BANKS AND BANKING.

THE BANK ACT, CANADA,

WITH

NOTES, AUTHORITIES AND DECISIONS, AND THE LAW RELATING TO CHEQUES, WAREHOUSE RECEIPTS, BILLS OF LADING, ETC.

Also The Currency Act, The Dominion Notes Act, The Savings Bank Acts, The Penny Bank Act, the Act Incorporating The Canadian Bankers' Association, and the By-laws of the Association.

THIRD EDITION

BY

THE HONORABLE J. J. MACLAREN, D.C.L., LL.D.

Justice of Appeal, Ontario; Author of "Bills, Notes and Cheques," etc., etc.

WITH

AN INTRODUCTION ON BANKING IN CANADA.

BY

B. E. WALKER, Esq.,

President of the Canadian Bank of Commerce.

TORONTO:
THE CARSWELL COMPANY, LIMITED
1908

PRINTED BY
THE CARSWELL COMPANY, LIMITED
30 ADELAIDE STREET EAST,
TORONTO

PREFACE TO THE THIRD EDITION.

THE consolidation of the Bank Act and amending Acts in the Revised Statutes of Canada, and the changes made in the arrangement and numbering of the sections, would have rendered a new edition of the present work desirable. There are also the additional reasons that the second edition was exhausted about two years ago, and that during the seven years since its appearance, many of the sections of the Act have been construed by the Courts, and a number of doubtful points settled.

The number of new cases cited in the present edition is one hundred and twenty, the majority of them being decisions upon the Act itself.

In order to facilitate a reference to the sections of the Revised Statute which correspond to those of the former Acts referred to in the cases, a concordance has been prepared which immediately follows the Table of Contents.

The part of the Bills of Exchange Act relating to cheques, with notes and recent decisions, is also given.

The Revised Statutes concerning the Currency, Dominion Notes, Savings Banks, and the Act incorporating the Canadian Bankers' Association, are also added.

J. J. M.

Toronto, May, 1908.

PREFACE TO THE FIRST EDITION.

OUR Canadian Statutes on general subjects are largely a reproduction of legislation previously enacted elsewhere, generally in Great Britain. The Bank Act is however an exception to this rule. Our financial conditions are very different from those of the mother country, and our whole banking policy has been widely divergent from that of the United States.

It is more than seventy years since charters were granted to banks in each of the old provinces that are now known as Ontario, Quebec, Nova Scotia and New Brunswick, and which comprised the whole Dominion as it was formed in 1867, and with a single exception these are all in successful operation to-day. The organization of other banks, and the periodical renewal of all bank charters, as well as the discussions incident to the frequent amendment and revision of our general banking laws, have in the course of time evolved a system that appears to be admirably adapted to the circumstances of a young and growing country like Canada.

On this account many of the rules and principles laid down in the general works on banking by writers in Great Britain and the United States are inapplicable here, and they are apt to prove misleading. The same is also true to a certain extent of the decisions of the Courts in these and other countries.

In the selection of cases as authorities and illustrations, the writer has sought to include all those in our Canadian reports which appear to embody or settle a principle, and which have not been overridden by subsequent legislation, or overruled by later decisions.

The leading cases in the higher Courts in England and in the United States, which seem to be in harmony with our law, have also been given. Of the cases cited three hundred and fifty are Canadian, and the references to Canadian Statutes number nearly three hundred.

The Introduction, on "Banking in Canada," by Mr. Walker will be found to be a very interesting and valuable contribution from one who is an acknowledged authority on the subject.

J. J. M.

Toronto, April, 1896.

CONTENTS.

PAGE.

CONCORDANCE—FORMER BANK ACTS AND PRESENT ACT.... xi.
CORRIGENDA ..... xii.
CASES CITED ..... xiii.
STATUTES CITED ..... xxix.
ABBREVIATIONS ..... xxxi.
INTRODUCTION—BANKING IN CANADA ..... xxxiii.

THE BANK ACT.

SECTION.

1. Short Title—The Bank Act 1
History of Canadian legislation 1
2. Interpretation—Definitions 6
3. Application of the Act—Recent changes..... 12
4. Charters continued to 1911 14
5. Banks in course of Winding-up 15
6. Bank of British North America 15
7. Head office of BANK OF B. N. A. 16

INCORPORATION AND ORGANIZATION OF BANKS.

8. Future Acts of Incorporation 16
9. Incorporation under Schedule B. 16
10. Capital stock and shares 17
11. Provisional directors 17
12. Opening of stock books 17
13. First meeting of subscribers 20
14. Bank commencing business 23
15. Certificate of Treasury Board 24
16. Certificate to issue within a year 24
17. Return of deposit 24

INTERNAL REGULATIONS.

18. Shareholders may make by-laws 25
Annual meeting—proxies 27
Directors—remuneration 28
Discounts—Guarantee and pension funds..... 29
Existing by-laws continued 29
19. Board of directors 29
20. Qualification of directors 32
21. Election of directors 34
22. Who shall be directors 35

SECTION. PAGE.
23. Provision in case of a tie 36
24. Election of president and vice-president 36
25. Vacancies in the board 37
26. Vacancy in office of president 38
27. Failure to elect directors 38
28. Meetings of directors 38
29. General powers of directors 39
30. Directors may appoint officers 40
Officers must give bonds 45
31. Special meeting of shareholders 50
Removal of president, director, etc. 51
32. Votes of shareholders 52

CAPITAL STOCK.

33. Increase of capital stock 54
34. Allotment of stock 55
35. Reduction of capital 56

SHARES AND CALLS.

36. Shares are personalty 58
Books of subscription—transfers 59
Dividends—Agents 61
37. Payment of shares—Cancellation 62
38. Calls—Intervals—Notice 63
39. Capital lost to be called for 66
41. Penalty and forfeiture of shares 67
42. Recovery of calls by action 69

TRANSFER AND TRANSMISSION OF SHARES.

43. Conditions for transfer of shares 69
44. List of daily transfers 72
45. Requirement for valid transfer 73
46. Sale of shares under execution 74
47. Transmission of shares 75
48. Transmission by marriage 77
49. Authentication of declaration 78
50. Transmission by will or intestacy 79
51. Transmission by decease 79

SHARES SUBJECT TO TRUSTS.

52. Not bound to see to trusts 83
53. When trust shareholder not liable 86

ANNUAL STATEMENT AND INSPECTION.

54. Statement at annual meeting—Contents 87
55. Further statements if required 88
56. Inspection of books 89

DIVIDENDS.

SECTION. PAGE.

57. Dividends quarterly or half-yearly 91
58. Not to impair capital 92
59. Dividend limited by rest 93

CASH RESERVES.

60. Part to be in Dominion notes 93

ISSUE AND CIRCULATION OF NOTES.

61. Authority for and limit of issue 95
62. Issue of notes outside Canada 97
63. Pledge of notes prohibited 99
64. Bank circulation redemption fund 99
65. When bank notes bear interest 101
66. Payment of share of suspended bank 102
67. Refund of deposit on winding-up 103
68. Rules as to fund 103
69. Minister may enforce payments 104
70. Circulation at par and redemption of notes..... 104
71. Bank must take its own notes 104
72. Payment in Dominion notes if required 105
73. Assignment of bonds, obligations, etc..... 105
74. Signing notes by machinery 107
75. Counterfeit notes to be stamped 107

BUSINESS AND POWERS OF THE BANK.

76. Branches—Banking business 109
The bank as a dealer 111
Discounts 112
Collateral security 114
Negotiable instruments 117
A general banking business..... 127
Business prohibited to banks 133
Bankers' lien 137
Agents, Trustees, etc. 140
Bank holidays 142
Banking hours—Clearing house 143
77. Bank's lien on debtor's stock 145
78. Sale of collateral securities 148
79. Acquisition of real estate 150
80. Mortgages as additional security 150
81. Purchase of realty by bank 157
82. Acquiring title to mortgaged property 159
83. Property to be sold 160
84. Loans on standing timber 161

SECTION. PAGE.
85. Advances for building ships 162
86. Warehouse receipts and bills of lading 163
87. Previous holder an agent 170
88. Loans to wholesale dealers or manufacturers 175
89. Goods manufactured from articles pledged 176
90. When bank may take security 182
Exchange of bill of lading and warehouse receipt.... 188
91. Rate of interest charged 188
92. Allowance of interest 191
93. Collection charges 191
94. Agency charges 192
95. Deposits and payments 192
Pass books—Deposit receipts 197
96. Payment of trust deposits 201
97. Death of small depositor 204
98. Dominion government cheques—Payable at par..... 204

PURCHASE OF ASSETS OF A BANK.

99. A bank may sell its assets 205
100. Consideration for such sale 206
101. Submission to selling shareholders 206
102. Approval of agreement of sale 206
103. Approval by purchasing bank 207
104. Approval by Dominion Government 207
105. Sections 33 and 34 not to apply 207
106. Conditions of approval by Government 208
107. Further conditions of approval 208
108. Notes of selling bank assumed 209
109. Evidence of Government approval 210
110. Assets vest in purchasing bank 210
111. Selling bank to cease business 210

RETURNS BY THE BANK TO GOVERNMENT.

112. Monthly returns to the Minister 211
113. Special returns when required 212
114. Annual returns to the Minister 212

PAYMENTS TO THE MINISTER ON WINDING-UP.

115. Unclaimed moneys to be paid to Minister..... 214
116. Moneys for outstanding notes 216

THE CURATOR.

117. Appointed by Bankers' Association 216
118. Manner of appointment 217
119. His powers and duties 217

SECTION. PAGE.
120. Officers of bank to assist curator 217
121. Directors' acts subject to his approval 218
122. Curator to report to Minister 218
123. Remuneration of curator 218

BY-LAWS OF BANKERS' ASSOCIATION.

124. Subject to approval of Treasury Board 218

INSOLVENCY.

125. Double liability of shareholders 219
126. No prescription as to deposits or dividends 220
127. What constitutes insolvency 221
128. Calls on winding-up 224
129. Liability of directors continues 226
130. Liability of ex-shareholders continues 226
131. Order of charges on assets 227

OFFENCES AND PENALTIES.

132. Premature commencement of business 229
133. Improper selling of shares 229
134. Not holding enough Dominion notes 230
135. Excessive issue of notes 230
136. Issuing unauthorized notes for circulation 231
137. Defacement of notes 232
138. Issuing notes during suspension 232
139. Pledging notes 233
140. Issuing notes fraudulently 233
141. Acquiring securities contrary to Act 234
142. Selling improperly under power of sale 235
143. Making false statement in security 236
144. Depriving bank of pledged goods 237
145. Improper sale of pledged shares 237
146. Bank doing prohibited business 238
147. Not making monthly returns 238
148. Not making special returns 239
149. Not making return of unpaid drafts 239
150. Not sending list of shareholders 239
151. Not sending list of unpaid dividends 240
152. Date stamp on envelope as evidence 240
153. Making wilfully false statement 241
154. Punishment for not making calls 243
155. Undue preference to bank's creditors 244
156. Improperly issuing title "bank," etc. 245
157. Committing an offence against the Act 245
158. Recovery of penalties 246

SECTION. PAGE.
SCHEDULE A.—List of banks 246
SCHEDULE B.—Form of Act of incorporation 247
SCHEDULE C.—Security under sec. 88..... 248
SCHEDULE D.—Form of return to Minister 249

CHEQUES ON A BANK.

BILLS OF EXCHANGE ACT, PART III..... 253
SECTION.
165 .Cheque defined 254
What provisions as to bills apply 257
Illustrations 258
166. Presentment for payment 267
167. Revocation by countermand or death 270

CROSSED CHEQUES.

168. General and special crossing 274
169. Crossing by drawer, etc. 275
170. Crossing a material part of cheque 276
171. Crossed to more than one bank 276
172. Liability for improper payment 276
173. Protection for payment in good faith 277
174. Taking crossed cheque "not negotiable" 278
175. Bank receiving payment in good faith 279

REVISED STATUTES OF CANADA.

CHAPTER.
25. The Currency Act 282
26. The Ottawa Mint Act 287
27. The Dominion Notes Act 288
30. The Savings Banks Act 291
31. The Penny Bank Act 304
32. The Quebec Savings Banks Act 320
33. Savings Deposits Returns Act 338

CANADIAN BANKERS' ASSOCIATION.

Act of Incorporation 339
By-laws of the Association 345
Rules of Clearing Houses 353
INDEX..... 359

CONCORDANCE.

Shewing where the several sections of the Bank Act, 1890 (53 V., c. 31), and of amending Acts are to be found in the Consolidated Bank Act, 1906, R.S.C., c. 29.

53 V., c. 31,	R.S.C., c. 29,
Sec. 1	Sec. 1
2	2
3	3
6	6
7	7
9	8, 9
10	10
11	11
12	12
13	13
14	14, 132
15	15
16	16
17	17
18	18, 20
19	19, 20, 21
	22, 23, 24
	25, 26
20	27
21	28
22	29
23	30
24	31
25	32
26	33
27	34
28	35
29	36
30	37
31	38
32	40
33	41
34	42
35	43
36	44
37	45, 133
38	46
39	47, 49
40	48
41	50
42	51

53 V., c. 31,	R.S.C., c. 29,
Sec. 43	Sec. 52
45	54
46	56
47	57
48	39, 58
49	59
50	60, 134
51	61, 135
52	63, 139,
	140
53	131
54	2, 64, 65
	66, 67, 68
	69
55	70
56	71
57	72
58	73
59	74
60	136
61	137
62	75
64	76
65	77
66	78
67	79
68	80
69	81
71	82
72	85
73	86, 87
74	88
75	90, 143
	144
76	89
77	89
78	89
79	141, 142
	145, 146
80	91, 92

53 V., c. 31,	R.S.C., c. 29.
Sec. 82	Sec. 93
83	94
84	95, 96
85	112, 147, 152
86	113, 148, 152
87	114, 150
88	114, 115, 116, 151
89	125
90	126
91	127
92	128, 154
93	128
94	128
95	129
96	130
97	155
98	158
99	153
100	156
101	157
102	2
103	98
Sch. B	Sch. B

63-64 V., c 26.	
Sec. 3	2
4	Sch. A.
5	5
6	4
7	6
8	53
9	55
10	61, 138
11	65
12	66
13	64
14	82, 83
15	86, 87
16	84
17	88
18	90, 142, 144

63-64 V., c. 26,	R.S.C., c. 29.
Sec. 19	Sec. 89
20	97
21	114, 149
22	152
24	2, 117
25	118
26	119
27	120, 121
28	122
29	123
30	124
31	124
33	99
34	100
35	101
86	102
37	103
38	104, 105
39	106
41	108
42	109
43	110
44	111
45	Sch. B.
46	" C.
47	" D.
Sch. A.	" A.
" C.	" C.
" D.	" D.

63-64 V. c. 27	
Sec. 1	107

4 Edw. VII. c. 3.	
Sec. 1	62
2	62
3	62
4	62

4-5 Edw. VII. c. 4	
Sec. 1	11
2	13
3	18
4	2, 24

CORRIGENDA

Page 11, line 9, for "*Burwick*" read "*Burdick*."
Page 93, lines 13 and 31, for "*Dorey*" read "*Dovey*."
Page 113, line 25, for "*Roquette*" read "*Rouquette*."

TABLE OF CASES CITED.

A.

Acraman v. Morrice, 8.
Adams, American Bank v. 49.
Adams v. Bank of Montreal, 191.
Adamson's Case, 64.
Agra & Masterman's Bank, 132, 195.
Agra & M. Bank, Jeffryes v. 138.
Agricultural S. & L. Association v Federal Bank, 259.
Akrokerri Mines v. Economic Bank, 281.
Albrecht, Duncuft v. 8.
Alexander v. Automatic Tel. Co., 30.
Alexander v. Burchfield, 269.
Alexander, Wakefield v. 266.
Allan v. Clarkson, 186.
Allen v. Bank of N. B. 139.
Allen v. Ont. R. R. R. Co., 21.
Alma Spinning Co., *Re*, 38, 68.
American Bank v. Adams, 49.
Amy, Pendleton County v. 120.
Anderson v. Thornton, 48.
Anglin v. Kingston, 121.
Ansell, Bank of Toronto v. 127.
Anson v. Towgood, 92.
Appleyard, Freeman v. 8.
Arcand, Légaré v. 260, 269, 270.
Armour v. Imperial Bank, 119.
Armstrong v. Buchanan, 185.
Armstrong, Hannan's Lake View v. 279.
Armstrong v. Hemstreet, 260.
Armstrong v. McGibbon, 35.
Armstrong v. Merchants M. Co. 65, 67.
Arnold v. Caldwell, 264.
Ashbury Ry. Co. v. Riche, 32.
Asiatic Banking Corp., *Re*, 40, 132.
Aspinwall, Board of Knox Co. v. 120.
Aston, Sanderson v. 49.
Athill v. Athill, 115.
Atkinson v. Bell, 7.
Attenborough, Clutton v. 266.
Atty.-Gen. v. Bouwens, 127.
Atty.-Gen. v. Higgins, 60.
Atty.-Gen. v. Montefiore, 59.
Atty.-Gen. v. N. Y. Breweries Co., 82.
Austin, Barrick v. 45.
Austin, Miller v. 120.
Automatic Tel. Co., Alexander v. 30.
Ayers v. South. Aus. Banking Co., 133, 157.

B.

Backhouse v. Charlton, 272.
Bailey, Clode v. 110.
Bailey v. Jellett, 202.
Bailey, Morrison v. 256.
Bain v. Torrance, 111.
Bainbridge v. Smith, 33.
Baines' Case, 63, 227.
Baird v. Bank of Washington, 31.
Baker, Glyn v. 127.
Bank of Australasia v. Breillat, 129.
Bank of B. N. A., Benallack v. 191.
Bank of B. N. A. v. Bossuyt, 190.
Bank of B. N. A. v. Clarkson, 167, 184.
Bank of B. N. A. v. Lafrance, 191.
Bank of B. N. A., Lee v. 119, 199.
Bank of B. N. A., Richards v. 139.
Bank of B. N. A., Torrance v. 129.
Bank of B. N. A., Wisconsin Bank v. 131.
Bank of Columbus, U. S. v. 45.
Bank of Commerce v. Jenkins, 30, 42.
Bank of Commerce, Williams v. 191.
Bank of England, Hartga v. 85.
Bank of England v. Moffat, 85.
Bank of England v. Parsons, 85.
Bank of England, Starkey v. 71.
Bank of England, Vagliano v. 196, 199.
Bank of England, Whitaker v. 197, 270.
Bank of England, Willis v. 110.
Bank of Hamilton v. Donaldson, 157.
Bank of Hamilton v. Halstead, 184.

Bank of Hamilton, Henderson v. 197, 270.
Bank of Hamilton v. Imperial Bank, 145.
Bank of Hamilton, Imperial Bank v. 145, 256, 264.
Bank of Hamilton v. Noye Mfg. Co., 9, 10, 168, 184.
Bank of Hamilton v. Shepherd, 184.
Bank of Liverpool v. Bigelow, 37, 65, 71.
Bank of London, Foster v. 90, 264.
Bank of Montreal, Adams v. 191.
Bank of Montreal v. Geddes, 124.
Bank of Montreal v. Hartman, 191.
Bank of Montreal, Heneker v. 79.
Bank of Montreal, Irwin v. 111.
Bank of Montreal, Jones v. 196, 270.
Bank of Montreal v. The King, 198, 261.
Bank of Montreal v. Little, 119, 199.
Bank of Montreal v. McWhirter, 155.
Bank of Montreal, The Queen v. 110 260.
Bank of Montreal v. Rankin, 37, 262.
Bank of Montreal, Rose-Belford Co. v. 259.
Bank of Montreal, Ryan v. 90.
Bank of Montreal v. Simpson, 59.
Bank of Montreal v. Sweeny, 141, 147.
Bank of Montreal v. Thomas, 130.
Bank of New Brunswick, Allen v. 139.
Bank of New Brunswick, Boyd v. 79, 84.
Bank of New Brunswick, Scott v. 201.
Bank of New South Wales v. Campbell, 159.
Bank of N. S. W. v. Milvain, 197, 270.
Bank of N. S. W., Owston v. 44.
Bank of N. Z., Fleming v. 197, 270.
Bank of Nova Scotia, Barss v. 72.
Bank of Nova Scotia v. Forbes, 65.
Bank of Nova Scotia, Landry v. 114.
Bank of Nova Scotia, Reg. v. 228.
Bank of Nova Scotia, Richards v. 44.
Bank of Nova Scotia, Smith v. 72.
Bank of Nova Scotia, Thompson v. 44.
Bank of Ontario, *Re*, 74.
Bank of Passamaquoddy, Wild v. 45.
Bank of St. Hyacinthe, Sarazin v. 14, 137.
Bank of Syria, *In re*, 31, 37.
Bank of Toronto v. Ansell, 127.
Bank of Toronto v. Cobourg P. & M. Ry. Co., 124.
Bank of Toronto, Drake v. 246.
Bank of Toronto v. European Assurance Society, 47.
Bank of Toronto v. Lambe, 6.
Bank of Toronto v. Perkins, 136, 152, 156.
Bank of Toronto v. St. Lawrence Fire Ins. Co., 107, 200.
Bank of Toronto v. Wilmot, 47.
Bank of Upper Canada v. Bradshaw, 42.
Bank of U. C., Commercial Bank v. 151, 174.
Bank of U. C. v. Covert, 46.
Bank of U. C., v. Killaly, 155.
Bank of U. C., Lyman v. 154.
Bank of U. C., McDonell v. 154.
Bank of U. C., Reg. v. 54.
Bank of U. C. v. Scott, 159.
Bank of U. C., v. Widmer, 30.
Bank of U. S., Fleckner v. 114.
Bank of Van Diemen's Land v. Bank of Victoria, 128.
Bank of Victoria, Bank of Van Diemen's Land v. 128.
Bank of Washington, Baird v. 31.
Bank of Washington, Barrington v. 49.
Banque d'Hochelaga's Case, 264.
Banque d'Hochelaga, Robertson v. 65, 67, 68.
Banque Jacques Cartier v. C. & D. Savings Bank, 43.
Banque Jacques Cartier v. Corporation of Limoilou, 260, 270.
Banque Jacques Cartier, Donohue v. 81.
Banque Nationale v. City Bank, 42, 261.
Banque Nationale, Grant v. 155, 161.
Banque Nationale v. Lesperance, 48.
Banque Nationale v. Merchants' Bank, 143.
Banque du Peuple, Exchange Bank v. 262.
Banque du Peuple, Hudon v. 74.
Banque du Peuple, McCaffrey v. 156.
Banque du Peuple v. Pacaud, 117.
Banque Provinciale v. Charbonneau, 42.
Banque de St. Hyacinthe v. Guilbault, 263.
Banque de St. Hyacinthe v. Sarrazin, 190.
Banque Ville Marie, Wilson v. 261.
Barber, Knight v. 8, 58.
Barber, Latham v. 8.

Barber v. Mackrell, 188.
Barclay, Sheffield Corp. v. 71.
Baril v. Tetrault, 262.
Baring, Venables v. 126.
Barkwell's Claim, 119.
Barned's Banking Co., *Re*., 123.
Barnett, Brandao v. 137.
Barnhart v. Robertson, 189.
Barrick v. Austin, 45.
Barrington v. Bank of Washington, 49.
Barrow, City Bank v. 174.
Barrow's Case, 65.
Barrow-in-Furness Co., *Re*, 64.
Barss v. Bank of Nova Scotia, 72.
Bartlett, Gompertz v. 112.
Barwick v. Eng. J. S. Bank, 32.
Bates, Carstairs v. 113, 114.
Bathgate v. Merchants' Bank, 156.
Bavins v. South Western Bank, 255, 279.
Bayley v. Manchester Ry. Co., 45.
Beak v. Beak, 265, 272.
Beatty, N. W. Transportation Co. v. 53.
Beauchemin, Larocque v. 64.
Beaudoin, Thibaudeau v. 135.
Bechuanaland Exploration Co. v. London Trading Bank, 125.
Bell, Atkinson v. 7.
Bell, Bowlby v. 8.
Bell, v. Carey, 196, 270.
Bell, Weir v. 32.
Bellamy v. Marjoribanks, 273.
Benallack v. Bank B. N. A., 191.
Benas, Ogden v. 278.
Bennett v. London & County Bank, 279.
Bentham Mills Co., *Re*, 76, 146.
Bergeron, Quebec Bank v. 116.
Bernard, Coggs v. 166.
Bevan v. National Bank, 281.
Bigelow, Bank of Liverpool v. 37, 65, 71.
Bignold, Ex parte, 256.
Birkbeck Loan Co. v. Johnston, 83.
Birkbeck Loan Co., McKain v. 71.
Bissel v. Fox, 279.
Black v. Homersham, 92.
Black v. Ottoman Bank, 49.
Blackburn v. Cunliffe, 199.
Blackley v. McCabe, 131, 269.
Blake, Toronto Brewing Co. v. 25, 38.
Blakely Ordnance Co., *Re*, 125.
Bloomenthal v. Ford, 56, 62.
Blumberg v. Life Int. Corp., 266.
Board of Knox Co. v. Aspinwall, 120.
Bobbett v. Pinkett, 274.
Boddington v. Schlenker, 262, 273.
Bonar v. Macdonald, 49.
Booth v. Powers, 256.
Boschoek Co. v. Fuke, 33, 50.
Bossuyt, Bank B. N. A. v. 190.
Boston & N. S. Coal Co., O'Dell v. 21, 31.
Bottomley's Case, 38, 68.
Boulanger, Dion v. 262.
Boultbee v. Gzowski, 227.
Boulton v. Langmuir, 256.
Bouwens, Atty.-Gen. v. 127.
Bowen v. Newell, 256.
Bower v. Foreign Gas Co., 114, 138.
Bowes, Foster v. 184.
Bowlby v. Bell, 8.
Bowmanville Machine Co., Smart v. 65.
Bowsher, Davis v. 139.
Boyd v. Bank of New Brunswick, 79, 84.
Boyd v. Nasmith, 131, 260, 269, 270.
Bradford Banking Co. v. Briggs, 86, 147.
Bradshaw, Bank of U. C. v. 42.
Braintree, Carver v. 154.
Brandao v. Barnett, 137.
Brandon v. Scott, 202.
Bread Supply Association, *Re*, 220.
Breillat, Bank of Australasia v. 129.
Briggs, Bradford Banking Co. v. 86, 147.
British Linen Co. v. Caledonian Ins. Co., 127.
British Mutual B. Co. v. Charnwood Forest Ry. Co., 32.
Brocklebank, New London Bank v. 147.
Bromley v. Brunton, 265.
Brooks, Firth v. 269.
Brown, *Re*, 256.
Brown, City Bank v. 47.
Brown, Mathews v. 280.
Brown v. National Bank, 255.
Brown, Teale v. 111.
Brown, Traders Bank v. 167.
Browne v. Commercial Bank, 115.
Brownrigg, Navulshaw v. 173.
Bruce, Napier v. 48.
Brunton, Bromley v. 265.
Brush v. Molson's Bank, 115.
Buchanan, Armstrong v. 185.
Buckingham v. London & Midland Bank, 132, 271.

Bucks & Oxon Ry. Co., Coleman v. 204.
Bunny, Shaw v. 158.
Buntin, Reg. v. 245.
Burchfield, Alexander v. 269.
Burdick, Sewell v. 11.
Burkinshaw v. Nicolls, 56, 65.
Burland v. Earle, 53, 91.
Bush v. Fry, 173.

C.

Cady, Colonial Bank v. 123.
Caisse d'Economie, Petry v. 141.
Caisse d'Economie, Rolland v. 137.
Calderwood's Case, 19.
Caldwell, Arnold v. 264.
Caldwell v. National Bank, 45.
Caledonian Ins. Co., British Linen Co. v. 127.
Cameron v. Kerr, 155.
Campbell, Bank of N. S. Wales v. 159.
Campbell, Exchange Bank v. 65.
Campbell v. Maund, 52.
Campbell v. Riendeau, 269.
Canada Permanent L. & S. Co., Hughes v. 259.
Canada Shipping Co.'s Case, 186.
Canadian Bank of Commerce v. McDonald, 153, 156, 191.
Canadian Bank of Commerce, Ritchie v. 191.
Canadian Bank of Commerce v. Stevenson, 173.
Canadian Bank of Commerce v. Woodward, 117.
Capeyron, Chasteauneuf v. 76.
Capital & Co.'s Bank v. Gordon, 255, 266, 280.
Carey, Bell v. 196, 270.
Carlon v. Ireland, 273.
Carpenter v. Street, 255.
Carr v. Carr, 196.
Carruthers, Royal Can. Bank v. 167.
Carscaden, Molson's Bank v. 130.
Carstairs v. Bates, 113, 114.
Carter, Holmes v. 87, 141.
Carter, Muir v. 87, 141.
Carver v. Braintree, 154.
Cawley Co., *Re*, 65.
Central Bank, *Re*, 63, 70, 71, 119, 124, 186, 200, 220, 223, 227.
Central Bank v. Garland, 116.
Central Bank v. Hogg, 70.
Central Bank, Schroeder v. 265.
Central Ont. Ry., Toronto General Trusts v. 150.
Champion v. Gordon, 256.
Chaplin, Johansen v. 130.
Chaplin, Ontario Bank v. 223.
Charbonneau, Banque Provinciale v. 42.
Charitable Corp. v. Sutton, 30.
Charnwood Forest Ry. Co., Brit. Mutual B. Co. v. 32.
Charlton, Backhouse v. 272.
Chasteauneuf v. Capeyron, 76.
Chatham Banner Co., *Re*, 90, 198.
Chatterton v. London & County Bank, 199.
Cheeseman, Clement v. 265, 272.
Chemical Nat. Bank, Critten v. 199
Cherry, National Bank v. 136, 157.
Chickering, Dedham Bank v. 41.
Chinic, *Re*, 72.
Chinic & Union Bank, 147.
Christin, Compagnie de Navigation v. 65.
Chunder Sein v. Ryan, 173.
Citizens Ins. Co. v. G. T. Ry. Co., 47.
Citizens Ins. Co., Wilson v. 170.
City Bank, Banque Nationale v. 42, 261.
City Bank v. Barrow, 174.
City Bank v. Brown, 47.
City Bank, Goodenough v. 131.
City & County Bank, Stone v. 134.
City & District Savings Bank v. Banque Jacques Cartier, 43.
City & District Savings Bank, Exchange Bank v. 43, 124, 138, 139, 220.
Clark, *In re*, 60.
Clark, France v. 123.
Clark, Jarvis v. 189.
Clarke v. Hart, 67.
Clarke v. London & County Banking Co., 279.
Clarkson, Allen v. 186.
Clarkson, Bank B. N. A. v. 167, 184.
Clarkson v. Sterling, 187.
Clayton's Case, 195.
Clement v. Cheeseman, 265, 272.
Clench v. Consolidated Bank, 203.
Clode v. Bailey, 110.
Clutton v. Attenborough, 266.
Clydesdale Bank, Kirkwood v. 271.
Clydesdale Bank, McLean v. 271.
Coates' Case, 64.
Cobourg, Crawford v. 121.
Cobourg P. & M. Ry. Co., Bank of Toronto v. 124.
Cockburn v. Sylvester, 168, 185.

Code, Union Bank v. 64.
Coffey v. Quebec Bank, 9, 168.
Coggs v. Bernard, 166.
Cohen v. Hale, 271.
Cole v. North Western Bank, 174.
Cole, Young v. 121.
Coleman, *Re*, 168.
Coleman v. Bucks & Oxon Bank, 204.
Collins v. Collins, 59.
Colonial Bank v. Cady, 123.
Colonial Bank v. Whinney, 59.
Colonial Bank v. Willan, 31.
Colonial Bank, Williams v. 70.
Colville v. Flanagan, 272.
Commercial Bank, *Re*, 119, 256, 264.
Commercial Bank v. Bank of U. C. 151, 154.
Commercial Bank, Browne v. 115.
Commercial Bank v. Cotton, 189.
Commercial Bank v. Fleming, 263.
Commercial Bank v. G. W. Ry. Co., 32.
Commercial Bank, Gillies v. 157.
Commercial Bank, Mackay v. 44.
Commercial Bank v. Rhind, 199, 271.
Commercial Bank, Windsor v. 94.
Commercial Nat. Bank v. Corcoran, 169.
Commissioners of Herne Bay, Webb v. 120, 125.
Common v. Matthews, 20.
Compagnie de Navigation v. Christin, 65.
Compagnie de Villas, Hughes v. 63.
Comptoir National, Kleinwort v. 278.
Compton, E. T. Bank v. 121.
Confederation Life v. Howard, 120, 121.
Confederation Life v. Labatt, 182.
Conflans Stone Q. Co. v. Parker, 127.
Conn v. Merchants Bank, 224.
Conn v. Smith, 188.
Consolidated Bank, Clench v. 203.
Consolidated Bank, Prentice v. 117.
Converse, Ross v. 66.
Cook v. Royal Can. Bank, 72.
Cooper v. Griffin, 33, 34.
Cooper v. Molsons Bank, 117.
Cooper, Tassell v. 89.
Corcoran, Com. Nat. Bank v. 169.
Cordingly, Harris v. 197.
Cory, Dovey v. 89, 93, 243.
Corney, Rothschild v. 269.
Corp. of Limoilou, Banque Jacques Cartier v. 260, 270.
Cerry, Fielding v. 110.
Cotté, The Queen v. 242.
Cotton, Commercial Bank v. 189.
Counsell, Exchange Bank v. 223.
County Life Assurance Co., *Re*, 31.
County of Gloucester Bank v. Rudry Merthyr Co., 31.
Couper's Trustees v. National Bank of Scotland, 271.
Court, Gihnan v. 65.
Court v. Waddell, 220.
Covert, Bank of U. C. v. 46.
Cox, Seeley v. 44.
Craig v. First Pres. Church, 23.
Cramp v. Panton, 92.
Crawford v. Cobourg, 121.
Crawford, Shaw v. 115.
Crédit Foncier, Crouch v. 118, 125.
Crédit Lyonnais, Johnson v. 174.
Crédit Lyonnais, Lacave v. 278, 280.
Criddle, Prideaux v. 269.
Critten v. Chemical Nat. Bank, 199.
Cromwell v. Sac Co., 122.
Crouch v. Crédit Foncier, 118, 125.
Crowell v. Longard, 263.
Crown Bank, Toronto C. & B. Co. v. 185.
Crum, Oakbank Oil Co. v. 91.
Cubley, Pigot v. 149, 181.
Culverwell, Morley v. 113, 255.
Cummer, Royal C. Bank v. 139, 155.
Cunliffe, Blackburn v. 199.
Currie, Misa v. 128, 195.
Cummings v. Shand, 271.
Curtice v. London City Bank, 272.
Cushing v. Dupuy, 5, 83.

D.

Dansereau, Massue v. 190.
D'Arcy v. Tamar Ry. Co., 18, 31.
Darling, Exchange Bank v. 65.
Darveau, Merchants Bank v. 130.
Da Silva v. Fuller, 255.
Davidson, Dominion Bank v. 169.
Davidson v. Fraser, 260.
Davidson v. Grange, 35.
Davis v. Bowsher, 139.
Davis, Husband v. 202.
Dawes, Sharp v. 23.
Dawson, Pothonier v. 149.
Day v. McLea, 265.
Dedham Bank v. Chickering, 41.
De Gendre v. Kent, 92.
Denham & Co., *Re*, 89, 243.
Derbyshire Ry. Co., Serrell v. 270.
De Serres v. Euard, 257, 268.

Desrosiers v. Montreal P. & B. Ry. Co., 124.
Detroit Savings Bank v. Ziegler, 49.
Deverges v. Sandeman, 149, 181.
Dickson v. McMurray, 52.
Dillon, *In re*, 120, 200.
Dion v. Boulanger, 262.
Dion v. Lachance, 263.
Dobell v. Ontario Bank, 41.
Dominion Bank v. Davidson, 169.
Dominion Bank v. Knowlton, 41.
Dominion Bank v. Oliver, 155, 184.
Donald v. Suckling, 149.
Donaldson, Bank of Hamilton v, 157.
Donogh v. Gillespie, 130.
Donohue v. Banque Jacques Cartier, 81.
Dorion v. Dorion, 262.
Dorion, Kierzkowski v. 190, 191.
Dorrien, Lucas v. 139.
Douglas, Nickle v. 60.
Dovey v. Cory, 89, 93, 243.
Drake v. Bank of Toronto, 246.
Duffin v. Duffin, 200.
Dufresne v. St. Louis, 258.
Duggan, London & Can. L. & A. Co. v. 142.
Duncan & Co., *Re*, 194.
Duncuft v. Albrecht, 8.
Dunspaugh v. Molsons Bank, 129.
Dupuy, Cushing v. 5, 83.

E.

Earle, Burland v. 53, 91.
East of England Banking Co., *Re*, 194.
East Holyford Mining Co., Mahony v. 31.
Eastern Townships Bank v. Compton, 121.
Eastern Townships Bank, Roxton v. 122.
Economic Bank, Akrokerri Mines v. 281.
Edwards, Hitchcock v. 255.
Edwards v. Vere, 194.
Elliott, Union Bank v. 115.
Elwood, Rochester City Bank v. 49.
Embury v. West, 187.
Eng. & C. P. Co., Sutton v. 33.
English & Irish Rolling S. Co., *Re*, 28.
Eng. J. S. Bank, Barwick v. 32.
Erie & Huron Ry. Co., Michie v. 20.
Ernest v. Loma Mines, 28.
Essex Land Co., *Re*, 155.
Euard, De Serres v. 257, 268.
European Bank, *In re*, 126.
European & N. A. Ry. Co. v. McLeod, 20.
European Assurance Society, Bank of Toronto v. 47.
Ewer, Lockwood v. 149, 181.
Exchange Bank v. Banque du Peuple, 262.
Exchange Bank v. Campbell, 65.
Exchange Bank v. C. & D. Savings Bank, 43, 124, 138, 139, 220.
Exchange Bank v. Counsell, 223.
Exchange Bank v. Darling, 65.
Exchange Bank v. Fletcher, 43, 134.
Exchange Bank v. Gault, 48.
Exchange v. Hall, 223.
Exchange Bank v. Montreal Coffee House, 223.
Exchange Bank v. Nowell, 115.
Exchange Bank v. People's Bank, 43.
Exchange Bank v. Quebec Bank, 262.
Exchange Bank v. The Queen, 228.
Exchange Bank, Seneca v. 223.
Exchange Bank, Springer v. 47, 89.
Exchange Bank v. Stinson, 223.
Eyre, *Ex parte*, 138.

F.

Fear, Woodland v. 110, 113, 271.
Fearson, Nichols v. 112.
Federal Bank, Agricultural S. & L. Association v. 259.
Federal Bank, Hutton v. 189.
Fielding v. Corry, 110.
Fine Art Society v. Union Bank, 127.
First Nat. Bank v. Leach, 260, 270.
First Pres. Church, Craig v. 23.
Firth v. Brooks, 269.
Fisher v. Roberts, 279.
Fitzsimmons, Union Fire Ins. Co. v. 66.
Flanagan, Colvile v. 272.
Fleckner v. Bank of U. S., 114.
Fleming v. Bank of N. Z., 197, 270.
Fleming, Commercial Bank v. 263.
Fletcher, Exchange Bank v. 43, 134.
Flewker, Heyman v. 174.
Foley v. Hill, 195, 197, 270.
Forbes, Bank of N. S. v. 65.
Foreign Gas Co., Bower v. 114, 138.
Ford, Bloomenthal v. 56, 62.
Forest of Dean Coal Co., *Re*, 30.
Forster, Hopkinson v. 265.
Forster, Mitchell v. 66.
Forter v. Mackreth, 255, 264.

Foster v Bank of London, 90, 264.
Foster v. Bowes, 184.
Foster v. Fraser, 258.
Fothergill's Case, 64.
Fournier v. Union Bank, 261.
Fourth Street Bank v. Yardley, 264.
Fox, Bissel v. 279.
Foxall, Phillips v. 49.
Foxton v. Manchester & L. B. Co., 204.
France v. Clark, 123.
Franck, Hall v. 202.
Fraser, Davidson v. 260.
Fraser, Foster v. 258.
Freeman v. Appleyard, 8.
Fry, Bush v. 173.
Fry v. Quebec Harbor Comrs. 170.
Fuke, Boschoek Co. v. 33, 50.
Fuller, Da Silva v. 255.
Fuller, Hall v. 264.
Fulton Co., Marsn v. 120.

G.

Gaden v. Newfoundland S. Bank, 266.
Galloway's Case, 19.
Garden Gully Co. v. McLister, 68.
Garland, Central Bank v. 116.
Garnett v. McKewan, 111, 271.
Gaskell, Lee v. 7.
Gault, Exchange Bank v. 48.
Geddes, Bank of Montreal v. 124.
Geddes, Montreal C. & D. Savings Bank v. 124.
General Estates Co., *Re*, 125.
General Exchange Bank v. Horner, 44.
Gibb v. Poston, 35.
Giblin v. McMullen, 133.
Gillespie, Donogh v. 130.
Gillies v. Commercial Bank, 157.
Gilman v. Court, 65.
Gilmour v. Hall, 35.
Glyn v. Baker, 127.
Gomersall, *Re*, 113.
Gompertz v. Bartlett, 112.
Goodenough v. City Bank, 131.
Goodfallow, *Re*, 179.
Goodwin v. Robarts, 118, 125.
Gordon, Capital & Co.'s Bank v. 255, 266, 280.
Gordon, Champion v. 256.
Gordon, London City & M. Bank v. 255, 280.
Gordon, Mackay & Co. v. Union Bank, 260.
Gordon, Quinlan v. 189.
Gore Insurance Co., McBride v. 168.
Gorgier v. Mieville, 127.
Goulsbury, Hudleston v. 59.
Grand Trunk Ry. Co., Cit. Ins. Co. v. 47.
Grand Trunk Ry. Co., Royal Can. Bank v. 11, 168.
Grange, Davidson v. 35.
Grant v. Banque Nationale, 155, 161.
Grant, Household Fire Ins. Co. v. 19.
Gray v. Johnston, 203.
Great Northern Works, *In re*, 18.
Great Western Ry. Co., Commercial Bank v. 32.
Great Western Ry. Co. v. London & C. Banking Co., 280.
Great Western Ry. Co., Mason v. 9, 167, 179.
Greener, North Sydney Mining Co. v. 21.
Grenier, Prefontaine v. 89, 93, 243.
Greymouth Paint Co., Yuill v. 31.
Grieve v. Molsons Bank, 42.
Griffin, Cooper v. 34.
Griffin, Lee v. 7.
Groome, London & County Bank v. 269.
Grote, Young v. 264.
Guilbault, Banque de St. Hyacinthe v. 263.
Gunn's Case, 19.
Gunn, Pawle v. 8.
Gurney v. Womersley, 112, 113.
Gzowski, Boultbee v. 227.

H.

Hale, Cohen v. 271.
Hall, Exchange Bank v. 223.
Hall v. Franck, 202.
Hall v. Fuller, 264.
Hall, Gilmour v. 35.
Hallen v. Runder, 7.
Hallett & Co., *Re*, 113.
Hallmark's Case, 89.
Halstead, Bank of Hamilton v. 184.
Hamilton v. Holmes, 20.
Hamilton, Trust & Loan Co. v. 121.
Hamilton, Woolf v. 266.
Hampson, Imperial Co. v. 51.
Hancock, Merchants Bank v. 169.
Hannan's Lake View v. Armstrong, 279.
Hannum v. McRae, 90.

Harbon v. Phillips, 28.
Hardy v. Veasey, 89.
Hare v. Henty, 269.
Harren v. Yernen, 158.
Harris v. Cordingley, 197.
Harrison v. Nicollet Bank, 256.
Hart, Clarke v. 67.
Hartga v. Bank of England, 85.
Hartman, Bank of Montreal v. 191.
Harvey, Larraway v. 263.
Hately v. Elliott, 261.
Hatton, National Ins. Co. v. 65.
Haycraft Gold R. & M. Co., *Re*, 18.
Hazelton, Reg. v. 257.
Heilbut v. Nevill, 202.
Heilig, Molsons Bank v. 156.
Hemstreet, Armstrong v. 260.
Henderson's Case, 134, 227.
Henderson v. Bank of Hamilton, 197, 270.
Heneker v. Bank of Montreal, 79.
Henry v. Simard, 36.
Henty, Hare v. 269.
Heseltine v. Siggers, 8, 127.
Hewitt v. Kaye, 120, 265, 272.
Heyman v. Flewker, 174.
Heywood v. Pickering, 131, 269.
Higgins, Atty.-Gen. v. 60.
Higgins, North Sydney Co. v. 64.
Higgon, Young v. 66.
Hill, Foley v. 195, 197, 270.
Hill v. Smith, 196, 270.
Hincks, Reg. v. 212, 242.
Hirst, Wilson v. 195.
Hitchcock v. Edwards, 255.
Hochelaga Bank, Insky v. 139.
Hochelaga Bank, London Guarantee Co. v. 48.
Hodgkin, *Ex parte*, 186.
Hoeffler v. Irwin, 161.
Hogg, Central Bank v. 70.
Holmes v. Carter, 87, 141.
Holmes, Hamilton v. 20.
Home Savings & Loan Co.'s Case, 71, 124, 220.
Homersham, Black v. 92.
Hopkinson v. Forster, 265.
Hornblower, Randolph Bank v. 266.
Horner, General Exchange Bank v. 44.
Horsey's Claim, 150.
Household Fire Ins. Co. v. Grant, 19.
Hovey, Mill Dam Foundry v. 154.
Howard, Confederation Life v. 120, 121.
Howard v. Pat. Ivory Co., 31.
Howard v. Sadler, 33.
Howbeach Coal Co. v. Teague, 18, 28.
Hudleston v. Gouldsbury, 59.
Hudon v. Banque du Peuple, 74.
Hughes v. Canada Permanent L. & S. S., 259.
Hughes v. Compagnie de Villas, 63.
Hughes v. Rees, 60.
Hughes, Vinden v. 261.
Hull Glass Co., Smith v. 41.
Hull, Imperial Bank v. 170.
Humble v. Mitchell, 8, 58.
Humby's Case, 227.
Hunter, Lord v. 262.
Husband v. Davis, 202.
Hutton v. Federal Bank, 189.

I.

Imperial Bank, Armour v. 119.
Imperial Bank v. Bank of Hamilton, 145, 256, 264.
Imperial Bank, Bank of Hamilton v. 145.
Imperial Bank v. Hull, 170.
Imperial Bank, Jones v. 112.
Imperial Bank, Peuchen v. 182.
Imperial Co. v. Hampson, 51.
Imperial Land Co., *Re*, 125.
Indian Zoedone Co., 28.
Ingham, Simson v. 111, 195.
Inglis v. Robertson, 170.
Innes v. Stephenson, 202.
Insky v. Hochelaga Bank, 139.
International Contract Co., *Re*, 74.
Ireland, Carlon v. 273.
Ireland v. North of Scot. Co., 271.
Ireland, Ont. Marine Ins. Co. v. 85.
Irvine v. Union Bank of Australia, 32, 50.
Irwin v. Bank of Montreal, 111.
Irwin, Hoeffler v. 161.
Isle of Wight Ry. Co. v. Tahourdin, 51.

J.

Jackson, Rex v. 257.
Jacques Cartier Bank v. City & District Savings Bank, 43.
Jacques Cartier Bank v. The Queen, 127.
Jarvis v. Clark, 189.
Jeffery, Lewis v. 112.
Jeffryes v. Agra & M. Bank, 138.
Jellett, Bailey v. 202.

Jenkins, Bank of Commerce v. 30, 42.
Jewan v. Whitworth, 173.
Johansen v. Chaplin, 130.
Johnson v. Crédit Lyonnais, 174.
Johnson v. Lyttle's Iron Agency, 65, 67, 69.
Johnson v. Robarts, 195.
Johnston, Birkbeck Loan Co. v. 83.
Johnston, Gray v. 203.
Jones v. Bank of Montreal, 196, 270.
Jones v. Imperial Bank, 112.
Jones v. Peppercorne, 140.
Jones v. Ryde, 112.
Jonmenjoy v. Watson, 115, 184.

K.

Kaines v. Stacey, 189.
Kaye, Hewitt v. 120, 265, 272.
Keane v. Robarts, 203.
Kelsall, Wallace v. 202.
Kemp v. Westbrook, 181.
Kennedy, *Ex parte*, 18.
Kennedy, Molsons Bank v. 129.
Kenny v. Price, 262.
Kent, De Gendre v. 92.
Kerr, Cameron v. 155.
Kerr, Milloy v. 9.
Kierzkowski v. Dorion, 190, 191.
Killaly, Bank of U. C. v. 155.
Kilsby v. Williams, 271.
King, The Bank of Montreal v. 198, 261.
King, The v. Lovitt, 243.
King, The v. Richard, 257.
Kingston, Anglin v. 121.
Kingston, *Ex parte*, 203.
Kirkwood v. Clydesdale Bank, 271.
Kirkwood v. Thompson, 158.
Kleinwort v. Comptoir National, 278.
Knauth Nachod v. Stern, 263.
Knight v. Barber, 8, 58.
Knipe, Ogle v. 59.
Knowlton, Dominion Bank v. 41.
Kolfage, Redpath v. 131, 259, 269.
Kymer v. Laurie, 196, 270.

L.

Labatt, Confederation Life v. 182.
Lacave v. Credit Lyonnais, 278, 280.
Lachance, Dion v. 263.
Ladbroke, Rogerson v. 272.
Lafrance, Bank of B. N. A. v. 191.
Lajoie, Robertson v. 173, 185.
Lake Superior Nav. Co. v. Morrison, 20.
Lambe, Bank of Toronto v. 6.
Lambeth, Reg. v. 52.
Lanaud, Molsons Bank v. 8.
Lancaster, *Ex parte*, 28.
Landry v. Bank of N. S. 114.
Lang v. Smyth, 127.
Langmuir, Boulton v. 256.
Laroeque v. Beauchemin, 64.
Larraway v. Harvey, 263.
Latham v. Barber, 8.
Laurie, Kymer v. 196, 270.
Lawson v. McGeoch, 187.
Leach, First Nat. Bank v. 260, 270.
Leather M. Bank v. Morgan, 199.
Leduc v. Ward, 11.
Lee v. Bank B. N. A. 119, 199.
Lee v. Gaskell, 7.
Lee v. Griffin, 7.
Lee v. Sankey, 202.
Lee, Stewart v. 273.
Leeds Banking Co., *Re*, 19.
Leese v. Martin, 138, 140.
Légaré v. Arcand, 260, 269, 270.
Leipschitz v. Montreal Street Ry. Co., 263.
Lesperance, Banque Nationale v. 48.
Leveaux, Smith v. 195.
Levitt's Case, 19.
Lewis v. Jeffery, 112.
Life Int. Corporation, Blumberg v. 266.
Litman v. Montreal C. & D. S. Bank, 129.
Little, Bank of Montreal v. 119, 199.
Liverpool Ins. Co., Todd v. 168.
Llado v. Morgan, 9, 168.
Lockwood v. Ewer, 149, 181.
Loma Mines, Ernest v. 28.
London, Birmingham &c., Banking Co., *Re*, 146.
London & Canadian L. & A. Co. v. Duggan, 142.
London Chartered Bank v. White, 138.
London & C. Banking Co., Great W. Ry. Co. v. 280.
London City Bank, Curtice v. 272.
London City & M. Bank v. Gordon, 255, 280.
London & County Bank, Picker v. 127.
London & County Bank, Bennett v. 279.
London & County Bank, Chatterton v. 199.
London & County Bank, Clarke v. 279.
London & County Bank v. Groome, 269.

London & County Bank, Mathiessen v. 279.
London & County Bank v. River Plate Bank, 123.
London Guarantee Co. v. Hochelaga Bank, 48.
London Joint Stock Bank, Sheffield v. 123, 125, 141.
London Joint Stock Bank v. Simmons, 125.
London Joint Stock Bank, Simmons v. 118, 142.
London Life v. Molsons Bank, 261.
London, &c., Land Co., *Re*, 28.
London & Midland Bank, Buckingham v. 132, 271.
London & N. W. Ry. Co. v. Whinray, 49.
London & Southern Cos. F. L. Co., *Re*, 18.
London Trading Bank, Bechuanaland Exp. Co. v. 125.
Londonderry Ry. Co., Reg. v. 65.
Longard, Crowell v. 263.
Lorant, Scadding v. 27.
Lord v. Hunter, 262.
Loupret, Molleur v. 242.
Lovitt, The King v. 243.
Lucas v. Dorrien, 139.
Lyman v. Bank of U. C., 154.
Lyons' Case, 28.
Lyster's Case, 28.
Lyttle's Iron Agency, Johnson v. 65, 67, 69.

M.

Macbeth v. N. & S. Wales Bank, 261.
McBride v. Gore Insurance Co., 168.
McCabe, Blackley v. 131, 269.
McCaffrey v. Banque du Peuple, 156.
McCallum, Scally v. 121.
McConnell, Ryan v. 115.
McCrae v. Molsons Bank, 186.
McCraken v. McIntyre, 56, 62.
McDonald, Can. Bk. of Commerce v. 153, 156, 191.
McDonald v. Rankin, 44, 134, 243.
McDonell v. Bank of U. C., 154.
Macdonald, Bonar v. 49.
McFarlane, Raphael v. 141.
Macfarlane v. St. Cesaire, 122.
McGibbon, Armstrong v. 35.
McGillivray, Robinson v. 260.
McGeoch, Lawson v. 187.
McIntyre, McCraken v. 56, 62.
McKain v. Birkbeck Co., 71.
McKewan, Garnett v. 111, 271.
Mackay v. Commercial Bank, 44.
Mackrell, Barber v. 188.
Mackreth, Foster v. 255, 264.
McLea, Day v. 265.
McLean v. Clydesdale Bank, 271.
McLeod, European Ry. Co. v. 20.
McLister, Garden Gully Co., 68.
McMullen, Giblin v. 133.
McMurray, Dickson v. 52.
Macnider v. Young, 126.
Macnider, Young v. 126.
McRae, Hannum v. 90.
McQuesten, Parker v. 243.
McRoberts v. Steinoff, 186.
McWhirter, Bank of Montreal v. 155.
Mahony v. East Holyford Mining Co., 31.
Maitland, Wilmot v. 9, 167, 179.
Malcolm v. Scott, 264.
Mallory's Case, 19.
Malo, Nye v. 189.
Manchester, etc., Ry. Co., Bayley v. 45.
Manchester L. & B. Co., Foxton v. 204.
Mander v. Royal Can. Bank, 119, 199.
Manning, Nasmith v. 20.
Manning v. Purcell, 196.
Marchant, Parker v. 196.
Maritime Bank v. The Queen, 228.
Maritime Bank v. Receiver-General, 228.
Maritime Bank v. Union Bank, 262.
Marjoribanks, Bellamy v. 273.
Marler v. Molsons Bank, 258, 268.
Marler v. Stewart, 131, 269.
Marseilles Extension Ry., *Re*, 31.
Marsh v. Fulton County, 120.
Martin, Leese v. 138, 140.
Marzetti v. Williams, 197, 270.
Mason v. G. W. Ry. Co., 9, 167, 179.
Massey Manufacturing Co., *Re*, 55.
Mass. National Bank, Morse v. 45.
Masson v. Merchants' Bank, 170.
Massue v. Dansereau, 190.
Mathiessen v. London & County Bank, 279.
Matthews v. Brown, 280.
Matthews, Common v. 20.
Matthews v. Williams, 280.
Maund, Campbell v. 52.
Mayfield v. Wadsley, 7.
Mead, *In* re, 120.
Mechanics' Bank, Minor v. 49.
Mechanics' Bank v. St. Jean, 222.
Medewe, *Re*, 139.

Merchants' Bank, Bathgate v. 156.
Merchants' Bank, Banque Nationale v. 143.
Merchants' Bank, Conn v. 224.
Merchants' Bank v. Darveau, 130.
Merchants' Bank v. Hancock, 169.
Merchants' Bank, Masson v. 170.
Merchants' Bank, Moffatt v. 130.
Merchants' Bank, Perrault v. 197.
Merchants' Bank, Radford v. 133.
Merchants' Bank v. Smith, 4.
Merchants' Bank, Smith v. 164.
Merchants' Bank v. State Bank, 45, 269, 270.
Merchants' Bank, Steinhoff v. 110, 128.
Merchants' Bank, Suter v. 186.
Merchants' Bank v. Whidden, 44.
Merchants' M. Co., Armstrong v. 65, 67.
Metropolitan Bank, Rumbull v. 140.
Michie v. Erie & Huron Ry. Co., 20.
Meville, Gorgier v. 127.
Mill Dam Foundry v. Hovey, 154.
Miller v. Austin, 120.
Miller, Royal Can. Bank v. 167.
Milloy v. Kerr, 9.
Milvain, Bank of N. S. W. v. 197, 270.
Minor v. Mechanics' Bank, 49.
Misa v. Currie, 128, 195.
Mitchell v. Forster, 66.
Mitchell, Humble v. 8, 58.
Moffatt v. Merchants' Bank, 130.
Molleur v. Loupret, 242.
Molsons Bank, Brush v. 115.
Molsons Bank v. Carscaden, 130.
Molsons Bank, Cooper v. 117.
Molsons Bank, Dunspaugh v. 129.
Molsons Bank, Grieve v. 42.
Molsons Bank v. Heilig, 156.
Molsons Bank v. Kennedy, 129.
Molsons Bank v. Lanaud, 8.
Molsons Bank, London Life v. 261.
Molsons Bank, Marler v. 258, 268.
Molsons Bank, McCrae v. 186.
Molsons Bank, Ry. Advg. Co. v. 123.
Molsons Bank, Ross v. 9, 185.
Molsons Bank, Simpson v. 84.
Molsons Bank v. Stoddart, 87.
Molsons Bank, Thompson v. 139, 169.
Montefiore, Atty.-Gen. v. 59.
Monteith, *Re*, 9.
Montgomery v. Ryan, 198.
M. O. & W. Ry. Co., Ottawa v. 122.
Montreal C. & D. Savings Bank v. Geddes, 124.
Montreal C. & D. Savings Bank, Litman v. 129.
Montreal Coffee House, Exchange Bank v. 223.
Montreal P. & B. Ry. Co. ,Desrosiers v. 124.
Montreal Street Ry. Co., Leipschitz v. 263.
Montreal & St. Lawrence L. & P. Co. v. Robert, 31, 150.
Moore & P. B. Harbor Co., *Re*, 35.
Morgan, Leather M. Bank v. 199.
Morgan, Llado v. 9, 168.
Morley v. Culverwell, 113, 255.
Morrice, Acraman v. 8.
Morris, Union Bank v. 64.
Morrison v. Bailey, 256.
Morrison, Lake Superior Nav. Co. v. 20.
Morse v. Mass. National Bank, 45.
Muir v. Carter, 87, 141.
Murray v. Pinkett, 147.
Murray, Wills v. 50.
Mutton v. Peat, 132, 196.

N.

Napier v. Bruce, 48.
Nasmith, Boyd v. 131, 260, 269, 270.
Nasmith v. Manning, 20.
Nasmith's Case, 63, 134.
Natal Investment Co., *Re*, 125.
Nathan v. Ogdens, 265.
National Bank, Bevan v. 281.
National Bank, Brown v. 255.
National Bank, Caldwell v. 45.
National Bank v. Silke, 275, 279.
National Bank of Australasia v. Cherry, 136, 157.
National Bank of Chicago v. Corcoran, 14.
National Bank of Scotland, Couper's Trustees v. 271.
National Ins. Co. v. Hatton, 65.
Navulsham v. Brownrigg, 173.
Neelon v. Thorold, 62.
Nelson Coke Co. v. Pellatt, 19.
Nevill, Heilbut v. 202.
New Chile Gold M. Co., *Re*, 67, 69.
New London Bank v. Brocklebank, 147.
Newell, Bowen v. 256.
Newfoundland S. Bank, Gaden v. 266.
Newhaven Local Board v. Newhaven School Board, 37.
Nichols v. Fearson, 112.
Nichols v. Ryan, 258.
Nickle v. Douglas, 60.
Nicollet Bank, Harrison v. 256.

Nicolls, Burkinshaw v. 56, 65.
N. B. Australian Co., Swan v. 123.
New York Breweries Co., Atty.-Gen. v. 82.
North of Scot. Co., Ireland v. 271.
North & S. Wales Bank, Macbeth v. 261.
North Simcoe Ry. Co. v. Toronto, 20.
North Sydney Co. v. Higgins, 64.
North Sydney Mining Co. v. Greener, 21.
N. W. Electric Co. v. Walsh, 56, 62.
N. W. Transportation Co. v. Beatty, 53.
North Western Bank, Cole v. 174.
North Western Bank v. Poynter, 170.
Norton, Serle v. 269.
Nowell, Exchange Bank v. 115.
Noye Mfg. Co., Bank of Hamilton v. 9, 10, 168, 184.
Nye v. Malo, 189.

O.

Oakbank Oil Co. v. Crum, 91.
O'Dell v. Boston & N. S. Coal Co., 21, 31.
O'Gara v. Union Bank, 114.
Ogden v. Benas, 278.
Ogdens, Nathan v. 265.
Ogle v. Knipe, 59.
Oliver, Dominion Bank v. 155, 184.
Ontario, *Re* Bank of, 74.
Ontario Bank v. Chaplin, 223.
Ontario Bank, Dobell v. 41.
Ontario Bank v. O'Reilly, 170, 185.
Ontario Bank, Söderquist v. 201.
Ontario Bank, Union Bank v. 111.
Ontario Express Co., *Re*, 62.
Ontario Loan & Deb. Co., Purdom v. 52, 207.
Ontario Marine Ins. Co. v. Ireland, 65.
Ontario R. R. R. Co., Allen v. 21.
Ooregum Gold Mining Co. v. Roper, 56, 64.
O'Reilly, Ontario Bank v. 170, 185.
Oriental Bank, Prince v. 110, 111, 271.
Orr v. Union Bank, 127.
Ottawa v. M. O. & W. Ry. Co., 122.
Ottoman Bank, Black v. 49.
Ottos Kopje Diamond Mines, *Re*, 72.
Oulton, *Re*, 268.
Overell, Tidd v. 133.
Overmann, Rouquette v. 113.
Owens v. Quebec Bank, 131, 259, 269.
Owston v. Bank of N. S. W., 44.

P.

Pacaud, Banque du Peuple v. 117.
Pagin & Gill's Case, 65.
Panton, Cramp v. 92.
Pape v. Westcott, 265.
Parbury's Case, 56.
Parker, Conflans S. Q. Co. v. 127.
Parker v. McQuesten, 243.
Parker v. Marchant, 196.
Parker v. Staniland, 7.
Parsons, Bank of England v. 85.
Parsons v. Queen Ins. Co., 169.
Patent Ivory Co., Howard v. 31.
Patent Safety Gun Cotton Co. v. Wilson, 278.
Pawle v. Gunn, 8.
Peacock v. Purcell, 115.
Pearce, Rolls v. 272.
Peat, Mutton v. 132, 196.
Pellatt's Case, 19.
Pellatt, Nelson Coke Co. v. 19.
Pendleton County v. Amy, 120.
People's Bank Claim, 136.
People's Bank, Exchange Bank v. 43.
Peppercorne, Jones v. 140.
Perkins, Bank of Toronto v. 136, 152, 156.
Perkins v. Ross, 185.
Perrault v. Merchants' Bank, 197.
Petry v. La Caisse d'Economie, 141.
Peuchen v. Imperial Bank, 182.
Phillips v. Foxall, 49.
Phillips, Harben v. 28.
Picker v. London County Bank, 127.
Pickering, Heywood v. 131, 269.
Pigot v. Cubley, 149, 181.
Pinkett, Bobbett v. 274.
Pinkett, Murray v. 147.
Pontiac v. Ross, 122.
Port Philip G. M. Co., Shaw v. 32.
Portalis v. Tetley, 173, 175.
Poston, Gibb v. 35.
Pothonier v. Dawson, 149.
Powers, Booth v. 256.
Poynter, North Western Bank v. 170.
Prefontaine v. Grenier, 89, 93, 243.
Prentice v. Consolidated Bank, 117.
Price, Kenny v. 262.
Prideaux v. Criddle, 269.
Prince v. Oriental Bank, 110, 111, 271.
Proctor, Trunkfield v. 254.
Pulbrook v. Richmond Mining Co., 33.
Purcell, Manning v. 196.
Purcell, Peacock v. 115.
Purdom v. Ont. Loan & Deb. Co., 52, 207.

Q.

Quebec Bank v. Bergeron, 116.
Quebec Bank, Coffey v. 9, 168.

Quebec Bank, Exchange Bank v. 262.
Quebec Bank, Owens v. 131, 259, 269.
Quebec Bank, Rennie v. 8, 130, 156.
Quebec Bank, Ward v. 115.
Quebec Harbor Commissioners, Fry v. 170.
Quebec S. Ry. Co., Sorel v. 107.
Queen, The v. Bank of Montreal, 110, 260.
Queen, The v. Cotté, 242.
Queen, The, Exchange Bank v. 228.
Queen The, Jacques Car. Bank v. 127.
Queen, The, Maritime Bank v. 228.
Queen, The, Quirt v. 5.
Queen, The v. Weir, 242.
Queen Ins. Co., Parsons v. 169.
Quinlan v. Gordon, 189.
Quirt v. The Queen, 5.

R.

Radford v. Merchants' Bank, 133.
Railway Advertising Co. v. Molsons Bank, 123.
Randolph v. Randolph, 136.
Randolph Bank v. Hornblower, 266.
Rankin, Bank of Montreal v. 37, 262.
Rankin, McDonald v. 44, 134, 243.
Raphael v. McFarlane, 141.
Rastall, Straton v. 120.
Receiver-General, Maritime Bank v. 228.
Redpath v. Kolfage, 131, 259, 269.
Rees, Hughes v. 60.
Reg. v. Bank of N. S., 228.
Reg. v. Bank of Upper Canada, 54.
Reg. v. Buntin, 245.
Reg. v. Hazelton, 257.
Reg. v. Hincks, 212, 242.
Reg. v. Lambeth, 52.
Reg. v. Londonderry Ry. Co., 65.
Reg. v. Salop, 66.
Reg. v. St. Pancras, 52.
Reg. v. Wilson, 264.
Reg. v. Wimbledon, 27, 52.
Rennie v. Quebec Bank, 8, 130, 156.
Rex v. Jackson, 257.
Reynolds, Vaisey v. 196.
Rhind, Commercial Bank v. 199, 271.
Rhind, Williamson v. 9.
Rhodes v. Starnes, 242.
Richard, The King v. 257.
Richards v. Bank of B. N. A., 139.
Richards v. Bank of Nova Scotia, 44.
Riche, Ashbury Ry. Co. v. 32.
Richer, Voyer v. 119, 199.
Richmond Mining Co., Pulbrook v. 33.
Riddel, Small v. 41.
Riendeau, Campbell v. 269.
Ritchie v. Canadian Bank of Commerce, 191.
Ritherdon, Stein v. 196.
River Plate Bank, London & County Bank v. 123.
Robarts, Goodwin v. 118, 125.
Robarts, Johnson v. 195.
Robarts, Keane v. 203.
Robarts v. Tucker, 196, 270.
Robert, Montreal & St. L. Co. v. 150.
Roberts, Fisher v. 279.
Robertson v. Banque d'Hochelaga, 65, 67, 68.
Robertson, Barnhart v. 189.
Robertson, Inglis v. 170.
Robertson v. Lajoie, 173, 185.
Robinson v. McGillivray, 260.
Rochester City Bank v. Elwood, 49.
Rogers, Warwick v. 143.
Rogers v. Whiteley, 197, 271.
Rogerson v. Ladbroke, 272.
Rolin v. Steward, 197, 270.
Rolland v. Caisse d'Economie, 137.
Rolls v. Pearce, 272.
Romford Canal Co., *Re*, 125.
Roper, Ooregum Gold M. Co. v. 56.
Rose-Belford Co. v. Bank of Montreal, 259.
Ross v. Converse, 66.
Ross v. Molsons Bank, 9, 185.
Ross, Perkins v. 185.
Ross, Pontiac v. 122.
Ross, Royal Can. Bank v. 186.
Ross v. Tyson, 115.
Rothschild v. Corney, 269.
Rouquette v. Overmann, 113.
Roxton v. Eastern Townships Bk., 122.
Royal Bank of India's Case, 26, 123.
Royal Bank v. Tottenham, 265.
Royal British Bank v. Turquand, 31, 32.
Royal Canadian Bank v. Carruthers, 167.
Royal Canadian Bank, Cook v. 72.
Royal Canadian Bank v. Cummer, 139, 155.
Royal Canadian Bank v. G. T. Ry. Co., 11, 168.
Royal Can. Bank, Mander v. 119, 199.
Royal Canadian Bank v. Miller, 167.
Royal Canadian Bank v. Ross, 186.
Royal Canadian Bank v. Yates, 47.
Rudry Merthyr Co., Co. Gloucester Bank v. 31.
Rumball v. Metropolitan Bank, 140.
Runder, Hallen v. 7.
Russell v. Sealy, 266.

Ryan v. Bank of Montreal, 90.
Ryan, Chunder Sein v. 173.
Ryan v. McConnell, 115.
Ryan, Monigomery v. 198.
Ryan, Nichols v. 258.
Ryde, Jones v. 112.

S.

Sic Co., Cromwell v. 122.
Saderquist v. Ontario Bank, 201.
Sadler, Howard v. 33.
Saffrey, Welton v. 56, 64.
Salomon v. Salomon, 53.
Salop, Reg v. 66.
Sandeman, Deverges v. 149, 181.
Sanderson v. Aston, 49.
Sankey, Lee v. 202.
Sarrazin, Banque de St. Hyacinthe v. 190.
Sarazin v. Bank of St. Hyacinthe, 14. 137.
Sawyer v. Thomas, 131, 269.
Scadding v. Lorant, 27.
Scealy v. McCallum, 121.
Schenck, Supervisors v. 120.
Schlenker, Boddington v. 262, 273.
Schofield, *Ex parte*, 128.
Schroeder v. Central Bank, 265.
Scott v. Bank of N. B. 201.
Scott, Bank of Upper Canada v. 159.
Scott, Brandon v. 202.
Scott, Malcolm v. 264.
Scottish Petroleum Co., *Re*, 20, 37.
Sealy, Russell v. 266.
Seeley v. Cox, 44.
Senecal v. Exchange Bank, 223.
Serle v. Norton, 269.
Serrell v. Derbyshire Ry. Co., 270.
Sewell v. Burdick, 11.
Shand, Cummings v. 271.
Sharp v. Dawes, 23.
Shaw v. Bunny, 158.
Shaw v. Crawford, 115.
Shaw v. Port Philip G. M. Co., 32.
Shaw v. Spencer, 141.
Sheffield v. London Joint Stock Bank, 123, 125, 141.
Sheffield Corp. v. Barclay, 71.
Shepherd, Bank of Hamilton v. 184.
Sheppard v. Union Bank, 173.
Siggers, Heseltine v. 8. 127.
Silke, National Bank v. 275, 279.
Simard, Henry v. 36.
Simmons v. London Joint Stock Bank, 118, 141.
Simmons, London J. S. Bank v. 125.
Simmons v. Taylor, 273.
Simpson, Bank of Montreal v. 59.
Simpson v. Molsons Bank, 84.
Simson v. Ingham, 111, 195.
Small v. Riddel, 41.
Smart v. Bowmanville Machine Co., 65.
Smith, Bainbridge v. 33.
Smith v. Bank of Nova Scotia, 72.
Smith, Conn v. 188.
Smith, Hill v. 196, 270.
Smith v. Hull Glass Co., 41.
Smith v. Leveaux, 195.
Smith v. Merchants Bank, 164.
Smith, Merchants Bank v. 4.
Smith v. Surman, 7.
Smith v. Union Bank of London, 273.
Smith v. Walkerville Iron Co., 79.
Smith, Wentworth v. 111, 197.
Smyth, Lang v. 127.
Société Generale v. Tramways Union Co., 85.
Sorel v. Quebec Southern Ry. Co., 107, 209.
South Australia Banking Co., Ayers v. 133, 157.
South Western Bank, Bavins v. 255, 279.
Sovereen Co. v. Whitside, 37.
Spargo's Case, 64.
Spencer, Shaw v. 141.
Spincer v. Spincer, 271.
Spinney, Union Bank v. 179.
Spitta, Wienholt v. 271.
Spratley, Watson v. 8.
Springer v. Exchange Bank, 47, 89.
St. Cesaire v. Macfarlane, 122.
St. Jean, Mechanics' Bank v. 222.
St. John Bridge Co. v. Woodward, 65.
St. Lawrence F. Ins. Co., Bank of Toronto v. 107, 200.
St. Louis, Dufresne v. 258.
St. Pancras, Reg. v. 52.
Stacey, Kaines v. 189.
Staniland v. Parker, 7.
Starkey v. Bank of England, 71.
Starnes, Rhodes v. 242.
State Bank, Merchants' Bank v. 45, 260, 270.
Stein v. Ritherdon, 196.
Steinhoff v. Merchants' Bank, 110, 128.
Steinoff, McRoberts v. 186.
Stenning, Wood v. 203.
Stephenson, Innes v. 202.
Stephenson, Wood v. 255, 259.
Sterling, Clarkson v. 187.
Stern, Knauth Nachod v. 263.
Steward, Rolin v. 197, 270.
Stewart v. Lee, 273.
Stewart, Marler v. 131, 269.

Stewart v. Union Bank, 155.
Stinson, Exchange Bank v. 223.
Stoddart, Molsons Bank v. 87.
Stone v. City & County Bank, 134.
Straton v. Rastall, 120.
Street, Carpenter v. 255.
Stringer, *Ex parte*, 146.
Suckling, Donald v. 149.
Supervisors v. Schenck, 120.
Surman, Smith v. 7.
Surrey, Wiltshire v. 120.
Suter v. Merchants' Bank, 186.
Sutton, Charitable Corporation v. 30.
Sutton v. Eng. & C. P. Co., 33.
Swan v. N. B. Australian Co., 123.
Sweeny, Bank of Montreal v. 141, 147.
Sylvester, Cockburn v. 168, 185.
Symonds, Walker v. 202.

T.

Tahiti Cotton Co., *Re*, 71.
Tahourdin, Isle of Wight Ry. Co. v. 51.
Tamar Ry. Co., D'Arcy v. 18, 31.
Tassell v. Cooper, 89.
Taurine Co., *Re*, 32.
Taylor, Simmons v. 273.
Teague, Howbeach Coal Co. v. 18, 28.
Teale v. Brown, 111, 140.
Tennant v. Union Bank, 4, 9, 83, 165, 167, 169, 180, 186.
Terry, Yates v. 197.
Tetley, Portalis v. 173, 175.
Tetrault, Baril v. 262.
Thibaudeau v. Beaudoin, 135.
Thomas, Bank of Montreal v. 139.
Thomas, Sawyer v. 131, 269.
Thompson v. Bank of N. S. 44.
Thompson, Kirkwood v. 158.
Thompson v. Molsons Bank, 139, 169.
Thornton, Anderson v. 48.
Thorold, Neelon v. 62.
Tidd, *In re*, 133.
Tidd v. Overell, 133.
Todd v. Liverpool Ins. Co., 168.
Todd v. Union Bank, 197, 270.
Toronto Brewing Co. v. Blake, 35, 38.
Toronto C. & B. Co. v. Crown Bank, 185.
Toronto General Trusts v. Central Ont. Ry. 150.
Toronto, North Simcoe Ry. Co. v. 20.
Torrance, Bain v. 111.
Torrance v. Bank B. N. A. 129.
Tottenham, Royal Bank v. 265.
Towgood, Anson v. 92.
Towle, Way v. 256.
Traders Bank v. Brown, 167.
Tramways Union Co., Société Generale v. 85.
Trout's Case, 155.
Truman's Case, 19.
Trunkfield v. Proctor, 254.
Trust & Loan Co. v. Hamilton, 121.
Tucker, Robarts v. 196, 270.
Tucker v. Wilson, 149, 181.
Tuckett, Wright v. 92.
Turquand, Royal British Bank v. 31, 32.
Tyson, Ross v. 115.

U.

Union Bank & Chinic, 147.
Union Bank v. Code, 64.
Union Bank v. Elliott, 115.
Union Bank, Fine Art Society v. 127.
Union Bank, Fournier v. 261.
Union Bank, Gordon Mackay & Co. v. 260.
Union Bank, Maritime Bank v. 262.
Union Bank v. Morris, 64.
Union Bank, O'Gara v. 114.
Union Bank v. Ontario Bank, 111.
Union Bank, Orr v. 127.
Union Bank, Sheppard v. 173.
Union Bank, Smith v. 273.
Union Bank v. Spinney, 179.
Union Bank, Stewart v. 155.
Union Bank, Tennant v. 4, 9, 83, 165, 167, 169, 180, 186.
Union Bank, Todd v. 197.
Union Bank, Walsh v. 70.
Union Bank of Australia, Irvine v. 32, 50.
Union Fire Insurance Co. v. Fitzsimmons, 66.
U. S. v. Bank of Columbus, 45.

V.

Vagliano v. Bank of England, 196, 199.
Vaisey v. Reynolds, 196.
Van Wart v. Wooley, 128.
Veal v. Veal, 265.
Veasey, Hardy v. 89.
Venables v. Baring, 126.
Vere, Edwards v. 194.
Vinden v. Hughes, 261.
Voyer v. Richer, 119, 199.

W.

Waddell, Court v. 220.
Wadsley, Mayfield v. 7.

Wakefield v. Alexander, 266.
Walker v. Symonds, 202.
Walkerville Iron Co., Smith v. 70.
Wallace's Case, 19.
Wallace v. Kelsall, 202.
Walsh, N. W. Electric Co. v. 56, 62.
Walsh v. Union Bank, 70.
Wandsworth Co. v. Wright, 20, 52.
Ward, Leduc v. 11.
Ward v. Quebec Bank, 115.
Warwick v. Rogers, 143.
Watson, Jonmenjoy v. 115, 184.
Watson v. Spratley, 8.
Watts v. Wells, 130.
Way v. Towle, 256.
Webb v. Commissioners of Herne Bay, 120, 125.
Weir v. Bell, 32.
Weir, The Queen v. 242.
Wells' Case, 223.
Wells, Watts v. 130.
Welton v. Saffery, 56, 64.
Wentworth v. Smith, 111, 197.
West, Embury v. 187.
West of England Bank, *In re*, 131.
Westbrook, Kemp v. 181.
Westcott, Pape v. 265.
Westminster Bank v. Wheaton, 256.
Wheeler v. Young, 269.
Whidden, Merchants' Bank v. 44.
Whinney, Colonial Bank v. 59.
Whinray, London & N. W. Ry. Co. v. 49.
Whitaker v. Bank of England, 197, 270.
White's Case, 65.
White, London Chartered Bank v. 138.
Whiteley, Rogers v. 197, 271.
Whiteside, Sovereign Co. v. 37.
Whitworth, Jewan v. 173.
Widmer, Bank of U. C. v. 30.
Wienholt v. Spitta, 271.
Wild v. Bank of Passamaquoddy, 45.
Wilder v. Wolf, 272.
Willan, Colonial Bank v. 31.
Williams, *Re*, 195.
Williams v. Bank of Commerce, 191.
Williams v. Colonial Bank, 70.
Williams, Kilsby v. 271.
Williams, Marzetti v. 197, 270.
Williams, Matthews v. 280.
Williamson v. Rhind, 9.
Willis v. Bank of England, 110.
Wills v. Murray, 50.
Wilmot, Bank of Toronto v. 47.
Wilmot v. Maitland, 9, 167, 179.
Wilson v. Banque Ville Marie, 261.
Wilson v. Citizens Ins. Co., 170.
Wilson v. Hirst, 195.
Wilson, Patent Safety Co. v. 278.
Wilson, Reg. v. 264.
Wilson, Tucker v. 149, 181.
Wiltshire v. Surrey, 120.
Wimbledon, Reg. v. 27, 52.
Windsor v. Commercial Bank, 94.
Wisconsin Bank v. Bank B. N. A., 131.
Wolf, Wilder v. 272.
Womersley, Gurney v. 112, 113.
Wood v. Stenning, 203.
Wood v. Stephenson, 255, 259.
Woodland v. Fear, 110, 113, 271.
Woodward, Bank of Commerce v. 117.
Woodward, St. John Bridge Co. v. 65.
Wooley, Van Wart v. 128.
Woolf v. Hamilton, 266.
Wright's Case, 50.
Wright v. Tuckett, 92.
Wright, Wandsworth Co. v. 20, 52.

Y.

Yardley, Fourth St. Bank v. 264.
Yates, Royal Can. Bank v. 47.
Yates v. Terry, 197.
Yerner, Harren v. 158.
Yuill v. Greymouth Paint Co., 31.
Young v. Cole, 121.
Young v. Grote, 264.
Young v. Higgon, 66.
Young v. Macnider, 126.
Young, Macnider v. 126.
Young, Wheeler v. 269.

Z.

Ziegler, Detroit Savings Bank v. 49.

TABLE OF STATUTES CITED.

IMPERIAL.

Statute of Frauds, pp. 7, 46.
Crossed Cheques Act, 1856, p. 273.
Crossed Cheques Act, 1858, p. 273.
24-25 V. c. 98, p. 276.
Companies Act, 1862, p. 56.
B. N. A. Act, 1867, pp. 2, 4, 5, 164, 165, 194.
Crossed Cheques Act, 1876, p. 274.
Factors Act, 1877, p. 10.
Bills of Exchange Act, 1882, pp. 253, 266, 272, 277, 280.
Factors Act, 1889, p. 173.
Merchant Shipping Act, 1894, p. 153.
6 Edw. VII. c. 17, p. 280, 281.

CANADIAN.

Bank Act, 1842, p. 154.
1843, p. 54.
1850, p. 150.
1853, p. 190.
C. S. C. c. 54, pp. 1, 8, 164, 167.
c. 55, p. 1.
c. 58, p. 189.
1861, pp. 1, 167.
1866, p. 1.
1867, pp. 2, 18...
1869, p. 2.
1870, p. 2.
1871, pp. 2, 22, 29, 71, 124, 161, 164.
1872, p. 162.
1879, p. 124.
1880, pp. 2, 9, 228.
1883, p. 265.
Forgery Act, 1869, p. 274.
R. S. C. (1886) c. 120, pp. 3, 9, 111, 112, 157, 165, 178, 186, 227, 228.
c. 165, pp. 274, 276.
18 V. c. 80, p. 121.
35 V. c. 82, p. 191.
50-51 V. c. 13, p. 6.
51 V. c. 27, p. 9.
53 V. c. 31, pp. 3, 7, 28, 29, 73, 176, 179, 228.
c. 34, p. 191.
62-63 V. c. 14, pp. 3, 98.
63-64 V. c. 26, pp. 5, 9, 13, 14, 17, 29, pp. 102, 161, 163, 93, pp. 7, 144, 216.
3 Edw. 7, c. 4, p. 3, 61, p. 4.
4-5 Edw. 7, c. 3, p. 3, 4, pp. 3, 28.
6 Edw. 7, c. 127, p. 20.
6-7 Edw. 7, c. 43, p. 4.
R. S. C. c. 1, pp. 4, 18, 28, 53, 245, 23, p. 6, 25, pp. 105, 282, 26, p. 286, 27, pp. 94, 105, 288, 30, pp. 6, 13, 191, 254, 231, 31, pp. 6, 13, 254, 304, 32, pp. 13, 32, 191, 254, 320, 33, p. 328, 37, p. 74, 79, pp. 33, 34, 63, 65, 68, 124, 113, pp. 153, 162, 163, 118, p. 11, 119 (Bills of Exchange Act), pp. 106, 112, 114, 118, 121, 131, 142, 143, 183, 197, 200, 253, 144, pp. 218, 220, 225, 146 Criminal Code), sec. 164, p. 276, 191, p. 205, 405, p. 257, 425, 427, p. 236, 426, p. 237, 468 (r), p. 274, 1035, 1052, p. 205.

ONTARIO.

33 V. c. 10, p. 11.
R. S. O. c. 51, pp. 107, 122, 200.
119, p. 124.
122, p. 4.
124, p. 260.
145, pp. 116, 164.
147, p. 77.
150, p. 172.
223, p. 121.

QUEBEC.

C. S. L. C. c. 91, p. 82.
Civil Code,
Art. 14, p. 181.
249, 323, 338, 347, p. 81.
387, pp. 58, 59.
429-42, p. 179.
650*a*, p. 80.
1069, 1077, p. 122.
1100-1, p. 202.
1191*d*, p. 79.
1233, p. 46.
1272, p. 78.
1487-90, p. 126.
1488-9, p. 174.
1570-1, pp. 107, 200.
1573-4, p. 116.
1716, p. 87.
1740, pp. 173, 174.
1892, 1897, p. 272.
1950, p. 116.
1959, pp. 116, 147.
1971, pp. 149, 181.
1975, 1978, p. 138.
1994, 2000 pp. 179, 180.
2268, p. 174.
2349, p. 255.
2352, p. 268.

Code of Civil Procedure,
Art. 80, p. 82.
642, p. 74.
853, p. 76.
987, p. 35.
Municipal Code,
Arts. 981-7, p. 121.
Bank Tax Act, 1882, p. 5.
R. S. Q. Arts.
1191, p. 79.
4629-30, p. 121.
5643-50, p. 164.
42-43 V. c. 19, p. 175.
55-56 V. c. 17, p. 79.

NOVA SCOTIA.

R. S. N. S. c. 155, pp. 107, 200.

NEW BRUNSWICK.

C. S. N. B. c. 111, pp. 107, 200.
c. 169, p. 121.

MANITOBA.

R. S. Man. c. 40, pp. 107, 200.

N.-W. TERRITORIES.

Cons. Ord. c. 41, pp. 107, 200.

BRITISH COLUMBIA.

R. S. C. c. 56, pp. 107, 200.
144, p. 121.

ABBREVIATIONS.

A. & E. ..... Adolphus & Ellis' Reports, King's Bench.
A. C. ..... Appeal Cases, Law Reports, 1875-1908.
B. & Ad. ..... Barnewall & Adolphus' Reports, King's Bench.
B. & Ald. ..... Barnewall & Alderson's Reports, King's Bench.
B. & C. ..... Barnewall & Cresswell's Reports, King's Bench.
B. & S. ..... Best & Smith's Reports, King's Bench.
B. C. R. ..... British Columbia Reports.
B. N. A. Act ..... British North America Act, 1867.
Beav. ..... Beavan's Rolls' Reports.
Bing. N. C. ..... Bingham's New Cases, Common Pleas.
C. & K. ..... Carrington & Kirwan's Reports, *Nisi Prius.*
C. B. ..... Common Bench Reports.
C. B. N. S. ..... Common Bench Reports (New Series).
C. C. ..... Civil Code, Quebec.
C. L. J. ..... Canada Law Journal, Toronto.
C. L. T. ..... Canadian Law Times, Occasional Notes.
C. P. D. ..... Law Reports, 1865-9—Common Pleas Division.
C. S. N. B. ..... Consolidated Statutes of New Brunswick, 1903.
Camp. ..... Campbell's Reports, *Nisi Prius.*
Ch. D. ..... Law Reports, 1875-90, Chancery Division.
Cl. & F. ..... Clark & Finnelly's Reports, House of Lords.
Cr. M. & R. ..... Crompton, Meeson and Roscoe's Reports, Exchequer.
DeG. M. & G. ..... DeGex, Macnaghten & Gordon's Reports.
Dorion ..... Dorion's Queen's Bench Reports, Montreal.
E. L. R. ..... Eastern Law Reporter, 1905-8.
E. & B. ..... Ellis & Blackburn's Reports, King's Bench.
E. & I. App. ..... Law Reports, 1865-75, English and Irish Appeals.
Ex. ..... Exchequer Reports, Welsby, Hurlstone & Gordon.
Ex. D. ..... Law Reports, 1875-9, Exchequer Division.
F. & F. ..... Foster & Finlason's Reports, *Nisi Prius.*
Gen. Ord. N. W. T. .. General Ordinances, North-West Territories, 1905.
Grant. ..... Chancery Reports, Upper Canada.
H. & C. ..... Hurlstone & Coltman's Reports, Exchequer.
H. & N. ..... Hurlstone & Norman's Reports, Exchequer.
H. L. C. ..... House of Lord's Cases, Clark.
Jur. N. S. ..... Jurist, English, New Series.
J. & H. ..... Johnson & Hemming's Reports, Chancery.
L. C. J. ..... Lower Canada Jurist.
L. C. R. ..... Lower Canada Reports.
L. J. ..... Law Journal, English.
L. N. ..... Legal News, Montreal.

L. R. C. C. ..... Law Reports, 1865-75, Crown Cases Reserved.
" " Ch. ..... Law Reports, 1865-75, Chancery Apeal Cases.
" " Eq. ..... Law Reports, 1865-75, Equity Cases.
" " Ex. ..... Law Reports, 1865-75, Exchequer Cases.
" " H.L. ..... Law Reports, 1865-75, House of Lords Cases.
" " P. C. ..... Law Reports, 1865-75, Privy Council Cases.
" " Q. B. ..... Law Reports, 1865-75, Queen's Bench Cases.
L. T. N. S. ..... Law Times Reports, New Series.
M. & Gr. ..... Manning & Granger's Reports, Common Pleas.
M. & M. ..... Moody & Malkin's Reports, *Nisi Prius.*
M. & Rob. ..... Moody & Robinson's Reports, *Nisi Prius.*
M. & W. ..... Meeson & Welsby's Reports, Exchequer.
M. L. R.—Q. B. .... Montreal Law Reports, Queen's Bench.
M. L. R.—S. C. .... Montreal Law Reports, Superior Court.
Man. R. ..... Manitoba Law Reports.
Mod. ..... Modern Reports, 1669-1755.
Moore ..... Moore's Privy Council Reports.
N. B. ..... New Brunswick Reports.
N. S. ..... Nova Scotia Reports.
N. Y. ..... New York Reports.
O. L. R. ..... Ontario Law Reports, 1901-8.
O. R. ..... Ontario Reports, 1882-1900.
Ont. A. R. ..... Ontario Appeal Reports,1870-1900.
Ont. P. R. ..... Ontario Practice Reports, 1856-1900.
O. W. R. ..... Ontario Weekly Reporter, 1902-8.
P. & B. ..... Pugsley & Burbidge's Reports, New Brunswick.
P. R. ..... Practice Reports, Upper Canada.
Q. B. ..... Queen's Bench Reports.
Q. B. D. ..... Law Reports, 1875-90, Queen's Bench Division.
Q. L. R. ..... Quebec Law Reports.
Q. R.—Q. B.—K. B. .Quebec Official Reports (Rapports Judiciaires Officiels) Queen's Bench—King's Bench.
Q. R.—S. C. ..... *Ibid*—Superior Court.
R. ..... The Reports, English.
R. L. ..... Revue Legale, Montreal.
R. S. B. C. ..... Revised Statutes of British Columbia, 1897.
R. S. C. ..... Revised Statutes of Canada, 1906.
R. S. Man. ..... Revised Statutes of Manitoba, 1902.
R. S. O. ..... Revised Statutes of Ontario, 1897.
R. S. Q. ..... Revised Statutes of Quebec, 1888.
S. C. Can. ..... Supreme Court of Canada Reports.
Sess. Cas. ..... Sessions Cases, Scotland.
T. L. R. ..... London Times Law Reports.
T. R. ..... Term Reports, King's Bench, Durnford & East.
Terr. L. R. ..... Territories Law Reports, 1885-1905.
Taunt. ..... Taunton's Reports, Common Pleas.
U. C. C. P. ..... Upper Canada Common Pleas Reports.
U. C. O. S. ..... Upper Canada Reports, Old Series.
U. C. Q. B. ..... Upper Canada Queen's Bench Reports.
U. S. ..... United States Supreme Court Reports.
V. L. R. ..... Victoria Law Reports.
W. L. R. ..... Western Law Reporter, 1905-8.
W. N. ..... Weekly Notes, English.
W. R. ..... Weekly Reporter, English.

INTRODUCTION.

BANKING IN CANADA.*

In common with other social developments, modern banking is mainly the result of heredity and environment, and not of arbitrary legislation or the general admission in any wide degree of settled principles in the practice of banking. The student endeavouring to understand the science of banking, seeking to discover some body of principles underlying the practice of banking throughout the world, is confused by the radical differences between the systems of the various nations and the complicated nature of the conditions surrounding each of these systems. The most cherished dogma of one country is rank heresy in another. The principles suitable to an old country, with a compact population, a highly developed railroad and telegraph organization for the distribution of commodities and information, and wealth enough to be lenders to other nations, are not applicable to a new country with a scattered population, imperfect means of distribution, and little wealth apart from fixed property—a country, indeed, requiring to borrow largely from older and wealthier communities.

Again, if in any country banking has been left to develop itself in accordance alone with the requirements of trade, or nearly so, that country has been fortunate in this respect as compared with others, where the national debt, caused by war or extravagances in public works, has been made the basis of the currency. Sometimes, however, the condition of the present environment in two countries may be in many respects similar, and yet a practice in banking which has worked out desirable results in one of these countries cannot be attempted in the other. The body of banking principles

*Paper read before the World's Congress of Bankers and Financiers at Chicago, by B. E. Walker, General Manager of The Canadian Bank of Commerce, Toronto

in the other country may be so different, because of hereditary influences, as to make it impossible by any kind of evolution to add the practice which has proved so serviceable elsewhere.

I am aware that there is nothing new in this point of view, but in attempting to treat of the subject of banking in Canada, I cannot avoid comparison with this great country where banking systems are being keenly discussed, and where it is admitted that changes, perhaps of a radical nature, are necessary. In contending for the comparative perfection of the Canadian system I do not wish to be understood as asserting that the points of superiority in our system could be adopted here. For over half a century banking in the United States has been following lines of development opposed in many respect to the Canadian system, and it may well be that no matter how desirable, it is too late to adopt our practices.

My main object, however, is to describe the banking of Canada, and to demonstrate, if I can, its suitability to the requirements of trade in that country and not its suitability elsewhere.

BANK CHARTERS.

It has been occasionally urged by writers in financial journals published in the United States, that banking in Canada is a monopoly, and therefore unsuited to the democratic principles of this country. These writers have overlooked the fact that the Province of Ontario, the centre of thought and progress in the Dominion, is the most democratic community in the British Empire, and that the legislation of Canada, whether in form or not, is in reality as liberal as it can well be. Banking in Canada is not in any sense a monopoly. Whether it can be said to be "free banking," as understood in the United States, depends on what is meant by that term. In the United States a certain number of by that term. In the United States a certain number of individuals having complied with certain requirements — more numerous and complicated, by the way, than the Canadian requirements—become thereby an incorporated bank, if we regard the consent of the Comptroller of Currency as a matter of form. In Canada, merely in order to follow the British

parliamentary methods, when a certain number of individuals have complied with certain requirements, they are supposed to have applied for a charter, which parliament theoretically might refuse, but which, as a matter of fact, would not be refused unless doubt existed as to the *bona fide* character of the proposed bank. Then, as in the United States, on complying with certain other requirements and obtaining consent of the Treasury Board (performing in this case the same function as the Comptroller of Currency in the United States), the bank is ready for business.

The main difference in the matter of obtaining the privilege from the people to carry on the business of banking is that in Canada the subscribed capital must be $500,000, paid up to the extent of one-half, or $250,000, and this fact must be proved by the temporary deposit of the actual money with the Treasury Department. If it is contended that a monopolistic element is introduced by making the minimum paid-up capital $250,000, I have only to point to the varying minima of capital in the National banking system, based upon the population of the city or town where a bank is established. The minimum with us is placed so high because with the privilege to carry on the business of banking is attached the privilege to open branches and to issue a bank note currency not secured by special pledge with the Government. In the opinion of many Canadians the minimum is too small. So much for the statement that banking is less "free" in Canada than in the United States. I think the very term "free banking," about which so much was written in the *ante bellum* days, is a misnomer; and I hope there are many here who agree with me that a little less of freedom in the ability to create a bank, and a little more knowledge on the part of the people regarding the true function of banking, and its high place in the world of commerce, would be for the public good. What we want is the most absolute evidence when a bank is created, that its projectors are embarking in a *bona fide* venture and have put at risk a sum considerable enough to ensure that fact.

In Canada, as in the United States, shareholders in banks are subject to what is known as "double liability." I can remember when the practical value of this power to call on the shareholders in the event of failure of a bank for a

second payment to the extent of the subscribed amount of the shares was doubted by many. Shares were transferred just before failure to men unable to meet such calls and willing to be used in this manner, or shares were found to be held by men of straw who owed a corresponding amount to the bank. Or, again, many of the shareholders were borrowers for amounts far in excess of their holdings in shares, and the failure of the bank precipitated their failure as well, and they were thus unable to pay. Of course there were always some real investors among the shareholders, but the value of the double liability was a very variable and doubtful quantity. These features have not, as we know, all passed away, but we have done as much as we could to guarantee an honest share list and to prevent the shareholder from escaping his liability. Banks are not allowed to lend money on their own or the stock of any other Canadian bank, and as the minimum paid-up capital of $250,000 must be deposited with the Finance Department before a bank commences business, this should ensure a *bona fide* capital at the start. All transfers of shares must be accepted by the transferee. No transfers within 60 days before failure avoid the double liability of the transferrer unless the transferee is able to pay. A list of the shareholders in all banks is published annually by the Government, and this book is eagerly examined by investors to ascertain changes in the share list of banks which might indicate distrust. As the capital of each bank is large and the number of banks small relatively to the United States, there is, regarding everything connected with the credit of a Canadian bank, an amount of public scrutiny which leads to circumspection in the conduct of bank authorities. Again, the very fact that the capital is large and that the banks have many branches and a more or less national character, causes the stock to be widely held. In the largest banks the share list numbers from 1,800 to 2,000 names. We still, doubtless, have plenty of bad banking and will always have it. No legislative checks will prevent that, and even a severe public scrutiny will not altogether prevent it; but our banking history since the confederation of the old provinces into the Dominion in 1867, shows that the double liability has been a most substantial asset, and has done much towards enabling liquidated banks to pay in full. In my own Pro-

vince of Ontario we have the fine record of no instance, save one, since Confederation in 1867, in which all creditors have not been paid in full.

In the case of this one blemish the dividends amounted to 99⅓ cents to depositors, only the unwarrantably high fees paid to the liquidators causing the dividend to fall below 100 cents. In the short life of this institution almost every sin in the calendar of banking had been committed.

TERM OF THE CHARTER.

Under the United States National banking system the life of a bank is limited to twenty years from the date of the execution of the particular bank's certificate of organization, but at the expiration of the first, or any succeeding period, the bank, if it elects to do so may have its corporate existence renewed for the same number of years. Under the Canadian system the charter of every bank expires at the same time, and the renewal period is only ten years. I do not intend to discuss the length of the period—most of us think it quite too short. It is the effect of all charters expiring at the same time to which I desire to draw your attention. This condition of things doubtless arose merely from the confederation in 1867 of the provinces which had granted the then existing charters, but which thereupon surrendered their authority over banking institutions to the Federal Government. As the charters granted by the old provinces expired, the banks working under them became institutions subject to the new Federal or Dominion Banking Act, and by its conditions every charter expires at the same time. This ensures a complete discussion of the principles underlying the Act, and of the details connected with the working of it, once in ten years. In the interval we are almost free from attempts by demagogues or ambitious but ill-informed legislators to interfere with the details of our system, but during the session of Parliament preceding the date of the expiry of the charters we have to defend our system from the demagogue, the bank-hater, the honest but inexperienced citizen who writes letters to the press, sometimes the press itself—indeed from all the sources of attack which institutions possessing a franchise granted by the people experience when they come before the public to answer for their stewardship. But while resisting

the attacks of ignorance, we are, of course, called upon to answer such just criticism as may arise from the existence of defects in our system developed by the experience of time. Or perhaps, as when the Act was under discussion in 1890, we may see the defects even more clearly than the public, and may ourselves suggest the remedies. Whatever may be said for or against these decennial battles, the product of the discussion is a Banking Act, improved in many respects by the exchange of opinion between the bankers and the public. The banking system having been subjected to unsparing analysis by an unusually enlightened people—perhaps too democratic in tendency and too jealous of every privilege granted, but anxious to build rather than to destroy—is brought at each period of renewal to a higher degree of perfection.

BANKING PRINCIPLES.

What is necessary in a banking system in order that it may answer the requirements of a rapidly growing country and yet be safe and profitable?

1. It should create a currency free from doubt as to value, readily convertible into specie, and answering in volume to the requirements of trade. In saying this I do not wish to be understood as asserting that banks should necessarily enjoy the right to issue notes. Whether they should or should not issue notes must always, I presume, end in a discussion as to expediency in the particular country or banking system.

2. It should possess the machinery necessary to distribute money over the whole area of the country, so that the smallest possible inequalities in the rate of interest will result.

3. It should supply the legitimate wants of the borrower, not merely under ordinary circumstances, but in times of financial stress, at least without that curtailment which leads to abnormal rates of interest and to failures.

4. It should afford the greatest possible measure of safety to the depositor.

We think in Canada that our system possess all these qualities, and we are confident that we have a currency perfectly suited to our trade and other requirements. We have not, however, arrived at our present reasonably comfortable condition by any other process than the usual slow development from a past full enough of error and bitter experience.

HISTORICAL SKETCH.

It is perhaps not generally known that we were among the first in modern times to issue fiat paper-money for general circulation. In 1685, in the time of the French regime in Canada, the Intendant could not pay his soldiers. The little struggling colony, after the manner of all new countries, was an absorbent of money, and France was nearly bankrupt and could afford no aid. So the Intendant, left to his wits alone and having a helpless people to deal with, cut playing cards into small pieces, wrote thereon his promises to pay, accompanied by the seal of France, and thus led the way in North America in this seductive method of paying debts.[1] For the next thirty years this was the money of Canada. Although always written, because the people would not have accepted printed promises to pay, the volume rose to about $20 per head, when the usual results of fiat money followed. It was compromised, and the Government promised never to repeat the experiment. The poor colony, left with no regular currency, struggled for a time, but in 1729, at the request of the people, card money was issued again. They had now some experience, but did not understand how to draw lessons from it, and the amount issued was so excessive that when the British took Quebec, and assumed the government of Canada, one of the most troublesome features in the settlement with France was the arrangement for the retirement of this currency. It would have been well if this complete exposition, although on such a small scale, of the unsoundness of fiat money, had served for all North America. Mr. Sumner says there was a bank in Massachusetts as early as 1686 which may have issued notes, but there is a story in this connection so picturesque that I hope it is true. A couple of Massachusetts fur traders are supposed to have visited Canada a few years after the card money first appeared, and to have reported at home the prosperity resulting from the experiment, and so when the military expedition against Canada was organized in 1690, what more natural than that Massachusetts should have paid the cost in the first of that currency, which in its final stages of collapse has given our language that expressive phrase, "not worth a continental?" We were even smaller, relatively, in population then than we are now, yet apparently you did not hesitate to adopt a very

bad feature in our development. If we have anything to-day in our financial conditions worth your attention, I hope it will not the less merit your approval because the development is on such a small scale. Sound or unsound principles are perhaps more easily detected when a system has not become complicated beyond the capacity for analysis of the ordinary individual.

I will now, in as few words as possible, finish the historical sketch which is necessary to the clear understanding of our currency and banking as it exists at present. Shortly after a bank was organized in Philadelphia in 1781, and another in New York in 1784, the merchants of Quebec and Montreal began to agitate for a bank of issue. In these days a bank without a power to issue notes was of little use; but the people of Canada having very strong opinions on this subject, the attempt was a failure, although in 1792 a private bank of deposit resulted. The merchants tried again with the same result in 1807-8. But during the war of 1812 the Government found it necessary to issue some kind of paper money, and an Army Bill Office was created. These were the first paper notes put in circulation in Canada under British authority, and as they were paid in full, the people must have been at last convinced that all paper money was not bad. In the Province of Nova Scotia, not then joined with us in the Dominion of Canada as it is now, Treasury notes were also issued in 1812. At the same time banking was growing rapidly in Great Britain and the United States, and in 1817 our first joint stock bank was created—that great institution of which we are all so proud, and which I am sure has done its share in making Chicago what it is to-day—the Bank of Montreal.

From 1817 to 1825, two banks were established in Lower Canada (Quebec), and one each in Upper Canada (Ontario), New Brunswick, and Nova Scotia, all now doing business except one.

I will not attempt to follow the course of banking in the old provinces, but it is necessary to indicate the condition of banking and currency at the time of the Confederation of the provinces into the Dominion of Canada in 1867. There were thirty-nine charters, but only twenty-seven banks doing

business. The charters expired at various dates from 1870 to 1892, and varied in accordance with the views regarding banking in the different provinces. In Upper and Lower Canada (Old Canada), shareholders were liable for double the amount of their stock, except that there was one bank, *en commandite*, the "principal partners" having unlimited personal liability. In most cases notes could be issued equal to the paid-up capital plus specie and Government securities held. In New Brunswick charters had been granted without the double liability, but the principle was being insisted on in renewals, while in Nova Scotia in the opinion of some there was no double liability. In Old Canada and Nova Scotia, as a rule, total liabilities were restricted to three times, and in New Brunswick to twice the amount of capital. There was also one bank with a royal charter, head office in England, and shareholders not under double liability. The situation was further complicated by the "Free Banking Act," under which notes could be issued secured by deposit of Government debentures, and by the legal tender issues of the Governments of Old Canada and Nova Scotia. In 1866-67 two of the largest banks in Upper Canada failed, resulting in a very severe financial crisis.

Under these conditions, and after tentative legislation in 1867 and 1870, the first general Bank Act of the Dominion was passed in 1871 (34 Vict. chap. 5). It confirmed the special features in the bank working under a royal charter, and that with "principal partners" personally liable, and it will be understood in any statements hereafter regarding banks as a whole that these institutions are not referred to. As the charters of other banks expired they were renewed under the Dominion Act. The first Act extended all charters for ten years, which practice has been followed thus far. There were various amendments during the first few years, but since then changes have been infrequent, except at the regular revisions in 1880 and 1890. The Act hereafter referred to is that assented to May, 1890, and which came into force July, 1891. (53 Vict. Chap. 31).

NOTE ISSUE.

In the successive Banking Acts of the Dominion Parliament banks have been empowered to issue circulating notes

to the extent of the unimpaired paid-up capital. By the first Act the note-holders had no greater security than the depositors and other creditors. At the renewal of charters in 1880, the circulation note was made a prior lien upon all assets; and at the last renewal in 1890 the banks, at their own suggestion, were in addition required to create in two years a guarantee fund of 5 per cent. upon their circulation, to be kept unimpaired, the annual contribution, however, if the fund is depleted, to be limited to 1 per cent. The fund is to be used whenever the liquidator of a failed bank is unable to redeem note issues in full after a lapse of sixty days. Notes of insolvent banks are to bear 6 per cent. interest from the date of suspension, until the liquidator announces his ability to redeem. Banks are also required to make arrangements for the redemption at par of their notes in the chief commercial cities in each of the provinces of the Dominion. The change in 1880 was caused by the failure of a small bank with a circulation of about $125,000, paying all creditors, note-holders included, only 57½ per cent. The change in the Act now in force was due to the demand for a currency which would pass over the entire Dominion without discount under any circumstances. The history of banking in Canada since Confederation shows no instance in which a depletion of such a guarantee fund would have occurred. Fines from $1,000 to $100,000 may be imposed for the over-issue of notes. The pledging of notes as security for a debt, or the fraudulent issue of notes in any shape, renders all parties participating liable to fine and imprisonment. As the crown prerogative to payment in priority to other creditors had been set up on behalf of both Dominion and Provincial Governments, the Act places the claims of the Dominion second to the note issues, and those of the provinces third. Notes of a lesser denomination than $5 may not be issued, and all notes must be multiples of $5. Notes smaller than $5 are issued by the Dominion Government.

The distinctive features, therefore, of our bank note issues are:—

(*a*) They are not secured by the pledge or special deposit with the Government of bonds or other securities, but are simply credit instruments based upon the general assets of the bank issuing them.

(*b*) But in order that they may be not less secure than notes issued against bonds deposited with the Government, they are made a first charge upon the assets.

(*c*) To avoid discount for geographical reasons each bank is obliged to arrange for the redemption of its notes in the commercial centres throughout the Dominion.

(*d*) And, finally, to avoid discount at the moment of the suspension of a bank, either because of delay in payment of note issues by the liquidator or of doubt as to ultimate payment, each bank is obliged to keep in the hands of the Government a deposit equal to five per cent. on its average circulation, the average being taken from the maximum circulation of each bank in each month of the year. This is called the Bank Circulation Redemption Fund, and should any liquidator fail to redeem the notes of a failed bank, recourse may be had to the entire fund if necessary. As a matter of fact, liquidators almost invariably are able to redeem the note issues as they are presented, but in order that all solvent banks may accept without loss the notes of an insolvent bank, these notes bear six per cent. interest from the date of suspension to the date of the liquidator's announcement that he is ready to redeem.

I have already stated, in attempting to outline what is necessary in a banking system in order that it may answer the requirements of a rapidly growing country, that "it should create a currency free from doubt as to value, readily convertible into specie and answering in volume to the requirements of trade." In an admirable paper on "The Note Circulation" read in December, 1889, before the Institute of Bankers, in London, England, by Mr. Inglis Palgrave, only two requisites in a note circulation are directly stated as essential: "First, that it should be completely secured. Second, that it should be readily convertible into metallic money." But the discussion which follows bears distinctly upon a third requisite, that it should answer in volume to the fluctuating requirements of trade, in a word that it should be elastic. This last is a much less important point, however, in England than in North America.

In discussing bank issues I will reverse the order in which the three requirements are placed in Mr. Palgrave's paper

and the ensuing discussion, and take up the question of elasticity first. I shall not attempt to discuss the many and conflicting views held regarding paper money, its use and abuse, and whether there is any scientific basis for its issue; but I shall endeavor to show to what extent it seems possible for note issues in North America to have a scientific basis with regard to elasticity. In Canada, as in the United States, the resulting difference in business transactions, after cheques and all other modern instruments of credit has been used, is almost entirely paid in paper money. It is therefore of the greatest importance that the amount of this paper money existing at any one time, shall be as nearly as possible just sufficient for the purpose. That is, that there shall be a power to issue such money when it is required, and also a power which forces it back for redemption when it is not required.

I may, therefore, I think, safely lay it down as a principle that: (1) There should be as complete a relation as possible between the currency requirements of trade and whatever are the causes which bring about the issue of paper money; (2) and, as it is quite as necessary that no over-issue should be possible, as that the supply of currency should be adequate, there should be a similar relation between the requirements of trade and the causes which force notes back for redemption.

Now, certainly, one of the causes of the issue of bank notes is the profit to be derived therefrom, and it is clear that an amount sufficient for the needs of trade will not be issued unless it is profitable to issue. Likewise it is clear that it should not be possible to keep notes out for the sake of the profit if they are not needed.

In Canada, bank notes, as we have seen, are secured by a first lien upon the entire assets of the bank, including the double liability, the security being general and not special—not by the deposit of Government bonds, for instance. Therefore it is clear that it will always pay Canadian banks to issue currency when trade demands it. Because bank notes in Canada are issued against the general estate of the bank, they are subject to daily actual redemption; and no bank dares to issue notes without reference to its power to redeem, any more than a solvent merchant dares to give promissory

notes without reference to his ability to pay. The presentation for actual redemption of every note not required for purposes of trade, is assured by the fact that every bank seeks by the activity of its own business to keep out its own notes, and therefore sends back daily for redemption the notes of all other banks. This great feature in our system as compared with the National Banking System, is generally overlooked, but it is because of this daily actual redemption that we have never had any serious inflation of our currency, if indeed there has ever been any inflation at all. Trade, of course, becomes inflated, and the currency will follow trade, but that is a very different think from the existence in a country of a great volume of paper money not required by trade. I will not discuss at length this quality of elasticity in our system, because it is generally admitted. But some critic may endeavor to show that a similar quality might be given to a currency secured by Government bonds, and I desire to make it clear that such elasticity as is required in North America is impossible with a currency secured by Government bonds. In the older countries of the world it may be sufficient if the volume of currency rises and falls with the general course of trade over a series of years, and without reference to the fluctuations within the twelve months of the year. In North America it not enough that the volume of currency should rise and fall from year to year. In Canada we find that between the low average of the circulation during about eight months of each year and the maximum attained at the busiest period of the autumn and winter, there is a difference of twenty per cent., the movement upward in the autumn and downward in the spring being so sudden that without the power in the banks to issue, in the autumn serious stringency must result, and without the force which brings about redemption in the spring there must be plethora. As a matter of fact it works automatically, and there is always enough and never too much.

If our currency were secured by Government bonds the volume in existence at any one time would be determined by the profit to be gained by the issue of such bond-secured currency. It would, therefore, be necessary to fix a maximum beyond which no currency could be issued, but as such an abitrary limit would be mere legislative guess work,

it would be productive of the evils incident to all efforts to curb natural laws by legislation. As we all know, when the National Bank charters were offered by the Federal Government to the State Banks, the bonds of the United States bore 5 to 6 per cent. interest, and the business of issuing currency against such bonds was so profitable that a maximum such as I have referred to was fixed, with an elaborate provision stating how the banking charters were to be distributed as to area, in order that each State or section of country might have a fair share. This was followed by several adjustments, the last limit being $354,000,000, no one being satisfied with the interference with free banking, and the cry of monopoly being frequently heard. Subsequently the maximum was abandoned; indeed the business of issuing notes against Government bonds had become unprofitable, and there was no longer any fear of inflation.

The condition in the United States under which the issue of currency was unduly profitable, and the fear of inflation was present, did not actually last many years, but it lasted long enough to create in the people a hatred of banks which does not seem yet to have quite passed away. The condition which followed showed, it seems to me, conclusively the unsoundness of the system in the matter of providing an elastic currency, a currency at all times adequate in volume. The currency wants of the country increased with the great increase in population, but the volume of National Bank currency decreased because by the repayment of the national debt and the improvement in the national credit the bonds which remained outstanding yielded so low a rate of interest as to make the issue of National Bank notes unprofitable. The Comptroller's statement shows that the volume of circulation secured by United States bonds, which ranged from 1866 to about 1880 at from about $300,000,000 to $350,000,000, has declined until the amount subject to redemption by the banks is now only about $130,000,000. The moral of this is plain. If the Government bond yields such a low rate of interest as to make it unprofitable to issue currency, banks will not provide sufficient currency for the wants of the country. I need not remind an American audience that it was this unfortunate contraction which to a great degree made it possible for the Bland Act silver

issues, from 1878 to 1890, to create so little financial disturbance.

I hope I have made it clear that if the business of issuing currency against Government bonds were profitable, too much currency would be the result; and if it were unprofitable, too little would be issued. We would require to have a condition of things under which the profit of issuing notes would at all times bear an exact relation to the amount of currency required by the country, the profit therefore changing not only as the currency rises and falls over a series of years, but at the time of the sharp fluctuations within each year, already referred to. No such relation, however, could very well exist with an issue based upon Government bonds.

The next quality in a currency to be considered is, "That it should be readily convertible into metallic money." I do not propose to discuss this at length. As I have pointed out, our safety lies in the actual daily redemption which arises out of our circulation being generally instead of specially secured. This is the best possible safeguard against suspension of specie payments. The United States National Banking System was created during a suspension of specie payments, and doubtless would never have been heard of but for that fact.

My last point is that placed first by Mr. Palgrave in his discussion with the English bankers: "That the currency should be completely secured." I do not know whether we are to understand also that a note must pass throughout the entire country without discount for any reason, but I include that in the point to be discussed. Now, I contend that it is better for the reasons given, that bank issues should be based for security on the general assets of the bank, with a prior lien to other creditors; and also, that taking the world as a whole, such notes will be actually safer because the effect of a system of notes secured by Government bonds—a loan forced by the Government practically—must sometimes be to produce national bankruptcy, as in the case of the Argentine Republic. Still, I cheerfully admit that the United States National Banking System has taught us that a currency issued by banks may be made to pass over the entire area of a great nation without

discount. This is a great quality in currency. To the ordinary individual, who knows and cares little about banking except as it affects the bank note he happens to carry in his pocket, it appears to be the one quality necessary.

In Canada, experience has shown that as long as the notes are a prior lien on the assets of the bank, including the double liability, ultimate loss is scarcely possible,—has not at all events occurred as yet. To secure a circulation —at the close of December, 1892, of $36,194,023—the banks had assets of $305,730,910, to which the double liability of $63,169,643 is to be added, making a total of $368,900,553 or $10.19 of assets against every dollar of currency. It has been pointed out, however, that the assets are not thus aggregated against the circulation, and that all banks are not as secure as these figures seem to show. But the security in this respect, in regard to each bank, varies little from the general average, the lowest percentage being 6.18 as against the general average of 10.19. The lowest percentage applies to but two or three small banks, none others falling below about $8 for every dollar of circulation. To this we have added the five per cent. guarantee fund applicable in its entirety to meet the notes of any individual bank.

THE BORROWER AND THE BRANCH SYSTEM.

In discussing the banking systems in older countries, the borrower is not often considered. Men must borrow where and how they can, and pay as much or as little for the money as circumstances require. I believe too strongly in the necessity for an absolute performance of engagements, to think that it is a requirement in any banking system that it shall make the path of the debtor easy. Every banker should discourage debt, and keep before the borrower the fact that he who borrows must pay or go to the wall. But in America the debtor class is apt to make itself heard, and I wish to show what our branch system does for the worthy borrower as compared with the United States National Banking System.

In a country where the money accumulated each year by the people's savings does not exceed the money required for new business ventures, it is plain that the system of

banking which most completely gathers up these savings and places them at the disposal of the borrowers, is the best. It is to be remembered that this involves the savings of one slow-going community being applied to another community where the enterprise is out of proportion to the money at command in that locality. Now, in Canada, with its banks with forty and fifty branches, we see the deposits of the saving communities applied directly to the country's new enterprises in a manner nearly perfect. The Bank of Montreal borrows money from depositors at Halifax and many points in the Maritime Provinces, where the savings largely exceed the new enterprises, and it lends money in Vancouver or in the North-west, where the new enterprises far exceed the people's savings. My own bank in the same manner gathers deposits in the quiet, unenterprising parts of Ontario, and lends the money in the enterprising localities, the whole result being that forty or fifty business centres, in no case having an exact equilibrium of deposits and loans, are able to balance the excess or deficiency of capital, economizing every dollar, the depositor obtaining a fair rate of interest, and the borrower obtaining money at a lower rate than borrowers in any of the colonies of Great Britain, and a lower rate than in the United States, except in the very great cities in the east. So perfectly is this distribution of capital made, that as between the highest-class borrower in Montreal or Toronto, and the ordinary merchant in the North-west, the difference in interest paid is not more than one to two per cent.

In the United States, as we know, banks have no branches. There are banks in New York and the east seeking investment for their money, and refusing to allow any interest because there are not sufficient borrowers to take up their deposits; and there are banks in the west and south which cannot begin to supply the borrowing customers, because they have only the money of the immediate locality at their command, and have no direct access to the money in the east, which is so eagerly seeking investment. To avoid a difficulty which would otherwise be unbearable, the western and southern banks sometimes re-discount their customers' notes with banks in the east, while many of their customers, not being able to rely on them for assistance, are forced to float paper through eastern note-brokers. But,

of course, the western and southern banks wanting money, and the eastern banks having it, cannot come together by chance, and there is no machinery for bringing them together. So it follows that a Boston bank may be anxiously looking for investments at four or five per cent., while in some rich western state ten and even twelve per cent. is being paid. These are extreme cases, but I have quoted an extreme case in Canada, where the capital marches automatically across the continent to find the borrower, and the extra interest obtained scarcely pays the loss of time it would take to send it so far, were the machinery not so perfect.

As I have indicated, it should be the object of every country to economize credit, to economize the money of the country so that every borrower with adequate security can be reached by some one able to lend, and the machinery for doing this has always been recognized in our banks. That is surely not a perfect system of banking under which the surplus money in every unenterprising community has a tendency to stay there, while the surplus money required by an enterprising community has to be sought at a distance. But if by paying a higher rate of interest, and seeking diligently, it could always be found, the position would not be so bad. The fact is that when it is most wanted, distrust is at its height, and the cautious eastern banker buttons up his pocket. When there is no inducement to avert trouble to a community by supplying its wants in time of financial distress, there is no inclination to do so. The individual banks, east or west, are not apt to have a very large sense of responsibility for the welfare of the country as a whole, or for any considerable portion of it. But the banks in Canada, with thirty, forty or fifty branches, with interests which it is no exaggeration to describe as national, cannot be idle or indifferent in time of trouble, cannot turn a deaf ear to the legitimate wants of the farmer in the prairie provinces, any more than to the wealthy merchant or manufacturer in the east. Their business is to gather up the wealth of a nation, not a town or city, and to supply the borrowing wants of a nation.

There was a time in Canada, about twenty years ago, when some people thought that in every town, a bank,

no matter how small, provided it had no branches, and had its owners resident in the neighbourhood, was a greater help to the town than the branch of a large and powerful bank. In those days, perhaps, the great banks were too autocratic, had not been taught by competition to respect fully the wants of each community. If this feeling ever existed to any extent, it has passed away. We are, in fact, in danger of the results of over-competition. I do not know any country in the world so well supplied with banking facilities as Canada. The branch system not only enables every town of 1,000 or 1,200 people to have a joint stock bank, but to have a bank with a power behind it generally twenty to fifty times greater than such a bank as is found in the towns of similar size in the United States would have.

But one of the main features of the branch system is connected intimately with our power to issue notes based upon the general assets of the bank. When the statement of a large Canadian bank is examined by an American banker, the comparatively small amount of actual cash must be noticeable. He will notice that the bank is careful to have large assets in the United States which may be taken back to Canada in times of financial strain there, and large assets in convertible shape at home, but having regard to actual cash as the machinery for carrying on the business at the counter, how can a bank for forty or fifty branches get along with so little cash? The simple answer is that the tills of our branches are filled with notes which are not money until they are issued, and which, therefore, save just that much idle capital and just that much loss of interest.

THE DEPOSITORS.

The legal position of the depositor is about the same in both countries. The note-holder's claim is preferred to his. We must not, however, expect that any Government will relieve a depositor from the necessity of using discretion as to where he places his money. Governments never have done and never can do that. Men must look around, and after measuring the security offered, judge where they should entrust their money. It is perhaps easier for a man, with limited intelligence to make a selection if the banks

have large capital and are of semi-national importance, provided, of course, the basis of the system is not unsound, as in Italy and Australia. In Canada, we do not borrow from abroad, although we would not object to do so if money could be obtained at low enough rates of interest; our banks have large capital and small deposits relatively, and we do not lend on real estate. The Government statement at 31st December, 1892, shows that before depositors having claims amounting to $80,000,00 can suffer, shareholders must lose in paid-up stock and double liability as such as $126,000,000, and $25,000,000 of surplus funds, in all $151,000,000. There is probably no country in the world where greater security is offered to depositors.

When our charters were under discussion two or three years ago, I had occasion to defend our system, and I have copied freely from a pamphlet written by me at that time. I must not, therefore, omit to repeat a statement made then, which might excite criticism more readily, now that the banking system of Australia has collapsed. In making a comparison between individual banks with small capital, and banks with branches and large capital, I urged that:—

"The probability of loss to the depositors in one bank with several millions of capital, is less than the probability of loss to some of the depositors in ten or twenty small banks, having in the aggregate the same capital and deposits as the large bank."

The retort will be quickly made:—"But if the large bank fails, the ruin will be just so much the more widespread."

This is quite true, but while it appears to be an answer to the point it is not. If the conditions of two countries are about the same and the ability of the bankers and the principles of the banking system, are in other respects equally excellent, it must still remain true that the probability of loss to the depositors in one or more of the ten or twenty small banks is greater than the probability of loss to any of the depositors in the one large bank.

There are some features in our deposit business which may be interesting to American bankers. There are perhaps not half a dozen savings banks, as the term is under-

stood in North America, in the whole of Canada, and those only in the largest cities, and there is really little need for the existence of any. The Government carries on the Post Office Savings Bank system, copied in some respects from Great Britain. It is unnecessary and unsuited to our country, but it perhaps affords the very ignorant a refuge from the dread of bank failures. The safeguards always necessary when a government undertakes to carry on a regular business are so many and so tedious that the leading banks do not find it necessary to allow as high a rate of interest as the Government.

In addition to the Government we have as competitors for deposits the companies authorized to lend on real estate. Most of those companies, however, now borrow only on debentures, at fixed periods. Some of this money is borrowed in Great Britain, but much of it is obtained at home. I may say here that while, as with you, banks have fortunately no power to lend on real estate, the restriction is perhaps no longer necessary, as land banking and mercantile banking are clearly separated in the minds of every intelligent man of business in Canada. And as the banks do not buy paper made for the purpose of obtaining money, as you do in the United States, but loan only to their own customers, supplying their entire wants, and seeing that the money is to make or move some product about to be sold, we do not so often discover that we have unwittingly been booming a corner lot, building a mill, or helping to float a company.

Returning from this digression to the subject of deposits, I have to deal with the objection, present I am sure in the minds of many of my hearers, that we pay interest on deposits. I am aware that many eminent bankers in the United States have expressed the opinion very decidedly that it is inconsistent with sound banking to pay interest on deposits. On the other hand, bankers in Great Britain and in Canada would say that any system of banking which will not afford interest on certain classes of deposits is unsound. I must hold with this latter opinion. It is entirely a question of the character of the deposit. Well managed Canadian banks do not give interest on active current accounts. But all Canadian banks issue interest-bearing receipts, and, as you will have gathered.

all, or almost all have Savings Departments. These deposits, great or small, are in the nature of investments by the depositor, and are not like the temporary balances of a merchant. They are entitled to interest. It is of vital importance to every nation that its people should have the saving habit. It is also of vital importance that all the money disbursed for labor, or to the farmer or otherwise, should find its way back as early as possible into the channels of commerce. Will it find its way back unless interest is offered for it? It will be said that the ordinary savings bank is the proper organization to take care of such deposits. So far as the very large cities are concerned this may be quite true. The mercantile banks of Chicago would not like to have been the creditors of the excited savings bank depositors who clamored for their deposits a few weeks ago. But is the ordinary savings bank an effective instrument for collecting the miscellaneous savings of the smaller communities? I think not. Be this as it may, we by our branch system, with the savings department added, provide in small towns where the ordinary savings bank is impossible, a secure place of deposit, and the quite large deposits of our leading banks are certainly the accumulation of tens of thousands of such depositors.

Banks are required once a year to make a return to the Government, which is published as a blue-book, of all unclaimed dividends, deposits or other balances of five years' standing.

BANK INSPECTION.

We have in Canada no public bank examiner as in the United States, nor are our annual statements audited as in Australia. When the audit system was proposed, we resisted because we felt that it pretended to protect the shareholders and creditors, but did not really do so, and if the audit did not really protect it seemed better that shareholders and creditors should not be lulled by imaginary safeguards, but be kept alert by the constant exercise of their own judgment. So far as we have ever discussed with the Government the question of public bank examiners, apart of course from denying the necessity for anything of the kind, we have confined our arguments to pointing

out the impracticability when banks have many branches. This may in the minds of some constitute an argument against branch banking. I simply state the facts. But we say that, while it may be very well—if it really does lessen bank failures—to have public examiners for the protection of the people, it is much more necessary with branch banking to have bank examiners, or as we call them, inspectors, on behalf of the executive of the bank. And I am aware that the practice is growing in the United States, where everything is under one roof. When it comes to the quality of the work done by our inspectors, I would not admit that anything could well be better. In my own bank it takes a staff of five trained men an entire year to make the round of all the branches. Some of these officers devote themselves to the routine of the branches, verifying all cash, securities, bills, accounts, etc., testing the compliance of officers with every regulation of the bank, reporting on the skill and character of officers, etc., while the chiefs devote themselves to the higher matters, such as the quality of the bills under discount, loans against securities, indeed the quality and value of every asset found at the branch. They also deal with the growth and profitableness of the branch, its prospects, etc. Now all these matters have already passed the judgment of the branch manager, and the more important have been referred to and approved by the executive, so that it may be said that three different judgments are passed upon the business of the branch. But it will be said that the chief inspector may be under the sway of the executive and his reports a mere echo of the opinion of the latter. This is quite true—the reports may be dishonest. We do not tell the public that the inspector is specially employed for its protection. He, like the general manager, is merely a part of the bank's machinery for conducting business, and the public is left to judge of the bank by its chief officers, its record in the past, its entourage.

Our banks make a very full return to the Government at the close of each month. These are published during the month and are keenly discussed by the public. The Deputy Minister of Finance has the power to call for statements of any character at any time.

In the larger banks the officers insure their fidelity by funds established within the bank. Many of the banks also have funds for the superannuation of their officers.

RESERVES.

If this paper were not already too lengthy I would like to have discussed the question of reserves. We hold with the majority of the banking world outside of the United States against fixed reserves. With us no reserves are actually required by law. The cash reserve in gold and legal tenders has averaged for some years about ten per cent., but you will remember that our till money is almost entirely supplied by the bank note circulation. The smaller banks keep their available resources in securities, call loans at home and balances with their bankers in Montreal and New York. The large banks, as you know, in addition to their securities and call loans in Canada, lend largely on easily liquidated securities in the United States.

The change making notes, those of denominations less than $5, are issued by the Dominion Government. The settlements at the clearing houses are made in legal tenders, notes of large denominations being issued by the Government for the purpose. Forty per cent. of whatever cash reserves a bank may keep must be in Dominion legal tenders, a provision entirely in the interest of the Government, and so unworthy of our otherwise creditable system that we must hope our Government will some day relieve us of such an unscientific arrangement.

THE BANK ACT, CANADA.

REVISED STATUTES OF CANADA, 1906.

CHAPTER 29.

AN ACT RESPECTING BANKS AND BANKING.

(Came into force January 31st, 1907.)

SHORT TITLE.

1. This Act may be cited as the Bank Act. 53 V., c. 31, s. 1.

Before Confederation the banks doing business in the old province of Canada were governed by their special charters and by the provisions of chapters 54 and 55 of the Consolidated Statutes of Canada, intituled respectively "An Act respecting Incorporated Banks," and "An Act respecting Banks and Freedom of Banking" and by amending Acts passed in 1861 and 1866. These charters were granted usually for a term of ten years at a time, most of them expiring at the end of the session of Parliament after the first of June, 1870. The provisions of these special charters were not always uniform.

In the old Province of Nova Scotia there was no general banking Act, special provisions being embodied in the respective charters, which were, as a rule, granted for fifteen years at a time, terminating at different periods.

New Brunswick, the remaining province which made up the original Dominion in 1867, like Nova Scotia, had no general Act, but had granted charters for terms varying from twelve to twenty-six years.

When British Columbia joined the Dominion in 1871, it had the Bank of British Columbia, which was organized in 1872 under an Imperial charter, with its head office in London, England.

Prince Edward Island became a province of the Dominion in 1873, and had then three banks with special charters, which had been extended to 1890, 1892, and 1900, respectively.

By the British North America Act, section 91, sub-section 15, the right to legislate respecting "Banking, Incorporation of Banks, and the Issue of Paper Money" was assigned exclusively to the Dominion Parliament. At its first session in 1867, it passed the Act, 31 Vict. chap. 11, which gave the banks of Upper and Lower Canada, Nova Scotia and New Brunswick the right to do business throughout the Dominion until 1870, under certain regulations and restrictions. In 1869, by the Act 32-33 Vict. chap. 49, these provisions were still further extended, and certain expiring bank charters continued temporarily. In 1870 the Act of 1867 was extended until 1872, by the Act 33 Vict. chap. 11, which introduced certain new provisions for the protection of the interests of shareholders and of the public. In 1871 the first comprehensive Dominion Banking Act, 34 Vict. chap. 5 was passed. It was made applicable to ten banks having their head office in Quebec, six in Ontario, and three in Nova Scotia, and continued their charters until July 1st, 1881. It also applied in part to the Bank of British North America, which had an Imperial charter, and to La Banque du Peuple, which was organized as a limited partnership or partnership *en commandite*. In 1880, by 43 Vict. chap. 22, the Act of 1871, with certain amendments, was continued until July 1st, 1891, and was declared to be applicable to the thirty-six banks therein named, of which sixteen had their head office in Quebec, nine in Ontario, nine in Nova Scotia, and two in New Brunswick.

When the Dominion Statutes were consolidated in 1886, the laws then in force on the subject became chapter 120 of

the Revised Statutes of Canada intituled "An Act respecting Banks and Banking." On the first of July 1891, this was superseded by the Act of 1890, which came into force on that day by virtue of section 104, and which extended the bank charters to the 1st of July, 1901.

In 1899, by 62-63 Vict. chap. 14, Canadian banks were authorized to issue bank notes of one pound sterling or of any multiple of that sum at their offices in any British colony or possession other than Canada, and to make them redeemable at such offices, or in Canada in case they closed such other offices. This Act was repealed in 1904, by 4 Edw. VII., chap. 3, which made fuller and more detailed provisions regarding offices and sterling notes in other British colonies or possessions. These are now found in section 62 of the present Act.

In 1900 the Bank Act was revised in view of the approaching expiry of the Bank charters in 1901, and The Bank Act Amendment Act, 63-64 Vict. chap. 26, was passed, which embodied certain important changes and extended the charters to the 1st of July, 1901. Provisions as to the business and powers of a bank were extended, further returns and statements were provided for, and authority was given to the Canadian Bankers' Association, incorporated during the same session, to appoint a curator to a suspended bank. Provision was also made for the purchase of the assets of one bank by another, and by a supplementary Act for any increase of the capital stock of the purchasing bank rendered necessary thereby.

In 1903, the Penny Bank Act, 3 Edw. VII., chap. 4, was passed, which will be found in the Appendix. These banks do not come under the present Act.

In 1905 by 4-5 Edw. VII., chap. 4, provision was made for having more than ten directors, and for electing one of them as honorary president.

The Bank Act of 1890 and the foregoing amending Acts were revised and consolidated by the commissioners for revising the Dominion Statutes, as Chapter 29 of the Revised Statutes of Canada, 1906, which came into force by proclamation and statute on the 31st of January, 1907. The revisers omitted obsolete provisions, re-arranged, divided,

and sub-divided a number of the sections and changed the order and position of not a few, introduced new definitions, and made other minor changes. In order to facilitate references in decisions under former Acts to the corresponding provisions of the present Act, a concordance will be found after the table of contents in the Introduction.

The revision was made under the authority of the Act of 1903, 3 Edw. VII., chap. 61, which provides that such alterations might be made in the language of the statutes consolidated as were requisite to preserve a uniform mode of expression, and that such minor amendments might be made as were necessary to bring out more clearly the intention of Parliament, or to reconcile seemingly inconsistent enactments or to correct clerical or typographical errors.

The Statute bringing the Revised Statutes into force, assented to 30th January, 1907, provides by section 7 that they are not to operate as new laws but to be construed and have effect as declaratory of the old law; but if on any point they are in effect not the same as those for which they are substituted, the provisions in them shall prevail as to all matters subsequent to January 31st, 1907.

By section 21 of the Interpretation Act, R. S. C. chap. 1, it is declared that Parliament by re-enacting, revising or consolidating any Act shall not be deemed to have adopted the construction which has, by judicial decision or otherwise, been placed upon the language used in such Act, or upon similar language.

The right of the Dominion Parliament to pass the Acts of 1880 and 1890 was challenged as an interference with the powers conferred on the provincial legislatures by section 92 of the British North America Act, especially as an invasion of the domain of "Property and Civil Rights." The provisions relating to warehouse receipts were claimed to be invalid as being in conflict with the Mercantile Amendment Act, chap. 122, of the Revised Statutes of Ontario on the same subject. The Supreme Court in *The Merchants' Bank* v. *Smith*, S. C. Can. 512 (1884), upheld these provisions of the Dominion Act. The Privy Council subsequently gave a decision to the same effect in *Tennant* v. *The Union Bank*, [1894] A. C. 31. In this case the doctrine was clearly laid

down, as had been previously done in *Cushing* v. *Dupuy*, 5 App. Cas. 409 (1880), that inasmuch as section 91 of the B. N. A. Act expressly declares that "notwithstanding anything in this Act," the exclusive authority of the Parliament of Canada shall extend to all matters coming within the enumerated classes, this is a plain indication that the legislation of that Parliament, so long as it strictly relates to these matters, is to be of paramount authority, even though it trenches upon matters assigned to the local legislatures by section 92. They further lay down the doctrine that the legislative authority conferred by the words "Banking Incorporation of Banks and the Issue of Paper Money," is not confined to the mere constitution of corporate bodies with the privilege of carrying on the business of bankers; that it extends to the issue of paper currency, which necessarily means the creation of a species of personal property carrying with it rights and privileges which the law of the province does not and cannot, attach to it; and that it also comprehends "banking," an expression wide enough to embrace every transaction coming within the legitimate business of a banker. They also say that the power to legislate on the subject of banking conferred upon the Dominion Parliament by section 91 may be fully exercised, even though it may have the effect of modifying civil rights in the province.

The Supreme Court also in *Quirt* v. *The Queen*, 19 S. C. Can. 510 (1891), upheld the validity of the Dominion Acts which authorized the trustees of the Bank of Upper Canada to carry on the business of the bank, so far as was necessary to wind it up, and which finally transferred to the Dominion Government all the property of the bank and the powers of the trustees. The majority of the Court did so, however, on the ground that it came under the head of "bankruptcy and insolvency," and not under the head of "banking." The doctrine was also laid down that the Dominion Parliament had not the power to deal with either real estate or personal property simply because a bank was interested in the transaction, when it did not come within the scope of the ordinary business of banking.

On the other hand, the right of the Quebec Legislature to pass the Act of 1882, imposing a special tax on banks and

other commercial corporations, was claimed to be an interference with the exclusive rights of the Dominion Parliament as to Banking, and the Regulation of Trade and Commerce, and as being indirect taxation. The Privy Council, however, in *The Bank of Toronto* v. *Lambe*, 12 App. Cas. 575 (1887), upheld the validity of the tax. It was held that it was not a fatal objection that the tax was on the whole paid-up capital of the bank, while only a portion of it was employed in the province of Quebec; nor that the legislature might lay on taxes so heavy as to crush a bank out of existence, and so nullify the power of Parliament to create banks.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) 'Bank' means any bank to which this Act applies;

By section 3 the provisions of the Act apply to the banks named in schedule A, and to banks incorporated after January 1st, 1905. Certain provisions apply to the banks being wound up, and to the Bank of British North America. The sections applicable to the latter are enumerated in section 6.

The Act does not apply to the Post Office Savings Banks, nor to the Government Savings Banks, which are regulated by R. S. C. chap. 30; nor to the Penny Banks established under R. S. C. chap. 31; nor to the two Quebec Savings Banks, governed by R. S. C. chap. 32. These Acts will be found in the Appendix.

(*b*) 'Minister' means the Minister of Finance and Receiver General.

The Minister of Finance as head of the Department of Finance of the Dominion Government and as a member of the Treasury Board established by R. S. C. chap. 23, is assigned very important duties under the Bank Act. See sections 13 to 17, 33, 35, 60, 61, 62, 64 to 69, 102, 105 to 108, 112 to 116, 122, 124, 147 to 152, and 158.

(*c*) 'Association' means the Canadian Bankers' Association, incorporated by the Act passed in the session held in the sixty-third and sixty-fourth years of Her

late Majesty's reign, chapter ninety-three, intituled *An Act to incorporate the Canadian Bankers' Association;*

The Statute 63-64 Vict. chap. 93, will be found in the Appendix. The powers and duties of the Association in the case of a bank suspending payment are set out in sections 117, 118, and 124.

(*d*) 'curator' means any person appointed under the authority of this Act by the Canadian Bankers' Association to supervise the affairs of any bank which has suspended payment in specie or Dominion notes of any of its liabilities as they accrue;

See sections 117 to 124 as to the powers and duties of a curator under the Act.

(*e*) 'Circulation Fund' means the fund heretofore established and continued by the authority of this Act under the name of the Bank Circulation Redemption Fund;

This fund was established by section 54 of the Act of 1890, which with subsequent amendments has become sections 54 to 59 of the present Act.

(*f*) 'goods, wares and merchandise' includes, in addition to the things usually understood thereby, timber, deals, boards, staves, saw-logs and other lumber, petroleum, crude oil, and all agricultural produce and other articles of commerce;

This expression has been frequently the subject matter of judicial decision, especially in connection with its use in the 17th section of the Statute of Frauds. See *Atkinson* v. *Bell*, 8 B. & C. 277 (1828); also *Lee* v. *Griffin*, 1 B. & S. 272 (1861). It does not include fixtures: *Hallen* v. *Runder*, 1 Cr. M. & R. 266 (1834); *Lee* v. *Gaskell*, 1 Q. B. D. 700 (1876). It does include timber and growing crops, because the clear intention being that they shall be severed, they are taken by a fiction of law as being actually severed: *Smith* v. *Surman*, 9 B. & C. 561 (1829); *Parker* v. *Staniland*, 11 East 362 (1809); *Mayfield* v. *Wadsley*, 3 B. & C. 357 (1824). A fortiori, trees felled, are within the phrase:

Acraman v. *Morrice*, 8 C. B. 449 (1849). Choses in action are not within the expression: *Humble* v. *Mitchell*, 11 A. & E. 205 (1839); nor shares in a company: *Latham* v. *Barber*, 6 T. R. 67 (1794). *Bowlby* v. *Bell*, 3 C. B. 284 (1846); *Watson* v. *Spratley*, 10 Ex. 222 (1854); *Duncuft* v. *Albrecht*, 12 Sim. 189 (1841); nor are bonds or certificates of stock: *Heseltine* v. *Siggers*, 1 Ex. 856 (1848); *Freeman* v. *Appleyard*, 32 L. J. Ex. 175 (1862); *Pawle* v. *Gunn*, 4 Bing. N. C. 445 (1838); *Knight* v. *Barber*, 16 M. & W. 66 (1846); nor commercial debts: *Rennie* v. *Quebec Bank*, 3 O. L. R. 541 (1902).

The expression is used in sections 76 and 86 to 89.

(*g*) 'warehouse receipt'

(i) means any receipt given by any person for any goods, wares or merchandise in his actual visible and continued possession as bailee thereof in good faith and not as of his own property, and

(ii) includes receipts, given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods, wares or merchandise, for goods, wares and merchandise delivered to him as bailee, and actually in the place or in one or more of the places owned or kept by him, whether such person is engaged in other business or not, and

(iii) includes also receipts given by any person in charge of logs or timber in transit from timber limits or other lands to the place of destination of such logs or timber; 53 V., c. 31, s. 2 (*d*); 63-64 V., c. 26, s. 3.

The first statutory recognition of warehouse receipts in Canada in connection with banking is found in the Act of 1859, which became section 8 of chapter 54 of the Consolidated Statutes of Canada.

In 1861 warehouse receipts given by warehousemen, millers and wharfingers, for cereal grains, goods, wares, or merchandise, their own property, were placed, as to banks, on the same footing as those given for the property of others. See *Molsons Bank* v. *Lanaud*, 2 Dorion, 182 (1881).

In *Williamson* v. *Rhind*, 22 L. C. J. 166 (1877), it was held that a warehouse receipt given by a warehouseman for goods not in his possession was null and void. Also in *Milloy* v. *Kerr*, 8 S. C. Can. 474 (1880).

The first definition of a warehouse receipt introduced into a Canadian Bank Act was in that of 1880, apparently with a view to overcome the decisions of the Ontario Courts to the effect that a warehouse receipt could be given only by one who followed the business of a warehouseman. For a discussion of this definition see *re Monteith*, 10 O. R. 529 (1885).

By section 54 of R. S. C. 1886, chap 120, as amended by the Act of 1888, 51 Vict. chap. 27, receipts given by certain manufacturers, dealers, etc., for goods their own property were recognized as warehouse receipts. The Bank Act of 1890 did not include such an instrument in its definition of a warehouse receipt, but under section 74 called it simply a "security." It is dealt with in section 88 of the present Act.

In *Tennant* v. *Union Bank*, 19 Ont. A. R. 1 (1892), it was held that a warehouse receipt for logs lying in certain lakes on the way from the woods to the mill was not valid as not being in a place kept by the signers of the receipt. This had previously been held in *Ross* v. *Molsons Bank*, 2 Dorion, 82 (1881). The last clause of the above definition was enacted by section 3 of the Act of 1900 to render valid such receipts.

In a warehouse receipt the goods should be described with reasonable certainty, and where practicable, by distinguishing marks. Ordinarily it does not cover substituted or subsequently received goods: *Llado* v. *Morgan*, 23 U.C.C. P. 517 (1874). Where, however, as in the grain trade there is a usage of trade that different lots of the same quality are stored together and mixed, the receipt is satisfied by the delivery of the specified quantity and quality: *Coffey* v. *Quebec Bank*, 20 U. C. C. P. 555 (1870): *Bank of Hamilton* v. *Noye Manufacturing Co.*, 9 O. R. 638 (1885). So also in the case of wheat to be made into flour: *Wilmot* v. *Maitland*, 3 Grant, 107 (1851): *Mason* v. *G. W. R. Co.*, 31 U.

C. Q. B. 73 (1871); *Bank of Hamilton* v. *Noye Manufacturing Co., supra.*

In England warehouse receipts were not fully recognized as negotiable instruments, like bills of lading and other documents of title, until the Factors Act, 1877.

They are negotiable only in the lower or secondary sense of this term in that they may be transferred by endorsement and delivery, or by delivery alone, and may thereby vest in the transferee the rights of the transferrer. They are not negotiable in the higher sense, like bills of exchange and promissory notes, which by endorsement or delivery before maturity, may vest in the *bona fide* holder for value not only the rights of the transferrer, but the right to claim the full amount for which the instrument is drawn. If the receipt is in favor of a certain person or his order it must be endorsed by him: if it is drawn in favor of the bearer or endorsed in blank it is transferable by delivery alone.

A warehouse receipt does not require to be in any particular form, but the receipt itself and the facts and circumstances attending its issue should conform to the definition in section 2 (*g*), (*i*); and the document itself should as fully as possible be brought within one or other of the clauses (ii) and (iii), giving the name of the owner, a sufficient description of the goods, the place or places where the property is kept, or in the case of logs or timber in transit, the two extreme places.

See sections 86, 87, 89 and 90, and the notes thereon for a discussion of these receipts as affected by the provisions of the Bank Act.

(*h*) 'bill of lading' includes all receipts for goods, wares or merchandise, accompanied by an undertaking to transport the same from the place where they were received to some other place, by any mode of carriage whatever, whether by land or water, or partly by land and partly by water; 53 V., c. 31, s. 2 (*e*).

The bill of lading is a very ancient document, and by the custom of merchants is negotiable, when made to bearer or order or to assigns. It is in general use among all commercial nations, and is much the same in its form and

provisions. It was originally used for transportation of goods by water only. By legislation and usage it has come to be applied to transportation by land. A "shipping note" given by the G. T. R. Co. was held to be a "bill of lading" within the Ontario Statute, 33 Vict. chap. 10, sec. 3: *Royal Canadian Bank* v. *G. T. R. Co.*, 23 U. C. C. P. 225 (1873). It is not the contract, for that had been made before the bill of lading was signed and delivered, but it is excellent evidence of the terms of the contract: *Sewell* v. *Burwick*, 10 App. Cas. at p. 105 (1884). When the goods have been received and the bill of lading signed, it is in general the evidence of the contract, and cannot be varied by parol evidence: *Leduc* v. *Ward*, 20 Q. B. D. 475 (1888).

The Bills of Lading Act, R. S. C. chap. 118, provides that every consignee named in a bill of lading and every endorser of it, shall be vested with all rights of action and be subject to such liabilities as if the contract had been made with himself. It is not to prejudice the right of stoppage *in transitu* or of the unpaid vendor in Quebec, or the right to claim freight against the original shipper. Every bill of lading in the hands of a consignee, or endorsee for valuable consideration without notice, shall be conclusive evidence of such shipment as against the master or other person signing the same.

See sections 86, 87, 89 and 90, and the notes thereon.

(*i*) 'manufacturer' includes manufacturers of logs, timber or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise: 53 V., c. 31, s. 2 (*f*); 63-64 V., c. 26, s. 3, s-s. 2.

See sections 88, 89, and 90.

(*j*) 'president' does not include an honorary president: 4-5 Edw. VII., c. 4, s. 4.

See section 24.

2. Where by this Act any public notice is required to be given the notice shall, unless otherwise specified, be given by advertisement,—

(*a*) in one or more newspapers published at the place where the head office of the bank is situate; and,

(*b*) in the *Canada Gazette*. 53 V., c. 31, s. 102.

APPLICATION.

GENERAL.

3. The provisions of this Act apply to the several banks enumerated in schedule A to this Act, and to every bank incorporated after the first day of January, one thousand nine hundred and five, whether this Act is specially mentioned in its Act of incorporation or not, but not to any other bank, except as hereinafter specially provided. 53 V., c. 31, s. 3.

Schedule A to the Act of 1890 contained the names of thirty-six banks; Schedule A to the Act of 1900 contained the names of thirty-four. Of those in the former list three had suspended payment and were being wound up, viz., The Commercial Bank of Manitoba, which suspended July 3rd, 1893; La Banque du Peuple, July 16th, 1895; and La Banque Ville Marie, July 25th, 1899. The Merchants' Bank of Prince Edward Island was added to the list on the 1st of March, 1892. La Banque Jacques Cartier, on July 3rd, 1900, became La Banque Provinciale du Canada and the Merchants' Bank of Halifax, on January 2nd, 1901, became the Royal Bank of Canada.

Schedule A to the present Act, R. S. C. 1906, chap. 29, contains the names of thirty-four banks. Of those in the list of 1900, the Halifax Banking Company, and the Merchants' Bank of Prince Edward Island, have been merged in the Canadian Bank of Commerce; the Exchange Bank of Yarmouth, the People's Bank of Halifax and the People's Bank of New Brunswick, in the Bank of Montreal; the Commercial Bank of Windsor in the Union Bank of Halifax; and the Summerside Bank in the Bank of New Brunswick. The Bank of Yarmouth, Nova Scotia, suspended payment on the 6th of March, 1905.

The following new banks appear in the list of 1906: The Sovereign Bank of Canada; the Metropolitan Bank; the

Crown Bank of Canada; the Home Bank of Canada; the Northern Bank; the Sterling Bank of Canada; and the United Empire Bank of Canada. It will thus be seen that seven banks disappeared from the list of 1900, and were replaced by seven new banks in the list of 1906.

The assets and business of the Ontario Bank were taken over by the Bank of Montreal in October, 1906, and the People's Bank of New Brunswick merged in the same in April, 1907; while the Farmers Bank of Canada began business in January, 1907.

On the 17th of January, 1908, the 86 offices of the Sovereign Bank were taken over by, and distributed among, twelve of the leading banks, and the business carried on by them without even a rumour of the impending change having appeared in the public press. The capital was reduced from four to three million dollars in 1907, and the directors came to the conclusion that the bank could not be carried on profitably.

In February, 1908, the shareholders of the Northern Bank and the Crown Bank voted in favor of an amalgamation of these two institutions under the name of the Northern Crown Bank, and authorized an application to Parliament to ratify the union.

The number of banks doing business in Canada on January 31st, 1908, was thirty-three, including the Bank of British North America, two less than in 1900, and four less than in 1890.

While the number of banks has decreased, the volume of banking business has increased enormously. On Dec. 31st, 1890, the paid-up capital of the banks was $60,057,235; on Dec. 31st, 1900, $67,087,111; on Dec. 31, 1907, $95,995,482; their combined rest or reserve funds on these dates respectively, $21,940,369, $34,501,349, and $95,995,482; and their deposits respectively $139,593,525, $464,383,538, and $578,653,921.

The Act does not apply to the Post Office Savings Banks, nor to the Government Savings Banks, which are governed by R. S. C. chap. 30; nor to Penny Banks established under R. S. C. chap. 31; nor to the Quebec Savings Banks regulated by R. S. C. chap. 32. These statutes will be found in the Appendix.

The provisions of the Bank Act do not apply to a foreign bank: *National Bank of Chicago* v. *Corcoran*, 6 O. R. 531 (1884).

4. Charters continued.—The charters or Acts of incorporation, and any Acts in amendment thereof, of the several banks enumerated in schedule A to this Act are continued in force until the first day of July, one thousand nine hundred and eleven, so far as regards, as to each of such banks,—

(*a*) the incorporation and corporate name;

(*b*) the amount of the authorized capital stock;

(*c*) the amount of each share of such stock; and,

(*d*) the chief place of business;

subject to the right of each of such banks to increase or reduce its authorized capital stock in the manner hereinafter provided.

2. As to all other particulars this Act shall form and be the charter of each of the said banks until the first day of July, one thousand nine hundred and eleven.

3. Nothing in this section shall be deemed to continue in force any charter or Act of incorporation, if, or in so far as it is, under the terms thereof, or under the terms of this Act or of any other Act passed or to be passed, forfeited or rendered void by reason of the non-performance of the conditions of such charter or Act of incorporation, or by reason of insolvency, or for any other reason. 63-64 V., c. 26, s. 6.

The question whether the charter of a bank might be annulled by a writ of *scire facias* in the Exchequer Court at the instance of the Minister of Justice was considered by the latter in a matter of *Sarazin* v. *Bank of St. Hyacinthe*, 28 L. C. J. 270 (1881). The application was refused on the merits, and doubts expressed as to the regularity of such a proceeding.

By the Act of 1900 the charters of all the banks were extended to the 1st of July, 1911, and those granted since 1900 expire at the same time. The present Act will probably be revised in the session of 1910, and the charters extended for another ten years.

BANKS IN COURSE OF WINDING-UP.

5. The provisions of this Act shall continue to apply to the banks named in schedule A to the Bank Act, passed in the fifty-third year of Her late Majesty's reign, chapter thirty-one, and not named in schedule A to this Act, but only in so far as may be necessary to wind up the business of the said banks respectively; and the charters or Acts of incorporation of the said banks, and any Acts in amendment thereof, or any Acts in relation to the said banks now in force, shall respectively continue in force for the purposes of winding-up, and for such purposes only.

2. The sections of this Act enumerated in the next following section shall continue to apply to the Bank of British Columbia, but only in so far as may be necessary to wind up the business of the bank. 63-64 V., c. 26, s. 5.

The banks referred to in sub-sec. 1 are those named under section 3, page 12, as having suspended payment or having been merged in other banks.

The Bank of British Columbia was incorporated by Royal Charter in 1862, with its head office in London, England, and had branches in British Columbia and the Pacific States. It was purchased by and merged in the Canadian Bank of Commerce on the 2nd of January, 1901.

THE BANK OF BRITISH NORTH AMERICA.

6. The sections of this Act which apply to the Bank of British North America are sections,—

one; two; six; seven; thirty-nine; forty-five; fifty-seven to sixty-one, both inclusive; sixty-three to one hundred and twenty-four both inclusive; one hundred and thirty; one hundred and thirty-two to one hundred and fifty-two both inclusive; and one hundred and fifty-four to one hundred and fifty-seven, both inclusive.

2. The other sections of this Act do not apply to the Bank of British North America. 53 V., c. 31, s. 6; 63-64 V., c. 26, s. 7.

A reference to the sections above mentioned will show that the provisions of the Bank Act which are applicable to the Bank of British North America are those relating to that portion of its business transacted in Canada, and which are specially intended for the protection of the public. The sections which do not apply to it are chiefly those relating to the operations at the head office, such as the incorporation, organization, shares, calls, double liability and insolvency. As to such matters it is regulated by the terms of its Imperial Charter.

The bank began business on the 28th of May, 1836, as a banking partnership. It was granted a Royal Charter on the 23rd of April, 1840. Supplemental charters were granted October 5th, 1852, and May 27th, 1884. Royal Warrants have been granted from time to time extending its right to do business, corresponding to the extensions granted to the Canadian banks by the Canadian Bank Acts.

7. For the purposes of the several sections of this Act made applicable to the Bank of British North America the chief office of the Bank of British North America shall be the office of the bank at Montreal in the province of Quebec. 53 V., c. 31, s. 7.

INCORPORATION AND ORGANIZATION OF BANKS.

3. The capital stock of every bank hereafter incorporated, the name of the bank, the place where its chief office is to be situated, and the name of the provisional directors, shall be declared in the Act of incorporation of every such bank respectively. 53 V., c. 31, s. 9.

9. An Act of incorporation of a bank in the form set forth in schedule B to this Act shall be construed to confer upon the bank thereby incorporated all the powers, privileges and immunities, and to subject it to all the liabilities and provisions set forth in this Act. 53 V., c. 31, s. 9.

The skeleton form in schedule B contains blanks for the four provisions named in section 8, and also states that the Act of incorporation shall remain in force until July 1st, 1911, subject to the provisions of section 16 as to obtaining a certificate to do business within a year.

10. The capital stock of any bank hereafter incorporated shall be not less than five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. 53 V., c. 31, s. 10.

These provisions as to minimum capital stock and the amount of shares of new banks were first enacted in 1890. In 1900 there were six banks doing business with a subscribed capital of less than $500,000. Now there is only one, viz., St. Stephen's Bank, which has a capital of $200,000. Of the others, the Exchange Bank of Yarmouth and the People's Bank of New Brunswick have been merged in the Bank of Montreal; Summerside Bank in the Bank of New Brunswick, and the Merchants' Bank of Prince Edward Island in the Canadian Bank of Commerce; while the Bank of Yarmouth suspended payment, and is being wound up.

11. The number of provisional directors shall be not less than five.

2. The provisional directors shall hold office until directors are elected by the subscribers to the stock, as hereinafter provided. 53 V., c. 31, s. 11; 4-5 E. VII., c. 4, s. 1.

The Act of 1890 provided that the number of provisional directors should be not less than five nor more than ten. The latter provision was struck out in 1905.

The election of directors by the subscribers is provided for in section 13.

12. Opening of stock books.—For the purpose of organizing the bank, the provisional directors may, after giving public notice thereof, cause stock books to be

opened, in which shall be recorded the subscriptions of such persons as desire to become shareholders in the bank.

2. Such books shall be opened at the place where the chief office of the bank is to be situate, and elsewhere, in the discretion of the provisional directors.

3. Such stock books may be kept open for such time as the provisional directors deem necessary: 53 V, c. 31, s. 12.

This and the following section contain all the provisions in the Act as to the powers and duties of provisional directors. While no special rules are laid down for their guidance, they should follow the approved and well recognized methods adapted to such bodies. All such steps as are reasonably taken by them in good faith for accomplishing the duty entrusted to them, viz., organizing the bank, would no doubt be upheld.

One of the first steps would naturally be to meet and organize by the election of a provisional president or chairman, and the appointment of such other officers as are necessary for carrying out the work indicated in this section.

A majority of the directors would form a quorum. *Howbeach Coal Co.* v. *Teague*, 5 H & N. 151 (1860); *Re London & Southern Cos. F. L. Co.*, 31 Ch. D. 223 (1885); R. S. C. chap. 1, sec. 31 (c). The business specified should, as a rule, be done at regularly called and organized meetings: *D'Arcy* v. *Tamar, etc., Ry. Co.*, L. R. 2 Ex. 158 (1867); *Re Haycraft Gold R. & M. Co.*, [1900] 2 Ch. 230. Where the subscribers who were the provisional directors, and who had the right to determine the number of directors, and the names of the first directors, did so by a writing signed by all of them, without holding a meeting, their action was upheld on the ground that the Act did not require them to act jointly or as a board: *In re Great Northern S. & C. Works. Ex parte Kennedy*, 44 Ch. D. 472 (1890).

Notice of the opening of the stock books should be given in one or more newspapers published at the place where the head office of the bank is situate, and in the *Canada Gazette*: sec. 2, sub-sec. 2.

The ordinary form of the heading of these stock books is in the nature of an application for shares. Like any other offer it requires an acceptance to make a binding contract. It may be withdrawn before it is accepted: *Wallace's Case*, [1900] 2 Ch. 271. It has been held that a verbal revocation is sufficient if made to a person who has authority to receive it: *Truman's Case*, [1894] 3 Ch. 272; *Mallory's Case*, 3 O. L. R. 552 (1902).

On account of the Act containing so little upon the subject of such applications or subscriptions for stock, and nothing upon the allotment by the provisional directors, or the collection of the $250,000 mentioned in the next section, it is desirable to embody fully in the heading of the subscription books the terms of payment, etc., to which the subscriber agrees; also that the applicant will take a specified number of shares or such smaller number as may be allotted to him by the provisional directors.

In *Galloway's Case*, 12 O. L. R. 107 (1906), it was held that under the Ontario Companies Act, the directors had no authority to delegate to a subordinate officer authority to allot stock on such applications as might be made. See to same effect *Re Leeds Banking Co.*, L. R. 1 Ch. 561 (1866).

To make a binding contract there must be not only an allotment, but a communication of it to the subscriber: *Pellatt's Case*, L. R. 2 Ch. 527 (1867); *Gunn's Case*, L. R. 3 Ch. 40 (1867).

Unless there is something pointing to the contrary a notice sent by post is sufficient even though it does not reach the subscriber, provided the bank be not in fault: *Household Fire Ins. Co.* v. *Grant*, 4 Ex. D. 216 (1879).

The contract for shares is complete if it be an offer on the part of the bank and an acceptance by the subscriber; or if it be an undertaking to take shares made under seal or for valuable consideration, it cannot be revoked. *Nelson Coke Co.* v. *Pellatt*, 4 O. L. R. 481 (1902); *Calderwood's Case*, 10 O. L. R. 705 (1905).

Notice of allotment may be waived, by the subscriber acting as a shareholder or director, or in a manner consistent only with an acknowledgment of an acceptance of his application: *Levita's Case*, L. R. 3 Ch. 36 (1867).

No power is given to fill any vacancies. So long as the number is not reduced below the minimum of five the remaining members may act. As the bank by section 16 must be organized within a year or its charter lapses, vacancies are not likely to occur. In some cases where the charters have been extended, power has been expressly given to fill vacancies: see 6 Edw. VII., chap. 127, sec. 3.

As pointed out in the note under the next section, there does not appear to be any provision in the Act for enforcing payment of these subscriptions by the provisional directors, or even any express provision for excluding subscribers in default from taking part in the organization of the bank. See *North Simcoe Ry. Co. & Toronto*, 36 U. C. Q. B. at p. 119 (1874), and *Michie* v. *Erie & Huron Ry. Co.*, 26 U. C. C. P. at p. 574 (1876). Until this is remedied by legislation, it would be well to provide for it in the terms of subscription in the stock books.

The provisional directors should make an allotment of stock to the subscribers and give them notice of it: *Nasmith* v. *Manning*, 5 S. C. Can. 417 (1881); *In re Scottish Petroleum Co.*, 23 Ch. D. 413 (1883). This would be indispensable in case the subscription was in the form of an application, or the stock was over subscribed; but should be done in any case in order to bind the subscribers: *Lake Superior Nav. Co.* v. *Morrison*, 22 U. C. C. P. at p. 220 (1872); *European and N. A. Ry. Co.* v. *McLeod*, 16 N. B. 3 (1875); *Common* v. *Matthews*, Q. R. 8 Q. B. 138 (1898).

Parol evidence is inadmissible to contradict the unconditional terms of the subscription: *Hamilton* v. *Holmes*, 33 N. S. 102 (1900).

Although nothing is said in the Act about the appointment of scrutineers, the meeting may appoint scrutineers to take the votes and report to the chairman if it sees fit: *Wandsworth Co.* v. *Wright*, 22 L. T. N. S. 404 (1870).

13. First meeting of subscribers.—So soon as a sum not less than five hundred thousand dollars of the capital stock of the bank has been *bona fide* subscribed, and a sum not less than two hundred and fifty thousand dollars thereof has been paid to the Minister, the pro-

visional directors may, by public notice, published for at least four weeks, call a meeting of the subscribers to the said stock, to be held in the place named in the Act of incorporation as the chief place of business of the bank, at such time and at such place therein as set forth in the said notice.

2. The subscribers shall at such meeting,—

(*a*) determine the day upon which the annual general meeting of the bank is to be held; and,

(*b*) elect such number of directors, duly qualified under this Act, not less than five, as they think necessary.

3. Such directors shall hold office until the annual general meeting in the year next preceeding their election.

4. Upon the election of directors as aforesaid the functions of the provisional directors shall cease. 53 V., c. 31, s. 13; 4-5 E. VII., c. 4, s. 2.

It would appear that it is expected that the $250,000 shall be paid voluntarily. No power is given to the provisional directors to sue. It is only to the directors elected by the shareholders that the Act gives power to make calls and to enforce payment by suit or forfeiture. Even the power of cancelling subscriptions for non-payment of ten per cent. within thirty days after subscribing is given to the directors only: sec. 37. The provisional directors should embody the terms in the heading of the stock books and prospectus.

For conflicting decisions as to the powers of provisional directors regarding contracts which they may make, see *Allen* v. *Ontario & R. R. Ry. Co.*, 29 O. R. 510 (1898); *O'Dell* v. *Boston & N. S. Coal Co*, 29 N. S. 385 (1897). and *North Sydney Mining Co.* v. *Greener*, 31 N. S. 41 (1898).

The notice calling the meeting of subscribers should be inserted for at least four weeks in one or more newspapers published at the place where the head office of the bank is situate, and in the *Canada Gazette*: sec. 2, sub-sec. 2.

The Act is silent as to whether all subscribers, even those who may not have paid even the first ten per cent., are entitled to vote. They are not called shareholders, and it is not stated that the subsequent provisions as to shareholders voting are applicable to this meeting. As suggested under the preceding section, it would be well to make it a condition of the subscription, that only those subscribers who pay the required portion of their stock shall be qualified to take part in this meeting, and that the provisions of section 32 shall apply so far as they may be applicable. Sufficient care does not appear to have been taken to adapt the present and other new sections of the Act to section 18 and others taken from the former Bank Acts. For instance, the subscribers, at the meeting for organization provided for in this section, are to fix the day on which future annual meetings are to be held, and are to determine the number of directors, which shall be not less than five; while section 18 provides that these matters are to be regulated by by-laws to be passed by the shareholders. Nothing is said as to proxies for this first meeting, nor is any authority given to provide for them. Do any of the provisions of section 32 as to the manner of voting and the counting of votes apply? And if so, which of them? Can the subscribers at this first meeting pass the by-laws mentioned in section 18 as to the remuneration of the president or other directors, or as to the amount of discounts, etc.? Until these matters are settled by legislation it would be well to apply the rules laid down in section 32 so far as practicable. It seems reasonable that at least some of the matters mentioned in section 18 in addition to the date of the annual meeting, and the number of the directors for the first year, should be provided for at the general meeting for the organization of the bank, as the occasion for the application of several of them will arise during the first year.

Since the Act of 1871 the minimum amount of subscribed capital to enable a bank to commence business has been $500,000. Under this Act it might obtain a certificate from the Treasury Board when $100,000 was paid up, another $100,000 being required to be paid within two years thereafter. Since 1890 it has been necessary that $250,000 be

not only paid in, but actually paid over to the Minister of Finance, before the holding of the meeting to elect directors.

There is no suggestion in the Act that any particular quorum of subscribers or shareholders either as to individuals or as to the number of shares held by them, is required for this first meeting or any subsequent general meeting.

The common law rule that in the absence of any other provision as to a quorum a majority of the whole number is necessary to form a quorum applies only to those bodies where the number is fixed and definite. Where the body, as here, consists of an indefinite number, the rule is that where the proper notice is given and the meeting is regularly assembled, a majority of those who assemble may transact the business, unless the number can be said to be unreasonably small for the business to be done: 1 *Lindley on Companies* (6th ed.), p. 208; 1 *Thompson on Corporations*, sec. 725; *Craig* v. *First Presbyterian Church*, 88 Pa. State 42 (1878).

In the case of banks the subscribers and shareholders are usually so numerous and widespread that it would be practically impossible to obtain the presence of a majority at a meeting.

It takes at least two persons to constitute a meeting: *Sharp* v. *Dawes*, 2 Q. B. D. 26 (1876).

14. Bank commencing business.—The bank shall not issue notes or commence the business of banking until it has obtained from the Treasury Board a certificate permitting it to do so.

2. No application for such certificate shall be made until directors have been elected by the subscribers to the stock in the manner hereinbefore provided. 53 V. c. 31, s. 14.

The preliminary statutory requirements for the organization of a bank and commencing business are the following, and are to be taken in the following order: (1) Obtaining Act of incorporation; (2) subscription of at least $500,000 of stock; (3) payment in on account of stock of $250,000; (4) payment over to the Minister of Finance of $250,000;

(5) holding meeting of subscribers and electing directors, etc.; (6) application for certificate to do business; (7) issue of such certificate by Treasury Board within a year from the passing of the Act of incorporation or within the time fixed by a subsequent Act.

Any person offending against sub-section 1 of this section is by section 132, guilty of an offence against the Act, and by section 157 liable to a fine not exceeding $1,000, or to imprisonment for five years or to both.

15. Conditions as to certificate.—No certificate shall be given by the Treasury Board until it has been shown to the satisfaction of the Board, by affidavit or otherwise, that all the requirements of this Act and of the special Act of incorporation of the bank, as to the payment required to be made to the Minister, the election of directors, deposit for security for note issue, or other preliminaries, have been complied with, and that the sum so paid is then held by the Minister.

2. No such certificate shall be given except within one year from the passing of the Act of incorporation of the bank applying for the said certificate. 53 V., c. 31, s. 15.

16. If certificate not granted.—If the bank does not obtain a certificate from the Treasury Board within one year from the time of the passing of its Act of incorporation, all the rights, powers and privileges conferred on the bank by its Act of incorporation shall thereupon cease and determine, and be of no force or effect whatever. 53 V. c. 31, s. 16.

17. Deposit, how disposed of.—Upon the issue of the certificate in manner hereinbefore provided, the Minister shall forthwith pay to the bank the amount of money so deposited with him as aforesaid, without interest, after deducting therefrom the sum of five thousand dollars required to be deposited under the provisions of this Act for the securing of the notes issued by the bank.

2. In case no certificate is issued by the Treasury Board within the time limited for the issue thereof, the amount so deposited shall be returned to the person depositing the same.

3. In no case shall the Minister be under any obligation to see to the proper application in any way of the amount so returned. 53 V., c. 31, s. 17.

The Minister of Finance is to retain the above sum of $5,000 until the adjustment takes place in the following year: sec. 64, s.s. 2.

INTERNAL REGULATIONS.

18. By-laws—The shareholders of the bank may regulate, by by-law, the following matters incident to the management and administration of the affairs of the bank, that is to say:—

(*a*) the day upon which the annual general meeting of the shareholders for the election of directors shall be held;

(*b*) the record to be kept of proxies, and the time, not exceeding thirty days, within which proxies must be produced and recorded prior to a meeting in order to entitle the holder to vote thereon;

(*c*) the number of the directors, which shall be not less than five, and the quorum thereof which shall be not less than three;

(*d*) Subject to the provisions hereinafter contained, the qualifications of directors;

(*e*) the method of filling vacancies in the board of directors, whenever the same occur during each year;

(*f*) the time and proceedings for the election of directors, in case of a failure of any election on the day appointed for it;

(*g*) the remuneration of the president, vice-president and other directors; and,

(*b*) the amount of discounts or loans which may be made to directors, either jointly or severally, or to any one firm or person, or to any shareholder, or to corporations. 53 V., c. 31, s. 18; 4-5 E. VII., c. 4, s. 3.

By-laws.—The shareholders may pass general by-laws or regulations for the internal government of the bank on the subjects mentioned in this section. The details of the management and the carrying out of these regulations are entrusted to the directors under section 29.

These by-laws may be passed at the annual general meeting or at a special meeting called for the purpose; when the shareholders meet they should organize by electing one of their number as chairman, and by appointing a secretary who need not be a shareholder. Proper minutes of all these meetings should be taken and recorded.

Several of the matters named in this section which may now be regulated by by-law, were formerly embodied in the charters of the respective banks.

No particular formality is required for by-laws; but as they are usually intended for a permanency, and not for a temporary use, they should be drawn up with care in statutory form. A by-law should be consistent with the statute under which it is framed and with the general law. It should also be certain and free from ambiguity, general in its application, reasonable and positive in its terms.

The shareholders may pass these by-laws at an annual meeting, or at a special meeting called for the purpose. A simple majority of the shares present and voting is sufficient. By-laws should be attested by the presiding officer and by the seal of the bank. If the meeting is not unanimous, the voting on a by-law must be by ballot, and in accordance with the other provisions of section 32.

The by-laws are binding upon the shareholders, officers and employees. Strangers dealing with the bank are justified in assuming that the by-laws were regularly passed: *Royal Bank of India's Case* L. R. 4 Ch. 252 (1869).

Annual Meeting.—Until 1871 the General Bank Acts did not authorize the shareholders to fix the date of the annual meeting. The day was formerly named in the several Acts of incorporation. In the case of a new bank, the day should be fixed at the first meeting of subscribers: sec. 13, s.-s. 2. The place of meeting is the head office; the directors fix the hour. Public notice should be given for at least four weeks in a newspaper published at the place where the head office is situate: sec. 21. The by-laws should provide for the case of failure to hold the annual meeting on the day appointed, or failure to elect directors at it. Otherwise a special general meeting might be called in accordance with sec. 31. At this annual meeting the directors are elected: sec. 21; and a detailed annual statement of the affairs of the bank laid before the shareholders: sec. 54.

There is at common law a right of adjournment of the annual meeting: *Reg.* v. *Wimbledon Local Board*, 8 Q. B. D. 459 (1882). The notice need not state the business to be transacted at the adjourned meeting: *Scadding* v. *Lorant* 3 H. L. C. 418 (1851).

The president presides *ex officio* at meetings of the board of directors; but at the annual meeting and other meetings of shareholders, they have a right to elect the presiding officer. Usually the president is voted to the chair, reads the annual report and moves its adoption. The meeting appoints its own secretary.

Proxies.—The by-laws may require proxies to have been produced thirty or any less number of days before a meeting, but not more than thirty days. In the absence of a by-law they might be produced up to the time of the meeting, or even up to the time of voting. Only proxies that comply with all the provisions of the Act should be recorded. Thus the proxy must not be two years old; both the shareholder giving the proxy and the one to whom it is given must have held their stock for at least thirty days; neither of them can be a manager, cashier, clerk or other subordinate officer of the bank; and neither must be in arrear for any call on the stock being voted on or qualifying: sec. 32. When a regulation was passed requiring proxy papers to be attested,

this was held to be imperative, and proxy papers not so attested were rejected: *Harben* v. *Phillips*, 23 Ch. D. 14 (1883). The Act does not contain such a provision, nor does it in express terms give power to the shareholders to make such provisions by by-law or otherwise; so that the question to be decided as to the validity of proxies would probably be whether they were reasonably sufficient for the purpose they were intended to serve, and whether they complied with the requirements of the Act and of any by-law authorized by it. A corporation may give a proxy: *Indian Zoedone Co.* 26 Ch. D. 70 (1884). A proxy paper executed with the name of the proxy left blank may be subsequently filled up: *Ex parte Lancaster*, 5 Ch. D. 911 (1877). So also as to the date of a meeting at which it is to be used: *Ernest* v. *Loma Mines*, [1897] 1 Ch. 1.

Directors.—The Act of 1890 provided that the number of directors should not be less than five nor more than ten. The amending Act of 1905 struck out the maximum limit. Under the Companies Act it had been held that if the number was reduced below the minimum, the remaining directors could not transact business before vacancies were filled. Section 25 provides that a quorum of the remaining directors may continue to transact the business of the bank.

In the absence of a by-law a majority would be a quorum: *Howbeach Coal Co.* v. *Teague*, 5 H. & N. 151 (1860); *Re London, etc., Land Co.*, 31 Ch. D. 223 (1885); R. S. C. chap. 1, sec. 31(*c*). If, however, without any by-law on the subject, any three or more directors have usually conducted business at meetings of the board, such number would be held to be a quorum: *English and Irish Rolling Stock Co., Lyon's Case*, 35 Beav. 646 (1866); *Lyster's Case*, L. R. 4 Eq. 233 (1867). The stock qualification in section 20 may be increased but cannot be diminished. The president, vice-president, or a director may be removed by the shareholders for just cause: sec. 31, s.-s. 4.

Remuneration.—No president, vice-president, or other director can receive any sum for his services except under a by-law passed by the shareholders.

Discounts.—The shareholders may pass a by-law fixing the maximum amount that may be lent to directors, or to any firm or person, or to any shareholder, or to corporations. The aggregate amount of loans to directors, and firms of which they are partners, must be given in each monthly statement sent to the Minister of Finance: sec. 112, and schedule D.

2. **Guarantee and pension funds.**—The shareholders may authorize the directors to establish guarantee and pension funds for the officers and employees of the bank and their families, and to contribute thereto out of the funds of the bank. 53 V., c. 31, s. 18, s.-s. 2.

This was first enacted in 1890. The Act of 1871 validated by-laws for establishing a guarantee fund for the employees of the bank, but did not in express terms authorize the voting of money of the bank to the fund, a provision which is continued in section 29, s.-s. 2 of the present Act.

3. **Existing by-laws continued.**—Until it is otherwise prescribed by by-law under this section, the by-laws of the bank on any matter which may be regulated by by-law under this section shall remain in force, except as to any provision fixing the qualification of directors at an amount less than that prescribed by this Act. 53 V., c. 31, s. 18.

The minimum qualification of directors is fixed by section 20, varying according to the paid-up capital of the bank. The shareholders may raise the qualification, but they cannot lower it.

19. **Board of directors.**—The stock, property, affairs and concerns of the bank shall be managed by a board of directors, who shall be elected annually in manner hereinafter provided, and shall be eligible for re-election. 53 V., c. 31, s. 19.

The board is to be composed of such number of directors, not less than five, as the shareholders may have determined: secs. 13 and 18. For the manner in which the shareholders may control the directors, see sections 18, 27, and 31. Among the specified duties and powers of directors are the following:

To make by-laws: sec. 29; to appoint officers, clerks, etc., and to require them to give bonds: sec. 30; to call special meetings of the shareholders: sec. 31; to allot stock: sec. 34; to regulate transfers: sec. 36; to make calls: sec. 38; to make annual statements: sec. 54; to declare dividends: sec. 57; to make monthly returns to the Minister of Finance: sec. 112.

Such matters as the Act does not require to be done by by-laws may be done by resolution. By-laws should have the corporate seal affixed; as also such deeds and documents as require a seal by a law of the Dominion or of the Province where they are executed, or of the place where they are to be used. See *Bank of Upper Canada* v. *Widmer*, 2 U. C. O. S. 222 B. (1832); *Bank of Commerce* v. *Jenkins*, 16 O. R. 125 (1888).

No director shall vote on the question of a loan to himself, or on any other matter in which he has a pecuniary interest. When acting as a director he is in the position of a quasi-trustee for the shareholders, and should not have any adverse personal interest. He is bound to use diligence in the performance of his duties: *Re Forest of Dean Coal Co.*, 10 Ch. D. 450 (1878); *Charitable Corporation* v. *Sutton*, 2 Atk. 405 (1742).

The duty of directors is so to conduct the business of the bank as to obtain for the benefit of the shareholders the greatest advantages that can be obtained consistently with the trust reposed in them by the shareholders and with honesty to other people. Directors who so use their powers as to obtain benefits for themselves at the expense of the other shareholders, without informing them of the facts, even though in so doing they act without fraud, and in the belief that they are doing nothing wrong, cannot be allowed to retain those benefits, but must account for them, so that all the shareholders may participate in them: *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.

The business of the board should be done at regularly constituted meetings, attended by at least a quorum, as fixed by by-law. If all the directors are present notice is immaterial; if they are not, all should have had notice. The decisions arrived at should be in the form of resolutions. The assent even of a majority of the directors not given at such a meeting

will not bind the bank: *D'Arcy* v. *Tamar Ry. Co.*, L. R. 2 Ex. 158 (1867); *Re Marseilles Extension Ry.*, L. R. 7 Ch. at p. 178 (1871); *O'Dell* v. *Boston & N. S. Coal Co.*, 29 N. S. 385 (1897).

There must be a quorum of qualified directors present to do business. If any directors are incompetent to act on account of being personally interested in any question, it cannot be disposed of unless there be a quorum qualified to act: *Yuill* v. *Greymouth Paint Co.*, [1904] 1 Ch. 32.

The acts of *de facto* directors in dealing with third persons within the powers conferred on them by the Act are valid, and will bind the bank, even though they may have been illegally or irregularly elected: *In re County Life Assurance Co.*, L. R. 5 Ch. 288 (1870); *Howard* v. *Patent Ivory Manufacturing Co.* 38 Ch. D. 156 (1888); *Royal British Bank* v. *Turquand*, 6 E. & B. 327 (1856); *Mahoney* v. *East Holyford Mining Co.*, L. R. 7 H. L. 869 (1875); *Baird* v. *Bank of Washington*, 11 Sergeant & Rawle (Pa.), 411 (1824).

The above rule is followed in the case of outsiders partly on the ground that if shareholders allow certain persons to occupy before the public the position of directors, the bank should suffer rather than those who have been dealing with it in good faith.

In like manner, third parties in good faith are not affected by mere irregularities on the part of the directors or officers of a bank. Where the quorum of directors was three, and only two were present and authorized the secretary to affix the seal to a mortgage deed, it was held not necessary for the mortgagees to enquire whether the secretary was duly authorized, and it must be taken that the mortgage was duly executed: *County of Gloucester Bank* v. *Rudry Merthyr Co.* [1895] 1 Ch. 325. See also *In re Bank of Syria*, [1901] 1 Ch. 115; and to the same effect *Montreal & St. Lawrence L. & P. Co.* v. *Robert*, [1906] A. C. 203.

It is not incumbent on a person lending money to a corporation to ascertain that all the proceedings of the company and its shareholders, *inter se*, have been strictly regular: *Colonial Bank* v. *Willan*, L. R. 5 P. C. 417 (1874). Where a person on reading a deed of settlement would find, not a

prohibition from borrowing, but a permission to do so on the authority of a resolution of the shareholders, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done: *Royal British Bank* v. *Turquand*, 6 E. & B. 327 (1856). But where there is a prohibition in the Act to incur certain expenditure except on a two-thirds vote of the shareholders, enquiry should be made whether this special provision were observed: *Commercial Bank* v. *Great Western Railway Company*, 3 Moore N. S. 295 (1865).

A bank is liable also for the torts of its directors committed by them when acting within the scope of their authority, even in the case of fraud and forgery; but the directors in such a case must be acting on behalf of the bank, and not merely to further their private ends: *Barwick* v. *English Joint Stock Bank*, L. R. 2 Ex. 265 (1867); *Weir* v. *Bell*, 3 Ex. D. 238 (1878); *Shaw* v. *Port Philip Gold Mining Co.*, 13 Q. B. D. 103 (1884); *British Mutual Banking Co.* v. *Charnwood Forest Ry. Co.* 18 Q. B. D. 717 (1887).

A bank not otherwise liable for the acts of its directors or officers may become so by ratification; but if the act is *ultra vires* the bank, it cannot be ratified even with the assent of the shareholders: *Ashbury Ry. Co.* v. *Riche*, L. R. 7 H. L. at p. 681 (1875); *Irvine* v. *Union Bank of Australia*, 2 App. Cas. 366 (1877).

The board may delegate to a committee of its members or to officers of the bank certain matters connected with the business, and may generally delegate the execution of its decisions: *In re Taurine Co.*, 25 Ch. D. 118 (1883).

20. Qualifications.—Each director shall,—

(*a*) when the paid-up capital stock of the bank is one million dollars or less, hold stock of the bank on which not less than three thousand dollars have been paid up;

(*b*) when the paid-up capital stock of the bank is over one million dollars and does not exceed three million dollars, hold stock of the bank on which not less than four thousand dollars have been paid up; and,

(c) when the paid-up capital stock of the bank exceeds three million dollars, hold stock of the bank on which not less than five thousand dollars have been paid up.

2. No person shall be elected or continue to be a director unless he holds stock paid up to the amount required by this Act, or such greater amount as is required by any by-law in that behalf. 53 V., c. 31, ss. 18 and 19.

By section 18 (*d*), the shareholders may, subject to this section, determine the qualification of directors. They may raise the requirements of the section but cannot lower them. Before 1890 it was sufficient to hold the above amounts of stock even if only partly paid up.

The Companies Act, R. S. C. chap. 79, sec. 75, requires a director to own the required number of shares "absolutely in his own right." These words would probably be construed to mean that he must be the beneficial as well as the legal owner. In England where a director was required to hold the shares "in his own right," it was held to be sufficient for him to have the legal, without the beneficial ownership: *Pulbrook* v. *Richmond Consolidated Mining Co.*, 9 Ch. D. 610 (1878). This construction was questioned by Cotton, L.J., but upheld by Lindley, L.J., in *Bainbridge* v. *Smith*, 41 Ch. D. 462 (1889); and was followed in *Cooper* v. *Griffin*, [1892] 1 Q. B. 751; *Howard* v. *Sadler*, [1893] 1 Q. B. 1; *Sutton* v. *English and C. P. Co.*, [1902] 2 Ch. 502; and *Boschoek Co.* v. *Fuke*, [1906] 1 Ch. 148. It would therefore be sufficient if he remained the registered owner of the required number of shares after having pledged or otherwise dealt with them.

It will be observed that the Bank Act does not use even the expression, "in his own right;" it simply requires the director to hold stock on which the required amount has been paid. It would be sufficient if he is the registered owner in the books of the bank of the necessary amount of stock. The bank would have no right to look beyond its own register.

Shares transferred to the name of a director so as to give him the necessary qualification, and of which the transferrers

remained the beneficial owners, cannot be charged for payment of a judgment debt incurred by the director: *Cooper* v. *Griffin*, [1892] 1 Q. B. 740.

3. A majority of the directors shall be natural born or naturalized subjects of His Majesty. 53 V., c. 31, ss. 18 and 19.

Before 1890 it was necessary that all the directors should be British subjects. Before 1902 the Companies Acts required that a majority of the directors should be resident in Canada, and in the case of companies incorporated by special Act that a majority should be British subjects. The Act of 1902, now R. S. C. chap. 79, abolished these requirements.

21. Election of directors.—The directors shall be elected by the shareholders on such day in each year as is appointed by the charter or by any by-law of the bank, and at such time of the day as the directors appoint.

2. The election shall take place at the head office of the bank.

3. Public notice of the election shall be given by the directors by publishing such notice, for at least four weeks previously to the time of holding the election, in a newspaper published at the place where the head office of the bank is situate. 53 V., c. 31, s. 19.

The old charters named the day for the annual meeting and election of directors. Since 1871 the shareholders have had the right to fix the day or to change it. "At the head office" would probably be held to mean the city or town where the bank has its head office and not necessarily the building in which the head office is situate. The shareholders elect one of their number as chairman and appoint a secretary. As a rule the president is elected chairman of the meeting and moves the adoption of the annual report. The shareholders appoint scrutineers to receive and count the ballots. All voting at shareholders' meetings is by ballot. See section 32 for detailed directions.

The number of shareholders being indefinite no particular number or proportion is required by law for a quorum. See note under section 13.

When the proper notice has been given a majority of the votes of the shareholders present in person or by proxy decides all questions except the reduction of the capital of the bank: sec. 35, or the sale of the assets: sec. 102. The proceedings must be conducted regularly and in good faith. A meeting was called for noon, and a few shareholders attended at that time and were aware that the president was on his way to the meeting. They organized at one minute past twelve and six minutes later had elected a board for the coming year, which appointed a president, a vice-president and a secretary. At ten minutes past twelve the president arrived and found that all was over and that the shareholders had left. The court held that there was unreasonable haste, and that the proceedings were not in good faith and set aside the election: *Armstrong* v. *McGibbon*, Q. R. 15 K. B. 345 (1906).

On account of the special provision as to publication of notice of the annual meeting in this section, publication in the *Canada Gazette*, under sec 2, s.-s. 2 is not required.

22. Who shall be directors.—The persons, to the number authorized to be elected, who have the greatest number of votes at any election, shall be directors. 53 V., c. 31, s. 19.

It is not necessary that a director should have a majority of all the votes cast. The number, as fixed by the shareholders, not less than five, who stand highest on the list are elected.

The courts will set aside an election that has been carried by illegal or improper means: *Davidson* v. *Grange*, 4 Grant 377 (1854); *Re Moore and the Port Bruce Harbor Co.*, 14 U. C. Q. B. 365 (1856); *Toronto Brewing and Malting Co.* v. *Blake*, 2 O. R. 175 (1882); *Gilmour* v. *Hall*, M. L. R. 2 Q. B. 374 (1886). In Quebec the proceeding would be by *quo warranto* under Art. 987 of the Code of Procedure.

On a proceeding to test the election of a bank director, it was held that the polling of illegal votes in his favor would not of itself annul his election unless it were shown that some other candidate polled more legal votes: *Gibb* v. *Poston*, 16 L. C. R. 257 (1866).

In the Province of Quebec a Judge in vacation has power to enquire into the validity of the election of a bank director, as the bank is a public corporation: *Henry* v. *Simard*, 16 L. C. R. 273 (1866).

23. Provision in case of a tie.—If it happens at any election that two or more persons have an equal number of votes, and the election or non-election of one or more of such persons as director or directors depends on such equality, than the directors who have a greater number of votes, or the majority of them, shall, in order to complete the full number of directors, determine which of the said persons so having an equal number of votes shall be a director or directors. 53 V., c. 31 ,s. 19.

The chairman of the shareholders' meeting has a casting vote on all questions in case of a tie, except as to the election of a director: sec. 32, s.-s. 4.

24. Election of president and vice-president.—The directors, as soon as may be after their election, shall proceed to elect, by ballot, two of their number to be president and vice-president respectively.

2. The directors may also elect by ballot one of their number to be honorary president. 53 V., c. 31, s. 19; 4-5 E. VII., c. 4, s. 4.

The president of a bank occupies a very important and responsible position, and yet it is surprising how little is said about him or his office in the Act. The only duties specially assigned to him are: (1) presiding at meetings of the board. sec. 28; (2) executing transfers of forfeited shares: sec. 41, s.-s. 3; (3) signing the bonds, obligations and bills of the bank: sec. 73; (4) signing the monthly and other returns to the government: secs. 112, 113, and 114. The only privilege given him beyond his fellow directors is that of giving a second or casting vote at board meetings in case of a tie: sec. 28, s.-s. 3. In case of his absence the vice-president takes his place, exercises his powers and performs his duties. In practice the president is usually expected to give more time and attention to the bank, and receives additional

remuneration therefor; but his powers and duties, other than those above specified, are only such as are expressly or impliedly given or assigned to him by the shareholders or the board by by-law or otherwise.

When it is alleged that a cheque was given for an illegal purpose, the personal knowledge of the president of the bank of the object for which it was given is not the knowledge of the bank, when the president is not the officer who acts in the matter on behalf of the bank: *Bank of Montreal* v. *Rankin*, 4 L. N. 302 (1881).

Sub-section 2 authorizing the election of an honorary president by the board was enacted by the amending Act of 1905. He has none of the duties or powers of the president assigned to him: sec. 2 (*j*).

25. Vacancies, how filled.—If a vacancy occurs in the board of directors the vacancy shall be filled in the manner provided by the by-laws: Provided that, if the vacancy is not filled, the acts of a quorum of the remaining directors shall not be thereby invalidated. 53 V., c. 31, s. 19.

If the shareholders have not passed a by-law providing for the filling of a vacancy it cannot be filled except at a special meeting of shareholders. So long as a quorum remains, the remaining directors may do business provided a quorum attends the meeting: *Re Scottish Petroleum Co.*, 23 Ch. D. 413 (1883); *In re Bank of Syria*, [1901] 1 Ch. 115. If the by-law provides that the remaining directors are to fill vacancies, and the number of directors falls below the quorum, a special meeting of shareholders would be necessary to fill the vacancies: *Newhaven Local Board* v. *Newhaven School Board*, 30 Ch. D. 350 (1885); *Sovereen Co.* v. *Whitside*, 12 O. L. R. 638 (1906).

Where no by-law on the subject had been passed the directors undertook to fill a vacancy. The quorum of the board was three. A resolution, seconded by the new director at a meeting at which three others were present was upheld, although his appointment was a nullity: *Bank of Liverpool* v. *Bigelow*, 12 N. S. (3 R. & C.) 236 (1878).

The proviso of this section, that so long as there is a quorum of directors their action is valid, overcomes the difficulty that arose under the Ontario and English Companies Acts, when the number of directors fell below the minimum required, in the *Toronto Brewing and Malting Co.* v. *Blake*, 2 O. R. 175 (1882), and *in re Alma Spinning Co. Bottomley's Case*, 16 Ch. D. 681 (1880).

26. If a vacancy occurs in the office of the president or vice-president, the directors shall, from among themselves, elect a president or vice-president, who shall continue in office for the remainder of the year. 53 V., c. 31, s. 19.

27. Failure of election.—If an election of directors is not made on the day appointed for that purpose, such election may take place on any other day, according to the by-laws made by the shareholders in that behalf.

2. The directors in office on the day appointed for the election of directors shall remain in office until a new election is made. 53 V., c. 31, s. 20.

If no such by-law has been made, it would be necessary to call a special meeting of shareholders under section 31 for the election of directors.

28. Meetings of directors.—The president, or in his absence the vice-president, shall preside at all meetings of the directors.

2. If at any meeting of the directors both president and vice-president are absent, one of the directors present, chosen to act *pro tempore*, shall preside.

3. The president, vice-president, or president *pro tempore*, so presiding, shall vote as a director, and shall, if there is an equal division on any question, also have a casting vote. 53 V., c. 31, s. 21.

While the president of a bank usually takes an active part in the management of its affairs, the special powers given to him and the duties specially assigned to him by the Act, beyond those assigned to the directors generally, are very few.

Besides the duty of presiding at the meetings of the board, he is one of the officers named to execute the transfer of forfeited shares which have been sold: sec. 41, s.-s. 3; to sign the bonds, obligations and bills of the bank: sec. 75; to sign the monthly returns to the Government: sec. 112, s.-s. 3; special returns when asked for: sec. 113; and the annual returns of sums lying more than five years unclaimed: sec. 114, s.-s. 4.

The by-laws contemplated by the next section will almost invariably assign to him important duties, especially as to his becoming a party to important contracts on the part of the bank, which may not come within the scope of the duties assigned to the cashier or manager.

The directors may frame by-laws or rules regulating the transaction of business at meetings of the board; in default of these, the president or presiding director would be governed by the usage of the board, or the well-established rules common to such deliberative bodies. They may make any regulations they choose, except that they cannot override any provision of the Act, or any by-law passed by the shareholders under section 18.

The business of the board should be transacted at regularly called meetings attended by a quorum of the directors. The assent of a quorum of the directors given individually elsewhere will not bind the bank. Full and correct minutes of each meeting should be kept and recorded. Such minutes are usually read and confirmed at the beginning of the next succeeding regular meeting.

29. General powers of directors.—The directors may make by-laws and regulations, not repugnant to the provisions of this Act or to the laws of Canada, with respect to,—

(*a*) the management and disposition of the stock, property, affairs and concerns of the bank.

(*b*) the duties and conduct of the officers, clerks and servants employed therein; and,

(*c*) all such other matters as appertain to the business of a bank.

2. All by-laws of the bank heretofore lawfully made and now in force with regard to any matter respecting which the directors may make by-laws under this section, including any by-laws for the establishing of guarantee and pension funds for the employees of the bank, shall remain in force until they are repealed or altered by other by-laws made under this Act. 53 V., c. 31, s. 22.

The directors cannot make by-laws or regulations repugnant to by-laws validly passed by the shareholders under section 18.

Under the head of "officers" in this section would be comprised not only those usually designated by that name, but also the president, vice-president and a managing director, if the bank should have such an officer, the shareholders being the body to deal with the remuneration of these latter under section 18 (*g*). These by-laws do not require to be approved by the shareholders.

By-laws passed by the directors or shareholders while binding upon the shareholders and officers of the bank, are not binding upon third parties unless they are aware of them: *In re Asiatic Banking Corporation*, L. R. 4 Ch. 252 (1869).

By section 18 the shareholders may authorize the directors to establish these guarantee and pension funds and to contribute thereto out of the funds of the bank.

30. Appointment of officers.—The directors may appoint as many officers, clerks and servants as they consider necessary for the carrying on of the business of the bank.

2. The directors may also appoint a director or directors for any branch of the bank.

3. Such officers, clerks and servants may be paid such salaries and allowances as the directors consider necessary. 53 V., c. 31, s. 23.

The director or directors appointed for any branch of the bank would be included in the number fixed by by-law passed by the shareholders. The object would usually be to assign

a director, who may not reside where the head office of the bank is situate, to the branch in his own locality to exercise special supervision over it.

The term "officers" in this section would not include the president or vice-president, whose election is provided for in section 24. It would include the manager, cashier, and subordinate officers of the bank. The duties of the manager or cashier and other officers should be defined by a by-law passed under section 29. As to some of them the name will indicate the duties and scope of their authority. Third parties dealing with them in good faith may assume that they have such powers as are usually possessed by such officers respectively: *Smith* v. *Hull Glass Co.*, 11 C. B. 897 (1852).

Although directors are only elected for a year they may appoint officers, etc., for a longer period: *Dedham Bank* v. *Chickering*, 3 Pickering (Mass.) 335 (1825).

ILLUSTRATIONS.

1. The manager of a bank has not, as such, authority to sell land belonging to the bank, and it is doubtful if a verbal authorization by the directors is sufficient: *Dominion Bank* v. *Knowlton*, 25 Grant 125 (1877).

2. Where a note was made payable to "The Canadian Bank of Commerce or order" it was endorsed "D. H. Charles, manager." It was urged that the endorsement should have been by and in the name of the bank, under the corporate seal, or at least with the name of the bank added to the manager's name, but the Court did not find it necessary to determine the point: *Small* v. *Riddel*, 31 U. C. C. P. 373 (1880).

3. A bank sold lumber held by it as security for advances, and the purchaser required a guarantee which the directors resolved to give after examination by a culler. The manager, however, gave a written guarantee in the name of the bank without employing a culler. The purchaser being in good faith, the bank was held liable on the guarantee: *Dobell* v. *Ontario Bank*, 3 O. R. 299 (1882).

4. A bank manager is not acting beyond the scope of his authority in accepting the cheque of a customer to deliver

to another customer on a particular day, or on the happening of a specific event: *Grieve* v. *Molsons Bank*, 8 O. R. 162 (1885).

5. Where a deed of composition was executed by a local manager in the name of the bank under an ordinary seal, it was held not to be binding on the bank, not being under the corporate seal, nor under a signature or sign manual whereby it executed documents: *Bank of Commerce* v. *Jenkins*, 16 O. R. 215 (1888).

6. A bank sued one of its branch managers for damages on two grounds: (1) for having taken a joint note when instructed to take only a joint and several one, and (2) for having voided the note by interlining the words "jointly and severally," intending to have the words initialled by the makers which was not done. He subsequently erased the inserted words. It was held that he was liable on the first ground; but as the note he took was as good a security as if in the other form the bank was only entitled to nominal damages. Held on the second point that as he acted in good faith, and as his superior officer and the bank solicitor were of opinion that his acts had not voided the note, higher knowledge could not reasonably be expected from one in his position: *La Banque Provinciale* v. *Charbonneau*, 6 O. L. R. 302 (1903).

7. The manager of a bank may deal in the ordinary and proper course of banking business with trading corporations, even though he is interested as a shareholder and director in them, and this is not necessarily a violation of the rule that an agent cannot be allowed to place his duty in conflict with his interests: *Bank of Upper Canada* v. *Bradshaw*, L. R. 1 P. C. 479; 17 L. C. R. 273 (1867).

8. Where the Bank of Montreal, by its manager, accepted cheques drawn on it by the City Bank, and the latter deposited them for value in the Banque Nationale, it was held that the Bank of Montreal could not refuse its acceptance thus made, and was bound to guarantee and protect the City Bank from all losses thereunder: *Banque Nationale* v. *City Bank*, 17 L. C. J. 197 (1873).

9. The president and manager of a bank has not, as such, authority to give to a creditor of the bank a considerable

amount of the notes discounted by the bank to guarantee a debt existing before the pledge; a special resolution of the board would be necessary: *Exchange Bank* v. *C. & D. Savings Bank*, 14 R. L. 8 (1885).

10. Where the cashier of a bank borrowed money from a savings bank in his own name, but on the representation that it was for his bank, and the money was paid to him personally and not as cashier, but subsequently changes were made in the books, charging the loan to the bank, the bank having stopped payment, and the new board elected after the suspension not having repudiated the entries for about a year, it was held by the Court of Appeal for Quebec that it was ratified by acquiescence: *City and District Savings Bank* v. *Jacques Cartier Bank*, 30 L. C. J. 106 (1886). This was reversed by the Privy Council on the ground that the new board had full knowledge of the facts, and that acquiescence and ratification would not apply to a debt which the bank never owed: *Banque Jacques Cartier* v. *C. & D. Savings Bank*, 13 App. Cas. 111 (1887).

11. Where the president and manager of a bank had accepted cheques of a customer and made them payable at a future day, and these were discounted by another bank and paid at maturity by the first named bank, the latter was held liable for cheques subsequently accepted and discounted in the same way, payment having been refused on the ground that the president and manager had exceeded his powers: *Exchange Bank* v. *People's Bank*, (S. C. Can.) 10 L. N. 362; 7 C. L. T. 387 (1887).

12. A bank which makes a loan and accepts as collateral certain shares of its own stock, which it procures to be transferred to its manager, is liable to the borrower for the return of this stock when the latter has paid the debt, although the transfer was illegal: *Exchange Bank* v. *Fletcher*, 19 R. L. 377 (1890).

13. Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the bank, they are nevertheless responsible for the fault and misconduct of the employees, unless the injurious acts complained

of are such as could not have been prevented by the exercise of reasonable diligence on their part: *McDonald* v. *Rankin*, M. L. R. 7 S. C. 44 (1890).

14. Where a cashier whose duty it was to obtain the acceptance of bills of exchange, in which the bank was interested, fraudulently, but without the knowledge of the president or directors, by a material false representation, induced the drawee to accept such a bill, the bank was held liable: *Mackay* v. *Commercial Bank*, L. R. 5 P. C. 394 (1874).

15. Where the agent of a bank, who was a partner in a firm doing business with the bank, obtained the signature of respondent to accommodation drafts which he discounted for the benefit of his firm, the latter became liable, although their name did not appear on the drafts: *Merchants Bank* v. *Whidden*, 19 S. C. Can. 53 (1890).

16. It is no part of the business of the agent of a bank to start a criminal prosecution, and when he does so without special authority the bank is not liable: *Thompson* v. *Bank of Nova Scotia*, 13 C. L. T. 311 (1893). See *Owston* v. *Bank of N. S. W.*, 4 App. Cas. 270 (1879).

17. The local manager of a bank having received a draft, induced the drawee to accept it by falsely representing that certain goods of his own were held by the bank as security for the draft. Held, that the bank was not bound by such representation; that the knowledge of the manager with which the bank would be affected should be confined to knowledge of what was material to the transaction, and the duty of the manager to make known to the bank: *Richards* v. *Bank of Nova Scotia*, 26 S. C. Can. 381 (1896).

18. Where an acceptance was indorsed to a bank, and the cashier sued on it in his own name, and the acceptor paid the amount to the cashier, it was held to be a fair inference that this was payment to the bank: *Seeley* v. *Cox*, 28 N. S. 210 (1896). Affirmed by the Supreme Court of Canada: Coutlée's Digest, p. 199.

19. An officer of a bank occupies a fiduciary position, and any secret profit made by him in connection with the business of the bank, belongs to the bank: *General Exchange Bank* v. *Horner* L. R. 9 Eq. 480 (1870).

20. If an officer exceeds his authority, the bank may be bound if the act is within the scope of his employment, and the other party is not aware that he is exceeding his authority: *Bayley* v. *Manchester, etc., Ry. Co.*, L. R. 8 C. P. 148 (1873).

The powers and duties of a cashier in the United States have been laid down as follows:

He is the chief executive officer through whom the whole financial operations of the bank are conducted. He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Subordinate officers may be appointed, but they are under his direction. They may be clothed with power to certify cheques, but this would not affect his right to do the same thing. The directors may limit his authority as they deem proper, but this would not affect those to whom the limitation is unknown: *Merchants' Bank* v. *State Bank*, 10 Wallace (U. S.), at p. 650 (1870).

The ordinary duties of a cashier do not comprehend the making of a contract, which involves the payment of money, without an express authority from the directors, unless it be such as relates to the customary transactions of the bank: *Morse* v. *Mass. National Bank*, 1 Holmes C. C. (U. S.) 209 (1873); *U. S.* v. *Bank of Columbia*, 21 Howard (U. S.), 364 (1858).

He may indorse, negotiate and transfer all negotiable paper on behalf of the bank: *Wild* v. *Bank of Passamaquoddy*, 3 Mason C. C. (U. S.) 505 (1825); but without special authority he has not a right to dispose of non-negotiable paper, or other property the dealing in which is not in the ordinary course of banking: *Barrick* v. *Austin*, 21 Barbour (N. Y.) 241 (1855).

If the directors, through inattention or otherwise, allow the cashier to pursue a line of conduct for a considerable period without objection, the bank would be bound in favor of parties dealing with him in good faith: *Caldwell* v. *National Bank*, 64 Barbour (N. Y.) 333 (1869).

4. **Security.**—The directors shall, before permitting any cashier, officer, clerk or servant of the bank to enter

upon the duties of his office, require him to give a bond, guarantee, or other security to the satisfaction of the directors, for the due and faithful performance of his duties. 53 V., c. 31, s. 23.

The taking of security "for the due and faithful performance of his duties" from each of these officers is compulsory. Directors who neglect this duty might be held personally responsible in case of loss.

A contract of guarantee, by the Statute of Frauds and by Article 1233 of the Civil Code of Quebec, must be in writing. The employment of the person guaranteed is a sufficient consideration for the contract. The relations and liability of the respective parties towards each other will be determined by the laws of the respective provinces on the subject of suretyship, which, however, do not materially differ.

Formerly private bonds were the rule; now the bonds of incorporated guarantee companies are generally given or required. These usually contain special stipulations as to employment, notice of irregularities, etc., which should be carefully examined on behalf of the bank, to see that they fully comply with the requirements of the Act. It is to be borne in mind that a surety's liability is not to be extended beyond the terms of his engagement. As a bond in the terms of the Act would be held to guarantee not only the honesty of the employee, but also his competency for the position, any material change in his position or duties which increases the risk would discharge the surety, unless the contract makes provision for it. Where the agreement between the bank and the employee is made a part of the contract with the surety, a change, even if not material, would bring about the same result. In view of the law being so favorable to the release of sureties, banks cannot be too careful as to the bonds they accept. The following cases will aid in illustrating the law on the subject:

ILLUSTRATIONS.

1. A bond given in favor of an agent of a bank will not cover losses occurring through his fault after his appointment as cashier: *Bank of Upper Canada* v. *Covert*, 5 U. C. O. S. 541 (1836).

2. Where the bond said nothing about the salary of the employee, the sureties cannot set up as a defence a change in the mode of his remuneration: *Bank of Toronto* v. *Wilmot*, 19 U. C. Q. B. 73 (1859).

3. Where a bond was given for faithful service "as clerk, or in any other capacity whatsoever," a plea that the clerk was transferred to the position of teller, whereby the risk was increased, is bad: *Royal Canadian Bank* v. *Yates*, 19 U. C. C. P. 439 (1869).

4. The sureties of an absconding bank cashier are not relieved from liability by showing that the directors employed him in transacting what was not properly banking business, in the course of which he appropriated the bank funds to his own use; the claim against the sureties being for the money so appropriated by him, and not for losses occasioned by such illegal transactions. Nor are the sureties discharged by the negligence of the directors in not inspecting the books and detecting such misappropriation, unless it amounts to connivance, or such gross negligence as to warrant the inference of fraud: *Springer* v. *The Exchange Bank*, 14 S. C. Can. 716 (1887).

5. Where a teller was engaged at a salary of £300 per annum, and by the same deed defendants became his sureties, a subsequent reduction of his salary without the consent of the sureties freed them from liability for losses occurring after such reduction: *City Bank* v. *Brown*, 2 L. C. R. 246 (1852).

6. The allowing by a bank manager of overdrafts, without security, is infidelity and an irregularity within the meaning of the bond guaranteeing the bank against loss by want of integrity, honesty and fidelity, or by negligence, default or irregularity on his part: *Bank of Toronto* v. *European Assurance Society*, 14 L. C. J. 186 (1870). Affirmed by the Privy Council, 7 R. L. 57 (1875).

7. An employee left a large sum of money in open bags in his room while he went to lunch. In his absence the room was broken into and the money stolen. The company that had guaranteed that he should diligently and faithfully discharge his duties was held liable: *Citizens Ins. Co.* v. *G. T. R. Co.*, 3 L. N. 312 (1880).

8. A package of bank notes was found to contain $6,300 less than the amount which the teller had endorsed on it. The fraud had been going on for years, but was skilfully covered up by false entries, so that it had escaped detection during the regular inspections. The company which had guaranteed his fidelity was held liable, but only for $1,400, the amount taken subsequent to their guarantee: *Banque Nationale* v. *Lesperance*, 4 L. N. 147 (1881).

9. A bond given in favor of a cashier, for the faithful performance of his duties "as an employee of the bank" does not cover defalcations after he was made managing director and president: *Exchange Bank* v. *Gault*, 30 L. C. J. 259 (1886).

10. A bank cashier took to his residence bank notes to sign. He brought them back to the bank, and there substituted $5 notes for $10 notes. It was held that as the taking of the notes to his house had not contributed to the defalcation, there was no negligence on the part of the bank to avoid the policy, and his act came under the clause guaranteeing against loss caused by "fraud and dishonesty amounting to embezzlement." He also induced the ledger-keeper to certify his cheques for a large sum, although he had no funds, and some of these were paid. This was also held to come under the same clause. The bank gave notice to the guarantee company the day after his fraud was discovered. This was held to be in reasonable time, and the fact that after his absconding the bank followed him and recovered a large part of the money, did not relieve the guarantee company, as there remained a loss exceeding the amount of the policy: *London Guarantee Co.* v. *Hochelaga Bank*, Q. R. 3 Q. B. 25 (1893).

11. A bond given for the good conduct of an employee, "a clerk," does not cover defaults after he became manager, it being shewn conclusively that he ceased to be clerk when he became manager: *Anderson* v. *Thornton*, 3 Q. B. 271 (1842).

12. Moneys received by an agent not in pursuance of the particular agency disclosed to the surety in the bond, are not covered by a general clause as to handing over moneys received: *Napier* v. *Bruce*, 8 Cl. & F. 470 (1842).

13. Where a bank without the consent of the surety made a new arrangement with a clerk increasing his salary, and also increasing his liability, the surety was held to have been relieved: *Bonar* v. *Macdonald*, 3 H. L. Cas. 226 (1850).

14. Where the mode of payment of the employee is recited in the bond, and this is changed, it may operate to discharge the surety: *London & N. W. Ry. Co.* v. *Whinray*, 10 Exch. 77 (1854).

15. A surety guaranteeing the honesty of an employee is not relieved from his obligation because the employer fails to use all the means in his power to guard against the consequences of dishonesty. Mere passive inactivity is not enough; there must be some positive act done to the prejudice of the surety, or such degree of negligence as to imply connivance and to amount to fraud: *Black* v. *Ottoman Bank*, 8 Jur. N. S. (P. C.) 801 (1862).

16. If the insured should be guilty of dishonesty and the bank retain him in its service without the knowledge or consent of the surety, express or implied, it will have no recourse against the surety for any subsequent loss: *Phillips* v. *Foxall*, L. R. 7 Q. B. 666 (1872); *Sanderson* v. *Aston*, L. R. 8 Ex. 73 (1873).

17. A bond well and truly to execute the duties of cashier or teller of a bank, includes not only honesty, but reasonable skill and diligence. If, therefore, he performs those duties negligently and unskilfully, or if he violates them from want of capacity and care, the condition of the bond is broken: *Barrington* v. *Bank of Washington*, 14 Sergeant & Rawle (Pa.) 405 (1826); *American Bank* v. *Adams*, 12 Pickering (Mass.) 303 (1832); *Minor* v. *Mechanics' Bank*, 1 Peters 46 (1828).

18. Where the bond was given in favor of an assistant bookkeeper in a bank, that he should faithfully discharge the trust reposed in him as such assistant bookkeeper, and while keeping a journal which until after the bond was given had been kept by the teller, he embezzled money and made fraudulent entries in this journal to conceal his crime, it was held that the sureties were not relieved: *Rochester City Bank* v. *Elwood*, 21 N. Y. 88 (1860). See also *Detroit Savings Bank* v. *Ziegler*, 49 Mich. 157 (1882).

A number of the banks have established guarantee funds of their own under sections 18 and 29, to which both the banks themselves and the employees contribute.

31. Special general meeting.—A special general meeting of the shareholders of the bank may be called at any time by,—

(*a*) the directors of the bank or any four of them; or:

(*b*) any number not less than twenty-five of the shareholders, acting by themselves or by their proxies, who are together proprietors of at least one-tenth of the paid-up capital stock of the bank.

2. Such directors or shareholders shall give six weeks' previous public notice, specifying therein the object of such meeting.

3. Such meeting shall be held at the usual place of meeting of the shareholders. 53 V., c. 31, s. 24.

The public notice of such special meeting should be published for six weeks in one or more newspapers published at the place where the head office of the bank is situate, and also in the *Canada Gazette*: sec. 2, s.-s. 2. No business can come before the meeting except that specified in the notice. The proxies should be less than two years old, and the other provisions of the next section will apply to the proceedings at such meeting.

Notices of special meetings are not to be construed with excessive strictness, provided they give the shareholders fair notice of what is proposed to be done:: *Wright's Case*, L. R. 12 Eq. 335*n* (1871); *Irvine* v. *Union Bank of Australia*, 2 App. Cas. 375 (1877); *Boschoek Co.* v. *Fuke*, [1906] 1 Ch. 148. Notice of a meeting for "special business" is not sufficient for such a meeting: *Wills* v. *Murray*, 4 Ex. 843 (1850).

The meeting need not necessarily be held in the room in which the shareholders usually meet. A meeting called for some suitable place in the town where the head office is situate would, no doubt, be held to be a reasonable compliance with the section, especially if the other could not be obtained for the purpose.

4. **Removal of president, etc.**—If the object of the special general meeting is to consider the proposed removal, for maladministration or other specified and apparently just cause, of the president or vice-president, or of a director of the bank, and if a majority of the votes of the shareholders at the meeting is given for such removal, a director to replace him shall be elected or appointed in the manner provided by the by-laws of the bank, or, if there are no by-laws providing therefor, by the shareholders at the meeting.

5. If it is the president or vice-president who is removed, his office shall be filled by the directors in the manner provided in case of a vacancy occurring in the office of president or vice-president. 53 V., c. 31, s. 24.

In the absence of such special power as is contained in this section, the shareholders would have no right to remove the president, vice-president or a director; but they would hold office for the year for which they were elected, unless removed by the Court: *Imperial Co.* v. *Hampson*, 23 Ch. D. 1 (1882).

The cause of complaint should be specified in the notice. A notice to remove "any of the directors" would justify a resolution to remove all of them: *Isle of Wight Ry. Co.* v. *Tahourdin*, 25 Ch. D. 320 (1883). No particular quorum of shareholders or number of shares is required at such a meeting; but the number should not be unreasonably small: *Lindley on Companies* (6th ed.) p. 208. If the proceeding be *bona fide* the Courts will not interfere with the discretion of the shareholders. The voting on the question of removal must be by ballot: sec. 32. When a vacancy has been created by such a vote the vacant place on the board will be filled in the manner provided by the by-laws of the bank. If there be no by-law on the subject the shareholders will fill the place on the board by a ballot vote at such meeting. In such a case this should be mentioned in the notice. If it should be the president or vice-president that was thus removed, the board, as thus filled up, would elect a successor in the manner provided by section 24.

32. One vote for each share.—Every shareholder shall, on all occasions on which the votes of the shareholders are taken, have one vote for each share held by him at least thirty days before the time of meeting.

2. In all cases when the votes of the shareholders are taken, the voting shall be by ballot. 53 V., c. 31, s. 25, s.-s. 1.

If some shares are fully paid up and others only partly, the latter have equal voting right with the former, provided no calls are owing and unpaid: *Purdom* v. *Ontario Loan and Debenture Co.*, 22 O. R. 597 (1892).

No shares which have been transferred within the thirty days preceding the meeting can be voted upon by either party.

The meeting may appoint scrutineers, although the Act is silent on the point: *Wandsworth Co.* v. *Wright*, 22 L. T. N. S. 404 (1870).

A candidate for the office of director should not be a scrutineer on a vote for the election of directors: *Dickson* v. *McMurray*, 28 Grant 533 (1881).

A shareholder may vote although not present when the poll was demanded: *Campbell* v. *Maund*, 5 A. & E. 865 (1836).

The poll should be kept open until all the votes present are recorded: *Reg.* v. *Wimbledon*, 8 Q. B. D. 459 (1882); *Reg.* v. *St. Pancras*, 11 A. & E. 15 (1839); *Reg.* v. *Lambeth*, 8 A. & E. 356 (1838).

3. **Majority to determine.**—All questions proposed for the consideration of the shareholders shall be determined by a majority of the votes of the shareholders present in person or represented by proxy.

4. The chairman elected to preside at any meeting of the shareholders shall vote as a shareholder only, unless there is a tie, in which case he shall, except as to the election of a director, have a casting vote. 53 V., c. 31, s. 25, s.-s. 2.

At all meetings of shareholders they have the right to elect any one of their number as chairman. The secretary

does not need to be a shareholder. In many bodies certain questions require a two-thirds or three-fourths vote; but at meeting of bank shareholders a bare majority of the shares present and voting is sufficient in nearly all cases. A by-law to reduce the stock requires a majority of the whole stock: sec. 35. A resolution approving of an agreement to sell the assets of a bank to another bank requires the assent of shareholders representing two-thirds of the subscribed capital of the selling bank: sec. 102.

While a director cannot in the board vote on any question in which he has a personal pecuniary interest, a shareholder, even though he be a director, is not under the same disability: at a meeting of shareholders: *N. W. Transportation Co.* v. *Beatty*, 12 App. Cas. 589 (1887); *Salomon* v. *Salomon*, [1897] A. C. 22; *Burland* v. *Earle*, [1902] A. C. 94.

The chairman should conduct the proceedings according to the Act and the recognized rules of order and procedure, subject to an appeal to the meeting by any dissatisfied shareholder or proxy.

5. **Joint holders.**—If two or more persons are joint holders of shares, any one of the joint holders may be empowered, by letter of attorney from the other joint holder or holders, or a majority of them, to represent the said shares, and to vote accordingly. 53 V., c. 25, s.-s. 3.

Joint holders of shares, such as executors, trustees, a firm, or the like, may either all join in a proxy to another shareholder, or one of them may be authorized by the others or a majority of them to act. "When an act or thing is required to be done by more than two persons, a majority of them may do it": Interpretation Act, R. S. C. chap. 1, sec. 31 (*c*). They might also all attend and act jointly.

6. **Proxies.**—Shareholders may vote by proxy, but no person other than a shareholder eligible to vote shall be permitted to vote or act as proxy.

7. No manager, cashier, clerk or other subordinate officer of the bank shall vote either in person or by proxy, or hold a proxy for the purpose of voting.

8. No appointment of a proxy to vote at any meeting of the shareholders of the bank shall be valid for that purpose, unless it has been made or renewed in writing within the two years last preceding the time of such meeting. 53 V., c. 31, s. 25, s.-s. 4 and 5.

See note under section 18 as to proxies.

The word "manager" in this section would probably be held not to apply to a managing director in a bank which has such an officer. In the Bank Act of 1843 the corresponding expression was the "cashier or other officers," and it was held that the president was not an officer within the meaning of that clause: *Reg.* v. *Bank of Upper Canada*, 2 U. C. Q. B. 338 (1848).

9. **Calls payable before voting.**—No shareholder shall vote, either in person or by proxy, on any question proposed for the consideration of the shareholders of the bank at any meeting of the shareholders, or on any case in which the votes of the shareholders of the bank are taken, unless he has paid all calls made by the directors which are then due and payable. 53 V., c. 31, s. 25, s.-s. 6.

CAPITAL STOCK.

33. Increase of capital.—The capital stock of the bank may be increased, from time to time, by such percentage, or by such amount, as is determined upon by by-law passed by the shareholders, at the annual general meeting, or at any special general meeting called for the purpose.

2. No such by-law shall come into operation, or be of any force or effect, unless and until a certificate approving thereof has been issued by the Treasury Board.

3. No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Treasury Board that a copy of the by-law, together with notice of intention to apply for the certificate, has been pub-

lished for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in the place where the chief office or place of business of the bank is situate.

4. Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue such certificate if it thinks best so to do. 53 V., c. 31, s. 26.

No notice is required by the Act to enable the shareholders to pass such a by-law at the annual meeting. Shareholders dissatisfied with the action of the meeting could appeal to the Treasury Board. The Treasury Board may refuse to issue a certificate in case a by-law is passed; but cannot issue one in case the by-law is defeated at the meeting.

The last clause was no doubt inserted to prevent the recurrence of such a case as that of *The Massey Manufacturing Co.*, 13 Ont. A. R. 446 (1886), where it was held that under the Ontario Letters Patent Act the Provincial Secretary was obliged to issue the notice of an increase of capital, when the conditions were complied with, and that he could exercise no discretion in the matter.

Where a bank purchases the assets of another bank and decides to increase its capital for that purpose, and the shareholders approve, the Governor in Council may authorize such increase without the observance of the provisions of this section: secs. 103, 104 and 105.

34. Allotment of stock.—Any of the original unsubscribed capital stock, or of the increased stock of the bank, shall, when the directors so determine, be allotted to the then shareholders of the bank *pro rata*, and at such rate as is fixed by the directors: Provided that,—

(*a*) no fraction of a share shall be so allotted; and,

(*b*) in no case shall a rate be fixed by the directors, which will make the premium, if any, paid or payable on the stock so allotted, exceed the percentage which the reserve fund of the bank then bears to the paid-up capital stock thereof.

2. Any of such allotted stock which is not taken up by the shareholder to whom the allotment has been made,

within six months from the time when notice of the allotment was mailed to his address, or which he declines to accept, may be offered for subscription to the public, in such manner and on such terms as the directors prescribe. 53 V., c. 31, s. 27.

It will be seen that when offering this stock to the shareholders a maximum premium is prescribed. When offered to the public the directors have full power to fix the rate. They cannot, however, in either case, offer it below par. If they should do so the purchasers would be liable to be called upon to pay the difference between the amount paid by them and the par value of their shares: *Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C. 125; *Welton* v. *Saffery*, [1897] A. C. 299; *North West Electric Co.* v. *Walsh*, 29 S. C. R. 33 (1898). If, however, the stock had passed into the hands of a *bona fide* purchaser for value without notice of the irregularity he would not be liable to pay such difference: *McCracken* v *McIntyre*, 1 S. C. Can. 479 (1877); *Burkinshaw* v. *Nicolls*, 3 App. Cas. 1004 (1878); *Parbury's Case*, [1896] 1 Ch. 100; *Bloomenthal* v. *Ford*, [1897] A. C. 156.

35. Reduction of capital.—The capital stock of the bank may be reduced by by-law passed by the shareholders at the annual general meeting, or at a special general meeting called for the purpose.

2. No such by-law shall come into operation or be of force or effect until a certificate approving thereof has been issued by the Treasury Board.

3. No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Board that,—

(*a*) the shareholders voting for the by-law represent a majority in value of all the shares then issued by the bank; and,

(*b*) a copy of the by-law, together with notice of intention to apply to the Treasury Board for the issue of a certificate approving thereof, has been

published for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in the place where the chief office or place of business of the bank is situate.

4. Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue the certificate if it think best so to do. 53 V., c. 31, s. 28, s.-s. 1 and 2.

Before 1890 a special Act of Parliament was required for reducing the stock of a bank. The reduction is made when the capital has been impaired by losses, and it is desired to pay dividends, as no dividends can be paid which will impair the paid up capital: sec. 58; and while the capital is impaired all profits shall be applied to make it good: sec. 39.

This is one of the few things in the Act which require a special majority. The Treasury Board may refuse a certificate even if the requirements of the section are complied with, but cannot grant a certificate without full compliance with the prescribed conditions.

Sub-section 8 provides that in no case shall the capital be reduced below $250,000, the minimum amount of paid-up capital required before a bank can receive a certificate permitting it to commence business.

5. **Statements to be submitted.**—In addition to evidence of the passing of the by-law, and of the publication thereof in the manner in this section provided, statements showing,—

(*a*) the amount of stock issued;

(*b*) the number of shareholders represented at the meeting at which the by-law passed;

(*c*) the amount of stock held by each such shareholder;

(*d*) the number of shareholders who voted for the by-law;

(*e*) the amount of stock held by each of such last mentioned shareholders;

(*f*) the assets and liabilities of the bank in full; and,

(*g*) the reasons and causes why the reduction is sought;

shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving the by-law: 53 V. c. 31, s. 28, s.-s. 3.

6. **Liability not affected.**—The passing of the by-law, and any reduction of the capital stock of the bank thereunder, shall not in any way diminish or interfere with the liability of the shareholders of the bank to the creditors thereof at the time of the issue of the certificate approving the by-law. 53 V. c. 31, s. 28, s.-s. 4.

7. **Reduction by Parliament.**—If in any case legislation is sought to sanction any reduction of the capital stock of any bank, a copy of the by-law or resolution passed by the shareholders in regard thereto, together with statements similar to those by this section required to be laid before the Treasury Board, shall, at least one month prior to the introduction into Parliament of the Bill relating to such reduction, be filed with the Minister. 53 V. c. 31, s. 28, s.-s. 5.

8. **Limit of reduction.**—The capital shall not be reduced below the amount of two hundred and fifty thousand dollars of paid-up stock. 53 V. c. 31, s. 28, s.-s. 6.

This is the amount required to be paid up by a new bank before it receives from the Treasury Board a certificate entitling it to commence business: sec. 14.

SHARES AND CALLS.

36. Shares personalty.—The shares of the capital stock of the bank shall be personal property. 53 V., c. 31, s. 29.

Shares in a bank would be personal property without any declaration to that effect in the Act: *Humble* v. *Mitchell*, 11 A. & E. 205 (1839); C. C. Art. 387. They would not be included in the expression "goods, wares, and merchandise": *Knight* v. *Barber*, 16 M. & W. 66 (1846); *Humble* v. *Mit-*

chell, supra. They are not " securities," and would not pass under a bequest of bonds, moneys, and securities: *Ogle* v. *Knipe*, L. R. 8 Eq. 434 (1869); *Collins* v. *Collins*, L. R. 12 Eq. 455 (1871); *Hudleston* v. *Gouldsbury*, 10 Beav. 547 (1847). They are property, and are, properly speaking, choses in action: *Colonial Bank* v. *Whinney*, 11 A. C. 426 (1886); *Atty.-Gen.* v. *Montefiore*, 21 Q. B. D. 461 (1888). In the *Bank of Montreal* v. *Simpson*, 6 L. C. J. 1, and 14 Moore P. C. 417 (1861), it was held that bank shares under the old French law were an *immeuble fictif*, and a tutor could not sell them without observing the formalities for the sale of immovables by him. Under Art. 387 C. C. they are, like shares in all commercial and manufacturing companies, declared to be movables even when the companies own immovable property.

2. **Books of subscription.**—Books of subscription may be opened at the chief place of business of the bank, or at such of its branches, or at such place or places in the United Kingdom or in any of the British colonies or possessions as the directors prescribe. 53 V., c. 31, s. 29.

3. **Transfers.**—The shares shall be assignable and transferable at any of the places aforesaid, according to such forms and subject to such rules and regulations as the directors prescribe. 53 V., c. 31, s. 29.

No assignment or transfer of shares shall be valid unless made, registered and accepted by the person to whom the transfer is made in a book or books kept for that purpose; and the person making the assignment or transfer has if required by the bank previously discharged all his debts or liabilities to the bank which exceed in amount the remaining stock, if any, belonging to such person, valued at the then current rate: sec. 43.

Where a bank has its head office in one province and has established stock registers in other provinces or in other parts of the British Empire, the situs of these latter shares may be a question not easily determined. It is possible that for different purposes the answer may be different. It is likely to arise with reference to local assessment or taxation, or probate or administration or succession duty.

The general rule is that shares are situate at the head office, and the leading case in support of this doctrine is *Attorney-General* v. *Higgins*, 2 H. & N. 339 (1857). In that case a domiciled Englishman owned shares in Scotch railway companies. On his death his will was proved in England, and under a statute similar to the transmission sections of the Bank Act, a copy of the English probate with the proper declaration was given to the secretaries of these companies, and the names of the executors entered on the register of shareholders. It was held that these shares were situate in Scotland and not in England. It was not a question between two offices of the company or two registers, but between the domicile of the testator and the head office of the company. The ground of the decision is stated by Martin, B., as follows (p. 350): "the evidence of title to these shares is the register of shareholders, and that being in Scotland this property is located in Scotland."

In *Nickle* v. *Douglas*, 35 U. C. Q. B. 126 (1874), where the city of Kingston sought to tax the plaintiff on his shares in the Merchants Bank, Montreal, Wilson, J., for the Court said (p. 145): "In our opinion the plaintiff's stock is owned by him, so far as the Assessment Act is concerned, at the head or chief place of business of the bank in Montreal. The fact that it may be transferred at a branch office of the company, if the directors so appoint, is a provision made for the convenience of the shareholders, and does not change the locality of the stock itself." Here there was no question between different offices; the sole question was whether these shares were "owned out of the province of Ontario," and it did not appear in the case that the bank even had an office in the province.

In *Hughes* v. *Rees*, 5 O. R. 654 (1884), Ferguson, J., stated (p. 666) that he was of opinion that the bank stock there in question was situate in Ontario where the head office was, although the bank had, for convenience, made provision for making transfers of the stock in Montreal. This, however, was not necessary for the decision of the case. He held the transaction void, and he would have done so even if he had considered that the stock was situate in Montreal.

A question closely analogous to that now being considered arose in a recent English case, *In re Clark*, [1904] 1 Ch. 294.

Clark was domiciled in England, and held shares in South African companies organized under the laws of the Transvaal and Orange Free State, with their head offices in South Africa, but with offices in London where a duplicate share register was kept. Transfers could be made either in South Africa or in England on the production of certificates which Clark at the time of his death had in England. By his will he bequeathed his property in England to certain persons called the "home trustees," and his property in South Africa to others called the "foreign trustees." On an application for the construction of the will, Farwell, J., held that while the transfer could be made equally effectually in South Africa or in England, the possession in England of the certificates which were essential to complete the title to the shares made them pass under the gift of the property situated in England, and not under the gift of property in South Africa.

If the Clark shares had been stock in a Canadian bank it could not be said that their transfer could be made equally effective in either place. Before they could be transferred at all it would be necessary for the executors to make a declaration of transmission under section 47, and leave it with the cashier, or other agent of the bank who had charge of the register upon which the shares in question were, together with the probate of the will under section 50, whereupon the proper officer would enter the names of the executors or trustees upon the register. Any dispute as to who were the proper trustees of the shares in question would have to be settled by the Court having jurisdiction where the shares were registered.

Canadian bank shares are transferred from one register to another at the request of the shareholder. If they are transmitted in any one of the ways indicated in section 47, it is necessary that the person to whom they are transmitted should be entered on the register of shareholders before they are dealt with.

4. **Dividends.**—The dividends accruing upon any shares of the capital stock of the bank may be made payable at any of the places aforesaid. 53 V., c. 31, s. 29.

5. **Agents.**—The directors may appoint such agents in the United Kingdom, or in any of the British colonies or possessions, for the purposes of this section, as they deem necessary. 53 V., c. 31, s. 29.

37. Payment of shares.—The shares of the capital stock shall be paid in by such instalments and at such times and places as the directors appoint.

2. The directors may cancel any subscription for any share, unless a sum equal to ten per centum at least on the amount subscribed for is actually paid at or within thirty days after the time of subscribing.

3. Such cancellation shall not, in the event of insolvency, relieve the subscriber as hereinafter provided, from his liability to creditors. 53 V., c. 31, s. 30.

See the next section as to the amount of calls, the necessary interval between them, and the mode of payment.

The Act contemplates that all shares shall be paid in full, or that a liability shall remain for the amount unpaid. No authority is given to issue shares at a discount; but any not originally subscribed for may be issued at a premium by the directors after organization, or in case of the increase of the capital stock: sec. 34. If issued at a discount or as fully paid up when not actually paid, a shareholder would be liable to creditors, or to a liquidator in case of winding up, for the amount unpaid. A person, however, who would afterwards accept a transfer of such stock in good faith and in ignorance of the irregularity would not be liable: *McCraken* v. *McIntyre*, 1 S. C. Can. 479 (1877); *Neelon* v. *Thorold*, 22 S. C. Can. 390 (1893); *N. W. Electric* v. *Walsh*, 29 S. C. Can. at p. 50 (1898); *In re The Ontario Express Co.*, 21 Ont. A. R. 646 (1894).

Where a person lent money to a company and was to receive fully paid up shares, which he accepted in good faith, believing them to be paid up, the liquidator was held to be estopped, and his name was removed from the list of contributories: *Bloomenthal* v. *Ford*, [1897] A. C. 156.

The right given to the directors to cancel subscriptions to stock would apply not only to stock offered by themselves, but also to original subscriptions of stock during the term of office of the provisional directors. Under the former Act no share was lawfully subscribed unless at least ten per cent. was paid within thirty days.

The last clause of the section was first enacted in 1890, and no doubt was added in view of the objection that was raised in the matter of the *Central Bank of Canada, Baines' Case*, 16 Ont. A. R. 237 (1889), that a shareholder was not obliged to pay the double liability because the ten per cent. was not paid within the thirty days. The Court of Appeal affirmed the judgment of the Chancellor, holding the shareholder liable on the ground that the subsequent payment for the stock was equivalent to a new subscription, and that the shareholder, by his subsequent payment, etc., was estopped from denying that he was a shareholder. This was subsequently affirmed in *Nasmith's Case* in the same matter: 18 Ont. A. R. 209 (1891).

It is worthy of notice that the Act does not say that the calls shall bear interest when not paid at the time fixed. The Companies' Acts, R. S. C. chap. 79, secs. 60 and 140, provide that calls shall bear interest at the rate of 6 per cent. from the day appointed for payment. Is the omission of all reference to interest in the Bank Act intentional? And if so, is the penalty of ten per cent. on the amount of the shares on which the unpaid call has been made by section 41 intended as a substitute for interest? It would appear to be inequitable to impose both a penalty and interest as damages for default in prompt payment of a call. In *Hughes* v. *La Compagnie de Villas*, M. L. R. 5 S. C. 129 (1889), it was held that the Quebec statute relating to building societies did not authorize interest on calls not paid when due.

38. Calls on shares.—The directors may make such calls of money from the several shareholders for the time being, upon the shares subscribed for by them respectively, as they find necessary.

2. Such calls shall be made at intervals of not less than thirty days.

3. Notice of any such call shall be given at least thirty days prior to the day on which the call is payable.

4. No such call shall exceed ten per centum of each share subscribed. 53 V., c. 31, s. 31.

The calls are to be "of money." The corresponding expression in the English and Canadian Companies' Acts is that they are to be paid "in cash." In construing this latter term the Courts have upheld honest transactions in which no cash has passed; they have treated payment in cash as equivalent to payment within the meaning of a plea of payment as distinguished from set-off, or accord and satisfaction: *Fothergill's Case*, L. R. 8 Ch. 270 (1873); *Spargo's Case, ibid.* 407 (1873). The latter case was approved and followed by the Privy Council in *Larocque* v. *Beauchemin*, [1897], A. C. 358, an appeal from the Province of Quebec, where the statute required payment to be made "in cash." In a case in the House of Lords, *Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C., Lord Watson says, at p. 136:—"It has been decided that under the Act of 1862 shares may be lawfully issued as fully paid up, for considerations which the company has agreed to accept as representing in money's worth the nominal value of the shares. I do not think any other decision could have been given in the case of a genuine transaction of that nature, where the consideration was the substantial equivalent of full payment of the shares in cash. The possible objection to such an arrangement is that the company may overestimate the value of the consideration, and, therefore, receive less than nominal value for its shares. The Court would doubtless refuse effect to a colourable transaction, entered into for the purpose or with the obvious result of enabling the company to issue its shares at a discount; but it has been ruled that, so long as the company honestly regards the consideration given as fairly representing the nominal value of the shares in cash, its estimate ought not to be critically examined."

For illustrations of colourable transactions where shareholders were held liable, see *Union Bank* v. *Morris*, and *Union Bank* v. *Code*, 27 Ont. A. R. 396 (1900); *Welton* v. *Saffery*, [1897] A. C. at p. 329; *North Sydney Co.* v. *Higgins*, [1899] A. C. at p. 272.

A statement of an account in which there would be a balance payable to the shareholder in cash would be sufficient: *Coates' Case*, L. R. 17 Eq. 169 (1873); *Adamson's Case*, L. R. 18 Eq. 670 (1874); *Barrow-in-Furness Co.*, 14

Ch. D. 400 (1880). But where the original subscription is based upon an agreement that the stock shall be paid for in property or services, such an agreement is not binding: *National Insurance Co.* v. *Hatton*, 24 L. C. J. 26 (1879); *Compagnie de Navigation* v. *Christin*, 4 L. N. 162 (1880); *Smart* v. *Bowmanville Machine Co.*, 25 U. C. C. P. 503 (1875); *Pagin and Gill's Case*, 6 Ch. D. 681 (1877); *Burkinshaw* v. *Nicolls*, 3 A. C. 1004 (1878); *White's Case*, 12 Ch. D. 511 (1879); *Barrow's Case*, 14 Ch. D. 432 (1880).

A call can be made only at a meeting of directors duly called at which a quorum is present: *Bank of Liverpool* v. *Bigelow*, 12 N. S. (3 R. & C.) 236 (1878); *Ontario Marine Insurance Co.* v. *Ireland*, 5 U. C. C. P. 139 (1855). It may be made by by-law or resolution. It must fix the time and place for payment: *In re Cawley Co.*, 42 Ch. D. at p. 236 (1889); *Johnson* v. *Lyttle's Iron Agency*, 5 Ch. D. 694 (1877); *Armstrong* v. *Merchants' Mantle Co.*, 32 O. R. 387 (1900). It is made in point of time when the by-law or resolution is passed, and not when notice of it is given to the shareholder: *Reg.* v. *Londonderry Ry. Co.*, 13 Q. B. 998 (1849); R. S. C. chap. 79, sec. 59. Where directors passed a resolution for a call, but left the date of payment in blank, and some time afterwards a resolution was passed fixing the date of payment, it was held that no proper call was made until the date of the second resolution: *In re Cawley Co.*, 42 Ch. D. 209 (1889).

Only one call should be made in a single by-law or resolution. There should be an interval of not less than thirty days, not only between the dates of payment of successive calls, but also between the actual making of them: *Robertson* v. *Banque d'Hochelaga*, 4 L. N. 314 (1881); *Gilman* v. *Court*, 13 R. L. 619 (1882); *Exchange Bank* v. *Darling*, 16 R. L. 649 (1884); *Exchange Bank* v. *Campbell*, 17 R. L. 246 (1885); *Bank of Nova Scotia* v. *Forbes*, 16 N. S. (4 R. & G.) 295 (1883); *St. John Bridge Co.* v. *Woodward*, 3 N. B. (1 Kerr), 29 (1840).

In the case of insolvency of a bank, the directors may make any number of calls by one resolution: sec. 128, s.s. 4.

"Not less than thirty days" and "at least thirty days" mean thirty clear days, that is, exclusive of both the first and last days: *Reg.* v. *Salop*, 8 A. & E. 173 (1838); *Mitchell* v. *Forster*, 12 A. & E. 472 (1840); *Young* v. *Higgon*, 6 M. & W. 49 (1840).

Shareholders are entitled to thirty clear days' notice before the day fixed for payment of a call. The Act does not say how this notice shall be given. Public notices are to be given by advertisement in one or more newspapers published at the head office, and in the *Canada Gazette*: sec. 2, s.s. 2. It would be prudent in the case of calls, besides the above public notice, to send a notice to each shareholder by registered letter: *Union Fire Ins. Co.* v. *Fitzsimmons*, 32 U. C. C. P. 602 (1882); *Ross* v. *Converse*, 27 L. C. J. 143 (1883).

39. Capital lost to be called for.—If any part of the paid-up capital is lost the directors shall, if all the subscribed stock is not paid up, forthwith make calls upon the shareholders to an amount equivalent to the loss: Provided that all net profits shall be applied to make good such loss.

2. Any such loss of capital and the calls, if any made in respect thereof, shall be mentioned in the next return made by the bank to the Minister. 53 V., c. 31, s. 48.

These calls would not enable the directors to declare dividends before the net profits equalled such loss. Dividends could only be paid before that time by reducing the capital as provided by section 35.

This is the only section between seven and forty-five which is applicable to the Bank of British North America: sec. 6.

40. Recovery of calls.—In case of the non-payment of any call, the directors may, in the corporate name of the bank, sue for, recover, collect and get in any such call, or may cause and declare the shares in respect of which any such call is made to be forfeited to the bank. 53 V., c. 31, s. 32.

The directors may sue not only for the amount of the call or calls, but also for the penalty of ten per cent. provided by the next section.

Instead of suing, the directors have the option of declaring the stock forfeited. If, however, the bank has threatened to sue, it cannot forfeit the stock without a notice to the shareholder that it intends to do so: *Robertson* v. *Banque d'Hochelaga*, 4 L. N. 314 (1881).

Forfeiture being a penal provision, its operation will be kept strictly within the limits prescribed by the Act, and what in ordinary cases might be considered trifling irregularities may suffice to have it declared invalid and set aside: *Clarke* v. *Hart*, 6 H. L. C. 633 (1858); *Johnson* v. *Lyttle's Iron Agency*, 5 Ch. D. 687 (1877); *In re New Chile Gold Mining Co.*, 45 Ch. D. 598 (1890); *Armstrong* v. *Merchants' Mantle Co.*, 32 O. R. 387 (1900).

The procedure for carrying out such forfeiture is laid down in the next section.

41. Penalty and forfeiture of shares.—If any shareholder refuses or neglects to pay any instalment upon his shares of the capital stock at the time appointed therefor, such shareholder shall incur a penalty, to the use of the bank, of a sum of money equal to ten per centum of the amount of such shares.

2. If the directors declare any shares to be forfeited to the bank they shall, within six months thereafter, without any previous formality, other than thirty days' public notice of their intention so to do, sell at public auction the said shares, or so many of the said shares as shall, after deducting the reasonable expenses of the sale, yield a sum of money sufficient to pay the unpaid instalments due on the remainder of the said shares, and the amount of penalties incurred upon the whole.

3. The president or vice-president, manager or cashier of the bank shall execute the transfer to the purchaser of the shares so sold; and such transfer shall be as

valid and effectual in law as if it had been executed by the original holder of the shares thereby transferred.

4. The directors, or the shareholders at a general meeting, may, notwithstanding anything in this section contained, remit, either in whole or in part, and conditionally or unconditionally, any forfeiture or penalty incurred by the non-payment of instalments as aforesaid. 53 V., c. 31, s. 33.

The penalty of ten per cent. provided by this section is incurred whether the directors exercise the option of suing the delinquent shareholder, or of declaring the shares to be forfeited as provided in section 40. It would appear as if this penalty was provided in lieu of interest on such calls. The Companies' Act, R. S. C. c. 79, provides for interest on calls at the rate of six per cent., but no penalty: secs. 60 and 140.

To render a shareholder liable to the penalty of ten per cent., or to the forfeiture of his shares, the Act must have been strictly complied with. While the acts of directors *de facto* in dealing with outsiders would be valid and would bind the bank in favor of parties acting in good faith, yet irregularity in the election of directors or violation of the by-laws might be set up by shareholders as an answer to a call or forfeiture: *Garden Gully Co.* v. *McLister*, 1 App. Cas. 39 (1875).

The business of a company was to be conducted by not less than five nor more than seven directors, and power was given to fix a quorum. A quorum of four was fixed, but this was done irregularly; these four made a call and afterwards declared the stock forfeited for non-payment. It was held that the call and forfeiture were invalid: *In re Alma Spinning Co., Bottomley's Case*, 16 Ch. D. 681 (1881).

Where the bank notified a shareholder that in default of payment they would sue, it was held that they had no right to forfeit his stock without further notice: *Robertson* v. *Banque d'Hochelaga*, 4 L. N. 314 (1881).

The secretary sent a notice that unless a call was paid with interest from the day it was made it would be for-

feited. Interest actually only ran from the date of payment. The forfeiture was consequently set aside: *Johnson v. Lyttle's Iron Agency*, 5 Ch. D. 687 (1877).

When the rules required a notice after default in payment, and this was not given, the forfeiture was declared invalid: *In re New Chile Co.*, 45 Ch. D. 598 (1890).

42. Recovery by action.—In any action brought to recover any money due on any call, it shall not be necessary to set forth the special matter in the declaration or statement of claim, but it shall be sufficient to allege that the defendant is the holder of one share or more, as the case may be, in the capital stock of the bank, and that he is indebted to the bank for a call or calls upon such share or shares, in the sum to which the call or calls amount, as the case may be, stating the amount and number of the calls.

2. It shall not be necessary, in any such action, to prove the appointment of the directors. 53 V., c. 31, s. 34.

TRANSFER AND TRANSMISSION OF SHARES.

43. Conditions for transfer of shares.—No assignment or transfer of the shares of the capital stock of the bank shall be valid unless,—

(*a*) made, registered and accepted by the person to whom the transfer is made in a book or books kept for that purpose; and,

(*b*) the person making the assignment or transfer has, if required by the bank, previously discharged all his debts or liabilities to the bank which exceed in amount the remaining stock, if any, belonging to such person, valued at the then current rate.

2. No fractional part of a share, or less than a whole share, shall be assignable or transferable. 53 V., c. 31, s. 35.

The directors have the right to prescribe the form for the transfer and acceptance of stock. They may keep stock

registers for such transfers not only at the head office of the bank, but at any other place in the British Empire: sec. 36.

The parties to such transfers must be persons capable of contracting. These transfers may be set aside on the same grounds as other contracts, as infancy, incapacity, fraud, etc. Thus, when a father executed a transfer of certain shares in a bank to his minor son, and purported to accept the transfer on behalf of his son, and the bank acted upon the transfer and paid him dividends, it was held that the transfer was void for want of legal acceptance: *Walsh* v. *Union Bank*, 5 Q. L. R. 289 (1879). Where a father subscribed for stock in the name of his infant daughter, and nine months after coming of age she took steps to have her name removed from the list of contributories, it was held that she was entitled to this relief: *Re Central Bank and Hogg*, 19 O. R. 7 (1890).

The Ontario Letters Patent Act contained a provision as to the registration of transfers nearly in the same terms as this section. A company incorporated under it had issued a certificate to a registered owner with an indorsement that the shares were transferable only on the surrender of the certificate. He sold the shares and made over the certificate to the purchaser. He sold them to another purchaser who bought in good faith and had the transfer duly made in the books of the company. It was held that the first purchaser had lost his claim on the stock by not having his transfer registered, and that the company could waive the production of the certificate: *Smith* v. *Walkerville Iron Co.*, 23 Ont. A. R. 95 (1896). *Williams* v. *Colonial Bank*, 38 Ch. D. 388 (1888), was relied upon as an authority.

On account of the double liability which attaches to bank stock, transferees often seek to escape responsibility, in case of insolvency, by claiming that the transfers to them or their predecessors are invalid for want of compliance with this section. In the case of the Central Bank, where the seller signed a transfer in blank, subject, by a marginal note, to the order of a broker, and the purchaser designated by the broker signed the acceptance, it was held to be a sufficient compliance with the Act: *Re Central Bank*,

16 Ont. A. R. 237 (1889). In the same matter, where a purchaser did not sign the acceptance, but dealt with the shares by selling and signing the transfer of them to another person, it was held that the latter was estopped from setting up the irregularity, and was properly placed on the list of contributories: *Re Central Bank, Nasmith's Case*, 16 O. R. 293 (1888); affirmed in appeal, 18 Ont. A. R. 209 (1891). Also that after a winding-up order has been made, it is too late for a shareholder who has accepted the transfer of certain shares to set up irregularities in previous transfers of these shares: *Re Central Bank, Home Savings and Loan Co.'s Case*, 18 Ont. A. R. 489 (1891).

Where there was no valid transfer of the shares under the Act, but defendant had paid calls, given a receipt for a dividend and combined with others in appointing a proxy, he was held to be a shareholder and liable for calls: *Bank of Liverpool* v. *Bigelow*, 12 N. S. (3 R. & C.) 236 (1878).

If a transfer be made in blank the transferee has implied power to fill up the blanks: *In re Tahiti Cotton Co.*, L. R. 17 Eq. 273 (1873).

Where a person in good faith induces a bank to transfer shares under a power of attorney, which is really forged, he is liable to indemnify the bank against the claim of the shareholder whose stock has been transferred: *Starkey* v. *Bank of England*, [1903] A. C. 114; *Sheffield Corporation* v. *Barclay*, [1906] A. C. 392.

"Debts or liabilities to the bank" would include not only all sums actually due and payable, and those maturing but not due, when the shareholder is the principal debtor, but also all sums for which he would be liable only secondarily or conditionally as endorser, surety or the like. It would also include stock not yet called up, so that the bank might refuse to register a transfer of stock not fully called and paid up, if it was not satisfied to accept the purchaser for the amount; and might apply to a transfer of fully paid up shares, where the transferrer was liable on other shares not fully paid up: *Re McKain* v. *Birkbeck Co.*, 7 O. L. R. 241 (1904). Under the Act of 1871, it was only debts due to the bank that the shareholder could be obliged to pay, if so required, in order to have his transfer allowed.

Under that Act it was held that the bank was obliged to allow a transfer of partly paid-up stock: *Smith* v. *Bank of Nova Scotia*, 8 S. C. Can. 558 (1883). A bank has a lien on the stock held in it by a member of a firm for a debt due to it by such firm: *In re Chinic*, 14 Q. L. R. 289 (1888).

When a bank gives a statement to an intending purchaser of the amount of its lien on certain shares, but before the transfer of the stock other liabilities accrue, it may hold the stock until the latter are paid: *Cook* v. *Royal Canadian Bank*, 20 Grant 1 (1873).

See section 77 as to a like claim on dividends and as to the mode of realizing the lien on such stock.

In *Smith* v. *Bank of Nova Scotia*, 8 S. C. Can. 558 (1883), it was held that a resolution adopted at a meeting of shareholders, authorizing a loan on behalf of the bank and agreeing to hold their stock until this loan was fully paid, did not bind a shareholder who was not at the meeting although he joined in a bond as surety for the loan, and the bank had no right to refuse to transfer his stock. In *Barss* v. *Bank of Nova Scotia*, 18 N. S. (6 R. & G.) 254 (1885), a shareholder who was present at the meeting in question was held entitled to have the transfer of his stock registered.

If a bank should, without good cause, refuse to allow a transfer to be registered, it would be liable for the damages sustained by such refusal. The bank is entitled to a reasonable time to decide: *In re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

44. List of transfers.—A list of all transfers of shares registered each day in the books of the bank, showing, in each case, the parties to such transfers and the number of shares transferred, shall be made up at the end of each day.

2. Such list shall be kept at the chief place of business of the bank, for the inspection of its shareholders. 53 V., c. 31, s. 36.

This section comes from the Act of 1871 without change. It has not been altered to harmonize with the provisions for keeping stock registers and transfer books elsewhere than at the head office of the bank.

45. Requirement for valid transfer.—All sales or transfers of shares, and all contracts and agreements in respect thereof, hereafter made or purporting to be made, shall be null and void, unless the person making the sale or transfer, or the person in whose name or behalf the sale or transfer is made, at the time of the sale or transfer,—

(*a*) is the registered owner in the books of the bank of the share or shares so sold or transferred, or intended or purporting to be so sold or transferred or,

(*b*) has the registered owner's assent to the sale.

2. The distinguishing number or numbers, if any, of such share or shares shall be designated in the contract of agreement of sale or transfer.

3. Notwithstanding anything in this section contained, the rights and remedies under any contract of sale, which does not comply with the conditions and requirements in this section mentioned, of any purchaser who has no knowledge of such non-compliance, are hereby saved. 53 V., c. 31, s. 37.

This section was first inserted in the Act of 1890 and was designed to prevent gambling in bank shares, or engaging in transactions which are really betting on the rise or fall of the stock in the market; but like similar legislation in other countries it has not accomplished the desired object.

It is the only section of the Act between thirty-nine and fifty-seven which applies to the Bank of British North America: sec. 6.

The practice of numbering their shares is optional with Canadian banks, but has not been adopted by them.

The section as originally enacted in 1890 contained a clause making non-compliance an offence against the Act. This clause is section 133 of the present Act.

When the transferrer has as many shares as are mentioned or more, but the numbers do not correspond, the transfer is not necessarily void; the figures might afterwards be

rectified: *In re International Contract Co.*, L. R. 7 Ch. 485 (1872).

46. Sale of shares under execution.—When any share of the capital stock has been sold under a writ of execution, the officer by whom the writ was executed shall, within thirty days after the sale, leave with the bank an attested copy of the writ, with the certificate of such officer endorsed thereon, certifying to whom the sale has been made.

2. The president, vice-president, manager or cashier of the bank shall execute the transfer of the shares so sold to the purchaser, but not until after all debts and liabilities to the bank of the holder of the shares, and all liens in favour of the bank existing thereon, have been discharged as by this Act provided.

3. Such transfer shall be to all intents and purposes as valid and effectual in law as if it had been executed by the holder of the said share. 53 V., c. 31, s. 38.

The Act does not make any provision as to the seizure and sale of bank stock. That is left to the provincial courts and their procedure. It simply recognizes the sale and provides for the carrying out of the transfer to the purchaser. The principle is analogous to the provisions of the Railway Act which permit the sale of a Dominion railway in certain cases and provide for its being vested in the purchaser and for its subsequent operation: R. S. C. c. 37, sec. 299.

The Act of 1871 named the sheriff as the officer who might sell bank stock under a writ of execution. *In re Bank of Ontario*, 44 U. C. Q. B. 247 (1879), a sale by a bailiff in Montreal was held to have the same effect as a sale by the sheriff, and the sale was valid although the bank has its head office in Ontario, and only a branch office with no stock register in Montreal.

In the Province of Quebec bank shares cannot be seized by means of *saisie arret* (garnishment), but should be seized conformably to Art. 566 of the Code of Procedure (Art. 642 of the new Code): *Hudon* v. *Banque du Peuple*, 7 R. L. 229 (1875).

47. Transmission of shares.—If the interest in any share in the capital stock of any bank is transmitted by or in consequence of,—

(*a*) the death, bankruptcy, or insolvency of any shareholder; or,

(*b*) the marriage of a female shareholder; or,

(*c*) any lawful means, other than a transfer according to the provisions of this Act;

the transmission shall be authenticated by a declaration in writing, as hereinafter mentioned, or in such other manner as the directors of the bank require.

2. Every such declaration shall distinctly state the manner in which and the person to whom the share has been transmitted, and shall be made and signed by such person.

3. The person making and signing the declaration shall acknowledge the same before a judge of a court of record, or before the mayor, provost or chief magistrate of a city, town, borough or other place, or before a notary public, where the same is made and signed.

4. Every declaration so signed and acknowledged shall be left with the cashier, manager, or other officer or agent of the bank, who shall thereupon enter the name of the person entitled under the transmission in the register of shareholders.

5. Until the transmission has been so authenticated, no person claiming by virtue thereof shall be entitled to participate in the profits of the bank, or to vote in respect of any such share of the capital stock. 53 V., c. 31, s. 39.

The word "transfer" is used in the Act, when the interest in the stock passes as the result of the act of the parties; the word "transmission" where it passes by the operation of the law. The provisions of section 43 as to the previous discharge of indebtedness do not apply to a case of transmission, and a bank cannot refuse to register the trans-

mission on the ground of indebtedness or lien: *In re Bentham M. S. Co.*, 11 Ch. D. 900 (1878). The person to whom the shares are transmitted takes them in the same condition and subject to the same liabilities, if any, as existed while they were in the hands of the person from whom they are transmitted.

A transmission, in order to be of the same nature as a transmission by bankruptcy, insolvency, death, or marriage, must be a transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted, and a transmission to a purchaser at a sale by licitation is not such a transmission: *Chesteauneuf* v. *Capeyron*, 7 App. Cas. 127 (1881).

If the directors require the transmission to be authenticated in some other manner than is set out in this and the three following sections, any rules they make should be reasonable and not more onerous than those prescribed by the Act.

Although subsection 4 states that where the declaration is left with the cashier or other officer or agent of the bank, he shall thereupon enter the name of the person entitled under the transmission in the register, the succeeding sections show that it is only when the declaration is accompanied by the documents and evidence there mentioned, or when these latter are furnished to the bank, that the name shall be so entered. See sections 48 and 50.

Until such declaration is made, and such documents and evidence furnished, the person entitled to the transmitted shares would be debarred, not only from drawing dividends or voting on these shares, but also from transferring or dealing with them.

Transmission by the marriage of a female shareholder is further dealt with by section 48; and transmission by death by sections 50 and 51; there is nothing outside the present section relating to transmission by the bankruptcy or insolvency of a shareholder.

While there is no Dominion Act relating to this subject, the section would apply to an abandonment of property in Quebec under Chapter XXXI. of the Code of Civil Procedure

(Arts. 853 *et seq.*) and to the curator appointed thereto, and to assignments by insolvents under R. S. O. chap. 147, and the assignees thereunder, and to assignees under similar Acts of the other provinces.

It would also apply to assignees under general insolvency Acts in other countries. These have always been accorded full recognition in the province of Quebec, which also recognizes foreign executors and administrators as more fully set forth under section 51. While the law of England and of these provinces which derived their laws from England have not fully recognized the latter, they have recognized foreign assignees, curators and trustees under general bankruptcy or insolvency Acts. The law of England on the point is stated as follows in Westlake's International Law (3rd ed.), at s. 134: "Curators, syndics and others who under the law of a country where a debtor is domiciled are entitled to administer his property on behalf of his creditors, are entitled as such to his chattels personal and choses in action in England."

48. Transmission by marriage.—If the transmission of any share of the capital stock has taken place by virtue of the marriage of a female shareholder, the declaration shall be accompanied by a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share, and shall be made and signed by such female shareholder and her husband.

2. The declaration may include a statement to the effect that the share transmitted is the separate property and under the sole control of the wife, and that she may, without requiring the consent or authority of her husband, receive and grant receipts for the dividends and profits accruing in respect thereof, and dispose of and transfer the share itself.

3. The declaration shall be binding upon the bank and persons making the same, until the said persons see fit to revoke it by a written notice to the bank to that effect.

4. The omission of a statement in any such declaration that the wife making the declaration is duly authorized by her husband to make the same, shall not invalidate the declaration. 53 V., c. 31, s. 40.

Where the marriage domicile of the female shareholder is in a province or country where by law she has the exclusive control of her property as if she had remained single, the declaration is necessary only for the purpose of keeping the record of her stock under her married name. If however the marriage domicile should be in the province of Quebec, the shares, being personal or movable property, would, in the absence of a notarial ante-nuptial contract of marriage, fall into the community of property and be subject to the sole control of the husband: C. C. Art. 1272. In case there is a marriage contract, it will probably make provision both as to the capital of the stock and as to the dividends. Even if the husband became by law entitled to the stock and the dividends a declaration in the terms of sub-section 2 would probably be held to be equivalent to a power of attorney to enable the wife to receive dividends or even to transfer the stock until the bank received a revocation under subsection 3.

A similar rule would apply when the marriage domicile was in a country where by marriage the shares would become the property of the husband or come under his control.

49. Authentication of declaration.—Every such declaration and instrument as are by the last two preceding sections required to perfect the transmission of a share in the bank shall, if made in any country other than Canada, the United Kingdom or a British colony—

(*a*) be further authenticated by the clerk of a court of record under the seal of the court, or by the British consul or vice-consul, or other accredited representative of His Majesty's Government in the country where the declaration or instrument is made; or,

(*b*) be made directly before such British consul, vice-consul or other accredited representative.

2. The directors, cashier or other officer or agent of the bank may require corroborative evidence of any fact alleged in any such declaration. 53 V., c. 31, s. 39.

50. Transmission by will or intestacy.—If the transmission has taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will, or the letters of administration, or act of curatorship or tutorship, or an official extract therefrom, shall, together with the declaration, be produced and left with the cashier or other officer or agent of the bank.

2. The cashier or other officer or agent shall thereupon enter in the register of shareholders the name of the person entitled under the transmission. 53 V., c. 31, s. 41.

The Quebec Statute 55-56 Vict. chap. 17, imposes a tax on the transmission of property by death, and provides (Art. 1191*d*, 5) that no transfer of the property of any estate or succession shall be valid nor shall the title vest in any person until the tax has been paid. It was held that this statute was *intra vires*, and a bank was justified in refusing to register a transfer of shares by executors until proof was given that the tax had been paid: *Heneker* v. *Bank of Montreal*, Q. R. 7 S. C. 257 (1895).

From the report it is to be inferred that the declaration of transmission was duly made and the names of the executors entered on the list of shares. They then desired to transfer the shares without paying the tax.

An executor filed with the bank a copy of the probate of a will, and required the entry of his name as entitled to the stock of the testator in his capacity of executor. The bank refused on the ground that the stock was specifically bequeathed to certain legatees. He applied for an injunction, and it was held that it was the duty of the bank to enter his name in the register, and that there was no obligation on the bank to see that the bequests of the will were carried out by the executor: *Boyd* v. *Bank of New Brunswick*, N. B. Equity Cases, 545 (1893).

51. Transmission by decease.—If the transmission of any share of the capital stock has taken place by virtue of the decease of any shareholder, the production to the directors and the deposit with them of,—

(*a*) any authenticated copy of the probate of the will of the deceased shareholder, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testament dative expede in Scotland; or,

(*b*) an authentic notarial copy of the will of the deceased shareholder, if such will is in notarial form according to the law of the province of Quebec; or,

(*c*) if the deceased shareholder died out of His Majesty's dominions, any authenticated copy of the probate of his will or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters;

shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share, in pursuance of and in conformity to the probate, letters of administration, or other such document as aforesaid. 53 V., c. 31, s. 42.

In the Province of Quebec a will may be made in any one of three forms: (1) Notarial, (2) holograph, and (3) in English form before two witnesses. The two latter require probate. A notarial will is made in the presence of two notaries, or of one notary and two witnesses, and does not require probate; a copy certified by the notary who retains possession of the original will being equally authentic with a copy of a will in one of the other forms admitted to probate and certified by the clerk of the Court.

"Letters of verification of heirship" are issued by the Superior Court of Quebec in cases of intestacy when the deceased has property outside of that province: C. C. Art. 650*a*. Administrators and letters of administration are unknown in Quebec. The property of a deceased intestate vests immediately in his heirs or next of kin, in accordance

with the French legal maxim "le mort saisit le vif." These must provide for the administration of the estate themselves.

Where shares belong to a Quebec minor he must be represented by a tutor appointed by the prothonotary or a Judge of the Superior Court: C. C. Art. 249. A curator is appointed by the same authority to any person who is interdicted for imbecility, insanity, madness or prodigality; also to emancipated minors and to children conceived but not yet born: C. C. Arts. 325 and 33[illegible]. Curators to property are those appointed: (1) to the property of absentees; (2) in cases of substitution; (3) to vacant estates; (4) to the property of extinct corporations; (5) to property abandoned, and (6) to property accepted under benefit of inventory: C. C. Art. 347.

A shareholder in the province of Quebec by his will made his mother usufructuary legatee of all his property; a nephew who was a minor living with his parents in the U. S. being named universal legatee in ownership. A tutor *ad hoc* to the property of the minor was appointed by the Court at Montreal, for the taking of the inventory. The executors and the tutor *ad hoc* obtained leave of the Court to sell the bank stock to make repairs on certain buildings. A regular tutor was subsequently appointed, and he duly accepted the executors' account, including this item. It was held that the order to sell was illegal, the tutor *ad hoc* having no such authority, but as the matter was ratified by a tutor duly appointed, and the minor received the benefit, he could not after coming of age, recover the value of the stock from the bank: *Donohue* v. *Banque Jacques Cartier*, Q. R. 11 S. C. 90 (1896).

The object of this section appears to be to authorize foreign executors, administrators, etc., of a deceased foreign shareholder to have the shares registered in their names and to authorize them to draw dividends, and transfer the shares on lodging with the bank an authenticated copy of the foreign probate, letters of administration, etc., without taking out ancillary probate or letters of administration, if the will or the foreign law authorizes the executors, administrators, etc., to perform these acts.

This has been the policy of the civil law and has been specially authorized in the province of Quebec by Statute and by the Code. Article 80 of the Code of Civil Procedure reads as follows: "Any person who, according to the laws of a foreign country, is authorized to represent a person who has died or made his will therein, leaving property in the province, may also appear as such in judicial proceedings before any court in the province." This was derived from section one of C. S. L. C. chap. 91, which provided that all executors, administrators and other legal representatives legally seized by foreign law of the estate of a deceased person or representing him under the foreign law, shall be recognized, and their legal capacity be of equal validity and effect to all legal intents as in the country where they reside, or were appointed, or when the will was made. This is fuller than the language of the Code, but there is no suggestion that the Code was not to be of the same effect as the Statute, and the jurisprudence has been consistent with this construction.

Under the law of England a foreign executor or administrator cannot sue or be sued there, nor can he intermeddle with the estate of the deceased in England without making himself liable as executor *de son tort:* William on Executors (9th ed.) pp. 296, and 1827, cited with approval by Smith, L.J., in *Attorney-General* v. *New York Breweries Co.* [1898] 1 Q. B. 205. This was a case in which an English company registered in England undertook, upon the death of a New York shareholder, to transfer into the names of his New York executors the shares standing in his name and to pay to them the dividends in New York, where they had been accustomed to pay them to him, without taking out representation to the deceased in England. It was held by the Court of Appeal that they could not do so.

So far as appears from reported cases the right of the Dominion Parliament to legislate that a foreign probate, etc., shall be sufficient justification and authority to a bank for paying dividends and authorizing the transfer of shares, has not been called in question in any of those provinces where the law is similar to that of England. It has probably been considered that such right would be upheld under the prin-

ciples laid down by the Privy Council in *Cushing* v. *Dupuy*, 5 *App. Cas.* (1880), and *Tennant* v. *Union Bank*, [1894] A. C. 31.

In section 97 a similar provision is made for paying over the deposit of a deceased depositor provided it does not exceed $500.

SHARES SUBJECT TO TRUSTS.

52. Not bound to see to trusts.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any share of its stock is subject.

2. The receipt of the person in whose name any such share stands in the books of the bank, or, if it stands in the names of more persons than one, the receipt of one of such persons shall be a sufficient discharge to the bank for any dividend or any other sum of money payable in respect of such share, unless, previously to such payment, express notice to the contrary has been given to the bank.

3. The bank shall not be bound to see to the application of the money paid upon such receipt, whether given by one of such persons or all of them. 53 V., c. 31, s. 43.

Although the present section has been in the Bank Act since 1871, and has also been in the Companies Acts of the Dominion and of several of the provinces for many years, it is surprising that it appears to have been so seldom construed by the Courts.

If the first sub-section were not in the Act, it would probably be claimed—at least in those provinces which derive their law from England—that notice of a beneficial interest in some person other than the legal holder might constitute the bank a trustee for such other person.

A similar clause in the Loan Corporations Act was considered in the ***Birkbeck Loan Co.*** **v.** ***Johnston***, 3 O. L. R. 497 (1902). Mrs. Johnston held certain shares in trust for her children. In rendering the judgment of the Divisional

Court, Street, J., said, at p. 506:—"Mrs. Johnston had no more right, so far as appears, to mortgage these shares than if they had stood in the name of her children instead of in her name, in trust for them. It is argued that the company by sec. 53 of ch. 205, R. S. O. 1907, was entitled to disregard the trusts of which it had notice as attaching to these shares, but I do not so understand the meaning of that provision. The section relieves the company from the duty of seeing to the execution of any trust, to which any shares are subject, and enables it to pay money to a shareholder, who holds shares upon any trust without seeing that the money is properly dealt with by the shareholder after receiving it; but it goes no farther. It does not entitle the company to lend money to A. with express notice that he is a mere trustee for B."

The charter of the Molsons Bank contained a clause similar to sub-section 1. In *Simpson* v. *Molsons Bank*, [1895] A. C. 270, this clause was discussed. Certain shares of the bank were bequeathed to executors in which one of them had a life interest with a substitution in favor of his children. The bank was in possession of a copy of the will, believed to have been given to it when the declaration of transmission to the executors was made. The children were deprived of the shares by a transfer made to their father. The Privy Council was satisfied that at the date of the transfer the bank had not any notice which could warrant the inference that they were aware that a breach of trust was intended or was being committed. They further held that it had not been proved that the bank had any notice of the particular trust in favor of the children, or which could affect them with knowledge of the particular way it ought to have been executed by the trustees. The bank was consequently held not liable for having permitted the transfer of the shares.

In *Boyd* v. *The Bank of New Brunswick*, N. B. Equity Cases 545 (1891), the plaintiff had grants of administration and probate, and filed declarations of transmission with these grants with the bank and required them to transfer the stock. The bank declined on the ground that by the will the shares covered by it were specifically bequeathed to be divided

among certain legatees. It was held by Palmer, J., that as these shares were personal property the legal title to them under the law of the province vested in the plaintiff and he had the right to sell them to pay the expenses of the estate, to pay all creditors and then to give what remained over to the legatees, and that he did not require the assent of a legatee or any other person to transfer the stock. He cites the cases of *Hartga* v. *The Bank of England*, 3 Ves. 35 (1796), *The Bank of England* v. *Parsons*, 5 Ves. 665(1800), and *The Bank of England* v. *Moffat*, 3 Bro. C. C. 260(1791), as authorities that even without such a clause as this, a bank could not prevent an executor from transferring stock of the testator to himself or a third party.

There is no similar clause in the English Companies Acts, but section 30 of the Act of 1862 provides that "No notice of any trust, expressed, implied or constructive, shall be entered on the register or be receivable by the registrar;" and the 22nd Article of Association that "The company shall not be bound by or recognize . . . any other right in respect of a share, except an absolute right thereto in the person from time to time registered as the holder thereof."

These provisions are, it will be seen, much stronger and go farther than this section of the Bank Act. Their effect was considered in the case of *La Societe Generale* v. *Tramways Union Co.*, 14 Q. B. D. 424 (1884), where the Master of the Rolls expressed a doubt as to the secretary or directors being personally liable for not preventing a transfer involving a breach of trust. However, Cotton, L.J., said at p. 445: "Where the directors are asked to register a transfer which from circumstances in fact known to them at the time would be in violation of the rights of others, in my opinion they cannot, either safely to themselves, or without disregard of their duty, register the transfer, at least without allowing time for enquiry and for the assertion of the equitable rights, if any, inconsistent with the claim to register the enquiry." Lindley, L.J., said p. 453: "I have no doubt that if directors allow a transferor to make a transfer which they know to be fraudulent, they could be made liable for the value of the shares transferred, they would make themselves parties to his fraud. Moreover, a refusal by directors, or an

omission on their part, to pay attention to a notice given to them by a person having an equitable interest in shares, and requiring the directors not to register a transfer for such time as may be necessary to allow him time to apply for a proper restraining order, would be prima facie improper."

Notice that a shareholder has given a lien upon his shares as security, is not notice of a trust, and the bank cannot obtain a prior lien upon them for subsequent advances to the shareholder: *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29 (1886).

It would be a question to be determined according to the particular circumstances of each case whether there was sufficient to put the bank upon its guard and to justify or require it to give notice to the cestui que trust or person having the equitable interest in order to give an opportunity, if desired, to take steps to prevent the contemplated breach of trust.

If under the law of the province the trustee or other person holding the stock in a representative capacity is entitled to transfer the stock, the bank can only interfere in such exceptional circumstances as above stated.

53. Not personally liable.—No person holding stock in the bank as executor, administrator, guardian, trustee, tutor or curator of or for an estate, trust or person named in the books of the bank as being so represented by him, shall be personally subject to any liability as a shareholder; but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such estate and funds would be, if living and competent to hold the stock in his own name.

2. If the trust is for a living person, such person shall also himself be liable as a shareholder.

3. If the estate, trust or person so represented is not so named in the books of the bank, the executor, administrator, guardian, trustee, tutor or curator shall be personally liable in respect of the stock, as if he held it in his own name as owner thereof. 63-64 V., c. 26, s. 8.

Where a person holds stock simply "in trust," or as "executor," "administrator," "trustee," "tutor," "curator," or the like, he is personally liable for unpaid calls, and also for the double liability in case of the insolvency of the bank. The only way to escape such liability is to have the testator, intestate, *cestui que trust*, minor, or other person whom he represents, also named in the books of the bank.

In Quebec a mandatary or agent who acts in his own name is liable to the third party with whom he contracts, without prejudice to the rights of the latter against the mandatary or principal also: C. C. 1716. A person who subscribes for stock in his own name for another is liable thereon jointly and severally with the latter: *Molsons Bank* v. *Stoddart*, M. L. R. 6 S. C. 18 (1890).

The fact that bank shares are purchased "in trust" at a time when the trustee was solvent imports an interest in somebody else, and the onus is upon a party who has seized such shares to prove that they are in fact the property of the trustee, and as such available to satisfy the demand of his creditors: *Muir* v. *Carter*, and *Holmes* v. *Carter*, 16 S. C. Can. 473 (1889).

The present section refers exclusively to shares of the bank held in trust; the other question as to the bank taking shares in a company held in trust as collateral security, or otherwise dealing with them, is treated under sections 76 and 96.

ANNUAL STATEMENT AND INSPECTION.

54. Statement at annual meeting.—At every annual meeting of the shareholders for the election of directors, the out-going directors shall submit a clear and full statement of the affairs of the bank, exhibiting, on the one hand, the liabilities of or the debts due by the bank, and, on the other hand, the assets and resources thereof.

2. The statement shall show, on the one part,—

(*a*) the amount of the capital stock paid in;

(*b*) the amount of the notes of the bank in circulation;

(*c*) the net profits made;

(*d*) the balances due to other banks; and,

(*e*) the cash deposited in the bank, distinguishing deposits bearing interest from those not bearing interest.

3. The statement shall show, on the other part,—

(*a*) the amount of the current coin, the gold and silver bullion and the Dominion notes held by the bank;

(*b*) the balances due to the bank from other banks;

(*c*) the value of the real and other property of the bank; and,

(*d*) the amount of debts owing to the bank, including and particularizing the amounts so owing upon bills of exchange, discounted notes, mortgages and other securities.

4. The statement shall also exhibit,—

(*a*) the rate and amount of the last dividend declared by the directors;

(*b*) the amount of reserved profits at the date of such statement; and,

(*c*) the amount of debts due to the bank, overdue and not paid, with an estimate of the loss which will probably accrue thereon. 53 V., c. 31, s. 45.

This section and the two following do not apply to the Bank of British North America: sec. 6.

An officer of the bank making any wilfully false or deceptive statement is liable to imprisonment for a term not exceeding five years, and is also responsible for the damages sustained by any person in consequence thereof: sec. 153.

This statement is in large part a summary of the monthly statements sent to the Minister of Finance under section 112 and Schedule D.

55. Further statements.—The directors shall also submit to the shareholders such further statements of the affairs of the bank, other than statements with

reference to the account of any person dealing with the bank, as the shareholders require by by-law passed at the annual general meeting, or at any special general meeting of the shareholders called for the purpose.

2. The statements so required shall be submitted at the annual general meeting, or at any special general meeting called for the purpose, or at such time and in such manner as is set forth in the by-law of the shareholders requiring such statements. 63-64 V., c. 26, s. 9.

This section was added to the Act of 1890 by the amending Act of 1900, in order to enable shareholders to obtain fuller information than that furnished in the annual statement in case they so desire. Only directors are allowed to inspect the accounts of customers of the bank: sec. 56.

56. Inspection of books.—The books, correspondence and funds of the bank shall, at all times, be subject to the inspection of the directors.

2. No person, who is not a director, shall be allowed to inspect the account of any person dealing with the bank. 53 V., c. 31, s. 46.

While the directors have the right to inspect the books, correspondence and funds of the bank, they are not bound to do so personally: *Hallmark's Case*, 9 Ch. D. 332 (1878); *In re Denham & Co.*, 25 Ch. D. 752 (1883); *Dovey* v. *Cory*, [1901] A. C. 477; *Prefontaine* v. *Grenier*, [1907] A. C. 101. The fact that the directors have not inspected the books, whereby they would have detected the embezzlement of the bank funds by the cashier, is no defence in an action by the bank against the sureties of the cashier: *Springer* v. *Exchange Bank*, 14 S. C. Can. 716 (1887).

In England, in the case of *Tassell* v. *Cooper*, 9 C. B. 509 (1850), doubt was expressed by Maule, J., whether there was any such duty there upon a bank as that imposed by this section, not to disclose the state of a customer's account. In *Hardy* v. *Veasey*, L. R. 3 Ex. 107 (1868), Byles, J., expressed the opinion that a bank might make such disclosure on a justifiable occasion, and that when it was made with a

reasonable hope and an honest intention of getting assistance for the customer, no action would lie. In *Foster* v. *Bank of London*, 3 F. & F. 214 (1862), where a bill was presented and there were not sufficient assets, and the bank informed the holder of the amount of the deficiency, and so enabled him by paying in a small sum to obtain payment of the bill, it was held that the bank should not have gone further than to say "not sufficient assets," and that an action lay for this breach of duty.

Evidence as to a customer's account is not privileged at common law, and the present section merely prohibits a bank voluntarily permitting any examination of a customer's accounts save by a director. A local manager of a bank when duly served with a subpœna *duces tecum* is bound to produce the bank books in his office, even when the bank is not a party to the suit, and to give evidence as to the entries in them. Inconvenience to the bank is no ground for refusing to produce the books, which *primâ facie* are to be deemed in his custody: *Hannum* v. *McRae*, 18 Ont. Pr. R. 185 (1898).

The liquidator of a company was held to be entitled to go into the private bank account of the manager of the company to show that the proceeds of notes which formed part of the claim of the bank against the company went to the private account of the manager: *Re Chatham Banner Co.*, 2 O. L. R. 672 (1901).

In *Ryan* v. *Bank of Montreal*, 9 O. W. R. 572 (1907), Clute, J., held that the bank had no right to allow an inspection of a customer's account by a proposed purchaser of the bank's claim against him, and allowed $1,000 damages. The Court of Appeal held that under section 64 of the Act of 1890 the bank had a right to sell the debt, and as an incident to this it might make a proper disclosure of the account and allow an inspection of the securities: 11 O. W. R. 279 (1908); to be reported in 15 O. L. R.

DIVIDENDS.

57. Quarterly or half-yearly.—The directors of the bank shall, subject to the provisions of this Act, declare

quarterly or half-yearly dividends of so much of the profits of the bank as to the majority of them seems advisable.

2. The directors shall give at least thirty days' public notice of the payment of such dividends previously to the date fixed for such payment.

3. The directors may close the transfer books during a certain time, not exceeding fifteen days, before the payment of each dividend. 53 V., c. 31, s. 47.

Formerly all Canadian banks declared their dividends half-yearly. In 1894 the Dominion Bank first declared its dividends quarterly. The practice has now become quite general. The amount of the dividend is decided by a majority of the directors, subject to the two next sections. In some companies the shareholders pass upon this. In banks, if the shareholders are dissatisfied with the amount, their only remedy appears to be to elect new directors. In either case it is a matter of internal management and the court has no power to interfere: *Burland* v. *Earle*, [1902] A. C. at p. 95.

Canadian banks pay their dividends on the paid-up capital. Where the subscribed capital is not wholly paid up the declaration of dividends should be specific on this point. In England the charter of a company provided that the directors might "declare a dividend to be paid in proportion to the shares." Part of the capital was fully paid up, and on another part only 25 per cent. was paid. The directors declared a dividend in proportion to the amount paid. The House of Lords set this aside, and held that the shares were all to be treated alike, those partly paid to receive the same as those fully paid. Their lordships held that it was not unreasonable that shareholders should be compensated for their risk, even if they had not actually paid the money: *Oakbank Oil Co.* v. *Crum*, 8 App. Cas. 65 (1882). In England it has been held that in case of a sale, if there be no agreement to the contrary, a dividend, if declared before the sale, belongs to the seller, if declared after the sale, to the purchaser, even although the transfer may have been completed only after the dividend

was declared. Where stock was sold by auction on the 21st of August, to be completed transferred on the 29th, and a meeting of shareholders was held on the 28th August, which declared a dividend for the half year ending June 30th, it was held that the dividend belonged to the purchaser: *Black* v. *Homersham*, 4 Ex. D. 24 (1878). The purchaser of a life interest in stock is entitled to a dividend becoming due on the day following the sale: *Anson* v. *Towgood*, 1 Jac. & W. 637 (1820). A dividend declared on the 16th of September made payable on the 1st November, was held to belong to the life tenant, who died on the 18th September: *Wright* v. *Tuckett*, 1 J. & H. 266 (1860).. A testatrix held certain bank shares on which in June, 1865, a dividend was declared payable half in June, 1865, and half in January, 1866. She died in December, 1865. It was held that the January dividend formed part of the corpus of her residuary estate and did not pass under a bequest of the annual income of such residuary personal estate: *De Gendre* v. *Kent*, L. R. 4 Eq. 283 (1867).

In Canada, a different usage has prevailed generally with regard to bank dividends, as between the seller and the purchaser. On the stock exchange, in the absence of an agreement to the contrary, it is understood that in case a sale is made in time to allow of the transfer being completed before the books are closed, the dividend previously declared belongs to the purchaser. In the case of a sale after that time it belongs to the seller. Banks make out their dividend warrants in favor of the person in whose name the stock stands at the time of the closing of the transfer books.

The bank has a lien on unpaid dividends, if the holder of the shares is indebted to it: sec. 77.

Notice of the dividends is to be given for at least thirty days in one or more newspapers published at the head office of the bank, and in the Canada Gazette: sec. 2, s.s. 2.

Were it not for subsection 3 the bank could be compelled to execute a transfer at any time: *Cramp* v. *Panton*, 9 O. L. R. 3 (1904).

58. Dividend not to impair capital.—No dividend or bonus shall ever be declared so as to impair the paid-up capital of the bank.

2. The directors who knowingly and wilfully concur in the declaration or making payable of any dividend or bonus, whereby the paid-up capital of the bank is impaired, shall be jointly and severally liable for the amount of such dividend or bonus, as a debt due by them to the bank. 53 V., c. 31, s. 48.

If the statement prepared by the proper officers of the bank shews that there is a surplus over and above the paid-up capital, directors declaring a dividend upon this in good faith would not be liable even if an examination of the books would have revealed the actual situation. Only a director who knowingly joined in declaring a dividend which impaired the capital would be liable. See *Dorey* v. *Cory*, [1901] A. C. 477.

It is to be observed that calling up unpaid capital or issuing new shares would not restore the capital so as to allow dividends to be paid. It could only be done by passing the dividends and allowing profits to accumulate, or by reducing the capital as provided by section 35.

59. When dividend limited.—No division of profits, either by way of dividends or bonus, or both combined, or in any other way, exceeding the rate of eight per centum per annum, shall be made by the bank, unless, after making the same, the bank has a rest or reserve fund, equal to at least thirty per centum of its paid-up capital after deducting all bad and doubtful debts. 53 V., c. 31, s. 49.

In making the estimate of the assets of the bank upon which dividends are to be paid, the directors are justified in acting in good faith upon the reports of competent officers appointed by them: *Dorey* v. *Cory*, [1901] A. C. 477; or upon the reports of auditors appointed by the shareholders: *Prefontaine* v. *Grenier*, [1907] A. C. 107.

CASH RESERVES.

60. Part in Dominion notes.—The bank shall hold not less than forty per centum of its cash reserves in Dominion notes.

2. The Minister shall make such arrangements as are necessary for ensuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of specie, at the several offices at which Dominion notes are redeemable, in the cities of Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown, respectively.

3. Such notes shall be redeemable at the office for redemption of Dominion notes in the place where the specie is given in exchange. 53 V., c. 31, s. 50.

Banks are not required by the Act to keep any fixed reserve. The average amount of reserves in specie and Dominion notes kept by Canadian banks is about eighty-five per cent. of the amount of their notes in circulation, and ten per cent. of their total liabilities. Of this about sixty-five per cent. is usually held in Dominion notes and the other thirty-five per cent. in specie.

These Dominion notes are issued under R. S. C. chap. 27. They may be issued to any amount. Up to $30,000,000 the Government must hold for their redemption at least twenty-five per cent. of the amount outstanding, in gold and securities guaranteed by the British Government. For any amount over $30,000,000 the Government must hold specie equal to such excess in addition to the amount above stated. They are a legal tender, and are redeemable in specie at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown. Monthly statements of the amount of notes outstanding and the amount of gold and securities held for their redemption are published in the *Canada Gazette*. The Act in full will be found in the Appendix.

The local Legislature has authority to enact a by-law imposing a tax on the Dominion notes held by a bank as part of its cash reserves: *Windsor* v. *Commercial Bank*, 15 N. S. (3 R. & G.) 420 (1882).

In the Act of 1890 the first subsection contained the penalty for not keeping the required percentage of Dominion notes. This will now be found in section 134.

THE ISSUE AND CIRCULATION OF NOTES.

Canadian banks are Banks of Issue as well as of Discount and Deposit. Their notes form the chief circulating medium for sums of five dollars and upwards. The amount of bank notes in circulation for 1907 ranged from sixty-eight to eighty-four million dollars. Sections 61 to 75 inclusive of the Act relate to their business as Banks of Issue.

61. Authority for and limit of issue.—The bank may issue and re-issue notes payable to bearer on demand and intended for circulation: Provided that,—

(*a*) the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any such notes; and,

(*b*) if, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinafter provided for, it shall not issue or re-issue any of such notes until authorized by the Treasury Board so to do.

2. No such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars.

3. The total amount of such notes, in circulation at any time, shall not exceed the amount of the unimpaired paid-up capital of the bank.

4. Notwithstanding anything in this section contained the total amount of such notes of the Bank of British North America in circulation at any time shall not exceed seventy-five per centum of the unimpaired paid-up capital of the Bank: Provided that,—

(*a*) the Bank may issue such notes in excess of the said seventy-five per centum upon depositing with the Minister, in respect of the excess, in cash or bonds of the Dominion of Canada, an amount equal to the excess; and the cash or bonds so deposited shall, in the event of the suspension of the Bank, be available by the Minister for the redemption of the notes issued in excess as aforesaid; and,

(*b*) the total amount of such notes of the Bank in circulation at any time shall in no case exceed its unimpaired paid-up capital.

5. All notes heretofore issued or re-issued by any bank, and now in circulation, which are for a sum less than five dollars, or for a sum which is not a multiple of five dollars, shall be called in and cancelled as soon as practicable. 53 V., c. 31, s. 51; 63-64 V., c. 26, s. 10.

Before 1871 Canadian banks issued notes for one dollar and upwards. The Bank Act of that year took away the right to issue notes for less than four dollars. In 1880 the present rule was adopted.

Bank notes are promissory notes payable to bearer on demand. They are not a legal tender, but circulate as cash, are not deemed to be overdue, and are not discharged by being returned to the bank, but may be reissued. They are not subject to the statutes of limitation or prescription, at least not until after demand and dishonour.

Any individual, firm or corporation, other than one of the banks to which the Act applies, which issues a note or other instrument intended to circulate as money is liable to a penalty of $400: sec. 136.

Any person privy to a violation of the proviso in subsection 1 is liable to imprisonment not exceeding seven years or to a fine not exceeding $2,000 or to both.

There would appear to be a conflict between clause (*b*) of subsection 1, and section 121. The latter provides that no by-law, regulation, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank, shall be of any force or effect until approved by the curator. Clause (*b*) in effect provides that the bank may, after suspension, resume business without the consent in writing of the curator, but when it does so, it shall not issue or re-issue any of its notes until authorized by the Treasury Board to do so. The result probably is that the special provision overrides the general, and that the directors of the bank may resume business in spite of the curator; but be-

fore they can issue notes of the bank they must appeal to the Treasury Board and persuade it to overrule the curator.

The issuing of notes of the bank to a creditor in contemplation of its insolvency, so as to give such creditor an unfair preference under section 131, is made an offence under section 155, and renders the officer who grants or concurs in such issue liable to two years' imprisonment and to damages.

The penalty for exceeding the authorized issue is prescribed in section 135.

The exceptional provision as to the Bank of British North America is on account of the section providing for the double liability not being applicable to it.

62. Issue of notes outside Canada.—Notwithstanding the provisions of the last preceding section any bank may issue and re-issue, at any office or agency of the bank in any British colony or possession other than Canada, notes of the bank payable to bearer on demand and intended for circulation in such colony or possession, for the sum of one pound sterling each, or for any multiple of such sum, or for the sum of five dollars each, or for any multiple of such sum, of the dollars in commercial use in such colony or possession, if the issue or re-issue of such notes is not forbidden by the laws of such colony or possession.

2. No issue of notes of the denomination of five such dollars, or any multiple thereof, shall be made in any such British colony or possession unless or until the Governor in Council, on the report of the Treasury Board, determines the rate, in Canadian currency, at which such notes shall be circulated as forming part of the total amount of the notes in circulation within the meaning of the last preceding section.

3. The notes so issued shall be redeemable at par at any office or agency of the bank in the colony or possession in which they are issued for circulation, and not elsewhere, except as in this section specially provided.

and the place of redemption of such notes shall be legibly printed or stamped across the face of each note so issued.

4. In the event of the bank ceasing to have an office or agency in any such British colony or possession, all notes issued in such colony or possession under the provisions of this section shall become payable and redeemable at the rate of four dollars and eighty-six and two-thirds cents per pound sterling, or, in the case of the issue of notes, of the denomination of five dollars, or any multiple thereof, of the dollars in commercial use in such colony or possession, at the rate established by the Governor in Council as required by this section, in the same manner as notes of the bank issued in Canada are payable and redeemable.

5. The amount of the notes at any time in circulation in any such colony or possession, issued under the provisions of this section, shall, at the rate mentioned in the last preceding subsection, form part of the total amount of the notes in circulation within the meaning of the last preceding section, and, except as herein otherwise specially provided, shall be subject to all the provisions of this Act.

6. No notes issued for circulation in a British colony or possession other than Canada shall be re-issued in Canada.

7. Nothing in this section contained shall be construed to authorize any bank,—

(*a*) to increase the total amount of its notes in circulation in Canada and elsewhere beyond the limit fixed by the last preceding section; or,

(*b*) to issue or re-issue in Canada notes payable to bearer on demand, and intended for circulation, for a sum less than five dollars, or for a sum which is not a multiple of five dollars. 4 E. VII., c. 3, ss. 1, 2, 3 and 4.

The above provisions were first enacted in 1899, by 62-63 Vict. chap. 14, and amended in 1904. The Bank of

Nova Scotia established an agency under them at Kingston, Jamaica.

63. Pledge of notes prohibited. — The bank shall not pledge, assign, or hypothecate its notes; and no advance or loan made on the security of the notes of a bank shall be recoverable from the bank or its assets. 53 V., c. 31, s. 52.

This section was first enacted in 1890, and was intended to prevent the repetition of irregularities which had taken place in connection with some of the banks that had failed shortly before that time.

The parties to such a transaction are liable to a fine of from $400 to $2,000, and to imprisonment for two years, or to both: sec. 139.

64. Bank circulation redemption fund.—The moneys heretofore paid to and now deposited with the Minister by the banks to which this Act applies, constituting the fund known as the Bank Circulation Redemption Fund, shall be continued to be held by the Minister for the purposes and subject to the provisions in this section mentioned and contained.

2. The Minister shall, upon the issue of a certificate under this Act authorizing a bank to issue notes and commence the business of banking, retain, out of any moneys of such bank then in his possession, the sum of five thousand dollars, which sum shall be held for the purposes of this section, until the annual adjustment hereinafter provided for takes place in the year then next following.

3. The amount at the credit of such bank shall, at such next annual adjustment, be adjusted by payment to or by the bank of such sum as is necessary to make the amount of money at the credit of the bank equal to five per centum of the average amount of its notes in circulation from the time it commenced business to the time of such adjustment, and such sum shall thereafter be adjusted annually as hereinafter provided.

4. The amounts heretofore and from time to time hereafter paid, to be retained and held by the Minister as by this section provided, shall continue to form and shall form the Circulation Fund.

5. The Circulation Fund shall continue to be held as heretofore for the sole purpose of payment, in the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, of the notes then issued or re-issued by such bank, intended for circulation, and then in circulation, and interest thereon.

6. The Circulation Fund shall bear interest at the rate of three per centum per annum.

7. The Circulation Fund shall be adjusted, as soon as possible after the thirtieth day of June in each year, in such a way as to make the amount at the credit of each bank contributing thereto, unless herein otherwise specially provided, equal to five per centum of the average note circulation of such bank during the then last preceding twelve months.

8. The average note circulation of a bank during any period shall be determined from the average of the amount of its notes in circulation, as shown by the monthly returns for such period made by the bank to the Minister; and where, in any return, the greatest amount of notes in circulation at any time during the month is given, such amount shall, for the purposes of this section, be taken to be the amount of the notes of the bank in circulation during the month to which such return relates.

9. The Minister shall with respect to all notes paid out of the Circulation Fund have the same rights as any other holder of the notes of the bank: Provided that all such notes, and all interest thereon, so paid by the Minister, after the amount at the credit of such bank in the Circulation Fund, and all interest due or accruing due thereon, has been exhausted, shall bear interest, at the rate of three per centum per annum, from the time such notes and interest are paid until

such notes and interest are repaid to the Minister by or out of the assets of such bank. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 13.

The Bank Circulation Redemption Fund was instituted in 1890, on the suggestion of the banks to ensure the prompt payment in full of all Canadian bank notes. Before 1880 the holders of such notes ranked concurrently with other ordinary creditors. In the Bank Act of that year notes were made a first charge upon the assets. By the creation of the Fund in 1890 the banks guaranteed each other's notes to the extent of their respective contributions to the Fund.

The nucleus of the Fund is the $5,000 retained from the $250,000 paid in by a new bank to him in order to obtain a certificate to commence business: sec. 13. The amount at the credit of the Fund at the end of 1907 was $4,712,663, which would be five per cent. of the average note circulation of all the banks during the year ending June 30th, 1906.

The last sub-section was added by the amending Act of 1900.

65. When bank notes bear interest.—In the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, the notes of the bank, issued or re-issued, intended for circulation, and then in circulation, shall bear interest at the rate of five per centum per annum, from the day of the suspension to such day as is named by the directors, or by the liquidator, receiver, assignee or other proper official, for the payment thereof.

2. Notice of such day shall be given by advertising for at least three days in a newspaper published in the place in which the head office of the bank is situate.

3. If any notes presented for payment on or after any day named for payment thereof are not paid, all notes then unpaid and in circulation shall continue to bear interest until such further day as is named for payment thereof, of which day notice shall be given in manner hereinbefore provided.

4. **Payment by minister out of circulation fund.**—If the directors of the bank or the liquidator, receiver, assignee or other proper official fails to make arrangements, within two months from the day of the suspension of payment by the bank, for the payment of all its notes and interest thereon, the Minister may make arrangements for the payment, out of the Circulation Fund, of the notes remaining unpaid and all interest thereon, and the Minister shall give such notice of the payment as he thinks expedient.

5. Notwithstanding anything herein contained all interest upon such notes shall cease upon and from the date named by the Minister for such payment.

6. Nothing herein contained shall be construed to impose any liability upon the Government of Canada, or upon the Minister, beyond the amount available from time to time out of the Circulation Fund. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 11.

In the Bank Act of 1890 the rate of interest on the notes of a suspended bank was six per cent. By section 11 of the amending Act of 1900 it was reduced to five per cent., the legal rate fixed by 63-64 Vict. chap. 29.

66. Payments in excess of share of suspended bank.—All payments made from the Circulation Fund shall be without regard to the amount contributed thereto by the bank in respect of whose notes the payments are made.

2. If the payments from the Circulation Fund exceed the amount contributed to the Circulation Fund by the bank so suspending payment, and all interest due or accruing due to such bank thereon, the other banks to which this Act applies shall, on demand, make good to the Circulation Fund the amount of the excess, proportionately to the amount which each such other bank had or should have contributed to the Circulation Fund, at the time of the suspension of the bank in respect of whose notes the payments are made: Provided that.—

(*a*) each of such other banks shall only be called upon to make good to the Circulation Fund its share of the excess in payments not exceeding, in any one year, one per centum of the average amount of its notes in circulation;

(*b*) such circulation shall be ascertained in such manner as the Minister decides; and,

(*c*) the Minister's decision shall be final.

3. All amounts recovered and received by the Minister from the bank on account of which such payments were made shall, after the amount of such excess has been made good as aforesaid, be distributed among the banks contributing to make good such excess, proportionately to the amount contributed by each. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 12.

67. Refund of deposit.—In the event of the winding-up of the business of a bank by reason of insolvency or otherwise, the Treasury Board may, on the application of the directors, or of the liquidator, receiver, assignee or other proper official, and on being satisfied that proper arrangements have been made for the payment of the notes of the bank and any interest thereon, pay over to the directors, liquidator, receiver, assignee or other proper official, the amount of the Circulation Fund at the credit of the bank, or such portion thereof as it thinks expedient. 53 V., c. 31, s. 54.

68. Rules as to fund.—The Treasury Board may make all such rules and regulations as it thinks expedient with reference to,—

(*a*) the payment of any moneys out of the Circulation Fund, and the manner, place and time of such payments;

(*b*) the collection of all amounts due to the Circulation Fund;

(*c*) all accounts to be kept in connection therewith; and,

(*d*) generally the management of the Circulation Fund and all matters relating thereto. 53 V., c. 31, s. 54.

No rules or regulations under this section have been made.

69. Minister may enforce payments.—The Minister may, in his official name, by action in the Exchequer Court of Canada, enforce payment, with costs of action, of any sum due and payable by any bank which should form part of the Circulation Fund. 53 V., c. 31, s. 54.

70. Circulation at par and redemption of notes.—The bank shall make such arrangements as are necessary to ensure the circulation at par, in any and every part of Canada, of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at the cities of Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown, and at such other places as are, from time to time, designated by the Treasury Board. 53 V., c. 31, s. 55.

This provision was first made in 1890. Before that time notes of a bank were sometimes subject to a small discount in places remote from any of its offices. The enactment has secured the circulation at par in every part of Canada of the notes of all the banks.

No other place has yet been named by the Treasury Board for the redemption and payment of bank notes.

71. Bank must take its own notes.—The bank shall always receive in payment its own notes at par at any of its offices, and whether they are made payable there or not.

2. The chief place of business of the bank shall always be one of the places at which its notes are made payable. 53 V., c. 31, s. 56.

The first sub-section relates to the reception of its notes at par by a bank at any of its offices, from a debtor who is making a payment to the bank.

The second sub-section relates to the payment of legal tender for its notes. Prior to 1871 banks frequently made their bills payable only at a branch named. Now any bill must be redeemed in legal tender at the head office, and banks now issue their bills without designating any place of payment, simply dating them at the head office.

72. Payment in Dominion notes.—The bank, when making any payment, shall, on the request of the person to whom the payment is made, pay the same, or such part thereof, not exceeding one hundred dollars, as such person requests, in Dominion notes for one, two, or four dollars each, at the option of such person.

2. No payment, whether in Dominion notes or bank notes, shall be made in bills that are torn or partially defaced by excessive handling. 53 V., c. 31, s. 57.

Bank notes are not a legal tender, and even without the first sub-section any person receiving payment from a bank could require payment in legal tender: R. S. C. c. 25, ss. 9 to 12, and R. S. C. c. 27, s. 3. The meaning of the section is not clear, but it will probably be construed to mean that the person receiving payment may require one hundred dollars or less in Dominion notes of the denominations mentioned.

73. Assignment of bonds, obligations, etc.—The bonds, obligations and bills, obligatory or of credit, of the bank under its corporate seal, signed by the president or vice-president, and countersigned by a cashier or assistant cashier, which are made payable to any person, shall be assignable by endorsement thereon.

2. The bills or notes of the bank signed by the president, vice-president, cashier or other officer appointed by the directors of the bank to sign the same, promising the payment of money to any person, or to his order, or to the bearer, though not under the corporate seal of the bank, shall be binding and obligatory on the

bank, in like manner and with the like force and effect as they would be upon any private person, if issued by him in his private or natural capacity, and shall be assignable in like manner as if they were so issued by a private person in his natural capacity.

3. The directors of the bank may, from time to time, authorize or depute any cashier, assistant cashier or officer of the bank, or any director other than the president or vice-president, or any cashier, manager or local director of any branch or office of discount and deposit of the bank, to sign the notes of the bank intended for circulation. 53 V., c. 31, s. 58.

When the first sub-section above was enacted in 1871 it made the instruments therein named which were payable to any person and not to his order assignable by endorsement, which they would not otherwise have been in the state of the law at that time. As these would now be negotiable instruments under section 22 of the Bills of Exchange Act, it does not appear to add anything to their negotiability.

The second sub-section was originally enacted probably to overcome any claim that might be urged that as a corporation a bank might not be bound by an instrument not under seal—a doctrine that still largely prevails in those provinces that have adopted the law of England.

The present section reverses the ordinary rule as to the transfer of the two classes of documents covered by it. Usually stricter rules prevail as to transferring instruments under seal than to mercantile instruments not under seal. Bonds, obligations and bills of the bank under its corporate seal made payable to any person are by the first sub-section made transferable by simple indorsement without qualification. Bills or notes of the bank not under its seal are by the second sub-section only placed on the same footing as similar paper issued by a private person, and if they meet the requirements of the definition of a bill of exchange or promissory note would come under section 21 of the Bills of Exchange Act, which provides that "When a bill contains words prohibiting transfer or indicating an intention that it

should not be transferable, it is valid as between the parties, but is not negotiable."

Take for example an ordinary bank deposit receipt without the seal of the bank, payable to a person named. If it contains the words, "Not transferable," or other words to that effect, it is not a negotiable instrument and is not transferable by delivery or indorsement. It would be a chose in action, and would require to be assigned in writing, either on the document itself or by a separate instrument, in order to give the assignee the right to sue in his own name, according to the law of the respective provinces. See the Ontario Judicature Act, R. S. O. chap. 51, sec. 58 (5); R. S. N. S. chap. 155, sec. 19 (5); C. S. N. B. chap. 111, sec. 155; R. S. Man. chap. 40, sec. 39 (e); Cons. Ord. N. W. T. chap. 41; Rev. Stat. B. C. chap. 56, sec. 16 (17). In Quebec it would come under Articles 1570 and 1571 of the Civil Code, which would require that a copy of the instrument of sale should be served on the bank. Its not being a negotiable instrument would also prevent any holder acquiring greater rights under it than possessed by the first holder: *Bank of Toronto* v. *St. Lawrence Fire Ins. Co.* [1903] A. C. 59; *Sorel* v. *Quebec Southern Ry. Co.*, 36 S. C. Can. 686 (1905).

74. Signing by machinery.—All bank notes and bills whereon the name of any person entrusted or authorized to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank, shall be good and valid to all intents and purposes, as if such notes and bills had been subscribed in the proper handwriting of the person entrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatever: Provided that at least one signature to each note or bill must be in the actual handwriting of a person authorized to sign such note or bill. 53 V., c. 31, s. 59.

75. Counterfeit notes to be stamped.—Every officer charged with the receipt or disbursement of public

moneys, and every officer of any bank, and every person acting as or employed by any banker, shall stamp or write in plain letters, upon every counterfeit or fraudulent note issued in the form of a Dominion or bank note, and intended to circulate as money, which is presented to him at his place of business, the word *Counterfeit, Altered* or *Worthless*.

2. If such officer or person wrongfully stamps any genuine note he shall, upon presentation, redeem it at the face value thereof. 53 V., c. 31, s. 62.

BUSINESS AND POWERS OF THE BANK.

The legal relation between a bank and its customers in their ordinary dealings is simply that of debtor and creditor. Money paid into a bank or placed to the credit of a customer in the books of a bank is not impressed with any trust, and there is nothing of a fiduciary nature in the relation between the parties. The obligation of the bank is to pay a like amount to the customer's use on an order from him by a cheque or otherwise as may have been arranged between the parties.

Canadian banks are Banks of Issue, of Discount and of Deposit. The sections relating to them as Banks of Issue are those from 61 to 75 inclusive. The following sections from 76 to 94, inclusive, regulate and govern their operations as Banks of Discount, while section 95 relates to them as Banks of Deposit.

Apart from issuing notes for circulation, as money, and receiving deposits, it may be said in a general way that banks are only authorized to deal in money and documents for the payment of money. These latter they may buy, sell, discount, lend money upon, or take as collateral security for loans. Except as authorized by the Act they are prohibited from dealing in goods or lands, or lending money directly upon their security. Section 76 lays down these powers in a general way; 77 gives banks a lien upon the stock and dividends of its debtors; 78 prescribes how they may deal with collateral securities; 80 with mortgages taken as additional security; 79, 81, 82 and 83 with lands; 84 with standing

timber and timber licenses; 85 with mortgages on vessels; and 86 to 90 inclusive with warehouse receipts, bills of lading and analogous securities.

76. Business and powers generally.—The bank may,—

(*a*) open branches, agencies and offices;

(*b*) engage in and carry on business as a dealer in gold and silver coin and bullion;

(*c*) deal in, discount and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, provincial, British, foreign and other public securities; and,

(*d*) engage in and carry on such business generally as appertains to the business of banking.

2. Except as authorized by this Act, the bank shall not, either directly or indirectly,——

(*a*) deal in the buying or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever;

(*b*) purchase, or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,

(*c*) lend money or make advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise. 53 V., c. 31, s. 64.

Branches.—The system of Branch Banks adopted in Canada was borrowed from Scotland. It has been greatly extended of recent years, so that the banks now have about 1,880 branches. Most of the larger banks have branches throughout the Dominion, and even the smaller ones have

adopted the same policy. For some purposes a branch is treated as an independent institution, but for most purposes it is considered as an integral part of the main body.

For the payment of cheques it is considered as distinct from the head office or other branches. A customer at one branch is not entitled to present a cheque except at the branch where his account is kept. If it is cashed at another branch for a holder, all parties are in the same position as though it was on another bank: *Woodland* v. *Fear*, 7 E. & B. 519 (1857).

The same principle applies as to notice of dishonour or protest. Each branch indorsing has a day to send notice to the next preceding indorser: *Clode* v. *Bayley*, 12 M. & W. 51 (1843); *Prince* v. *Oriental Bank*, L. R. 3 A. C. at p. 332 (1878); *Steinhoff* v. *Merchants' Bank*, 46 U. C. Q. B. 25 (1881); *The Queen* v. *Bank of Montreal*, 1 Exch. Can. 154 (1886); *Fielding* v. *Corry*, [1898] 1 Q. B. 268.

A branch cannot keep open after receiving notice that the head office has suspended payment; but until such notice is received its authority to do business is not revoked.

But for most purposes a bank and its branches are in law held to be one. Where notice affects the liability of a bank, it is not necessary that it should be given to all the branches. It is sufficient to give notice at the head office, and this will be good against all the branches after a sufficient time has elapsed to allow of its being sent from the head office to the branches: *Willis* v. *Bank of England*, 4 A. & E. 21 (1835).

Inasmuch as all the branches of a bank form part of one corporation a draft by one branch upon another is not a bill of exchange or cheque within the meaning of the Bills of Exchange Act, which requires an instrument to be drawn upon one person by another. In the foregoing case the drawer and drawee would in law be the same person.

Another result of treating a head office and a branch as one, is, that entries of sums transferred or transmitted are on the same footing as entries in the same office. A note was paid in at the head office and transmitted to a branch where it was payable, and the signature there cancelled.

The head office was notified and the amount credited; but before the customer was advised it was discovered that the note should not have been marked paid. It was marked "cancelled in error" and the entries reversed. Held that the bank had a right to do so: *Prince* v. *Oriental Bank*, L. R. 3 A. C. 325 (1878). See also *Simson* v. *Ingham*, 2 B. & C. 65 (1823); *Irwin* v. *Bank of Montreal*, 38 U. C. Q. B. 375 (1876); *Bain* v. *Torrance*, 1 Man. R. 32 (1884).

Another result of this principle is that if a customer has accounts at two or more branches, the bank may consolidate them, and a cheque may be refused when there appears to be money to his credit, if upon the whole there are not sufficient funds: *Garnett* v. *McKewan*, L. R. 8 Ex. 10 (1872); *Prince* v. *Oriental Bank*, 3 A. C. at p. 333 (1878); *Teale* v. *Brown*, 11 T. L. R. 56 (1894).

A bank is bound to know the amounts of its own drafts, and if one branch pays a draft drawn by another branch, the amount of which had been fraudulently raised, the bank cannot recover the money from the holder who has acted in good faith: *Union Bank* v. *Ontario Bank*, 9 R. L. 631 (1879).

Where a bank has its head office in another province, but has a branch in Ontario, it is deemed to be resident within Ontario, and moneys deposited at a branch in that province may be attached as debts due to the depositors: *Wentworth* v. *Smith*, 15 Ont. Pr. R. 372 (1893).

The bank as a dealer.—In the Bank Act, R. S. C. (1886) chap. 120, it was provided by section 45, that a bank should not engage "in any trade whatsoever except as a dealer in gold and silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and in such trade generally as appertains to the business of banking." It will be seen that the terms of the present Act are more specific, and that in addition to its rights to discount, lend money, make advances, and take certain collateral securities, which will be considered further on, a bank is given express power to deal "in gold and silver coin and bullion, bills of exchange, promissory notes and other negotiable securities or the stock, bonds, debentures and obligations of munici-

pal and other corporations, whether secured by mortgage or otherwise, or Dominion, Provincial, British, foreign, and other public securities."

"Dealing" in these instruments and securities, as contra-distinguished from discounting or lending money or making advances on them, would ordinarily mean buying and selling them outright without an indorsement of them by the customer, or with an indorsement "without recourse" when they are made payable to his order. This is the usual way in which these instruments and securities, except bills of exchange and promissory notes, are disposed of. In that event the seller simply warrants that they are genuine and that he has a right to transfer them, and that he is not aware at the time that they are valueless; practically the same warranties as if he was selling coin or bullion. Bills of Exchange Act, sec. 138; *Lewis* v. *Jeffrey*, M. L. R. 7 Q. B. 141 (1875); *Jones* v. *Ryde*, 5 Taunt. 488 (1814); *Gompertz* v. *Bartlett*, 2 E. & B. 489 (1853); *Gurney* v. *Womersley*, 4 E. & B. 139 (1854); *Nichols* v. *Fearson*, 7 Peters (U. S.) 103 (1833).

The Bank Act of 1871 contained a provision similar to that quoted above from R. S. C. (1886) chap. 120. Like the latter, it also authorized a bank to acquire and hold corporation bonds and debentures as collateral security and to realize upon them. It was held that this authorized a bank not only to lend money on these securities, but also to purchase them absolutely: *Jones* v. *Imperial Bank*, 23 Grant 269 (1876).

"Other securities" in this section means securities of the same kind as those mentioned, namely, similar to bills of exchange and promissory notes. It would probably be held to include cheques, bonds payable to bearer or a person named, negotiable deposit receipts and the like.

Discounts.—By this section a bank is authorized to discount "bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal corporations, or Dominion, Provincial, British, foreign, and other public securities." When a bank discounts a negotiable instrument it really becomes

the purchaser, and the instrument becomes a part of its assets. The expression "discounting" is not, however, usually applied to the acquisition of such bonds, debentures and public securities. As a rule they are either bought without the seller's indorsement or they are received by the bank as collateral security. "Discounting" is usually applied to bills of exchange and promissory notes not yet due, and which the bank acquires from the drawer or indorser, crediting him with the face of the instrument less the discount for the time it has to run. If the customer does not indorse it, it is a simple sale, and the seller only warrants its genuineness, and is not responsible if the maker or acceptor does not meet it or subsequently becomes insolvent: *Gurney* v. *Womersley*, 4 E. & B. 133 (1854).

Usually, however, the customer indorses the bill or note discounted by a bank. This transaction is sometimes spoken of as the bank lending him money on the security of the instrument; but such is not its real nature. It is in effect a sale with warranty. The bill or note becomes the property of the bank, absolutely, and it agrees to look in the first instance to the acceptor or maker for payment, and only to the customer in case of their default of payment at maturity and notice to him of such default: *Carstairs* v. *Bates*, 3 Camp. 301 (1812); *Morley* v. *Culverwell*, 7 M. & W. 174 (1840); *Roquette* v. *Overmann*, L. R. 10 Q. B. 525 (1875); *Re Gomersall*, 1 Ch. D. 142 (1875); *Re Hallett & Co.* [1894] 2 Q. B. 256.

A bank may discount a cheque as well as a bill or note. If this is done without getting the customer's indorsement he cannot be sued upon it or directly for the money advanced him. When a cheque drawn upon one branch of a bank was presented for payment at another branch where the holder was known to the officers and they cashed it for him, it was held that the cheque was cashed on the credit of the holder, and that the bank was, on its dishonor, entitled to charge him with the money he received: *Woodland* v. *Fear*, 7 E. & B. 519 (1857).

While discounted bills are current the bank has no lien on the customer's cash balance, and ought not to dishonor

his cheques during that time, if the account is in funds: *Bower* v. *Foreign Gas Co.*, 22 W. R. 740 (1874).

As a discounted bill is the property of the bank, it follows that if it is accidentally destroyed or lost, the loss falls on the bank: *Carstairs* v. *Bates*, 3 Camp. 301 (1812).

Where the bank agreed with an indorser, who was a surety for contractors, that all moneys earned should apply on the discounted paper, and the bank without his consent applied some of the moneys otherwise, the surety was held to be discharged: *O'Gara* v. *Union Bank*, 22 S. C. Can. 404 (1893).

Where a customer gave a bank a bill of exchange to discount, it had no right to keep the bill and apply the proceeds on his former indebtedness without his consent: *Landry* v. *Bank of Nova Scotia*, 29 N. B. 564 (1889); *Fleckner* v. *Bank of U. S.*, 8 Wheaton 338 (1823).

Collateral security.—A bank may not only discount the negotiable instruments named in this section, but may also make advances upon them, and take them as collateral or further security for loans made by it. There is this difference to be noted between discounting and taking as collateral security. The former, as already stated, is a selling, and the instrument discounted becomes the property of the bank. The latter is rather a pledging or hypothecating of the instrument, which remains the property of the customer, but is subject to the lien of the bank for the amount of the advances or loan, with interest and any other accessory charges. If such an instrument should be lost or destroyed, without negligence, the loss, of any, would fall on the customer and not on the bank.

When a bank receives as collateral security a negotiable instrument which is payable to bearer, or is indorsed in blank or indorsed in its favor, it becomes the holder of the paper within the meaning of the Bills of Exchange Act, and can exercise all the rights of a holder, one of which is that it may sue upon it in its own name. Such a pledging is a negotiation of the instrument: Bills of Exchange Act, sec. 60. When the bank so acquires it before maturity, in good faith, without notice of any defect in the title of the cus-

tomer, it holds it free from any defect of title of prior parties: *Ibid.* sec. 56.

The bank can sue upon such paper when it becomes due, and before the maturity of the debt for the security of which it was given as collateral: *Shaw* v. *Crawford*, 16 U. C. Q. B. 101 (1857); *Ross* v. *Tyson*, 19 U. C. C. P. 294 (1869); *Ward* v. *Quebec Bank*, Q. R. 3 Q. B. 122 (1894).

If it realize more than its debt from its collaterals or otherwise, it holds the surplus as a trustee for the customer, who is entitled to it, and also to the surrender of any collaterals on hand after payment of the debt. The bank is liable if it does not exercise due diligence in presenting such collateral paper for payment and giving notice to indorsers in case of non-payment: *Peacock* v. *Purcell*, 14 C. B. N. S. 728 (1863); *Browne* v. *Commercial Bank*, 10 U. C. Q. B. 129 (1852); *Ryan* v. *McConnell*, 18 O. R. 409 (1889); *Union Bank* v. *Elliott*, 14 Man. R. 187 (1902).

A power of attorney to sell, dispose of, assign and transfer promissory notes does not give the right to pledge them as security for a loan: *Jonmenjoy* v. *Watson*, 9 App. Cas. 561 (1884).

Where a bank took a note indorsed by a customer as collateral security for past advances amounting to $10,000, and after the maturity of this note deposits amounting to more than $100,000 were passed to his credit in the books of the bank, it was held that in the absence of any agreement as to the imputation of payments, they would be applied to the oldest debt, and the collateral was discharged, the bank having no claim on the maker or the customer who indorsed it: *Exchange Bank* v. *Nowell*, M. L. R. 3 S. C. 129 (1887).

A letter of guarantee was given to secure advances on certain accepted drafts discounted by a bank. It was declared to be a continuing guarantee. The drafts were renewed. It was held that the guarantee covered the renewals, although renewals were not expressly mentioned: *Brush* v. *Molsons Bank*, Q. R. 3 Q. B. 12 (1893). The expression "collateral security" is sometimes used in the sense of a secondary, at other times in the sense of a primary security: *Athill* v. *Athill*, 16 Ch. D. 211 (1880).

Where a bank has received as collateral security bills or notes or other securities, and also holds liable some person who may occupy the position of a surety, care should be exercised in dealing with such securities if the surety is to be held responsible. The law of Quebec on the subject is expressed in Article 1959 of the Civil Code: "The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor." This also expresses the law in the other provinces where the English law prevails.

In the case of the *Central Bank* v. *Garland*, 20 O. R. 142 (1890), goods were sold for which the purchasers gave their notes and also hire receipts, by which the property remained in the vendor until the goods were paid for. These notes were discounted through a third party, and the bank was aware of the hire receipts being taken, but there was no express contract in regard to them. It was held that the hire receipts were accessory to the debt, and that the bank was entitled to recover them from the assignee of the vendor. This case was affirmed on appeal: 18 Ont. A. R. 438 (1891).

A promissory note was given in payment of the price of some real estate and was secured by mortgage on the property. The note was indorsed to the Quebec Bank. It was held that under Articles 1573 and 1574 of the Civil Code the bank became entitled to the mortgage without signification of the transfer and could even bring an hypothecary action against the holder of the mortgaged property: *Quebec Bank* v. *Bergeron*, 11 Q. L. R. 368 (1885).

The law in Ontario as to the right of the surety who pays to get an assignment of the securities held by the bank is contained in section 2 of the Mercantile Amendment Act, R. S. O. chap. 145, which reads as follows: "Every person who being surety for the debt or duty of another, or being liable with another for any debt or duty, pays the debt or performs the duty, shall be entitled to have assigned to him, or a trustee for him, every judgment, specialty, or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security be or be not deemed at law to have been satisfied by the pay-

ment of the debt or the performance of the duty." The Civil Code of Quebec is to the same effect: "Art. 1950. The surety who has paid the debt is subrogated in all the rights which the creditor had against the debtor."

A bank received the note of a third party as collateral security for a $200 note which it discounted. On maturity of this latter note the maker paid $25 and gave his note for $175. This did not relieve the maker of the note given as collateral: *Canadian Bank of Commerce* v. *Woodward*, 8 Ont. A. R. 347 (1883).

When timber limits given to a bank as collateral security were offered at auction and withdrawn, and subsequently sold at private sale for what was held to be a grossly inadequate price, the bank was held liable for the difference between the sum obtained and the real value of the limits: *Prentice* v. *Consolidated Bank*, 13 Ont. A. R. 69 (1886).

If a bank agrees to give a customer a line of credit, accepting negotiable paper as collateral, it is not obliged, so long as the paper remains uncollected, to give any credit in respect of it; but when any portion of the collaterals is paid, it operates at once as payment of so much of the customer's debt, and must be credited to him: *Cooper* v. *Molsons Bank*, 26 S. C. Can. 611 (1896). Affirmed in Privy Council, 26 A. R. 571 (1898); 14 T. L. R. 276. A bank on discounting a note received collateral security from a third party, on condition that it would use diligence in collecting the note. It renewed the note and released one of the indorsers for a consideration. The depositor of the collateral sued for and recovered it: *Banque du Peuple* v. *Pacaud*, Q. R. 2 Q. B. 424 (1893).

NEGOTIABLE INSTRUMENTS.

This section authorizes banks to deal in bills of exchange, promissory notes and other "negotiable securities." The expression "negotiable securities", or "negotiable instruments" is used in two senses. It is frequently used to describe any written security which may be transferred by indorsement and delivery, or by delivery alone, so as to vest in the holder the legal title, and thus enable him to sue upon

it in his own name. In a narrower and more technical sense it applies only to those instruments which, like bills of exchange, by indorsement or delivery before maturity, vest in the *bona fide* holder for value not only the rights of the transferrer, but the right to claim the full amount for which the instrument is drawn: *Goodwin* v. *Robarts*, L. R. 10 Ex. 337 (1875); *Crouch* v. *Credit Foncier*, L. R. 8 Q. B. at p. 381 (1873); *Simmons* v. *London Joint Stock Bank*, [1891] 1 Ch. at p. 294.

The expression would seem to have been used in this section in the latter sense as there is added "or the stock, bonds, debentures, and obligations of municipal and other corporations, or Dominion, Provincial, British, foreign and other public securities," some of which would come within the former meaning. All of these when in their usual form, except "stock" when used to designate capital or shares, would be negotiable instruments in the wider sense; while some of them may come within that designation in the narrower or more technical sense. In the broader meaning it would include warehouse receipts and bills of lading, which it is evident from subsequent sections were not intended to be included. The powers conferred by the present section were evidently intended to be confined to money and securities for money.

Bills and notes.—Bills of exchange and promissory notes both had a negotiable quality by the law merchant, and they have always been recognized as such in Canada, as well in the Province of Quebec through the French law, as in those provinces which derived their laws from England. By far the largest part of the business of our Canadian banks is in the discounting of bills and notes.

For questions which may arise in connection with them the reader is referred to the Bills of Exchange Act, and works on that subject.

Cheques.—A cheque is defined by section 165 of the Bills of Exchange Act as a bill of exchange drawn on a bank, payable on demand. Cheques are negotiable in the same sense and to the same extent as bills or notes. Being intended for immediate payment, and not bearing interest,

they are seldom dealt in as negotiable securities. As a rule, bank receive cheques on other banks or on their own branches only for collection.

For the law on the subject of cheques, the reader is referred to that portion of the Bills of Exchange Act and the notes thereon, which is found in the present work following the schedules to this Act.

Bank deposit receipts.—The instruments of this class which were considered in the earlier Canadian cases were not made payable to order or bearer, and so were held not to be negotiable instruments under the law relating to promissory notes as it then stood, so as to enable the holder by indorsement or delivery to recover in his own name. See *Mander* v. *Royal Canadian Bank*, 20 U. C. C. P. 125 (1869); *Bank of Montreal* v. *Little*, 17 Grant 313 (1870); *Lee* v. *Bank B. N. A.*, 30 U. C. C. P. 255 (1879); followed in *Armour* v. *Imperial Bank*, 15 C. L. J. 391 (1895). In *Voyer* v. *Richer*, 13 L. C. J. 213 (1869), the Quebec Courts held that even when the receipt was payable to order it was not negotiable. In the Privy Council, L. R. 5 C. P. 461 (1874), it was said that there was "high authority in favor of considering it to be negotiable," but the case was decided on another ground. In *Re Central Bank*, 17 O. R. 574 (1889), it was held that the bank which had issued such a receipt, payable to order, was estopped from denying its negotiable character. Under section 21 of the Bills of Exchange Act, if such a receipt contains words prohibiting transfer or indicating an intention that it should be transferable, it would not be a negotiable instrument, but would be a chose in action and require to be assigned in writing, in accordance with the provincial law: *In re Commercial Bank of Manitoba, Barkwell's Claim*, 11 Man. R. 494 (1897).

Such words would not prevent the depositor from thus transferring the receipt and enabling the transferee to draw the money. It would prevent its being transferred by indorsement or delivery under the law merchant or the Bills of Exchange Act, and would prevent the transferee from acquiring any greater rights than the transferrer had. It would enable the bank to set up against the holder any

equities it might have against the depositor prior to the transfer.

Such receipts have been held in the United States to be negotiable instruments: *Miller* v. *Austin*, 13 Howard, U. S. 218 (1851).

They may also be the subject matter of a good *donatio mortis causa*: *Hewitt* v. *Kaye*, L. R. 6 Eq. 198 (1868); *In re Mead*, 15 Ch. D. 651 (1880); *In re Dillon*, 44 Ch. D. 76 (1890).

Municipal debentures.—Banks are also authorized to deal in the stock, bonds, debentures, and obligations of municipal corporations, to discount them, to lend money and make advances upon their security, and to take them as collateral security for loans. Nor are they restricted to those issued by municipal bodies in Canada. Care, however, should be taken to see that they are authorized by statute, and that the requirements of the statutes under which they purport to have been issued have been complied with.

Where the power to issue debentures for a given purpose exists, but there has been some irregularity in connection with the passing of the by-law or non-compliance with certain directions, the corporation is estopped from denying the validity of the debentures in the hands of a *bona fide* holder: *Webb* v. *Commissioners of Herne Bay*, L. R. 5 Q. B. 642 (1870); *Confederation Life* v. *Howard*, 25 O. R. 197 (1894); *Board of Knox Co.* v. *Aspinwall*, 21 Howard (U. S.) 539 (1858); *Supervisors* v. *Schenk*, 5 Wallace (U. S.) 772 (1865); *Pendleton County* v. *Amy*, 13 Wallace (U. S.) 297 (1871).

Where, however, the debenture refers to a by-law and the by-law on its face shows that it is for a purpose not authorized by law, the debenture is invalid: *Confederation Life* v. *Howard*, 25 O. R. 197 (1894); *Wiltshire* v. *Surrey*, 2 B. C. R. 79 (1891); *Marsh* v. *Fullton County*, 10 Wallace (U. S.) 676 (1870).

Money paid for worthless debentures can be recovered back, as money paid without consideration, or for a consideration that has failed: *Straton* v. *Rastall*, 2 T. R. 366

(1788); *Young* v. *Cole*, 3 Bing. N. C. 724 (1837); *Confederation Life* v. *Howard*, 25 O. R. 197 (1894).

In 1855 by the Act of the old Province of Canada, 18 Vict. chap. 80, municipal debentures issued in Upper or Lower Canada, payable to bearer were declared to be transferable by delivery, and those payable to any person or order, by indorsement; the holder for the time being having the right to sue in his own name, and his title not being liable to be impeached if he was a *bona fide* holder for value without notice.

Similar provisions are found in the municipal Acts now in force in most of the provinces of the Dominion. See the Ontario Municipal Act, R. S. O. chap. 223, secs. 429 to 436; Municipal Code, Quebec, Arts. 981 to 987; R. S. Q. Arts. 4629, 4630; also the special Acts of incorporation of the respective cities in the Province of Quebec; Con. Stat. N. B. 1903, chap. 169, sec. 1; Rev. Stat. B. C. chap. 144, secs. 100 to 109.

The negotiability of municipal debentures is sometimes restrained by a provision for registration in the books of the corporation.

They are usually issued for a term of years under the corporate seal, with interest coupons payable annually or semi-annually attached. It has been thought that their being under seal would prevent their being considered as negotiable instruments; but section 90 of the Bills of Exchange Act shows that this is not an objection in Canada. The coupons are generally in the form of ordinary promissory notes signed by one or more of the officers who execute the debentures.

In Ontario such debentures have long been held to be negotiable, and *bona fide* holders for value have been protected: *Anglin* v. *Kingston*, 16 U. C. Q. B. 121 (1857); *Trust & Loan Co.* v. *Hamilton*, 7 U. P. C. P. 98 (1857); *Crawford* v. *Cobourg*, 21 U. C. Q. B. 113 (1861); *Sceally* v. *McCallum*, 9 Grant 434 (1862).

In Quebec they have been held to be negotiable like promissory notes, and in suing might be declared upon as such: *Eastern Townships Bank* v. *Compton*, 7 R. L. 446 (1871);

Roxton v. *E. T. Bank*, Ramsay, A. C. 240 (1882); *Macfarlane* v. *St. Cesaire*, M. L. R. 2 Q. B. 160 (1886); *St. Cesaire* v. *Macfarlane*, 14 S. C. Can. 738 (1887); *Ottawa* v. *M. O. & W. Ry. Co.*, 14 S. C. Can. 193 (1886); *Pontiac* v. *Ross*, 17 S. C. Can. 406 (1890).

In the United States, such municipal bonds, negotiable in form, notwithstanding they are under seal, are clothed with all the attributes of commercial paper, pass by delivery or indorsement, and are not subject to equities (when the power to issue them exists), in the hands of holders for value before maturity without notice: 1 Dillon, Municipal Corporations, 4th ed., secs. 486, 513: See *Cromwell* v. *Sac Co.*, 96 U. S. 51 (1877).

Decisions conflict as to whether coupons are entitled to grace. The weight of authority is in favor of their being payable on the very day of maturity without grace: 2 Daniel, secs. 1490*a*, 1505.

Coupons dishonored bear interest from their maturity: R. S. O. chap. 51, sec. 114 (2); C. C. 1069, 1077.

Company stock or shares.—Banks are also authorized to "deal in, discount, and lend money and make advances upon the security of, and take as valuable security for any loan made by it, the stock, bonds, debentures, and obligations of corporations, whether secured by mortgage or otherwise;" their powers as to dealing in these securities being the same as with regard to bills of exchange and promissory notes.

The word "stock" in this section would include not only such corporation bonds and debentures as are sometimes called stock, and debenture stock when authorized by statute, but also the shares or capital stock of joint stock and other companies. These latter are not negotiable in the ordinary sense, but are usually assigned or transferred in the books of the company in accordance with the provisions of the governing statute or by-laws.

The power of a bank to "deal in" the stock of such corporations would probably not be held to justify their dealing in them as brokers, investors or speculators. By acquiring a controlling interest, for example, in trading or loan com-

panies they might come within the spirit of the prohibition as to engaging in trade, or lending upon mortgage. Their dealing in them should be in the way of a banking business. In *Re Barned's Banking Company*, L. R. 3 Ch. 105 (1867), similar words were, however, held to authorize a company to take shares in another company. In the *Royal Bank of India's Case*, L. R. 4 Ch. 252 (1869), Selwyn, L.J., said: "I entirely agree with the judgment of Lord Cairns in the case of Barned's Banking Company, that there is not, either by the common or statute law, anything to prevent one trading corporation from taking or accepting shares in another trading corporation. . . . I apprehend that making advances upon shares in public companies is within the ordinary course of the dealing of bankers. . . . Then it is said that the consequence is one of very great hardship, as involving the shareholders in the Royal Bank of India in a great number of liabilities in respect of other companies with which they had nothing to do, and many cases have been suggested in argument, such as that of bankers becoming partners in a brewing company, or a shipping company, or many other things with which, in their own articles of association, they had no connection whatever. But I think the answer to that is, that such dangers are necessarily involved in lending money upon securities of this kind."

The only prohibition is as to its own stock or the stock of another bank.

Even where certificates are issued to represent such shares or stock they are not recognized in England as being negotiable. See *Swan* v. *N. B. Australasian Co.*, 2 H. & C. 175 (1863); *France* v. *Clark*, 26 Ch. D. 257 (1884); *London & County Bank* v. *River Plate Bank*, 20 Q. B. D. 232 (1887); *Sheffield* v. *London Joint Stock Bank*, 13 A. C. 333; (1888); *Colonial Bank* v. *Cady*, 15 A. C. 267 (1890).

In the United States they are not considered to be negotiable; but are said to be quasi-negotiable or assignable, being generally subject to certain restrictions in the charter or by-laws of the company. See 2 Daniel, secs. 1708, 1709.

Where a bank held shares of a joint stock company as collateral security, it was held not to be liable for calls on such shares: *Railway Advertising Co.* v. *Molsons Bank*, 2 L.

N. 207 (1879); *Exchange Bank* v. *C. & D. Savings Bank*, M. L. R. 6 Q. B. 196 (1887). But in *Re Central Bank, Home Savings & Loan Co.'s Case*, 18 Ont. A. R. 489 (1891), where the loan company was authorized to lend money on bank shares, and accepted transfers, absolute in form, it was held liable for calls.

Under the Act of 1871, as amended in 1879, a bank could not make loans on the stock of a joint stock company, and no action would lie on behalf of a bank claiming to have made a loss on such a loan induced by false reports of directors of the company: *Bank of Montreal* v. *Geddes*, 3 L. N. 146 (1880).

When a bank has advanced money on the stock of a company it is not obliged to sell the stock before bringing an action against the directors of the company for having made false reports and for paying dividends not justified by the profits, and thereby unduly inflating the price of the stock and inducing the bank to lend upon it: *Montreal C. & D. Savings Bank* v. *Geddes*, 19 R. L. 684 (1890).

Bonds or debentures of other corporations.—Banks may also deal in these securities in the same manner as with bills and notes. Railway and other commercial corporations incorporated by special Dominion or Provincial Acts are usually authorized to issue bonds or debentures up to a certain limit, which are secured by a lien or mortgage on the undertaking made in favor of trustees for the holders of the bonds. Companies incorporated by Dominion letters patent may also issue bonds or debentures for borrowed money: R. S. C. chap. 79, sec. 69. In Ontario, by R. S. O. chap. 119, sec. 38, bonds and debentures of corporations, if payable to bearer, are transferable by delivery, and if to order, by indorsement and delivery, and the holder may sue in his own name. Other provinces have similar provisions.

See *Bank of Toronto* v. *Cobourg P. & M. Ry. Co.*, 7 O. R. 1 (1884), where bonds are compared to promissory notes; and *Desrosiers* v. *Montreal P. & B. Ry. Co.*, 6 L. N. 388 (1883), as to coupons.

In England such bonds and debentures of both home and foreign companies have frequently come before the Courts.

Even when they were made payable to order or bearer, the transferee has sometimes been denied the right to sue in his own name, although as a general rule the company which has issued such securities has been held to be estopped from denying their negotiability. The course of the jurisprudence has been towards placing such instruments more nearly on the same footing as bills and notes. The case of *Sheffield* v. *London Joint Stock Bank*, 13 A. C. 333 (1888), in the House of Lords, was understood to have somewhat restricted their negotiability. This interpretation was put upon it in *Simmons* v. *London Joint Stock Bank*, [1891] 1 Ch. 270; but the House of Lords, in reversing this latter decision, explained that the Sheffield judgment was based upon the particular facts of that case. For a full discussion of the law as to such bonds or debentures in England: see *Re Blakely Ordinance Co.*, L. R. 3 Ch. 154 (1867); *Re Natal Investment Co., ibid.* 355 (1868); *Re General Estates Co., ibid.* 758 (1868); *Re Imperial Land Co.*, L. R. 11 Eq. 478 (1871); *Webb* v. *Commissioners of Herne Bay*, L. R. 5 Q. B. 642 (1870); *Crouch* v. *Credit Foncier*, L. R. 8 Q. B 374 (1873); *Goodwin* v. *Robarts*, 1 A. C. 476 (1876); *Re Romford Canal Co.*, 24 Ch. D. 85 (1883); *London Joint Stock Bank* v. *Simmons*, [1892] A. C. 201.

Certain debentures issued by an English company and payable to bearer had conditions indorsed on them which prevented their being promissory notes. Plaintiffs who owned them kept them in a safe, the key of which was entrusted to their secretary. The latter fraudulently pledged them to defendants, who made the advances in good faith. It was proved that commercial usage had for many years treated such debentures as negotiable instruments transferable by delivery. It was held that although plaintiffs were not estopped by their conduct from denying defendants' title, yet the latter were entitled to hold them as transferable by mere delivery, and that *Crouch* v. *Credit Foncier* had been in effect overruled by *Goodwin* v. *Robarts*: *Bechuanaland Exploration Co.* v. *London Trading Bank*, [1898] 2 Q. B. 658.

Where an agent in possession of debentures of a corporation, payable to bearer, which are past due, but on

which interest is being paid, pledges them for an advance for himself, the fact that they are past due does not destroy their negotiable character, and is not alone sufficient to put the person advancing the money on his guard. Nothing short of bad faith will affect his title. The fact that they are past due does not affect persons claiming ownership, who are not liable as makers or indorsers. A negotiation of such debentures is not subject to Articles 1487, 1488, 1489 and 1490 of the Civil Code as to sales by persons who are not the owners of the things sold: *Macnider* v. *Young*, Q. R. 3 Q. B. 539 (1894). This judgment was affirmed in the Supreme Court where it was also held (following *In re European Bank*, L. R. 5 Ch. 338), that a person taking such instruments after maturity, took them subject not only to the equities of prior parties to them, but also to the equities of third parties: *Young* v. *Macnider*, 25 S. C. Can. 272 (1895).

In the United States such bonds, as well as those issued by the Federal and State Governments, and by municipalities, if made payable to order or bearer, are generally considered to be negotiable in the highest sense of that term, as are also the interest coupons: 2 Daniel, secs. 1486 to 1517*a*.

On account of having the latter attached they are frequently called "Coupon Bonds." If the bond is secured by a mortgage, this covers the coupon and interest on it if not paid on presentation at maturity. Neither the mortgage security nor the informal nature of the coupons prevents their being negotiable instruments: 2 Daniel, secs. 1486 to 1517, *Venables* v. *Baring*, [1892] 3 Ch. 527.

Government securities.—Banks are also authorized to deal in "Dominion, Provincial, British, foreign and other public securities." These bonds or debentures are usually in the form of negotiable instruments, payable to order or bearer. In the English Courts the question of the negotiability of foreign Government bonds has often come up. The question to be decided has been held to be, whether they were treated as negotiable in the English money market, if consistent with what appeared on their face, and not simply whether they were made payable to order or bearer, or whether

they were considered to be negotiable in foreign countries. See *Glyn* v. *Baker*, 13 East 509 (1811), as to East India bonds; *Gorgier* v. *Mieville*, 3 B. & C. 45 (1824), as to Prussian Government bonds; *Lang* v. *Smyth*, 7 Bingham 284 (1831), as to Neapolitan bonds; *Atty.-Gen.* v. *Bouwens*, 4 M. & W. at p. 190 (1838), as to Russian and Danish bonds; *Heselline* v. *Siggers*, 1 Exch. 856 (1848), as to Spanish stock; *Picker* v. *London & County Bank*, 18 Q. B. D. at p. 518 (1887), as to Prussian Government bonds. The course of the jurisprudence is in the direction of favoring the negotiability of such instruments.

Letters of credit.—A letter of credit is not a negotiable instrument: *Orr* v. *Union Bank*, 1 Macq. H. L. at p. 523 (1854); *British Linen Co.* v. *Caledonian Ins. Co.*, 4 Macq. 107 (1861). A circular note is a letter of credit in which the person in whose favor it is granted carries with him a letter containing the signature to be shewn to the correspondents of the bank to whom the note may be presented. This is called a letter of indication: *Conflans Stone Quarry Co.* v. *Parker*, L. R. 3 C. P. 1 (1867). A bank cannot deal in such securities as a "letter of credit" signed by the Provincial Secretary of Quebec without the authority of an order in council, which is dependent upon the vote of the legislature, and therefore not a negotiable instrument within the Bills of Exchange Act or the Bank Act: *Jacques Cartier Bank* v. *The Queen*, 25 S. C. Can. 84 (1895).

A bank cannot revoke a letter of credit at pleasure; but after notice of revocation has been given to the holder, he is not bound to present it for acceptance in order to recover from the bank: *Bank of Toronto* v. *Ansell*, 5 L. N. 408 (1873).

Post-office orders.—A post-office money order is not a negotiable instrument: *Fine Art Society* v. *Union Bank*, 17 Q. B. D. at p. 713 (1886).

A general banking business.—In addition to the right to issue notes for circulation and to receive deposits given in other sections, and in addition to the special powers as a bank of discount enumerated in the earlier part of this sec-

tion, a bank is authorized to "engage in and carry on such business generally as appertains to the business of banking." This, of course, is subject to the limitations and restrictions contained in the Act.

A bank, like any other corporation, has the right to do such acts and to enter into such contracts as may be necessary to enable it to carry out the object of its incorporation, or to exercise the powers that are either expressly or by implication conferred upon it by the Act. Section 79 gives it the power to acquire real estate for its own use, and to dispose of the same. Sections 77, 81, 82, and 89 show how it may dispose of stock, lands and merchandise in which it may not traffic, but which come into its possession indirectly through its dealings authorized by the Act.

A branch of general banking business not specified in the Act is the collection of bills and other negotiable instruments for its customers. The bank presents them for payment, and if paid, places the amount, less its charge for collection, to the credit of the customer. Such instruments while in the custody of the bank remain the property of the customer, subject to any lien the bank may have, if it allows the customer to draw against them, or if it places the amount to his credit before it is paid. The bank may sue the other parties to the bill if it is not paid; but cannot sue the customer unless it has a lien on the bill for an advance overdraft or other liability: *Ex parte Schofield*, 12 Ch. D. 337 (1879); *Misa* v. *Currie*, 1 App. Cas. 554 (1876). The bank is liable for any loss that may arise from not duly presenting the bill for payment, or for not giving due notice of dishonor: *Steinhoff* v. *Merchants Bank*, 46 U. C. Q. B. 25 (1881). The bank may make a reasonable charge for such services.

A similar rule would apply where a customer delivers a bill to a bank to get accepted for him. In case acceptance is refused and the bank fails to inform the customer, it will be liable for any damage arising from such neglect: *Van Wart* v. *Wooley* 3 B. & C. 439 (1824); *Bank of Van Diemen's Land* v. *Bank of Victoria*, L. R. 3 P. C. 526 (1871).

When a bank receives a note for collection and in the regular course of business places the same in the hands of

a responsible and solvent agent, it is not liable for the loss of the note in the mails. In any case the offer of the bank to give security to the makers and endorser that they would never be troubled if they paid the note was sufficient: *Litman* v. *Montreal City & District Savings Bank*, Q. R. 13 S. C. 262 (1897).

Directors of a bank, without special authorization, have power to borrow such sums as may be required to meet the liabilities of the bank, and to give a promissory note or other usual acknowledgment therefor. The fact that the engagement to repay was accomplished by other stipulations that were *ultra vires* would not discharge the bank from liability to repay the loan or render the note invalid: *Bank of Australasia* v. *Breillat*, 6 Moore P. C. 152 (1847).

Authority to carry on such business as generally appertains to the business of banking covers the case of a bank guaranteeing payment to the vendors in England of the price of goods sold to a customer in Montreal, on having the bills of lading addressed directly to the bank, and does not come within the prohibition as to dealing in merchandise: *Molsons Bank* v. *Kennedy*, 10 R. L. 110 (1879).

Where a bank discounted a draft on the assurance that the acceptor of a maturing bill would accept it, and a cheque for the proceeds was sent to the acceptor with a statement of what had occurred, and the latter kept the cheque and retired the maturing bill with it, but refused to accept the new one, he was held liable to the bank for the amount: *Torrance* v. *Bank of British North America*, L. R. 5 P. C. 246 (1873).

In a case very similar to the foregoing, *Dunspaugh* v. *Molsons Bank*, 23 L. C. J. 57 (1878), where the bank made advances after being shown a telegram from the acceptor that he would accept a renewal, it was held entitled to recover the amount of its advances from the acceptor, who declined to accept the renewal. Again, where the drawer telegraphed the acceptor to draw on him for the amount of a maturing bill, and a bank, on seeing the telegram, advanced the money to retire the maturing bill, its claim

against the drawer, who refused to accept the new bill, was maintained: *Bank of Montreal* v. *Thomas*, 16 O. R. 503 (1888).

A manufacturer discounted with a bank an unaccepted draft on a customer, and at the same time assigned to the bank the claim for the price of the goods. The customer refused to accept the draft, but remitted the money to the seller who had become insolvent and it came into the hands of his curator. The latter claimed that the bank had no power to accept such an assignment. It was held that the transaction was authorized by the present section and also by section 74 (now 88) of the Bank Act: *Merchants Bank* v. *Darveau*, Q. R. 15 S. C. 325 (1898).

Bankers are subject to the same principles of law as ordinary agents, and when they receive a bill for collection cannot bind the principals by setting off the amount of the bill against a balance due by them to the acceptor, or otherwise than by receiving payment in money only: *Donogh* v. *Gillespie*, 21 Ont. A. R. 292 (1894).

A firm of contractors, in pursuance of an agreement with an indorser of a note discounted, assigned to a bank moneys which would be coming to them on a railway contract, and gave the manager a power of attorney to collect the money. It was held that the bank might under its general powers take an assignment of such a chose in action as additional security: *Molsons Bank* v. *Carscaden*, 8 Man. R. 451 (1892).

An assignment of a debt may be taken by a bank under its general banking powers: *Rennie* v. *Quebec Bank*, 3 O. L. R. 541 (1902). See to same effect *Moffatt* v. *Merchants Bank*, 11 S. C. Can. 46 (1885).

A bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party, and where the bank has derived no benefit from such a contract a claim against it under such circumstances will be dismissed: *Johansen* v. *Chaplin*, M. L. R. 6 Q. B. 111 (1889); *Watts* v. *Wells*, M. L. R. 7 Q. B. 387 (1890).

A Milwaukee bank sent to a Toronto bank a bill drawn at forty-five days, together with a bill of lading for wheat. It was held that in the absence of instructions the latter bank was right in giving up the bill of lading on the bill being accepted. Evidence of usage in the United States and Canada was given. It was held that the latter alone was relevant: *Wisconsin Bank* v. *Bank of British North America*, 21 U. C. Q. B. 284 (1861). To the same effect, *Goodenough* v. *City Bank*, 10 U. C. C. P. 51 (1860).

Where a customer deposits a cheque for collection and it is passed to his credit, the bank has a right to charge it back when it is dishonored, even when the customer did not endorse it: *Owens* v. *Quebec Bank*, 30 U. C. Q. B. 382 (1870).

Where the directors of a bank are authorized to deal with money, to advance money, to take money from their customers, to indorse bills, and to do a general banking business, they have power, when the formation of a company is of importance to the bank, to guarantee the payment of interest on the debentures of the company: *In re West of England Bank*, 14 Ch. D. 317 (1880).

When a bank receives for collection, without special instructions, a cheque on a bank in the same place, it should present it either the same day or the next business day; if on a bank in another place, it should be forwarded within the same delay: *Redpath* v. *Kolfage*, 16 U. C. Q. B. 433 (1858); *Owens* v. *Quebec Bank*, 30 *ibid.* 382 (1870); *Boyd* v. *Nasmith*, 17 O. R. 40 (1888); *Blackley* v. *McCabe*, 16 Ont. A. R. 295 (1889); *Sawyer* v. *Thomas*, 18 *ibid.* 129 (1890); *Marler* v. *Stewart*, 2 Stephens, Que. Dig. 111 (1878); *Heywood* v. *Pickering*, L. R. 9 Q. B. 428 (1874).

The same diligence should be used in presenting for payment a bill payable on demand, and for presenting for acceptance a bill entrusted to the bank for that purpose. If a bill is not accepted within two days after it is presented for acceptance, it should be treated as dishonored: Bills of Exchange Act, sec. 80.

A bank gave an open letter of credit for £15,000, and requested parties negotiating bills under it to indorse par-

ticulars on the back of it. Bills were drawn under it, and when negotiated were indorsed as requested. The bank failed, and the party to whom the letter was given was indebted to the bank apart from these bills. The bank was held liable to the holder of the bills, irrespective of the state of the account between it and the party to whom the letter was given: *Agra & Masterman's Bank, Ex parte Asiatic Banking Corporation*, L. R. 2 Ch. 391 (1867).

A bank opened two accounts with a customer, a loan account and a drawing account. It closed the latter by transferring the balance to the loan account in reduction of the customer's debt. At the time there were bills and cheques of the customer outstanding, which on being presented were dishonored. It was held that in view of the course of dealing, the bank was not entitled to close the current account without a reasonable notice, and the customer recovered £500 damages: *Buckingham v. The London and Midland Bank*, 12 T. L. R. 70 (1895).

A firm of stockbrokers had two accounts with their bankers, a current account and a loan account. They had deposited as security for their general indebtedness bonds and shares belonging to clients, but the bankers did not know these were not their own. The brokers failed, having a balance to their credit on the current account, and owing the bank on the loan account. The bankers sold the securities for more than the total amount due on the loan account. It was held that the two accounts should be treated as one; that the bankers should apply the balance to the credit of the current account on reduction of the amount due on the other, and use the proceeds of the securities only to pay the balance, the surplus belonging to the owners of the securities. Two days before the stoppage of the brokers a client had sent them a cheque to pay for some stock they had purchased for him. They paid this in to their current account, and the purchase was not completed. Held, that the client had no equity on the balance of the current account as against the owners of the securities: *Mutton v. Peat*, [1900] 2 Ch. 79.

Banks as bailees.—Sometimes banks keep for safety boxes of valuables, such as plate, jewellery, etc., for their

customers. If they make a charge for this, they would incur the same responsibility as other depositaries or bailees. If on the other hand, as is usually the case, they do it without making a charge, they will be liable only in the case of gross negligence. Where a box containing securities was kept in the inner vault of a bank and was stolen by the cashier, the Privy Council held that the owner could not recover as no charge was made for the service: *Giblin* v. *McMullen*, L. R. 2 P. C. 317 (1868). In the case of such deposits the Statute of Limitations or prescription does not begin to run until after a demand has been made on the bank for delivery of the property: *In re Tidd, Tidd* v. *Overell*, [1893] 3 Ch. 154.

Business prohibited to banks.—A bank being created for the purpose of carrying on a banking business, anything outside of that would be beyond its scope. There are, however, certain transactions or lines of business, more or less connected with banking, which it might be claimed that a bank had a right to engage in if not specially prohibited.

Subject to the exceptions named in the Act, these are laid down in the present section as follows:

1. A bank is prohibited from dealing in the buying or selling or bartering of goods, wares and merchandise, or engaging in any trade or business whatsoever. The exceptions are contained in sections 80, 84, 85, 86 and 88, which relate to property which a bank may acquire through a valid chattel mortgage, warehouse receipt, bill of lading or security. Such goods, wares and merchandise may be disposed as pointed out in section 89.

In *Radford* v. *Merchants' Bank*, 3 O. R. 529 (1883), a bank sold goods which it had acquired by means not recognized by the Act, and was sued for breach of warranty. It was held that the action would not lie, as the bank was prohibited from selling goods.

In *Ayers* v. *South Australia Banking Co.*, L. R. 3 P. C. 548 (1871), a similar prohibition was considered, and it was said that it would not prevent the property from passing or the purchaser from the bank getting a good title to the goods.

2. A bank is also prohibited from purchasing, or dealing in, or lending money, or making advances upon the security of any pledge of any share of its own capital stock, or the capital stock of any bank. This prohibition is absolute. If directors should undertake to buy up shares with the bank's money in order to keep up the price of the stock or for any other purpose, they would be personally liable: *McDonald* v *Rankin*, M. L. R. 7 S. C. 44 (1890).

In the winding up of the Central Bank, a question was raised as to shares which the cashier had purchased for the bank and which he had subsequently disposed of. It was held that the purchasers could not set up this illegality so as to escape payment of the double liability to the liquidators: *Nasmith's Case*, 16 O. R. 293 (1888). See *Stone* v. *City and County Bank*, 3 C. P. D. 282 (1877). A person who had shares transferred to him on behalf of the bank is also responsible for the double liability on the winding up: *Henderson's Case*, 17 O. R. 110 (1889).

It is unnecessary, however, for a bank to take security upon its own stock held by a debtor, as section 77 gives it a privileged lien on such stock and its dividends until the debt is paid. Sections 43 and 46 also give it the power to prevent the transfer of any such stock until all liabilities to it are cleared off. This applies not only to debts due but also those to mature. In the case of *The Exchange Bank* v. *Fletcher*, 19 S. C. Can. 278 (1890), it was assumed that under the Act of 1871 as amended in 1879, a bank had no authority to lend upon the security of the shares of another bank. Such shares were transferred to the managing director of the Exchange Bank as security for advances made by the latter. He fraudulently pledged them to another bank for his private debt and absconded. It was held that the prohibition to make advances on such security applied to the bank lending, and not to the borrower, and the loan having been repaid, the Exchange Bank was condemned to return the shares or to pay their value.

3. A bank is also prohibited from lending money or making advances upon the security, mortgage, or hypothecation of any land, tenements or immovable property. It may, however, take a mortgage on land by way of additional

security for debts contracted to it in the course of its business: sec. 80. See the notes under that section as to how this provision has been interpreted.

Under the Act of 1871, it was held that the cashier of a bank who had indorsed notes for a customer of the bank might, if in good faith, take a mortgage on the customer's real estate to protect himself on the indorsements: *Thibaudeau* v. *Beaudoin*, 3 L. N. 306 (1880).

4. A bank is also prohibited from lending money or making advances upon the security, mortgage or hypothecation of any ship or vessel, except that it may take a mortgage on them by way of additional security: sec. 80; and it may advance money for aiding in the building of ships or vessels: sec. 85. See the notes to these sections.

5. A bank is also prohibited from lending money or making advances on the security of any goods, wares and merchandise, except as it may lend upon chattel mortgage by way of additional security for debts contracted: sec. 80; or on a bill of lading or warehouse receipt under section 86; or on a security under section 88. See the notes to these sections and to section 90.

As to what would be the result of a bank's doing or attempting to do any of the acts prohibited in this section it would be difficult to lay down any general rule, as each case would be governed largely by its particular circumstances. In the first place the bank would be liable to the penalty of $500 for each violation, which would be payable to the Dominion Government: secs. 141 and 146.

In the next place it is to be observed that these acts, in so far as they do not come within the exceptions in other sections, are not only *ultra vires* in the sense that they are outside the objects for which banks are incorporated, but they are also illegal, as being positively prohibited by the Act.

It has been laid down as the result of the English authorities on the subject, that while any such transaction is merely executory, neither party can have as against the other any cause of action; and that even when executed

wholly or in part by one of the parties, it is not, nor is any part of it enforceable by an action directly upon the engagement itself; the most that the party complaining can obtain is an account. If a loan is made and a prohibited security is taken, the bank would have no right to claim or enforce the security, but the borrower would be liable for the loan. Where a security is partly legal and partly illegal, the right of a bank has been maintained for the portion that was legal.

In *Bank of Toronto* v. *Perkins*, 8 S. C. Can. at page 610 (1883), Ritchie, C.J., said: "This prohibition (as to lending on mortgage) is a law of public policy in the public interest, and any transaction in violation thereof is necessarily null and void. No Court can be called upon to give effect to any such transaction or to enforce any contract or security on which money is lent or advances as thus prohibited are made. It would be a curious state of the law, if, after the legislature had prohibited a transaction, parties could enter into it, and, in defiance of the law, compel Courts to enforce and give effect to their illegal transactions." In the same case, at p. 617, Strong, J., said: "Whenever the doing of any act is expressly forbidden by statute, whether on grounds of public policy or otherwise, the English Courts hold the act, if done, to be void, though no express words of avoidance are contained in the enactment itself." Followed in *Randolph* v. *Randolph, People's Bank Claim*, 4 Eastern L. R. 24 (1907).

In the *National Bank of Australasia* v. *Cherry*, L. R. 3 P. C. 299 (1870), Lord Cairns laid down the rule that the prohibition to lend on the security of real estate was a matter of public policy, and that when such a transaction was entered into, the contract for the loan of the money would be perfectly valid, and the only question would be whether the bank had power to take the security. If this was *ultra vires* the bank could not hold it. It was also pointed out that the object of the legislation was not so much to make contracts for advances void, but rather to make it *ultra vires* for the bank to take, on the occasion of contracts for these advances, securities of the kind mentioned.

Money was borrowed from a savings bank on the security of letters of credit of the Quebec Government. The debtor assigned and the bank filed its claim with the curator. Certain creditors contested it on the ground that the transacton was *ultra vires* and illegal. It was held that though the lending of money on the pledge of such securities was *ultra vires*, and though this might affect the pledge as regards third parties interested in the securities, it was not, of itself, and *ipso facto*, a radical nullity of public order of such a character as to disentitle the bank from claiming back the money with interest: *Rolland* v. *La Caisse d'Economie*, 24 S. C. Can. 405 (1895).

It is a question whether the only results of a bank's engaging in prohibited business are the incurring of the penalties laid down in section 146, and the avoidance of the contract entered into and the security taken in certain cases, or whether it also renders itself liable to the forfeiture of its charter at the suit of the Crown. In 1872 the Minister of Justice granted a fiat for a *scire facias* to set aside the charter of La Banque Nationale on this ground, but the matter was not followed up. In 1881 another application was made to the then Minister of Justice for a fiat to prosecute the Bank of St. Hyacinthe in the Exchequer Court to have its charter declared forfeited for engaging in business prohibited by the Act. The Minister in refusing the application said that no authority had been given him for the annulling of a charter created by Act of Parliament, and he was not satisfied that the officers of the bank had intentionally and materially violated the terms of their charter: *Sarrazin* v. *Bank of St. Hyacinthe*, 28 L. C. J. 270 (1881).

BANKER'S LIEN.

By the law merchant which is part of the common law, and consequently to be judicially noticed without being proved, a bank has a general lien on the securities of its customers in its hands. The rule was stated as follows by Lord Campbell in *Brandao* v. *Barnett*, 12 Cl. & F. 787 (1846): "Bankers must undoubtedly have a general lien on all securities deposited with them as bankers, by a cus-

tomer, unless there be an express contract, or circumstances that show an implied contract inconsistent with lien." The language was approved and adopted by the Privy Council in the case of the *London Chartered Bank* v. *White*, 4 A. C. at p. 422 (1879).

This lien does not apply to plate, securities etc., merely deposited in the bank for safe keeping: *Ex parte Eyre*, 12 L. J. Ch. 266 (1843); *Leese* v. *Martin*, L. R. 17 Eq. 224 (1873).

In the Province of Quebec, where the civil law and not the common law prevails, the general rule is found in Article 1975 of the Civil Code, which says: "If another debt be contracted after the pledging of the thing and become due before that for which the pledge was given, the creditor is not obliged to restore the thing until both debts are paid." In the case of banking this would be subject to Article 1978, which says: "The rules contained in this chapter are subject in commercial matters to the laws and usages of commerce." There is an absence of judicial authority as to how far the law merchant would be recognized. In the case of *The Exchange Bank* v. *The City and District Savings Bank* cited below, Matthieu, J., held that securities pledged for a special debt could not be held for an anterior debt. It does not appear that the general bankers' lien was claimed in the matter, and his finding as to the contract in question might bring it within the exception mentioned above by Lord Campbell.

It must be understood that the deposit and the debt are respectively made and due not only by the same person but in the same right.

This general lien is only for a debt due and payable to the bank, and is not so extensive as that which is given on its own shares by section 77, which is "for any debt or liability for any debt": *Jeffryes* v. *Agra and Masterman's Bank*, L. R. 2 Eq. 674 (1866); *Bowen* v. *Foreign Gas Co.*, 22 W. R. 740 (1874).

ILLUSTRATIONS.

1. When advances are made by a bank contemporaneously with a deposit of title deeds, the presumption would

be that the security was for the advances and not for an antecedent debt. In a conflict of testimony, however, the fact that the latter was legal and the former illegal was taken into account, and the transaction upheld: *Royal Canadian Bank* v. *Cummer*, 15 Grant 627 (1869).

2. Commercial securities pledged to guarantee a special loan cannot be retained by the creditor until a debt anterior to that for which the securities were pledged should be paid, unless there was a special agreement to that effect: *Exchange Bank* v. *City and District Savings Bank*, 14 R. L. 8 (1885).

3. Where warehouse receipts were pledged to a bank for a certain debt, a parol agreement that the surplus of the proceeds after the sale of the goods was to apply on other debts due to the bank, was upheld: *Thompson* v. *Molsons Bank*, 16 S. C. Can. 664 (1889); see also *Insky* v. *Hochelaga Bank*, Q. R. 10 S. C. 510 (1896).

4. If the bankers' lien exists in the Province of New Brunswick, the person against whom it is sought to enforce it, must be a customer of the bank: *Allen* v. *Bank of New Brunswick*, 17 N. B. (1 P. & B.) 446 (1877).

5. Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers by the firm, the bank has no lien for such balance on the separate accounts: *Richards* v. *Bank of B. N. A.*, 8 B. C. R. 143, 209 (1901).

6. A banker has a general lien upon all the securities in his hands belonging to any particular person for his general balance, unless there be evidence to show that he received any particular security under special circumstances, which would take it out of the common rule: *Davis* v. *Bowsher*, 5 T. R. at p. 491 (1794).

7. A bank has no lien for its general balance on securities casually left in the office by a customer after a refusal to make advances on them: *Lucas* v. *Dorrien*, 7 Taunton 278 (1817).

8. Security given by a customer for the amount "which shall or may be found due on the balance" of his account, covers only the then existing balance, and does not operate as a continuing security: *Re Medewe*, 26 Beavan 588(1859).

9. The fact that securities were deposited as security for a specific advance is not inconsistent with the claim of a bank to hold them for the general balance: *Jones* v. *Peppercorne*, 28 L. J. Ch. 158 (1859).

10. Where plaintiff delivered to his broker scrip certificates purporting to be transferable by delivery, which the broker in fraud of his principal deposited with a bank as security for his own debt, plaintiff was estopped from denying the negotiability or the lien of the bank: *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194 (1877).

11. A bank has no lien for the balance of an account upon boxes containing plate or securities, which were deposited with it for safe custody, the depositor retaining the keys: *Leese* v. *Martin*, L. R. 17 Eq. 224 (1873).

12. Where a customer has three separate accounts in a bank and there is no special agreement regarding them and the bank has had no notice that any of them is for other persons, they have a lien on each for any balance due on the others: *Teale* v. *Brown*, 11 T. L. R. 56 (1894).

AGENTS, TRUSTEES, ETC.

Difficult questions sometimes arise when banks receive securities or acquire claims upon them from agents, trustees and others who may be acting for principals or other third parties.

It is in the nature of bills and notes and other instruments that are negotiable in the full sense of that term, that the person who acquires them in good faith before maturity for value without notice of any defect or irregularity, or in the language of the Bills of Exchange Act, becomes a holder in due course, may acquire a better title than that of the person from whom they are received. If a bank takes such securities in good faith for value from a person who negotiates them in breach of trust, or even from a thief, it may acquire a perfect title. It has long been well settled that not even gross negligence is sufficient to invalidate such a title, that nothing short of fraud or bad faith will accomplish this.

It is to be observed that with respect to securities in which a bank deals it has no protecting clause regarding trusts, similar to sections 52 and 96 relating to shares of its own stock and to deposits held on trust. In dealing with trust securities it is on the same footing as any other dealer.

With respect to such securities as bonds, debentures, scrip stock, and the like, there has been of recent years a conflict of authority.

In *The Bank of Montreal* v. *Sweeny*, 12 A. C. 617 (1887), the Privy Council held, affirming the judgment of the Supreme Court of Canada, that where a customer of the bank transferred to the manager, as security for a private debt, certain shares in a joint stock company, which he held "in trust," this was sufficient to have put the bank upon enquiry, and it was responsible to the real owner. See *Muir* v. *Carter*, and *Holmes* v. *Carter*, 16 S. C. Can. 473 (1889); *Raphael* v. *McFarlane*, 18 S. C. Can. 183 (1890); and *Shaw* v. *Spencer*, 100 Mass. 382 (1868).

In *Petry* v. *La Caisse d'Economie*, 19 S. C. Can. 713 (1891), the plaintiffs were held not to be entitled to get back moneys which one of them had paid to redeem such stock with full knowledge of the facts.

The case of *Sheffield* v. *London Joint Stock Bank*, 13 A. C. 333 (1888), arose over certain Grand Trunk Railway and other railway and canal bonds transferred in blank and delivered to a broker or money lender, who made advances on them. He deposited them with the bank as security for his running account. The House of Lords held that the bank should have known from the nature of the broker's business that he was not the owner, and maintained the action of the real owner for the bonds or their value.

In *Simmons* v. *London Joint Stock Bank*, [1891] 1 Ch. 270, Kekewich, J., and the Court of Appeal, relying upon the case of Sheffield against the same bank above cited, held that where a broker pledged certain foreign bonds of plaintiffs, with those of other persons, to raise a lump sum, the bank had no reason to believe that the broker had authority to pledge the securities in that way, and did not

acquire a good title. This decision was reversed by the House of Lords, which held that the circumstances were not sufficient to have aroused the suspicion of the bank which was entitled to retain and realize upon the securities, as having acquired them in good faith and for value. They further stated that the case of Sheffield against the bank turned entirely upon the special facts of that case: *London Joint Stock Bank* v. *Simmons*, [1892] A. C. 201.

In *London & Canadian L. & A. Co.* v. *Duggan*, [1893] A. C. 506, the Privy Council held, reversing a judgment of the Supreme Court of Canada, that where the manager of the Federal Bank held certain shares in a joint stock company simply as manager "in trust," these words implied that he held them in trust for the Federal Bank, and that there was nothing to put the London and Canadian Company upon further enquiry.

Bank holidays.—The Bank Act has no provision for holidays. The expression is popularly used for those days which are holidays for the maturity of bills and notes under the Bills of Exchange Act, section 43. These are: (*a*) In all the provinces, Sundays, New Year's Day, Good Friday, Easter Monday, Victoria Day (May 24th), Dominion Day (July 1st), Labour Day (1st Monday in Sept.), Christmas Day, the birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign; any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; and the day next following New Year's Day, Victoria Day, Dominion Day, Christmas Day, and the birthday of the reigning sovereign, when such days respectively fall on Sunday:

(*b*) In the Province of Quebec in addition to the said days, The Epiphany (January 6th), The Ascension (movable), All Saints' Day (November 1st), Conception Day (December 8th);

(*c*) In any province any day appointed by proclamation of the Lieutenant-Governor for a public holiday, or for a fast or thanksgiving, and any non-juridical day by virtue of a statute of such province.

Banking hours.—No hours are prescribed for banks by the Act. In most places they are fixed by usage at from 10 to 3 on all business days except Saturdays, when they are from 10 to 12 or 1. A bill or note cannot be protested for non-payment until after 3 o'clock, even on a Saturday: Bills of Exchange Act, sec. 121 (*b*). When the bill was under discussion in the House of Commons it was proposed to make the hour 1 o'clock on Saturday, but the argument that Saturday was market day in many towns, and the chief business day, prevailed. The acceptor or maker of a bill or note could no doubt claim that he was not liable for the costs of protest before 3 o'clock, and if he could show that he was injured by notices of protest sent out before that time he might have a right of action.

Clearing house.—The first clearing house was established in London in 1775. It was at first simply a place of meeting where the clerks of the different banks exchanged cheques, bills, etc. The mode in which it was operated in 1836 is described in *Warwick* v. *Rogers*, 5 M. & G. at p. 348 (1843). The risks run in carrying large sums of money led to the appointment of several clerks who were common to all the banks using the clearing house, to whom each bank would report the payment of the balance settling the transaction. The saving in the use of money has been very great, as a rule not more than 3 or 4 per cent. of the aggregate transactions being paid in bank notes or specie.

A clearing house was organized in Montreal on the 20th of December, 1888, an example since followed by Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver, Victoria, Ottawa, Quebec, London, Calgary and Edmonton. Its objects and methods have been described as follows by Davidson, J., in the case of *La Banque Nationale* v. *Merchants Bank*, M. L. R. 7 S. C. (1891), at page 336: "Its purposes are to provide simple and expeditious facilities for the daily settlements of the banks with each other, by the effecting at one place and at one time of the daily exchanges between the associated banks, and the payment of the differences resulting from such exchanges. These objects are carried out in this way: Every morning at 10 o'clock each bank has at the clearing house all the cheques and other

demands it has received against all the other banks during the preceding day, making them up into separate bundles for each bank, with a statement on the cover showing the aggregate of the contents of each bundle. The settlement is made on these statements, without regard to the fact whether the contents of the bundle were correctly ticketed or found good claims against the bank charged. Thus each messenger is, in a few minutes, able to receive and take to his bank all the claims of the other banks against it. To attempt to examine and challenge securities at the clearing house would make its purposes inoperative. These temporary clearing house balances are subsequently verified at the bank by a scrutiny of the cheques and other demands of which they are composed."

In the above case a temporary regulation made when the clearing house was organized, that dishonoured cheques received in the morning should be returned before noon, was relied upon as a ground for refusing to receive one returned in the afternoon, the refusal being based on the statement that the securities had been given up early in the afternoon. An attempt was also made to prove a usage to the same effect as the rule. The Court held that a custom or usage of trade or banking must be strictly proved, that the rule in question only purported to be a temporary one, that the usage alleged was not general, and the rule had fallen into disuse, and that the ordinary rule of law as to the return of cheques for which there are no funds had not been superseded. Previous to the establishment of the clearing house the undisputed practice was to return such cheques at 3 o'clock.

The Canadian Bankers' Association, incorporated in 1900 by the Act 63-64 Victoria, chapter 93, is authorized to establish clearing houses at any place in Canada, and to make rules and regulations for their operations. The practice of presenting cheques, etc., through the clearing house is recognized, and any delay necessarily occasioned thereby would be excused. A bank may or may not become a member of the clearing house, and may withdraw if it chooses.

The above Act, and the by-laws of the Association made in accordance with its provisions, will be found in the latter part of the present work.

The practice of the Toronto Clearing House was considered in the case of *The Bank of Hamilton* v. *The Imperial Bank*, where a depositor of the plaintiff bank drew a cheque for $5 which the bank marked good, and which he raised to $500 and deposited in the Imperial Bank and drew against it. It was sent through the clearing house and paid by the Bank of Hamilton, which discovered the fraud the next day and sued the Imperial Bank. All the Courts decided in favor of the Bank of Hamilton. In the judgment of the Privy Council (*Imperial Bank* v. *Bank of Hamilton*, [1903] A. C. at p. 55) the practice is referred to in the following terms:—"It is proved by the evidence that certified cheques, apparently in order and presented through the clearing house, are paid as a matter of course, and that it is not usual with bankers to turn to their customers' accounts on the day marked cheques are presented for payment through the clearing house to see whether there is anything wrong before paying them. It is, however, usual to check the returns with the customers' accounts the next day, and then to enter the cheques paid the day before. In conformity with this custom the Bank of Hamilton paid the cheque on January 27, without looking at Bauer's account in their ledger, but on the next day they turned to it and at once discovered the fraud. The Bank of Hamilton immediately gave notice to the Imperial Bank and demanded the repayment of the $495 overpaid." The defence was that the Bank of Hamilton was negligent in paying the forged cheque without first turning to Bauer's account, and that notice the next day was too late. There were no endorsers. The defence was overruled in all the Courts, and the practice upheld.

77. Bank's lien on debtor's stock.—The bank shall have a privileged lien, for any debt or liability for any debt to the bank, on the shares of its own capital stock, and on any unpaid dividends of the debtor or person liable, and may decline to allow any transfer of the shares of such debtor or person until the debt is paid.

2. The bank shall, within twelve months after the debt has accrued and become payable, sell such shares:

Provided that notice shall be given to the holder of the shares of the intention of the bank to sell the same, by mailing the notice, in the post office, post paid, to the last known address of the holder, at least thirty days prior to the sale.

3. Upon the sale being made the president, vice-president, manager or cashier shall execute a transfer of the shares to the purchaser thereof in the usual transfer book of the bank.

4. Such transfers shall vest in the purchaser all the rights in or to the said shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer of the bank executing the transfer. 53 V., c. 31, s. 65.

The privileged lien given to the bank by this section on its shares held by debtors is to be distinguished from the general banker's lien on securities for a general balance considered under the preceding section. The lien of the present section is the creation of the statute; that discussed in the notes on the preceding section is part of the law merchant, and is not mentioned in the Act.

By section 43 it is provided that no transfer of shares is valid unless the holder pays off his debts and liabilities if required, or unless his remaining shares are worth more than such debts and liabilities. Section 46 provides that the officers of the bank shall not execute the transfer of shares sold under execution, until all debts, liabilities and liens in favor of the bank have been discharged.

Under a clause giving a company the right to refuse a transfer made by a shareholder indebted to the company, it was held that this meant indebted on any account: *Ex parte Stringer*, 9 Q. B. D. 436 (1882); that it also meant "indebted whether solely or jointly with others:" *Bentham Mills Co.*, 11 Ch. D. 900 (1879); and that where a bill was taken for the original debt the right existed, but the remedy was suspended until the maturity of the bill: *London, Birmingham, etc., Banking Co.*, 34 Beav. 332 (1865).

The language of this section, "any debt or liability for any debt to the bank," is so comprehensive that it would appear to include any claim of the bank under which the holder of the shares might ultimately become liable to it.

It is to be observed that the general lien of the bank on securities or deposits, independently of special contract, exists only when the debt is due and payable. See the notes to the preceding section.

The bank's lien would not have priority over an equitable interest of which it had notice before the incurring of the debt for which it claimed such privilege: *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29 (1886).

The lien would only exist if the debt or liability were against the holder in the same right or interest as that in which he held the shares. For instance, if the debt or liability was personal and the stock were held by him "as executor, administrator, guardian or trustee of or for some person named," as provided in section 53, or *vice versa*, there would be no lien. Even if the person represented were not named, and the shares were held by him simply "as executor" or "in trust," the principle laid down in *Bank of Montreal* v. *Sweeny*, 12 App. Cas. 617 (1887), and *Murray* v. *Pinkett*, 12 Cl. & F. 746 (1846), would prevent the bank from obtaining a lien after notice that the shares did not really belong to its debtor.

A bank has a lien on its shares held by a member of a firm for a debt due to it by such firm: *In re Chinic and Union Bank*, 14 Q. L. R. 289 (1888); also on trust shares for the debt of the trustee where the trust has not been disclosed: *New London Bank* v. *Brocklebank*, 21 Ch. D. 302 (1882).

The bank may waive its right of lien, but care should be taken in case it holds any sureties for the debt or liability. Article 1959 of the Civil Code says: "The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor." The English law as to suretyship is to the same effect

The clause requiring the bank to sell the shares within twelve months after the debt has accrued and become payable was enacted in 1890. The sale should be by auction after reasonable publicity and notice. The thirty days' notice to the debtor should indicate the time and place of sale. If the bank does not exercise its right of sale under this section within twelve months after the maturity of the debt, it would then need to fall back upon any remedy that might be given to it by the law of the province. In most of the provinces it would require to get judgment and sell the shares under execution, when it would be paid by preference out of the proceeds. It would also be liable under section 145 to a penalty not exceeding five hundred dollars.

78. Sale of collateral securities.—The stock, bonds, debentures or securities, acquired and held by the bank as collateral security, may, in case of default in the payment of the debt, for the securing of which they were so acquired and held, be dealt with, sold and conveyed, either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell and convey the same: Provided that the bank shall not be obliged to sell within twelve months.

2. The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of the stock, bonds, debentures or securities, made at the time at which such debt was incurred, or, if the time of payment of the debt has been extended, then by an agreement made at the time of the extension. 53 V., c. 31, s. 66.

The stock, bonds, debentures and securities referred to in this section are those enumerated in section 76 (*c*) as the ones which the bank may take as collateral security for a loan made by it.

If any such securities held by the bank as collateral security mature before the debt for which they are held as collateral, the bank has a right to collect them and apply them in payment of the debt. The present section has reference to bonds or debentures that do not mature until after the debt, and to stock and other similar securities.

The bank is bound to use due diligence and prudence in realizing on these securities. It may either proceed as is prescribed for its own shares in the preceding section, or it may avail itself of the law of the province as to the disposal of articles held in pledge, in the same way as a private individual.

Unless there be a special agreement to that effect, the bank does not acquire a title to the collateral securities on the default to pay the debt. If the collateral be a security for a sum of money the bank may collect it when due; if it be stock or a security for the payment of money it may take steps to have it sold. At English common law a pledgee may sell the pledge at public auction without judicial process on giving the debtor reasonable notice to redeem: *Tucker* v. *Wilson*, 1 Peere Williams 261 (1714); *Lockwood* v. *Ewer*, 9 Modern 275 (1742); *Pothonier* v. *Dawson*, 1 *Holt* N. P. 385 (1816); *Pigot* v. *Cubley*, 15 C. B. N. S. 701 (1864); *Donald* v. *Suckling*, L. R. 1 Q. B 585 (1866); *Deverges* v. *Sandeman*, [1902] 1 Ch. 579. In the Province of Quebec, in the absence of a special agreement, the bank would require to obtain judgment, and then seize and sell in the ordinary way, when it would be paid by privilege out of the proceeds: C. C. Art. 1971. The bank has the option of exercising these remedies or of pursuing the method indicated in section 77.

Where the pledgor has only a limited interest in the collateral the bank can only sell such interest. Where there is the right to sell without judicial authority, the sale can only be made after reasonable notice of the time and place of sale, unless such notice has been waived by agreement, made when the debt was contracted, or when the time of payment was extended, as provided by the second subsection.

Where railway bonds were deposited with a bank as collateral security to a promissory note, with a right on default

to resell " by giving notice in one daily paper, with power to the bank to buy in and resell," it was held that the sale should be by auction, and that the bank had no power to sell by private contract. See also a discussion of what would be a proper notice: *Toronto General Trusts* v. *Central Ontario Ry. Co.*, 10 O. L. R. 347 (1905).

79. Acquisition of real estate.—The bank may acquire and hold real and immovable property for its actual use and occupation and the management of its business, and may sell or dispose of the same, and acquire other property in its stead for the same purpose. 53 V., c. 31, s. 67.

This would not prevent the bank from buying, leasing, or erecting a larger building than actually needed for its own business, and renting the portion which it did not actually require. The validity of the transaction would turn upon whether it was required *bona fide* for its own business, or whether it was entered into as a speculation in violation of the Act: *Horsey's Claim*, L. R. 5 Eq. 561 (1868). The bank must be the sole judge of what is required for the purpose of its business: *Montreal and St. Lawrence L. & P. Co.* v. *Robert*, [1906] A. C. 196.

80. Mortgages as additional security.—The bank may take, hold and dispose of mortgages and *hypothèques* upon real or personal, immovable or movable property, by way of additional security for debts contracted to the bank in the course of its business.

2. The rights, powers and privileges which the bank is by this Act declared to have, or to have had, in respect of real or immovable property mortgaged to it, shall be held and possessed by it in respect of any personal or movable property which is mortgaged or hypothecated to the bank. 53 V., c. 31, s. 68.

This section is substantially the same as that in the Bank Act of 1850 of the old Province of Canada, which has been continued in the succeeding Acts. By section 76 a bank is prohibited, except as authorized by the Act, from lending money or making advances upon the security, mortgage, or

hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise. The present section contains some of the exceptions. A bank may not lend money upon such security; but it may take mortgages upon such property by way of additional security for debts contracted to the bank in the course of its business.

It will be observed that the expression used is "debts contracted" and not "debts previously contracted," as in the National Banking Act of the United States. Our jurisprudence has not been uniform as to whether our Act should be construed in the same sense as that of the United States. All are agreed that a mortgage cannot be taken to secure future advances. Opinions differ as to whether it can be taken to secure a debt contracted simultaneously with the taking of the mortgage as additional security. The weight of authority would appear to be that possibly it may be taken at the same time, provided it be clear that the money is not really advanced on the security of the mortgage. In a simultaneous transaction the presumption would be against its validity, and if only a very short time intervened this might be taken as a suspicious circumstance.

This question was discussed in two cases—one in Upper Canada before Confederation, and the other in Quebec since that event. In the former of these cases, *The Commercial Bank* v. *Bank of Upper Canada*, 7 Grant (1859), at page 430, Chief Justice Robinson says: "It is quite true that whenever the money is advanced, whether it be just before or at the time of making the mortgage, then there is literally a debt due, but not a debt contracted in the course of the business of the bank, that is, of its legitimate and proper business, which the lending money upon mortgage of real property certainly cannot be, until the statutes are repealed or altered. When it is shown that the mortgage in any case was taken by a bank "as an additional security for a debt contracted to it in the course of its business," then the question occurs whether that can only be taken to mean a debt that had been previously incurred with it in the course of its business, or whether a mortgage may not be taken as an additional security for a debt that had no previ-

ous existence, but which the bank was about to allow a party to contract, by advancing him money at that time in the proper course of their business. . . . I think it might perhaps be held that the spirit and intention of the Act are not opposed to it, and that a mortgage so taken might be upheld, when it appears that the mortgage was really and in truth taken to secure the transaction upon the bill, and not that the bill was created for the mere purpose of upholding and giving color to the mortgage. That would be a question of fact, upon which the conclusion that a jury might come to would be in general so uncertain that I dare say the banks will not think it prudent to risk their money on a real security in any such case, where the nature of the transaction might appear to be at all equivocal—so long, I mean, as the present statutes continue in force."

In the Quebec case, *Bank of Toronto* v. *Perkins*, 1 Dorion 362 (1881), Dorion, C.J., in giving the judgment of the Court, said: "I am of opinion that the transfer made to the appellant of a mortgage to secure an advance made on a promissory note discounted at the same time that the transfer was made, is an evasion of the Banking Act, 34 Vict. chap. 5, sec. 40, which forbids banks to advance on the security of real estate, and that this prohibition being in the public interest, a law of public policy, the transfer made by Bonnell to the appellant was null and void. The whole policy of the law is against such transactions. The one under consideration cannot come under section 41 of the Act, for it is not a debt contracted in the ordinary course of its business. Banks do not usually take mortgages to secure the notes which they discount. Section 41 of the Banking Act is not for the purpose of nullifying the disposition contained in the 46th section, but merely to enable the bank to secure themselves against the possibility of a loss by reason of a change in the position of the debtor or his indorsers, after the loan has been made."

This case was taken to the Supreme Court, where the judgment holding the mortgage to be invalid was affirmed. The language of some of the Judges would seem to imply that they considered the transaction void, because the mortgage was taken at the same time as the note was discounted.

or rather before, while some of the others were not prepared to put it on that ground. All of them, however, agreed that the real transaction was a loan upon the security of the mortgage, which was a violation of the Banking Act, and consequently void: 8 S. C. Can. 603 (1883).

The above case was followed in *Canadian Bank of Commerce* v. *McDonald*, 3 Western L. R. 90 (1906), where it was held that mortgages taken at the time of, or immediately after, the advance by the bank, were invalid under this section, but that the loan was not illegal and the bank was entitled to judgment for the money it had advanced.

This section of the Act does not purport to give a bank any right under a mortgage upon real or personal property beyond what might be claimed by an individual under the law of the province where the transaction takes place; so that the provincial law as to the form of the mortgage, its registration, etc., would apply. Thus in the Province of Quebec, where the law does not recognize chattel mortgages or mortgages on personal property, the present section would not make them valid or legal in favor of a bank even as an additional security. This, of course, is apart from the rights under the security of standing timber and timber licenses: sec. 84; and advances for building ships: sec. 85; and under bills of lading and warehouse receipts: sec. 86; and under the assignment by way of security: sec. 88.

Vessels being personal property the present section would authorize the taking of mortgages on them by way of additional security. Those upon British vessels are governed by the Imperial Merchant Shipping Act, 1894, 57-58 Vict. chap. 60, sec. 31; those upon Canadian vessels by R. S. C. chap. 113. As to mortgages on vessels for advances for their construction, see sec. 85 of this Act.

The bank may take such mortgages as additional security from its debtor, either by taking from him a mortgage on his own property, or by taking from him an assignment of a mortgage which he holds on the property of another, or by taking it as additional security from a third party.

The powers which a bank may exercise with respect to real estate on which it holds a mortgage are set out in sec-

tions 81, 82, and 83. All the powers conferred by these sections as to such real estate are by this section made applicable to personal property as well. This would include the right to deal with and dispose of such property in the same manner as individuals would have the right to do.

A question may arise as to whether the word "debts" is here used in the narrower sense of the English law as a sum of money due, or in the broader sense of an obligation or liability as in the civil law. For example, if a bank agreed to purchase debentures to be delivered at a future time, could it take a mortgage on real or personal property as additional security for the debt or liability thus contracted? It is possible that the meaning given to the word debt in this connection might be governed by the law of the province. In the case of *Carver* v. *Braintree*, 2 Storey's U. S. Circuit Court Reports, 432 (1843), it was held that in a statute making members of a corporation personally liable for "debts contracted" by the corporation, the words included not only debts in the narrower or technical sense, but any liabilities incurred by the corporation. See to the same effect *Mill Dam Foundry* v. *Hovey*, 21 Pickering (Mass.) 417 (1839).

ILLUSTRATIONS.

1. The Act of 1842 authorized banks to hold mortgages and hypotheques on real estate and property as additional security for debts contracted with them in the course of their dealings. This was held to mean real property only, and refer to pre-existing debts: *McDonell* v. *Bank of Upper Canada*, 7 U. C. Q. B. 252 (1850).

2. The Bank of Upper Canada having by its charter no right to hold vessels, either as owner or mortgagee, is not liable for supplies to the vessel, either on implied assumpsit or the promise of the directors: *Lyman* v. *Bank of Upper Canada*, 8 U. C. Q. B. 354 (1852).

3. Mortgages may be taken as additional security simultaneously with the discount of notes to which they are collateral: *Commercial Bank* v. *Bank of Upper Canada*, 7 Grant, 250 (1859).

4. The Bank of Upper Canada was held entitled to take as security, for previous advances, the interest of a railway company in a contract for the construction of certain cars, and to lease them to the railway company: *Bank of Upper Canada* v. *Killaly*, 21 U. C. Q. B. 9 (1861).

5. An unregistered chattel mortgage taken as additional security upheld against an assignee in insolvency: *Bank of Montreal* v. *McWhirter*, 17 U. C. C. P. 506 (1867).

6. A customer deposited title deeds with a bank. He swore that the mortgage thereby created was to secure future advances; the manager of the bank that it was as additional security for past indebtedness. The legality of the latter position and the banker's knowledge of the law were circumstances that partly led the Court to accept this view: *Royal Canadian Bank* v. *Cummer*, 15 Grant, 627 (1869).

7. A mortgage was taken by a bank as additional security for notes under discount, and renewals. Sums were paid in on other transactions, and these notes were paid by cheques drawn against the proceeds of other discounted notes. Held, that this mode of keeping the accounts had not operated as a discharge of the mortgage debt: *Cameron* v. *Kerr*, 3 Ont. A. R. 30 (1878); *Dominion Bank* v. *Oliver*, 17 O. R. 402 (1889).

8. A mortgage or pledge of timber limits in Quebec "for advances made and to be made" by a bank, is valid as to the former, and invalid as to the latter: *Grant* v. *Banque Nationale*, 9 O. R. 411 (1885).

9. Where a bank has taken a chattel mortgage as additional security, it may arrange for a sale and disposal of the mortgaged property. This is not a dealing in goods, but a realization of its securities: *Stewart* v. *Union Bank*, 15 Ont. A. R. 749 (1888).

10. An indorser took a mortgage on real estate belonging to a company to secure his indorsements of the company's paper discounted by a bank. He assigned the mortgage to the bank before the contemplated indorsements. This was not a violation of section 45 of the Bank Act, R. S. C. chap. 120: *Essex Land Co., Trout's Case*, 21 O. R. 367 (1891).

11. A bank took a mortgage on real estate as additional security to secure notes. An indorser of one of the notes being sued, pleaded that the bank had released some of the land without his consent. It was held that this was no defence to the action on the note, but the Court reserved his right to make the bank account to him for its dealings with the property when the security had answered its purpose, or the debt was paid by the sureties, or the application of the moneys from the security could be properly ascertained: *Molsons Bank* v. *Heilig*, 26 O. R. 276 (1895).

12. A bank may take an assignment of debts as additional security: *Rennie* v. *Quebec Bank*, 3 O. L. R. 541 (1902).

13. An assignment of a mortgage taken colorably as additional security on the discounting of a note, when the advance was in reality made on the security of the mortgage, is null: *Bank of Toronto* v. *Perkins*, 8 S. C. Can. 603 (1883); *Canadian Bank of Commerce* v. *McDonald*, 3 Western L. R. 90 (1906).

14. Where an accommodation indorser paid to a bank a note that had been discounted, he was held entitled to a mortgage on real estate given by the maker to the bank as collateral. It was urged in review for the first time that this mortgage was null as having been given for future advances. This claim was not allowed: not having been pleaded or legally proved: *McCaffrey* v. *La Banque du Peuple*, Q. R. 5 S. C. 135 (1894).

15. A chattel mortgage taken simultaneously with the discount of a note by a bank is void: *Bathgate* v. *Merchants Bank*, 5 Man. R. 210 (1888).

16. A debtor to a bank mortgaged to it certain stock in trade, and all future stock to be acquired during the currency of the mortgage, and assigned book debts, and agreed to assign all future book debts of the business as security for the debt of the bank. The chattel mortgage, besides the usual proviso for redemption, seizure and sale in case of default, etc., and for application of the proceeds, and covenants for payment, contained a covenant on the part of the bank to pay the then commercial indebtedness

of the mortgagor, and the expense of running the business out of the proceeds of the sale of the stock, and the book accounts and debt; but not so as to increase the then indebtedness to the bank, all moneys received being paid into the bank. When default occurred the bank took possession and sold, there not being enough to pay what was due to it. It was held that the securities taken were valid under the Bank Act, R. S. C. chap. 120, and that the debtor could not compel the bank to pay the other creditors or to share with them: *Gillies* v. *Commercial Bank*, 10 Man. R. 460 (1895).

17. Where a bank has taken a bill of sale of horses as additional security for a debt and sold some of the horses to the defendant and took his notes therefor, the bank is entitled to recover on such notes: *Bank of Hamilton* v. *Donaldson*, 13 Man. R. 378 (1901).

18. A customer of a bank gave a mortgage by the deposit of title deeds to secure advances to be made. This was *ultra vires*, but afterwards, when the bank sued, on condition of its not taking judgment, he agreed that the deeds should be a security for the sum for which judgment was about to be signed. This was held to be a valid security for a debt previously incurred: *National Bank of Australasia* v. *Cherry*, L. R. 3 P. C. 299 (1870).

19. The charter of a bank prohibited its making advances on merchandise. A statute allowed owners of sheep to give a preferential lien on the clip of wool from season to season. It was held that such a lien given to the bank for advances was valid: *Ayers* v. *South Australian Banking Co.*, L. R. 3 P. C. 548 (1871).

81. Purchases of realty.—The bank may purchase any lands or real or immovable property offered for sale,—

(*a*) under execution, or in insolvency, or under the order or decree of a court, as belonging to any debtor to the bank; or,

(*b*) by a mortgagee or other encumbrancer, having priority over a mortgage or other encumbrance held by the bank; or,

(*c*) by the bank under a power of sale given to it for that purpose;

in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title thereto as any individual, purchasing at sheriff's sale, or under a power of sale, in like circumstances could do, and may take, have, hold and dispose of the same at pleasure. 53 V., c. 31, s. 69.

Before 1890 the Bank Acts did not contain the above words authorizing the bank to purchase lands "offered for sale by a mortgagee or other encumbrancer having priority over a mortgage or other encumbrance held by the bank." An individual having a second mortgage has the same right to purchase as a stranger, and to buy the property at less than its value, even if he himself be in actual possession when the sale is held: *Shaw* v. *Bunny*, 33 Beav. 494 (1864); *Kirkwood* v. *Thompson*, 12 L. T. N. S. 811 (1865); *Harron* v. *Yernen*, 3 O. R. at p. 133 (1883). A mortgagee exercising the power of sale cannot become the purchaser either directly or indirectly.

A power of sale in a mortgage is something unknown to the law of Quebec. The nearest approach to it would perhaps be a power of attorney to sell, and even this is not used. Even if anything of the kind were attempted the section would not give the bank the right to purchase the mortgaged lands, as under similar circumstances in Quebec a private individual could not so purchase. The regular remedy would be for the bank to sue on its mortgage, and then to have the lands seized and sold by the sheriff, unless they are brought to sale by another execution creditor. The plaintiff or any other creditor may buy the property at the sheriff's sale. Such a sale purges the land of hypothecary and another privileged claims, creditors ranking on the proceeds according to their respective priorities.

The bank may also purchase personal or movable property mortgaged or hypothecated to it, when brought to sale in the manner pointed out in this section: sec. 80.

82. Acquiring title to mortgaged property.—The bank may acquire and hold an absolute title in or to real or immovable property mortgaged to it as security for a debt due or owing to it, either by the obtaining of a lease of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals an equity of redemption can, by law, be barred, and may purchase and acquire any prior mortgage or charge on such property.

2. Nothing in any charter, Act or law shall be construed as ever having been intended to prevent or as preventing the bank from acquiring and holding an absolute title to and in any such mortgaged real or immovable property, whatever the value thereof, or from exercising or acting upon any power of sale contained in any mortgage given to or held by the bank, authorizing or enabling it to sell or convey away any property so mortgaged. 53 V., c. 31, s. 71; 63-64 V., c. 26, s. 14.

The terms "equity of redemption," and "foreclosure" used in this section are unknown to Quebec law, and the means indicated are not applicable to that province. There a mortgage is a mere pledge or *hypothèque* of the property; the ownership and title remain in the mortgagor. As mentioned under the last section, a mortgage creditor realizes on his mortgage by getting judgment, seizing and selling the mortgaged property by the sheriff.

Under the last clause of sub-section 1 the bank could acquire prior mortgages in Quebec as well as in other provinces; and although the language of the first part of that sub-section is inapt, it would probably be held to be sufficient to authorize the bank to receive from the mortgagor a surrender or transfer of his rights or interest in the property.

Before these rights had been expressly conferred on banks, it was held that they had been impliedly given: *Bank of Upper Canada* v. *Scott*, 6 Grant 451 (1858). See to the same effect: *Bank of New South Wales* v. *Campbell*, 11 App. Cas. 192 (1886).

By section 80, a bank has like powers as to personal property mortgaged or hypothecated to it.

83. Property to be sold.—No bank shall hold any real or immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof, or any extension of such period as in this section provided, and such property shall be absolutely sold or disposed of, within such period or extended period, as the case may be, so that the bank shall no longer retain any interest therein unless by way of security.

2. The Treasury Board may direct that the time for the sale or disposal of any such real or immovable property shall be extended for a further period or periods, not to exceed five years.

3. The whole period during which the bank may so hold such property under the foregoing provisions of this section shall not exceed twelve years from the date of the acquisition thereof.

4. Any real or immovable property, not required by the bank for its own use, held by the bank for a longer period than authorized by the foregoing provisions of this section, shall be liable to be forfeited to His Majesty for the use of the Dominion of Canada: Provided that,—

(*a*) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the bank by the Minister of the intention of His Majesty to claim the forfeiture; and,

(*b*) the bank may, notwithstanding such notice, before the forfeiture is effected, sell or dispose of the property free from liability to forfeiture.

5. The provisions of this section shall apply to any real or immovable property heretofore acquired by the bank and held by it at the time of the coming into force of this Act. 63-64 V., c. 26, s. 14.

The first part of the above sub-section 1 providing that a bank shall not hold any real property not required for its own use more than seven years, was a proviso to section 70 of the Act of 1890. As pointed out in the first edition of this work, no penalty was provided except one of $500, and nothing was said as to what would become of the property. This was remedied in 1900 by enacting the remainder of the section which was made retroactive.

84. Loans on standing timber. — The bank may lend money upon the security of standing timber, and the rights or licenses held by persons to cut or remove such timber. 63-64 V., c. 26, s. 16.

This is an addition to the general powers of a bank as found in section 76. The authorization of loans upon the security for standing timber may be said to be a derogation from the prohibition to lend upon the security of land or immovable property, contained in the latter part of that section. The security of standing timber or of timber licenses is not put upon the same footing as mortgages upon real or personal property. A bank is only authorized to take the latter as additional security for debts contracted to it in the course of its business. Nor is it authorized to deal with such timber or licenses as it may do with negotiable securities. It may deal in, discount, lend money and make advances upon these latter or take them as collateral security. As to the former the present section merely authorizes the bank to lend money upon them.

Under the Bank Act of 1871, it was held in *Grant* v. *La Banque Nationale*, 9 Q. R. 411 (1885), that as to advances on timber limits before the pledge was made the security was valid; but that as to future advances the pledge of the limits was invalid.

Such rights or licenses have been sometimes treated as personal and sometimes as real property. For a discussion of the subject, especially as it affects the Province of Ontario, see *Hoeffler* v. *Irwin*, 8 O. L. R. 740 (1904).

The form in which the security should be taken would require to comply with the laws and regulations of the pro-

vince where the timber was situate. The Act has not prescribed any form.

85. Advances for building ships.—Every bank advancing money in aid of the building of any ship or vessel shall have the same right of acquiring and holding security upon such ship or vessel, while building and when completed, either by way of mortgage, *hypothèque*, hypothecation, privilege or lien thereon, or purchase or transfer thereof, as individuals have in the province wherein the ship or vessel is being built.

2. The bank may, for the purpose of obtaining and enforcing such security, avail itself of all such rights and means, and shall be subject to all such obligations, limitations and conditions, as are, by the law of such province, conferred or imposed upon individuals making such advances. 53 V., c. 31, s. 72.

The provisions of this section were first embodied in the Bank Act in 1872, and are an exception to the prohibition to a bank in section 76, to lend money or make advances on a ship or other vessel. It will be seen that the restrictions imposed on advances by banks on other kinds of property are removed, and the mortgage or other security may be taken either before, or at the time of, or subsequent to the advance, and either during the building or after the completion of the vessel. It also allows the bank to purchase the vessel to secure its advances. In addition to the rights thus given under provincial laws, the Dominion Act respecting the Registration of Ships, R. S. C. chap. 113, contains important provisions which by the present section are made applicable to banks. A ship about to be built, or being built, may be recorded with the nearest registrar of shipping, and a mortgage given for advances in aid of its building in the form contained in a schedule to the Act. Section 62 of the Act specially provides that deeds and documents relating to this matter in the Province of Quebec may be in notarial form.

Vessels being personal property, banks may, in addition to the rights conferred by this section, take a mortgage

upon them by way of additional security under section 80. The provisions of R. S. C. chap 113, above referred to, are enacted by the Dominion Parliament under the authority given it by section 91 of the British North America Act to make laws relating to Navigation and Shipping.

86. Warehouse receipts and bills of lading.—The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favor, or as security for any liability incurred by it for any person, in the course of its banking business.

2. Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof,—

(*a*) all the right and title to such warehouse receipt or bill of lading and to the goods covered thereby of the previous holder or owner thereof, or,

(*b*) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom the same were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favor of the bank instead of to the previous holder or owner of such goods, wares and merchandise. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15.

The words "or as security for any liability incurred by it for any person" in the fourth and fifth lines were added by section 15 of the Act of 1900 to what was the first subsection of section 73 of the Act of 1890.

This section may be said to contain another exception to the rule laid down in section 76, that except as authorized by the Act, no bank shall lend money on the security of any goods, wares or merchandise. The bank cannot purchase or discount the warehouse receipt or bill of lading, it can only take them as collateral security. Section 90 sets out the precise terms and conditions on which they may be taken by a bank. They may either be made out directly

in favor of the bank, or they may be negotiated to it by indorsement or delivery, as the case may be.

For the definition of "warehouse receipt," "bill of lading," and "goods, wares and merchandise," as used in the Act, see section 2 (*f*), (*g*) and (*h*).

Mortgages of real and personal property treated of in the preceding sections are such instruments as are recognized by that name under the laws of the respective provinces. The Act only authorizes banks to use them in part as individuals may under the respective provincial laws. Warehouse receipts and bills of lading in the present section and the "security" mentioned in section 88, on the other hand, are instruments defined in the present Act and may be in conflict with the laws of the various provinces. This has given rise to a constitutional question as to how far the Dominion Parliament, under the sub-sections of section 91 of the British North America Act relating to "Banking," "Shipping" or the "Regulation of Trade and Commerce," can legislate on the subjects of warehouse receipts or bills of lading, and whether such legislation is valid when it conflicts with that of the provinces legislating on the same subjects under the authority of section 92 regarding "Property and Civil Rights."

In Ontario the legislation regarding warehouse receipts and bills of lading is found in "The Mercantile Amendment Act," R. S. O. chap. 145. In Quebec it is to be found in R. S. Q., Arts. 5643-5650. The foundation of both these Acts was in the Consolidated Statutes of Canada, 1859, chap. 54, which provided that such documents should be transferable by indorsement. In Ontario there has been subsequent legislation which is embodied in the Mercantile Amendment Act above cited. In Quebec the law in force in the former Province of Canada at Confederation remains unchanged.

In the case of *Smith* v. *Merchants Bank*, 8 Ont. A. R. 15 (1883), the Judges of the Court of Appeal were of opinion that the Bank Act of 1871, in so far as it was in conflict with the law of Ontario on the subject, was invalid. Their judgment was, however, reversed in the Supreme Court: 8 S. C. Can. 512 (1884). The point was again raised in

Tennant v. *Union Bank*, 19 Ont. A. R. 1 (1892). It was not argued in the Court of Appeal, as that Court was bound by the decision of the Supreme Court on the subject. In the Privy Council it was held that, although the warehouse receipts in question were not valid securities under the provisions of the Ontario "Mercantile Amendment Act," the Dominion Bank Act validated them. It also held that subsection 15 of section 91 of the B. N. A. Act, relating to Banking, gave to the Dominion Parliament power to legislate respecting every transaction within the legitimate business of a banker, notwistanding that the exercise of such power interferes with "property and civil rights in the province," and confers upon a bank privileges as a lender which the provincial law does not recognize. Also, that legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in section 91, is of paramount authority even though it trenches upon the matters assigned to the provincial legislatures by section 92: *Tennant* v. *Union Bank*, [1894] A. C. 31.

It is to be observed that the conflict has arisen largely from the fact that successive Bank Acts, beginning with 1871, have introduced changes regarding the person who might give such a receipt, the class of property that might be covered by it, the place where the property might be kept and the like, most of the changes being in the direction of giving greater facilities, while corresponding changes were not made in the provincial laws regarding warehouse receipts in general.

Section 54 of the Bank Act, R. S. C. (1886) chap. 120, provided that the person granting a warehouse receipt might be the owner of the goods covered by it. In the present Act, the term warehouse receipt is only applied where the person granting it is not the owner of the goods. Section 88 provides for the case where they are the same person, and the instrument is simply called a "security." Not only the person who may grant this security, but also the kind of goods for which it may be granted, differ from the classes of persons and goods named in section 54.

A bank should be careful in taking a warehouse receipt to see that it complies with the definition in section 2 (*g*).

(i); and that the facts and circumstances connected with its issue and the document itself bring it as far as practicable within one or other of the classes marked (ii) and (iii) respectively. Section 90 indicates the conditions under which a bank may acquire a warehouse receipt.

A warehouse receipt or bill of lading can only be taken as collateral security for the payment of a debt incurred in favor of a bank or as security for some liability incurred by it in the course of its banking business, that is, business done by it in accordance with the terms of the Bank Act. The collateral security need not be furnished by the principal debtor; it may be for the payment of any debt, or for any liability incurred by it for any person.

A bank is bound to exercise ordinary diligence and care in looking after property which may be pledged to it in any of the ways authorized by the Act. As long as it does so, it is not liable for the loss of the property or for any damage done to it; nor is it prevented from suing for any amount of the secured debt: *Coggs* v. *Bernard*, 2 Ld. Raymond 909 (1703).

If the goods are held by the warehouseman or carrier to order the warehouse receipt or bill of lading is transferred by endorsement and delivery; if held for bearer, or if endorsed in blank it is transferable by delivery alone.

Every person wilfully making a false statement in a warehouse receipt or bill of lading given to a bank is liable to imprisonment for a term not exceeding two years: sec. 143.

Sub-section 2 provides that when a bank acquires a warehouse receipt or bill of lading as aforesaid it shall vest in the bank from the date of the acquisition thereof all the right and title to the instrument and to the goods covered thereby of the previous holder or owner; and if the instrument is issued directly in favour of the bank all the right and title to the goods mentioned therein of the person from whom the same were received or acquired by the bank.

After the acquisition by the bank of the instrument the previous holder or owner cannot give to any third party, nor can any creditor of such previous holder, or other person

acquire any claim upon the goods that will have priority over the claim of the bank.

Up to the time of the acquisition of the instrument by a bank the transaction or transactions relating to the instrument and the property covered by it would be governed by the provincial law as relating to "property and civil rights"; upon such acquisition the Dominion law would govern and would override any provincial law that might otherwise affect it: *Tennant* v. *Union Bank*, [1894] A. C. 31; *Traders Bank* v. *Brown*, 18 Q. R. 430 (1889). Section 89, s.s. 3, indicates how a bank may realize on such goods.

ILLUSTRATIONS.

1. Where there is a usage of trade authorizing it, a warehouse receipt may cover flour subsequently brought into the warehouse in the place of a similar quantity removed: *Wilmot* v. *Maitland*, 3 Grant 107 (1851). So of a bill of lading for wheat ground into flour: *Mason* v. *G. W. Ry. Co.*, 31 U. C. Q. B. 73 (1871).

2. A document in the following form, without any indorsement, is not a warehouse receipt under Con. Stat. Canada, chap. 54, or the Amending Act of 1861: "Received in store at our warehouse at . . . from sundry parties, 17,900 lbs. batting, to be delivered pursuant to the order of the Bank of British North America, to be indorsed thereon. The said batting is separate from," etc., etc.: *Bank of British North America* v. *Clarkson*, 19 U. C. C. P. 182, (1869). Followed in *Royal Canadian Bank* v. *Miller*, 29 U. C. Q. B. 266 (1870).

3. A shipper of flour sold it and delivered two bills of lading endorsed by him in blank to the purchaser, who got a bill discounted by a bank to pay for the flour, and attached to it one copy of the bill of lading as collateral. A person holding the other copy of the bill of lading got possession of the flour and disposed of it. It was held that a bill of lading signed by the purser was valid, that an indorsement of it in blank was sufficient under C. S. C. chap. 54, and that the bank was entitled to recover the full value of the flour: *Royal Canadian Bank* v. *Carruthers*, 29 U. C. Q. B. 283 (1870).

4. Where the usage of trade is that grain of the same quality received from different persons is stored together and mixed, a warehouse receipt covers the specified quantity of the quality mentioned: *Coffey* v. *Quebec Bank*, 20 U. C. C. P. 555 (1870); *Bank of Hamilton* v. *Noye Mfg. Co.*, 9 O. R. 631 (1885).

5. Where a bank held a warehouse receipt signed by the clerk of a warehouseman and indorsed by the latter, it was held that the receipt was invalid as the clerk was not a warehouseman, and the bank was not entitled to recover on an insurance policy assigned to it by the warehouseman: *Todd* v. *Liverpool Insurance Co.*, 20 U. C. C. P. 523 (1870).

6. The holder of warehouse receipts of grain had it insured, and then indorsed the warehouse receipts to a bank as collateral security. It was held that under the Dominion Act, 31 Vict. chap. 11, sec. 7, the property in the grain passed to the bank and he could not recover on a policy insuring him as owner: *McBride* v. *Gore Insurance Co.*, 30 U. C. Q. B. 451 (1870).

7. A shipping note given by the agent of a railway is a bill of lading within the Ontario Statute, 33 Vict. chap. 19, sec. 3. A bank is entitled to recover as indorsee without alleging that it received the bill of lading as collateral: *Royal Canadian Bank* v. *Grand Trunk Ry. Co.*, 23 U. C. C. P. 225 (1873).

8. A warehouse receipt indorsed to a bank for "40 bales of corks" not distinguishing by separate marks or values, held not to cover corks received in the warehouse after its date to replace others taken out, the bales having distinguishing marks and being of various values: *Llado* v. *Morgan*, 23 U. C. C. P. 517 (1874).

9. Incurring liability, as for instance, giving an accommodation note, is not contracting a debt, for securing which a warehouse receipt may be taken: *Cockburn* v. *Sylvester*, 1 Ont. A. R. 471 (1877); overruling *Re Coleman*, 36 U. C. Q. B. 559 (1875).

10. Where warehouse receipts are indorsed to a bank as collateral security. It was held that the indorser has still

an insurable interest in the goods: *Parsons* v. *Queen Ins. Co.*, 29 U. C. C. P. 188 (1878).

11. The provisions as to warehouse receipts in the Bank Act do not apply to foreign banks: *Commercial National Bank* v. *Corcoran*, 6 O. R. 527 (1884).

12. The giving to the bank of warehouse receipts as security for advances to the company in question was held not to be such a hypothecating, mortgaging or pledging of the company's property as required a by-law sanctioned by the shareholders under the Letters Patent Act: *Merchants Bank* v. *Hancock*, 6 O. R. 285 (1884).

13. Where a bank advanced money to consignees to pay the draft attached to a bill of lading and returned the latter to the consignees, who stored the grain and delivered the warehouse receipt to the bank it was held entitled to the grain as against execution creditors of the consignees: *Dominion Bank* v. *Davidson*, 12 Ont. A. R. 90 (1885).

14. A bank took several warehouse receipts as collateral security for notes discounted. The bank sold the goods, and the proceeds were more than the amount of the discounted paper. It claimed the right to apply the surplus on other debts of the customer, under a parol agreement. It was held that the bank had a right to do so: *Thompson* v. *Molsons Bank*, 16 S. C. Can. 664 (1889).

15. A firm of saw millers obtained from a bank advances on promissory notes indorsed by them. To the maker of the notes they gave warehouse receipts on logs, described as being in certain lakes in transit to the mills, and subsequently, in pursuance of a written agreement when the advances were made, gave warehouse receipts of the lumber manufactured from the logs. The maker of the notes indorsed the receipts to the bank. It was held that they were bad as to the logs, the lakes not being "places kept by the signers of the receipts," and good as to the lumber: *Tennant* v. *Union Bank*, 19 Ont. A. R. 1 (1892).

16. A commission firm composed of three partners stored some of its goods with a separate warehousing firm composed of two of the three. One of the warehousing firm gave receipts in its name to the third partner of the com-

mission firm for these goods and he transferred them to a bank as collateral security for notes of the commission firm which it discounted. Held that as the two firms were separate entities the transaction was valid: *Ontario Bank* v. *O'Reilly*, 12 O. L. R. 420 (1906).

17. A warehouseman is not liable for a loss resulting from a cause the danger and risk of which was made known to the owner of the goods at the time they were warehoused: *Fry* v. *Quebec Harbour Commissioners*, Q. R. 9 S. C. 14 (1896).

18. Goods held under a duly indorsed warehouse receipt as collateral security for advances may be properly and legally insured as being the property of the holder of such receipt, who had made advances on it: *Wilson* v. *Citizens Ins. Co.*, 19 L. C. J. 175 (1875).

19. A bank is not liable in damages for not giving notice of the arrival of goods to a customer to whom it has endorsed the bill of lading, even when it has received such notice. The customer should ascertain by what vessel the goods are coming or notify the agents of the marks on the goods and ask that he be informed of their arrival: *Masson* v. *Merchants Bank*, Q. R. 14 S. C. 293 (1898).

20. The plaintiff held a bill of lading with draft on the defendant attached. The latter received the bill of lading in order to inspect the goods. The railway kept the bill and cancelled it. Defendant took the goods but refused to accept the draft, alleging that the goods were not up to contract. Held that the plaintiff was entitled only to the proved value of the goods and not to the amount of the draft: *Imperial Bank* v. *Hull*, 5 Terr. L. R. 313 (1902).

21. A bank which has acquired a bill of lading as collateral security may redeliver it to the pledgor for a limited purpose, as for example, to sell the goods and hand over to it the proceeds towards satisfaction of the debt, without thereby losing its rights: *North Western Bank* v. *Poynter*, [1895] A. C. 56; *Inglis* v. *Robertson*, [1898] A. C. 616.

87. Previous holder an agent.—If the previous holder of such warehouse receipts or bill of lading is any person,—

(*a*) entrusted with the possession of the goods, wares and merchandise mentioned therein, by or by the authority of the owner thereof; or,

(*b*) to whom such goods, wares and merchandise are, by or by the authority of the owner thereof consigned; or,

(*c*) who, by or by the authority of the owner of such goods, wares and merchandise, is possessed of any bill of lading, receipt, order or other document covering the same, such as is used in the course of business as proof of the possession or control of goods, wares and merchandise, or as authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such a document to transfer or receive the goods, wares and merchandise thereby represented;

the bank shall be, upon the acquisition of such warehouse receipt or bill of lading, vested with all the right and title of the owner of such goods, wares and merchandise, subject to the right of the owner to have the same re-transferred to him if the debt or liability, as security for which such warehouse receipt or bill of lading is held by the bank, is paid.

2. Any person shall be deemed to be the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid,—

(*a*) who is in actual possession thereof; or

(*b*) for whom, or subject to whose control, the same are held by any person. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15.

The present section is a consolidation by the revisors of 1906 of sub-sections 2 and 3 of section 73 of the Act of 1890, as amended in 1900. The "previous holder," described in clauses (*a*), (*b*) and (*c*) above, was called an "agent" in sub-section 2, and the effect of his transfer of the warehouse receipt or bill of lading to the bank was described in the same language as in the above section. In sub-section 3 the word "agent" was defined in the terms of clauses (*a*), (*b*)

and (*c*) above, and the term "possessor" defined as in sub-section 2 of the present section. The recasting of the section does not appear to have affected its meaning or effect; it is simply a substitution of the statutory definition of an agent for the word "agent" itself, when he is the "previous holder" mentioned in section 86.

In the discussion of the section it will be convenient to use the term "agent" for the previous holder described in sub-section 1.

Such an agent may transfer to a bank a warehouse receipt or bill of lading under the circumstances mentioned in section 90, and the bank become vested with all the right and title of the owner as above indicated, even if the agent has no right to pledge the receipt or bill and is acting fraudulently, provided of course the bank itself is acting in good faith.

If the agent is a warehouseman he cannot give the bank a valid warehouse receipt for the goods of his principal which he has in store.

The powers given to an agent under this section are among those conferred on agents under the Factors Acts. The Ontario Act is R. S. O. chap. 150. Section 2 provides that such an agent may sell or pledge the goods of his principal. The clauses corresponding to the present section are as follows: "2. Any agent entrusted with the possession of goods or of the documents of title thereto, shall be deemed the owner thereof for the following purposes, that is to say: * * * (3) To give validity to any agreement by way of pledge, lien or security, *bona fide* made with such agent, as well for an original loan, advance or payment made upon the security of the goods or documents, as for any further or continuing advance in respect thereof; and (4) To make such contract binding upon the owner of the goods and on all other persons interested therein, notwithstanding the person claiming such pledge or lien had notice that he was contracting only with an agent." "Documents of title" in the foregoing section includes warehouse receipts and bills of lading. By section 16 the owner may redeem the goods on paying the amount of the lien.

The law of Quebec is found in Article 1740 of the Civil Code, and is in the same words as the Ontario Statute, both having been taken from chapter 59 of the Consolidated Statutes of Canada.

A bank may avail itself of the provisions of the provincial law in so far as the business of banking would justify, and there is no statutory prohibition of the transaction in question.

The English Factors Act, 1889, is to the same effect. It has been held by the English Courts that bankers and others dealing with such agents or factors are protected if they are acting in good faith, notwithstanding the bad faith of the agent, or the revocation of his authority. See *Naval-Shaw* v. *Brownrigg*, 2 DeG. M. & G. 441 (1852); *Chunder Sein* v. *Ryan*, 5 L. T. N. S. 559 (1861); *Sheppard* v. *Union Bank*, 7 H. & N. 661 (1862); *Jewan* v. *Whitworth*, L. R. 2 Eq. 692 (1866); *Portalis* v. *Tetley*, L. R. 5 Eq. 140 (1867).

The pledge of goods to a bank by a trader as collateral security, the goods being held by him under warehouse receipts duly indorsed to him, and the pledge being in the course of the bank's regular business, is a commercial matter, and the bank receiving such pledge in good faith and not knowing that the goods did not belong to the pledger, thereby acquires a valid title to the goods, and the right to dispose of them for its benefit: *Canadian Bank of Commerce* v. *Stevenson*, Q. R. 1 Q. B. 371 (1892). See also *Robertson* v. *Lajoie*, 22 L. C. J. 169 (1878).

As to goods themselves, it will be observed that in this section the agent must be a person "entrusted" with their possession, or one to whom they have been consigned. As to documents of title, it is enough that he be "possessed" of them. Under the Factors Act he requires to have been "entrusted" with the latter as well as with the former. It remains to be seen what restrictions, if any, the Courts will place upon the somewhat general language of the Act.

In the case of *Bush* v. *Fry*, 15 O. R. 122 (1887), the question of what was necessary to constitute an agent under R. S. O. chap. 150, was considered. A piano was shipped to a music teacher on the representation that he had

a customer for it. If this customer did not buy he was to return it. He shipped it to another city, consigned to a name which he had assumed, where he obtained advances on it. It was held that he was not an "agent" within the meaning of the Act, and that he was not "entrusted," and there was no valid lien for the advances.

In *Heyman* v. *Flewker*, 13 C. B. N. S. 519 (1863), Willes, J., said: "The term 'agent' does not include a mere servant or caretaker, or one who has possession of goods for carriage, safe custody, or otherwise, as an independent contracting party; but only persons whose employment corresponds to that of some known kind of commercial agent like that class (Factors) from which the Act has taken its name." In *Cole* v. *North Western Bank*, L. R. 10 C. P. 354 (1875), it was held that a warehouseman with whom goods were deposited, was not an "agent" or "entrusted with the possession of goods" within the Factors Act, although he used also frequently to sell such goods. In *Johnson* v. *Credit Lyonnais*, 3 C. P. D. 32 (1877), a vendor who retained the documents of title, and fraudulently obtained advances on them, was held not to be the agent of the vendee.

In *City Bank* v. *Barrow*, 5 App. Cas. 664 (1880), Art. 1740 of the Quebec Civil Code above cited was considered. An English merchant sent hides to a Montreal tanner to be tanned. He pledged the hides to the Bank of Toronto. It was held that he was not a factor or agent entitled to do so, and that the bank had no lien as against the owner. In this case Lord Blackburn cited approvingly the case of *Cole* v. *North Western Bank* as establishing "that an agent who can pledge or sell must be an agent of that class which, like factors, have a business which, when carried to its legitimate result, would properly end in selling or in receiving payment for goods. That would be a kind of class; factors and agents, in the class of factors. If such a person is 'entrusted,' and is entrusted in that capacity, then, in the absence of bad faith on the part of the pledgee, the pledge is good."

In this case it was held by the Privy Council that Articles 1488, 1489 and 2268 of the Civil Code, which make valid a

sale if it be a commercial matter, or if the article be bought in good faith in a fair or market or at a public sale, or from a trader dealing in similar articles, even though the article had been stolen, did not apply to a case of pledge. The Quebec Statute, 42-43 Vict. chap. 19, was subsequently passed declaring that they should also apply to a contract of pledge.

If the agent has validly pledged the goods for a portion of their value, they are held by the pledgee for him within the meaning of the last clause of the section, so that he may pledge them for further advances: *Portalis* v. *Tetley*, L. R. 5 Eq. 140 (1867).

88. Loans to wholesale dealers or manufacturers.—The bank may lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock and the products thereof, upon the security of such products, or of such live stock or dead stock and the products thereof.

2. The bank may allow the goods, wares and merchandise covered by such security to be removed and other goods, wares and merchandise, such as mentioned in the last preceding sub-section, to be substituted therefor, if the goods, wares and merchandise so substituted are of substantially the same character and of substantially the same value as, or of less value than, those for which they hae been so substituted; and the goods, wares and merchandise so substituted shall be covered by such security as if originally covered thereby.

3. The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture.

4. Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of said goods, wares and merchandise, stock or products.

5. The security may be taken in the form set forth in schedule C to this Act, or to the like effect.

6. The bank shall, by virtue of such security, acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt. 53 V., c. 31, s. 74; 63-64 V., c. 26, s. 17.

This section is a much greater innovation on provincial law than the preceding sections relating to warehouse receipts and bills of lading. In those provinces which recognize change of ownership or of legal relation respecting personal property without change of possession, or change of possession without change of ownership or legal relation. Acts relating to bills of sale, to chattel mortgages, and to conditional sales and the like, have been passed requiring as a rule some form of registration of the transaction or other form of publicity. In the Province of Quebec chattel mortgages are not recognized, and as a rule the apparent ownership of personal or movable property corresponds with the real ownership.

Prior to 1890 there had been embodied in the Bank Acts from time to time provisions allowing certain classes of persons to give to banks, either by endorsement or directly, warehouse receipts for goods that were their own property. A change was made by the Act of 1890 in giving a definition of a warehouse receipt which made it a condition that the goods should not be the property of the person giving the receipt. That Act, however, by section 74, introduced a new instrument called a "security," by which the classes of persons named in the section could assign to a bank the kinds of property therein enumerated, and the bank thereby acquire most of the rights and privileges previously acquired by warehouse receipts, besides some additional ones. In 1900 the section was amended by adding the words "dealer" and "quarry" in what is now sub-section 1, and by adding sub-section 2. Sub-section 3 of the present revision was originally sub-section 1.

89. Goods manufactured from articles pledged.—If goods, wares and merchandise are manufactured or produced

from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or included in or covered by any security given under the last preceding section, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title, and for the same purposes and upon the same conditions, as it held or could have held the original goods, wares and merchandise.

2. All advances made on the security of any bill of lading or warehouse receipt, or of any security given under the last preceding section, shall give to the bank making the advances a claim for the repayment of the advances on the goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor: Provided that such preference shall not be given over the claim of any unpaid vendor who had a lien upon the goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

3. In the event of the non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading, or secured by any security given under the last preceding section, the bank may sell the goods, wares and merchandise mentioned therein, or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the warehouse receipt, bill of lading, or security, or the goods, wares and merchandise mentioned therein, as the case may be, were acquired: Provided that such power of sale shall be exercised subject to the following provisions, namely:—

(*a*) No sale, without the consent in writing of the owner of any timber, boards, deals, staves, saw-logs or other lumber, shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledger thereof, at least thirty days prior to the sale thereof;

(*b*) No goods, wares and merchandise, other than timber, boards, deals, staves, saw-logs or other lumber, shall be sold by the bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledger thereof, at least ten days prior to the sale thereof;

(*c*) Every sale, under such power of sale, without the consent of the owner, shall be made by public auction, after notice thereof by advertisement, in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof; and, if the sale is in the province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one other such newspaper shall be a newspaper published in the French language. 53 V., c. 31, ss. 76, 77 and 78; 63-64 V., c. 26, s. 19.

In the Bank Act, R. S. C. (1886), chap. 120, the principle of sub-section 1 applied only to cereal grains manufactured into flour or malt, or hogs manufactured into pork, bacon or hams. In 1890 it was made applicable to all manufactured articles. Where other goods than those covered by the warehouse receipt or security enter into the composition of the manufactured articles nice questions may arise. If these other goods belong to the manufacturer there probably would be no difficulty, as that might be considered to be in the contemplation of the parties, and the blame, if any, would be on the manufacturer himself.

If, however, he should combine material covered by two or more warhouse receipts or assignments under section 88, the difficulty would be greater. In that case the question would be settled by the provincial law, as the Act is silent on the point. In Quebec the Civil Code lays down a series of rules in Articles 429 to 442; the principle being that the product might be divided according to the respective interests of the parties, or if not divisible, the party having the greatest interest might claim the whole on paying the others what they are entitled to.

In *Re Goodfallow*, 19 O. R. 299 (1890), a miller gave a bank a warehouse receipt for a certain quantity of "wheat and its product." It was held that once the wheat in the mill was reduced to a quantity equal to or less than the amount in the receipt, the whole of it belonged to the bank, and so long as "the product" could be traced, whether in flour or in money, it was recoverable by the bank as against the administrator of the miller.

Where corn had been transferred to a bank by a miller as security for advances under section 74 of the Act of 1890, to be ground and sold and the proceeds given to the bank, such proceeds may be recovered by the bank from another creditor of the miller to whom they had been assigned and who had a knowledge of the facts at the time: *Union Bank* v. *Spinney*, 38 S. C. Can. 187 (1906).

The principle laid down in this section had been adopted by the Courts before it had been incorporated in the statute. See *Wilmot* v. *Maitland*, 3 Grant, 107 (1851); *Mason* v. *G. W. Ry. Co.*, 31 U. C. Q. B. 73 (1871).

Preference over unpaid vendor.—The preceding sub-section gives a bank a right to hold goods even when their form is changed. The present one gives it priority for its claim over the unpaid vendor, who, under the law of Quebec, ranks above the pledgee. By Article 1994 of the Civil Code privileged claims upon movable property rank in the following order: "1. Law costs and all expenses incurred in the interest of the mass of the creditors. 2. Tithes. 3. The claims of the vendor. 4. The claims of creditors who have a right of pledge or of retention."

Article 1994c provides that the claim of a workman for cutting, drawing or rafting logs or timber shall not affect the rights of a bank under the Banking Act.

Article 1998: "The unpaid vendor of a thing has two privileged rights: 1. A right to revendicate it. 2. A right of preference upon its price. In the case of insolvent traders these rights must be exercised within fifteen days after the delivery."

Article 1999: "The right to revendicate is subject to four conditions: 1. The sale must not have been made on credit. 2. The thing must still be entire and in the same condition. 3. The thing must not have passed into the hands of a third party who has paid for it. 4. It must be exercised within either days after the delivery, saving the provisions concerning insolvent traders contained in the last preceding article."

Article 2000: "If the thing be sold pending the proceedings in revendication, or if, when the thing is seized at the suit of a third party, the vendor be within the delay and the thing in the condition prescribed for revendication, the vendor has a privilege upon the proceeds in preference to all other privileged creditors hereinafter mentioned. If the thing be still in the same condition, but the vendor be no longer within the delay, or have given credit, he has a like privilege upon the proceeds, except as regards the lessor or the pledgee."

The effect of the sub-section is that if the bank has notice of the claim of the unpaid vendor it will rank after him; if it had not such notice at the time it acquired its lien it will have priority over him. The rule laid down in the case of *Tennant* v. *The Union Bank*, [1894] A. C. 31, would appear to uphold the constitutionality of this provision, which overrides the civil law of the province.

Sale of goods on non-payment of debt. — Sub-section 3 provides for the sale of the pledged goods by the bank when the debt or liability is not met at maturity.

It is a well settled rule of the English common law that a pledgee, upon default, may sell at public auction goods or

chattels that are pledged without judicial process and decree of foreclosure, upon giving the debtor reasonable notice to redeem: *Tucker* v. *Wilson*, 1 Peere Williams, 261 (1714); *Lockwood* v. *Ewer*, 9 Modern, 275 (1742); *Kemp* v. *Westbrook*, 1 Vesey, Sr., 278 (1749); *Pigot* v. *Cubley*, 15 Common Bench (N.S.), 701 (1864); *Deverges* v. *Sandeman*, [1902] 1 Ch. 579.

In the Province of Quebec under the civil law the pledgee has no such right. His remedy is to get judgment against the debtor, seize and sell the goods pledged, and obtain payment by preference out of the proceeds: Civil Code, Art. 1971.

The effect of this sub-section is to make the law of England for the sale of such pledged goods applicable to the whole Dominion.

The provisions of this sub-section as to the method of sale of pledged goods are those that are to govern in the absence of consent by the owner to a sale otherwise. With such consent any or all of the provisions may be dispensed with, and banks as a rule obtain such consent when the goods are pledged. It is to be noticed that in the case of timber or lumber the notice by registered letter can only be waived by a consent in writing, while as to other goods a written consent is not necessary. For both of these classes of goods the waiver of the sale by public auction and of the advertisement in two newspapers the consent need not be in writing.

The two clauses as to notice by registered letter are negative and prohibitory. If a sale were made without such notice, it would appear to be null, at least in the province of Quebec, where the rule of the civil law prevails that "prohibitive laws import nullity, although such nullity be not therein expressed": C. C. Art. 14. In such a case the bank might be liable in damages for its illegal act, besides being subject to the penalty of $500 under section 142.

It will be noticed that clause (*c*) is affirmative in form and not negative so that the foregoing remarks would not apply to it. The selling by auction would probably be held to be essential, as neither the statute nor the common law

would authorize a sale in any other way. The want of notice in the newspapers might not be fatal if reasonable notice were given otherwise, unless the prohibition in section 76 would have that effect. By that section the bank is prohibited, except as authorized by the Act, from dealing in the buying or selling or bartering of goods or from engaging in any trade or business whatsoever, or from lending money or making advances upon the security of any goods, wares or merchandise. This would no doubt prevent the bank from lending upon warehouse receipts that might comply with the provincial law and upon which a private individual or another corporation might acquire a good security. It would probably also be held to prevent a bank from realizing on its security, in a manner authorized by the provincial law and thus open to other lenders of money.

When a bank sells goods which had been pledged to it, covered by a bill of lading, it may become liable to the purchaser upon an implied warranty of title: *Pewchen* v. *Imperial Bank*, 20 O. R. 325 (1890). See also *Confederation Life* v. *Labatt*, 27 Ont. A. R. 321 (1900).

90. When bank may take security.—The bank shall not acquire or hold any warehouse receipt or bill of lading, or any such security as aforesaid, to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt or liability is negotiated or contracted,—

(*a*) at the time of the acquisition thereof by the bank; or,

(*b*) upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank;

Provided that such bill, note, debt, or liability may be renewed, or the time for the payment thereof extended, without affecting any such security.

2. The bank may,—

(*a*) on shipment of any goods, wares and merchandise for which it holds a warehouse receipt, or any such security as aforesaid, surrender such receipt

or security and receive a bill of lading in exchange therefor; or,

(*b*) on the receipt of any goods, wares and merchandise for which it holds a bill of lading, or any such security as aforesaid, surrender such bill of lading or security, store the goods, wares and merchandise, and take a warehouse receipt therefor, or ship the goods, wares and merchandise, or part of them, and take another bill of lading therefor. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 18.

A warehouse receipt or bill of lading, or a security under section 88 can only be taken as collateral security by a bank (1) if the bill or note is negotiated at the time the bank acquires the security, or (2) if the debt or liability is contracted at the time of such acquisition, or (3) if at the time the bill or note is negotiated or the debt or liability contracted there is a written promise or agreement that such warehouse receipt or bill of lading or security shall be given.

There are several grounds for a somewhat strict interpretation of the present section, and others of a like nature. The general rule is laid down in section 76, viz., that a bank shall not, except as authorized by the Act, either directly or indirectly lend money on the security of any goods, wares or merchandise. Sections 86 and 88, which are among the exceptions to 76, are controlled by the present section, which is prohibitory in declaring that a bank shall not acquire or hold any of the documents of title named, except on the terms indicated.

By section 60 of the Bills of Exchange Act "a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill." "Holder" in that Act is defined as the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof. He need not be the owner, he may have it merely for discount, collection or the like; so that the negotiation of a bill or note is not necessarily a sale of the instrument, but may be a pledging or a mere transfer of possession, provided the transferee is in a position thereby to acquire the status of a holder as above defined. The word

"negotiated" would appear to be used in a narrower sense in this section. Its being joined with the words "debt or liability contracted" would seem to restrict it to the purchase or discount of the bill or note by the bank, and not to include the renewal, which is trtated as something distinct, in the concluding part of the section. See *Jonmenjoy Coondoo* v. *Watson*, 9 App. Cas. 561 (1884).

In the *Bank of Hamilton* v. *Shepherd*, 21 Ont. A. R. 156 (1894), a warehouse receipt was taken by the bank on the renewal of a note, no actual advance being then made. It was held that this was not a negotiation, and the bank was not entitled to hold the security.

The fact that when the renewal note and the warehouse receipt were taken by the bank, another warehouse receipt, which had been taken when the debt was contracted, was surrendered, was held not to be a negotiation or sufficient to bring the transaction within the provisions of this section. In *Bank of Hamilton* v. *Noye*, 9 O. R. 631 (1885), it had been considered that the surrender of the antecedent lien and the taking of a new one with the renewal, might be treated as a negotiation within the meaning of the definition given in *Foster* v. *Bowes*, 2 P. R. 256 (1857).

In the *Bank of Hamilton* v. *Halstead*, 28 S. C. Can. 235 (1897), where notes were discounted and the proceeds placed to the credit of the customer when the assignments were given, but the moneys were really under the control of the bank, it was held that the notes were not "negotiated" within the meaning of this section, nor was there any "debt" contracted at the time, and that the securities were consequently void as against the assignee for creditors.

In the *Dominion Bank* v. *Oliver*, 17 O. R. 402 (1889), it was pointed out by Boyd, C., that in the corresponding clause of the former Act the negotiation of a note is put in contrast with its renewal; and that the mere renewal cannot be read as meaning negotiation. See to the same effect *Bank of British North America* v. *Clarkson*, 19 U. C. C. P. 182 (1869).

Where a warehouse receipt was indorsed to the acceptor of an accommodation bill by way of security for his acceptance, it was held that there was no debt contracted at the

time so as to give the accepor a valid claim to the property mentioned in the warehouse receipt: *Cockburn* v. *Sylvester*, 1 Ont. A. R. 471 (1877).

When warehouse receipts were transferred to a bank by indorsement and instrument of hypothecation contemporaneously with the discount of a promissory note made by the holders of the receipts and the placing of the proceeds of the discount to the credit of such holders, the transaction was upheld although the account was generally overdrawn when such transactions took place, such proceeds being placed freely at the disposal of the customers: *Ontario Bank* v. *O'Reilly*, 12 O. L. R. 420 (1906); *Toronto Cream & B. Co.* v. *Crown Bank*, 11 O. W. R. 776 (1908).

A warehouse receipt may be transferred by indorsement as collateral security for a debt contracted at the time. The obligation contracted at the time may be made to cover future advances, but not past indebtedness: *Robertson* v. *Lajoie*, 22 L. C. J. 169 (1878).

Where a debtor pledged warehouse receipts as collateral security for drafts, and agreed that if the proceeds of the goods were more than sufficient to pay these drafts the surplus should go to pay an old indebtedness, the agreement was held void as to the latter: *Perkins* v. *Ross*, 6 Q. L. R. 65 (1880).

Where a lumber company gave to a bank documents pledging logs in a river as security for previous advances, the bank acquired no lien on the logs: *Ross* v. *Molsons Bank*, 2 Dorion, 82 (1881).

Where a bank took a security which was claimed to be irregular, but the customer in compromise of a suit agreed that the bank should sell the goods and apply the proceeds to his idebtedness, the bank was entitled to hold them as against the sheriff who subsequently levied on them under an execution against the customer: *Armstrong* v. *Buchanan*, 35 N. S. R. 559 (1903).

Written promise or agreement.—The Bank Act of 1871 provided that the bill of lading or receipt should be transferred only when the bill or note was negotiated or the debt contracted, unless at that time there was an "understanding" that they should be given subsequently. In the Bank

Act, R. S. C. (1886), chap. 120, the word used is "promise"; in the Act of 1890 the words "written promise or agreement" were substituted. Although these words have been so long used in this connection it is surprising how seldom they have come up for judicial interpretation.

In the *Royal Canadian Bank* v. *Ross*, 40 U. C. Q. B. 466 (1877), the bank made advances to be secured by bills of lading and warehouse receipts for coal and stone when received. The goods came from time to time, and bills of lading and warehouse receipts were given to the bank. The transactions were sustained, and it was held to be no objection that the agreement was to give bills and receipts for goods, of which, at the time, the customer was not possessed. See to the same effect, *McCrae* v. *Molsons Bank*, 25 Grant, 519 (1878); and *Re Central Bank, Canada Shipping Co.'s Case*, 21 O. R. 515 (1891). In *Suter* v. *Merchants' Bank*, 24 Grant, 365 (1877), a manufacturer, when getting advances from the bank, proposed that he should warehouse his goods as manufactured and pledge the receipts with the bank. This was agreed to, and such receipts given from time to time. It was held that it was no objection that the goods and receipt were not in existence at the time of the agreement. It was contended by plaintiff that the alleged agreement was not valid as it did not specify the number of cases or their value. This was held not to be too vague or uncertain to entitle the bank to hold the receipts. In *Tennant* v. *Union Bank*, 19 Ont. A. R. 1 (1892), the bank made advances to mill owners for getting out logs, on a promise that warehouse receipts would be given to the bank on the lumber to be manufactured from them. These were given from time to time as the lumber was manufactured and piled in the yard of the mill owners. The bank was held entitled to the lumber covered by these receipts.

A somewhat analogous case is that where a chattel mortgage has been given in accordance with the previous promise or agreement, and it is sought to set it aside as a fraudulent preference. Instances of preferences being sustained on the ground of a previous promise or agreement will be found in *Ex parte Hodgkin*, L. R. 20 Eq. 746 (1875); *Allan* v. *Clarkson*, 17 Grant, 570 (1870); *McRoberts* v. *Steinoff*, 11

O. R. 369 (1886); *Clarkson* v. *Sterling*, 15 Ont. A. R. 234 (1888); *Embury* v. *West*, *ibid.* 357 (1888); *Lawson* v. *McGeoch*, 20 Ont. A. R. 464 (1893).

In scarcely any of the cases on the subject do the precise terms of the agreement come in question. In most of them all that appears is that there was an agreement to give security. Once this was clearly proved it seems to have been considered, as a rule, that the conditions were met. In *Lawson* v. *McGeoch*, *supra*, at page 475, Maclennan, J., says: "It is said that the agreement was too vague and uncertain to be attended to as it is not shown that any particular goods were mentioned, which were to be mortgaged. I am not pressed with this objection. The debtor was a farmer, and the mortgage was to be a chattel mortgage. I think that means a mortgage of the debtor's chattels and that the defendant could have selected a sufficient quantity of the debtor's goods, and have required a mortgage upon them."

It is probable that, in accordance with the favor shown to commercial and banking transactions, a promise or agreement to give one of the securities mentioned in this section would be more liberally construed than one to give a chattel mortgage. In drawing up such an agreement care should be taken that it is made wide enough. The promise may include more than the receipt or the security, but the latter cannot cover more than the promise. The property need not be in the possession of the customer, or even in existence, when the customer obtains the advance, but it must be in contemplation that he is to acquire it. The promise may be to give the securities from time to time. An agreement to give a bill of lading, warehouse receipt or security for a certain class of goods up to a certain quantity, or up to a certain value, would probably be a sufficient compliance with the law.

In this way by an agreement with a wholesale manufacturer, or purchaser or shipper, mentioned in section 88, a bank might, when making advances, provide that securities should be given it from time to time as the goods are manufactured or purchased, and thus keep its claim secured, while allowing the business to be carried on.

Renewal.—A bill or note may be renewed or the time extended without affecting any such security. If taken as security for more than one bill or note it would not be necessary that they should be kept distinct in taking renewals, provided the new bills or notes did not in the aggregate amount to more than the old with the interest added, and provided no additional debt were included in any of the new paper: *Barber* v. *Mackrell*, W. N. 1892, p. 133.

Exchange of securities.—Subsection 2 provides for the conversion of one of these classes of securities into another when the bank ships goods which it holds under a warehouse receipt or security, or when it receives goods for which it holds a bill of lading or such security.

A purchaser of hops had given a bank securities under section 74 on the hops. At the request of the bank he constituted his bookkeeper his warehouseman, and the latter issued warehouse receipts to the bank in substitution for these securities, there being no new advance. It was held that this exchange was valid under this sub-section: *Conn* v. *Smith*, 28 O. R. 629 (1897).

Section 143 provides for imprisonment for a term not exceeding two years for wilfully making a false statement in any one of the documents named in this section; and section 144 provides the same punishment for any person who has control of the goods covered by any such document wrongfully alienating or parting with the goods or withholding the same from the bank.

91. Rate of interest charged.—The bank may stipulate for, take, reserve or exact any rate of interest or discount, not exceeding seven per centum per annum, and may receive and take in advance, any such rate, but no higher rate of interest shall be recoverable by the bank. 53 V., c. 31, s. 80.

This section and the following one formed part of section 80 of the Act of 1890, the whole section reading as follows: "80. The bank shall not be liable to incur any penalty or forfeiture for usury, and may stipulate for, take, reserve or exact any rate of interest or discount not exceed-

ing seven per cent. per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by the bank; and the bank may allow any rate of interest whatever upon money deposited with it." This latter section was first enacted in the Bank Act of 1867, 31 Vict. chap. 11 sec. 17. In the old Province of Canada, by C. S. C. chap. 58, sec. 4, it was enacted that "no bank may stipulate for, take, reserve, or exact a higher rate of discount or interest than seven per cent. per annum, and that any rate of interest not exceeding seven per cent. per annum may be received and taken in advance by any such bank," and by the eighth section "six per cent. per annum shall continue to be the rate of interest in all cases where, by the agreement of the parties or by law, interest is payable, and no rate has been fixed by the parties or by the law." *The Commercial Bank* v. *Cotton*, 17 U. C. C. P. 214 (1866), and in appeal, *ibid.* 447 (1867), decided that the effect of the 9th section of that Act was, that as to any bank violating the provisions of the Act, as a punishment for that violation, the note or other security taken is declared void, and that the corporation should be liable to the further penalty of three times the value of the moneys lent or bargained for.

The Act of 1867, above cited, abolished all penalties and forfeitures for usury as against banks, that may have been in force in any of the provinces. Since that time a bank could not recover more than seven per cent. If, however, a higher rate were paid, would the customer be entitled to recover it back? On this point the decisions have not been uniform.

In *Barnhart* v. *Robertson*, 6 O. S. 542 (1843), it was held that a plaintiff who had voluntarily paid more than the legal rate could maintain an action to recover the excess. Under the Act of 1853 the contrary was held in *Kaines* v. *Stacey*, 9 U. C. C. P. 355 (1859); *Jarvis* v. *Clark*, 10 U. C. C. P. 480 (1860); *Quinlan* v. *Gordon*, 20 Grant, Appendix I. (1861); *Hutton* v. *Federal Bank*, 9 Ont. P. R. 568 (1883).

In the Province of Quebec also the jurisprudence has been conflicting. In *Nye* v. *Malo*, 7 L. C. R. 405 (1857),

it was held in appeal that under the law of 1853, abolishing the penalties for usury, the maker of a promissory note, whereon interest at a higher rate than that allowed by law had been retained or paid, was entitled to have the excess deducted from the principal. In *Massue* v. *Dansereau*, 10 L. C. J. 179 (1865), the Court of Appeal, by three Judges against two, reversed the Court below, and decided that money paid voluntarily in excess of the legal rate, could not be recovered back. The question was raised in another case which went from Lower Canada to the Privy Council, *Kierzkowski* v. *Dorion*, 5 Moore (N.S.), 397 (1868), but their lordships there decided the case upon another ground. They say, however (p. 430), "But an action to recover such excess could not properly be called a civil proceeding for usury, the words of the Act (16 Viet. chap. 8) evidently pointing to a proceeding upon the fact of usury itself and not upon claims which resulted from it. * * * * The whole effect of this Act is, that a usurious contract shall no longer subject a party to penalty or forfeiture; but that it shall be invalid so far as it stipulates for more than six per cent."

The authorities on the subject were reviewed by Pagnuelo, J., in *La Banque de St. Hyacinthe* v. *Sarrazin*, Q. R. 2 S. C. 96 (1892), where he held that the provision in section 80 of the Act of 1890 prohibiting a bank from taking more than seven per cent. was a matter of public order, and that the defendant was entitled to credit for $5,768.35, which the bank had from time to time taken in the course of business over and above the legal rate of seven per cent.

Defendant agreed to pay the plaintiff bank interest, first at the rate of 24 per cent. and afterwards at the rate of 18 per cent., and from time to time gave cheques for the same which paid up to January 31st, 1902. Held that he could not recover back the excess above 7 per cent. which he had paid; but that after January 31st, 1902, the bank could only recover interest at the legal rate of 5 per cent., as a promise to pay 18 per cent. would not justify a judgment for 7 per cent.: *Bank B. N. A.* v. *Bossuyt*, 15 Man. R. 266 (1904).

It has however been held by all the judges of the Yukon Territory that when a customer has agreed to pay a bank

more than 7 per cent., that the agreement is void only as to the excess, that the customer is not entitled to get back such excess when paid voluntarily, but that the bank is entitled to recover 7 per cent.: *Canadian Bank of Commerce* v. *McDonald*, 3 Western L. R. at p. 101 (1906), and the cases of *Benallack* v. *Bank of B. N. A.*, and the *Bank of B. N. A.* v. *Lafrance*, therein referred to. The same has been held in British Columbia by Martin, J., in *Adams* v. *Bank of Montreal*, 9 B. C. R. at p. 316 (1899), and in *Bank of Montreal* v. *Hartman*, 12 B. C. R. 375 (1905). In *Williams* v. *Bank of Commerce*, 13 B. C. R. 70 (1907), Hunter, C.J., held that no action lay to recover back the excess over 7 per cent.

The weight of authority in our Courts is in favor of allowing a bank the legal limit of 7 per cent. when there has been an agreement for a higher rate, and this seems to be more consonant with the reasoning in *Kierzkowski* v. *Dorion*, *supra*.

It has been also held that creditors have no right to raise the question of excessive interest charged by the bank: *Benallack* v. *Bank of B. N. A.*, cited in *Ritchie* v. *Canadian Bank of Commerce*, 1 Western L. R. at p. 503 (1905).

Section 81 of the Act of 1890 contained a provision regarding usurious notes and bills which was originally 35 Vict. chap. 8, sec. 2. Certain old provincial statutes relating to usury remained in force until they were repealed by 53 Vict. chap. 34, sec. 2. As was pointed out in the former editions of this work this repeal rendered section 81 of the Act of 1890 superfluous. In the revision of 1906 it has been omitted as being obsolete.

In addition to the seven per cent. a bank may make the additional charges for collection mentioned in sections 93 and 94.

92. Allowance of interest.—The bank may allow any rate of interest whatever upon money deposited with it. 53 V., c. 31, s. 80.

93. Collection charges.—When any note, bill, or other negotiable security or paper, payable at any of the bank's places or seats of business, branches, agencies, or offices of discount and deposit in Canada, is dis-

counted at any other of the bank's places or seats of business, branches, agencies or offices of discount and deposit, the bank may, in order to defray the expenses attending the collection thereof, receive or retain, in addition to the discount thereon, a percentage calculated upon the amount of such note, bill, or other negotiable security or paper, not exceeding, if the note, bill, or other negotiable security or paper is to run,—

(*a*) for less than thirty days, one-eighth of one per centum;

(*b*) for thirty days or over but less than sixty days, one-fourth of one per centum;

(*c*) for sixty days or over but less than ninety days, three-eighths of one per centum; and,

(*d*) for ninety days or over, one-half of one per centum. 53 V., c. 31, s. 82.

The charges in this section relate only to bills, notes, etc., which have been discounted by the bank, and not to those which they have received for collection. No rate is fixed by the Act for the latter. A bank is not allowed to make a charge for cashing a Government cheque: sec. 98. The above rates have been in force since 1867.

94. Agency charges.—The bank may, in discounting any note, bill or other negotiable security or paper, *bona fide* payable at any place in Canada, other than that at which it is discounted, and other than one of its own places or seats of business, branches, agencies or offices of discount and deposit in Canada, receive and retain, in addition to the discount thereon, a sum not exceeding one-half of one per centum on the amount thereof, to defray the expenses of agency and charges in collecting the same. 53 V., c. 31, s. 83.

95. Deposits and payments.—The bank may, subject to the provisions of this section, without the authority, aid, assistance or intervention of any other person or official being required,—

(*a*) receive deposits from any person whomsoever, whatever his age, status or condition in life, and whether such person is qualified by law to enter into ordinary contracts or not; and,

(*b*) from time to time repay any or all of the principal thereof, and pay the whole or any part of the interest thereon to such person, unless before such repayment the money so deposited in the bank is lawfully claimed as the property of some other person.

2. In the case of any such lawful claim the money so deposited may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor.

3. If the person making any such deposit could not, under the law of the province where the deposit is made, deposit and withdraw money in and from a bank without this section, the total amount to be received from such person on deposit shall not, at any time, exceed the sum of five hundred dollars. 53 V., c. 31, s. 84.

Deposits.—Sections 76 to 94 of the Act relate to banks as banks of discount; the present section relates to them as banks of deposit. Although so little is said in the Act on the subject it is one of their most important functions. By the general adoption of the policy of branches a network of these institutions has been established throughout the Dominion, and in the older and wealthier portions of the country where there is more capital than is necessary for local requirements, they receive deposits which are transmitted to those points where the capital is not sufficient for the necessities of business. We have thus a system which works automatically and is admirably adapted to the development of the country.

While the paid up capital of our banks was on Dec. 31st, 1907, only $95,995,482, their deposits in Canada were no less than $578,653,921. These are received chiefly in three ways: (1) In the ordinary current commercial accounts:

(2) Special deposits at interest by the Dominion and Provincial governments and by corporations and individuals for which latter deposit receipts as a rule are issued; and (3) Savings bank deposits, the bank having savings departments, where non-commercial accounts are kept on special terms, interest being generally credited half-yearly or oftener, and money usually withdrawn by receipt instead of by cheque and on the production of the depositor's pass book; notice of the intended withdrawal of large sums being often required, etc. These savings departments are not governed by the provisions of the Savings Bank Acts, R. S. C. c. 30 and 32; but are carried on by the banks under the Bank Act.

By section 54, the statement to be laid before the shareholders at the annual meeting must show not only the total amount of the deposits, but must distinguish between those bearing interest, and those not bearing interest. In the monthly returns to the Government, Schedule D, separate statements are to be made of (1) deposits by the public, payable on demand in Canada; (2) deposits by the public, payable after notice, or on a fixed day, in Canada; (3) deposits elsewhere than in Canada; (4) deposits made by other banks in Canada.

Interest on deposits is not payable by a bank unless there is a special agreement to that effect: *Edwards* v. *Vere*, 5 B. & Ad. 282 (1833); or unless such an agreement is to be implied from the circumstances of the particular case: *Re East of England Banking Co.* L. R. 4 Ch. 14 (1868); *Re Duncan & Co.*, [1905] 1 Ch. 307. The bank may allow any rate of interest whatever upon money deposited with it: sec. 92.

Deposits from disqualified persons.—As the subject of civil rights belongs exclusively to the provincial legislatures under sec. 92, s.-s. 13 of the B. N. A. Act, the classes of persons qualified to enter into contracts differ in the several provinces. The Dominion Parliament under its jurisdiction over the subject of banking has undertaken in this section to override the provincial legislation which disqualifies certain classes of persons from entering into such contracts, by declaring that each of such disqualified persons may deposit in and withdraw moneys from a bank, provided

the deposit of such a person shall not, at any time, exceed $500. Such disqualified persons are chiefly minors in all the provinces, and married women in several of them.

Bank and depositor.—When money is paid into a bank it ceases to be the money of the person paying it in, and becomes the property of the bank. Nor does it become the property of the party to whose credit it is placed in the books of the bank. The latter simply becomes the creditor of the bank for the amount. The relation existing between the bank and its customer is not that of trustee and *cestui que trust*, or bailee and bailor; but that of debtor and creditor: *Foley* v. *Hill*, 2 H. L. Cas. 36 (1848); *Smith* v. *Leveaux*, 2 DeG. J. & S. at p. 5 (1863); *In re Agra & Masterman's Bank*, 36 L. J. Ch. 151 (1866).

Moneys deposited in a bank to current account are subject to the banker's lien, unless paid in and received for a particular purpose: *Misa* v. *Currie*, 1 App. Cas. at p. 569.

If a customer has several accounts in a bank he may specify at the time of a payment or deposit, to which of them it is to be applied. In default of his doing so, the bank may determine its application: *Wilson* v. *Hirst*, 4 B. & Ad. 760 (1833); *Simson* v. *Ingham*, 2 B. & C. 65 (1823); *Johnson* v. *Roberts*, L. R. 10 Ch. 565 (1875).

A customer of a bank had at the time of his death a certain sum to his credit, and the bank held two of his notes, one secured by an endorser, and the other not secured. After his death the bank applied the whole sum on the latter note. This was upheld, although his estate was insolvent: *Re Williams*, 7 O. L. R. 156 (1903).

Where a number of deposits and withdrawals have been made, the question of the application of these often becomes a matter of importance. The general rule is that there is a presumption that the sum first paid in is that which is first paid out. This is a presumption, however, which may be rebutted: *Clayton's Case*, 1 Mer. 608 (1816). The rule in Clayton's Case applies where there is one unbroken account, even between *cestuis que trustent*. But when a bank applies specific receipts to the payment of a specific balance due by

a customer, the rule does not apply: *Mutton* v. *Peat*, [1899] 2 Ch. 556.

A bequest of the testator's "ready money" includes his money on deposit in a bank: *Parker* v. *Marchant*, 1 Younge & Collyer (Ch.) 290 (1842); *Stein* v. *Ritherdon*, 37 L. J. Ch. 369 (1868). The balance in a bank has been held to be included in a bequest of "all the debts due to me": *Carr* v. *Carr*, 1 Mer. 541*n* (1811); also in bequest of "money in hand": *Vaisey* v. *Reynolds*, 5 Russ. 12 (1828); and of "all my moneys": *Manning* v. *Purcell*, 7 DeG. M. & G. 55 (1855).

Payments by a bank.—The ordinary mode of payment out of moneys by a bank to a depositor who has a current account is by the honoring of his cheques.

In the absence of instructions to the contrary it may also as his agent pay any bills or notes which he has made payable at the bank: *Jones* v. *Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Kymer* v. *Laurie*, 18 L. J. Q. B. 218 (1849); *Roberts* v. *Tucker*, 16 Q. B. 560 (1851); *Vagliano* v. *Bank of England*, [1891] A. C. 107. A bank refusing to pay such instruments incurs the same liability as in refusing to pay a cheque: *Hill* v. *Smith*, 12 M. & W. 618 (1844); *Bell* v. *Carey*, 8 C. B. 887 (1849).

When deposit receipts have been issued they usually contain the terms on which the money will be paid, or it is a matter of agreement.

In the case of ordinary deposits and accounts in the savings department of a bank, the conditions as to payment are usually printed in the pass-book supplied to the customer. As a rule a receipt is taken from the customer for the amount paid out to him, and presentation of the pass-book required.

Money due a depositor or other customer by a bank being a chose in action, is assignable like other debts or choses in action. Such assignments not being dealt with by the Bank Act or the law merchant, are governed by the law of the province where the deposit is situate. It would also pass to an assignee for the benefit of creditors under an assignment covering debts.

It would also be subject to an attachment (saisie arrêt) in the province of Quebec, and to a garnishee order in the other provinces: *Harris* v. *Cordingley*, Q. R. 16 S. C. 501 (1899); *Wentworth* v. *Smith*, 15 Ont. P. R. 372 (1893). Such a proceeding would justify a bank in not honoring any cheques, even those issued before the order, and although the balance exceeded the amount claimed: *Rogers* v. *Whiteley*, [1892] A. C. 118; *Yates* v. *Terry*, [1901] 1 Q. B. 102.

Cheques.—The general subject of cheques as negotiable instruments is dealt with in the Bills of Exchange Act, secs. 165 to 175 inclusive. These sections with full notes will be found in the present work immediately following the schedules to the present Act, and to them the reader is referred.

As above stated, money is ordinarily withdrawn from a bank in a current account by the cheques of the customer, and it is part of the law merchant that the bank shall honor these cheques when there are funds to meet them. The Bills of Exchange Act recognizes this obligation in section 167, when it speaks of "the duty and authority of a bank to pay a cheque."

A bank having sufficient funds of the drawer of a cheque in its hands is bound to pay it, and in case of refusal is liable to an action of damages: *Marzetti* v. *Williams*, 1 B. & Ad. 415 (1830); *Whitaker* v. *Bank of England*, 6 C. & P. 700 (1835); *Foley* v. *Hill*, 2 H. L. Cas. 28 (1848); *Rolin* v. *Steward*, 14 C. B. 595 (1854); *Todd* v. *Union Bank*, 4 Man. R. 204 (1887); *Fleming* v. *Bank of New Zealand*, [1900] A. C. 577; *Perreault* v. *Merchants Bank*, Q. R. 27 S. C. 149 (1905). The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit, are nominal or limited to interest on the money: *Henderson* v. *Bank of Hamilton*, 25 O. R. 641 (1894), 22 Ont. A. R. 414 (1895); *Bank of New South Wales* v. *Milvain*, 10 Vict. R. (Law) 3 (1884).

Pass books.—As a rule, customers having a current account in a bank, are furnished with pass-books, in which are entered the deposits as they are made, and also the withdrawals by cheque and otherwise, and which show the balance

from time to time. The cheques and other vouchers for the moneys paid out bythe bank are handed out to the customer at intervals depending upon the volume of the business, or the convenience of the parties, in many cases at the end of each month. A receipt is usually taken for these vouchers, and acknowledging the correctness of the account signed by the party receiving them, often a messenger or other subordinate employee of the customer. How far such entries should be evidence of a settled account has been a matter of controversy and has not been authoritatively or satisfactorily determined. It has been held that periodical acknowledgments given to a bank of the correctness of an account cannot be set up as a bar to an enquiry into the account, when specific errors were charged to the bank: *Re Chatham Banner Co.*, 2 O. L. R. 672 (1901); a position that will scarcely be challenged.

The subject has been discussed in two recent Ontario cases of considerable interest. In the first of these, *The Bank of Montreal* v. *The King*, it was considered in the Supreme Court, in the Court of Appeal, and by the trial Judge, in 38 S. C. R. at p. 272; 11 O. L. R. at pp. 599 and 605; and 10 O. L. R. at p. 126, respectively. It was held in all the Courts, that if a customer were precluded from questioning the correctness of the account, it would be ordinarily on the ground of estoppel, and as the doctrine of estoppel could not be invoked against the Crown, it did not avail the bank as a defence.

The second of these cases is *Montgomery* v. *Ryan*, 11 O. W. R. 279 (1908), and to be reported in 15 O. L. R. The trial Judge had held, 9 O. W. R. at p. 584 (1907), that the signing of monthly acknowledgments of the correctness of the account as contained in the bank pass-book in which compound interest at the rate of 7 per cent. was charged, did not bind the defendant even as to the charge of 7 per cent., the legal limit by the Bank Act. It was held, however, by the Court of Appeal, 11 O. W. R. at p. 290, that such acknowledgments, although not sufficient to establish an acquiescence on the part of the defendant in the charge of compound interest which did not appear on the face of the account, were sufficient with other evidence to estab-

lish acquiesence on the part of defendant in the payment of 7 per cent. simple interest.

In England also the law upon the subject is said to be in an unsettled and unsatisfactory condition. In *Paget on Banking* a chapter is devoted to the subject, and the cases of *Commercial Bank* v. *Rhind*, 3 Macq. House of Lords, 643, (1860); *Blackburn* v. *Cunliffe Brooks & Co.*, 22 Ch. D. 61 (1882), *Vagliano* v. *Bank of England*, 23 Q. B. D. 243 (1889), and [1891] A. C. 207, are discussed, as is also an unreported case of *Chatterton* v. *London and County Bank*, the particulars and proceedings of which are set out at length. The remarks of Lord Esher and Mr. Justice Mathew in the Chatterton case as to there being no obligation on the customer to examine his pass-book and to report any alleged errors to the bank are specially commented upon.

The duty of the customer to make such an examination is more fully recognized in the American courts. Two leading cases on the subject are the *Leather Manufacturers' Bank* v. *Morgan*, 117 U. S. 96 (1885), and *Critten* v. *Chemical National Bank*, 171 N. Y. 219 (1902).

Deposit receipts.—When money is deposited with a bank which is not to be withdrawn in the ordinary course of business, but only after certain notice or after the expiration of a certain time, a deposit receipt is usually given. A considerable controversy has arisen as to whether these instruments are negotiable and transferable by delivery or endorsement. Of course much will depend upon their precise terms. Those in question in the earlier Canadian cases had not the words "bearer" or "order," and it was held that the holder by endorsement could not recover in his own name. See *Maunder* v. *Royal Canadian Bank*, 20 U. C. C. P. 125 (1869); *Bank of Montreal* v. *Little*, 17 Grant. 313 (1870); *Lee* v. *Bank B. N. A.*, 30 U. C. C. P. 255, (1879). In *Voyer* v. *Richer*, 13 L. C. J. 213 (1869), the Quebec Courts held that even where the receipt was payable to order it was not negotiable. In the Privy Council, L. R. 5 P. C. 461 (1874) it was said that there was "high authority in favor of considering it to be negotiable," but the case was decided on another ground.

In *Re Central Bank*, 17 O. R. 574 (1889), the receipt was in the following form: "Received from Messrs. Cox & Co., the sum of six thousand dollars, which this bank will repay to the said Cox & Co., or order, with interest at four per cent. per annum, on receiving 15 days' notice. No interest will be paid unless the money remains with this bank six months. This receipt to be given up to the bank when payment of either principal or interest is required." Boyd, C., in giving judgment in favor of the holder by endorsement, said: "I have a very strong opinion that the deposit receipt as drawn is a negotiable instrument, under which the claimants are entitled to succeed as upon a promissory note made by the bank." He added that, being payable to order, it was meant to be transferable by endorsement, and the bank which had issued it in that form was estopped from denying its negotiability.

Under the Bills of Exchange Act the words "order" or "bearer" are not required to make an instrument a promissory note. If intended that it shall not be negotiable, it should contain the words "not negotiable," or some words to the like effect: sec. 21. It would then require to be transferred in the manner prescribed by the law of the respective provinces for the transfer of choses in action or rights of action; that is by assignment and not by simple endorsement. After such assignment the assignee can sue upon it in his own name. See the Judicature Act, R. S. O. chap. 51, sec. 58 (5); Rev. Stat. N. S. chap. 155, sec. 19 (5); Con. Stat. N. B. chap. 111, sec. 155; Rev. Stat. Man. chap. 40, sec. 3, 39 (*e*); Cons. Ord. N. W. T. chap. 41; Rev. Stat. B. C. chap. 56, sec. 16 (17). In Quebec the assignee has no possession available against third persons until a copy of the transfer has been served on the debtor, unless the latter is a party to it: C. C. Arts. 1570, 1571. The institution of an action against the debtor is a sufficient service of the transfer of the debt: *Bank of Toronto* v. *St. Lawrence Fire Ins. Co.*, [1903] A. C. 59; *Sorel* v. *Quebec Southern Ry. Co.*, S. C. Can. 686 (1905).

A deposit receipt is a good subject of a *donatio mortis causa* even when the order for its payment is in the form of a cheque signed by the depositor: *In re Dillon, Duffin* v. *Duffin*, 44 Ch. D. 76 (1890).

Saderquist v. *Ontario Bank*, 15 Ont. A. R. 609 (1889), is a case where a bank was compelled to pay the amount of a deposit receipt a second time. The depositor, on leaving the country for some months, gave the receipt to a friend, who forged his name and drew the money. On the return of the depositor he learned what had been done, but did not notify the bank or take any steps to recover. The friend left the country, and after eighteen months the depositor sued the bank and he was held entitled to recover.

Scott v. *Bank of New Brunswick*, 31 N. B. 21 (1891), is a very similar case, which resulted differently. In this case the friend with whom the receipt was left owed the depositor other sums, and on the return of the latter he took a mortgage from him. The jury found that the amount of the deposit receipt was not included in the mortgage, and gave a verdict for the depositor; but the Court held that he was estopped from recovering by his conduct and dismissed his action.

96. Payment of trust deposits.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any deposit made under the authority of this Act is subject.

2. Except only in the case of a lawful claim, by some other person before repayment, the receipt of the person in whose name any such deposit stands, or, if it stands in the names of two persons, the receipt of one, or, if it stands in the names of more than two persons, the receipt of a majority of such persons, shall, notwithstanding any trust to which such deposit is then subject, and whether or not the bank sought to be charged with such trust, and with which the deposit has been made, had notice thereof, be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit.

3. The bank shall not be bound to see to the application of the money paid upon such receipt. 53 V., c. 31, s. 84.

Sub-section 1 of section 52 contains a provision respecting trust shares of the bank similar to that of sub-section 1 of

this section as to deposits, and the reader will there find a discussion of the liability of the bank with respect to these trusts. Sub-section 2 of that section differs in that the receipt of one of two or more trustees is sufficient for any dividend or bonus payable thereon; whereas by this section the receipt of a majority of the trustees is required for the payment of a deposit if there are more than two of them.

The rule of English law is that in case of money payable to trustees, the receipt must be signed by all the trustees and not by the majority merely, or it will not be valid: *Walker* v. *Symonds*, 3 Swanston, 63 (1818); *Hall* v. *Franck*, 11 Beav. 519 (1849); *Lee* v. *Sankey*, L. R. 15 Eq. 204 (1873). In the case of ordinary joint creditors payment to one and a receipt from him is sufficient: *Wallace* v. *Kelsall*, 7 M. & W. 264 (1840); *Heilbut* v. *Nevill*, L. R. 5 C. P. 478 (1870). In the case of money paid into a bank on joint account it is generally implied from the purpose of such an account, and the relation between bankers and their customers, that it shall not be withdrawn without the joint order of all; and the banker is not discharged by a payment to one only: Per Lord Tenterden, C.J., in *Innes* v. *Stephenson*, 1 M. & Rob. 145 (1831). See also *Husband* v. *Davis*, 10 C. B. 645 (1851); and *Brandon* v. *Scott*, 7 E. & B. 234 (1857).

Under the law of Quebec, payment may be validly made to one of several joint and several creditors, and a receipt given by him will bind the others; but a release or discharge given by one without payment will avail only for his own share: C. C. Arts. 1100, 1101.

It will be seen that this section of the Act differs from the law in England as to a receipt from one of two joint depositors, or from the majority of a larger number. If it is desired that the deposit shall not be withdrawn in this manner, then notice to that effect should be given to the bank.

In the case of *Bailey* v. *Jellett*, 9 Ont. A. R. 187 (1884), it was sought to hold a bank responsible for moneys belonging to a client which a solicitor had improperly paid into the bank in his own name, and which he had withdrawn, on the ground that the bank manager was aware of the trust. The Court held that the bank was not liable; but that it was liable

for notes and cheques of the solicitor paid after the bank had notice of his death; that these sums and the balance at his credit were to be treated as trust moneys; and that the client whose money was paid in last had the preference. See *Wood* v. *Stenning*, [1895] 2 Ch. 433.

The leading English case on the subject is *Gray* v. *Johnston*, L. R. 3 E. & I. App. 1 (1868), where Lord Cairns says, p. 11: "In order to hold a banker justified in refusing to pay a demand of his customer, the customer being an executor, and drawing a cheque as executor, there must, in the first place, be some misapplication, some breach of trust, intended by the executor, and there must, in the second place, as was said by Sir John Leach, in the well known case of *Keane* v. *Robarts*, 4 Maddock, 357 (1819), be proof that the bankers are privy to the intent to make this misapplication of the trust funds. And to that I think I may safely add, that if it can be shewn that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance, above all others, will most readily establish the fact that the bankers are in privity with the breach of trust which is about to be committed." In the same case Lord Westbury says, p. 14: "Supposing that a banker becomes incidentally aware that a customer, being in a fiduciary or a representative capacity, meditates a breach of trust, and draws a cheque for that purpose, the banker, not being interested in the transaction, has no right to refuse the payment of the cheque. . . . If an executor or a trustee who is indebted to a banker, or to another person, having the legal custody of the assets of a trust estate, applies a portion of them in the payment of his own debt to the individual having that custody, the individual receiving the debt has at once not only abundant proof of the breach of trust, but participates in it for his own personal benefit." It is not necessary that the word "trust" or "trustee" should be used by the customer; it is enough that there should be something to indicate to the bank or that the bank should know that other persons are beneficially interested. See *Clench* v. *Consolidated Bank*, 31 U. C. C. P. 169 (1880); *Ex parte Kingston*, L. R. 6 Ch. App. 632 (1871).

Subsequent cases in England have not been consistent as to the degree of knowledge that would render a banker liable

for a breach of trust committed by a depositor, or as to the facts that would put the banker upon further enquiry. If the banker is to derive a benefit from the transaction his conduct would be more closely scrutinized. In *Foxton* v. *Manchester and Liverpool Banking Co.*, 44 L. T. N. S. 406 (1881), it was held that a bank could not retain the benefit of a cheque drawn on a trust fund and paid into an overdrawn private account; while in *Coleman* v. *Bucks and Oxon Bank*, [1897] 2 Ch. 243, under circumstances nearly the same the transaction was upheld.

97. Death of depositor of $500 or under.—If a person dies, having a deposit with the bank not exceeding the sum of five hundred dollars, the production to the bank and deposit with it of,—

(*a*) any authenticated copy of the probate of the will of the deceased depositor, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testament dative expede in Scotland; or,

(*b*) an authentic notarial copy of the will of the deceased depositor, if such will is in notarial form, according to the law of the province of Quebec; or,

(*c*) if the deceased depositor died out of His Majesty's dominions, any authenticated copy of the probate of his will, or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters;

shall be sufficient justification and authority to the directors for paying such deposit, in pursuance of and in conformity to such probate, letters of administration, or other document as aforesaid. 63-64 V., c. 26, s. 20.

DOMINION GOVERNMENT CHEQUES.

98. To be paid at par.—The bank shall not charge any discount or commission for the cashing of any official

cheque of the Government of Canada or of any department thereof, whether drawn on the bank cashing the cheque or on any other bank. 53 V., c. 31, s. 103.

A bank is not compelled to cash a Government cheque, unless it is one drawn upon itself by the Government as a customer; but if it undertakes to do so it must pay the full face value. It cannot make the collection or agency charges allowed by sections 93 and 94 when it discounts the paper of another party. No penalty is prescribed in the Act for a breach of this section, but it would be a violation of section 191 of the Criminal Code, and punishable by a fine under sections 1052 and 1035.

THE PURCHASE OF THE ASSETS OF A BANK.

Before 1900 the purchase of the assets of one bank by another bank, now authorized by the following sections 99 to 111 inclusive, could only have been carried out under a special Act of Parliament. The Act was passed to meet the case of the purchase of the Bank of British Columbia by the Canadian Bank of Commerce, the consideration in that case being $2,000,000 stock of the purchasing bank and $312,000 in cash. The purchase took effect on the 2nd of January, 1901.

Since that time under the provisions of these sections the following purchases have been made: The Exchange Bank of Yarmouth, the Peoples' Bank of Halifax, the Ontario Bank, and the Peoples' Bank of New Brunswick, by the Bank of Montreal; the Halifax Banking Company, and the Merchants' Bank of Prince Edward Island by the Canadian Bank of Commerce; the Commercial Bank of Windsor by the Union Bank of Halifax; and the Summerside Bank by the Bank of New Brunswick.

99. Bank may sell assets.—Any bank may sell the whole or any portion of its assets to any other bank which may purchase such assets; and the selling and purchasing banks may, for such purposes, enter into an agreement of sale and purchase, which agreement shall contain all the terms and conditions connected with the sale and purchase of such assets. 63-64 V., c. 26, s. 33.

100. Consideration.—The consideration for any such sale and purchase may be as agreed upon between the selling and purchasing banks.

2. If the consideration, or any portion thereof, is shares of the capital stock of the purchasing bank, the agreement shall provide for the amount of the shares of the purchasing bank to be paid to the selling bank.

3. Until such shares so paid to the selling bank have been sold by such bank, or have been distributed among and accepted by the shareholders of such bank, they shall not be considered issued shares of the purchasing bank for the purposes of its note circulation. 63-64 V., c. 26, s. 34.

101. Submission to selling shareholders.—The agreement of sale and purchase shall be submitted to the shareholders of the selling bank, either at the annual general meeting of such bank or at a special general meeting thereof called for the purpose.

2. A copy of the agreement shall be mailed, postpaid, to each shareholder of such bank to his last known address, at least four weeks previously to the date of the meeting at which the agreement is to be submitted, together with a notice of the time and place of the holding of such meeting. 63-64 V., c. 26, s. 35.

A special general meeting requires six weeks' public notice in one or more newspapers published at the place where the head office of the bank is situate, and in the Canada Gazette: secs. 31 and 2, s.s. 2.

102. Approval of agreement.—If at such meeting the agreement is approved by resolution carried by the votes of shareholders, present in person or represented by proxy, representing not less than two-thirds of the amount of the subscribed capital stock of the bank, the agreement may be executed under the seals of the banks, parties thereto, and application may be made to the Governor in Council, through the Minister, for approval thereof.

2. Until the agreement is approved by the Governor in Council it shall not be of any force or effect. 63-64 V., c. 26, s. 36.

The voting is by ballot; one vote for each share, held for at least thirty days: sec. 32. Fully paid-up and partly paid-up shares count equally: *Purdom* v. *Ontario Loan and Debenture Co.*, 22 O. R. 597 (1892).

The Minister is the Minister of Finance and Receiver-General: sec. 2 (*b*).

103. Approval by purchasing bank.—If the agreement provides for the payment of the consideration for such sale and purchase, in whole or in part, in shares of the capital stock of the purchasing bank, and for such purpose it is necessary to increase the capital stock of such bank, the agreement shall not be executed on behalf of the purchasing bank, unless nor until it is approved by the shareholders thereof at the annual general meeting, or at a special general meeting of such shareholders. 63-64 V., c. 26, s. 37.

No particular proportion of the stock of the purchasing bank requires to be represented at this meeting or to vote in its favor, as is required by section 102 in the case of the selling bank; a simple majority of the shares voting at the meeting is sufficient.

104. Approval by government.—The Governor in Council may, on the application for his approval of the agreement, approve of the increase of the capital stock of the purchasing bank, which is necessary to provide for the payment of the shares of such bank to the selling bank, as provided in the said agreement. 63-64 V., c. 26, s. 38.

105. Sections 33 and 34 not to apply.—The provisions of this Act with regard to,—

(*a*) the increase of the capital stock of the bank by by-law of the shareholders approved by the Treasury Board; and,

(*b*) the allotment and sale of such increased stock;

shall not apply to any increase of stock made or provided for under the authority of the last two preceding sections. 63-64 V., c. 26, s. 38.

The approval of the agreement by the shareholders and the approval by the Governor in Council take the place of the by-law increasing the stock in section 33 and the approval of the Treasury Board. Stock for the purchase of another bank need not be allotted to existing shareholders *pro rata*.

106. Conditions of approval.—The approval of the Governor in Council shall not be given to the agreement, unless,—

(*a*) the approval thereof is recommended by the Treasury Board;

(*b*) the application for approval thereof is made, by or on behalf of the bank executing it, within three months from the date of execution of the agreement; and,

(*c*) it appears to the satisfaction of the Governor in Council that all the requirements of this Act in connection with the approval of the agreement by the shareholders of the selling and purchasing banks have been complied with, and that notice of the intention of the banks to apply to the Governor in Council for the approval of the agreement has been published for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in places where the chief offices or places of business of the banks are situate.

2. Such banks shall afford all information that the Minister requires.

3. Nothing herein contained shall be construed to prevent the Governor in Council or the Treasury Board from refusing to approve of the agreement or to recommend its approval. 63-64 V., c. 26, s. 39.

107. Further conditions.—The agreement shall not be approved of unless it appears that,—

(*a*) proper provisions have been made for the payment of the liabilities of the selling bank;

(*b*) the agreement provides for the assumption and payment by the purchasing bank of the notes of the selling bank issued and intended for circulation, outstanding and in circulation; and,

(*c*) the amounts of the notes of both the purchasing and selling banks issued for circulation, outstanding and in circulation, as shown by the then last monthly returns of the banks, do not together exceed the then paid-up capital of the purchasing bank; or, if the amount of such notes does exceed such paid-up capital, an amount in cash, equal to the excess of such notes over such paid-up capital, has been deposited by the purchasing bank with the Minister.

2. The amount so deposited as aforesaid shall be held by the Minister as security for the redemption of the said excess of notes; and, when such excess, or any portion thereof, has been redeemed and cancelled, the amount so deposited, or an amount equal to the amount of excess so redeemed and cancelled, shall, from time to time, be repaid by the Minister to the purchasing bank, but without interest, on the application of such bank, and on the production of such evidence as the Minister may require to show that the notes in regard to which such repayment is asked have been redeemed and cancelled. 63-64 V., c. 27, s. 1.

108. Notes of selling bank.—The notes of the selling bank so assumed and to be paid by the purchasing bank shall, on the approval of the agreement, be deemed to be, for all intents and purposes, notes of the purchasing bank issued for circulation; and the purchasing bank shall be liable in the same manner and to the same extent as if it had issued them for circulation.

2. The amount at the credit of the selling bank in the Circulation Fund shall, on the approval of the agree-

ment, be transferred to the credit of the purchasing bank.

3. The notes of the selling bank shall not be re-issued, but shall be called in, redeemed and cancelled as quickly as possible. 63-64 V., c. 26, s. 41.

109. Evidence of approval.—The approval by the Governor in Council of the agreement shall be evidenced by a certified copy of the order in council approving thereof.

2. Such certified copy shall be conclusive evidence of the approval of the agreement therein referred to, and of the regularity of all proceedings in connection therewith. 63-64 V., c. 26, s. 42.

110. Assets vest in purchasing bank.—On the agreement being approved of by the Governor in Council, the assets therein referred to as sold and purchased shall, in accordance with and subject to the terms thereof, and without any further conveyance, become vested in the purchasing bank.

2. The selling bank shall, from time to time, subject to the terms of the agreement, execute such formal and separate conveyances, assignments and assurances, for registration purposes or otherwise, as are reasonably required to confirm or evidence the vesting in the purchasing bank of the full title or ownership of the assets referred to in the agreement. 63-64 V., c. 26, s. 43.

111. Selling bank to cease business.—As soon as the agreement is approved of by the Governor in Council, the selling bank shall cease to issue or re-issue notes for circulation, and shall cease to transact any business, except such as is necessary to enable it to carry out the agreement, to realize upon any assets not included in the agreement, to pay and discharge its liabilities, and generally to wind up its business; and the charter or Act of incorporation of such bank, and any Acts in amendment thereof then in force, shall continue in force only for the purposes in this section specified. 63-64 V., c. 26, s. 44.

RETURNS BY THE BANK TO GOVERNMENT.

In Canada there is no public bank examiner as in the United States, nor are the annual or other bank statements audited by the government as in Australia. It is claimed by Canadian bankers that the system of frequent and detailed statements by the principal officers of the bank, with heavy penalties for any false statement, is really a better protection than a government examination or audit, as the latter pretend to protect while they do not really do so, while the former keeps shareholders and creditors alert by the constant exercise of their own judgment.

Besides the detailed statements which the directors are required to present to the shareholders at the annual meeting by section 54, and any further statements ordered by the shareholders under section 55, the bank is obliged to make monthly returns to the government by section 112, and the Minister of Finance may call for special returns under section 113. It must also make an annual statement of all dividends or balances unpaid for more than five years, and send a list of its shareholders with the number of shares held by each. The monthly and annual business statements are keenly examined by the public, and form the topics of critical articles in the financial and commercial journals.

112. Monthly returns.—Monthly returns shall be made by the bank to the Minister in the form set forth in schedule D to this Act.

2. Such returns shall be made up and sent in within the first fifteen days of each month, and shall exhibit the condition of the bank on the last juridical day of the month last preceding.

3. Such returns shall be signed by the chief accountant and by the president, or vice-president, or the director then acting as president, and by the manager, cashier or other principal officer of the bank at its chief place of business. 53 V., c. 31, s. 85.

A glance at schedule D shows that it covers no less than 42 items of information concerning the position and business of the bank. These returns are tabulated and are issued as

an extra of the Canada Gazette usually in the latter part of the month in which they are sent in.

The penalty for neglect in sending in these returns on time is $50 a day: sec. 147.

It may be difficult always to classify the transactions of the bank under the proper items in the schedule. Where, on a prosecution for making false returns, the Judge directed the jury, as a matter of law, that certain sums borrowed by the bank from other banks, and for which deposit receipts payable on time were granted, were improperly classified as deposits instead of loans, it was held that this was a misdirection, and that the question of such classification was one of fact for the jury. In the same case it was held that where the bank took demand notes to cover over-drafts, these were improperly classified as current loans: *Reg.* v. *Hincks*, 24 L. C. J. 116 (1879).

113. Special returns.—The Minister may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition.

2. Such special returns shall be made and signed in the manner and by the persons specified in the last preceding section.

3. Such special returns shall be made and sent in within thirty days from the date of the demand therefor by the Minister: Provided that the Minister may extend the time for sending in such special returns for such further period, not exceeding thirty days, as he thinks expedient. 53 V., c. 31, s. 86.

The penalty for neglect in complying with this section is $500 a day: sec. 148.

114. Annual returns.—The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return,—

(*a*) of all dividends which have remained unpaid for more than five years; and,

(*b*) of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return:

Provided that, in the case of moneys deposited for a fixed period, the said term of five years shall be reckoned from the date of the termination of such fixed period.

2. The return mentioned in the last preceding subsection shall set forth,—

(*a*) the name of each shareholder or creditor to whom such dividends, amounts or balances are, according to the books of the bank, payable;

(*b*) the last known address of each such shareholder or creditor;

(*c*) the amount due to each such shareholder or creditor;

(*d*) the agency of the bank at which the last transaction took place;

(*e*) the date of such last transaction; and,

(*f*) if such shareholder or creditor is known to the bank to be dead, the names and addresses of his legal representatives, so far as known to the bank.

3. The bank shall likewise, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return of all drafts or bills of exchange, issued by the bank to any person, and remaining unpaid for more than five years prior to the date of such return, setting forth so far as known,—

(*a*) the names of the persons to whom, or at whose request such drafts or bills of exchange were issued;

(*b*) the addresses of such persons;

(*c*) the names of the payees of such drafts or bills of exchange;

(*d*) the amounts and dates of such drafts or bills of exchange;

(*e*) the names of the places where such drafts or bills of exchange were payable; and,

(*f*) the agencies of the bank respectively from which such drafts or bills of exchange were issued.

4. The returns required by the foregoing provisions of this section shall be signed by the chief accountant, and by the president or vice-president or the director then acting as president, and by the manager, cashier, or other principal officer of the bank, at its chief place of business.

5. The bank shall also, within twenty days after the close of each calendar year, transmit or deliver to the Minister a certified list showing,—

(*a*) the names of the shareholders of the bank on the last day of such calendar year, with their additions and residences;

(*b*) the number of shares then held by them respectively; and,

(*c*) the value at par of such shares.

6. The Minister shall lay such returns and lists before Parliament at the next session thereof. 53 V., c. 31, ss. 87 and 88; 63-64 V., c. 26, s. 21.

Subsections 1 and 2 were first enacted in 1890, and the publication of the first annual returns shewed a very large number of unclaimed dividends and balances, most of them being small. Subsequent returns shew that as the result of the publicity given from year to year very many of the amounts have been claimed and withdrawn.

Subsection 3 was first enacted in 1900 and in a lesser degree has had a like effect.

By section 126 a bank cannot plead any statute of limitations or prescription with reference to deposits or dividends. In case of a winding-up such moneys are paid over to the Minister of Finance: sec. 115.

PAYMENTS TO THE MINISTER UPON WINDING-UP.

115. Unclaimed moneys.—If, in the event of the winding-up of the business of the bank in insolvency, or under

any general winding-up Act, or otherwise, any moneys payable by the liquidator, either to shareholders or depositors, remain unclaimed,—

(*a*) for the period of three years from the date of suspension of payment by the bank; or,

(*b*) for a like period from the commencement of the winding-up of such business; or,

(*c*) until the final winding-up of such business, if the business is finally wound up before the expiration of the said three years;

such moneys and all interest thereon shall, notwithstanding any statute of limitations or other Act relating to prescription, be paid to the Minister, to be held by him subject to all rightful claims on behalf of any person other than the bank.

2. If a claim to any money so paid is thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall, on the report of the Treasury Board, direct payment thereof to be made to the person entitled thereto, together with interest on the principal sum thereof, at the rate of three per centum per annum, for a period not exceeding six years from the date of payment thereof to the Minister as aforesaid: Provided that no such interest shall be paid or payable on such principal sum, unless interest thereon was payable by the bank paying the same to the Minister.

3. Upon payment to the Minister as herein provided the bank and its assets shall be held to be discharged from further liability for the amounts so paid. 53 V., c. 31, s. 88.

The bank is prevented by section 126 from claiming the benefit of a statute of limitations or prescription as to deposits, or dividends left for more than the statutory period. While it continues in business it may have the use of such moneys; but in the event of a winding-up, the money must be paid over to the Minister of Finance.

116. Outstanding notes.—Upon the winding-up of a bank in insolvency or under any general winding-up Act, or otherwise, the assignees, liquidators, directors, or other officials in charge of such winding-up, shall, before the final distribution of the assets, or within three years from the commencement of the suspension of payment by the bank, whichever shall first happen, pay over to the Minister a sum, out of the assets of the bank, equal to the amount then outstanding of the notes intended for circulation issued by the bank.

2. Upon such payment being made, the bank and its assets shall be relieved from all further liability in respect of such outstanding notes.

3. The sum so paid shall be held by the Minister and applied for the purpose of redeeming, whenever presented, such outstanding notes, without interest. 53 V., c. 31, s. 88.

Outstanding notes include not only those actually in circulation, but also any that may have been destroyed.

THE CURATOR.

117. Appointed by Association.—The Association shall, if a bank suspends payment in specie or Dominion notes of any of its liabilities as they accrue, forthwith appoint a curator to supervise the affairs of such bank.

2. The Association may at any time remove the curator, and may appoint another person to act in his stead. 63-64 V., c. 26, s. 24.

The Association is defined by section 2 (c) to be the Canadian Bankers' Association incorporated by 63-64 Vict. chap. 93. This statute is published in full in a later part of this work, as are also the By-laws of the Association. The appointment and removal of a curator are dealt with in By-Law No. 14.

As the notes of the suspended bank may become payable out of the Bank Circulation Redemption Fund (sec. 64), all the banks are interested in seeing that the fund is properly administered.

118. Manner of appointment.—The appointment of the curator shall be made in the manner provided for in the by-law of the Association made in that behalf as hereinafter provided.

2. If there is no such by-law the appointment shall be made in writing by the president of the Association, or by the person acting as president. 63-64 V., c. 26, s. 25.

By-law No. 14 of the Association was passed in accordance with this section, and was approved by the Treasury Board in May, 1901. It will be found among the By-laws of the Association in a later part of this work.

119. Powers and duties.—The curator shall assume supervision of the affairs of the bank, and of all necessary arrangements for the payment of the notes of the bank issued for circulation, and, at the time of his appointment, outstanding and in circulation.

2. The curator shall generally have all powers and shall take all steps and do all things necessary or expedient to protect the rights and interests of the creditors and shareholders of the bank, and to conserve and ensure the proper disposition, according to law, of the assets of the bank; and, for the purposes of this section, he shall have free and full access to all books, accounts, documents and papers of the bank.

3. The curator shall continue to supervise the affairs of the bank until he is removed from office, or until the bank resumes business, or until a liquidator is duly appointed to wind up the business of the bank. 63-64 V., c. 26, s. 26.

In the ordinary course the duties of the curator are of a temporary nature. When a liquidator is appointed, and notice of the payment of the notes of the suspended bank is given as provided by section 65, and such payment is kept up, his duties are practically at an end.

120. Officers to assist Curator.—The president, vice-president, directors, general manager, managers, clerks

and officers of the bank shall give and afford to the curator all such information and assistance as he requires in the discharge of his duties. 63-64 V., c. 26, s. 27.

121. Subject to approval.—No by-law, regulation, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank, shall be of any force or effect until approved in writing by the curator. 63-64 V., c. 26, s. 27.

The resumption of business by a bank within ninety days after suspension is an exception to the rule laid down in this section. See section 61 (*b*) and the notes thereon; also section 138 (*b*).

122. To make reports.—The curator shall make all returns and reports, and shall give all information to the Minister, touching the affairs of the bank, that the Minister requires of him. 63-64 V., c. 26, s. 28.

123. Remuneration.—The remuneration of the curator for his services, and his expenses and disbursements in connection with the discharge of his duties, shall be fixed and determined by the Association, and shall be paid out of the assets of the bank, and, in case of the winding-up of the bank, shall rank on the estate equally with the remuneration of the liquidator. 63-64 V., c. 26, s. 29.

The Winding-up Act, R. S. C. chap. 144, sec. 92, makes the remuneration of the liquidator a first claim on the assets of the estate.

BY-LAWS OF THE CANADIAN BANKERS' ASSOCIATION.

124. Making and approval.—The Association may, at any meeting thereof, with the approval of two-thirds in number of the banks represented at such meeting if the banks so approving have at least two-thirds in par value of the paid-up capital of the banks so represented, make by-laws, rules and regulations respecting,—

(*a*) all matters relating to the appointment or removal of the curator, and his powers and duties;

(*b*) the supervision of the making of the notes of the banks which are intended for circulation, and the delivery thereof to the banks;

(*c*) the inspection of the disposition made by the banks of such notes;

(*d*) the destruction of notes of the banks; and,

(*e*) the imposition of penalties for the breach or non-observance of any by-law, rule or regulation made by virtue of this section.

2. No such by-law, rule or regulation, and no amendment or repeal thereof, shall be of any force or effect until approved by the Treasury Board.

3. Before any such by-law, rule or regulation, or any amendment or repeal thereof is so approved, the Treasury Board shall submit it to every bank which is not a member of the Association, and give to each such bank an opportunity of being heard before the Treasury Board with respect thereto.

4. The Association shall have all powers necessary to carry out, or to enforce the carrying out, of any by-law, rule or regulation, or any amendment thereof, so approved by the Treasury Board. 63-64 V., c. 26, ss. 30 and 31.

By laws Nos. 13, 14, 15, and 16 to be found among the by-laws of the Canadian Bankers' Association, *post*, were passed on the subjects mentioned in this section and were approved by the Treasury Board in May, 1901, and are still in force.

INSOLVENCY.

125. Double liability.—In the event of the property and assets of the bank being insufficient to pay its debts and liabilities, each shareholder of the bank shall be liable for the deficiency, to an amount equal to the par value of the shares held by him, in addition to any amount not paid up on such shares. 53 V., c. 31, s. 89.

This liability of each shareholder to pay an amount equal to the par value of the stock held by him is commonly called the double liability. It applies to all the banks now doing business in Canada, except the Bank of British North America: sec. 6.

Shareholders are those who subscribe for and are allotted shares, and those to whom they are transferred or transmitted.

If after a bank has become insolvent by reason of its suspension for ninety days it has been brought under the Winding-up Act, R. S. C., chap. 144, the extent to which shareholders shall be called upon to pay this double liability will be determined by the liquidator and court in settling the list of contributories. If it has not been brought under the Winding-up Act, then this shall be determined by the directors under section 128, with the approval of the curator.

Where a savings bank holds shares as pledgee, but appears as owner in the books of the bank, it is not a shareholder within the meaning of this section, and not subject to the double liability. The bank is presumed to know that a savings bank cannot acquire bank shares or hold them except as pledgee: *Exchange Bank* v. *C. & D. Savings Bank*, M. L. R. 6 Q. B. 196 (1887). But see now the Savings Bank Act.

A director who has drawn dividends on stock standing in his name cannot set up irregularities in the issue of the stock to him to escape the double liability: *Court* v. *Waddell*, 4 L. N. 78 (1881).

A loan company which by its charter is authorized to lend money on bank shares, and which advances money on shares transferred to it, and accepted by it in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower: *Re Central Bank, Home Savings & Loan Co.'s Case*, 18 Ont. A. R. 489 (1891).

A director who had acted as such, was placed on the list of contributories for the number of shares required to qualify directors, although, as a fact, no shares had ever been allotted to him, nor had he applied for any: *In re Bread Supply Association*, [1893] W. N. 14.

126. No prescription or limitation.—The liability of the bank, under any law, custom or agreement to repay

moneys deposited with it and interest, if any, and to pay dividends declared and payable on its capital stock, shall continue, notwithstanding any statute of limitations, or any enactment or law relating to prescription.

2. This section applies to moneys heretofore or hereafter deposited, and to dividends heretofore or hereafter declared. 53 V., c. 31, s. 90.

It will be observed that it is only with regard to deposits and the interest thereon, and dividends, that a bank is precluded from setting up the statute of limitations or prescription. With regard to other debts or claims against it, it is in the same position as other debtors. This section was first enacted in 1890, but was then made retroactive, and a condition of the extension of the bank charters at that time.

The relation between the bank and its customers being that of debtor and creditor, the ordinary limitation or prescription would but for this section run in favor of the bank, so that in the Province of Quebec the claim of a depositor for principal and interest and of a shareholder for dividends would be extinct in five years, and in the other provinces in six years.

127. What constitutes insolvency.—Any suspension by the bank of payment of any of its liabilities as they accrue, in specie or Dominion notes, shall, if it continues for ninety days consecutively, or at intervals within twelve consecutive months, constitute the bank insolvent, and work a forfeiture of its charter or Act of incorporation, so far as regards all further banking operations.

2. The charter or Act of incorporation of the bank shall, in such case, remain in force only for the purpose of enabling the directors, or other lawful authority, to make and enforce the calls mentioned in the next following section of this Act, and to wind up the business of the bank. 53 V., c. 31, s. 91.

When a bank suspends payment, the President of the Canadian Bankers' Association must forthwith appoint a

curator: sec. 117, and By-law 15 of the Association. The curator takes charge of the affairs of the bank, and does what is necessary to protect the interests of the creditors and shareholders; sec. 119. The directors, officers, etc., are to give him all the information and assistance he requires: sec. 120; and nothing done or ordered by the directors is to have any force or effect until approved by him in writing: sec. 121.

It would be part of his duty to see that nothing was done, no payment made, and no contract entered into that would constitute a fraudulent preference within the meaning of the Winding-up Act, or be liable to be set aside in case the bank should after suspension for ninety days be brought under the provisions of that Act.

He should also see that no notes of the bank are issued during the suspension in contravention of section 61.

Although section 121 declares that no by-law, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank shall be of any force or effect until approved in writing by the curator, yet, as pointed out in the notes to section 61, that section assumes that the bank may resume business without such approval, the only restriction being that it shall not issue or re-issue any of its notes until authorized by the Treasury Board so to do.

It is to be noted that the bank is not deemed to be insolvent during the ninety days, nor is its charter forfeited as to further banking operations until the expiration of that period. What may be done or allowed by the curator during that period will depend largely upon the condition he finds the bank in. If there is a prospect of the bank being able to resume business, or if it is certain that all its creditors will be paid in full, the course adopted during that period will be quite different from that to be adopted if there is a possibility that the liabilities may not be paid in full.

Before the Act of 1890 only a suspension for ninety consecutive days constituted a bank insolvent. The day on which the bank suspends is reckoned as the first day of the ninety: *Mechanics' Bank* v. *St. Jean*, 9 R. L. 555 (1879).

A creditor of an incorporated bank, which has suspended payment, may, before the expiration of the ninety days, sue the bank and get judgment for his debt: *Seneeal* v. *Exchange Bank*, M. L. R. 2 S. C. 107 (1884).

A deposit of money made in a bank on the day and at the very hour when it suspended payment may be lawfully returned to the depositor: *Exchange Bank* v. *Montreal Coffee House*, M. L. R. 2 S. C. 141 (1886).

A deposit made on the day the bank suspended and after the directors had passed a resolution conditionally in favor of suspension was ordered to be returned with interest: *Re Central Bank, Wells' Case*, 15 O. R. 611 (1888).

A fair transaction by a bank after suspension will be upheld: *Exchange Bank* v. *Stinson*, 8 O. R. 667 (1885).

Where a depositor gave his cheque on a suspended bank to a debtor of the bank, which the bank accepted for the debtor's notes maturing, no action lies against the depositor as he has received nothing from the bank: *Exchange Bank* v. *Counsell*, 8 O. R. 673 (1885).

A person who deposits in a bank after its suspension cheques of third parties drawn on and accepted by the bank in question, is not entitled to be paid by privilege the amount of such deposit: *Ontario Bank* v. *Chaplin*, M. L. R. 5 Q. B. 407 (1889); affirmed in the Supreme Court, 20 S. C. Can. 152 (1891).

A depositor, five days after the suspension of a bank, drew cheques upon it which were accepted. These he handed to different persons, who some days later got them cashed by the suspended bank. It was held that no action lay against the depositor; the right of action, if any, was against the persons who drew the money: *Exchange Bank* v. *Hall*, M. L. R. 2 Q. B. 409 (1886).

A bank at Stratford received a deposit of $1,000 of the Mechanics' Bank bills, and later in the day learned that the Mechanics' Bank had suspended. That evening it forwarded the bills to Montreal, and three days later charged the amount to the depositor. It was held that the bills should have been tendered back the day they were deposited

or the next day, and that the bank was liable: *Conn* v. *Merchants' Bank*, 30 U. C. C. P. 380 (1879).

128. Calls on winding-up.—If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank, continues for three months after the expiration of the time which, under the last preceding section, would constitute the bank insolvent, and if no proceedings are taken under any Act for the winding-up of the bank, the directors shall make calls on the shareholders thereof, to the amount they deem necessary to pay all the debts and liabilities of the bank, without waiting for the collection of any debts due to the bank or the sale of any of its assets or property.

2. Such calls shall be made at intervals of thirty days.

3. Such calls shall be made upon notice to be given at least thirty days prior to the day on which any such call shall be payable.

4. Any number of such calls may be made by one resolution.

5. No such call shall exceed twenty per centum on each share.

6. Payment of such calls may be enforced in like manner as payment of calls on unpaid stock may be enforced.

7. The first of such calls may be made within ten days after the expiration of the said three months.

8. In the event of proceedings being taken, under any Act, for the winding-up of the bank in consequence of the insolvency of the bank, the said calls shall be made in the manner prescribed for the making of such calls in such Act.

9. Any failure on the part of any shareholder liable to any such call to pay the same when due, shall work a forfeiture by such shareholder of all claim in or to any part of the assets of the bank: Provided that such call, and any further call thereafter, shall nevertheless be recoverable from him as if no such forfeiture had been incurred. 53 V., c. 31, ss. 92, 93 and 94.

The first part of this section provides for a voluntary winding-up by the directors in case proceedings are not taken under a Winding-up Act, after the expiration of the ninety days. In that event the curator appointed under section 118 would remain in charge. The directors and officers of the bank are to give him all the assistance he requires: sec. 120. The calls provided for by the early part of this section and all other proceedings of the directors are to be approved by him in writing before they are acted on: sec. 121.

If no winding-up proceedings are taken within three months after the bank has become insolvent, that is within six months after its suspension, the directors must, within ten days, enforce the double liability so far as necessary. The making of calls is the same as under section 38 except that a call may be for twenty per cent. instead of ten, and any number of calls may be made by one resolution.

Sub-section 8 speaks of proceedings being taken "under any Act for the winding-up of the bank." The only Act under which proceedings can be taken for the winding-up of a bank, is the Dominion Winding-up Act, R. S. C. chap. 144, which applies to all corporations under the authority of the Parliament of Canada. Other corporations are deemed insolvent and may be wound up if there has been an acknowledgment of insolvency, an offer to compound, a fraudulent disposal or a general conveyance or assignment of the property of the corporation, or any unsatisfied seizure of its property for fifteen days, or until within four days of the sale: sec. 3. Also if a creditor for over $200 has made a demand of payment in writing and it has neglected to pay, or secure or compound for the same for 60 days: sec. 4. Section 4 also provides that if such a demand is made upon a bank and its neglect continues for 90 days, it shall be deemed insolvent. A demand is, however, not necessary in case of a bank, as under the present section suspension for ninety days constitutes insolvency without any demand.

Sections 150 to 159 inclusive apply to banks alone. The application must be made by a creditor of at least $1,000. The Court must hold separate meetings of shareholders and creditors to ascertain their respective wishes as to the appointment of liquidators.

If the bank is wound up under the Act the Court settles a list of contributories and the shareholders are ordered to pay such portion of the double liability as may be required to pay the creditors. The Court and liquidators are not subject to the limitations imposed on the directors in the earlier sub-sections with respect to calls.

129. Liability of directors.—Nothing contained in the four sections last preceding shall be construed to alter or diminish the additional liabilities of the directors as herein mentioned and declared. 53 V. c. 31, s. 95.

The additional liabilities of directors referred to in this section are for declaring a dividend or bonus so as to impair the paid-up capital: sec. 58; pledging or hypothecating notes of the bank: sec. 139; making a false statement or return: sec. 153; or giving an undue preference: sec. 155.

130. Liability of ex-shareholders.—(*a*) Persons who, having been shareholders of the bank, have only transferred their shares, or any of them, to others, or registered the transfer thereof, within sixty days before the commencement of the suspension of payment by the bank; and,

(*b*) Persons whose subscriptions to the stock of the bank have been cancelled, in manner hereinbefore provided, within the said period of sixty days before the commencement of the suspension of payment by the bank; shall be liable to all calls on the shares held or subscribed for by them, as if they held such shares at the time of such suspension of payment, saving their recourse against those by whom such shares were then actually held. 53 V., c. 31, s. 96.

Before 1890 the period of such liability was only a month, and there was no liability on cancelled shares. The liability in question is for the unpaid portion, if any, of the amount subscribed for, transferred or transmitted, and the double liability. This liability exists whether the bank has been brought under the Winding-up Act, or is being wound up by the curator and directors.

If the stock has passed through several hands within the sixty days preceding the suspension, they are all liable; the prior holders having their recourse against those who held the stock subsequent to themselves: *Re Central Bank, Baines' Case*, 16 Ont. A. R. 237 (1889); *Re Central Bank, Henderson's Case*, 17 O. R. 110 (1889); *Humby's Case*, 26 L. T. N. S. 936 (1872).

The owner of certain shares in the Central Bank authorized his broker to sell them, and transferred them to him for that purpose. The latter sold them on the Toronto Stock Exchange to a firm of brokers who did not then disclose the name of their principal. The selling broker signed the transfer in the books of the bank, leaving the name of the transferee blank, but noting in the margin that they were subject to the order of the purchasing brokers. The latter a few days later made another marginal note giving the name of their principal, who accepted the transfer, his name being filled in the blank space as transferee. Within a month (the time limited by section 77 of the then Bank Act, R. S. C. chap. 120) from the original transfer to the seller's broker the bank failed. The seller was held for the double liability. He obtained a judgment of indemnity against his broker, which was assigned to him, and the purchasing brokers were in turn held liable to him, their principal being worthless: *Boulthee* v. *Gzowski*, 29 S. C. Can. 54 (1898).

131. Order of charges on assets.—In the case of the insolvency of any bank,—

(*a*) the payment of the notes issued or re-issued by such bank, intended for circulation, and then in circulation, together with any interest paid or payable thereon as hereinafter provided, shall be the first charge upon the assets of the bank;

(*b*) the payment of any amount due to the government of Canada, in trust or otherwise, shall be the second charge upon such assets;

(*c*) the payment of any amount due to the government of any of the provinces, in trust or otherwise, shall be the third charge upon such assets; and,

(*d*) the amount of any penalties for which the bank is liable shall not form a charge upon the assets of the bank, until all other liabilities are paid. 53 V., c. 31, s. 53.

This section applies to all banks that have suspended payment for ninety days, whether brought under the Winding-up Act, or left in the hands of the curator and directors.

Holders of notes were given a preference in 1880, and the other preferences granted in 1890.

Depositors rank with ordinary creditors between clauses (*c*) and (*d*).

In the case of the Bank of Prince Edward Island, which existed under a provincial charter and never came under the Dominion Bank Act, it was held that the Dominion Government as a depositor had a right of priority over note holders and other ordinary creditors: *Reg.* v. *Bank of Nova Scotia*, 11 S. C. Can. 1 (1885).

In the case of the Exchange Act which was under the Bank Act of 1880, and had its head office in Montreal, it was held that the Crown was bound by the provisions of the Quebec codes, which gave the Crown priority only in the case of certain officials accountable for its moneys, and that as an ordinary creditor of a bank in liquidation the Dominion Government had no priority over the other ordinary creditors: *Exchange Bank* v. *The Queen*, 11 App. Cas. 157 (1886).

Where by an arrangement with the Dominion Government an insurance company made the deposit of $50,000 required by the Insurance Act with the Maritime Bank, which was to pay the interest to the company, it was held that this was not the money of the Crown, but was held by the Finance Minister in trust for the company, and was not subject to the prerogative of payment in full in priority to other creditors: *Maritime Bank* v. *The Queen*, 17 S. C. Can. 657 (1889).

The Provincial Government of New Brunswick had moneys in the Maritime Bank when it failed. The Supreme Court held that under R. S. C. chap. 120, sec. 79, note holders had a right of priority over the Government, and that the latter had priority over depositors and simple contract creditors: *Maritime Bank* v. *Receiver-General*, 20 S. C. Can. 695

(1889). The liquidators of the bank appealed against the latter part of this judgment, but it was affirmed by the Privy Council: [1892] A. C. 437.

The penalties for which the bank may be liable are those laid down in secs. 134, 135, 141, 142, 146, 147, 148, 149, 150, and 151.

OFFENCES AND PENALTIES.

The revisers of the Act of 1906 have re-arranged the sections and clauses relating to offences and penalties. In the Act of 1890, as a rule, they formed part of the section setting out the act or omission prohibited. In this Act they are grouped together in sections 132 to 146 inclusive.

The Commencement of Business.

132. Every director or provisional director of any bank and every other person, who, before the obtaining of the certificate from the Treasury Board, by this Act required, permitting the bank to issue notes or commence business, issues or authorizes the issue of any note of such bank, or transacts or authorizes the transaction of any business in connection with such bank, except such as is by this Act authorized to be transacted before the obtaining of such certificate, is guilty of an offence against this Act. 53 V., c. 31, s. 14.

Such certificate may be issued only after $500,000 have been subscribed, and $250,000 paid in and deposited with the Minister of Finance, and a meeting of subscribers held and directors elected: secs. 13 and 14.

The punishment for an offence against the Act is a fine not exceeding $1,000, or imprisonment not exceeding 5 years or both: sec. 157.

The Sale and Transfer of Shares

133. Any person, whether principal, broker or agent, who wilfully sells or transfers or attempts to sell or transfer,—

(*a*) any share or shares of the capital stock of any bank by a false number; or,

(*b*) any share or shares of which the person making such sale or transfer, or in whose name or on whose behalf the same is made, is not at the time of such sale, or attempted sale, the registered owner; or,

(*c*) any share or shares, without the assent to such sale of the registered owner thereof;

is guilty of an offence against this Act. 53 V., c. 31, s. 37.

Such transactions are null and void: sec. 45. The practice of numbering bank shares has not been adopted in Canada.

The punishment for an offence against the Act is laid down in section 157.

The Cash Reserves.

134. Every bank which at any time holds less than forty per centum of its cash reserves in Dominion notes shall incur a penalty of five hundred dollars for each such offence. 53 V., c. 31, s. 50.

This penalty is for a violation of section 60, and is recoverable at the suit of His Majesty: sec. 158.

The Issue and Circulation of Notes.

135. Penalties for exceeding limit.—If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this Act the bank shall,—

(*a*) if the amount of such excess is not over one thousand dollars, incur a penalty equal to the amount of such excess; or,

(*b*) if the amount of such excess is over one thousand dollars, and not over twenty thousand dollars, incur a penalty of one thousand dollars; or,

(*c*) if the amount of such excess is over twenty thousand dollars, and not over one hundred thousand dollars, incur a penalty of ten thousand dollars; or,

(*d*) if the amount of such excess is over one hundred thousand dollars, and not over two hundred thousand dollars, incur a penalty of fifty thousand dollars; or,

(*e*) if the amount of such excess is over two hundred thousand dollars, incur a penalty of one hundred thousand dollars. 53 V., c. 31, s. 51.

Other banks may issue notes up to the amount of their unimpaired capital; the Bank of British North America up to seventy-five per cent. of that amount: sec. 61. The penalty is recoverable at the suit of His Majesty: sec. 158.

136. Unauthorized notes for circulation.—Every person, except a bank to which this Act applies, who issues or re-issues, makes, draws, or endorses any bill, bond, note, cheque or other instrument, intended to circulate as money, or to be used as a substitute for money, for any amount whatsoever, shall incur a penalty of four hundred dollars.

2. Such penalty shall be recoverable with costs, in any court of competent jurisdiction, by any person who sues for the same.

3. A moiety of such penalty shall belong to the person suing for the same, and the other moiety to His Majesty for the public uses of Canada.

4. If any such instrument is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight, or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation, or as a substitute for money, the intention to pass the same as money shall be presumed, unless such instrument is,—

(*a*) a cheque on some chartered bank paid by the maker directly to his immediate creditor; or,

(*b*) a promissory note, bill of exchange, bond or other undertaking for the payment of money made or

delivered by the maker thereof to his immediate creditor; and,

(*c*) not designed to circulate as money or as a substitute for money. 53 V., c. 31, s. 60.

Most of the offences against the Act by individuals are punishable by indictment; the penalty in this section is recoverable in an ordinary *qui tam* action.

The issuing of notes in Canada intended to circulate as money is limited to the Dominion Government and the banks to which this Act applies.

137. Defacement of notes.—Every person who in any way defaces any Dominion or provincial note, or bank note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, shall be liable to a penalty not exceeding twenty dollars. 53 V., c. 31, s. 61.

This penalty is recoverable at the suit of His Majesty instituted by the Attorney-General of Canada or by the Minister of Finance: sec. 158.

138. (*a*) **Issue during suspension.**—Every person who, being president, vice-president, director, general manager, manager, clerk or other officer of the bank, issues or re-issues, during any period of suspension of payment by the bank of its liabilities, any notes of the bank payable to bearer on demand, and intended for circulation, or authorizes or is concerned in any such issue or re-issue; and,

(*b*) If, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinbefore provided for, every person who being president, vice-president, directeotr, general manager, manager, clerk or other officer of the bank issues or re-issues, or authorizes or is concerned in the issue or re-issue of any such notes before being thereunto authorized by the Treasury Board; and,

(c) Every person who accepts, receives or takes, or authorizes or is concerned in, the acceptance, receipt or taking of any such notes, knowing the same to have been so issued or re-issued, from the bank, or from such president, vice-president, director, general manager, manager, clerk or other officer of the bank, in payment or part payment, or as security for the payment of any amount due or owing to such person by the bank;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars or to both. 63-64 V., c. 26, s. 10.

This is the punishment provided for a violation of section 61.

139. (a) **Pledging notes.**—Every person who, being the president, vice-president, director, general manager, manager, cashier, or other officer of thebank, pledges, assigns, or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank; and,

(b) Every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation;

shall be liable to a fine of not less than four hundred dollars and not more than two thousand dollars, or to imprisonment for not more than two years, or to both. 53 V., c. 31, s. 52.

By section 63 a bank is prohibited from pledging its notes, and no advance or loan thereon is recoverable from the bank or its assets.

140. Issuing notes fraudulently—(a) Every person who, being the president, vice-president, director, general manager, manager, cashier or other officer of a bank, with intent to defraud, issues or delivers, or authorizes or is concerned in the issue or delivery of notes of

the bank intended for circulation and not then in circulation; and,

(*b*) Every person who, with knowledge of such intent, accepts, receives or takes, or authorizes or is concerned in the acceptance, receipt or taking of such notes;

shall be guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both. 53 V., c. 31, s. 52.

A violation of section 63 is punishable under this section.

Warehouse Receipts, Bills of Lading and other Securities.

In the present Act the following sections, 141, 142, 143, and 144 have been inserted by the revisors to take the place of section 79 in the Act of 1890, which reads as follows: "Every bank which violates any provision contained in any of the sections numbered sixty-four to seventy-eight (both inclusive) shall incur for each violation thereof a penalty not exceeding five hundred dollars. The sections named are those that relate to the business and powers of banks, and correspond generally to sections 76 to 90 inclusive of the present Act.

141. Acquiring contrary to Act.—If any bank, to secure the payment of any bill, note, debt or liability, acquires or holds,—

(*a*) any warehouse receipt or bill of lading; or,

(*b*) any instrument such as is by this Act authorized to be taken by the bank to secure money lent,—

(i) to any wholesale purchaser, or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live or dead stock, and the products thereof, upon the security of such products or of such live or dead stock, or the products thereof; or,

(ii) to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by such person, or procured for such manufacture;

such bank shall, unless,—

(*a*) such bill, note, debt or liability is negotiated or contracted at the time of the acquisition by the bank of such warehouse receipt, bill of lading or security; or,

(*b*) such bill, note, debt or liability is negotiated or contracted upon the written promise or agreement that such warehouse receipt, bill of lading or security would be given to the bank; or,

(*c*) the acquisition or holding by the bank of such warehouse receipt, bill of lading or security is otherwise authorized by this Act;

incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

It will be seen that the bank incurs the penalty unless it acquires the warehouse receipt, bill of lading or security in accordance with the provisions of this Act. It cannot claim the right to do so under any other law—Dominion or Provincial. See especially sections 86 to 90.

The penalty is recoverable by action at the suit of His Majesty: sec. 158.

142. Selling under power of sale.—If any debt or liability to the bank is secured by,—

(*a*) any warehouse receipt, or bill of lading; or,

(*b*) any other security such as is mentioned in the last preceding section;

and is not paid at maturity, such bank shall, if it sells the goods, wares and merchandise or products, covered by such warehouse receipt, bill of lading or security, under the power of sale conferred upon it by this Act, without complying with the provisions to which

the exercise of such power of sale is, by this Act, made subject, incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79; 63-64 V., c. 26, s. 18.

Section 89 contains the provisions as to such sales.

The penalty is recoverable by action at the suit of His Majesty: sec. 158.

143. Making false statement.—Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement,—

(*a*) in any warehouse receipt or bill of lading given under the authority of this Act to any bank; or,

(*b*) in any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser, or shipper of or dealer in live or dead stock and the products thereof, whereby any such products or stock is assigned or transferred to the bank as security for the payment of such loan; or,

(*c*) in any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, whereby any of the goods, wares and merchandise manufactured by him, or procured for such manufacture, are transferred or assigned to the bank as security for the payment of such loan. 53 V., c. 31, s. 75.

The Criminal Code, section 425, provides that any warehouseman, forwarder, etc., who gives a false warehouse or shipping receipt is guilty of an indictable offence and liable to three years' imprisonment, as is also any person who knowingly and wilfully accepts, transmits or uses any such false receipt. Section 427 makes any person liable to the same

punishment who wilfully makes any false statement in any receipt, certificate or acknowledgment for grain, timber or other goods or property which can be used for any of the purposes in the Bank Act.

144. Depriving bank of pledged goods.—Every person who, having possession or control of any goods, wares or merchandise covered by any warehouse receipt or bill of lading, or by any such security as in the last preceding section mentioned, and having knowledge of such receipt, bill of lading or security, without the consent of the bank in writing, and before the advance, bill, note, debt or liability thereby secured has been fully paid,—

(*a*) wilfully alienates or parts with any such goods, wares or merchandise; or,

(*b*) wilfully withholds from the bank possession of any such goods, wares and merchandise, upon demand, after default in payment of such advance, bill, note, debt or liability;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding two years. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 18.

See Criminal Code, sec. 426.

145. Sale of pledged shares.—(*a*) If any bank having, by virtue of the provisions of this Act, a privileged lien for any debt or liability for any debt to the bank, on the shares of its own capital stock of the debtor or person liable, neglects to sell such shares within twelve months after such debt or liability has accrued and become payable; or,

(*b*) If any such bank sells any such shares without giving notice to the holder thereof of the intention of the bank to sell the same, by mailing such notice in the post office post paid, to the last known address of such holder, at least thirty days prior to such sale;

such bank shall incur, for each such offence, a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

The above penalty is for a violation of section 77. It is recoverable by action at the suit of His Majesty: sec. 158.

Prohibited Business.

146. Bank doing.—If any bank, except as authorized by this Act, either directly or indirectly,—

(*a*) deals in the buying or selling or bartering of goods, wares and merchandise, or engages or is engaged in any trade or business whatsoever; or,

(*b*) purchases, deals in, or lends money or makes advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,

(*c*) lends money or makes advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise;

such bank shall incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

The above penalty is for a violation of section 76.

See section 158.

Returns.

147. Not making monthly returns.—Every bank which neglects to make up and send to the Minister, within the first fifteen days of any month, any monthly return by this Act required to be made up and sent in within the said fifteen days, exhibiting the condition of the bank on the last juridical day of the month last preceding, and signed in the manner and by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration

of such time, during which the bank neglects to make and send in such return. 53 V., c. 31, s. 85.

The above penalty is for a violation of section 112.

See sections 152 and 158.

148. Not making special returns.—Every bank which neglects to make and send to the Minister, within thirty days from the date of the demand therefor by the Minister, or, if such time is extended by the Minister, within such extended time, not exceeding thirty days, as the Minister may allow, any special return, signed in the manner and by the persons by this Act required, which, under the provisions of this Act, the Minister may, for the purpose of affording a full and complete knowledge of the condition of the bank, call for, shall incur a penalty of five hundred dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 86.

The above penalty is for a violation of section 113.

See sections 152 and 158.

149. Not making return of unpaid drafts.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons and setting forth the particulars by this Act required in that behalf, of all drafts or bills of exchange issued by the bank to any person and remaining unpaid for more than five years prior to the date of such return, shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 63-64 V., c. 26, s. 21.

The above penalty is for a violation of section 114, s.s. 3.

See sections 152 and 158.

150. Not sending list of shareholders.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a certified list, as by this Act required, showing,—

(*a*) the names of the shareholders of the bank on the last day of such calendar year, with their additions and residences;

(*b*) the number of shares then held by such shareholders respectively; and,

(*c*) the value at par of such shares;

shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 87.

The above penalty is for a violation of section 114, s.s. 2.

See sections 152 and 158.

151. Not making list of unpaid dividends.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons by this Act required, of all dividends which have remained unpaid for more than five years, and also of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return, and setting forth such further particulars as are by this Act required in that behalf, shall incur a penalty of fifty dollars for each and every day during which such neglect continues.

2. The said term of five years shall, in case of moneys deposited for a fixed period, be reckoned from the date of the termination of such fixed period. 53 V., c. 31, s. 88.

The above penalty is for a violation of section 114, s.s. 1.

See sections 152 and 158.

152. Date stamp on envelope.—If any return or list, mentioned in either of the last five preceding sections, is transmitted by post, the date appearing, by the post office stamp or mark upon the envelope or wrapper inclosing the return or list received by the Minister, as the date of deposit in the post office of

the place at which the chief office of the bank was situated, shall be taken prima facie, for the purpose of any of the said sections, to be the day upon which such return or list was transmitted to the Minister. 53 V., c. 31, ss. 85 and 86; 63-64 V., c. 26, sec. 22.

153. Making wilfully false statement.—The making of any wilfully false or deceptive statement in any account, statement, return, report, or other document respecting the affairs of the bank is an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years.

2. Every president, vice-president, director, auditor, manager, cashier or other officer of the bank, who,—

(*a*) prepares, signs, approves or concurs in any such account, statement, return, report or document containing such false or deceptive statement; or,

(*b*) uses the same with intent to deceive or mislead any person;

shall be held to have wilfully made such false or deceptive statement, and shall further be responsible for all damages sustained by any person in consequence thereof. 53 V., c. 31, s. 99.

This section comes down to us without material change from the Act of 1871. It has been claimed that under the second sub-section the simple signing, approving or concurring in the false statement by the officers named, without their actually knowing it was a false statement, is sufficient to make them liable to the punishment named in the first sub-section, and that a *mens rea* is not a necessary ingredient of the offence. Our courts, however, do not appear to have adopted this construction of the section.

A reference to Schedule D. shews that the statement of the president and manager to the monthly returns made under section 112 are only declared to be correct "to the best of our knowledge and belief."

Complaints under this section, as a rule, either come under the statement submitted by the directors at the annual meeting: sec. 54; or under the monthly returns to the Government, section 112.

In an indictment under this section in the Act of 1871 for having unlawfully and wilfully made a wilfully false and deceptive statement in a return respecting the affairs of the bank, it was held not necessary to allege that the return was one required by law to be made by the accused, or that any use was made by him of such return, or to specify in what particulars it was false. The enumeration in the indictment of several alleged false statements constitute but one count, and a general verdict is sufficient if the statement is shown to be false in any one of the particulars alleged. It is not necessary to allege in the indictment that the false statement was made with intent to deceive or mislead: *The Queen* v. *Cotté*, 22 L. C. J. 141 (1877).

Where the Judge charged the jury that wilful intent to make a false return might be inferred from all the circumstances of the case proved to their satisfaction, this was held to be a proper instruction: *Reg.* v. *Hincks*, 24 L. C. J. 116 (1879).

It is not necessary that the information should be laid by a shareholder or creditor of the bank; it may be done by any citizen, even though he is a debtor of the bank: *Molleur* v. *Loupret*, 8 L. N. 305 (1885).

The annual report of the bank submitted to the shareholders is a statement within the meaning of the section not only to them but to the public, and if shown that it was made with intent that it be acted upon, directors may be liable to third parties: *Rhodes* v. *Starnes*, 22 L. C. J. 113 (1878).

An indictment is sufficient in form if it charges in substance the offence created by the Act. A charge that the accused made a "wilful false and deceptive statement of and con erning the affairs of the bank, sufficiently charges an offence under section 99 of the Bank Act, 1890: *The Queen* v. *Weir*, Q. R. 8 Q. B. 521 (1899); 3 Can. Cr. Cas. 102.

Directors may be held personally responsible for losses incurred through a statement which they know to be untrue, or where they are guilty of such gross negligence as to amount to fraud: *Parker* v. *McQuesten*, 32 U. C. Q. B. 273 (1872); *McDonald* v. *Rankin*, M. L. R. 7 S. C. 44 (1890).

An innocent director, however, is not liable for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance sheets, if the books and accounts have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud: *In re Denham & Co.*, 25 Ch. D. 752 (1883).

Where the collapse of a bank was due to overdrafts which the cashier, the principal executive officer of the bank under the directors, whose accounts had been audited, duly appointed and entirely independent of the directors, had irregularly and improperly allowed to certain customers, it was held that by the law of Quebec as by the law of England, a charge of negligence could not be established against the president of the bank simply by reason of his having in good faith failed to detect the cashier's concealment of such overdrafts. *Dovey* v. *Cory*, (1901) A. C., followed: *Prefontaine* v. *Grenier*, (1907) A. C. 101.

In the same case in the Court of Appeal, Quebec, Q. R. 15 K. B. 143 (1906), it was held that the signing of the statements by the president when he had no reason to suspect they were inaccurate or false did not amount to the making or approval of wilfully false statements under section 99 of the Bank Act, 1890.

In the *King* v. *Lovitt*, 41 N. S. 240 (1907), 3 Eastern L. R. 384, it was held by two judges that there was no guilty knowledge on the part of the defendant as president of the falsity of the returns to the government signed by him, and that the case should have been withdrawn from the jury. Two others were in favour of a new trial on account of misdirection in the charge; while the fifth judge who thought there was no evidence to warrant a conviction joined in a judgment ordering a new trial.

Calls in the Case of Suspension of Payment.

154. Punishment for refusal to make.—(*a*) If any suspension of payment in full, in specie or Dominion

notes, of all or any of the notes or other liabilities of the bank continues for three months after the expiration of the time which, under the provisions of this Act, would constitute the bank insolvent; and,

(*b*) if no proceedings are taken under any Act for the winding-up of the bank; and,

(*c*) if any director of the bank refuses to make or enforce, or to concur in the making or enforcing of any call on the shareholders of the bank, to any amount which the directors deem necessary to pay all the debts and liabilities of the bank;

such director shall be guilty of an indictable offence, and liable,—

(*a*) to imprisonment for any term not exceeding two years; and,

(*b*) personally for any damages suffered by any such default. 53 V., c. 31, s. 92.

The duty of making such calls is set out in section 128.

Undue Preference to the Bank's Creditors.

155. Every person who, being the president, vice-president, director, manager, cashier or other officer of the bank, wilfully gives or concurs in giving to any creditor of the bank any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor, or by changing the nature of his claim, or otherwise howsoever, is guilty of an indictable offence, and liable,—

(*a*) to imprisonment for a term not exceeding two years; and,

(*b*) for all damages sustained by any person in consequence of such preference. 53 V., c. 31, s. 97.

A director of the Exchange Bank had at the time of its suspension over $13,000 standing to his credit. A few days after the suspension the president of the bank paid him sums aggregating $10,000. A creditor laid an information against the director, who returned the money. He was,

however, convicted and sentenced to ten days' imprisonment: *Reg.* v. *Buntin*, 7 L. N. 395 (1883)

One way of giving a preference would be to give bills of the bank to an ordinary creditor.

The Using of the Title "Bank," etc.

156. Every person assuming or using the title of "bank," "banking company," "banking house," "banking association" or "banking institution," without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act. 53 V., c. 31, s. 100.

Up to the 1st of July, 1880, any person was at liberty to use the word "bank," or any of the expressions mentioned in this section. It was enacted by 43 Vict. chap. 22, sec. 10, that any one who used the word "bank" after that date without being authorized to do so, should be guilty of a misdemeanour. The Act of 1883, 46 Vict. chap. 8, added the other expressions of this section, and required the addition of the words "not incorporated." In the present Act the use of the words is absolutely forbidden.

The punishment for a violation of this section is a fine not exceeding $1,000, or imprisonment not exceeding five years, or both: sec. 157.

In accordance with the provisions of the Interpretation Act, R. S. C. chap. 1, sec. 7, "person" would include a body corporate or a partnership.

Penalty for Offence against this Act.

157. Every person committing an offence, declared to be an offence against this Act, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the court before which the conviction is had. 53 V., c. 31, s. 101.

The "offences" against the Act are, (1) Commencing business without a certificate: sec. 132; (2) Selling shares

by a false number, or as belonging to one not the owner: sec. 133; (3) Using unlawfully the name "bank," etc.: sec. 156.

Procedure.

158. The amount of all penalties imposed upon a bank for any violation of this Act shall be recoverable and enforceable, with costs, at the suit of His Majesty instituted by the Attorney-General of Canada, or by the Minister.

2. Such penalties shall belong to the Crown for the public uses of Canada: provided that the Governor in Council, on the report of the Treasury Board, may direct that any portion of any penalty be remitted, or paid to any person, or applied in any manner deemed best adapted to attain the objects of this Act, and to secure the due administration thereof. 53 V., c. 31, s. 98.

In the case of insolvency these penalties are not a charge on the assets of the bank, until all other liabilities are paid: sec. 131.

As will be seen from the several sections in which these penalties are imposed, they are recoverable from the bank in the first instance. As in every case it would be for the neglect of a director or officer of the bank, it would have its recourse against the officer or officers in default.

The directors of banks are quasi trustees for the general body of stockholders, and if any loss should accrue to the bank through their violating the provisions of the Act, they would be liable individually to make good the loss to the bank: *Drake* v. *Bank of Toronto*, 9 Grant 116 (1862).

SCHEDULE A.

1. The Bank of Montreal.
2. The Bank of New Brunswick.
3. The Quebec Bank.
4. The Bank of Nova Scotia.

5. The St. Stephen's Bank.
6. The Bank of Toronto.
7. The Molsons Bank.
8. The Eastern Townships Bank.
9. The Union Bank of Halifax.
10. The Ontario Bank.
11. La Banque Nationale.
12. The Merchants Bank of Canada.
13. La Banque Provinciale du Canada.
14. The People's Bank of New Brunswick.
15. The Union Bank of Canada.
16. The Canadian Bank of Commerce.
17. The Royal Bank of Canada.
18. The Dominion Bank.
19. The Bank of Hamilton.
20. The Standard Bank of Canada.
21. La Banque de St. Jean.
22. La Banque d'Hochelaga.
23. La Banque de St. Hyacinthe.
24. The Bank of Ottawa.
25. The Imperial Bank of Canada.
26. The Western Bank of Canada.
27. The Traders' Bank of Canada.
28. The Sovereign Bank of Canada.
29. The Metropolitan Bank.
30. The Crown Bank of Canada.
31. The Home Bank of Canada.
32. The Northern Bank.
33. The Sterling Bank of Canada.
34. The United Empire Bank of Canada.

63-64 V., c. 26, s. 4, and sch. A.

SCHEDULE B.

An Act to incorporate the Bank.

Whereas the persons hereinafter named have, by their petition, prayed that an Act be passed for the purpose of establishing a bank in , and it is expedient to grant the prayer of the said petition:

Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The persons hereinafter named, together with such others as become shareholders in the corporation by this Act created, are hereby constituted a corporation by the name of , hereinafter called the Bank.

2. The capital stock of the Bank shall be dollars.

3. The chief office of the Bank shall be at

4. shall be the provisional directors of the Bank.

5. This Act shall, subject to the provisions of section sixteen of the Bank Act, remain in force until the first day of July, in the year one thousand nine hundred and eleven.

53 V., c. 31, sch. B.; 63-64 V., c. 26, s. 45.

SCHEDULE C.

In consideration of an advance of.....dollars made by the.....Bank to A. B., for which the said Bank holds the following bills or notes: (*describe the bills or notes, if any*), [*or*, in consideration of the discounting of the following bills or notes by the.....Bank for A. B.: (*describe the bills or notes*),] the goods, wares and merchandise mentioned below are hereby assigned to the said Bank as security for the payment on or before the..... day of.....of the said advance, together with interest thereon at the rate of....per centum per annum from the.....day of.....(*or*, of the said bills or notes, or renewals thereof, or substitutions therefor, and interest thereon, *or as the case may be*).

This security is given under the provisions of section eighty-eight of the Bank Act, and is subject to the provisions of the said Act.

The said goods, wares and merchandise are now owned by....., and are now in the possession of.....,

and are free from any mortgage, lien or charge thereon (*or as the case may be*), and are in (*place or places where the goods are*), and are the following (*description of goods assigned*).

Dated, etc.

(*N.B.—The bills or notes and the goods, etc., may be set out in schedules annexed.*)

63-64 V., c. 26, s. 46 and sch. C.

SCHEDULE D.

Return of the liabilities and assets of the bank on the day of , A.D.

Capital authorized .....$
Capital subscribed .....
Capital paid up .....
Amount of rest or reserve fund.....
Rate per cent. of last dividend declared..... per cent.

LIABILITIES.

1. Notes in circulation .....$
2. Balance due to Dominion Government, after deducting advances for credits, pay-lists, etc. .....
3. Balances due to provincial governments.....
4. Deposits by the public, payable on demand, in Canada .....
5. Deposits by the public, payable after notice or on a fixed day, in Canada.....
6. Deposits elsewhere than in Canada.....
7. Loans from other banks in Canada, secured, including bills rediscounted.....
8. Deposits made by and balances due to other banks in Canada .....
9. Balances due to agencies of the bank, or to other banks or agencies, in the United Kingdom .....

10. Balances due to agencies of the bank, or to other banks or agencies, elsewhere than in Canada and the United Kingdom.....$
11. Liabilities not included under foregoing heads

$

ASSETS.

1. Specie .....$
2. Dominion notes .....
3. Deposits with Dominion Government for security of note circulation .....
4. Notes of and cheques on other banks .....
5. Loans to other banks in Canada, secured, including bills rediscounted .....
6. Deposits made with and balances due from other banks in Canada .....
7. Balances due from agencies of the bank, or from other banks or agencies, in the United Kingdom .....
8. Balances due from agencies of the bank, or from other banks or agencies, elsewhere than in Canada and the United Kingdom
9. Dominion Government and provincial government securities .....
10. Canadian municipal securities, and British, or foreign, or colonial public securities, other than Canadian .....
11. Railway and other bonds, debentures and stocks .....
12. Call and short loans on stocks and bonds in Canada .....
13. Call and short loans elsewhere than in Canada .....
14. Current loans in Canada .....
15. Current loans elsewhere than in Canada....
16. Loans to the Government of Canada.....
17. Loans to provincial governments.....
18. Overdue debts .....
19. Real estate other than bank premises ....

20. Mortgages on real estate sold by the bank..$
21. Bank premises .....
22. Other assets not included under the foregoing heads .....

$

$

Aggregate amount of loans to directors, and firms of which they are partners, $

Average amount of specie held during the month, $

Average amount of Dominion notes held during the month, $

Greatest amount of notes in circulation at any time during the month, $

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,
Chief Accountant.

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the bank; and we further declare that the bank has never, at any time during the period to which the said return relates, held less than forty per centum of its cash reserves in Dominion notes.

(*Place*) this day of

A. B., *President.*
C. D., *General Manager.*

63-64 V., c. 26, s. 47 and sch. D.

CHEQUES ON A BANK.

BILLS OF EXCHANGE ACT.

REVISED STATUTES OF CANADA, 1906.

CHAP. 119. PART III.

The law of Canada on the subject of Cheques is found in the Third Part of the Bills of Exchange Act, which consists of eleven sections, 165 to 175, inclusive. The first three of these relate to cheques generally, and the remaining seven to crossed cheques. They are taken from the Imperial Bills of Exchange Act, 1882, with but two slight changes. The first is the substitution of the word "bank" for "banker." The reason for this is that in England the banking business is carried on largely by individuals and incorporated companies, while in Canada the Bank Act and the Bills of Exchange Act recognize only incorporated banks and savings banks. The other is the addition of sub-section 7 to section 169.

Although the language of the Imperial and Canadian Acts is thus substantially identical, there are two marked differences between the law and the practice in the two countries. The first is in section 60 of the Imperial Act, which provides that when a bill payable to order on demand is drawn on a banker, and he pays it in good faith, he is not responsible even if the indorsements are forged. This rule applies to a cheque, which is a bill of exchange drawn on a banker payable on demand. An effort was made by the banks to have this clause embodied in the Canadian Act, but the House of Commons was unwilling to make the change. The use of crossed cheques in England has been adopted largely to overcome the danger aris-

ing from such forged indorsements. Under the Canadian law there is not the same necessity, and although the Act has introduced the English statute as to the crossing of cheques, the practice has been adopted to a very limited extent.

The other great difference arises from the fact that the practice of getting cheques marked or accepted, so general in Canada, is also unknown in England. Byles says in his work on Bills, that cheques are not accepted, and that to issue them accepted would probably be an infringement of the Bank Charter Acts.

A cheque drawn upon a private banker would not be a cheque within the meaning of the Bills of Exchange Act, and would not be subject to the special rules contained in this part of the Act, such as crossing and the like. It would be simply a bill of exchange, payable on demand, and subject to such provisions of the Act as apply to an instrument of that kind: *Trunkfield* v. *Proctor*, 2 O. L. R. 326 (1901).

In the following notes the references are to the Bills of Exchange Act, and not to the Bank Act, when the word "Act" or "section" is used without any more particular designation.

165. Cheque defined.—A cheque is a bill of exchange drawn on a bank, payable on demand. 53 V. c. 33, s. 72. Imp. Act, s. 73.

Reading this definition in connection with that of a bill of exchange in section 17 of this Act, a cheque is an "unconditional order in writing addressed by a person to a bank, signed by the person giving it, requiring the bank to pay on demand a sum certain in money to, or to the order of a specified person, or to bearer."

According to the definition in section 2 (*c*), "bank" means "an incorporated bank or savings bank carrying on business in Canada"; that is, one of the banks to which the Bank Act, R. S. C. chap. 29, applies; or a savings bank under R. S. C. chap. 30 or 32; or a penny bank under R. S. C. chap. 31; or a bank under an old provincial charter.

In Quebec, under the Code, a cheque might be drawn upon a private banker as well as upon an incorporated bank: Art. 2349. This was the law before the Act in the other provinces also.

A cheque should be addressed to the bank by its proper corporate name, and not to the "cashier," "manager" or "agent" of the bank. An instrument addressed to one of these would not, strictly speaking, be a cheque within the meaning of the Act, and if marked or accepted it might be claimed that the bank was not liable, as it would not be the drawee of the instrument and consequently could not become liable by acceptance.

The words "on demand" need not be on the cheque, as they are understood when no time for payment is expressed: sec. 23.

A document in the form of a cheque addressed by one branch of a bank to another branch of the same bank is not a cheque within the meaning of this section, drawer and drawee being the same person: *Brown* v. *National Bank*, 18 T. L. R. 669 (1902); *Capital and Counties Bank* v. *Gordon*, [1903] A. C. 240; *London City and Midland Bank* v. *Gordon*, [1903] A. C. 240.

An order in the form of an ordinary cheque with the following words added: "Provided the receipt form at the foot hereof is duly signed, stamped and dated," is not a cheque, not being unconditional: *Bavins* v. *London and S. W. Bank* [1900] 1 Q. B. 170.

A cheque is not invalid because it is not dated, nor because it does not specify the place where it was drawn, nor because it is antedated, or post-dated or bears date on a Sunday or other non-juridical day; sec. 27: *Wood* v. *Stephenson*, 16 U. C. Q. B. 419 (1858); and the fact that it is post-dated is not an irregularity: *Hitchcock* v. *Edwards*, 60 L. T. N. S. 636 (1889); *Carpenter* v. *Street*, 6 T. L. R. 410 (1890). But a cheque dated seven days after delivery is in substance a bill of exchange at seven days' date: *Forster* v. *Mackreth*, L. R. 2 Ex. 163 (1867). A bank should not pay a cheque before the day of its date: *DaSilva* v. *Fuller*, cited in *Morley* v. *Culverwell*, 7 M. & W. 178 (1840).

In the United States there has been a conflict as to whether a cheque may be made payable on a day subsequent to its date. The weight of authority is in favor of what is law under our Act, that such an instrument is not a cheque, and has three days' grace. See *Bowen* v. *Newell*, 13 N. Y. 290 (1855); *Morrison* v. *Bailey*, 5 Ohio St. 13 (1855); *Harrison* v. *Nicollet Bank*, 41 Minn. 488 (1889); 2 Daniel, sec. 1574. But see contra *Re Brown*, 2 Story, C. C. 502 (1843); *Westminster Bank* v. *Wheaton*, 4 R. I. 30 (1856); *Champion* v. *Gordon*, 70 Penn. St. 474 (1872); *Way* v. *Toule*, 155 Mass. 374 (1892).

When a cheque is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit: sec. 31.

A cheque is "issued" when it is in the hands of a person who is entitled to demand cash for it: *Ex parte Bignold*, 22 Beav. 143 (1856).

Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable: sec. 28.

A material alteration of a cheque makes it void. If the alteration is not apparent a holder in due course may avail himself of it as if it had not been altered, and may enforce payment of it according to its original tenor: sec. 145. The following alterations are material:

1. Alteration of the date or of the sum payable: sec. 146; even though it be to change it to a later date: *Boulton* v. *Langmuir*, 24 Ont. A. R. 618 (1897).

2. Changing "order" to bearer: *re Commercial Bank*, 10 Man. 171 (1894); *Booth* v. *Powers*, 56 N. Y. 22 (1874).

A customer drew a cheque for $5 and had it "marked." He altered it to $500 and deposited it with another bank and drew the money. The cheque was sent through the Clearing House, and was charged against the former bank as $500. The following morning the forgery was discovered and notice given, and a refund of $495 claimed. The claim was maintained on the ground that the notice was in time and the latter bank had not altered its position in the meantime: *Imperial Bank* v. *Bank of Hamilton*, [1903] A. C. 49.

The Act does not make it a part of the definition that the drawer should be a customer of the bank; but if a person gets goods or money on the strength of a cheque when he has no account he is guilty of obtaining the goods or money by false pretences, and is liable to three years' imprisonment: Criminal Code, R. S. C. c. 146, sec. 405; *Rex* v. *Jackson*, 3 Camp. 370 (1813); *Reg.* v. *Hazelton*, L. R. 2 C. C. 134 (1874).

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof, and is not, in itself, a false representation of a fact past or present: *The King* v. *Richard*, 11 Can. Cr. Cas. 279 (1906).

There have been conflicting decisions as to whether a cheque is money. A good deal will depend on the language of the statute to be construed. See illustrations, Nos. 10, 11, 12, and 51, *post*.

2. **Provisions as to bills to apply.**—Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V., c. 33, s. 72. Imp. Act, s. 73.

The exceptions are, (1) that failure to present a cheque for payment within a reasonable time does not discharge the drawer, except in so far as he is damaged thereby: sec. 176; (2) that the bank should not pay after notice of the customer's death: sec. 167; and (3) the provisions relating to crossed cheques: secs. 168 to 175, inclusive.

The law as to the presentment of a cheque for payment differs from that respecting a bill of exchange payable on demand. In suing on a cheque it is not necessary to allege or prove presentment within a reasonable time or protest for non-payment. These are matters of defence. It is for the drawer to allege and prove damage: *De Serres* v. *Evard*, Q. R. 17 S. C. 199 (1899).

The chief provisions of the Act relating to bills payable on demand, which also apply to cheques, are the following:

(1) There are no days of grace: sec. 42; (2) when they appear on their face to have been in circulation for an unreasonable length of time they are deemed to be overdue, so as to prevent a holder from acquiring them free from defects of title: sec. 70; (3) they must be presented for payment within a reasonable time after endorsement to charge an endorser: sec. 86.

A cheque being a bill of exchange does not operate as an assignment of funds in the hands of the bank available for the payment thereof, and until it accepts a cheque the bank is not liable on it: sec. 127. The holder of an unaccepted cheque, consequently, cannot sue the bank upon it, except under the circumstances mentioned in section 166. Under the Code it was held in Quebec that a cheque was an assignment of so much of the drawer's funds: *Marler* v. *Molsons Bank*, 23 L. C. J. 293 (1879). This is the law in Scotland: sec. 53, sub-sec. 2 of the Imperial Act; and also in France: Nouguier, (ss.) 392, 431.

Section 49 of the Act provides that where a signature on a bill is forged or placed thereon without authority it is wholly inoperative: Provided that if a cheque payable to order is paid by the drawee upon a forged indorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery. In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto, who has not previously instituted proceedings for the protection of his rights.

ILLUSTRATIONS.

1. The production of a cheque is not even *prima facie* evidence of money lent by the drawer: *Foster* v. *Fraser*, Rob. & Jos. Dig. 652 (1840); *Nichols* v. *Ryan*, 2 R. L. 111 (1868); *Dufresne* v. *St. Louis*, M. L. R. 4 S. C. 310 (1888).

2. A cheque may be post-dated, and is then payable on the day of its date without grace: *Wood* v. *Stephenson*, 16 U. C. Q. B. 419 (1858).

3. Where plaintiffs accepted from defendant a cheque of a third party in part payment of goods, and presented it at the bank the next day, and also applied several times to the drawer, but did not notify the defendant for a week, held that the latter was not liable: *Redpath* v. *Kolfage*, 16 U. C. Q. B. 433 (1858).

4. Plaintiff deposited in defendant's bank the cheque of a third party on another bank in the same town. Defendants credited it in his pass-book as cash and stamped it as their property. They presented it the next business day when it was dishonoured. If they had presented it the same day it would have been paid. Held, that the bank was not liable: *Owens* v. *Quebec Bank*, 30 U. C. Q. B. 382 (1870).

5. A cheque operates as payment until it has been dishonoured. It may be received either as conditional or as absolute payment: *Hughes* v. *Canada Permanent L. & S. S.*, 39 U. C. Q. B. 221 (1876).

6. Where a bank paid cheques on forged indorsements, the receipt given by the plaintiffs at the end of the month was, at most, an acknowledgment that the balance was correct on the assumption that the cheques had been paid to the proper parties. Where the names of the payees had also been forged on an application for a loan to plaintiffs, the cheques were not payable to fictitious payees: *Agricultural S. & L. Association* v. *Federal Bank*, 6 Ont. A. R. 192 (1881).

7. The Bank of Montreal allowed a private banker at London to put on his cheques "payable at Bank of Montreal, Toronto, at par." Held, that these words simply meant that there would be no charge for cashing the cheques, and not that the Bank of Montreal would pay them if there were no funds of the drawer to meet them: *Rose-Belford Printing Co.* v. *Bank of Montreal*, 12 O. R. 544 (1886).

8. The Finance Minister deposited a cheque on the Bank of P. E. I. in the Bank of Montreal, at Ottawa, which placed

the amount to his credit. On the dishonour of the cheque the Bank of Montreal was entitled to reverse the entry, as it was not a holder for value, but merely an agent for collection: *The Queen* v. *Bank of Montreal*, 1 Exch. Can. 154 (1886).

9. The payee of a cheque took it to the bank on which it was drawn the same day as he received it from the drawer, and had it marked "good," the amount being charged to the drawer's account; but he did not demand payment. The bank suspended payment that evening, and the next day the cheque was presented for payment and dishonoured. Held, that the drawer was discharged from all liability thereon: *Boyd* v. *Nasmith*, 17 O. R. 40 (1888); *Legaré* v. *Arcand*, Q. R. 9 S. C. 122 (1895); *Banque Jacques Cartier* v. *Corporation de Limoilou*, Q. R. 17 S. C. 211 (1899); *Merchants Bank* v. *State Bank*, 10 Wall. (U.S.) 647 (1870); *First National Bank* v. *Leach*, 52 N. Y. 350 (1873).

10. The handing by a debtor to his creditor of the cheque of a third person upon a bank in the place where the creditor lives, the maker of the cheque having funds there to meet it, is a "payment of money to a creditor" within the meaning of R. S. O. chap. 124, sec. 3, sub-sec. 1: *Armstrong* v. *Hemstreet*, 22 O. R. 336 (1892). (Overruled by No. 11 below.)

11. Indorsing and giving to a creditor the unaccepted cheque of a third person in the debtor's favor is not a payment of "money" within the meaning of section 3 of R. S. O. chapter 124: *Davidson* v. *Fraser*, 23 Ont. A. R. 439 (1896); affirmed, 28 S. C. Can. 272 (1897).

12. An insolvent trader sold his stock to a *bona fide* purchaser. Both were customers of the same bank which had a mortgage on the stock. The purchaser gave the bank his cheque in payment. This was held to be a "payment of money": *Gordon Mackay & Co.* v. *Union Bank*, 26 Ont. A. R. 155 (1899). Followed in *Robinson* v. *McGillivray*, 2 O. L. R. 232 (1906); 39 S. C. Can. 281 (1907).

13. The agent of a life insurance company sent in applications, some genuine and some forged, on which the company sent him policies. The genuine ones lapsed, but he

kept both classes on foot and sent in forged claims representing that the parties were dead. Cheques were sent to him payable to the order of the alleged claimants whose names were forged. He endorsed the cheques in the names of the respective payees, and received the proceeds from the bank. Held that the cheques were payable to fictitious or non-existent persons, and therefore payable to bearer, and the bank was not liable to the insurance company: *London Life Ins. Co.* v. *Molsons Bank*, 8 O. L. R. 238 (1904). See *Vinden* v. *Hughes*, [1905] 1 K. B. 795; *Macbeth* v. *N. & S. Wales Bank*, [1906] 2 K. B. 718.

14. An instrument in the form of a cheque with the words "cheque conditional deposit" written on the face of it, is not a cheque, not being an unconditional order to pay: *Hately* v. *Elliott*, 9 O. L. R. 185 (1905).

15. A government clerk forged departmental cheques, and deposited them under a fictitious name in different banks which collected them from the drawee bank through the clearing house, and paid out the money after the payment of the cheques. By fraudulent checking of the lists of departmental cheques paid, he procured the sending to the bank certificates of the correctness of such lists. His forgeries were not discovered for months. Held, affirming the trial Judge and the Ontario Court of Appeal, that there could be no estoppel against the Crown, that the drawee bank was liable and could not recover from the collecting banks: *Bank of Montreal* v. *The King*, 38 S. C. Can. 258 (1907). Leave to appeal refused by Privy Council.

16. A bank was held liable for the amount of a cheque it had lost, which the drawer disputed, although the latter had been guilty of negligence in not objecting earlier when it was entered in his pass-book: *Fournier* v. *Union Bank*, 2 Stephens' Que. Dig. 99 Cons. Que. Dig. 185 (1873).

17. Where an account bears interest, it ceases on the amount of a cheque drawn on the account when the cheque is marked, although the money is not actually drawn out until long after: *Wilson* v. *Banque Ville Marie*, 3 L. N. 71 (1880).

18. A bank was held liable to the holder of a marked cheque: *Banque Nationale* v. *City Bank*, 17 L. C. J. 197

(1873), even when marked good only on a future day by the president and cashier: *Exchange Bank* v. *Banque du Peuple*, M. L. R. 3 Q. B. 232 (1886). Items of claim older than a cheque cannot properly be set up in compensation against it: *Dorion* v. *Dorion*, 5 L. N. 130 (1882).

19. An instrument in the form of a cheque is none the less a cheque because not drawn against money on deposit, but because an overdraft or advance by the bank: *Bank of Montreal* v. *Rankin*, 4 L. N. 302 (1881).

20. A cheque should be presented the day after delivery and notice of dishonor given to charge the indorser: *Lord* v. *Hunter*, 6 L. N. 310 (1883); *Boddington* v. *Schlenker*, 4 B. & Ad. 752 (1833).

21. A cheque is a commercial matter, especially when given by a trader, and payment of it may be proved by parol in the Province of Quebec, even when above $50; *Baril* v. *Tetrault*, 29 L. C. J. 208 (1885).

22. A bank acting as agent for another bank is not authorized, in the absence of an express agreement, to cash a cheque drawn upon the principal bank, but not accepted by it; *Maritime Bank* v. *Union Bank*, M. L. R. 4 S. C. 244 (1888).

23. A cheque payable to C. M. & S., or bearer, was indorsed by them and stamped for deposit to their credit in the bank where they kept their account. Their clerk, instead of depositing it, took it to the bank on which it was drawn, and the teller paid it without noticing the writing on the back. It was held that such a cheque could not be restrictively indorsed, and the bank so paying it was not liable: *Exchange Bank* v. *Quebec Bank*, M. L. R. 6 S. C. 10 (1890).

24. Where a person for accommodation lends his cheque to another person he cannot refuse to pay the same to a third party who in good faith has given value for it: *Kenny* v. *Price*, 20 R. L. 1 (1890).

25. A person receiving a cheque seven months after its date, and after it was drawn, has no greater right against the drawer than the previous holder, in whose hands it was void as having been given for illegal expenditure at an election: *Dion* v. *Boulanger*, Q. R. 4 S. C. 358 (1893); confirmed in Review, 31st October, 1893.

26. A third party, who is the holder in good faith, of a cheque given in settlement of a gambling debt can recover the amount. The fact that the cheque was not presented at the bank until a month after it was drawn does not prevent recovery against the drawer: *Dion* v. *Lachance*, Q. R. 14 S. C. 77 (1898).

27. Cheques and other negotiable instruments are presumed to have been given for value although this is not expressed. The evidence to rebut this presumption must be clear and convincing: *Larraway* v. *Harvey*, Q. R. 14 S. C. 97 (1898).

28. L. gave an agent A. a cheque payable to the order of M., marked "deposit," to be used as a deposit on a purchase from the latter through his intervention. M. indorsed and applied the cheque on an old account against A. Held, that M. was, under the circumstances, bound to account to L. for the amount of the cheque: *Leipschitz* v. *Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518 (1899).

29. The payee of a cheque endorsed it and gave it for collection to a bank, which placed to his credit the amount less the cost of collection, and sent it to the bank on which it was drawn, accepting a draft on the head office of the latter bank. This was sent through the clearing house, but before presentation the bank (drawee) had suspended payment. Held, that the payee incurred only the ordinary liability of an indorsee and was liberated by the surrender of the cheque, and the acceptance of the draft: *Banque de St. Hyacinthe* v. *Guilbault*, 8 R. J. 115 (1901).

30. The statement that a cheque "was duly presented" for payment is sufficient: *Knauth Nachod* v. *Stern*, 30 N. S. 251 (1897). See also *Crowell* v. *Longard*, 28 N. S. 257 (1896).

31. The initialling of a cheque by the cashier does not amount to an acceptance. A cheque so initialled received by the defendant only a few days before the trial, when it was more than four years old, could not be used by him as a set-off to the bill of exchange on which he was sued: *Commercial Bank* v. *Fleming*, 1 Stevens' N. B. Dig. 294 (1872).

32. H. owed defendant $500, and induced him to indorse his (H.'s) cheque for $1,000 on a bank at N., out of the pro-

ceeds of which the debt was to be paid. The two went to a bank at W. to get cash for the cheque. H. alone went into the manager's room, and on his return told defendant he had given the cheque to the manager to forward it to N. for collection. H., in fact, retained the cheque, and the same day transferred it to plaintiff for value. Held, that defendant was liable on the cheque: *Arnold* v. *Caldwell*, 1 Man. L. R. 81 (1884).

33. Where a bank certified a cheque at the request of the drawer, who afterwards altered it, making it payable to bearer instead of to order; this is a material alteration, and the bank is not liable on the cheque to the drawer or his assigns: *Re Commercial Bank. Banque d'Hochelaga's Case*, 10 Man. L. R. 171 (1894).

34. A banker paid a cheque where the amount had been raised, but in such a way that it could not be easily detected. He was held liable to the customer for the difference between the genuine and the altered cheque: *Hall* v. *Fuller*, 5 B. & C. 750 (1826).

35. Where a cheque was so carelessly drawn as to be easily altered by the holder to a large sum, so that the bankers, when they paid it, could not distinguish the alteration: Held, that the loss must fall on the drawer, as it was caused by his negligence: *Young* v. *Grote*, 4 Bing. 253 (1827). Overruled by *Imperial Bank* v. *Bank of Hamilton*, [1903] A. C. 49.

36. Filling in a blank cheque with a larger sum than that authorized is forgery: *Reg.* v. *Wilson*, 2 C. & K. 527 (1847).

37. The holder of an unaccepted cheque has no right of action against a bank even if it has improperly refused to honour the cheque, as there is no privity of contract between him and the bank: *Malcolm* v. *Scott*, 5 Exch. 601 (1850); *Fourth Street Bank* v. *Yardley*, 165 U. S. 634 (1897).

38. If there are not sufficient funds to meet a cheque, the bank should not give any more than the information of the fact; it should not disclose the actual balance: *Foster* v. *Bank of London*, 3 F. & F. 214 (1862).

39. An authority to draw cheques does not necessarily include an authority to draw bills: *Forster* v. *Mackreth*, L. R. 2 Ex. 163 (1867).

40. The cheque of a third party may be the subject of a valid *donatio mortis causa: Veal* v. *Veal*, 27 Beav. 303 (1859); *Clement* v. *Cheeseman*, 27 Ch. D. 631 (1884). The cheque of the donor, not presented until after his death, is not: *Hewitt* v. *Kaye*, L. R. 6 Eq. 198 (1868); *Beak* v. *Beak*, L. R. 13 Eq. 489 (1872). It is, if presented, even though not paid: *Bromley* v. *Brunton*, L. R. 6 Eq. 275 (1868).

41. A cheque is not an equitable assignment of so much of the drawer's funds in the hands of his banker, or of a chose in action: *Hopkinson* v. *Forster*, L. R. 19 Eq. 74 (1874); *Schroeder* v. *Central Bank*, 34 L. T. N. S. 735 (1876).

42. A cheque sent as being "in full of all demands" was retained and cashed and a receipt sent as on account. The drawer of the cheque demanded its return. The creditor sued for the balance of his claim. It was held that the keeping of the cheque was not conclusive that there was accord and satisfaction, but that it was a question of fact on what terms the cheque was sent, and plaintiff recovered judgment for the balance: *Day* v. *McLea*, 22 Q. B. D. 610 (1889). See also to the same effect, *Nathan* v. *Ogdens*, 22 T. L. R. 57 (1905).

43. A tenant proposed to assign his lease, and the landlord handed a license to sub-let to an auctioneer and house agent, with instructions to deliver it only on receipt of the rent. The agent accepted the tenant's cheque for the amount and gave up the license. The cheque was dishonoured. The agent was held liable for the amount: *Pape* v. *Westcott*, [1894] 1 Q. B. 272.

44. Where a person pays a post-dated cheque into his bank in order that the amount may be placed to the credit of his account, and the amount is so placed, the bank are holders for value of the cheque: *Royal Bank* v. *Tottenham*, [1894] 2 Q. B. 715.

45. A cheque is drawn in favour of a person who does not really exist, although the drawer supposes that he does. This does not prevent the cheque being really payable to bearer, under section 7, sub-section 3, of the Bills of Exchange Act (now sec. 21, s.-s. 5), as being payable to a ficti-

tious or non-existing person: *Clutton* v. *Attenborough*, [1895] 2 Q. B. 707; affirmed, [1897] A. C. 90.

46. A solicitor who is authorized to accept a tender of mortgage money on behalf of his client is not at liberty to accept a banker's cheque, and the tender of a cheque is insufficient: *Blumberg* v. *Life Interests & R. S. Corporation*, [1898] 1 Ch. 27.

47. Where a cheque was given in payment of bets on horse races, and indorsed for value to the plaintiff, who was aware of the consideration, it was held that he could not recover, as the consideration was illegal under 5 & 6 William IV. ch. 41: *Woolf* v. *Hamilton*, [1898] 2 Q. B. 337.

48. The only effect of a drawee bank initialling a cheque is to certify that it has funds of the drawer to meet it. Where a certified cheque is deposited and credited to the depositor, the presumption is that the bank accepted it as agent of the depositor to cash it, and not as acquiring title and guaranteeing its payment: *Gaden* v. *Newfoundland Savings Bank*, [1899] A. C. 281.

49. Defendant, who was not a party to a cheque, at the request of the payee, wrote his name on the back of it, adding the words *sans recours*. It was held that under section 16 of the Bills of Exchange Act, he could thus negative his liability as an indorser: *Wakefield* v. *Alexander*, 17 T. L. R. 217 (1901).

50. A banker's draft payable to order on demand, addressed by one branch of a bank to another branch of the same bank and not crossed, is not a cheque, not being addressed by one person to another: *Capital and Counties Bank* v. *Gordon*, [1903] A. C. 240.

51. A marked cheque is "cash" within the meaning of the land regulations of 1853: *Russell* v. *Sealy*, 2 N. Z. R. (A. C.) 498 (1874).

52. If the drawer of a cheque gets it accepted and then delivers it to the payee, the drawer is not discharged; and if the payee before delivery requests the drawer to send it to the bank and gets it accepted, the rule is the same: *Randolph Bank* v. *Hornblower*, 160 Mass. 401 (1894).

166. Presentment for payment.—Subject to the provisions of this Act—

(*a*) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid. 53 V. c. 33, s. 73. Imp. Act, s. 74 (1).

The provisions of the Act to which this section is subject, are those in section 91 relating to excuses for non-presentment and delay in presentment.

As regards the drawer, the effect of not presenting a cheque for payment within a reasonable time differs from that relating to other bills payable on demand. In the case of the latter the drawer as well as the indorsers are wholly discharged by the failure to present it for payment within a reasonable time: sec. 85. This part of the Act relating to cheques does not modify the rule as regards the indorsers; but the present section lays down a different rule as regards the drawer, who is only discharged to the extent to which he actually suffers damage by the delay.

Chalmers says, p. 250: "This section is new law. It was introduced in the Lords by Lord Bramwell to mitigate the rigour of the common law rule. At common law a mere omission to present a cheque for payment did not discharge the drawer, until, at any rate, six years had elapsed, and in this respect the common law appears to be unaltered. But if a cheque was not presented within a reasonable time, as defined by the cases, and the drawer suffered actual damage by the delay, *e.g.*, by the failure of the bank, the drawer was absolutely discharged, even though ultimately the bank might pay (say) fifteen shillings in the pound." The section is substantially the law of Quebec before the Act, the Code placing the indorsers in the same position:—"If the cheque

be not presented for payment within a reasonable time, and the bank fail between the delivery of the cheque and such presentment, the drawer or indorser will be discharged to the extent of the loss he suffers thereby:" Art. 2352. See also *Re Oulton*, 15 N. B. (2 Pugs.) 333 (1874).

When the drawer or other person is thus discharged, the holder is a creditor of the bank to the extent of such discharge: clause (*b*).

The law as to the presentation of a cheque differs from that respecting a bill of exchange payable on demand. In suing on a cheque it is not necessary to allege or prove presentment within a reasonable time, or to protest for non-payment. These are matters of defence. It is for the drawer to allege and prove damage: *De Serres* v. *Euard*, Q. R. 17 S. C. R. 199 (1899).

(*b*) **Holder a creditor.**—The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it. 53 V. c. 33, s. 73 (*c*). Imp. Act, sec. 74 (2), (3).

This is, to a certain extent, a modification of the rule in section 127. In England it introduced partially the Scotch principle of sub-section 2 of that section, and in Canada it recognizes in this particular case the principle laid down in Quebec in *Marler* v. *Molsons Bank*, 23 L. C. J. 293 (1879). These countries adopted it from the civil law.

2. **Reasonable time.**—In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. 53 V. c. 33, s. 73 (*b*). Imp. Act, sec. 74 (2).

The following are said to embody the rules as to what is a reasonable time for the presentment of cheques in England:

1. If the person who receives a cheque and the bank on whom it is drawn are in the same place, the cheque must, in the absence of special circumstances, be presented for pay-

ment on the day after it is received: *Alexander* v. *Burchfield*, 7 M. & Gr. 1061 (1842); *Firth* v. *Brooks*, 4 L. T. N. S. 467 (1861).

1. If the person who receives a cheque and the bank on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it: *Hare* v. *Henty*, 10 C. B. N. S. 65 (1861); *Prideaux* v. *Criddle*, L. R. 4 Q. B. 455 (1869); *Heywood* v. *Pickering*, L. R. 9 Q. B. 428 (1874).

3. In computing time, non-business days must be excluded; and when a cheque is crossed, any delay caused by presenting the cheque pursuant to the crossing is excused: sec. 91.

These rules are substantially those that have been recognized in Canada. See *Redpath* v. *Kolfage*, 16 U. C. Q. B. 433 (1858); *Owens* v. *Quebec Bank*, 30 *ibid.* 382 (1870); *Boyd* v. *Nasmith*, 17 O. R. 40 (1888); *Blackley* v. *McCabe*, 16 Ont. A. R. 295 (1889); *Sawyer* v. *Thomas*, 18 Ont. A. R. 129 (1890); *Marler* v. *Stewart*, Cons. Que. Dig. 212 (1878); *Campbell* v. *Riendeau*, Q. R. 2 Q. B. 604 (1892).

A cheque is deemed to be stale or overdue when it appears on its face to have been in circulation an unreasonable time: sec. 70. A bank is not justified in paying such a cheque without inquiry: *Serle* v. *Norton*, 2 M. & Rob. 401 (1841).

Whether a cheque is presented within a reasonable time is a question for the jury. In this case they found the delay (4 days) to be unreasonable: *Wheeler* v. *Young*, 13 T. L. R. 468 (1877).

As to what is a reasonable time where a cheque is drawn on a bank that is understood to be about to suspend payment, see *Légaré* v. *Arcand*, Q. R. 9 S. C. 122 (1895).

It has been held that a delay of six days is not necessarily an unreasonable time: *Rothschild* v. *Corney*, 9 B. & C. 388 (1829); and the same as to eight days: *London and County Bank* v. *Groome*, 8 Q. B. D. 288 (1891); but that two months

is an unreasonable time: *Serrell* v. *Derbyshire Ry. Co.*, 9 C. B. 811 (1850).

Where the holder of a cheque presents it for acceptance instead of for payment, and the accepting bank fails, the drawer and indorsers are discharged: *Boyd* v. *Nasmith*, 17 O. R. 40 (1888); *Légaré* v. *Arcand*, Q. R. 9 S. C. 122 (1895); *Banque Jacques Cartier* v. *Limoilou*, Q. R. 17 S. C. 211 (1899); *Merchants Bank* v. *State Bank*, 10 Wall. (U.S.) 647 (1870); *First Nat. Bank of Jersey City* v. *Leach*, 52 N. Y. 350 (1873).

167. Revocation of authority.—The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by—

(*a*) Countermand of payment;

(*b*) Notice of the customer's death. 53 V. c. 33, s. 74. Imp. Act, sec. 75.

A bank having sufficient funds of the drawer of a cheque in its hands is bound to pay it, and in case of refusal is liable to an action of damages: *Marzetti* v. *Williams*, 1 B. & Ad. 415 (1830); *Whitaker* v. *Bank of England*, 6 C. & P. 700 (1835); *Foley* v. *Hill*, 2 H. L. Cas. 28 (1848); *Rolin* v. *Steward*, 14 C. B. 595 (1854); *Todd* v. *Union Bank*, 4 Man. R. 204 (1887); *Fleming* v. *Bank of New Zealand*, 16 T. L. R. 469 (1900). The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit, are nominal or limited to interest on the money: *Henderson* v. *Bank of Hamilton*, 25 O. R. 641 (1894); *Bank of New South Wales* v. *Milvain*, 10 Vict. R. (Law) 3 (1884).

A bank may, without special instructions, pay any bills or notes, of which the customer is acceptor or maker, and which are payable at the bank: *Jones* v. *Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Kymer* v. *Laurie*, 18 L. J. Q. B. 218 (1849); *Roberts* v. *Tucker*, 16 Q. B. 560 (1851); *Vagliano* v. *Bank of England*, [1891] A. C. 107.

A bank refusing to pay such instruments incurs the same liability as in refusing to pay a cheque: *Hill* v. *Smith*, 12 M. & W. 618 (1844); *Bell* v. *Carey*, 8 C. B. 887 (1849).

Cheques are payable in the order in which they are presented, irrespective of their dates, provided the date is not subsequent to the presentment: *Kilsby* v. *Williams*, 5 B. & Ald. 815 (1822).

Where a customer keeps his account at one branch of the bank, other branches are not bound to honour his cheques: *Woodland* v. *Fear*, 7 E. & B. 519 (1857). But if he has accounts in two or more branches, the bank may combine them against him, provided they are all in the same right: *Garnett* v. *McKeown*, L. R. 8 Ex. 10 (1872); *Prince* v. *Oriental Bank*, 3 A. C. 325 (1878).

If, however, the course of dealing was such that the customer was allowed to draw upon one account irrespective of the state of the other, the bank cannot combine them against him without a reasonable notice that the former course of dealing would be discontinued: *Cummings* v. *Shand*, 5 H. & N. 95 (1860); *Buckingham* v. *London & Midland Bank*, 12 T. L. R. 70 (1895); *Ireland* v. *North of Scotland Banking Co.*, 8 R. 215 (1880); *Kirkwood* v. *Clydesdale Bank*, 15 Sc. L. T. R. 413 (1907).

Entries made in a customer's pass book are *prima facie* evidence against the bank: *Commercial Bank* v. *Rhind*, 3 Macq. H. L. 643 (1860); *Couper's Trustees* v. *National Bank of Scotland*, 16 Sess. Cas. 412 (1889).

Countermand.—A customer may stop payment of a cheque before it is accepted, but not after: *Cohen* v. *Hale*, 3 Q. B. D. 371 (1878); *McLean* v. *Clydesdale Bank*, 9 App. Cas. 95 (1883).

When a cheque is handed to a person on a condition which the drawer finds is to be broken or eluded, he has the right to stop the payment of the cheque: *Wienholt* v. *Spitta*, 3 Camp. 376 (1813); *Spincer* v. *Spincer*, 2 M. & Gr. 295 (1841).

It has also been held that a bank is not bound to honour a customer's cheques after a garnishee order is served on it, even although the balance exceed the judgment: *Rogers* v. *Whiteley*, [1892] A. C. 118.

A vendor of goods, after being paid, fraudulently sold them to another purchaser, who bought in good faith and

gave his cheque in payment. The cheque was cashed at another bank on being guaranteed by an indorser. The second purchaser, on being served with garnishee proceedings by the first, stopped payment of the cheque and paid the money into Court. The endorser meanwhile paid the purchasing bank and received the cheque. Held, that he was entitled to the money in Court: *Wilder* v. *Wolf*, 4 O. L. R. 451 (1902).

The drawer of a cheque sent a telegram to the bank countermanding payment, which was placed in the letter box of the bank. It was left in the box when the rest of the letters, etc., were removed, and the cheque was presented and paid before the telegram came to the notice of the bank. Held, that there was no legal countermand, and the bank was not liable for the amount of the cheque even if the telegram was negligently overlooked. *Quære*—How far is a bank bound to act on an authenticated telegram? *Curtice* v. *London City and Midland Bank*, 24 T. L. R. 176 (1907).

Death of customer.—Payment after the death but before notice is valid: *Rogerson* v. *Ladbroke*, 1 Bing. 93 (1822). It has been held in England that after the death of a partner, the surviving partner may draw cheques upon the partnership account: *Backhouse* v. *Charlton*, 8 Ch. D. 444 (1878). In Quebec the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of a special agreement to the contrary: C. C. 1892, 1897.

A cheque given as a *donatio mortis causa* must be presented or negotiated before notice of the death of the donor in order to charge his estate: *Hewitt* v. *Kaye*, L. R. 6 Eq. 198 (1868); *Beak* v. *Beak*, L. R. 13 Eq. 489 (1872); *Rolls* v. *Pearce*, 5 Ch. D. 730 (1877). But see *Colvile* v. *Flanagan*, 8 L. C. J. 225 (1864); and *Clement* v. *Cheesman*, 27 Ch. D. 631 (1884).

CROSSED CHEQUES.

Sections 168 to 175, inclusive, treat of crossed cheques. They are copied from the Imperial Act, with the substitution of "bank" for "banker," as private bankers are not recognized by the Canadian Act. The practice of crossing

cheques did not prevail in Canada before the Act, and it is not likely to be generally adopted now, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt section 60 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorization of the indorsement on cheques drawn upon it.

The practice is a comparatively modern one in England, and is another illustration of the elasticity of the law merchant by which a custom obtains for itself judicial sanction or legislative recognition. From the report of *Stewart* v. *Lee*, 1 M. & M. at p. 161 (1828), it would appear that the effect of crossing was not then fully settled. It is described in *Boddington* v. *Schlenker*, 4 B. & Ad. 752 (1833); and in *Bellamy* v. *Majoribanks*, 7 Ex. at p. 402 (1852). Baron Parke there gives a history of its origin and growth.

The practice originated at the London clearing house, the clerks of the different bankers who did business there having been accustomed to write across the cheques the names of their employers, so as to enable the clearing house clerks to make up their accounts. It afterwards became a common practice to cross cheques which were not intended to go through the clearing house at all. Baron Parke held that this had nothing to do with the restriction of negotiability, and formed no part of the cheque, and in no way altered its effect; but was a protection and safeguard to the owner, as, if a banker paid it otherwise than through another banker, the circumstance of his so paying would be strong evidence of negligence in an action against him. See also *Carlon* v. *Ireland*, 5 E. & B. 765 (1856).

The first Imperial Statute recognizing crossings was passed in 1856. In *Simmons* v. *Taylor*, 2 C. B. N. S. 528 (1857), it was held that the crossing was not a material part of the cheque and a holder might erase it. The Act of 1858 was passed to overcome the effect of this decision. In *Smith* v. *Union Bank of London*, 1 Q. B. D. 31 (1875), a cheque crossed to a certain bank was stolen, and coming into the hands of a *bona fide* holder, he got it cashed through his own bank. The Court held that the Act of 1858 did not affect

the negotiability of the cheque which had been indorsed by the payee. In *Bobbett* v. *Pinkett*, 1 Ex. D. 368 (1876), where the indorsement of the payee was forged, the banker was held liable for paying it otherwise than through the banker to whom it was specially indorsed. Then came the Act of 1876, which introduced the "not negotiable" crossing, which had been substantially reproduced in the Act of 1882 and the present Act.

Although the crossing of cheques was not recognized in practice or in legislation in Canada, yet the Imperial Act, making the obliteration or alteration of the crossing a felony, was copied into our Forgery Act of 1869, and became section 31 of R. S. C. (1886) chap. 165. Even the words "and company" and "banker" were retained. In the Criminal Code, R. S. C. chap. 146, by section 468 (*r*), the forgery of a cheque renders the person found guilty liable to imprisonment for life, but obliterating or altering the crossing is not made a special offence.

The practice of crossing cheques has not been adopted in the United States.

168. General crossing.—Where a cheques bears across its face an addition of—

(*a*) The word "bank" between two parallel transverse lines, either with or without the words "not negotiable;" or—

(*b*) Two parallel transverse lines simply, either with or without the words "not negotiable;"

Such addition constitutes a crossing, and the cheque is crossed generally.

2. **Special crossing.**—Where a cheque bears across its face an addition of the name of a bank, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that bank. 53 V., c. 33, s. 75; Imp. Act, s. 76.

As already stated, this part of the Act does not apply to cheques on private bankers, nor can a cheque on an incorporated bank be crossed in favour of a private banker, or if crossed generally, be presented through him.

Where the drawer of a cheque made it payable to the order of M., and crossed it "Account of M., National Bank," and gave it to M., who indorsed it to the National Bank, it was held that the bank could recover from the drawer, for these words, even assuming that section 8 of the Bills of Exchange Act applies to cheques, do not prohibit transfer, or indicate an intention that it should not be transferred; and that probably the only way to make a cheque not transferable would be to comply with the provisions of this section: *National Bank* v. *Silke*, [1891] 1 Q. B. 435.

169. Crossing by drawer, etc.—A cheque may be crossed generally or specially by the drawer.

2. Where a cheque is uncrossed, the holder may cross it generally or specially.

3. Where a cheque is crossed generally, the holder may cross it specially;

4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially, to another bank for collection.

6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially.

The "holder" of a cheque is the payee or indorsee if it is payable to order, provided he is in possession of it. If it is payable to bearer, it is the person who is in possession of it. Bank here means an incorporated bank or savings bank doing business in Canada.

7. A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialling the same, the words "pay cash." 53 V. c. 33, s. 76; Imp. Act, s. 77.

This is not in the Imperial Act, but is in accordance with English custom: Chalmers, p. 256. It is the drawer alone who can obliterate the crossing. See the next section.

170. Crossing is material.—A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V. c. 33, s. 77; Imp. Act, s. 78.

A material alteration voids a cheque except as to a party who has made, authorized or assented to it, and except as to indorsers subsequent to the alteration: sec. 145.

In England an unauthorized obliteration or alteration is forgery: 24-25 Vict. chap. 98, secs. 25 and 39. This was copied in our Canadian criminal law, and became R. S. C. (1886), chap. 165, sec. 31, but it is the English crossing that is there referred to, and declared to be a felony. That section is not applicable to the crossing authorized by the Canadian Act.

If the obliteration, addition or alteration does not amount to forgery, it would come under section 164 of the Criminal Code, R. S. C. c. 146, which makes any person who, without lawful excuse, disobeys an Act of Parliament, guilty of an offence, and liable to one year's imprisonment.

171. Duties of a bank.—Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V. c. 33, s. 78; Imp. Act, s. 79.

This section would prevent the thief or a finder of a specially crossed cheque, or any holder subsequent to him, from crossing the cheque a second time and so getting paid through another bank.

The bank incurs no liability by such refusal, as the holder has no action on an unaccepted cheque. The next section gives a remedy to the true owner against a bank which improperly pays a crossed cheque.

172. Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or if crossed specially, otherwise than to the bank to which

it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. 53 V. c. 33, s. 78; Imp. Act, s. 79.

173. Protection to bank and drawer.—Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. 53 V. c. 33, s. 79; Imp. Act, s. 80.

This section gives to a bank on which a cheque is drawn the protection, in the case of a crossed cheque, which our Parliament refused to give it as to demand bills and ordinary cheques by striking out of the bill the clause corresponding to section 60 of the Imperial Act. On the other hand, it furnishes to the other parties to a cheque a strong reason for objecting to the crossing of a cheque. If a crossed cheque which has not been made "not negotiable" is lost or stolen before it reaches the hands of the payee, and the bank pays it in good faith and without negligence even upon a forged

indorsement, the drawer has no recourse against the bank which has paid or the bank which has collected, but can only look to the guilty party or some subsequent holder. See *Ogden* v. *Benas*, L. R. 9 C. P. 513 (1874); *Patent Safety Gun Cotton Co.* v. *Wilson*, 49 L. J. C. P. 713 (1880); sec. 175. If it is lost or stolen after reaching the hands of the payee, and is paid in like manner, the drawer is released, but the payee, indorsee, or holder who has lost the bill, or from whom it has been stolen, is in the same position as the drawer in the case just mentioned.

The payee of a crossed cheque specially indorsed it to plaintiffs and posted it to them. A stranger having obtained possession of it during transmission obliterated the indorsement to plaintiffs, and having specially indorsed it to himself, presented it at defendants' bank and requested them to collect it for him. They did so and handed him the money. In an action for conversion defendants were held liable for the amount of the cheque: *Kleinwort* v. *Comptoir National d'Escompte*, [1894] 2 Q. B. 157.

A cheque on defendants' bank in London in favour of plaintiff was crossed generally. The indorsement was forged, and a person purporting to be the last indorsee, and not a customer of the bank, presented it at defendants' branch in Paris and was paid. It was forwarded to London and credited to the Paris branch. It was held that English law governed, and that the bank was liable to plaintiff: *Lacave* v. *Credit Lyonnais*, [1897] 1 Q. B. 148.

174. Effect on holder.—Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V. c. 33, s. 80; Imp. Act, s. 81.

Making a cheque "not negotiable" puts it on the same footing as an overdue bill, so that any holder takes it subject to the equities attaching to it, and no person can become a holder in due course. If such a cheque should be lost or stolen the person receiving the money from the collecting bank would be liable in any event.

Where a cheque crossed "not negotiable" was drawn in favour of a firm, and one partner, S., in fraud of plaintiff, his co-partner, indorsed it to defendant, who got it cashed for S., defendant was held liable to the co-partner, who under the partnership articles was entitled to the cheque: *Fisher* v. *Roberts*, 6 T. L. R. 354 (1890). See *National Bank* v. *Silke*, [1891] 1 Q. B. 435.

175. When bank not liable.—Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V. c. 33, s. 81; Imp. Act, s. 82.

Section 173 relieves the bank on which the crossed cheque is drawn; this section, the bank which collects it. If it be indorsed "per proc." and the banker makes no inquiry as to the authority to so indorse, this may be negligence: *Bissel* v. *Fox*, 53 L. T. N. S. 193; 1 T. L. R. 452 (1885). See *Mathiessen* v. *London & County Bank*, 5 C. P. D. 7 (1879); *Bennett* v. *London & County Bank*, 2 T. L. R. 765 (1886). For an illustration of negligence disentitling a bank to the benefit of this section, see *Hannan's Lake View Central* v. *Armstrong*, 16 T. L. R. 236 (1900).

Where a customer's account is overdrawn, a banker collecting a crossed cheque, and placing the proceeds to his credit, is within the section: *Clarke* v. *London & County Banking Co.*, [1897] 1 Q. B. 552.

A railway company drew an order in the form of a cheque on a bank for £69, with this clause added: "Provided the receipt form at foot hereof is duly signed, stamped and dated." The order was crossed generally, and was stolen and plaintiff's name forged to the receipt and indorsement. Defendants received it in good faith from a customer and collected it. Held, that it was not a cheque, being conditional, and the bank was not protected: *Bavins* v. *South Western Bank*, [1900] 1 Q. B. 270.

The word "customer" implies something of use and habit. Where the only transaction between an individual and a bank is the collection of a crossed cheque, such individual is not a customer of the bank, and if he has no title the bank is not protected: *Matthews* v. *Brown*, 63 L. J. Q. B. 494 (1894); (reported as *Matthews* v. *Williams*, 10 R. 210); *Lacave* v. *Credit Lyonnais*, [1897] 1 Q. B. 148.

To make a person a "customer" of the bank within the meaning of this section, there must be some sort of account, either a current or a deposit account, or some similar relation. A person obtained from the drawer a cheque crossed generally and marked "not negotiable" and took it to a bank which, at his request, paid part of the amount of the cheque into the account of one of its customers and handed the balance to him. After the bank had received payment of the cheque from the bank on which it was drawn, the fraud was discovered, and the drawer sued the collecting bank. The latter received the payment in good faith and without negligence, and had for years been cashing cheques for the same person in like manner, but he had no account with them. Held, that he was not a customer, and the collecting bank was not protected: *Great Western Ry. Co.* v. *London & County Banking Co.*, [1901] A. C. 414.

Two banks credited a customer with the amounts of cheques as soon as they were handed in to his account and allowed him to draw against the amounts so credited before the cheques were cashed. It was held that the protection of this section did not apply to such a case, as the banks received the amounts for themselves and not for the customer: *Capital & Counties Bank* v. *Gordon*, and *London City & Midland Bank* v. *Gordon*, [1903] A. .C. 240. To overcome the effect of these decisions the Imperial Act was amended by chapter 17 of 6 Edw. VII., providing that a banker receives payment of a cross cheque within the meaning of section 82, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. The Canadian Act has not been amended, doubtless because crossed cheques are not in general use here as in England.

A clerk of the plaintiffs by fraud induced them to sign cheques crossed generally in favour of certain persons. He

then forged the indorsement of the payees, and deposited the cheques in the defendant bank where he had an account. The latter credited him the amount in its books, crossed the cheques specially, and had them cashed. It then entered the amount in his pass-book, and allowed him to draw against it. Held, that the bank was protected under section 82: *Akrokerri Mines* v. *Economic Bank*, [1904] 2 K. B. 465.

In another case arising before the passing of the amending Act 6 Edw. VII. c. 17, it was held by Channell, J., that a banker does not lose the protection of section 82 merely because, before a crossed cheque paid in by a customer is cleared, he makes a credit entry in the bank's books or in the pass-book not communicated to the customer. It may be negligence on the part of the banker to receive payment for a customer of a crossed cheque marked "account of payee," where the banker has information which may lead him to think that the account into which he is paying the amount of the cheque is not the payee's account: *Bevan* v. *The National Bank*, 23 T. L. R. 65 (1906).

Revised Statutes of Canada, 1906.

CHAPTER 25.

An Act respecting the Cu rency.

SHORT TITLE.

1. This Act may be cited as the Currency Act.

STANDARD OF VALUE.

2. The currency of Canada shall be such, that the British sovereign of the weight and fineness now prescribed by the laws of the United Kingdom, shall be equal to and shall pass current for four dollars eight-six cents and two-thirds of a cent of the currency of Canada, and the half sovereign of proportionate weight and like fineness, for one-half the said sum. R. S., c. 30, s. 2.

DENOMINATIONS.

3. The denominations of money in the currency of Canada, shall be dollars, cents and mills,—the cent being one hundredth part of a dollar, and the mill one-tenth part of a cent. R. S., c. 30, s. 1.

PUBLIC ACCOUNTS, DEBTS AND OBLIGATIONS.

4. All public accounts throughout Canada shall be kept in the currency of Canada; and in any statement as to money or money value, in any indictment or legal proceeding, the same shall be stated in such currency.

2. In all private accounts and agreements rendered or entered into, on or subsequent to the first day of July, one thousand eight hundred and seventy-one, all sums mentioned shall be understood to be in the currency of Canada.

unless some other is clearly expressed, or must, from the circumstances of the case, have been intended by the parties. R. S., c. 30, s. 2.

5. All sums mentioned in dollars and cents in *The British North America Act, 1867*, and in all Acts of the Parliament of Canada shall, unless it is otherwise expressed, be understood to be sums in the currency of Canada as by this Act established. R. S., c. 30, s. 12.

6. All sums of money payable on and after the first day of July, one thousand eight hundred and seventy-one, to Her late Majesty Queen Victoria, or to any person, under any Act or law in force in Nova Scotia, passed before the said day, or under any bill, note, contract, agreement or other document or instrument, made before the said day in and with reference to that province, or made after the said day out of Nova Scotia and with reference thereto, and which were intended to be, and but for such alteration would have been payable in the currency of Nova Scotia, as fixed by law previous to the fourteenth day of April, one thousand eight hundred and seventy-one, shall hereafter be represented and payable, respectively, by equivalent sums in the currency of Canada, that is to say, for every seventy-five cents of Nova Scotia currency, by seventy-three cents of Canada currency, and so in proportion for any greater or less sum; and if in any such sum there is a fraction of a cent in the equivalent in Canada currency, the nearest whole cent shall be taken. R. S., c. 30, s. 10.

7. Any debt or obligation contracted before the first day of July, in the year one thousand eight hundred and eighty-one, in the currency then lawfully used in the province of British Columbia, or in the province of Prince Edward Island, shall, if payable thereafter, be payable by an equivalent sum in the currency of Canada as hereby established. R. S., c. 30, s. 11.

DOMINION AND BANK NOTES.

8. No Dominion note or bank note payable in any other currency than the currency of Canada, shall be issued or reissued by the Government of Canada, or by any bank, and

all such notes issued before the first day of July, one thousand eight hundred and seventy-one, shall be redeemed, or notes payable in the currency of Canada shall be substituted or exchanged for them. R. S., c. 30, s. 3.

COINS, LEGAL TENDER, ETC.

9. Any gold coins struck for circulation in Canada by authority of the Crown, of the standard of fineness prescribed by law for the gold coins of the United Kingdom, and bearing the same proportion in weight to that of the British sovereign, which five dollars bear to four dollars eighty-six cents and two-thirds of a cent, shall pass current and be a legal tender in Canada for five dollars; and any multiples or division of such coin, struck by the same authority for like purposes, shall pass current and be a legal tender in Canada at rates proportionate to their intrinsic value respectively; and any such coins shall pass by such names as are assigned to them by Royal Proclamation declaring them a legal tender, and shall be subject to the like allowance for remedy as British coin. R. S., c. 30, s. 4.

10. The silver, copper or bronze coins heretofore struck by authority of the Crown for circulation in the provinces of Ontario, Quebec and New Brunswick under the Acts at the time in force in the said provinces respectively, shall be current and a legal tender throughout Canada, at the rates in the said currency of Canada assigned to them respectively by the said Acts, and under the like conditions and provisions.

2. Such other silver, copper or bronze coins as are by the same authority struck for circulation in Canada, shall pass current and be a legal tender in Canada, at the rates assigned to them respectively by Royal proclamation, such silver coins being of the fineness now fixed by the laws of the United Kingdom, and of weights bearing respectively the same proportion to the value to be assigned to them which the weights of the silver coins of the United Kingdom bear to their nominal value.

3. All such silver coins aforesaid shall be a legal tender to the amount of ten dollars, and such copper or bronze coins to the amount of twenty-five cents, in any one payment.

4. The holder of the notes of any person to the amount of more than ten dollars, shall not be bound to receive more than that amount in such silver coins in payment of such notes, if presented for payment at one time, although any of such notes is for a less sum. R. S., c. 30, s. 5.

11. No other silver, copper or bronze coins than those which the Crown has heretofore caused to be struck or may hereafter cause to be struck for circulation in Canada, or in some province thereof, shall be a legal tender in Canada. R. S., c. 30, s. 6.

12. His Majesty may, by proclamation, from time to time, fix the rates at which any foreign gold coins of the description, date, weight and fineness mentioned in such proclamation, shall pass current, and be a legal tender in Canada: Provided that until it is otherwise ordered by any such proclamation, the gold eagle of the United States of America, coined after the first day of July, one thousand eight hundred and thirty-four, and before the first day of January, one thousand eight hundred and fifty-two, or after the said last-mentioned day, but while the standard of fineness for gold coins then fixed by the laws of the said United States remains unchanged, and weighing ten pennyweights, eighteen grains, troy weight, shall pass current and be a legal tender in Canada for ten dollars.

2. The gold coins of the said United States being multiples and halves of the said eagle, and of like date and proportionate weights, shall pass current and be a legal tender in Canada for proportionate sums. R. S., c. 30, s. 7.

13. The stamp of the year on any foreign coin made current by this Act, or any proclamation issued under it, shall establish *prima facie* the fact of its having been coined in that year; and the stamp of the country on any foreign coin shall establish *prima facie* the fact of its being of the coinage of such country. R. S., c. 30, s. 8.

14. No tender of payment in money in any gold, silver or copper coin which has been defaced by stamping thereon any name or word, whether such coin is or is not thereby diminished or lightened, shall be a legal tender. R. S., c. 30, s. 9.

REDEMPTION OF COINS.

15. The Minister of Finance may, under regulations of the Governor in Council, redeem any silver, copper or bronze coins issued for circulation in Canada which by reason of abrasion through legitimate usage are no longer deemed fit for circulation. 6 E. VII., c. 8, s. 1.

COUNTERFEIT OR DIMINISHED COIN TO BE BROKEN.

16. If any coin is tendered as current gold or silver coin to any person who suspects the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, such person may cut, break, bend or deface such coin, and if any coin so cut, broken, bent or defaced appears to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the coin is of due weight, and appears to be lawful coin, the person cutting, breaking, bending or defacing it, shall be bound to receive the coin at the rate for which it was coined.

2. If any dispute arises whether the coin so cut, broken, bent or defaced, is diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any justice of the peace, who may examine, upon oath, the parties as well as any other person, for the purpose of deciding such dispute, and if he entertains any doubt in that behalf, he may summon three persons, the decision of a majority of whom shall be final.

3. Every officer employed in the collection of the revenue in Canada shall cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which is tendered to him in payment of any part of the revenue in Canada.

4. For the purposes of this section "current gold or silver coin" includes any coin which it is by Part IX. of the Criminal Code defined to include. R. S., c. 167, s. 26.

Revised Statutes of Canada, 1906.

CHAPTER 26.

An Act respecting the Ottawa Branch of the Royal Mint.

1. This Act may be cited as the Ottawa Mint Act. 1 E. VII., c. 4, s. 1.

2. There shall be payable to His Majesty in every year out of the Consolidated Revenue Fund of Canada, a sum or sums not exceeding in the whole in any year seventy-five thousand dollars, for defraying the salaries, contingencies, retiring and other allowances and expenses connected with the maintenance of the Ottawa Branch of the Royal Mint.

2. Such yearly payments shall take effect and begin to run on the day upon which a proclamation issued in England by His Majesty is duly published in Canada, directing that a branch of the Royal Mint be established at or near Ottawa. 1 E. VII., c. 4, s. 2.

3. The said sums of money shall be paid by the Minister of Finance to such persons, and at such times, and in such manner as the Lords Commissioners of His Majesty's Treasury direct; and the Minister of Finance shall account to His Majesty for the said sums through the Lords Commissioners in such manner and form as His Majesty is pleased to direct. 1 E. VII., c. 4, s. 3.

4. From and after the day on which the aforesaid yearly payments commence, all sums, by way of fees, dues or charges, lawfully received or collected at the Ottawa branch, shall be from time to time accounted for and paid over by the Deputy Master, or other proper officer of the said branch, to the Minister of Finance, to be by him paid into the Consolidated Revenue Fund of Canada. 1 E. VII., c. 4, s. 4.

Revised Statutes of Canada, 1906.

CHAPTER 27.

An Act respecting Dominion Notes.

SHORT TITLE.

1. This Act may be cited as the Dominion Notes Act.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(*a*) "specie" means coin current by law in Canada, at the rates and subject to the provisions of the law in that behalf, or bullion of equal value according to its weight and fineness;

(*b*) "Dominion notes" means notes of the Dominion of Canada issued and outstanding under the authority of this Act. 3 E. VII., c. 43, ss. 1 and 2.

ISSUE AND REDEMPTION.

3. Dominion notes may be issued and outstanding at any time to any amount, and such notes shall be a legal tender in every part of Canada except at the offices at which they are redeemable. 3 E. VII., c. 43, s. 2.

4. Dominion notes shall be of such denominational values as the Governor in Council determines, and shall be in such form, and signed by such persons and in such manner, by lithograph, printing or otherwise, as the Minister of Finance from time to time directs.

2. Such notes shall be redeemable in specie on presentation at branch offices established or at banks with which arrangements are made for the redemption thereof as hereinafter provided. 3 Ed. VII., c. 43, s. 3.

SECURITY.

5. The Minister of Finance shall always hold as security for the redemption of Dominion notes up to and including thirty million dollars, issued and outstanding at any one time, an amount equal to not less than twenty-five per centum of the amount of such notes in gold, or in gold and securities of Canada, the principal and interest of which are guaranteed by the Government of the United Kingdom.

2. The amount so held in gold shall be not less than fifteen per centum of the amount of such notes so issued and outstanding.

3. As security for the redemption of Dominion notes issued in excess of thirty million dollars the Minister shall hold an amount in gold equal to such excess. 3 E. VII., c. 43, s. 4.

6. In case the amount held in accordance with the provisions of this Act as security for the redemption of Dominion notes is not sufficient to pay the Dominion notes presented for redemption, or in case the amount so held is reduced below the amount required by this Act to be held, the Governor in Council may raise, by way of loan, temporary or otherwise, such sums of money as are necessary to pay such notes or to provide the amount required to be held as security for the redemption of Dominion notes issued and outstanding. 3 E. VII., c. 43, s. 5.

PROCEEDS AND EXPENSES.

7. The proceeds of Dominion notes so issued shall form part of the Consolidated Revenue Fund of Canada, and all expenses incurred or required to be paid in connection with the engraving, printing or preparation of such notes, or the signing, issue or redemption thereof, shall be paid out of the said fund. 3 E. VII., c. 43, s. 5.

MONTHLY STATEMENT.

8. The Minister of Finance shall publish monthly in the *Canada Gazette* a statement of the amount of Dominion

notes outstanding on the last day of the preceding month, and of the gold and guaranteed debentures then held by him for securing the redemption thereof. 3 E. VII., c. 43, s. 6.

AGENCIES FOR REDEMPTION.

9. The Governor in Council may establish branch offices of the Department of Finance at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown, for the redemption of Dominion notes, or may make arrangements with a chartered bank at any of the said places for the redemption thereof.

2. Every assistant receiver general appointed at any of the said places under Part II. of the Savings Banks Act shall be an agent for the issue and redemption of such notes. 3 E. VII., c. 43, s. 7.

NOTES OF LATE PROVINCE OF CANADA.

10. Provincial notes under the Act of the late province of Canada, passed in the session held in the twenty-ninth and thirtieth years of Her late Majesty Queen Victoria's reign, chapter ten, intituled *An Act to provide for the issue of Provincial Notes*, shall be held to be notes of the Dominion of Canada, and shall be redeemable in specie on presentation at Toronto, Montreal, Halifax, or St. John, according as the same are respectively made payable, and shall be legal tender except at the offices at which they are so respectively made payable. 3 E. VII., c. 43, s. 8.

CHAPTER 30.

An Act respecting Savings Banks.

SHORT TITLE.

1. This Act may be cited as the Savings Banks Act.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(*a*) "Minister" means the Minister of Finance;

(*b*) "agent" includes Assistant Receiver General. R.S., c. 121, s. 1.

DIVISION OF ACT.

3. This Act is divided into three parts. Part I. applies exclusively to the system of post office savings banks established by the Postmaster General with the consent of the Governor in Council. Part II. applies exclusively to savings banks established by the Governor in Council. Part III. is general, and is not confined to either kind of banks.

PART I.

POST OFFICE SAVINGS BANKS.

Establishment of Banks.

4. There shall continue to be a system of post office savings banks established by the Postmaster General, with the consent of the Governor in Council, in connection with a central savings bank, established as a branch of the Post Office Department at the seat of the Government. R. S., c. 35, s. 65.

5. The Postmaster General may, with the consent of the Governor in Council, authorize and direct such postmasters as he thinks fit, to receive deposits for remittance to the office of the central savings bank, and to repay the same, under such regulations as he, with the sanction of the Governor in Council, prescribes in that respect. R. S., c. 35, s. 66.

Deposits.

6. No deposit shall be received of less amount than one dollar, nor of any sum not a multiple of a dollar. R. S., c. 35, s. 67.

7. Every deposit received by any postmaster appointed for that purpose shall be entered by him at the time in the depositor's book, and the entry shall be attested by him and by the dated stamp of his office.

2. The amount of such deposit shall, upon the day of such receipt, be reported by such postmaster to the Postmaster General, and the acknowledgment of the Postmaster General, signified by the officer whom he appoints for the purpose, shall be forthwith transmitted to the depositor. R. S., c. 35, s. 67.

8. Such acknowledgment shall be conclusive evidence of the claim of the depositor to the payment of the deposit, with the interest thereon, upon demand made by him on the Postmaster General.

2. In order to allow a reasonable time for the receipt of the acknowledgment, the entry by the proper officer in the depositor's book shall also be conclusive evidence of the title, as respects a deposit made in any part of Canada other than the province of British Columbia, Saskatchewan or Alberta, or the Northwest or Yukon Territories, for ten days from the making of the deposit, and as respects a deposit made in the province of British Columbia, Saskatchewan or Alberta, or the Northwest or Yukon Territories, for eighteen days from the making of the deposit.

3. If such acknowledgment has not been received by the depositor through the post within such ten or such eighteen

days respectively, and before or upon the expiry thereof he demands such acknowledgment from the Postmaster General by letter addressed to him at Ottawa, then the entry in his book shall be conclusive evidence of title during another term of ten or eighteen days respectively, and *toties quoties*. R. S., c. 35, s. 67.

9. No sum of money deposited under this Part shall, while in the hands of any postmaster, or while in course of transmission to or from the Postmaster General, at any time be liable to demand, seizure or detention, under legal process against the depositor thereof. R. S., c. 35, s. 68.

Certificates of Deposit.

10. The Postmaster General may, with the consent of the Governor in Council, whenever it is deemed expedient, issue certificates of deposit in sums of not less than one hundred dollars, and bearing interest at a rate not exceeding five per centum per annum, to depositors who, having like sums at the credit of their ordinary deposit accounts, desire to transfer such sums from such ordinary deposit accounts to a special deposit account, represented by such certificates, and bearing the rate of interest specified therein.

2. Such certificates shall not be transferable, but shall be evidence of the depositor's claim upon such special deposit account to the amount expressed in such certificate, with the interest due thereon, and shall be redeemable upon such previous notice as is expressed therein, and shall in all respects be subject to such regulations as are made by the Postmaster General, with the sanction of the Governor in Council. R. S., c. 35, s. 74.

Repayment.

11. On demand of the depositor, or person legally authorized to claim on account of the depositor, made in such form as is prescribed in that behalf by the Postmaster General, for repayment of any deposit or any part thereof, the authority of the Postmaster General for such repayment shall be transmitted to the depositor forthwith, and the depositor shall be entitled to repayment of any sum that is due to him

with the least possible delay after his demand is made, at any post office where deposits are received or paid. R. S., c. 35, s. 69.

12. All moneys transmitted to the central savings bank shall forthwith be paid over to the Minister, and shall be credited to an account called *Post Office Savings Bank Account;* and all sums withdrawn by depositors, or by persons legally authorized to claim on account of depositors, shall be repaid to them by the Minister through the Post Office Department, and charged to such account. R. S., c. 35, s. 71.

Secrecy.

13. The postmasters and other officers of the post office engaged in the receipt or payment of deposits shall not disclose the name of any depositor or the amount deposited or withdrawn, except to the Postmaster General, or to such of his officers as are appointed to assist in carrying into operation the provisions of this Part. R. S., c. 35, s. 70.

Regulations.

14. Except as in this Part otherwise specially provided, the Postmaster General may make regulations for superintending, inspecting and regulating the mode of keeping and examining the accounts of depositors, and with respect to the making of deposits, and to the withdrawal of deposits and interest, and all other matters incidental to carrying the provisions of this Part into execution by him.

2. All regulations so made shall be binding on the persons interested in the subject-matter thereof to the same extent as if such regulations were enacted in this Part.

3. Copies of all regulations issued under the authority of this Part shall be laid before both Houses of Parliament within fourteen days from the date thereof, if Parliament is then sitting, and if not, then within fourteen days after the next re-assembling of Parliament. R. S., c. 35, s. 75.

Returns and Accounts.

15. As soon as possible after the end of each month, the Postmaster General shall make a return to the Minister of

all moneys received and paid during the preceding month, and of the total amount in deposit at the end of each month, and the Minister shall cause such monthly statement to be published in the *Canada Gazette*. R. S., c. 35, s. 76.

16. An annual account of all deposits received and paid under the authority of this Part and of the expenses incurred during the fiscal year, together with a statement of the total amount due at the close of the year to all depositors, shall be laid by the Postmaster General before both Houses of Parliament within ten days after the commencement of the next following session thereof. R. S., c. 35, s. 77.

Report.

17. The Postmaster General shall annually make to the Governor General, so that it may be laid before Parliament within ten days after the meeting thereof, in each session, a report made up to the close of the last preceding fiscal year containing a statement,—

(*a*) of the bank transactions during the year, and of the total amount due at the close of the same to all depositors;

(*b*) of the losses, if any, sustained during the year to which the report relates, in conducting the bank system. 52 V., c. 20, s. 12.

Offences and Penalties.

18. Every one who forges, counterfeits or imitates any bank depositor's book, or authority of the Postmaster General for repayment of a bank deposit or of any part thereof, or any signature or writing in or upon any bank depositor's book, or authority of the Postmaster General for repayment of a bank deposit, or of any part thereof, with intent to defraud, is guilty of an indictable offence, and liable to imprisonment for any term not exceeding seven years, and not less than two years. R. S., c. 35, s. 87.

19. Every officer of or connected with the bank system who converts to his own use in any way whatsoever, or uses by way of investment in any kind of property or merchan-

dise, or lends, with or without interest, any portion of the public moneys entrusted to him as such officer for safe keeping, or transfer, disbursement or for any other purpose, shall be deemed to have stolen so much of the said moneys as is so taken, converted, invested, used or lent, and is guilty of an indictable offence.

2. Every person who advises or knowingly and willingly participates in such theft, is guilty of an indictable offence, and shall, for every such offence, forfeit and pay to His Majesty a fine equal to the amount of the money stolen, and shall be liable to imprisonment for a term not exceeding seven years and not less than three months. R. S., c. 35, s. 105.

Evidence.

20. The neglect or refusal by any such officer to pay over any public moneys aforesaid in his hands, or to transfer or disburse any such moneys promptly, on the requirement of the Postmaster General, shall be *prima facie* evidence of such conversion to his own use of so much of such public moneys as is so in the hands of such officer. R. S., c. 35, s. 105.

21. In any action or proceeding for the recovery of any penalty under this Part, the burden of proof that anything proved to have been done by the defendant was done in conformity to or without violation of this Part, shall lie upon the defendant. R. S., c. 35, s. 114.

PART II.

GOVERNMENT SAVINGS BANKS.

Establishment.

22. The Governor in Council may establish a savings bank at each of the cities of Toronto, Montreal, Halifax and St. John, and at any place within the provinces of Manitoba, British Columbia, Prince Edward Island, Saskatchewan

and Alberta, and at any place within any province which shall hereafter form part of Canada. R. S., c. 121, s. 2.

23. The Governor in Council may appoint a person who shall be called an Assistant Receiver General at any city or place where a savings bank is established.

2. The Assistant Receiver General appointed for the city or place where a savings bank is established shall have the management of the same. R. S., c. 121, s. 2.

24. The Governor in Council may also establish branch savings banks in any places in the provinces of Nova Scotia and New Brunswick other than the cities of Halifax and St. John, and may appoint persons as agents for the management thereof. R. S., c. 121, s. 2.

Deposits—and Duties of Officers.

25. Every agent shall, under regulations from time to time made in that behalf by the Treasury Board with the approval of the Governor in Council, receive deposits of money on account of the Minister, and shall repay the same with interest to the depositor as hereinafter provided. R.S., c. 121, s. 3.

26. Such of the collectors of customs in the province of New Brunswick as are authorized to receive deposits of money as savings shall continue to receive the same until other savings bank agents are appointed in their stead respectively, and shall be subject as agents to all the provisions of this Part. R.S., c. 121, s. 3.

27. The Governor in Council may also appoint an inspector or inspectors to inspect, investigate and report upon the business which arises in carrying out the provisions of this Part.

2. The agent appointed to receive deposits, and all other persons who are employed under this Part, shall afford to such inspectors all needful facilities for such inspection and investigation.

3. The duties and powers of such inspectors shall be such as are assigned to them under the regulations made under this Part. R.S., c. 121, s. 4.

28. Every agent, officer, clerk and servant employed under this Part, who is entrusted with and has the custody of any moneys or valuable securities, shall, before entering upon the duties of his office or employment, give such security for the faithful discharge of the same, and for the due accounting for all such moneys, as is required of him by the Treasury Board, and shall also take an oath or affirmation before a justice of the peace, faithfully to perform his said duties, in the form or to the effect following, that is to say:—

I, A. B., of , being duly sworn, swear, (*or* do solemnly affirm) that so long as I am employed in assisting to carry out the provisions of the Savings Banks Act, relating to Government savings banks, I will perform faithfully and to the best of my ability the duties that are assigned to me.

And I have signed,

Sworn (*or* affirmed) at this day of , 19 , before me, A. B., justice of the peace for the of

R.S., c. 121, s. 5.

29. Every agent appointed to receive deposits may receive deposits from any person whatever, whether such person is qualified by law to enter into ordinary contracts or not: Provided that if the person who makes any such deposit could not, under the laws of the province where the deposit is made, by reason of some disability, deposit and withdraw money in and from a bank, the total amount of deposits to be received from such person shall not exceed the sum of five hundred dollars.

2. Every such agent may, from time to time, pay any or all of the principal of such deposits and the whole or any part of the interest thereon to such person, without the authority, aid, assistance or intervention of any person or official being required, any law, usage or custom to the contrary notwithstanding. R. S., c. 121, s. 6.

30. Every depositor, on making his first deposit, shall declare his name, residence and occupation.

2. The persons employed in the receipt or payment of such deposits shall not disclose the name of any depositor, or the amount deposited or withdrawn, except to the Minister or to such of his officers as are appointed to assist in carrying into operation the provisions of this Part. R. S., c. 121, s. 7.

31. Every such deposit received by such agent shall be entered by him, at the time in a book to be kept by him for that purpose, and at the same time, shall be entered by him in a pass book to be furnished to the depositor.

2. Subject to the provisions of the next following section, the entry in such pass book, attested by the signature or initials of the agent who receives the deposit, or of his deputy or clerk, shall be evidence of the claim of such depositor to the repayment thereof, with interest thereon, upon demand made during office hours by such depositor on such agent or his successor in office, at the office or place where such deposits are payable. R.S., c. 121, s. 8.

32. Every agent shall report to the Minister, at such times and in such forms as are prescribed by the regulations under this Part, all deposits received by him.

2. At such times as are prescribed by the regulations made under this Part, but not at less intervals than the beginning of each calendar month, the officer appointed thereto by the Minister shall send, by mail, to each depositor, to the address given by him, a notice stating the amount deposited by him since the statement of the same kind then last sent to him, if any, and the total amount then at his credit.

3. The amount mentioned in such notice, as at such depositor's credit and no more, shall be the amount for which the Crown shall be liable up to and including the last deposit therein mentioned, unless the depositor, within thirty days after the receipt of the same, notifies the Minister, in such manner as is prescribed by the regulations then in force, that there is some error in such notice and specifies the same.

4. In such case the true amount shall be ascertained, and the depositor shall be notified accordingly. R.S., c. 121, s. 8.

33. Every agent shall, at such times as are prescribed by the regulations then in force, pay into the account of the Minister at such bank as is prescribed by the Minister, all moneys received on deposit.

2. He shall pay all moneys which are withdrawn in such manner as by the said regulations is prescribed. R.S., c. 121, s. 9.

34. Every agent shall also, at such times as are prescribed, transmit to the Minister, in such form as is prescribed by the Minister, a detailed account of the business of his office during the time that has elapsed since the transmission of his next preceding account. R.S., c. 121, s. 9.

35. All moneys deposited under this Part shall form part of the Consolidated Revenue Fund of Canada.

2. All moneys and interest paid to depositors, and all expenses incurred in maintaining the savings banks established under this Part, shall be paid out of the Consolidated Revenue Fund of Canada. R.S., c. 121, s. 14.

Regulations.

36. The Governor in Council may make regulations in respect to,—

(*a*) the withdrawing of deposits and interest;

(*b*) the keeping, examining, inspecting, checking and reporting on the accounts of depositors;

(*c*) the issuing of deposit certificates and also respecting the payment or transmission thereof in case of infancy or in the case of marriage, death, bankruptcy or any change in title whatsoever;

(*d*) the duties and powers of inspectors appointed under this Part; and,

(*e*) all other matters which the Governor in Council deems incidental to the carrying of this Part into effect.

2. Such regulations may prescribe how and in what manner any payment or transmission aforesaid shall be made and what declaration, documents or other evidence shall be necessary and sufficient as proof in that behalf. R.S., c. 121, s. 15.

37. All regulations so made shall be binding on the persons interested in the subject-matter thereof, to the same extent and as fully to all intents and purposes, as if such regulations were enacted in this Part.

2. Such regulations, and all amendments thereof, shall be published in such way as the Governor in Council directs.

3. Any copy of such regulations published as aforesaid shall be evidence thereof. R. S., c. 121, s. 15.

38. Copies of all regulations made under the authority of this Part shall be laid before both Houses of Parliament by the Minister, within fourteen days after the commencement of the session held next following the making of such regulations. R.S., c. 121, s. 15.

Statement and Accounts.

39. As soon as possible after the end of each month, the Minister shall prepare and insert in the *Canada Gazette* a statement of all moneys received or deposited and withdrawn during the preceding month, and of the total amount on deposit at the end of the preceding month, and the rate of interest payable on the same. R. S., c. 121, s. 16.

40. Within ten days from the commencement of the first session of Parliament after the close of each financial year, an account of the expenses incurred, and of the amount of deposits received and paid, and of the total amount at the close of the financial year due to all depositors, shall be laid before both Houses of Parliament by the Minister. R. S., c. 121, s. 17.

Offences and Penalties.

41. Every agent appointed to receive deposits, as aforesaid, and every officer, clerk or servant employed under the provisions of this Part, who defaces, alters, erases, or in any manner or way whatsoever, changes the effect of the books of account that are kept under the provisions of this Part, or any entry in the said books of account, for any fraudulent purpose, and every such agent, officer, clerk or servant who secretes, appropriates or steals any bond, obligation, bill or

note, or any security for money, or any moneys or effects entrusted to him, or in his custody, or to which he has obtained access, as such agent, officer, clerk or servant, to whomsoever the said property belongs, is guilty of an indictable offence and liable to imprisonment for life. R.S., c. 121, s. 19.

42. Every person who, with intent to defraud, falsely pretends to be the owner of any deposit made under this Part, or of the interest upon such deposit or of any part of such deposit or interest, and who is not such owner, and who demands or claims from the agent with whom such deposit has been made, or from any other person employed under this Part, the payment of such deposit or interest, or of any portion thereof, as the case may be, and whether he does or does not thereby obtain any such deposit or interest, or any part thereof, is guilty of an indictable offence, and shall be punishable accordingly. R.S., c. 121, s. 20.

PART III.

GENERAL.

43. The interest payable to the persons making deposits under this Act shall be at such rate, not exceeding the rate of four per centum per annum, as the Governor in Council from time to time prescribes.

2. Such interest shall not be calculated on any amount less than one dollar or some multiple thereof, and shall not commence until the first day of the month next following the day of deposit, and shall cease on the first day of the month in which such deposit is withdrawn. 51 V., c. 8, ss. 1 and 2.

44. On the thirtieth day of June in every year the interest on deposits shall be added to and become part of the principal money. R.S., c. 35, s. 73; R.S., c. 121, s. 11.

45. No officer of the Government of Canada shall be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any deposit made under the authority of this Act is subject.

2. The receipt of the person in whose name any such deposit stands, or, if it stands in the name of more than one person, the receipt of any one of such persons shall be a sufficient discharge to all persons concerned for the payment of any money payable in respect of such deposit, notwithstanding any trust to which such deposit is then subject, and whether or not the agent or postmaster sought to be charged with such trust, and with whom the deposit was made, or his successor, had notice thereof.

3. No agent or postmaster or any other officer of the Government shall be bound to see to the application of the money paid upon such receipt. R.S., c. 121, s. 12.

46. Every payment made in good faith to any person who appears *prima facie*, by the production of a declaration in writing and documents in support thereof, made under the provisions of this Act, or any regulation made thereunder, to be entitled to any deposit or interest, shall be valid and shall discharge the Crown and the agent or postmaster with whom the deposit has been made, and his successors, and all who might otherwise be liable, from all or any claim by any person whomsoever, for such deposit or interest. R.S., c. 121, s. 13.

47. The Minister shall hold, for the purpose of securing the repayment of deposits made in banks under this Act, an amount in gold, or in gold and Canada securities, guaranteed by the Government of the United Kingdom, equal to not less than ten per centum of the total amount of such deposits as such amount is ascertained from time to time. 3 E. VII., c. 62, s. 1.

Revised Statutes of Canada, 1906.

CHAPTER 31.

An Act respecting Penny Banks.

SHORT TITLE.

1. This Act may be cited as the Penny Bank Act.

INTERPRETATION.

2. In this Act unless the context otherwise requires,—

(*a*) 'bank' means a corporation constituted by letters patent issued under this Act;

(*b*) 'board' means the board of directors of such corporation;

(*c*) 'guarantee fund' means the fund in this Act required to be established and maintained by the bank as security for the purpose in that behalf in this Act set forth. 3 E. VII., c. 47, s. 27.

3. The banks incorporated under this Act shall be deemed savings banks within the meaning of the Winding-up Act. 3 E. VII., c. 47, s. 19.

4. The bank shall not be deemed a bank within the meaning of the Bank Act. 3 E. VII., c. 47, s. 25.

INCORPORATION AND ORGANIZATION.

5. The Governor in Council may by letters patent grant a charter to any number of persons, not less than five, who petition therefor, constituting such persons a body corporate under this Act, with the powers and subject to the restrictions and conditions hereinafter declared: Provided that no such charter shall be granted by the Governor in Council unless the grant-

ing thereof has been first recommended by the Minister of Finance. 3 E. VII., c. 47, s. 3.

6. Notice of the granting of letters patent under this Act shall be forthwith given by the Secretary of State in the *Canada Gazette*.

2. From the date of such letters patent the persons hereby constituted a corporation, and such other persons as become members of the corporation as provided by this Act, shall be a corporation by the name mentioned in the letters patent.

3. The corporation shall have and may exercise the powers conferred upon it by this Act subject to the provisions hereof. 3 E. VII., c. 47, s. 6.

7. The letters patent shall declare,—

(*a*) the name of the bank;

(*b*) the names of the provisional directors of the bank;

(*c*) the place, being a place in Canada, where the chief office of the bank is to be situate.

2. The name of the bank declared by the letters patent, shall include the words *Penny Bank*, as *The Penny Bank*, or *The Penny Bank of* , but such name shall not be the name of any existing corporation, or a name liable to be confounded with that of an existing corporation.

3. The person named in the letters patent as provisional directors shall not be less than five in number and shall hold office until directors are elected by members of the bank as hereinafter provided. 3 E. VII., c. 47, s. 7.

8. So soon as the guarantee fund has been established as hereinafter provided, the provisional directors shall call a meeting of the members of the bank to elect directors, and shall at such meeting elect not less than five in number.

2. The directors so elected shall constitute the board of directors, and shall take the place of the provisional directors.

3. The provisional directors shall be eligible for election on the board. 3 E. VII., c. 47, s. 8.

9. The bank shall not begin business until after the guarantee fund has been established, nor until after directors have been elected as provided for in the last preceding section, nor until a certificate has been issued under the direction of the Treasury Board permitting the bank to carry on business under this Act.

2. No such certificate shall be issued except within one year from the date of the letters patent incorporating the bank, nor except on proof by affidavit or otherwise to the satisfaction of the Treasury Board that all the requirements of this Act have been complied with.

3. In the event of the bank not obtaining a certificate from the Treasury Board within the period of one year aforesaid, the letters patent of incorporation and all rights, powers and privileges of the bank conferred thereby, or by this Act, shall cease and determine and be of no further force or effect. 3 E. VII., c. 47, s. 9.

RULES AND REGULATIONS.

10. The Minister of Finance may, with the approval of the Treasury Board, from time to time, make rules and regulations respecting the forms and proceedings and all other matters requisite for incorporating banks under this Act, and for carrying out the other provisions of this Act, and may, with such approval, alter, repeal, annul or change any or all of such rules or regulations.

2. Except as to the requirements of this Act regarding,—

(*a*) the number of persons to whom a charter may be granted under this Act; and,

(*b*) the recommendation by the Minister of Finance hereinbefore specified as a condition precedent to the granting of a charter;

such rules and regulations shall be deemed to be directory only. 3 E. VII., c. 47, ss. 4 and 5.

PRELIMINARY MATTERS.

11. No letters patent issued under authority of an order of the Governor in Council on the recommendation of the

Minister of Finance shall be held to be void or voidable on account of any irregularity or otherwise in respect of any matter, notice, or proceeding preliminary to the making of such recommendation by the Minister of Finance or the passing of such order of the Governor in Council. 3 E. VII., c. 47, s. 5.

INTERNAL REGULATION.

12. The affairs of the bank shall be managed and administered by and under the authority of the board.

2. Subject to the provisions of the by-laws, directors shall hold office until their successors are elected; and in default of regulation otherwise by by-law any member of the bank shall be eligible to be a director of the bank.

3. If the seat of a director elected by the members as hereinafter provided becomes vacant between annual meetings such vacancy may be filled by the board, and if the seat of a director elected by a workers' association as hereinafter provided becomes so vacant such vacancy shall be filled by the workers' association. 3 E. VII., c. 47, ss. 10 and 16.

13. A general meeting of the members of the bank shall be held during each calendar year for the election of directors, and for transaction of all or any business which the members in general meeting may lawfully transact.

2. Such general meeting shall be held on such day and at such time and place as are prescribed by by-law in that behalf, or in default of such by-law on such day and at such time and place as the board names.

3. Special meetings of the members may be called at any time by the board as provided for in the by-laws of the bank for the transaction of such business as is set forth in the notice calling such meeting.

4. At all the meetings of such members each member shall have one vote for each one hundred dollars of his subscription or payment to the said fund, and members may vote by proxy. 3 E. VII., c. 47, ss. 11 and 16.

14. In default of other provisions by by-law, notices of all meetings under this Act shall be mailed to each member of

the bank at least two weeks previous to the day appointed for the holding of such meeting. 3 E. VII., c. 47, s. 12.

15. The directors or the members of the voluntary workers' association shall not be entitled to receive any remuneration for their services as such directors or members, and no profits shall at any time be divided among or paid to members of the bank. 3 E. VII., c. 47, s. 15.

BY-LAWS.

16. The board may, from time to time, make by-laws not contrary to law relating to the conduct of the affairs of the bank as to,—

(*a*) the number of directors from time to time, such number to be not less than five;

(*b*) the terms of service and qualifications of directors;

(*c*) the appointment, functions, duties and removal of all officers, agents and servants of the bank;

(*d*) the security to be given by officers, agents and servants of the bank and their remuneration;

(*e*) the day, time and place for holding the annual meeting of the members of the bank;

(*f*) the calling of meetings, regular and special, of the board and of the members of the bank, and the notice to be given of any such meeting;

(*g*) the quorum at any such meeting;

(*h*) the requirements as to proxies;

(*i*) the procedure in all things at any such meeting;

(*j*) the making of calls on subscribers to the guarantee fund;

(*k*) the organization and constitution of one or more associations or workers as hereinafter mentioned;

(*l*) the receipt and repayment of deposits or interest thereon; and,

(*m*) the conduct in all other particulars of the affairs of the bank. 3 E. VII., c. 47, s. 13.

17. Every by-law made by the board, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a special meeting of the members of the bank duly called for that purpose, shall only have force until the next annual meeting of the members of the bank, and in default of confirmation thereat shall at and from that time cease to have force.

2. If any by-law or part thereof be by resolution expressly disaffirmed, no new by-law of the same or like effect to that disaffirmed shall have any force until confirmed at a special meeting or at an annual meeting of the members of the bank.

3. The members of the bank may, either at a special meeting or at the annual meeting, repeal, amend, vary or otherwise deal with any by-law which has been passed by the directors.

4. No act done or right acquired under any by-law shall be prejudicially affected by any such want of confirmation, disaffirmance, repeal, amendment, variation or other dealing. 3 E. VII., c. 47, s. 14.

MEMBERS AND VOLUNTARY WORKERS.

18. The members of the bank shall consist of the persons who subscribe or pay to the guarantee fund hereinafter mentioned the sum of at least one hundred dollars.

2. A subscriber whose liability for his unpaid subscription ceases and determines as hereinafter provided, shall, from the time such liability so ceases and determines, cease to be a member of the bank. 3 E. VII., c. 47, s. 16.

19. The board may, from time to time, make calls upon the members of the bank on account of their respective subscriptions to the guarantee fund for such amount as may be required for the payment of any losses which may arise from time to time, and of any expenses and disbursements for which the bank may be liable, which losses, expenses and disbursements it may not otherwise be able to pay.

2. Upon such calls being made the members shall respectively be liable to pay, and shall respectively pay, the amounts thereof to the bank, but not exceeding in all the respective

amounts of their respective subscriptions to the guarantee fund remaining unpaid. 3 E. VII., c. 47, s. 17.

20. The liability of a member of the bank for his unpaid subscription to the guarantee fund shall, subject to the provision of the next following section, cease and determine,—

(*a*) upon his death;

(*b*) upon his being declared by competent authority to be a lunatic or of unsound mind;

(*c*) upon his procuring another subscriber to the guarantee fund, to be approved and accepted by the board, for an amount equal to or greater than the amount for which he himself is liable as subscriber to the said fund. 3 E. VII., c. 47, s. 18.

21. Notwithstanding the provisions of the last preceding section, the liability of a member of the bank shall not cease and determine as therein provided, if within the period of sixty days from the time when under such section such liability would determine, proceedings are taken for the winding-up of the bank.

2. In such case the liability of such member, or of his legal representatives, shall continue, and he or they shall be liable to contribute, and shall contribute, to the assets of the bank such amount, not exceeding the amount of such unpaid subscription, as may be required to provide for payment of the debts and liabilities of the bank to depositors and others, and for the payment of the costs, charges and expenses of winding-up the bank, and for the adjustment of the rights of the contributories amongst themselves. 3 E. VII. c. 47, s. 19.

22. The board may, from time to time, by by-law constitute and organize one or more associations of voluntary workers in connection with the carrying on and administration of the business of the bank, and may define the powers and duties of such associations, and prescribe the number of directors to be elected by such associations, and the manner of election, and the filing of vacancies, and such other details in connection with such associations, and the organization and working thereof, as may be deemed expedient.

2. When and so soon as such powers and duties shall have been prescribed the said associations shall be entitled to and have the right and authority to elect such number of directors as may be prescribed. 3 E. VII., c. 47, s. 20.

23. The bank may receive deposits of money on such terms as the board or the by-laws of the bank prescribe, and such deposits may be received from any person of whatever age, status or condition of life, and whether such person is qualified by law to enter into contracts or not.

2. No deposit shall be received which would make the amount at the credit of the account in respect of which the deposit is offered to exceed three hundred dollars, and not more than one account shall be kept with the same depositor, and in no case shall interest be paid or allowed to depositors in the bank in excess of the current rate paid to depositors in the Government savings bank or in the Post Office savings bank. 3 E. VII. c. 47, s. 21.

24. Any payment of the whole or part of any deposit or of any interest thereon, not exceeding one hundred dollars, made in good faith and in accordance with the by-laws of the bank, shall discharge the bank from any claim by any person whomsoever in respect of the deposit or interest so paid, notwithstanding that the person making the deposit may have died, or become insane, or become otherwise incapacitated, and that there is or is not a person qualified to represent such person, or that such person cannot be found, or that some person other than the person to whom such payment is made may claim to be or be entitled to such deposit or interest.

2. Upon the book or other paper given to the depositor representing the deposit, or in or on which the deposit is entered, there shall be a printed copy of the last preceding subsection. 3 E. VII., c. 47, s. 22.

25. The bank may of the moneys received on deposit by it hold for the purpose of paying withdrawals such amount as the directors determine, not exceeding the sum of five per centum of the total amount of deposits in the bank.

2. All moneys received on deposit and on hand at any time in excess of such amount shall be deposited by the bank in a

Government savings bank or in a post office savings bank to the credit of the bank.

3. Interest on the amounts from time to time at the credit of the bank in the said Government savings bank or post office savings bank shall be allowed and credited half-yearly to the account of the bank at a rate to be from time to time fixed and determined by the Minister of Finance, such rate not to exceed one-half of one per centum in advance of the rate then payable to depositors in the said Government savings bank or post office savings bank. 3 E. VII., c. 47, s. 23.

26. The board may withdraw from the account of the bank in the Government savings bank, or in the post office savings bank, and apply towards payment of the working expenses or for the purpose of augmenting the guarantee fund of the bank, such portion of the interest credited to the account of the bank, as in the last preceding section provided, as represents the excess of the interest so credited over the interest paid or allowed by the bank to the depositors therein.

2. Except as aforesaid the moneys so at credit of the bank in the Government savings bank or in the post office savings bank shall be withdrawn by the bank only for the purpose of the payment of withdrawals by depositors in the bank of amounts deposited by them, and interest thereon, and shall be used and applied by the bank only for such purposes. 3 E. VII., c. 47, s. 24.

27. The bank shall not,—

(*a*) issue any bank note or note intended to circulate as money or as a substitute for money;

(*b*) deal in, discount or lend money or make advances upon, the security of bills of exchange or promissory notes;

(*c*) except as hereinafter provided, acquire any real estate;

(*d*) invest, lend or dispose of any moneys received by it; nor,

(*e*) except as especially provided in this Act, engage or be engaged in any trade or business. 3 E. VII., c. 47, s. 25.

28. The bank may acquire the assets and assume the liabilities of any existing savings association for benevolent purposes and may take up and carry on the work of such association, and the corporation or persons holding the deposits or assets thereof may transfer and hand over the same to the bank in pursuance of any agreement which may be entered into respecting the acquisition thereof.

2. Upon such transfer being made the transferrers shall, to the extent of the assets and deposits so transferred, be discharged from all liability in respect of the said deposits and assets, and such liability shall thereafter be assumed by the bank. 3 E. VII., c. 47, s. 26.

29. The bank shall, with as little delay as possible, but within one year after such transfer as aforesaid takes effect, convert into cash and deposit in a government savings bank or in a post office savings bank in its own name so much of the said assets as shall be equal to the amount of deposits in the association so acquired and interest thereon, and the remaining portion of such assets shall be appropriated towards the working expenses of the bank, or shall become a part of the guarantee fund of the bank, as the directors may determine, or as may be specified in the agreement of transfer.

2. If any portion of such assets, becoming a part of the guarantee fund, be invested in any security not authorized by this Act for investments of the guarantee fund, such portion shall as quickly as possible be converted into cash and invested as prescribed by this Act. 3 E. VII., c. 47, s. 26.

30. Until the portion of such assets which consists of securities is converted into cash, such securities shall be deposited with the Minister of Finance pending the realization thereof into cash as aforesaid.

2. The Minister shall not incur any liability or responsibility in respect thereof, or in connection with any sale thereof. 3 E. VII., c. 47, s. 26.

GUARANTEE FUND.

31. A guarantee fund shall be established and maintained by the bank for the purpose of securing the repayment of the

deposits made in the bank and interest thereon, and the payment of all other debts and liabilities of the bank incurred in the management of the business thereof, in the event of the funds in the hands of the board for the purpose of paying such deposits, interest, and other debts and liabilities being insufficient to pay the same, or in the event of the bank being wound up. 3 E. VII., c. 47, s. 27.

32. The said fund shall consist of,—

(*a*) all moneys and securities received by or paid to the bank, other than deposits and interest thereon, and other than moneys specifically appropriated by this Act, or by the person from whom they are received, for the working expenses of the bank or for any other purpose in connection with the bank other than the guarantee fund;

(*b*) securities and investments in which the bank is by this Act authorized to invest the moneys of the fund;

(*c*) the unpaid amounts of all subscriptions to the said fund under an agreement of guarantee in the form in the schedule to this Act, or an agreement to the like effect.

2. The bank may accept and receive all bequests and gifts to the said fund, and all bequests and gifts for the working expenses of the bank and for any other object or purpose in connection with the bank. 3 E. VII., c. 47, s. 28.

33. The bank may invest the moneys of the guarantee fund in, or lend such moneys upon,—

(*a*) annuities, bonds, debentures, stocks or other securities of the Government of the Dominion of Canada, or of any of the provinces of Canada;

(*b*) bonds or debentures of any municipal corporation of any city or town in Canada having, according to the last preceding government official census, a population exceeding ten thousand inhabitants, or of the municipal corporation of any county or township in any province of Canada having, according to such census, a population of over twenty thousand inhabitants;

(*c*) shares in the capital stock of any incorporated trust company doing business in Canada having, according to its last preceding annual statement submitted to its shareholders, a reserve fund or rest amounting to at least twenty per centum of its capital, and having its stock marketable above par;

(*d*) the bonds or debentures secured by mortgage of any telegraph company, telephone company, electric lighting company, gas company, hydraulic or electric power company, electric street railway company, or electric or steam railway company, incorporated under the laws of the Dominion of Canada, or of any province thereof, or of the late province of Canada, or of Upper Canada or Lower Canada, or of the provinces of New Brunswick, Nova Scotia, British Columbia or Prince Edward Island before Confederation, or of the United Kingdom, or of the United States, or any state thereof, if the gross income of such company, according to its last preceding annual statement submitted to its shareholders, is at least five hundred thousand dollars per annum, and if such company has paid regular dividends upon its ordinary or its preferred stock for the next preceding two years;

(*e*) any securities upon which trustees are by the laws of the province in which the head office of the bank is situate authorized to invest trust moneys;

(*f*) such freehold or leasehold real estate, movable and immovable property, as is required for the actual use and occupation of the bank and for the management of its business.

2. The bank may sell and dispose of any such real estate, movable or immovable property. 3 E. VII., c. 47, s. 29.

34. The guarantee fund shall be deemed to be established and to be maintained when and so long as it amounts to the sum of at least ten thousand dollars in any or all of the following:—

(*a*) cash;

(*b*) securities authorized by the last preceding section, taken at their market value, other than such freehold or leasehold real estate, movable and immovable property, as is required for the actual use and occupation of the bank and for the management of its business;

(*c*) unpaid subscriptions, if the payment, when required, of such amount thereof as will make, with cash and securities as hereinbefore provided, the guarantee fund amount to not less than ten thousand dollars, is secured and guaranteed by the bond of a company authorized to transact in Canada the business of a guarantee company and authorized to give such bond. 3 E. VII., c. 47, s. 30.

35. Should the bank fail for six consecutive months to maintain such fund within the meaning of this Act, the bank shall cease to receive deposits and shall be wound up: Provided that the Treasury Board may, on the application of the bank made before the expiration of that period, grant an extension thereof for a further period not exceeding six months. 3 E. VII., c. 47, s. 31.

36. The moneys received on account or in respect of the guarantee fund, or arising by way of interest from investment thereof, and all real estate or other property held by the bank and the proceeds thereof, shall be and remain the property of the bank and may, subject to the provisions of this Act in regard thereto being fully observed and complied with, be disposed of and dealt with by the bank as the Board determines. 3 E. VII., c. 47, s. 32.

STATEMENTS.

37. The bank shall transmit to the Minister of Finance statements showing the condition and business of the bank on the last juridical day in the months of June and December in each year, verified by the oath of the president, or of one of the vice-presidents of the bank, or of the chairman of the board, and of the manager or other chief officer of the bank.

2. To every such statement shall be annexed a certificate from a chartered accountant that he has examined and audited

the books of the bank and that he finds that such statement is a true statement of the affairs of the bank at the date named therein. 3 E. VII., c. 47, s. 33.

38. Such statements shall show,—

(*a*) the amount due depositors in the bank;

(*b*) the amount of the guarantee fund and the nature of the investments thereof;

(*c*) the unpaid subscriptions and the amount thereof secured by a bond of a guarantee company distinguishing the class of securities and the amount of each class;

(*d*) all other assets and liabilities of the bank; and,

(*e*) any other information as to the nature and extent of the business of the bank and in such detail as the Minister of Finance from time to time requires.

2. The bank shall in no case be bound to disclose the name or personal affairs of any person having dealings with the bank. 3 E. VII., c. 47, s. 34.

39. The Minister of Finance may call for a special return from the bank in such form as he may determine at any time when in his judgment it is necessary or expedient. 3 E. VII., c. 47, s. 35.

OFFENCES AND PENALTIES.

40. Every president, vice-president, director, manager or other officer of the bank who wilfully disposes of or concurs in disposing of any moneys received by the bank, in a way not authorized by this Act for the disposition thereof, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. 3 E. VII., c. 47, s. 37.

41. Every person making any wilfully false or deceptive statement in any account, statement, return, report, certificate or other document respecting the affairs of the bank, is guilty of an indictable offence punishable by imprisonment for a term not exceeding five years, unless under some other Act or law the particular offence committed is punishable with imprisonment for a longer term.

2. Every president, vice-president, director, auditor, manager or other officer of the bank, and every chartered accountant, who prepares, signs, approves of or concurs in such account, statement, return, report, certificate or document, containing such false or deceptive statement, or uses any such account, statement, return, report, certificate or document with intent to deceive or mislead any person, shall be deemed to have wilfully made such false statement. 3 E. VII., c. 47, s. 38.

42. Every president, vice-president, director, auditor, manager or other officer of the bank, and every chartered accountant who prepares, signs, approves of, or concurs in such account, statement, return, report, certificate or document, or uses any such account, statement, return, report, certificate or document with intent to deceive or mislead any person, and every president, vice-president, director, manager or other officer of the bank, who wilfully disposes of or concurs in disposing of any moneys received by the bank in a way not authorized by this Act for the disposition thereof, shall, in addition to the punishment provided by this Act for such offence, be responsible for all damages sustained by any person in consequence of such act on his part. 3 E. VII., c. 47, ss. 37 and 38.

SCHEDULE.

GUARANTEE FUND.

Subscribers' Agreement.

We, the undersigned, do hereby respectively become subscribers to the Guarantee Fund of (*name of bank*) incorporated under the Penny Bank Act, to the respective amounts set opposite our respective signatures hereto, and we do hereby respectively agree with the said bank to pay from time to time such calls as may be made upon us respectively under the provisions of said Act, but not exceeding in all the respective amounts of our said subscriptions.

Signatures.	Addresses.	Amounts.

NOTE.—Subscriptions to the Guarantee Fund may be made upon one or more papers in the above form. 3 E. VII., c. 47, sch.

CHAPTER 32.

An Act respecting certain Savings Banks in the Province of Quebec.

SHORT TITLE.

1. This Act may be cited as the Quebec Savings Banks Act.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(*a*) 'bank' means either of the savings banks to which this Act applies;

(*b*) 'Minister' means the Minister of Finance. 53 V., c. 32, ss. 1, 31 and 33.

CHARTERS.

3. It shall be a condition of the rights and privileges conferred by this Act or by any Act in amendment thereof, that the liability of the bank under any law, custom or agreement to repay moneys deposited with it and interest if any, and to pay dividends declared and payable on its capital stock, shall continue notwithstanding any statute of limitation or any enactment or law relating to prescription, and that this condition shall apply to moneys heretofore or hereafter deposited and to dividends heretofire or hereafter declared. 53 V., c. 32, s. 33.

4. The charters of the Montreal City and District Savings Bank and of *La Caisse d'Economie de Notre-Dame de Québec*, are hereby continued and shall remain in force until the first day of July in the year one thousand nine hundred

and eleven, except in so far as they, or either of them, are or become forfeited or void under the terms thereof, or of this Act, or of any other Act heretofore or hereafter passed relating to the said savings banks by non-performance of the conditions of such charters or Acts respectively, or by insolvency, or otherwise. 63-64 V., c. 28, s. 1.

BANK MEETINGS.

5. Public notice shall be given by the directors of the bank of the holding of annual or other meetings by publishing the same for at least four weeks in a newspaper at the place where the head office of the bank is situate; and such notice shall be given in both the English and French languages. 53 V., c. 32, s. 3.

6. At all meetings of the bank, every shareholder shall be entitled to one vote for each share then held by him which he shall have held for at least three months before the time of voting. 53 V., c. 32, s. 4.

7. Shareholders may vote by proxy, but no person but a shareholder shall vote or act as such proxy. 53 V., c. 32, s. 4.

8. No cashier, clerk or other officer of the bank, shall vote either in person or by proxy, or hold a proxy for that purpose. 53 V., c. 32, s. 4.

DIRECTORS.

9. The directors shall be elected annually at a general meeting of the shareholders and shall be eligible for re-election; but no person shall be elected a director unless he is a shareholder, at the time of such election, of twenty-five shares of stock. 53 V., c. 32, s. 4.

10. Every director of the bank who becomes insolvent, or assigns his estate and effects for the benefit of his creditors, or absents himself, without the consent of the board, for twelve consecutive months from the meetings of the directors, or is convicted of any indictable offence, shall thereupon, *ipso facto*, cease to be a director, and the vacancy so created

shall forthwith be filled up in the manner provided by the charter. 53 V., c. 32, s. 4.

11. No failure to elect directors of the bank shall operate a dissolution of the corporation, but in case of such failure the required election shall be made as soon thereafter as possible at a special general meeting of the shareholders called for that purpose; and until such subsequent election takes place, the official acts of the directors holding office shall be valid, and such directors shall call the said special general meeting. 53 V., c. 32, s. 5.

CALLS.

12. Whenever it is, in the opinion of the directors, necessary or expedient, they may make calls at intervals of not less than three months on the stock subscribed for and remaining unpaid, not exceeding five per centum; and all amounts paid upon stock, and all accumulated profits thereon after deduction of dividends as hereinafter provided, shall be invested or lent in the manner hereinafter provided for the investment or loan of moneys deposited with the bank: Provided that such limitation of the amount of any call, or of the intervals at which calls may be made, shall not apply to calls in case of a deficiency of the funds of the bank to meet the claims of depositors and other liabilities. 53 V., c. 32, s. 6.

13. The amount of every such call, if not paid when due, may be recovered with interest by the directors, in the name of the bank, in any court having jurisdiction to such amount; and in any action for the recovery thereof it shall be sufficient to allege and prove the charter, and that the calls were made under this Act, and that the defendant is the holder of a share or shares in respect of which the amount is due without alleging or proving any other matter or thing whatsoever; and any copy of the charter, purporting to be certified as a true copy thereof by the Secretary of State of Canada, shall be deemed authentic and shall be *prima facie* evidence of the charter and of its contents thereof. 53 V., c. 32, s. 7.

14. In the event of the funds of the bank in money and assets immediately convertible into money becoming insuffi-

cient to satisfy its debts and liabilities, the directors shall make calls on the unpaid stock to the full amount not paid thereon or to such less amount as they deem necessary to pay all such debts and liabilities without waiting for the collection of any debts due to the bank or the sale of any of its assets or property; and each shareholder, until the whole amount of his stock has been paid up, shall be individually liable for any such insufficiency to an amount equal to that remaining unpaid on his said stock, but not in excess of such amount so unpaid. 53 V., c. 32, s. 8.

15. In case of such insufficiency the first call shall be made within ten days after such insufficiency is ascertained, and thereafter calls shall be made at intervals of thirty days and upon notice given at least thirty days prior to the day on which the call is payable. 53 V., c. 32, s. 8.

16. No such call shall exceed twenty per centum on each share, and payment thereof may be enforced in the manner hereinbefore provided as to calls on unpaid-up stock. 53 V., c. 32, s. 8.

17. Failure on the part of any shareholder liable to such call to pay the same when due shall operate as a forfeiture by such shareholder of all claim in or to any part of the assets of the bank; but such call and any further call on the unpaid stock of such shareholders made thereafter shall nevertheless be recoverable from him as if no such forfeiture had been incurred. 53 V., c. 32, s. 8.

18. Persons who have been shareholders of any stock shall, in case of the failure of the bank to meet the claims of its creditors on demand, be liable to calls on all stock transferred by them within two months of the commencement of such failure, to the same extent as if such stock had not been transferred by them, saving their recourse for the amount of such calls against the transferees of such stock. 53 V., c. 32, s. 9.

DIVIDENDS.

19. The directors of the bank shall make half-yearly dividends of so much of the profits of the bank as to the majority

of them seems advisable, and as is not inconsistent with the provisions of this Act; and they shall give public notice for at least thirty days, in the manner in this Act provided for notices of meetings, of the time and place where such dividends will be paid. 53 V., c. 32, s. 10.

TRANSFER OF SHARES AND DEPOSITS.

20. The shares in the bank shall be transferable in the manner provided by the by-laws and regulations made as prescribed by the charter; and the transferee shall have the rights and shall be subject to the liabilities of the original holder. 53 V., c. 32, s. 11.

21. No share shall be divided, and if any share is held by several persons jointly, one of them shall be appointed by letter of attorney by the others to vote thereon, to receive dividends and to do all things that require to be done in respect thereof; and such letter of attorney shall be lodged with the bank. 53 V., c. 32, s. 11.

22. If the interest in any deposit or share in the bank becomes transmitted in consequence of the death or insolvency of any depositor or shareholder, or in consequence of the marriage of a female depositor or shareholder, or by any other lawful means than by a transfer upon the books of the bank, or by deed served upon the bank, such transmission shall be authenticated by a declaration in writing, which shall distinctly state the manner in which and the person to whom such deposit or share has been transmitted, and shall be, by such person, made and signed.

2. Every such declaration shall be, by the person making and signing the same, sworn to before a judge or justice of a court of record or chief magistrate of a city, town, borough or other place, or before a notary public, and left with the manager, agent or other officer of the bank who shall, if corroborative evidence of any facts alleged in such declaration is not required as hereinafter authorized, thereupon enter the name of the person so shown to be entitled to such deposit or share under such transmission as proprietor thereof in the books of the bank.

3. Until such transmission is so authenticated, no person claiming by virtue of any such transmission shall be entitled to receive such deposit or share, or any part thereof, or any interest or dividend thereon. 53 V., c. 32, s. 12.

23. Every declaration and instrument required to perfect the transmission of a deposit or share in the bank, made in any other country than Canada or some other of the British colonies or the United Kingdom of Great Britain and Ireland, shall be further authenticated by the British consul or vice-consul, or other accredited representative of the British Government in the country where the declaration is made, or shall be made directly before such British consul or vice-consul, or other accredited representative. 53 V., c. 32, s. 12.

24. Nothing in this Act contained shall prevent the directors, manager or other officer or agent of the bank from requiring corroborative evidence of any facts alleged in any such declaration. 53 V., c. 32, s. 12.

25. If payment is made to any depositor of any deposit or of any interest thereon, or of any dividend on any share, after transmission thereof by any of the means mentioned in this Act, but before such declaration is made and authenticated as aforesaid and left with the manager, agent or other officer of the bank, such payment shall be valid and shall discharge the bank. 53 V., c. 32, s. 12.

26. If the transmission of any deposit or share is by virtue of the marriage of a female depositor or shareholder, the declaration shall be accompanied by a copy of the register of such marriage, and shall declare the identity of the wife with the holder of such deposit or share; and if the transmission has taken place by virtue of any testamentary instrument or by intestacy, or by the vacancy of the estate of a deceased depositor or shareholder, the probate of the will, or, if it is notarial, an authentic copy thereof, or the letters of administration, or act of tutorship or curatorship, or authentic certificates of birth, as the case may be, shall, together with such declaration, be produced and left with the manager, agent or

other officer of the bank, who shall thereupon enter the name of the person entitled under such transmission in the books of the bank. 53 V., c. 32, s. 13.

DEPOSITS AND LOANS.

27. The bank may receive deposits of money for the benefit of persons depositing the same, and may invest the same as hereinafter provided, and may accumulate the revenues and profits derived from the investment of so much thereof as is not required to meet ordinary demands by the depositors, and out of such accumulation may allow and pay to the depositors thereof such rate of interest on such deposits as is from time to time fixed by the Governor in Council, not being more than five per centum per annum. 53 V., c. 32, s. 14.

28. Every depositor, on making his first deposit in the bank, shall disclose and declare his name, residence, addition and occupation. 53 V., c. 32, s. 15.

29. The bank may receive deposits from any person whatever, and whether such person is qualified by law to enter into ordinary contracts or not; and the bank may pay the principal or any part thereof, and the whole or any part of the interest thereon, to such person, without the authority, aid, assistance or intervention of any person or official being required: Provided that, if the person making any deposit in the bank is not, by the laws of the province of Quebec, authorized so to do, the total amount of deposits made by such person shall not exceed the sum of two thousand dollars. 53 V., c. 32, s. 16.

30. Any payment of interest or dividend, or of the whole or any part of any deposit, made in good faith to any person who appears *prima facie* to be entitled to such interest, dividend or deposit, by the production of a declaration in writing, and of the documents in this Act required in support thereof, shall be valid; and the discharge of such person shall be a sufficient discharge of the bank from all or any further claim by any person whatever for such interest, dividend or deposit. 53 V., c. 32, s. 17.

31. The bank shall always hold at least twenty per centum of the moneys deposited with it,—

(*a*) in public securities of the Dominion of Canada, or of any of the provinces thereof, or of the United Kingdom or of any British colony or possession, or of the United States, or of any state thereof; or,

(*b*) in deposits in chartered banks in Canada; or,

(*c*) in Canadian municipal bonds or securities; or,

(*d*) in school bonds or debentures issued in the province of Quebec, if they are secured by the school municipality in which the schools are situate; or,

(*e*) in any other security approved by the Treasury Board. 63-64 V., c. 28, s. 2.

32. The bank may, subject to the requirements of this Act, invest any moneys deposited with it,—

(*a*) in any of the securities mentioned in the next preceding section; or,

(*b*) in the purchase of bonds or debentures of any building society, loan or investment company, water-works company, gas company, street railway company, electric light or power company, electric railway or street railway company, telegraph or telephone company, water-power company, navigation company, or heat and light company: Provided such society or company is incorporated in Canada and has a paid-up capital of at least five hundred thousand dollars; or,

(*c*) in the purchase of the bonds or debentures of any telegraph cable company having a paid-up capital of at least five hundred thousand dollars. 63-64 V., c. 28, s. 2.

33. The bank may continue to hold any stock of any existing chartered bank held by it before it received its charter, and may sell and dispose of such stock. 63-64 V., c. 28, s. 2.

34. The bank may lend any of such moneys upon the personal security of individuals or to corporate bodies, if, in

addition to such personal or corporate security, collateral securities of the nature aforesaid, or foreign public securities, or stock of some chartered bank in Canada, or bonds or debentures or stock of an incorporated institution or company, the market value whereof is not less than the amount lent, are taken, with authority to sell such securities if the loan is not paid. 63-64 V., c. 28, s. 2.

35. The bank may lend any of such moneys without collateral security,—

(*a*) to the Government of Canada, or to the government of any province of Canada;

(*b*) to the corporation of any municipality in Canada with a population of at least two thousand inhabitants;

(*c*) to any *fabrique de paroisse*, or to *syndics pour l'erection d'églises*, specially authorized by Act of the Legislature of Quebec to issue bonds binding on the taxable property of the parish; or,

(*d*) upon a resolution of their respective boards of directors, to incorporated companies, or incorporated institutions, within the limits of their borrowing powers, and not exceeding in any case their paid-up capital, if such company or institution has a paid-up capital of not less than five hundred thousand dollars, and has paid continuously for the previous five years a dividend at the rate of at least five per centum per annum. 63-64 V., c. 28, s. 2.

36. The bank shall not make any loan, directly or indirectly, upon the security of real or immovable property, or with any reference to the security of real or immovable property; but nothing herein contained shall prevent the bank from taking security upon real or immovable property subsequently to the making of the loan and in addition to the security originally taken therefor and as collateral thereto. 53 V., c. 32, s. 21.

37. In the event of the non-payment of any loan within thirty days after such loan becomes due and payable, or with-

in such shorter time thereafter as shall have been fixed by any agreement made in that behalf between the bank and the borrower at the time such loan is contracted, the bank may sell in manner herein provided any collateral securities, other than real estate, held by it as security for such loan, or so much as will suffice to pay the amount of such loan and all interest thereon and the costs and expenses of sale, and shall return the surplus, if any, to the borrower, or person or corporation depositing such securities. 53 V., c. 32, s. 22.

38. Except as hereinafter provided, no such sale shall be made except by public auction, after notice thereof by advertisement stating the time and place of such sale, in at least two newspapers published in or nearest to the place where the sale is to be made, of which newspapers one at least shall be published in the English language and one other in the French language; and in addition to such notice by advertisement, notice of the time and place of such sale shall be given to the person or corporation depositing such collateral security, by addressing and mailing to the last address of such person, or to the address of such corporation, a letter containing such notice. 53 V., c. 32, s. 22.

39. Nothing herein contained shall prevent the bank from collecting or realizing such loan, or any balance due thereon, out of such collateral securities, in any way which has been agreed upon with the person depositing the same. 53 V., c. 32, s. 22.

40. The president or vice-president, manager, cashier or other officer of the bank, thereunto authorized by the directors, may transfer and convey any security so sold to the purchaser, and by such transfer and conveyance the property in such security shall become vested in such purchaser, but without any warranty from the bank, or any officer thereof.

2. The bank at any such sale may become the purchaser of any of the securities held by it. 53 V., c. 32, s. 22.

41. The bank may purchase any lands or immovable property offered for sale under execution at the suit of the bank, or exposed for sale by the bank under a power of sale given to it in that behalf in all cases in which, under similar cir-

cumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and shall acquire such title thereto, as any individual purchasing at sheriff's sale or under a power of sale, in like circumstances, could do, and may take, have, hold and dispose of any such lands or property at pleasure. 53 V., c. 32, s. 23.

42. The bank may acquire and hold an absolute title in or to land mortgaged to it as security for a debt due or owing to it, either by obtaining a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, or may purchase and acquire any prior mortgage or charge on such land: Provided that the bank shall not hold any real or immovable property, howsoever acquired, except such as is required for its own use for any period exceeding seven years from the date of the acquisition thereof. 53 V., c. 32, s. 24.

43. Nothing in any charter, Act or law shall be construed as having prevented or as preventing the bank from acquiring and holding an absolute title to and in any such mortgaged lands, whatever the value thereof may be, or from exercising or acting upon any power of sale contained in any mortgage given to it or held by it, authorizing or enabling it to sell or convey away any lands so mortgaged. 53 V., c. 32, s. 25.

44. Nothing herein contained shall prevent the bank from depositing money in any of the chartered banks carrying on the general business of banking within the province of Quebec. 53 V., c. 32, s. 26.

GENERAL.

45. The directors of the bank shall continue to distribute to charitable institutions yearly, as heretofore, the interest accruing on the amounts invested for that purpose. 53 V., c. 32, s. 27.

46. The principal of the Poor Fund of the City and District Savings Bank of Montreal, which has been ascertained and settled at one hundred and eighty thousand dollars, shall

continue invested and shall be held by the said bank in the city and municipal debentures in which the same is now invested and held, with power to change the investment of the same or of any part thereof, from time to time, with the approval and permission of the Treasury Board, but not otherwise. 53 V., c. 32, s. 27.

47. The principal of the Charity Fund of *La Caisse d'Economie de Notre-Dame de Québec*, which has been ascertained and settled at eighty-three thousand dollars, shall continue invested and shall be held by the said bank, in debentures of the city of Quebec, with power to change the investment of the same or of any part thereof, from time to time, with the approval and permission of the Treasury Board, but not otherwise. 53 V., c. 32, s. 27.

48. The shareholders may authorize the directors to establish, guarantee and pension funds for the officers and employees of the bank and their families, and to contribute thereto out of the funds of the bank. 53 V., c. 32, s. 28.

49. The bank shall not issue any bank note, or note intended to circulate as money or as a substitute for money, or be deemed a bank within the meaning of the Bank Act. 53 V., c. 32, s. 29.

50. The bank shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any deposit or share therein is subject.

2. The receipt of the person in whose name any such deposit or share stands in the books of the bank, or, if it stands in the names of more persons than one, the receipt of one of the persons, shall be a sufficient discharge to the bank for such deposit or share, interest or dividend thereon, or for any other sum of money payable in respect of such deposit or share, unless express notice to the contrary has been given to the bank. 53 V., c. 32, s. 30.

51. If such deposit is made upon express conditions as to the person or persons to whom such deposit shall be paid, such deposit shall be governed by such conditions, notwithstanding any trust to which such deposit is then subject, and

whether or not the bank has had notice of such trust; and the bank shall not be bound to see to the application of the money paid on any receipt whether given by one of a number of persons in whose name any deposit or share stands or by all of them. 53 V., c. 32, s. 30.

RETURNS.

52. Monthly returns shall be made, by the bank, to the Minister, and shall be made up within the first ten days of each month, and shall exhibit the condition of the bank on the last juridical day of the month next preceding; and such monthly returns shall be signed by the president or vice-president, or the director then acting as president and by the manager, cashier or other principal officer of the bank at its chief place of business, and shall be published in the *Canada Gazette*.

2. Such monthly returns shall be in the form set forth in the schedule to this Act. 53 V., c. 32, s. 31.

53. The bank shall furnish, annually, to the Minister, to be laid before Parliament, certified lists of the shareholders, with their additions and residences, and the number of shares they respectively hold and the amounts paid up thereon. 53 V., c. 32, s. 32.

54. The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister, to be laid by him before Parliament, a return of all dividends which have remained unpaid for more than five years, and also of all amounts or balances in respect to which no transactions have taken place, or upon which no interest has been paid during the five years prior to the date of such return.

2. In case of moneys deposited for a fixed period, the period of five years in this section referred to shall be reckoned from the date of the termination of such fixed period. 53 V., c. 32, s. 33.

55. Such return shall be signed in the manner required for the monthly returns under this Act, and shall set forth the name of each shareholder or creditor, his last known address, the amount due, the agency of the bank at which the

last transaction took place, and the date thereof; and if such shareholder or creditor is known to the bank to be dead, such return shall show the names and addresses of his legal representatives, so far as known to the bank. 53 V., c. 32, s. 33.

WINDING-UP.

56. Upon the winding-up of the bank in insolvency or under any general winding-up Act or otherwise, and before the final distribution of the assets, or within three years from the commencement of the suspension of payment by the bank or the commencement of the winding-up thereof, whichever shall first happen, the assignees, liquidators, directors or other officials in charge of such winding-up shall, notwithstanding any statute of limitation, or other enactment or law relating to prescription, pay to the Minister out of the assets of the bank any moneys payable either to shareholders or depositors, which may then remain unclaimed.

2. Upon such payment being made, the bank and its assets shall be relieved from all further liability in respect to the amount so paid. 53 V., c. 32, s. 33.

57. All moneys paid the Minister as aforesaid shall be held by him, subject to all rightful claims on behalf of any person other than the bank, and in case a claim to any moneys so paid as aforesaid should be thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall, on the report of the Treasury Board, direct payment thereof to be made to the parties entitled thereto, together with interest on the principal sum thereof at the rate of three per centum per annum for a period not exceeding six years from the date of payment thereof to the Minister as aforesaid: Provided that no such interest shall be paid or payable on such principal sum, unless interest thereon was payable by the bank paying the same to the Minister. 53 V., c. 32, s. 33.

58. Every liquidator or other officer or person appointed to wind up the affairs of the bank in case of its insolvency, shall have all the powers in this Act given to directors with respect to calls. 53 V., c. 32, s. 8.

OFFENCES AND PENALTIES.

59. Every officer, clerk, or servant, who is employed under the provisions of this Act, and who defaces, alters, erases, or in any manner or way whatsoever, changes the effect of the books of account kept under the provisions of this Act, or any entry in the said books of account, for any fraudulent purpose, and every such officer, clerk or servant, who secretes, appropriates or steals any bond, obligation, bill or note, or any security for money, or any money or effects entrusted to him, or in his custody, or to which he has obtained access as such agent, officer, clerk or servant, to whomsoever the said property belongs, is guilty of an indictable offence, and, on conviction thereof, shall be liable to imprisonment for life: Provided that nothing herein contained, nor the conviction or punishment of the offender, shall prevent, lessen or impair any remedy which His Majesty, or the Minister or any other person, would otherwise have against any other person whatsoever. 53 V., c. 32, s. 34.

60. Every person who, with intent to defraud, falsely pretends to be the owner of any deposit made under this Act, or of the interest upon such deposit, and who is not such owner, and who demands or claims from the bank with which such deposit has been made, or from any person employed under this Act, the payment of such deposit or interest, or of any portion thereof, as the case may be, and whether he does or does not thereby obtain any part of such deposit or interest, is guilty of an indictable offence and shall be punished accordingly. 53 V., c. 32, s. 35.

61. The making of any wilfully false or deceptive statement in any account, return, report or other document respecting the affairs of the bank is an indictable offence punishable by imprisonment for a term not exceeding five years, and every president, vice-president, director, auditor, manager, cashier or other officer of the bank, who prepares, signs, approves or concurs in any such account, statement, return, report or document containing such false or deceptive statement, or uses the same with intent to deceive or mislead any person, shall be held to have wilfully made such false statement, and shall further be responsible for all damages sus-

tained by such person in consequence thereof: Provided that nothing in this section shall have the effect of restricting the penalty for any act done, punishable under the Criminal Code. 53 V., c. 32, s. 36.

62. If the bank neglects to transmit or deliver to the Minister the returns required by this Act to be so transmitted or delivered within the time in this Act limited therefor, it shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 53 V., c. 32, s. 33.

63. If the bank shall hold any real or immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof, it shall incur a penalty not exceeding five hundred dollars, which shall be recoverable with costs in any court of competent jurisdiction by any person who sues for the same, and one-half of such penalty shall be paid to the Minister for the public uses of Canada and the other half thereof to the person suing for the same. 53 V., c. 32, s. 24.

64. Every director who refuses to make or enforce or to concur in making or enforcing any call provided for by this Act to be made in case of an insufficiency in the funds of the bank to satisfy its debts and liabilities, is guilty of an indictable offence and shall be personally responsible for any damages suffered by reason of such refusal. 53 V., c. 32, s. 8.

SCHEDULE.

RETURN of the amount of liabilities and assets of the (*name of the bank*) on the day of

CAPITAL STOCK, $ CAPITAL PAID UP, $

LIABILITIES.	$ cts.
1. Dominion Government deposits, payable on demand	
2. Provincial Government deposits, payable on demand	

	$	cts.
3. Other deposits, payable on demand.....		
4. Dominion Government deposits, payable after notice or on a fixed day.....		
5. Provincial Government deposits, payable after notice or on a fixed day.....		
6. Other deposits, payable after notice or on a fixed day		
7. Special Poor Fund or Charity Fund Trust.		
8. Liabilities not included under the foregoing heads.....		

ASSETS.

1. Dominion, provincial and other public securities		
2. Cash in hand and on deposit in chartered banks		
3. Canadian municipal bonds or securities, school bonds or debentures, and securities approved by Treasury Board.....		
4. Other bonds, debentures and securities..		
5. Loans to governments, municipal corporations, *fabriques de paroisses, syndics pour l'érection d'églises* and corporations on resolutions of their boards of directors..		
6. Loans for which bank stocks are held as collateral security		
7. Loans for which stocks, bonds, debentures or securities, other than bank stocks, are held as collateral security		
8. Special Poor Fund or Charity Fund investments		
9. Investment in bank stock made previous to the incorporation of the bank.....		
10. Bank premises		
11. Other assets, not included under the foregoing heads		

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,
Accountant, (or *Inspector*).

We declare that the foregoing return is made up from the books of the bank, and that it is correct, to the best of our knowledge and belief, and shows truly and clearly the financial position of the bank.

(*Place*) this day of

A. B., *President.*

C. D., *Cashier.*

63-64 V., c. 28, s.5, and schedule.

CHAPTER 33.

An Act respecting Returns by Certain Persons and Corporations receiving Moneys on Deposit at Interest.

1. This Act may be cited as the Savings Deposits Returns Act.

2. Every person, corporation or institution, except chartered banks, receiving money in small sums, on deposit at interest as savings, shall make such returns as to such deposits, and the investment thereof, as the Governor in Council, from time to time, requires; and shall register with the Minister of Finance and notify in such manner as the Governor in Council by order directs, the name of such person, corporation or institution, and that of the officer or person on whom process may be served in any suit or proceeding. R.S., c. 126, s. 1.

3. Every wilful refusal or neglect to obey any order in council made under this Act is an indictable offence. R.S., c. 126, s. 1.

CANADIAN BANKERS' ASSOCIATION.

63-64 VICTORIA, CHAPTER 93.

An Act to Incorporate the Canadian Bankers' Association.

[Assented to 7th July, 1900.]

Whereas the voluntary association now existing under the name of the Canadian Bankers' Association has, by its petition, prayed that it may be enacted as hereinafter set forth, and it is expedient to grant the prayer of the said petition. Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Name.—There is hereby created and constituted a corporation under the name of "The Canadian Bankers' Association," hereinafter called "the Association."

2. How composed.—The Association shall consist of members and associates;

(*a*) The members, hereinafter referred to as members, shall be the banks named in the schedule to this Act, and such new banks hereafter incorporated by or under the authority of the Parliament of Canada as become entitled to carry on the business of banking in Canada, and to which the Bank Act in force at the time of its incorporation applies. Any bank to which the Bank Act applies, carrying on business in Canada, and not named in the schedule to this Act, shall on its own application at any time be admitted as a member of the Association by resolution of the executive council hereinafter named;

(*b*) The associates, hereinafter referred to as associates, shall be the bank officers who are associates of the voluntary

association mentioned in the preamble at the time this Act is passed, and such other officers of the bank which are members of the Association as may be elected at a meeting of the executive council hereinafter named or at an annual meeting of the Association. Any associate may at any time by written notice to the president of the Association withdraw from the Association.

3. Ceasing to be a member.—Upon the suspension of payment of a bank being a member of the Association, such bank shall cease to be a member. Provided, however, that if and when such bank resumes the carrying on of its business in Canada it may again become a member of the Association.

4. Ceasing to be an associate.—Upon an associate ceasing to be an officer of a bank carrying on business in Canada, he shall at the end of the then current calendar year, cease to be an associate.

5. Objects and powers.—The objects and powers of the Association shall be, to promote generally the interests and efficiency of banks and bank officers, and the education and training of those contemplating employment in banks and for such purposes, among other means, to arrange for lectures, discussions, competitive papers and examinations on commercial law and banking, and to acquire, publish and carry on the "Journal of The Canadian Bankers' Association."

6. Sub-sections.—The Association may from time to time establish in any place in Canada a sub-section of the Association under such constitution and with such powers (not exceeding the powers of the Association) as may be thought best.

7. Clearing houses.—The Association may from time to time establish in any place in Canada a clearing house for banks, and make rules and regulations for the operations of such clearing house; provided always, that no bank shall be or become a member of such clearing house except with its own consent, and a bank may after becoming such member at any time withdraw therefrom.

8. Regulations.—All banks, whether members of the Association or not, shall have an equal voice in making from

time to time the rules and regulations for the clearing house; but no such rule or regulation shall have any force or effect until approved of by the Treasury Board.

8. Voting powers.—Members of the Association shall vote and act in all matters relating to the Association through their chief executive officers. For the purposes of this Act the chief executive officer of a member shall be its general manager or cashier, or in his absence the officer designated for the purpose by him, or in default of such designation the officer next in authority. Where the president or vice-president of a member performs the duties of a general manager or cashier he shall be the chief executive officer, and in his absence the officer designated for the purpose by him, and in default of such designation the officer next in authority to him. At all meetings of the Association each member shall have one vote upon each matter submitted for vote. The chairman shall, in addition to any vote he may have as chief executive officer or proxy, have a casting vote in case of a tie. Associates shall have only such powers of voting and otherwise taking part at meetings as may be provided by by-law.

9. Officers.—There shall be a president and one or more vice-presidents and an executive council of the Association, of which council five shall form a quorum unless the by-laws otherwise provide.

10. Officers continued.—The persons who are the president, vice-president and executive council of the voluntary association mentioned in the preamble at the time this Act is passed shall be the president, vice-president and executive council respectively of the Association until the first general meeting of the Association or until their successors are appointed.

11. General meetings.—The first general meeting of the Association shall be held during the present calendar year at such time and place and upon such notice as the executive council may decide. Subsequent general meetings shall be held as the by-laws of the Association may provide, at least once in each calendar year.

12. Election of officers.—At the first general meeting and at each annual meeting thereafter the members of the Association shall elect a president, one or more vice-presidents and an executive council, all of whom shall hold office until the next annual general meeting or until their successors are appointed.

13. Executive officers.—The president, vice-presidents and executive council shall be chosen from among the chief executive officers of members of the Association.

14. Executive council.—Unless the by-laws otherwise provide, the executive council shall consist of the president and vice-presidents of the Association and fourteen chief executive officers, and five shall form a quorum for the transaction of business.

15. Dues.—Each member and associate shall from time to time pay to the Association for the purposes thereof such dues and assessments as shall from time to time be fixed in that behalf by the Association at any annual meeting, or at any special meeting called for the purpose, by a vote of not less than two-thirds of those present or represented by proxy.

16. By-laws.—The objects and powers of the Association shall be carried out and exercised by the executive council, or under by-laws, resolutions, rules and regulations passed by it, but every such by-law, rule and regulation, unless in the meantime confirmed at a general meeting of the Association called for the purpose of considering the same, shall only have force until the next annual meeting, and in default of confirmation thereat shall cease to have force. Provided always, that any by-law, rule or regulation passed by the executive council may be repealed, amended, varied or otherwise dealt with by the Association at any annual general meeting or at a special general meeting called for the purpose.

2. **Power of executive.**—For greater certainty, but not so as to restrict the generality of the foregoing, it is declared that the executive council shall have power to pass by-laws, resolutions, rules and regulations, not contrary to law or to the provisions of this Act, respecting—

(*a*) Lectures, discussions, competitive papers, examinations;

(*b*) The journal of the Association;

(*c*) The sub-sections of the Association;

(*d*) Clearing houses for banks;

(*e*) General meetings, special and annual, of the Association and of the executive council, and the procedure and quorum thereat, including the part to be taken by associates and their powers of voting;

(*f*) Voting by proxy at meetings of the Association and of the executive council;

(*g*) The appointment, functions, duties, remuneration and removal of officers, agents and servants of the Association.

3. No by-law, resolution, rule or regulation respecting clearing houses, and no repeal, amendment, or variation of or other dealing with any such by-law, resolution, rule or regulation shall have any force or effect until approved of by the Treasury Board.

17. The provisions of the Companies Clauses Act, being chapter 118 of the Revised Statutes, shall not apply to the Association.

BY-LAWS

OF THE

Canadian Bankers' Association.

(By-laws Nos. 13, 14, 15 and 16 were approved by the Dominion Treasury Board in May, 1901, in accordance with section 30 of the Bank Act Amendment Act, 1900, and sections 7 and 16 of the Act of 1900, incorporating the Canadian Bankers' Association.)

1. General meetings.—The annual general meetings of the Association shall be held on the second Thursday of the month of November in each year, at such hour and place as may be decided upon by the executive council of the Association from time to time. Special general meetings of the Association may be called at any time by the said executive council, and shall be called by the president or secretary-treasurer on the written requisition of at least five members of the Association.

The requisition (if any) for, and the notice of calling any special general meeting, shall specify therein the general nature of the business to be considered or transacted thereat. Special general meetings shall be held at such time, hour and place as shall be mentioned in the notice calling the same. Thirty days' notice shall be given of every general meeting of the Association whether annual or special. At any annual or special general meeting of the Association seven persons, duly representing members of the Association, shall form a quorum.

At any annual general meeting of the Association any business may be transacted thereat.

At any special general meeting of the Association only such business shall be transacted as is mentioned in the notice calling such special general meeting.

2. Election of officers.—At every annual general meeting, the members of the Association, through their represen-

tatives or proxies, shall elect from among the chief executive officers (as defined by charter of incorporation) of members of the Association, a president, four vice-presidents, and fourteen councillors, all of whom shall hold office until the next annual general meeting, or until their successors are appointed, and may also elect honorary presidents of the Association, not exceeding three in number, who shall also hold office until the next annual general meeting after their election.

3. Executive council.—The executive council of the Association shall consist of the president and vice-presidents, and the said fourteen councillors aforesaid, and five shall form a quorum for the transaction of business.

The honorary presidents shall also have seats at the executive council, but shall have no vote thereat.

4. Voting at general meetings.—At all meetings of the Association each member shall have one vote upon each matter submitted for vote. The chairman shall, in addition to any vote he may have as chief executive officer or proxy, have a casting vote in case of a tie.

Each associate shall also have one vote on all subjects except the following, on which members only shall be permitted to vote:—

1. Election of officers.
2. Action relating to proposed legislation.
3. By-laws.
4. Adding to, or amending the charter.
5. All other subjects on which general action by the banks is contemplated.

5. Meetings of council. — The executive council may meet together for the despatch of business, adjourn and otherwise regulate its meetings, as it by resolution or otherwise may determine from time to time.

The secretary-treasurer shall at any time at the request of the president or any vice-president or any other member of the executive council convene a meeting of the council. Provided, however, that no business shall be transacted at a meeting called at the request of a member unless the notice calling the meeting specifies in some general terms that such

business will be transacted thereat, but this provision shall not apply to any meeting called at the request of the president or any vice-president.

On all questions arising at any meeting of the executive council each member shall have one vote in addition to any vote he may have as proxy, and the chairman shall have in addition a casting vote.

6. Chairman.—At all meetings of the Association and of the executive council, the president, when present, shall be chairman, and in his absence one of the vice-presidents chosen by the members of the council then present; and in the absence of the president and vice-presidents, the members of the council then present may choose some one of their number to be chairman of such meeting.

7. Voting by proxy.—Any member, not represented at a meeting of the Association by one of the officers named in section 8 of the charter of incorporation, may vote by proxy; provided such proxy is held by an associate who is an assistant general manager, or assistant cashier, inspector or manager of any bank, or any branch thereof.

Any member of the executive council, when not present at any meeting thereof, may be represented thereat by proxy, provided such proxy is held by such an associate as is before mentioned in this by-law. Proxies shall be in writing.

8. By-laws.—The executive council may from time to time repeal, amend or add to any of the by-laws of the Association, except those relating to dues, to the clearing house, to the curator and his duties, and to the circulation, but every such repeal, amendment or addition shall only have force until the next annual general meeting of the Association, and if not confirmed thereat shall thereupon cease to have force.

9. Secretary-treasurer and solicitor.—The said executive council shall have power from time to time to appoint a secretary-treasurer, who shall be an officer or ex-officer of a bank, and to remove him from office, and to fix his remuneration and the terms of his engagement.

The executive council shall also have power from time to time to appoint a solicitor or solicitors and to fix their

remuneration for either general or special services, and also to engage counsel where such services may be needed.

10. Sub-sections.—Existing sub-sections of the voluntary Association are hereby continued as, and constituted, sub-sections of the Association as incorporated. Sub-sections hereby or hereinafter constituted may pass by-laws for their guidance, subject always to the provisions of the charter of incorporation, and the by-laws of the association.

The bankers' section of the Boards of Trade in the cities of Montreal and Toronto respectively, shall be empowered respectively to represent the Association in all matters connected with legislation in the Legislatures of Quebec and Ontario, respectively—it being understood that the respective sections will, as fully as possible, keep the president and the executive council of the Association advised on all points that may arise in connection with the matters referred to, and will not make representations in the name of the Association contrary to the views of the executive council after such views have been expressed.

11. Journal, lectures, etc.—An editing committee appointed by the Association shall supervise the publication of the "Journal of the Canadian Bankers' Association," and the executive council shall appoint such other officers as it may deem necessary; and shall also make such provisions and arrangements from time to time as it deems proper, for lectures, discussions, competitive papers, and examinations.

12. Annual dues.—The dues or subscriptions payable to the Association by the members thereof shall be as follows:—

For banks with a paid-up capital stock of under $1,000,000	$100
For banks with a paid-up capital stock of $1,000,000 and under $2,000,000	200
For banks with a paid-up capital stock of $2,000,000 and under $3,000,000	300
For banks with a paid-up capital stock of $3,000,000 and over.	400

The dues or subscriptions payable to the association by the associates thereof shall be one dollar annually. Members' and associates' subscriptions shall be payable on or before the 1st February and 1st July respectively in each year.

CIRCULATION.

13. (*a*) **Monthly return.**—A monthly return shall be made to the president of the Canadian Bankers' Association by all banks doing business in Canada, whether members of the Canadian Bankers' Association or not, in the form hereinafter set forth; said return shall be made up and sent in within the first fifteen days of each month, and shall exhibit the condition of the bank's note circulation on the last juridical day of the month next preceding; and every such monthly return shall be signed by the chief accountant or acting chief accountant and by the president or vice-president, or by any director of the bank, and by the general manager, cashier, or other chief executive officer of the bank at its chief place of business. Every such monthly return which shows therein notes destroyed during such month, shall be accompanied by a certificate or certificates in the form hereinafter set forth, covering all the notes mentioned as destroyed in such return, signed by at least three of the directors of the bank, and by the chief executive officer or some officer of the bank acting for him, stating that the notes mentioned in such certificate or certificates have been destroyed in the presence of and under the supervision of the persons respectively signing such certificate or certificates respectively.

FORM OF MONTHLY RETURN OF CIRCULATION ABOVE MENTIONED.

CIRCULATION STATEMENT OF THE

(Here state name of bank)

for the month of .....190..

Credit Balance of Bank Note Accounts on last day of preceding month (inclusive of unsigned notes)....$		
Add notes received from printers during month, viz.:		
From.....$		
" .....$	$	
	$	
Less notes destroyed during month (as per certificate herewith) .....$		
Balance of Bank Note Accounts on last day of month..$		
Less notes on hand, viz.:		
Signed .....$		
Unsigned .....$	$	
Notes in circulation on last day of month.....$		

.....

Chief Accountant.

We declare that the foregoing return, to the best of our knowledge and belief, is correct, and shows truly and clearly the state and position of the Note Circulation of said Bank during and on the last day of the period covered by such return.

.....this.....day of.....190..

.....
President.

.....
General Manager.

FORM OF CERTIFICATE OF DESTRUCTION OF NOTES ABOVE MENTIONED.

Certificate of Destruction of Notes of the (here mention name of bank) accompanying monthly Circulation Statement for month of.....A.D., 190..

We, the undersigned, hereby certify that we have examined bank notes of this Bank amounting to $.....consisting of the following, viz.: (here set out the denominations) and have burned and destroyed the same, and that the said notes so burned and destroyed by us are not included in any other Certificate of Destruction of Notes signed by us or any of us, or to the best of our knowledge and belief, by any other person to accompany the present or any monthly circulation statement made or to be made to the President of The Canadian Bankers' Association.

.....this.....day of.....190..

.....

.....

.....
Directors of said Bank.

.....
General Manager.

(*b*) **Bank of British North America.**—For all purposes of this by-law, the chief place of business of the Bank of British North America shall be the chief office of the said bank at the city of Montreal, in the Province of Quebec.

And in the case of the said Bank of British North America the said monthly circulation return shall be signed by the general manager's clerk, or acting general manager's clerk, and by the general manager or the acting general manager of the said bank; and the said certificate of destruction of notes shall be signed by the general manager or acting general manager, the inspector or assistant inspector, and the local manager of the Montreal branch, or the acting local manager of the Montreal branch of the said bank, instead of by the persons respectively hereinbefore directed to sign the said returns respectively.

(*c*) **Penalty for neglect.**—Every bank which neglects to make up and send in as aforesaid any monthly return required by this by-law within the time by this by-law limited, shall incur a penalty of fifty dollars for each and every day after the expiration of such time during which the bank neglects so to make up and send in such return.

(*d*) **Inspection.**—The executive council of the association shall have power, by resolution, at any time, to direct that an inspection shall be made of the circulation accounts of any bank by an officer or officers to be named in such resolution, and such inspection shall be made accordingly.

(*e*) **Inspection and report.**—Some person or persons appointed from time to time by the executive council of the Association shall, during the year 1901, and during every year thereafter, make inspection of the circulation accounts of every bank doing business in Canada, whether members of the Association or not, and shall report thereon to the council; and upon every such inspection all and every the officers of the bank whose circulation account shall be so inspected shall give and afford to the officer or officers making such inspection, all such information and assistance as he or they may require to enable him or them fully to inspect said circulation account, and to report to the council upon the same, and upon the means adopted for the destruction of the notes.

(*f*) **Collection of penalties.**—The amount of all penalties imposed upon a bank for any violation of this by-law shall be recoverable and enforceable with costs, at the suit of the Canadian Bankers' Association, and such penalties shall belong to the Canadian Bankers' Association for the uses of the Association.

(*g*) **Statement of circulation.**—The president of the Canadian Bankers' Association shall each month have printed and forwarded to the chief executive officer of every bank of Canada subject to the Bank Act, whether a member of the Association or not, a statement of the circulation returns of all the banks in Canada for the last preceding month, as received by him.

(*h*) **Association defined.**—In this by-law it is declared for greater certainty that the Canadian Bankers' Association herein mentioned and referred to is the Association incorporated by special Act of Parliament of Canada, 63 and 64 Vict. chap. 93.

CURATOR.

14. Appointment, powers, etc.—Whenever any bank suspends payment, a curator, as mentioned in section 24 of the Bank Act Amendment Act, 1900, shall be appointed to supervise the affairs of such bank. Such appointment shall be made in writing by the president of the Association or by the person who, during a vacancy in the office of, or in the absence of, the president, may be acting as president of the Association.

If a curator so appointed dies, or resigns, another curator may be appointed in his stead in the manner aforesaid.

The executive council may, by resolution, at any time remove a curator from office and appoint another person curator in his stead.

A curator so appointed shall have all the powers and subject to the provisions of By-law No. 15, shall perform all the duties imposed upon the curator by the said Bank Act Amendment Act; he shall also furnish all such returns and reports, and give all such information touching the affairs of the suspended bank as the president of the Association or the executive council may require of him from time to time.

The remuneration of the curator for his services and his expenses and disbursements in connection with the discharge of his duties shall be fixed and determined from time to time by the executive council.

15. Advisory board.—Whenever a bank suspends payment and a curator is accordingly appointed, the president shall also appoint a local advisory board consisting of three members, selected generally as far as possible from among the general managers, assistant-general managers, cashiers, inspectors or chief accountants or branch managers of any bank at the place where the head office of such

suspended bank is situated, and the curator shall advise from time to time with such advisory board, and it shall be his duty, before taking any important step in connection with his duties as curator, to obtain the approval of such advisory board thereto. With the sanction of such advisory board, he may employ such assistants as he may require for the full performance of his duties as curator.

CLEARING HOUSES.

16. Rules and regulations.—The rules and regulations contained in this by-law are made in pursuance of the powers contained in the Act to Incorporate the Canadian Bankers' Association, 63 & 64 Vict. chap. 93 (1900), and shall be adopted by, and shall be the rules and regulations governing all clearing houses now existing and established, or that may be hereafter established.

RULES AND REGULATIONS RESPECTING CLEARING HOUSES.

MADE IN PURSUANCE OF THE POWERS CONTAINED IN THE ACT TO INCORPORATE THE CANADIAN BANKERS' ASSOCIATION.

1. Formation.—The chartered banks doing business in any city or town, or such of them as may desire to do so, may form themselves into a Clearing House. Chartered banks thereafter establishing offices in such city or town may be admitted to the Clearing House by a vote of the members.

2. Objects.—The Clearing House is established for the purpose of facilitating daily exchanges and settlements between banks. It shall not either directly or indirectly be used as a means of obtaining payment of any item, charge or claim disputed, or objected to. It is expressly agreed that any bank receiving exchanges through the Clearing House shall have the same rights to return any item, and to refuse to credit any sum which it would have had were the exchanges made directly between the banks concerned, instead of through the Clearing House; and nothing in these or any future rules, and nothing done, or omitted to be done thereunder, and no failure to comply therewith shall deprive a bank of any rights it might have possessed had such rules not been made, to return any item or refuse to credit any sum; and payment through the Clearing House of any item, charge or claim shall not deprive a bank of any right to recover back the amount so paid.

3. Meetings.—The Annual Meeting of the members shall be held on such day in each year, and at such time and place as the members may fix by by-law. Special meetings may be called by the Chairman or Vice-Chairman whenever it may be deemed necessary, and the Chairman shall call a special meeting whenever requested to do so in writing by three or more members.

4. Voting.—At any meeting each member may be represented by one or more of its officers, but each bank shall have one vote only.

5. Board of Management.—At every Annual Meeting there shall be elected by ballot a Board of Management who shall hold office until the next Annual Meeting, and thereafter until their successors are appointed. They shall have the general oversight and management of the Clearing House. They shall also deal with the expenses of the Clearing House, and the assessments made therefor. In the absence of any member of the Board of Managment he may be represented by another officer of the bank of which he is an officer.

6. Officers.—The Board of Management shall at their first meeting after their appointment, elect out of their own number a Chairman, a Vice-Chairman, and a Secretary-Treasurer, who shall perform the duties customarily appertaining to these offices.

The officers so selected shall be respectively the Chairman, Vice-Chairman, and Secretary-Treasurer of the Clearing House.

Should the bank of which the Chairman is an officer be interested in any matter, his powers and duties shall, with respect to such matter, be exercised by the Vice-Chairman, who shall also exercise the Chairman's duties and powers in his absence.

7. Meetings.—Meetings of the Board may be held at such times as the members of the same may determine. A special meeting shall be called by the Secretary-Treasurer on the written requisition of any member of the Clearing House for the consideration of any matter submitted by it, of which meeting 24 hours' notice shall be given, but if such meeting is for action under Rules 15 or 16, it shall be called immediately.

8. Expenses.—The expenses of the Clearing House shall be met by an equal assessment upon the members, to be made by the Board of Management.

9. Withdrawal.—Any bank may withdraw from the Clearing House by giving notice in writing to the Chairman or Secretary-Treasurer between the hours of 1 and 3 o'clock p.m., and paying its due proportion of expenses and obligations then due. Said retirement to take effect from the close of business of the day on which such notice is given. The other banks shall be promptly notified of such withdrawal.

10. Clearing Bank.—The Board of Management shall arrange with a bank to act as clearing bank for the receipt and disbursement of balances due by and to the various banks, but such bank shall be responsible only for the moneys and funds actually received by it from the debtor banks, and for the distribution of the same amongst the creditor banks, on the presentation of the Clearing House certificates properly discharged. The clearing bank shall give receipts for balances received from the debtor banks. The Board of Management shall also arrange for an officer to act as Manager of the Clearing House from time to time, but not necessarily the same officer each day.

11. Payment of Balances.—The hours for making the exchanges at the Clearing House, for payment of the debit balances to the clearing bank, and for payment out of the balances due the creditor banks, shall be fixed by by-law under clause 17. On completion of the exchanges, the balances due to or by each bank shall be settled and declared by the Clearing House Manager, and if the clearing statements are readjusted under the provisions of these rules, the balances must then be similarly declared settled, and the balances due by debtor banks must be paid into the clearing bank, at or during the hours fixed by by-law as aforesaid, provided that no credit balance, or portion thereof, shall be paid until all debit balances have been received by the clearing bank. At Clearing Houses where balances are payable in money they shall be paid in legal tender notes of large denominations.

At Clearing Houses where balances are payable by draft ,should any settlement draft given to the clearing bank not be paid on presentation, the clearing bank shall at once notify in writing all the other banks of such default; and the amount of the unpaid draft shall be repaid to the clearing bank by the banks whose clearances were against the defaulting bank on the day the unpaid draft was drawn, in proportion to such balances. The clearing bank shall collect the unpaid draft, and pay the same to the other banks in the above proportion. It is understood that the clearing bank is to be the agent of the associated banks, and to be liable only for moneys actually received by it.

Should any bank make default in paying to the clearing bank its debit balance, within the time fixed by this rule, such debit balance and interest thereon shall then be paid by the bank so in default to the Chairman of the Clearing House for the time being, and such Chairman and his successor in office from time to time shall be a creditor of and entitled to recover the said debit balances, and interest thereon from the defaulting bank. Such balances, when received by the said Chairman or his successor in office, shall be paid by him to the clearing bank for the benefit of the banks entitled thereto.

12. Objections to Statements.—In order that the clearing statements may not be unnecessarily interfered with, it is agreed that a bank objecting to any item delivered to it through the Clearing House, or to any charge against it in the exchanges of the day, shall, before notifying the Clearing House Manager of the objection, apply to the bank interested for payment of the amount of the item or charge objected to, and such amount shall thereupon be immediately paid to the objecting bank. Should such payment not be made the objecting bank may notify the Clearing House Manager of such objection and non-payment, and he shall thereupon deduct the said amount from the settling sheets of the banks concerned, and readjust the clearing statements and declare the correct balances in conformity with the changes so made, provided that such notice shall be given at least half an hour before the earliest hour fixed by by-law, as provided in clause 11, for payment of the balances due to the creditor banks. But notwithstanding that the objecting bank may not have so notified the Clearing House Manager, it shall be the duty under these rules of the bank interested to make such payment on demand therefor being made at any time up to 3 o'clock; provided, however, that if the objection is based on the absence

from the deposit of any parcel or of any cheque or other item entered on the deposit slip, notice of such absence shall have been given to the bank interested before 12 o'clock noon, the whole, however, subject to the provisions of Rule No. 2.

13. Items Received in Trust.—All bank notes, cheques, drafts, bills and other items (hereafter referred to as "items") delivered through the Clearing House to a bank in the exchanges of the day, shall be received by such bank as a trustee only, and not as its own property, to be held upon the following trust, namely, upon payment by such bank at the proper hour to the clearing bank of the balance (if any) against it, to retain such items freed from said trust; and in default of payment of such balance, to return immediately and before 12.30 p.m., the said terms unmarked and unmutilated through the Clearing House to the respective banks, and the fact that any item cannot be so returned shall not relieve the bank from the obligation to return the remaining items, including the amount of the bank's own notes so delivered in trust.

Upon such default and return of said items, each of the other banks shall immediately return all items which may have been received from the bank so in default, or pay the amount thereof to the defaulting bank through the Clearing House. The items returned by the bank in default shall remain the property of the respective banks from which they were received, and the Clearing House Manager shall adjust the settlement of balances anew.

A bank receiving through the Clearing House such items as aforesaid, shall be responsible for the proper carrying out of the trust upon which the same are received as aforesaid, and shall make good to the other banks respectively all loss and damage which may be suffered by the default in carrying out such trust.

14. Provision for Default. — In the event of any bank receiving exchanges through the Clearing House making default in payment of its debit balance (if any) then in lieu of its returning the items received by it as provided by Rule 13, the Board of Management may require the banks to which the defaulting bank, on an account being taken of the exchanges of the day between it and the other banks, would be a debtor, in proportion to the amounts which, on such accounting, would be respectively due to them, to furnish the Chairman of the Clearing House for the time being with the amount of the balance due by the defaulting bank, and such amount shall be furnished accordingly, and shall be paid by the Chairman to the clearing bank, which shall then pay over to the creditor banks the balances due to them in accordance with Rule 11. The said funds for the Chairman shall be furnished by being deposited in the clearing bank for the purpose aforesaid. The defaulting bank shall repay to the Chairman for the time being, or to his successor in office, the amount of such debit balance and interest thereon, and the said Chairman, and his successor in office, shall be entitled to recover the same from the defaulting bank. Any moneys so recovered shall be held in trust for and deposited in the clearing bank for the benefit of the banks entitled thereto.

15. Re-adjustment of Balances.—If a bank neglects or refuses to pay its debit balance to the clearing bank, and if such default be made not because of inability to pay, the Board of Management may direct that the exchanges for the day between the defaulting

bank and each of the other banks be eliminated from the Clearing House Statements, and that the settlements upon such exchanges be made directly between the banks interested, and not through the Clearing House. Upon such direction being given the Clearing House Manager shall comply therewith and adjust the settlement of balances anew, and the settlements of the exchanges so eliminated shall thereupon be made directly between the banks interested.

16. Suspension of Clearings.—Should any case arise to which, in the opinion of the Board of Management, the foregoing rules are inapplicable, or in which their operation would be inequitable, the Board shall have power at any time to suspend the clearings and settlements of the day: but immediately upon such suspension the Board shall call a meeting of the members of the Clearing House to take such measures as may be necessary.

17. By-laws.—Every Clearing House now existing, or that may hereafter be established, may enact by-laws, rules and regulations for the government of its members, not inconsistent with these rules, and may fix therein among other things:—

1. The name of the Clearing House;
2. The number of members of the Board of Management and the quorum thereof;
3. The date, time and place for the Annual Meeting;
4. The mode of providing for the expenses of the Clearing House;
5. The hours for making exchanges, and for payment of the balances to or by the clearing bank;
6. The mode or medium in which balances are to be paid.

Any by-law, rule, or regulation passed or adopted under this clause may be amended at any meeting of the members, provided that not less than two weeks' notice of such meeting, and of the proposed amendments, has been given.

NOTICES.

17. How to be given.—Any notice of meeting or any other notice authorized or required to be given to any member of the Association shall be deemed sufficiently given, if sent through the post office in a prepaid letter or by hand to the head office of any such member, addressed to such member or to the general manager, or cashier of such member, and in the case of the Bank of British North America through its chief office in the city of Montreal, addressed to it or to its general manager; and any notice sent by post shall be deemed to have been given on the day following that on which the same was mailed, and in proving the giving of such notice, it shall be sufficient to prove that the letter was properly prepaid, addressed and mailed.

Any notice authorized or required to be given to any member of the executive council may be sent by the secretary-treasurer by hand, or through the post office, or by telegraph, or in any other manner which the said council may prescribe.

Any notice authorized or required to be given to any associate as such shall be sufficiently given, if given by advertisement once in a newspaper in the cities of Montreal and Toronto.

18. Definitions.—In the foregoing by-laws, unless there be something in the subject or context inconsistent therewith, the words:

"The Association" shall mean "the Canadian Bankers' Association," incorporated by special Act of the Parliament of Canada (63 and 64 Vict. chap. 93).

"The executive council," or "the council" shall mean "the executive council of the Canadian Bankers' Association."

INDEX.

A.

ABBREVIATIONS, xxxi.
ACCOUNTS OF CUSTOMERS, only directors to inspect, 89.
ACTION to recover calls, 66, 69.
penalties, 246.
ADDITIONAL SECURITY, bank may take mortgage as, 150.
ADMINISTRATION, letters of, on transmission, 79, 80.
ADMINISTRATOR, when personally liable, 86.
foreign, recognized, 79, 82.
ADVANCES on bank notes not recoverable, 99.
for building ships, 162.
ADVERTISEMENTS, defacing notes with, 232.
ADVISORY BOARD TO CURATOR, 352.
AGENCIES, bank may open, 109.
AGENT, appointment of, by directors, 61.
when personally liable, 86.
of bank to enter name on transmission, 79.
banks dealing with, 140.
transferring warehouse receipt or bill of lading, 170.
powers of, under Factors Acts, 173.
AGREEMENT to give security, 182, 185.
ALLOTMENT of stock subscribed, 19.
unsubscribed stock, 55.
ANCILLARY PROBATE or administration, not required as to shares, 79, 80.
not required as to deposits under $500, 204.
ANNUAL MEETING, subscribers may fix day for, 21.
shareholders may fix day for, 25.
provisions respecting, 27.
election of directors at, 34.
public notice of, 34.
failure to elect directors at, 38.
statement to be submitted at, 87.
ANNUAL RETURN to government, 212.
details comprised in, 212.
ANNUAL STATEMENT and inspection, 87.
details comprised in, 87.
ANNULMENT OF CHARTER by Court, 14.
APPLICATION of Bank Act, 12.

ASSETS, annual statement of, 87.
notes a first charge on, 227.
Dominion claims a second charge on, 227.
Provincial claims a third charge on, 227.
monthly return of, to government, 211.
purchase of a bank's, 205.
ASSIGNMENT of funds, a cheque not, 258.
of shares—See Transfer.
under sec. 88—See Security.
ASSOCIATION—See Canadian Bankers' Association.
ATTORNEY-GENERAL of Canada may sue for penalties, 246.
AUCTION, forefeited shares to be sold at, 67.
sale of collateral securities at, 149.
sale of pledged goods at, 178, 180.
AUTHENTICATION of declaration of transmission of shares, 78.

B.

BAILEES, banks as, 132.
BALLOT, president and vice-president elected by, 36.
shareholders to vote by, 52.
BANK, definition of, 6.
unauthorized use of title, 245.
BANK CHARTERS in Canada, xxxiv.
term of 14.
BANK CIRCULATION REDEMPTION FUND, 99.
payment by Minister out of, 102.
refund of deposit, 103.
rules as to, 104.
BANK HOLIDAYS, 142.
BANK NOTES—See Notes.
BANK OF BRITISH COLUMBIA, application of Act to, 15.
assets purchased by Bank of Commerce, 15.
BANK OF BRITISH NORTH AMERICA, application of Act to, 15,
head office of, 16, 350.
issue of notes by, 95.
BANK OF MONTREAL, purchase of other banks, 12, 13.
BANK OF YARMOUTH, absorbed, 12.
BANKERS' ASSOCIATION—See Canadian Bankers' Association
BANKER'S LIEN defined, 137, 138.
illustrations of, 138.
BANKING in Canada—Introduction, xxxiii.
principles of, xxxviii.
assigned to Dominion by B. N. A. Act, 2.
general business of, 109, 127.
hours, 143.
using title improperly, 245.

BANKS to which the Act applies, 6, 12.
first Canadian, xli.
suspended, application of Act to, 15.
BANQUE JACQUES CARTIER, name changed, 12.
BANQUE DU PEUPLE, suspension of, 12.
BANQUE PROVINCIALE, formerly Jacques Cartier, 12.
BANQUE VILLE MARIE, liquidation of, 12.
BILL OF LADING, definition of, 10.
banks may acquire, as collateral security, 163.
right of Dominion to legislate respecting, 164.
Ontario and Quebec legislation on, 164.
illustrations as to, 167.
agent transferring, 170.
in possession of, 170.
when bank may acquire, 182.
written promise to give, 182, 185.
exchange of for warehouse receipt, 183, 188.
covers product of pledged goods, 176.
preference over unpaid vendor, 177, 179.
sale of goods covered by, 177, 180.
BILLS AND NOTES, bank may deal in and discount, 109, 111, 112.
BILLS OF EXCHANGE, bank may deal in or discount, 109, 118.
BONDS, guarantee, to be given by officers, 45.
cases as to, 46.
of bank, how to be executed, 105.
assignable by indorsement, 105.
of other corporations, bank may deal in, 109, 124.
BONUS or divided not to impair capital, 92.
when may exceed eight per cent., 93.
BOOKS, subscription, for stock, 17, 59.
transfers to be registered in, 59.
inspection of, by directors, 89.
BRANCH SYSTEM, benefits of, 1.
borrowed from Scotland, 109.
BRANCHES, directors may be appointed for, 40.
bank may open, 109.
sometimes considered distinct, 110.
generally as one with main body, 110.
paper payable at other, 191.
BRITISH colony, issue of notes in, 97.
subscription books in, 59.
agents in, 61.
Columbia, banking law before 1871, 2.

BRITISH North America Act, banking in, 2, 4.
subjects, majority of directors to be, 34.
public securities, bank may deal in, 109.
BROKER, dealing with securities, 141.
BULLION, bank may deal in, 109.
BUSINESS, when bank may commence, 23.
of bank managed by directors, 29.
and powers of bank, 108.
banks may do a general banking, 109, 127.
prohibited to banks, 109, 133.
BY-LAWS, shareholders may make, 25, 26.
requirements as to, 26.
on whom binding, 26.
old, to be in force until repealed, 29.
directors may make, 39.
to increase the capital stock, 54.
to reduce the capital stock, 56.
of Canadian Bankers' Association, 218.

C.

CAISSE d'Economic de Quebec, 320.
CALLS, only those who have paid can vote, 54.
stock may be cancelled for non-payment, 62.
directors may make, 63.
interval between, and notice of, 63.
not to exceed ten per cent., 63.
remedy in case of non-payment, 67.
action to recover, 66, 69.
forfeiture for non-payment, 67.
by directors in winding up, 224.
refusal to make, an indictable offence, 244.
CANADA, banking in, xxxiii.
history of, xxxix.
banking legislation in old, 1, 2, 3, 4.
issue of notes outside, 97.
CANADA GAZETTE, public notices in, 11.
notice of opening stock books, 17.
notice of meeting of subscribers, 21.
notice of annual meeting, 35.
notice of special meetings, 50.
increase of capital stock, 54.
reduction of capital stock, 56.
approval of sale and purchase of a bank, 208.
CANADIAN BANK OF COMMERCE, purchase of other banks, 12, 15.

CANADIAN BANKERS' ASSOCIATION, Act of incorporation, 144, 339.
may establish clearing houses, 144, 340.
to appoint curator to suspended bank, 216, 217, 352.
by-laws of, 218, 345.
CANCELLATION of subscriptions to stock, 62.
CAPITAL STOCK of banks incorporated hereafter, 16, 17.
minimum amount for commencing business, 20.
may be increased, 54.
reduced, 56.
not to be reduced below $250,000, 58.
lost, to be called for, 66.
annual statement of, 87.
not to be impaired by dividends, 92.
of banks, bank not to lend upon, 109, 134.
CASES CITED, xiii.
CASHIER, powers of, 41.
powers of in U. S., 45.
to give guarantee bond, 45.
not to vote or hold proxy, 53.
to enter name on transmission, 79.
may sign notes for circulation, 106.
to sign monthly returns, 211.
pledging notes of bank, 233.
issuing notes fraudulently, 233.
making false statement, 241.
giving creditor fraudulent preference, 244.
CASTING VOTE in case of a tie, 38, 52.
CERTIFICATE to begin business, 23.
conditions as to, 24.
of increase of stock, 54.
of reduction of stock, 56.
CHARGES ON ASSETS, order of, 227.
CHARITABLE FUNDS of savings banks, 330.
CHARLOTTETOWN, Dominion notes delivered at, 94.
banks to redeem their notes at, 104.
CHARTERS of banks continued to July 1st, 1911, 14.
annulment of, by Court, 14.
of new banks, 16, 247.
forfeited by 90 days' suspension, 221.
CHEQUE, a negotiable instrument, 118.
deposits usually withdrawn by, 197.
of Dominion government to be cashed at par, 204.
on a bank, law as to, 253.
definition of, 254.
irregularities in, 255.

CHEQUE, alteration of, 256.
when drawer has no account, 257.
provisions as to demand bills apply, 257.
has no days of grace, 258.
illustrations as to, 258.
not an assignment of funds, 258.
effect of initialling, 266.
not presented in a reasonable time, 267.
non-business days not counted, 269.
holder of, when creditor of bank, 268.
termination of authority to pay, 270.
countermand of payment, 271.
death of customer, 272.
crossing of, 272.
crossed generally, 274.
specially, 274, 276.
who may cross, 275.
crossing is material, 276.
CHIEF ACCOUNTANT to sign monthly return, 211.
special returns, 212.
annual returns, 214.
CHIEF OFFICE of Bank of B. N. A., 16.
books of subscription at, 59.
shares transferable at, 59.
notes payable at, 104.
relation of branches to, 110.
public notices in newspaper at, 11, 34, 54, 56, 208.
CHOSES IN ACTION are not goods, 7.
CIRCULATION, what notes banks may issue for, 95.
limit of notes banks may issue, 95.
penalty for over issue, 230.
monthly return to Association, 349.
CITY AND DISTRICT SAVINGS BANK, 320.
CIVIL CODE.
Art. 14, p. 181.
249, 325, 338, 347, p. 81.
387, p. 59.
429-42, p. 179.
650*a*, p. 80.
1069, 1077, p. 122.
1190-1, p. 202.
1191*d*, p. 79.
1233, p. 46.
1272, p. 78.
1487-90, p. 126.
1488-9, p. 174.

CIVIL CODE.
Art. 1570-1, pp. 107, 200.
1573-4, p. 116.
1716, p. 87.
1740, pp. 173, 174.
1892, 1897, p. 272.
1950, p. 117.
1959, pp. 116, 147.
1971, pp. 149, 181.
1975, 1978, p. 138.
1994-2000, pp. 179, 180.
2268, p. 174.
2349, p. 255.
2352, p. 268.
CLEARING HOUSE, origin and methods, 143.
crossing cheques originated in, 273.
Canadian Bankers' Association may establish, 144.
rules of Association respecting, 353.
CLERKS, directors may appoint, 40.
must give guarantee bond, 45.
CODE OF CIVIL PROCEDURE.
Art. 80, p. 82.
642, p. 74.
853, p. 76.
987, p. 35.
COLLATERAL SECURITY, what bank may take as, 109, 114.
sale of stock, etc., held as, 148
bank acquiring warehouse receipt as, 163.
bank acquiring bill of lading as, 163.
COLLECTIONS by a bank, 128, 192.
additional charge for, 191.
COLONY, issue of notes in British, 97.
COMMERCIAL BANK OF MANITOBA, liquidation, 12.
COMMERCIAL BANK OF WINDSOR, absorbed, 12.
COMMISSION, none on government cheques, 204.
COMPANIES ACT, 1862, 64.
COMPANY STOCK, bank dealing in, 109, 122.
CONCORDANCE, Bank Act, 1890, and R. S. C. c. 29, xi.
CONDITIONS OF TRANSFER of shares, 69.
CONFEDERATION, bank legislation before, 1.
CONSENT OF OWNER to sale of pledged goods, 178.
CONSOLIDATING ACT, interpretation of, 4.
CONSTITUTIONALITY of Dominion legislation, 4.
CONTENTS, table of, v.
CONTRACT, deposits from persons unable to, 181.

CONVERSION of pledged goods, 237.
CORRESPONDENCE, inspection of by directors, 89.
COUNTERFEIT NOTES to be stamped, 107.
COUNTERMAND of payment of cheque, 270, 271.
CRIMINAL CODE, R. S. C. c. 146:—
Sec. 164, p. 276.
191, p. 205.
405, p. 257.
425, 427, p. 236.
426, p. 237.
468(r), p. 274.
1035, 1052, p. 205.
CROSSED CHEQUES, 272.
origin of, 273.
not generally used in Canada, 273.
payment of in good faith, 277.
bank collecting for customer in good faith, 279.
CROSSING of cheque, what constitutes, 274.
is a material part of a cheque, 276.
CROWN, penalties to belong to, 246.
CROWN BANK, new, 12.
CURATOR, defined, 81.
when personally liable, 86.
to suspended bank, 216.
appointed by Association, 217, 352.
powers and duties, 217.
bank officers to assist, 217.
to report to Minister, 218.
CURRENCY ACT, R. S. C. c. 25, 282.
CUSTOMER of bank, who is, 280.

D.

DEALER, the bank as a, 109, 111.
loans to wholesale, 175.
DEATH of customer stops unpaid cheque, 270, 272.
shareholder, transmission by, 75, 79.
depositor of $500 or under, 204.
DEBENTURES, bank may deal in, 109.
municipal, 109, 120.
of other corporations, 109, 124.
DEBT OR LIABILITY, shares held for, 145, 147.
security taken at time of contracting, 182.
" DEBTS CONTRACTED," meaning of, in Act, 151.
due bank in annual statement, 87.

DECEASE, transmission of shares by, 75, 79.
DECLARATION of transmission of shares, 75, 77, 78, 79.
DEFACING NOTES, penalty for, 95.
DEFINITION of terms used in the Bank Act, 6.
agent in section 73, p. 171.
cheque, 254.
See Words and Phrases.
DEPOSIT RECEIPTS, whether negotiable instruments, 119, 199.
DEPOSITOR of $500 or under, 204.
position of, 195.
DEPOSITS, annual statement of amount of, 87.
bank may receive, 192.
from persons unable to contract, 193, 194.
in trust, payment of, 201.
statute of limitations not to apply, 220.
DESTRUCTION OF NOTES, certificate of, 349.
DIRECTORS, number of, 17, 21, 28.
election of, 21, 34, 35.
qualification of, 25, 32.
quorum of, 25, 28.
remuneration of, 25, 32.
by-law may limit loans to, 26.
manage the affairs of the bank, 29.
business to be done at meetings, 30.
acts of *de facto*, binding on bank, 31.
majority to be British subjects, 34.
vacancy in board, how filled, 37.
failure to elect, 38.
president to preside at meetings, 38.
may make by-laws, 39.
may appoint officers, clerks, etc., 40.
may be appointed for branches, 40.
illustrations of powers of, 41.
must require cashier, etc., to give security, 45.
four may call special meeting, 50.
special meeting to remove, 51.
when subscriptions may be cancelled by, 62.
may make calls, 63.
may sue for calls or forfeit stock, 66.
may remit forfeiture, 68.
may inspect books, etc., 89.
may declare dividends, 90.
when liable for impairing capital, 93.
may depute cashier, etc., to sign notes, 106.
pledging notes of bank, 99.
may borrow for the bank, 129.

DIRECTORS, making returns, when acting as president, 211, 214.
to assist curator, 217.
when to wind up bank, 198.
to make calls on double liability, 221.
refusing to make calls an indictable offence, 244.
giving fraudulent preference, an indictable offence, 244.
DIRECTORS, PROVISIONAL—See Provisional Directors.
DISCOUNT, shares not to be issued at a, 62.
Canadian banks are banks of, 108.
paper and securities, bank may, 109.
what it is to, 112.
bank may charge seven per cent., 188.
additional charge for collection, 189.
Dominion government cheques, not subject to, 204.
DISCOUNTS, shareholders may fix maximum, 26, 29.
DIVIDENDS, where may be made payable, 61.
what receipt sufficient for, 83.
directors may declare, 90.
public notice of, 91.
on shares partly paid up, 91.
when belong to the purchaser, 91.
or bonus not to impair capital, 92.
directors liable for impairing capital by, 93.
when may exceed eight per cent., 93.
lien of bank on unpaid, 145.
unpaid for five years, return of, 212.
Statute of Limitations not to apply, 221.
DOMINION banking legislation upheld, 4.
securities, bank may deal in, 109, 126.
cheques to be cashed at par, 204.
government ranks second on assets, 227.
DOMINION NOTES, amount held by bank, 88.
forty per cent. of reserves of bank, 93.
to be exchanged for specie, 94.
Act, R. S. C. c. 27, 94, 288.
provincial tax on, 94.
to be supplied if asked for, 105.
DOUBLE LIABILITY of shareholders, 219.
charter continues to enforce, 221.
when directors are to make calls on, 224.
punishment of directors for not enforcing, 244.
enforcement under Winding-up Act, 224, 225.
forefeiture for non-payment of, 224.

DRAFTS UNPAID for five years, 213.
DUTIES AND POWERS of bank officers, 40.
illustrations, 41.

E.

ELECTION of directors, 21, 34.
if not made on day appointed, 38.
president and vice-president, 36.
ENDORSEMENT, bonds of bank, how to be executed, 105.
bonds, etc., assignable by, 105, 125.
EXCHANGE of securities on goods, 182, 188.
EXCHANGE BANK of Yarmouth absorbed, 12.
EXECUTION, sale of shares under writ of, 74.
EXECUTOR, when personally liable on shares, 86.
foreign, recognized, 79, 82.
declaration of transmission by will, 79.

F.

FACTORS ACT, Ontario, 172.
Imperial, 1877, 10.
1889, 173.
powers of agents under, 172.
FAILURE TO ELECT directors at annual meeting, 38.
FALSE NUMBER, selling shares by, 73, 229.
FALSE STATEMENT in warehouse receipt, etc., 236.
returns, etc., 241.
FARMERS BANK, new, 13.
FINE for committing offence, 245. See Penalty.
FOREIGN EXECUTORS, assignees, etc., recognized, 76, 79, 81.
FOREIGN public securities, bank may deal in, 109, 126.
FORFEITURE of stock for non-payment of calls, 67.
directors or shareholders may remit, 68.
procedure must be regular, 68.
by shareholders on winding up, 224.
of charter by insolvency, 221.
FORM of Act of incorporation of new banks, 247.
security under sec. 88, 176, 248.
monthly returns, 211, 249.
FRAUDULENT PREFERENCE to creditors, 244.
FREE BANKING ACT, xiii., 1.
FRENCH CANADA, paper money in, xxxix.
FUNDS, inspection of, by directors, 89.

G.

GAZETTE, see Canada Gazette.
GENERAL BANKING BUSINESS, banks may do, 109, 127.

GOLD COIN, banks may deal in, 109.
GOODS, WARES AND MERCHANDISE, definition of, 7.
bank not to lend on, 109.
deal in, 109.
covered by warehouse receipt, 163.
bill of lading, 163.
title of owner vests in bank, 163.
possession of, by agent, 170.
of wholesale purchaser, shipper, dealer or manufacturer, security on, 175.
form of security under sec. 88, 176, 248.
produced from pledged goods, 176.
sale of, for non-payment of debt, 177.
GOVERNMENT, Dominion, ranks second on assets, 227.
Provincial ranks third on assets, 227.
securities, banks may deal in, 109, 126.
cheques (Dominion) to be cashed at par, 204.
approval of sale of a bank, 207.
GUARANTEE and pension funds, 29.
by-laws respecting, continued in force, 40.
cashiers, officers, etc., must give, 45.
illustrations of liability on bonds, 46.
GUARDIAN, when personally liable on shares, 86.

H.

HALF-YEARLY DIVIDENDS may be declared, 90.
HALIFAX, banks to redeem their notes at, 104.
Dominion notes to be delivered at, 94.
HALIFAX BANKING CO. absorbed, 12.
HEAD OFFICE, election of directors at, 34.
HISTORICAL SKETCH of banking in Canada, xxxix.
HOLDER OF CHEQUE, when creditor of bank, 268.
HOLIDAYS, bank, 142.
HOME BANK OF CANADA, new, 13.
HOURS, BANKING, 142.
HYPOTHECATION of notes prohibited, 99.
HYPOTHEQUES, bank may take as additional security, 150.

I.

ILLUSTRATIONS, duties and powers of bank officers, 41.
guarantee bonds, 46.
bankers' lien, 138.

ILLUSTRATIONS, mortgages held by banks, 154.
warehouse receipts and bills of lading, 167.
cheques, 258.
IMMOVABLE PROPERTY, bank not to lend on, 109.
acquired for use of bank, 150.
mortgages on, as additional security, 150.
bank may purchase debtor's, 157, 159.
hold for seven years, 160.
IMPAIRMENT OF CAPITAL BY DIVIDENDS, 92.
IMPRISONMENT for issuing notes fraudulently, 234.
false statement, 236.
depriving bank of pledged goods, 237.
not making calls, 244.
fraudulent preference, 244.
committing an offence, 245.
INCORPORATION of new banks, 16.
form of Act for, 16, 247.
of Canadian Bankers' Association, 339.
INCREASE OF CAPITAL STOCK, 54.
INDICTABLE Offence—See Offence.
INSOLVENCY of bank, 221.
suspension for 90 days constitutes, 221.
calls in case of, 224.
INSPECTION of books, etc., by directors, 89.
INSTALMENTS, stock to be paid by, 62.
INTEREST, on unpaid calls, 63.
bank notes, after suspension, 101.
bank may charge seven per cent., 188.
allow any rate of, 191.
action to recover back excessive, 189.
return of, not paid for 5 years, 213.
INTERNAL REGULATIONS of bank, 25.
INTERVAL BETWEEN CALLS, 63.
INTESTATE, when named, administrator not liable, 86.
INTRODUCTION—Banking in Canada, xxxiii.
ISSUE AND CIRCULATION of notes, 95.
of notes outside Canada, 97.

J.

JOINT holders of shares, how they may vote, 53.
depositors, withdrawal of money, 201.

K.

KINGSTON, Jamaica, Bank of Nova Scotia branch at, 98.

L.

LAND, bank not to lend money on, 109.
may acquire for its own use, 150.
may take mortgage as additional security, 150.
illustrations, 154.
may purchase debtor's, 157, 159.
may hold for seven years, 160.
LEGAL TENDER, bank notes not, 105.
LEGISLATION before Confederation, 1.
by Dominion Parliament, 2.
by Provincial legislatures taxing banks, 5.
for reduction of capital stock, 58.
of Ontario as to warehouse receipts, 164.
LETTER OF CREDIT, not a negotiable instrument, 127.
LETTERS OF ADMINISTRATION on transmission, 79.
verification of heirship in Quebec, 80, 82, 204.
when deposit of $500 or under, 204.
LIABILITIES, annual statement of, 87.
monthly statement of, 211.
schedule of, 249.
LIABILITY on guarantee bonds, 46.
not diminished by reduction of stock, 58.
of shareholder, when personal, 86.
bank has lien on stock for any, 145.
meaning of, 147.
double, of shareholders, 219.
of directors not diminished, 226.
LIEN, banker's, defined, 137
illustrations, 138.
of bank on its own shares, 145.
LIMITATIONS, when Statute of, not to apply, 220.
LIQUIDATION of bank by directors, 224.
LIQUIDATORS to pay in unclaimed moneys, 214.
money for notes not presented, 216.
under Winding-up Act, 225.
LOANS on bank notes not recoverable, 99.
what, banks may make, 109.
on standing timber, 161.
for building vessels, 162.
to wholesale purchasers, shippers, dealers or manufacturers, 175.
LOSS, estimate of, in annual statement, 88.

M.

MACHINERY, certain names impressed on notes by, 107.
MAJORITY of votes at meeting governs, 52.
joint holders of shares may name attorney, 53.
trustees may withdraw deposits, 186.
in value of shares may vote to reduce capital, 56.
joint depositors may withdraw money, 201.
MANAGER of bank, powers of, 41.
not to vote or hold a proxy, 53.
issuing notes during suspension, 232.
to sign monthly and annual returns, 211, 214.
making false statement, 241.
pledging notes, 233.
MANUFACTURER, definition of, 11.
loans to wholesale, 175.
MARRIAGE, transmission of shares by, 77.
MEETING for organization of bank, 20.
annual general, of shareholders, 23, 34.
of directors, 28, 30, 38.
special general, of shareholders, 50.
who may call, notice, 50.
statement to be laid before annual, 87.
MERCANTILE AMENDMENT ACT, 164.
MERCHANTS' BANK of Halifax, name changed, 12.
of Prince Edward Island, absorbed, 12.
METROPOLITAN BANK, new, 12.
MINIMUM CAPITAL of banks hereafter, 14.
subscribed, to commence business, 20.
payment of, for organization, 20.
MINISTER of Finance, $250,000 capital to be paid to, 20.
return of capital to bank by, 24.
to furnish Dominion notes, 94.
holds Bank Circulation Redemption Fund, 99.
to receive percentage of circulation, 100.
may redeem notes of insolvent bank, 102.
monthly returns to, 211.
may call for special returns, 212.
annual returns to, 212.
to receive unclaimed moneys on winding up, 214.
moneys for outstanding notes on winding up, 216.
may sue for penalties, 202.
MINT, Ottawa branch of Royal, 287.
MONEY, calls to be paid in, 63.
other bills not to circulate as, 231.

MONTHLY RETURNS by banks, 212.
penalty for not making, 238.
MONTREAL, chief office of Bank of B. N. A. at, 16
Dominion notes delivered at, 94.
banks to redeem their notes at, 104.
C. & D. Savings Bank, 320.
MORTGAGE, bank may take as additional security, 150.
on personal property as well as real, 150.
illustrations of banks holding, 154.
on vessels, as additional security, 150, 153.
for aid in building a vessel, 162.
bank may purchase lands under, 157, 159.
exercise power of sale in, 158.
MUNICIPAL Act, Ontario, 121.
Code, Quebec, 121.
debentures, bank may deal in, 109.
negotiability of, 121.

N.

NEGOTIABLE securities, bank may deal in, 109.
instruments, meaning of, 117.
NEGOTIATION of bill, security at time of, 182.
defined, 183.
NEW BRUNSWICK, banking law before 1867, 2.
NEWSPAPER, public notice to be given in, 11.
notice of annual meeting in, 34.
increase of stock in, 54.
reduction of stock in, 56.
redemption of notes in, 101.
sale of pledged goods in, 178.
both English and French in Quebec, 178.
approval of the sale of a bank, 208.
NON-PAYMENT of calls, remedy for, 66.
of debt, securities may be sold, 177, 180.
NORTHERN BANK, 13.
NORTHERN CROWN BANK, 13.
"NOT NEGOTIABLE" on crossed cheque, 274, 275, 278.
NOTARIAL COPY of Quebec will, sufficient, 80.
NOTE ISSUE, history of Canadian, xlii.
NOTES issued by banks for circulation, 95.
denominations and amount of, 95.
aggregate amount of allowed, 95.
issue of, outside Canada, 97.
pledging, prohibited, 99.
at par throughout Canada, 104.
not a legal tender, 105.

NOTES, when payable out of special fund, 103.
when to bear interest, 101.
where to be redeemed, 104.
to be binding on bank, 105.
who are to sign for bank, 105, 107.
counterfeit, to be stamped, 107.
outstanding on winding-up, 216.
a first charge on assets, 227.
penalties for over-issue of, 230.
NOTICE of calls, 63. See Public Notice.
of sale of shares under lien, 146.
of sale of pledged goods, 178.
of customer's death stops payment of cheque, 270, 272.
NOVA SCOTIA, banking law before 1867, 1.
NUMBER of banks in Canada, 12, 13.
of directors, 19, 24.
share may have distinguishing, 73.

O.

OFFENCE, commencing business without certificate, 229.
selling shares by false number, 229.
other than registered owner selling shares, 230.
issuing notes during suspension, 232.
issuing notes fraudulently, 233.
making false statement in warehouse receipt, bill of lading or security, 236.
depriving bank of pledged goods, 237.
wilfully making false statement, 241.
refusing to make calls, 243.
giving undue preference to creditors, 244.
using title of "bank," etc., without authority, 245.
punishment for committing, 245.
OFFICERS of bank, directors may appoint, 40.
who are included in term, 41.
powers of various, 41, 45.
illustrations of, 41.
must give security, 45.
issuing notes during suspension, 232.
giving fraudulent preference, 244.
making false statement, 241.
ONTARIO BANK, absorbed by Bank of Montreal, 13.
ONTARIO legislation on warehouse receipts, 9.
Municipal Act, 121.
powers of agents under Factors Act of, 172.
OPENING of stock books, 17, 59.
ORDER OF CHARGES on assets, 227.

OVERDUE DEBTS in annual statement, 88.
OWNER, warehouse receipt gives rights of, 163.
where previous holder is agent of, 170.
paying debt, entitled to re-transfer, 171.
security under sec. 88 to be given by, 175.
consent of, to sale of goods, 178.

P.

PAPER MONEY in French Canada, xxxix.
B. N. A. Act, 5.
PAR, a bank to take its own notes at, 104.
bank notes circulate at, 104.
Dominion government cheques to be cashed at, 204.
PARLIAMENT, jurisdiction of, as to banking, 2.
list of shareholders to be laid before, 214.
PASS-BOOKS, effect of entries in, 197.
law not settled as to, 198.
PAYMENT in Dominion notes, 105.
to depositors, 193, 196.
of trust deposits, 201.
of notes first charge on assets, 227.
PENALTIES, when to rank on bank assets, 228.
how to be recovered, 246.
to belong to the Crown, 246.
may be remitted by Governor, 246.
PENALTY for non-payment of calls, 67.
not holding Dominion notes, 230.
over-issue of notes, 230.
suspended bank issuing notes, 232.
issuing bills, etc., as money, 231.
defacing notes, 232.
pledging notes, 233.
violation of secs. 86 to 90, 234.
as to sale of pledged shares, 237.
bank doing prohibited business, 238.
not sending monthly returns, 238.
special returns, 239.
list of shareholders, 239.
unpaid dividends, etc., 240.
PENNY BANK ACT, 3, 304.
PENSION FUND, shareholders may authorize, 29.
PEOPLE'S BANK OF HALIFAX, absorbed, 12.
N. B., absorbed, 12.
PERSONAL property, bank shares are, 58.
mortgages of, 150.
liability of trustees, executors, etc., 86.

PLEDGEE, ranking with unpaid vendor, 177, 179.
PLEDGING NOTES of bank prohibited, 99.
POSSESSOR of goods or documents of title, 171.
POST OFFICE money order not a negotiable instrument, 127.
savings banks, 13, 291.
POWERS of various bank officers, 41.
PREFERENCE of bank over unpaid vendor, 177, 179.
fraudulent, of creditor by officer of bank, 244.
PRESCRIPTION, when not to apply to bank, 220.
PRESENTMENT of cheque in a reasonable time, 267.
PRESIDENT, shareholders fix remuneration of, 25.
election of, by directors, 36.
honorary, 36.
to preside at meetings of directors, 38.
has double or casting vote in case of a tie, 38.
special meeting of shareholders to remove, 51.
to transfer shares sold at auction, 67.
under execution, 74.
for debt, 145.
to sign the monthly returns, 211.
to sign the annual returns, 214.
pledging notes of bank, 233.
issuing notes during suspension, 232.
giving fraudulent preference to creditor, 244.
making false statement, 241.
PRINCE EDWARD ISLAND, banking law before 1873, 2.
PROBATE of will to be left with bank, 79, 80.
ancillary, not required under $500, 204.
of depositor of $500 or under, 204.
PROFITS, annual statement of, 88.
division of, when may exceed 8 per cent., 93.
PROHIBITED BUSINESS to banks, 109.
PROMISE, WRITTEN, to give security, 182, 185.
PROMISSORY NOTES, bank may deal in, 109.
discounting, by bank, 109, 112.
PROVINCIAL taxation of banks upheld, 5.
government ranks third on assets, 227.
securities, bank may deal in, 109.
PROVISIONAL DIRECTORS, to be named in Act, 16, 248.
number, and term of office, 17.
may open stock books, 17.
general duties of, 18, 21.
to call first meeting of subscribers, 20.
PROXIES, shareholders may make by-law as to, 25, 27.
valid for only two years, 54.

PROXY, shareholders may vote by, 53.
who may act as, 53.
PUBLIC AUCTION, sale of forfeited shares by, 67.
collaterals by, 149.
pledged goods by, 178, 180, 181.
PUBLIC NOTICE, how to be given, 11.
of opening stock books, 17.
first meeting of subscribers, 21.
annual meeting, 34.
special meeting, 50.
increase of stock, 54.
reduction of stock, 56.
sale of forfeited shares, 67.
of dividends declared, 91.
PUBLIC SECURITIES, bank may deal in, 109.
PURCHASE of lands by bank, 150.
a bank's assets, 205.
consideration for, 206.
approval by selling bank, 206.
purchasing bank, 207.
government, 207.
conditions of approval, 208.
PURCHASER of products, loans to wholesale, 175.

Q.

QUALIFICATION of directors, 21, 25, 32, 34.
QUARTERLY DIVIDENDS may be declared, 90.
QUEBEC SAVINGS BANKS ACT, 320.
QUEBEC taxation of banks upheld, 5.
notarial copy of will, 80.
law in case of intestacy, 80.
as to minors, etc., 81.
agents and factors, 173.
ranking of unpaid vendor in, 179.
See Civil Code.
QUORUM at meeting of shareholders, 23, 34.
directors, 18.

R.

REAL ESTATE, bank not to lend money on, 109.
bank may acquire for its own use, 150.
take mortgage as additional security, 250.
purchase debtor's, 157, 159.
hold for seven years, 160.

REASONABLE TIME, cheque to be presented in, 267.
what is, for a cheque, 268.
RECOVERY of calls by suit, 66.
REDEMPTION of notes by banks at par, 104.
of insolvent bank, 101.
REDUCTION of capital stock, 56.
effect of, 58.
legislation for, 58.
REGISTERED OWNER of shares alone can sell, 69.
REGISTRATION of transfers of shares, 72.
REMUNERATION of directors, 25, 28.
curator, 218.
RENEWAL of bill or debt not to affect security, 182, 188.
RESERVES, 40 per cent. in Dominion notes, 93.
penalty for holding less, 230.
required for dividend over 8 per cent., 93.
not actually required by law, lviii.
RESOURCES of bank, in annual statement, 87.
REST—See Reserves.
RETURNS, monthly, under Schedule D, 211, 249.
how to be signed, 211.
special, may be called for, 212.
annual, by bank, 212.
of list of shareholders, 214.
of dividends unpaid for five years, 212.
of unpaid drafts, 213.
curator to make, for suspended bank, 218.
penalty for neglect, 238, 239, 240.
ROYAL BANK, formerly Merchants' Bank of Halifax, 12.

S.

SALE of forfeited shares, 67.
shares under execution, 74.
held under lien, 145.
securities held as collateral, 148.
bank premises, 150.
mortgaged lands by bank, 150.
goods covered by warehouse receipt, etc., 177, 180.
a bank's assets, 205.
SAVINGS BANKS ACT, R. S. C. c. 30, 291.
SAVINGS DEPOSITS RETURNS ACT, 338.
SCHEDULE A to Bank Act, 12, 14, 246.
SCHEDULE B to Bank Act, 16, 247.
SCHEDULE C to Bank Act, 176, 248.
SCHEDULE D to Bank Act, 211, 249.

SCHEDULE to Penny Bank Act, 318.
SCHEDULE to Quebec Savings Banks Act, 335.
SCRUTINEERS, appointment of, 20.
SECURITIES, bank may deal in public, 109.
negotiable, defined, 117.
government, 109, 126.
received by banks from agents, 170.
held as collateral, 148.
right to dispose of, 148.
right to exchange, 182, 188.
sale of, on non-payment of debt, 177.
SECURITY, cashier and other officers must give, 45.
from wholesale purchaser, shipper or manufacturer, 175.
under section 88, 9, 175, 248.
form of, 176.
written promise to give, 182, 185.
when bank may acquire, 182.
preference over unpaid vendor, 177, 179.
fraudulently giving, to creditor, 244.
SHAREHOLDERS may make by-laws, 25.
fix date of annual meeting, 25.
regulate proxies, 25.
fix number of directors, 25.
remuneration of directors, 25.
maximum discounts, 25.
authorize guarantee and pension funds, 29.
special general meeting of, 50.
majority may remove directors, 50.
vote by ballot, 52.
majority of shares voting governs, 52.
have one vote for each share, 52.
may vote by proxy, 53.
in arrear for calls not to vote, 54.
may vote increase of capital stock, 54.
reduction of capital stock by, 56.
allotment of unsubscribed stock to, 55.
liable for shares issued as paid up, 64.
refusing or neglecting to pay calls, 67.
may remit penalty or forfeiture, 68.
may require further statements, 88.
approval of sale and purchase of a bank, 206, 207.
list of to be laid before Parliament, 214.
double liability of, 219.

SHAREHOLDERS, forfeiture for non-payment of calls, 226.
liable for sixty days after transfer, 226.
SHARES, to be $100 each in new banks, 17.
held for 30 days entitled to vote, 52.
personal property, 58.
assignable, 59.
payable by instalments, 62.
transfer of forfeited, 67.
transfer of, conditions of valid, 69.
list of daily transfers to be kept, 72.
may be numbered, 73.
sold under execution, 74.
transmission of, 75.
bank not to deal in its own or other bank shares, 109.
of corporations, bank dealing in, 109, 122.
under lien, when to be sold, 145.
transferred within 60 days of suspension, 226.
SHIPPER, loans to wholesale, 175.
SHIPS, banks not to lend on, 109, 135.
may aid in building, 162.
SHORT TITLE of Act, 1.
SIGNING of bonds and notes for bank, 105, 107.
monthly returns, 211.
special returns, 212.
annual returns, 214.
SILVER COIN, banks may deal in, 109.
SITUS of bank shares, 59.
SOVEREIGN BANK, 12, 13.
SPECIAL MEETING, who may call, and how, 50.
to remove president or directors, 51.
statements to be submitted at, 89.
SPECIAL RETURNS may be called for, 212.
STANDING TIMBER, loans on, 161.
STATEMENT to obtain reduction of stock, 57.
for annual meeting, 87.
further, if required, 88.
false, in warehouse receipt, etc., 236.
false, an indictable offence, 241.
STATUTE OF FRAUDS, 7, 46.
STATUTE OF LIMITATIONS, when not to apply, 220.
STATUTES CITED, xxix.
ST. JOHN, Dominion notes delivered at, 94.
banks to redeem their notes at, 104.
STERLING BANK of Canada, new, 13.
STOCK BOOKS, opening of, 16, 59.
bank deal in, 109.

SUBSCRIBERS to stock, meeting for organization, 20.
SUIT, recovery of calls by, 66.
SUMMERSIDE BANK, absorbed, 12.
SURETY, who pays, rights of, 116.
SUSPENDED BANKS, provisions as to, 15.
not to issue notes, 95.
penalty for issuing notes, 232.
SUSPENSION for ninety days, insolvency, 221.

T.

TAXATION of banks by provinces, 5, 79.
Dominion notes, 94.
TERMS, definition of, 5.
TESTAMENTARY INSTRUMENT, transmission by, 79.
TESTATOR when named, executor not liable, 86.
TIE, how decided in election of directors, 36.
casting vote in meetings of directors, 38.
shareholders, 52.
TIMBER, loans on standing, 161.
TORONTO, Dominion notes delivered at, 94.
banks to redeem their notes at, 104.
TRADE, bank not to engage in, 109.
TRANSFER of shares, where to be made, 59.
books to be kept, 59.
assignments registered in, 59.
may be closed 15 days, 91.
of forfeited shares sold at auction, 67.
conditions of valid, 69.
invalid if transferrer indebted, 69.
list of daily, to be kept, 72.
of shares sold under execution, 74.
tax to be paid before, 79.
held under lien, 146.
within 60 days of suspension, 226.
TRANSFERRER of shares, to be registered owner, 69.
not to owe bank, 69.
TRANSMISSION of shares, how authenticated, 75, 77, 78, 79.
by marriage of female shareholder, 77.
by testamentary instrument, 79.
by decease, 79.
TREASURY BOARD defined, 6.
certificate to begin business, 23.
may approve of increase of capital, 54
reduction of capital, 56
issue of notes, 95.
outside Canada, 97.

TREASURY BOARD, statements to be laid before, 57.
may extend time bank may hold lands, 160.
must approve sale of a bank, 208.
may recommend remission of penalties, 246.
TRUST, bank not bound to see to, 83, 201.
when holder personally liable for shares, 86.
bank acquiring shares held in, 141.
deposits in, 201.
TRUSTEE, when personally liable on shares, 86.
banks dealing with, 140.
majority may withdraw deposits, 201.
TUTOR, defined, 81.
when personally liable, 86, 87.

U.

UNAUTHORIZED NOTES for circulation, 231.
UNCLAIMED BALANCES in banks, 214.
on winding-up, 214.
UNCROSSING a crossed cheque, 275.
UNITED EMPIRE BANK, new, 13.
UNITED KINGDOM, stock books kept anywhere in, 59.
agents may be appointed in, 61.
dividends paid anywhere in, 61.
UNITED STATES BANKING, xxxiv.
UNPAID DIVIDENDS, list for Minister of Finance, 212.
penalty for neglect, 240.
UNPAID DRAFTS, bills, etc., return of, 213.
penalty for neglect, 239.
evidence of posting, 240.
UNPAID VENDOR, when ranks after bank, 177, 179.
how ranks in Quebec, 179.
USURY, legislation against, repealed, 191.

V.

VACANCY in board of directors, 37.
in office of president or vice-president, 38.
VARYING agreement as to sale of securities, 148.
crossing on a cheque, 275.
VENDOR, ranking of unpaid, 177, 179.
VESSELS, banks not to lend on, 109, 135.
may aid in building, 162.
VICE-PRESIDENT, election of by directors, 36.
presides in absence of president, 38.
special meeting to remove, 51.

VICE-PRESIDENT, to transfer shares sold at auction, 67.
under execution, 74.
for debt, 146.
pledging notes of bank, 99.
issuing notes during suspension, 232.
may sign the monthly returns, 211.
giving fraudulent preference to creditor, 244.
making false statement, 241.
VICTORIA, Dominion notes delivered at, 94.
banks to redeem their notes at, 104.
VOTE, one for each share held 30 days, 52.
no shareholder in arrear shall, 54.
VOTING, by ballot at shareholders' meetings, 52.

W.

WAIVER of rights as to sale of securities, 148.
WARD, if named, guardian not liable, 86.
WAREHOUSE RECEIPT, definition of, 8.
banks may acquire as collateral security, 163.
effect of transfer to bank, 163.
Ontario and Quebec legislation on, 8, 164.
illustrations as to, 167.
when previous holder of, agent of owner, 170.
agent in possession of, 171.
when bank may acquire, 182.
written promise to give, 182, 185.
exchange for bill of lading, 171, 188.
covers product of pledged goods, 176.
preference over unpaid vendor, 177, 179.
sale of goods covered by, 177, 180.
WHOLESALE purchaser, shipper, dealer or manufacturer, loans to, on goods, 175.
WIFE, declaration of transmission to, 75, 77.
WILL, transmission of shares by, 79, 80.
notarial copy of Quebec, 80.
probate of, to be produced, 79, 80, 204.
WINDING-UP, banks in course of, 15.
unclaimed moneys on, 214.
outstanding notes on, 216.
when to be done by directors, 224.
calls to be made, 224.
Act, Dominion, 224, 225.

WINNIPEG, Dominion notes delivered at, 94.
banks to redeem their notes at, 104.
WORDS AND PHRASES defined:—
Association, 6.
at least, 66.
bank, 6.
Bank Circulation Redemption Fund, 99.
bank holidays, 142.
banker's lien, 137.
banking hours, 143.
bill of lading, 10.
cheque, 254.
Circulation Fund, 7.
clearing house, 143, 353.
curator, 7, 81.
debts contracted, 182.
goods, wares and merchandise, 7.
holder of a bill, 183.
holder of a cheque, 268.
letters of verification, 80.
manufacturer, 11.
Minister, 6.
negotiable instrument, 117.
negotiable securities, 117.
negotiation, 184.
president, 11.
public notice, 11.
reasonable time, 268.
shares, 58.
Treasury Board, 6.
tutor, 81.
warehouse receipt, 8.
WRITTEN promise to give security, 187.
consent of owner to sale of goods, 178.