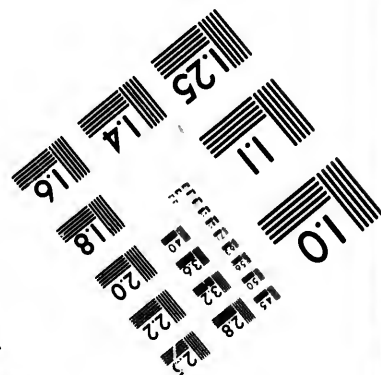
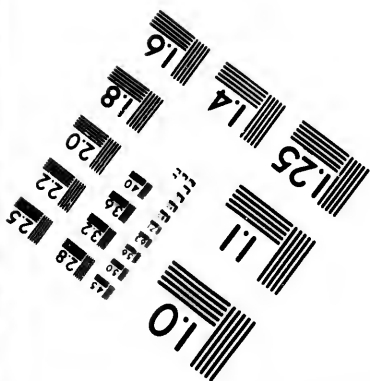
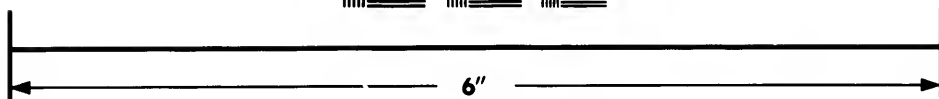
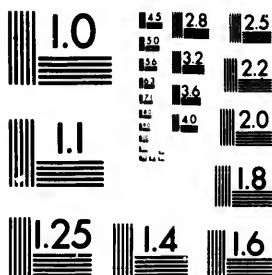


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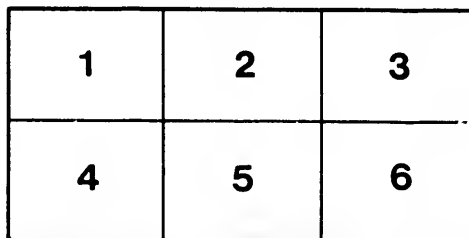
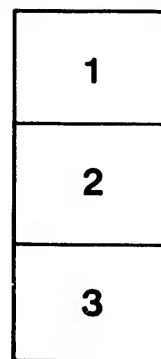
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In the Queen's Bench.
APPEAL SIDE.

THE
BANK OF UPPER CANADA,

Appellants.

AND

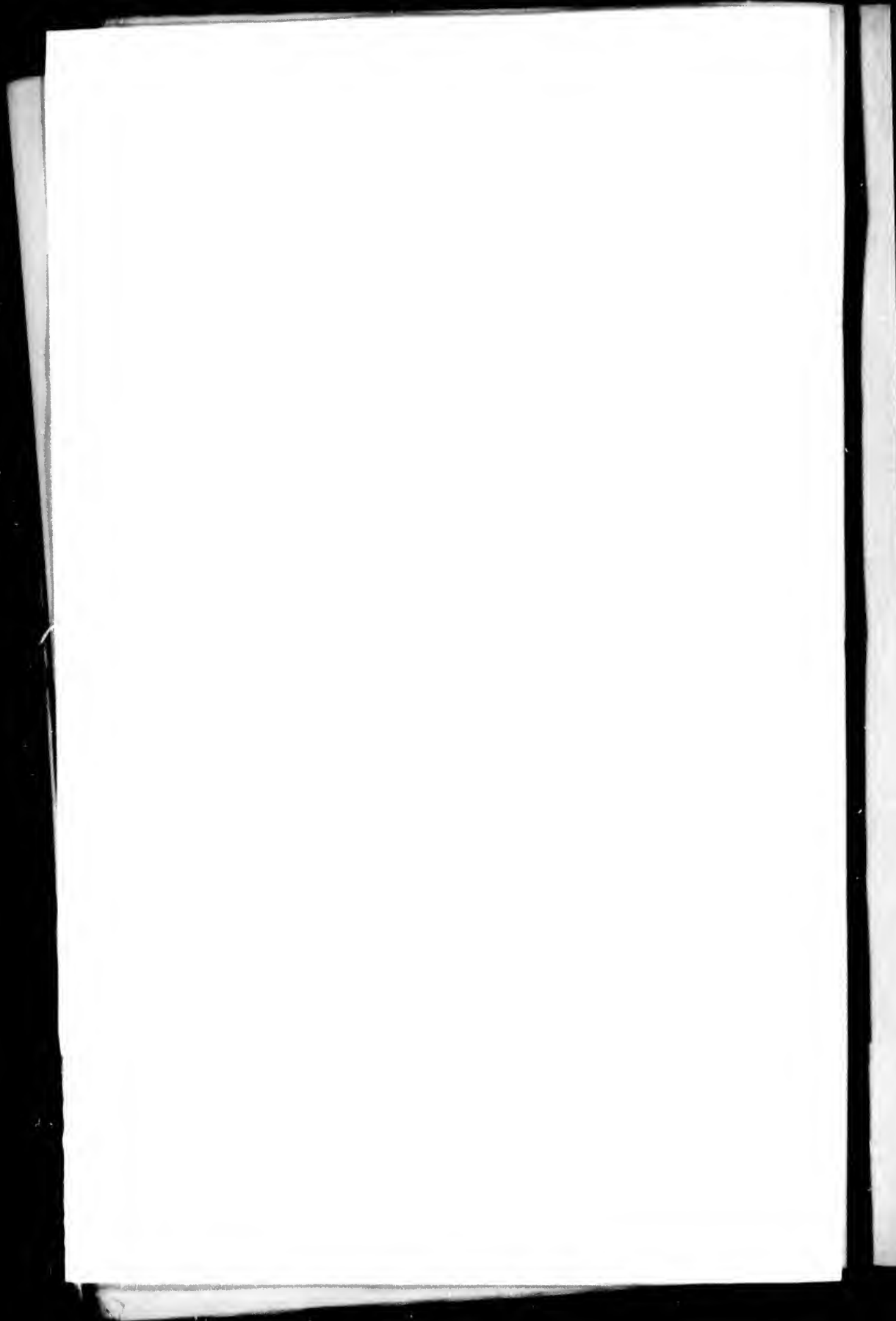
MARY HARRISON,

Respondent.

RESPONDENT'S CASE

July 1860

In the Queen's Bench.



PROVINCE OF CANADA,
LOWER CANADA.

COURT OF QUEEN'S BENCH,
APPEAL SIDE.

THE BANK OF UPPER CANADA,

APPELLANTS,

AND

MARY HARRISON,

RESPONDENT.

RESPONDENT'S CASE.

THE Judgment appealed from in the present cause was rendered by the Superior Court in an action instituted by the Appellants against the Respondent, and another to recover the sum of £212 10s., amount of a promissory note by her made, dated at Quebec, 5th September, 1856, payable on the 15th January then next at the Bank of Upper Canada at its Branch or Office of Discount and deposit in this city, to the order of Richard Moorsom Harrison, the other Defendant in the Court below, and by him endorsed and delivered to the said Bank, the Appellants.

The plea put in by the Respondent was a perpetual exception, *peremptoire en droit*, by which she alleged that the said note had been by her at the instance of the Appellants made without any legal consideration, no value having been given or received by any of the Parties thereto, that it had been thus made in lieu of a certain other note which in like manner was a mere renewal of a previous one given in place of a first note by her made at the said city of Quebec on and bearing date the 26th December 1855, payable to the order of the same Richard Moorsom Harrison, and which said original note had been before the making of the renewal notes aforesaid, paid and satisfied to the said Appellants, the then holders thereof, by her the said Respondent by the sale at the rate of £12 10s per share, of 17 shares of stock in the said Bank of Upper Canada, then belonging to her of the value of £212 10s., transferred by her to them, and by them accepted in satisfaction of the said original note on or about the said 26th December 1855. The Respondent for other head of exception alleged, that upon the making of the said original note dated the 26th December, 1855, she had assigned and transferred to the said Appellants accepting thereof the said 17 shares of the Capital Stock of the said Bank, then her property, each share being of the value of £12 10s., as a security for the sum mentioned in the said note, and which sum the said Appellants in discounting the said note advanced to the said Respondent, which said 17 shares of stock the said Appellants had ever since then retained as their property, and had drawn and continued to draw the profits arising therefrom, the value whereof, that is, of the Stock and Dividends exceeded in amount the sum of money mentioned in the said last mentioned note. That consequently the said Respondent had a right to set up against the amount of the said note, and of the note declared upon in the said Declaration of the said Appellants, the amount of said stock so assigned, because the said note declared upon in the said Declaration, was as before stated a mere renewal of the said original note as security for the payment whereof the said 17 shares of Bank Stock had been transferred to the said Appellants. And the Respondent by the conclusions of her said exception prayed that the *demande* of the said Appellants might be declared, to be compensated paid and discharged, and thereupon the action of the said Appellants dismissed.

Issue being joined upon this plea by a general answer denying all its allegations, the cause was inscribed for *enquête* and hearing at the same time and the parties respectively proceeded to proof. The Respondent produced as witness James Foster Bradshaw, late Cashier of the Branch or Agency of the said Bank at Quebec, who deposed that from the year 1851 to the year 1858 he had been Manager or Cashier of the Bank of Upper Canada at Quebec, and as such during that period had had charge of the funds, notes, monies and securities of that institution.

That the Respondent in the beginning of the year 1856 was Debtor to the Bank in the amount of a promissory note for £212 10s. then discounted by the Bank, and that the said note had been afterwards paid to the Bank by a transfer of 17 shares of Stock held by her. That the note sued upon had been given in renewal of that note which had been so paid by the said transfer. That the said Stock was made over to the Bank with the understanding the Respondent could obtain the same back again at a like price as that given for it by the Bank, and that the subsequent notes were made and received as renewals for the purpose of affording her the opportunity of so doing during the time the said renewal notes had to run. This Witness also deposed to his having authority as Manager of the Bank to enter into that and similar transactions.

The evidence adduced by the Appellants merely elicited these additional facts. That the Books of the Bank did not indicate either the payment of the note sued upon or that the amount of it had been secured to the Bank, but on the contrary shewed that the 17 shares of stock, formerly belonging to the Respondent had been assigned to Mr. Bradshaw, who had himself drawn and received the dividends after the transfer, that the scrip for the said Stock had not been upon his retirement as Cashier of the Bank handed over by him to the Bank, but had remained in

his own possession, and that he himself had returned the note sued upon to the Bank as a past due bill.

The Judgment which followed the hearing upon the merits of the cause maintained the Respondent's exception and dismissed the Appellant's action and is as follows:—"The Court having seen and examined the proceedings and evidence of record and heard the parties by Counsel on the merits, considering that James Foster Bradshaw the Cashier and Agent of the Plaintiffs at Quebec, took stock in the Bank of Upper Canada in payment of the promissory note declared upon in the declaration in this cause, and that he was authorized by the Plaintiffs to enter into transactions of that nature, doth maintain the Defendant's plea of personal exception and doth dismiss the present action with costs, *distracts* in favor of Messrs. Andrews & Andrews the Defendant's Attorneys."

The reason assigned by the Appellants complaining of this judgment, in support of their present appeal is that neither head of the Respondent's exception, namely, the payment, or the compensation set up was established by her in the Court below.

Now, although for want of sufficient information the Respondent's Counsel were unable to set forth minutely in the exception filed all the particulars and circumstances attending the transfer of the stock in question, the Respondent's son, the other Defendant in the Court below, with whom the transaction took place not residing in the District and they receiving instructions at second hand, still the plea in substance and legal effect it is submitted is correct, that is, that the note given by the Respondent to the Appellants was before the institution of the action in the Court below, satisfied by the transfer of Stock and that for the note sued upon no value was received or given.

And the evidence of Mr. Bradshaw the late Manager of the Bank is positive on the subject that the original note of which that sued upon was a mere renewal given for the sole purpose of affording to the Respondent a period for redeeming her Stock, was on a transaction between himself on the part of the Appellants, and the Respondent's paid by the transfer of certain stock in the Bank then belonging to her, and Mr. Bradshaw's testimony in this respect stands uncontradicted, while he is manifestly without bias or interest to make any statement favorable to the pretensions of the Respondent, inasmuch as they are apparently necessary of himself. The Appellants for some purpose or other, whether in reference to the present cause, or to matters in dispute between them and their late officer is not certain, drew from Mr. Bradshaw while under cross examination an admission that the Stock so assigned was transferred to himself in his own name and at their suggestion he produced and filed in Court the scrip held by him for the said 17 shares—this scrip bearing date the 27th February 1856, is marked *Pliff's exhibit*, as filed at *Enquete* and it purports to certify that the said shares belong to Francis F. Bradshaw, on the back however of this document is written "*taken in payment, Mary Harrison's Note endorsed R. M. Harrison.*"

Again the Appellants made it appear by the evidence of Richard J. Cassel their present Manager or Cashier of their Branch Bank at Quebec, and James Douglas an Accountant in the same Agency, that there is nothing in the Bank Books to show that the Bank has been paid or secured the amount of the said note sued upon, and these gentlemen likewise establish that the dividends on the Stock in question were in the year 1857 placed to Mr. Bradshaw's credit, as the holder of the said Stock, and continue so to the present time, and that he had actually received these dividends without accounting to the Bank for them. Mr. Bradshaw is also made to admit on cross-examination that the scrip for the Stock was not handed over by him to the Bank upon his ceasing to hold office in that institution but that it remained in his own possession, also, that although the note had in fact been paid by the transfer of the Stock, he in his return made to the Bank on his leaving their employ indicated it as a past due Bill; but, notwithstanding all these facts, which amount to this, that the officer of the Bank has not conducted himself in reference to the Corporation his employer, in a manner satisfactory to that Body, and that the Books of the Institution do not correctly show the transaction respecting the said notes, or indicate the object of the transfer of the Stock by the Respondent made, still it is apprehended that she cannot be held responsible for the acts whether of commission or of omission of the Officers of the Bank.

Mr. Bradshaw in his testimony repeats again and again that the original note was paid by means of the said Transfer, and it is certain the Respondent so understood the transaction, and trusting to him the avowed authorized Agent of the Appellants to carry out her intentions in the manner he thought fit, parted with her personal property intending the assignment to be made in as effectual and legal a manner as might be, in satisfaction of the debt due by her, for the benefit of the Corporation to whom she was indebted, and in her own discharge. If the said officer of the Bank is upon that, or any previous or subsequent business open in any manner to imputations either as to the method he pursued in presenting the said transfer, or as to the ulterior appropriation of the Stock and dividends, or as to the absence of a proper indication of the business upon the face of the Books of that institution, the Respondent believes she should not on that account be longer held responsible on her note, she having in good faith parted with her property of like value in satisfaction of it.

From the course pursued by the Appellants in their examination of the Witnesses, it would appear that they were desirous a transfer of the said Stock should have been made directly to the Bank, or that the Bank should have been secured the amount by the transfer, and that this should appear on the Books, but it is apprehended such a transaction would have been in violation of existing law, inasmuch as by the amended constitution of that Corporation, it is forbidden in its corporate capacity to hold any share or shares of its own stock, or to make any advance upon the security of any such stock.

The only legal course then it is respectfully submitted for the Respondent to pursue was that followed by her, namely to pay her note by the transfer of her stock not to the Corporation

but to Mr. Bradshaw, the Cashier and Agent of the Bank, leaving him to retain the same for his own individual use if he so desired, and lawfully could do it, or to cause the same to be sold to some other person qualified to become Stockholder.

That such was really the transaction and that the assignment was made in payment of the note is rendered further evident by this, that what was done upon the occasion would otherwise have been useless, as by the 2nd Vic. (3) Chap. 24, it is enacted that no assignment or transfer of stock shall be valid or effectual until the person making the same shall previously discharge all debts actually due by him to the Corporation which may exceed in amount the remaining stock belonging to such person, and it is in evidence the Respondent had after the said transfer no other stock belonging to her in the Bank.

That the transaction between the Respondent through the instrumentality of her son, the endorser of the said note of the one part, and Mr. Bradshaw the then Agent of the Bank on the other, was such as sworn to by Mr. Bradshaw is rendered probable by these circumstances. 1st. The renewal notes are for precisely the same amount, there being no addition for interest, which is corroborative of Mr. Bradshaw's evidence, that they were renewals given solely for the purpose of affording the Respondent an opportunity during the periods they had to mature of redeeming her stock. 2ndly. No dividends upon that Stock were received by the Respondent subsequent to the transfer, which indicates that all parties had ceased to consider her the owner of the said Stock. 3rdly. The renewal notes were each given and accepted long after the next preceding note had become past due and neither of them were protested, clearly establishing that it was not intended that the parties should be held liable upon them, but that these notes were merely given for the purpose stated by Mr. Bradshaw, to afford the Respondent a period of redemption.

Now the facts so far as they have come to the Respondent's knowledge, without reference to Mr. Bradshaw's other acts or intentions are these. She in the first instance desired to obtain from the Bank a loan of a sum of money equal to the value of her 17 shares of Stock in the Bank, and for such purpose with the assent of the Manager of the Bank made an assignment of the said Stock, to Mr. Bradshaw promising to reconvey the said shares to her upon receiving the value by him given for them. Subsequently having made up her mind not to redeem the Stock it was intimated that the sale should be considered absolute, and she abandoned her stipulated right to redeem it. She was however still advised to renew the said original note, and did so thinking it for her benefit, and that it would more effectually conduce to the carrying out the intentions of both parties in the matter. It is sworn by Mr. Bradshaw that he had the sanction of the Bank to enter into similar transactions, and the Respondent submits that she should not be made to suffer by any supposed or real neglect of duty of the Cashier of the Bank towards the Corporation, that so far as she is concerned the transaction was honest and legal, and she conceives it would have been satisfactory to all parties had Mr. Bradshaw accounted to the Bank for the value received by him of the Respondent in payment of the note, and she conceives that justice will be done by this Honorable Court confirming the Judgment appealed from, leaving the Appellants to resort to such means as they shall be advised in respect of the monies received by their own officer if not accounted for by him to them.

Quebec, 12th July, 1860.

Andrew & Andrews
Attys for Respondents

APPENDIX.

Evidence adduced by the Respondent.

James Foster Bradshaw, Esquire, of the City of Quebec, in the District of Quebec, aged above 21 years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied or of kin, to, nor in the service or domestic of either of them, or interested in the event of this suit. From the year one thousand eight hundred and fifty one to the year one thousand eight hundred and fifty eight I was the Manager or the Cashier of the Bank of Upper Canada at Quebec, and as such I had charge of the funds, notes, monies and securities of the above institution, I am aware that the Defendant in this cause had Stock in the Bank, I think to the extent of five hundred pounds, the shares are twelve pounds ten shillings each. I am aware that Mrs. Harrison, one of the Defendants, was debtor on a certain promissory note to the amount of two hundred and twelve pounds ten shillings, then discounted by the Bank, this was in the beginning of the year one thousand eight hundred and fifty six—1856—which note was paid to the Bank by a transfer of seventeen shares of stock then held by Mrs. Harrison—the note now sued upon is a note which was given in renewal of that note of which I have said it was so paid by the transfer.

Q.—Will you please explain how the note so paid came to be renewed by means of the note now sued upon?

A.—Mr. Harrison, as agent of Mrs. Harrison, and I think of his two sons, held seven hundred and thirty-seven pounds ten shillings stock in the Bank, of which I purchased and paid for five hundred and twenty-five pounds, which was all I required at that time, and being for another

party leaving a balance of stock in Mrs. Harrison's name of two hundred and twelve pounds ten shillings, and subsequently to that purchase of mine, Mr. Harrison required discount of his mother's note, endorsed by himself for two hundred and twelve pounds ten shillings, to which I consented on condition that this stock was to remain in the Bank as security, to which Mr. Harrison agreed, and the stock was then made over to the Bank, with the understanding that Mrs. Harrison could have the stock back again at the same price—there was no particular time specified within which she could get back her stock. The subsequent notes were taken as renewals, in order to afford her the opportunity of getting back her stock during the time the notes were running.

Cross-examined.—The scrip which I now produce, is the scrip which was handed over to me as Cashier of the Bank, for the Bank in payment of the note for two hundred and twelve pounds ten shillings, of which the note now in suit, is one of the renewals. When a transfer of stock takes place, the assignee has a right to get scrip for it, I presume.

Q.—At the time, when this scrip issued to you, was the head office made aware by you, that the transfer was not to yourself personally, but that you held the stock for the Bank.

A.—I cannot recollect what I may have said in my official or private letters, but I stated verbally to the cashier, and I believe to Mr. Brown, that that note was paid by stock held in my name for that amount, and which is still in the Bank. This was, I think, when Mr. Brown was last in Quebec, that is in the month of October, one thousand eight hundred and fifty-eight, this was long before I left the Bank. The memorandum on the back of the scrip over my initials and in my handwriting as to the scrip being taken in payment of Mary Harrison's note, was written I cannot say when, but it was written at a later period, for Mr. Harrison had a right to redeem that stock on paying that amount. This paper, which I have produced, is of no use, I presume, to any body, and was not handed over by me to the Bank, it remained in my possession. I have stated that the said transfer of stock paid the note which is now sued upon. I think I returned it to the Bank as a past due bill. I believe that after the stock was transferred to me, the dividends were placed to my credit up to the time I left the Bank, and of course I received these dividends, but there was a larger amount due to me by the Bank, which being placed to my credit, would more than cover that amount. My account was closed and I drew out that amount, I don't know whether in my report to the Bank I mentioned that the note was secured or paid by stock. I handed over the note in question as a part due Bill, because I did not consider the transaction closed; the note was not written out as paid, because the stock held opposite to it.

Re-examined.—Mrs. Harrison received, as far as I can recollect, no part of the dividend subsequent to the transfer.

The transfer of stock in payment took place after the expiring of one of the notes, I had authority as manager of the Bank to enter into the transaction in question, and I entered in transactions of a similar kind with the sanction of the Bank. The present deposition being read to the witness, he persists therein stating it contains the truth and has signed.

Sworn before me at Quebec,)
sitting the Court this 10th)
day of February, 1860.)

(Signed,) A. STUART,
A. J. S. C.

(Signed) J. F. BRADSHAW.

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