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CANADIAN CURRENCY AND EXCHANGE UNDER FRENCH RULE

III. SECOND PERIOD OF THE CARD MONEY*

IT was unfortunate for Canada that the close of the first period of the card money, and the return to a metallic currency, should have coincided with the inflating of Law's Mississippi bubble. The Company of the Occident, as was the name of this airy structure, obtained, among other rights and privileges, a monopoly of the Canadian beaver trade, and a lease of the French mint for nine years from 1719.

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*Chief sources:

Canadian Archives, Correspondance Générale, Vols. XLIV-LXXV.

"Documents relating to the Colonial History of the State of New York," Vol. IX.

"Collection de Manuscrits Contenant Lettres, Mémoires, et Autres Documents Historiques Relatifs a la Nouvelle-France," Vol. III.

"Edits, Ordonnances Royaux, Declarations et Arrets du Conseil D'Etat du Roi, Concernant le Canada."

"Histoire Monétaire des Colonies Françaises, d'apres les Documents Officiels." Par E. Zay.

French currency and finance were found to be in a very disordered condition when the ratification of the Treaty of Utrecht permitted attention to be drawn to them. Their reconstruction had been entrusted to the famous John Law, a man of genius in many respects, whose chief misfortune was the phenomenal success which attended his efforts. Like a cloud-burst after a drought, his projects swept everything before them, completing the ruin which they were intended to mitigate, and themselves being carried to destruction in the flood which they had precipitated.

Just when Canada was being purged of its paper currency France itself was being deluged with it through Law's national bank. By 1719 everything in France was afloat on paper. Values, prices, rates of exchange, monetary standards, all were dancing gaily without anchor on a very tidal wave of prosperity. With everyone lending a helping hand, the breakers were soon in sight. Then the Government ran wildly about issuing edicts and ordinances, repealing them and issuing others, in the vain hope of casting some anchor that would hold in the midst of drifting chaos.

The people of Canada, away on the outskirts of this commotion, were almost reduced to barter by the wiping out of their paper money before a sufficient substitute had been provided. Nevertheless they found themselves bewildered with a series of regulations about money and prices, sent over from France with the yearly supplies, the latter none too liberal.

Thus a royal edict of May 7th, 1719, declares that the king has issued a new gold coinage, the louis d'or being fixed at 35l., and all persons are forbidden to receive or pay it out at any other rate. This, however, was of no avail. Forces much stronger than royal edicts, the necessities of trade namely, were regulating values, and, in consequence, sending specie to a high premium.

Under Law's management of the mint several changes in the rating of the coins took place during 1719-20. In September, 1720, a special effort was made to fix money values and cheapen provisions. A new issue was made, of which the louis d'or was to pass for 54l., and the louis d'argent or écu for 9l., and the other gold and silver coins in proportion. From Dec.

1st these rates were to be reduced to 45l. and 7l. 10s., respectively, and after Jan. 1st, 1721, they were to be still further reduced to 33l. and 6l. respectively. Special rates were prescribed for the old coins till they could be returned to the mint. But before the end of 1720 it was found that this anchor too was dragging, and the effort to stem the tide was given up.

By this time the flood was in full sweep, and Law's vast edifice was rapidly going down before it. In Jan., 1721, his lease of the mint was annulled, but nothing could be done towards a permanent reform till the waters had subsided. A beginning was made in 1723, and, after various attempts, something stable was secured in 1726, when an extensive recoinage was undertaken on the basis of 20l. for the louis d'or and 5l. for the écu.

To what extent, it may be asked, did these rapid and extensive changes in the currency of France affect Canada? The colony had two points of contact with the movement of values in the mother country, namely, the commercial dealings of the country with French merchants, and the management of the Canadian finances.

As we have seen, the French commercial system did not respond to every attempt to fix the legal rating of the currency, hence the commercial exchanges between Canada and France followed the range of market values and not the edicts of the Court. In Canada, again, business was not done on a very close margin, and, though trade with France might be somewhat hampered, yet the fluctuations in values would not be rapidly or strongly felt in the internal trade of the country.

In the case of the Canadian finances, the matter was different. The funds sent out on the king's account were estimated on the basis of whatever happened to be the legal standard of values at the time, which was usually something else before the payments were actually made in Canada, the result being to greatly complicate the bookkeeping in connection with the colonial finances. Thus, for instance, a certain sum of money was sent out in 1720, consisting chiefly of crowns (louis d'argents or écus) rated at 2l. 15s., but in Jan., 1720, they had been reduced to 2l., which caused a shrinkage in the colonial appropriation to the extent of 17,952l. 15s. But

again, on July 30th, the same coin was increased to 4l., of which, however, prompt notice did not reach Canada, and the coins being paid out on the basis of 2l., great loss resulted, which the colony asked the king to bear.

It will be readily understood that specie being scarce in France itself, and in consequence running to a high premium, as little coin as possible would be sent to Canada. As the balance of trade was against Canada, the Canadian merchants in making their remittances would find the premium on specie a strong inducement to send it as long as they could get it. Hence what funds were sent out by the king, or brought by the company to purchase furs, as required by their charter, would immediately return to France. The colony was thus deprived of the necessary medium of exchange.

The function of a medium of exchange is, of course, quite different from that of a means of settling international trade balances. If the colony had a medium which could not be used for the settlement of trade balances it would be left to do its work regardless of the unfavourable balance of trade. It was a vague appreciation of this idea that led to the periodical revival of the proposal to issue a special coinage for Canada or the other colonies. It had also led to the extra rating of one-fourth on the French currency in Canada, which, though it had prevailed so long, had availed nothing when once Canadian values had made corresponding adjustment. None of the advocates of a separate coinage for Canada really understood the nature of the interdependence of the currency, the foreign exchanges, and the finances of the colony. The fact was that this three-cornered connection presented an economic problem more difficult of solution than any hitherto met with in French experience.

Naturally enough the condition of Canada after the withdrawal of the card money, which had acted as a special currency for the country, led to the revival of the idea of a separate coinage. The proposal first took shape, however, in a project for supplying the colonies with copper coin through the agency of the Company of the Occident, a project which was more particularly connected with the West Indies, though including Canada in its application.

The edict giving expression to the purpose provided for the issue of copper coins of 12 and 6 deniers. It was published in Dec., 1716, and the following year an order was apparently sent to Quebec and the other American colonies to have the edict registered and currency given to the coins. The copper, however, which was provided for their manufacture, turned out to be of so poor a quality that the process of minting them was suspended, and in the subsequent rush of events the matter was forgotten. In 1721 the Company of the Indies, which had absorbed the Company of the Occident, revived the project. Having obtained suitable copper from Sweden, they prevailed on the king to mint it for them, and give it the necessary legal status. Accordingly, an edict was issued in June, 1721, providing for the minting at Bordeaux, Rochelle and Nantes of 150,000 marcs of copper in pieces of 20, 40 and 80 to the marc. They were to be current in the Americas and in the other French possessions outside of Europe. Their values were fixed at 18, 9, and $4\frac{1}{2}$ deniers. In the end only the 9 denier piece was struck, and that only at Rochelle.

In 1722 the Company of the Indies sent 20,000l. worth of this copper money to their agent in Canada to put into circulation in connection with the purchase of furs. But the Canadians objected to receiving it, alleging as an excuse that the edict of the king had not been registered in the Superior Council. The company made appeal to the Minister of Marine to have instructions sent to Canada to register the edict. This was done, but with the proviso that no one should be required to take more than one-sixth of any cash payment in copper, as was the rule in France. The governor and intendant informed the minister that they did not expect the money to circulate, as it was not customary in Canada to make payments in copper. The people, they say, find it clumsy on account of its weight, and object to these coins in particular, because they are highly overrated, and because they will not circulate beyond the colony. When the company tried to force the circulation, the merchants steadily refused to take more than one-sixth in copper, and as the company had not the necessary silver to complete the payments, it had to give up the attempt, and pay in bills of exchange. Only 306l. 15s. had been got into circulation.

It was afterwards proposed to get the government to take over the rest of the copper, and pay it out along with its cash payments. Apparently the minister had received such a proposal, and had referred the matter to the Canadian authorities. The following year, 1724, the governor and intendant report that after discussing the matter with the chief inhabitants of the colony, they are sure that there is no use to attempt its issue. There is no need in the colony, they say, for any coin below the sol marquez. There is, therefore, nothing to do with it but send it back to France, for so long as it remains here it makes the people uneasy. It was finally returned to Rochelle in 1726.

Since these copper coins circulated freely in Louisiana and the West Indies, as they would certainly have circulated in Canada also in the period before the card money, it is quite evident that their failure to pass now was entirely due to the new monetary habits of the people, owing to the prevailing use of card money for a generation. The abundance and depreciated value of the cards necessarily raised prices, and led to an almost total disuse of fractional denominations either as currency or as a value counter. Hence even when specie payment was restored, the people in their valuations had no place for anything less than the sol.

When the distinction between money of Canada and money of France was abolished by the declaration of the king of July 5th, 1717, some difficulty resulted in fulfilling contracts made on the basis of the money of Canada. As, however, from the economic condition of the country at the time, there could not have been many contracts in force, beyond the narrow range of the commercial element of Quebec, Three Rivers and Montreal, who could readily understand and apply the law, the difficulty in this respect could not have been very great. In one direction, however, contracts were very general and of long duration, in the direction, namely, of the terms on which the common people held their lands. As time passed a number of disputes arose as to whether the land holders were entitled to the reduction of one-fourth on the contracts made on the basis of the money of Canada. Several decisions were given by the Canadian courts, but without complete satisfaction. Hence it

became necessary for the authorities in France to attempt to settle the matter, which they undertook to do in the "Declaration in interpretation of that of 5th July, 1717, on the subject of the card money of Canada," dated 25th March, 1730. This reverses several of the Canadian decisions, and declares that in the case of all feudal dues and other contracts made before the registering of the declaration of 1717, and where there is no stipulation for payment in money of France, or money *tournois* or *parisis*, the contract shall be paid in the money of France, with a reduction of one-fourth from the amount stipulated in money of Canada.

I have already referred to the difficulties of the Canadian treasury in trying to keep pace with the bewildering changes in the rating of the French coinage. This continued till about 1727-28, when conditions became somewhat more stable. A return of the specie in the treasury at Quebec, derived from the duties on liquors, dated 2nd Sept., 1726, shows that a separate account had to be kept of the coins of different issues, owing to their different values, and also another account, stating the increase or decrease on each class of coins, owing to the latest edict altering the rating of the currency after the duty had been paid. In this report the issues represented range from 1642 to 1725, and amount altogether to 3,000l. But, since collecting, an edict had raised their value by 156l. 8s. 10d., of which the treasury would have the benefit unless rates fell again before the money was paid out. This is merely a sample of the intricacies of Canadian finance at that period, owing to the unstable condition of the money standards.

While France was suffering from the effects of a disastrous war and the collapse of a financial and commercial boom, we are not surprised to find that trade languished, and hard times prevailed throughout the empire.

After the treaty of Utrecht the rivalry between the English and French colonies in America was sharper than ever. The French were endeavouring, by an aggressive and industrious diplomacy, and a series of most ingenious interpretations of the important clauses of the treaty, to minimize the English successes and to recover, during the interval of nominal peace, what had been lost during the last war.

The western trade movement, accompanied by advancing outposts and unstable Indian alliances, steadily contributed fresh causes for dispute. France managed to establish a connection between her Louisiana colony in the Mississippi valley, and the Canadian territory in the valley of the St. Lawrence and the great lakes. She then pressed east and south upon the advancing English settlements.

There is a striking contrast between the French and English methods of expansion. The French simply over-ran the country; the English settled as they went. Consequently, almost everywhere the French had the prior claim of discovery, almost nowhere had they a claim of settlement. By the policy which they adopted the French gave themselves up to the purely negative work of checking the expansion of the English, sacrificing to this their own opportunities of development.

The effort required in grasping and attempting to hold such a vast range of frontier entailed a heavy drain upon the energy of the Canadian settlers, and a great outlay on the part of the French government. While the home country was recovering from her financial exhaustion, more was required to be done in Canada than could well be paid for by France, hence the Canadian treasury was chronically scraping the bottom of the meal barrel.

The Marquis de Beauharnois, governor in 1727, complains that the intendant M. Dupuy has so many commissions to execute for the king, that no one knows where he is to get the money, and the colony is in danger of finding itself quite without currency. The officers and soldiers are often in straits for their pay, and he hopes that the king will make a separate fund for paying the officers and troops, which the intendant cannot apply to other uses.

Unaware, like his predecessors, of the reasons for the draining away of the colonial currency, he falls back upon the usual proposal in such cases, namely, to artificially prevent the export of money. To him, as to others, the simplest expedient appeared to be the supplying of the colony with a special money not current elsewhere. His particular plan is to have the king issue a separate coinage for Canada, and to use this in making payments from the colonial treasury. And since the

Company of the Indies is obliged by its charter to pay cash for the beaver, there might be sent out annually 200,000 fr. for several years, to be given to the company with which to make its payments. Obviously this was to be given to the company in exchange for regular money, paid over to the government in France. In this way, it was said, the whole currency of the colony would come to consist of the special issue, which, being of value only in Canada, could not be sent abroad, while all over-sea payments would have to be made in letters of exchange. The governor seems quite undisturbed by the reflection that there would have been no occasion for undertaking the risk and expense of sending specie abroad if the colony had anything to its credit there upon which to draw letters of exchange.

During the same month the intendant makes his proposal for preventing the export of specie. As in the case of the governor's scheme, the basis of his proposal is nowise new, being no other than the long used method of increasing by one fourth in Canada the ordinary money of France. He admits that when formerly in force, this arrangement was of no avail, because prices in Canada simply increased in like proportion. The novel feature in his plan is that this should be prevented by the king and the company providing goods at the same rates as before, and trusting to make up for the loss on the money by the corresponding advantage which they would have in making payments in the country.

It were hard to tell which scheme shows the more trusting confidence, or charming simplicity.

In a despatch of the same autumn, combining the views of both governor and intendant, it is indicated that they would be thankful to have the Company of the Indies send out their copper again in the shape of suitable coin, and they hope that the company will be strictly held to the requirement of their charter to pay for the furs in ready money. Lately, it appears, the company had been making nearly all their payments in bills of exchange. Under the circumstances, these were better for the colony than money.

In making his report on the finances of the country for the same year, the intendant closes with the plea that the minister

will see from his report how much the colony will be in need of money for the coming year. He has referred to the want of money in other despatches, but now he urges it more strongly than ever.

Money had indeed become so scarce that ordinary exchange was greatly hampered. As a consequence, the expedient most naturally suggested by the circumstances and the former experience of the country, was resorted to. Private individuals began to issue notes or bons on their own account, and the needs of trade soon extended their circulation. Probably the first notes appeared shortly after the recall of the card money. The first mention of them which I have found is in a despatch of the governor and intendant in Nov., 1728, where they are referred to as already extensively used, and beginning to show their evil effects through failure in redemption. It is interesting to find that the French Canadians had become acquainted with private notes at so early a date.

The same document states that the people have made representations to the Canadian authorities, praying for the reintroduction of the card money, on the original plan of redeeming it each year, after the arrival of the vessels from France.

Finding that the merchants and other inhabitants were thus anxious for another issue of the card money, and recognizing in it a very considerable profit to the treasury, the king yielded to the request. The necessary authority was conveyed in an ordinance of the king, dated March 2nd, 1729. The preamble to this ordinance briefly states the situation, referring to the fact that the money taken out to Canada returns each year, leaving the country without currency. And since the people of Canada of all classes have expressed their desire to have the card money restored, the benefits to be derived from which are enumerated, therefore the king makes an ordinance, of which the following are the chief features. There shall be made 400,000l. of card money, of 24l., 12l., 6l., 3l., 1l., 10s., 15s., and 7s. 6d. The cards are to be stamped with the arms of the king, and written and signed by the Controller of the Marine at Quebec. The cards of 24, 12, 6 and 3 livres are to be signed also by the governor and the intendant or commissary-general of the country. The smaller cards are only to be initialed by

them. The cards are not all to be made at once, but at different times as needed. Special regulations are made to safeguard their preparation and issue, and on no account are they to exceed the authorized amount of 400,000l. They are to circulate in the colony at their simple face value, and are to be received at the king's stores in Canada for powder and all other merchandise sold at those stores. They will also be received by the treasurer in return for letters of exchange drawn on the Treasurer of the Marine in France, and they shall be a legal tender for all payments in the colony.

As these cards were to be prepared and issued in Canada, Hocquart, the new intendant, before leaving France in 1729, purchased 2,000 packs, 52 in each, of white cards of two qualities, with which to prepare the card money. Unfortunately, however, two-thirds of them were lost in the shipwreck of the king's vessel; hence they were compelled to use ordinary cards, to be had in Canada, for a part of the issue.

The intendant requests that the following year a fresh supply of 2,000 packs be sent out, in order that new card money may be prepared if any attempt is made to counterfeit that issued.

The proportions of the various denominations of the cards to be sent are to be as follows, which are also the proportions of those issued in 1729:

4,000	cards of	24l.		making	96,000	livres
10,000	" "	12		"	120,000	
10,000	" "	6		"	60,000	
10,000	" "	3		"	30,000	
20,000	" "	1	10s.	"	30,000	
50,330	" "		15s.	"	37,747	10s.
70,004	" "		7s.6d.	"	26,251	10s.
174,334					399,999	

On these he asks to have engraved the year and the sum, with the names of the controller, the governor and the intendant. He asks also for three new stamps (poinçons)—on one the arms of the king, on another the arms of the governor, and on the third the arms of the intendant—in order that they may stamp the money at Quebec, apparently as it is issued. The

stamps, he says, should be difficult to counterfeit, and well engraved.

In the report of Beauharnois and Hocquart, Oct. 25, 1729, it is stated that of the first issue, which was then being made, 63,337l. 10s. in cards had already been prepared and handed over to the treasurer to be paid out.

The remainder of this report, taken in connection with a number of other documents of the period, is of special interest, as it enables us to understand clearly an important expedient to which the Canadians had resorted in their efforts to make exchanges.

It appears that each year from 1725 to 1729, the expenses incurred by the Canadian government had exceeded the receipts of the colonial treasury. When the cash was all gone the expenses were met by what were known in English finance of the period as exchequer bills, but were known in Canada as ordonnances on the Treasury of the Marine. The ordonnances, however, unlike the exchequer bills, did not bear interest. As these could not be cashed until the treasury was replenished, and as the persons receiving them, being either military officers, civil servants, or contractors, had necessarily many payments to make, the ordonnances came to be offered and accepted in lieu of money. Soon they were in general circulation in the business centres, being welcomed as a relief from the dearth of money, and much safer than private bons.

The circulation of the ordonnances naturally quickened the departure of what specie remained in circulation, because they represented an extra demand for goods, with no corresponding exports to balance them, hence there was a more urgent demand for specie to meet the adverse balance of trade. One special difficulty was met with in using these ordonnances as currency. Like ordinary promissory notes, they represented values of considerable amounts and inconvenient sums. Some one bethought himself of going to the official to whom they were ultimately to be presented, and asking him, in giving his receipts for them, to break them up into smaller and more convenient amounts. This he agreed to do, apparently with the sanction of the intendant. He gave small notes in exchange for the ordonnances, which, according to the intendant, produced a very beneficial effect on trade.

Here we have the circumstances which attended the first use of ordonnances as a currency in Canada. Although, as money, they were immediately suppressed, yet in a short time we find them in circulation again. It was this instrument of finance, somewhat modified in form and adapted for circulation, which enabled Bigot and his associates to carry on their system of wholesale corruption and embezzlement which contributed to the loss of the colony, the ruin of the French treasury, and the transfer of Canada to England, flooded with paper money in a state of confusion and discredit.

How many of the notes given for ordonnances were in circulation in 1729 the intendant did not know, but, after the departure of the vessels, he intended to call them in and replace them with card money.

The Canadian authorities were not very sure whether the sum of 400,000l. in card money would be sufficient to meet all the demands of the fiscal year then beginning. In case it should not, they ask the king to permit them to issue another 100,000l. of card money.

The king had evidently expected the issue of the card money to relieve him of all expenses in Canada for the year 1729-30. He had accordingly given instructions to draw no bills of exchange on France in 1729.

Nothing could have been more unfortunate, on the very threshold of another experiment with the card money. The order is one more evidence of the hopeless confusion in the official mind of the period, with reference to the nature of money and the principles of exchange? The card money might have supplied the place of specie in the internal trade of Canada, but it could not purchase supplies from abroad other than by relieving specie from circulation, and thereby permitting it to be exported. But the Canadian specie had already been almost entirely exported, hence the clamor for card money to meet the currency famine; hence, also, the resort to private notes and ordonnance notes for the means of exchange. Bills of exchange were, therefore, of as great necessity as ever to aid in making payments in France for the imports of the year.

The refusal to issue bills brought dismay to the colony. It

threw discredit on the card money, the prices in which began to go up at once, much to the alarm of the officials whose salaries were paid in cards. It also entirely upset the arrangements of the holders of the ordonnances, or the notes given for them, who had counted on converting them into letters of exchange before the sailing of the ships. The Canadian authorities did what they could to minimize the fears and disappointment of the people. To enable them to restore confidence, they requested the king to permit letters of exchange to be drawn, the following year, for not less than 250,000l., the exchanges given to each person to be in proportion to the amount of cards held by each.

The vessels which arrived in 1730 brought a severe reprimand to the Canadian authorities for permitting the circulation of small notes in return for ordonnances. By this time, however, they were all called in.

When these and other outstanding claims had been presented they amounted to 108,557l. 19s. 10d. The card money brought in for conversion into bills of exchange amounted to 167,791l. 2s. 6d. Both sums together made 267,349l. 2s. 4d. As only 250,000l. was authorized to be drawn in exchanges, the balance of the amount presented was returned to the holders in the shape of new card money. This transaction completed, it was estimated that the treasury would have on hand not more than 140,000l. in coin or beaver.

This amount, as the intendant points out, will be quite inadequate for the needs of the year, and he foresees the possibility of having to issue an extra 100,000l. or 150,000l. in cards. Now that confidence in the cards is restored by the exchanges drawn that year, he is of opinion that an extra issue to the extent suggested will be readily taken, without any risk to their credit. An alternative proposal is to permit them to draw a larger amount in letters of exchange, which would cause more card money to be returned to the treasury to be used again.

The 2,000 packs of new cards requested by the intendant were sent out, also two of the three stamps or dies asked for. But his request to have the cards printed before being sent,

instead of having them written in Canada, had not been met. The intendant complains that the work of signing so many cards is most tedious, the first issue having occupied the greater part of his time for the past year. He strongly presses his request to have them printed next time, maintaining that they will be perfectly safe. What reply was made to this I have not been able to discover, but, from the fact that the ordinance of 1733 provides for the issue of an extra 200,000l. in cards stamped with the arms of the king, and written and signed only by the Controller of the Marine at Quebec, would indicate that, while still not printed in France, yet the governor and intendant were relieved from the labor of signing each card.

In replacing the old issue of cards by a new one, the cards redeemed in letters of exchange were burned, and a corresponding amount of new cards turned over to the treasurer in their place.

Once confidence in the cards had been restored they were found to circulate very freely. It is worth observing, also, that, as soon as their conversion into bills of exchange was assured, specie ceased to leave the country, and apparently began to accumulate in the shape of savings in the hands of the ordinary citizens.

The reason for this is not far to seek. Bills of exchange, as a form of remittance, were much more convenient and less costly, counting risks, than specie, hence importers sought exchanges in preference to specie. But bills of exchange were obtained for card money, hence to the importing merchants card money came to be preferred to specie, especially towards the close of the summer. Specie, therefore, as it came to the country, tended to drift into the hands of those making savings, while the card money remained in the channels of commerce. At this period, however, there were not many avenues through which specie was likely to be brought to Canada, so that later on savings tended to be made in cards as well, their credit being good. Had the card money been issued on the authority of Canada, instead of France, or had it not been convertible into bills of exchange, the opposite effect would have been experienced, the cards driving out instead of conserving the

specie. These features will receive further illustration, chiefly on the negative side, under later and altered conditions.

Meantime, with the limited issue of 400,000l. of card money there was always a competition between the demand for cards with which to obtain exchanges, and the need for cards as a medium of exchange. These competing demands enhancing their value, a third demand for them as a saving fund, just referred to, was stimulated. Owing to the increase of rival claims, a diminishing proportion of the cards came back for redemption in exchanges. As the French government was sending little specie to Canada, permitting exchanges to be drawn instead, the Canadian treasury was continually in straits for ready money, and was forced to resort to ordonnances in increasing quantity. Under these conditions the treasury paper increased, and the card money decreased in the funds brought in for conversion into exchanges. These facts plainly indicated that more currency was needed to take the place of the treasury paper. So long as the exchanges were promptly paid in France there was no occasion for specially restricting the quantity of card money, the exchanges affording an automatic safety valve.

As matters stood, during the year 1731 the intendant found himself, as he had expected, in straits for ready money, and, with the sanction of the governor, had taken it upon himself to issue an additional 60,000l. of card money. For this presumption the Canadian authorities were again severely reprimanded. The extra cards, however, were rapidly absorbed, being actually far from meeting the need.

When the time came for drawing bills on France in 1731, only 136,489l. 9s. 8d. were presented in cards, about 95,000l. more being treasury paper. When, therefore, the 60,000l. of cards, which had been over-issued, were withdrawn and burned, the intendant was left with only about 75,000l. in the treasury to meet the expenses of the coming year. If he were not to be permitted to issue more cards the intendant wished to know how he was to meet his obligations. For the present he was left to the device of paying with ordonnances.

At this time letters of exchange were issued at Quebec for the expenses of Isle Royale (Cape Breton), and Fort Michilli-

macinac, the distributing centre for the north-western Indian posts, but these accounts were kept separately.

The fear of the intendant that some of the first issue of the card money might be counterfeited was realized. In June, 1731, the first counterfeits were discovered. The increasing tendency for the cards to pass into the country districts made it difficult to trace the false money, and as a great part of them no longer returned for redemption, the issue of the cards could not be readily changed.

The lowest denomination of the card money was 7s. 6d., which allowed of a considerable demand for copper sols as small change, which was increased by the greater facility for exchange afforded by the card money. In 1731 we find a special request made to the home government to send out the following year about 6,000l. in sols marquez. This request was granted, but the coins sent were a mixture of new and old, which were circulating in Canada at the time at two different rates, the new at 27d. and the old at 18d. In France they were indiscriminately rated at 24d. or 2s.

By an ordinance of the Canadian government, September 12, 1732, they were all rated at the same value as in France. In 1734 a second instalment of 6,000l. worth of sols marquez, or two sol pieces, was received, and a request was made for a similar amount to be sent the year following.

Before October, 1732, still more of the card money had leaked away from the commercial centres into the interior of the country, thus the governor and intendant had not only good ground for pleading justification, in reply to the reprimand for the over-issue of the 60,000l., but they were able to claim that an even larger issue was urgently required. This year, they say, very little card money will be brought in for conversion; it is now everywhere regarded as equal to coined money, and they are compelled to work almost entirely on ordonnances and treasury receipts, without which they would have to draw for more than the 250,000l. allowed them. It would be much better, they think, to use cards instead of this treasury paper.

The treasury paper, up to this time, included what are named in the documents, "ordonnances" and "acquits." The former were orders on the treasury given in discharge of claims

on the government. When these reached the treasury, receipts (acquits) were given for them, which were to be converted into bills of exchange just before the last vessels sailed for France.

From 1726 till 1729, inclusive, the expenses of the government had exceeded the actual payments made from appropriations, by 273,153l. 13s. 3d., which amount was represented chiefly by the cards and partly by the outstanding treasury paper.

The continued appeals of the Canadian authorities at length convinced the home government that an addition to the card money should be made. Accordingly, an ordinance of the king was passed, May 12, 1733, providing for an increase of 200,000l. of card money. The preamble to the ordinance recites the advantages which have resulted from the former issue of 400,000l. Being once more pressed both by the officials and the merchants of the country, the king has recognized the need for an extra issue to meet the expanding exchanges of the country, and accordingly authorizes this additional amount. The new cards are to be of the same denominations as the others, to be stamped with the arms of the king, and to be written and signed by the controller of the marine at Quebec.

In a letter from the intendant Hocquart to the minister, dated October 10, 1734, we get a glimpse of another feature introduced into the Canadian financial system, which was to prove of great service to Bigot and his friends.

Hocquart complains that he is losing control of the expenditure of the colony, inasmuch as very considerable expenses are incurred by other officers of the government over whom he has no control, but for whose orders on the treasury bills of exchange have to be drawn, while he is limited in his total drawings to 250,000l. each year.

This new feature was incidental to the Western expansion of the French power. Where work was being carried on and Indians bribed in regions so far away from Quebec, as the territory included between the Ohio, the Mississippi and the lakes, it had become necessary to permit the officers in charge to incur certain expenses in the king's service on their own

responsibility, and to pay for them by giving orders on the treasury at Quebec. In this way there grew up an independent claim, very difficult to control, upon the limited amount of exchange at the disposal of the intendant. How Bigot turned this method to account will be shown later.

The Western expansion, besides adding to the king's expenditure in the colony, was also increasing trade. At the same time the commercial interests of France were steadily recovering from the disasters of the bubble period, and the trade with Canada shared in the revival.

The extra 200,000l. in cards was easily absorbed, and still a steady increase was observed in the use of treasury paper as currency. The reputation of the card money was so firmly established that little of it came in for redemption. The treasury receipts being also convertible into exchanges shared the same confidence as the cards, among the merchants at least, and came to be that part of the circulation which they chiefly accumulated with a view to conversion into bills of exchange.

A distinction, in credit, had now appeared between the two elements of the treasury paper. The ordonnances becoming more numerous, and hailing from distant quarters, were not always promptly accepted by the treasurer. But when accepted and receipts issued for them the receipts were always received for exchanges. Hocquart says in 1734, that when drawing bills he makes no distinction between treasury receipts and cards. At the same time the intendant, observing that the receipts had a narrower circulation than the cards, proposed to the minister a third issue of the card money, to the extent of 120,000l., to pay off the receipts, and thus give to the country a medium of wider range, and consequently of greater usefulness. This plea, however, was not heeded at the time.

In 1735 we get a glimpse of currency and exchange aspects at Montreal, which may be taken as representative of places not immediately in touch with the colonial treasury at Quebec.

De Beaucourt, commandant at Montreal, writing to the minister in that year, says there is no coined money at Montreal, at least it is never seen. He apparently obtains his supply of

funds but once a year, and that in letters of exchange brought up from Quebec. These he is obliged to sell for cards and notes, the latter issued by M de l'Evy in connection with the fortifications. It is to be remarked that for a time after this the ordonnances on the treasury were referred to as notes (billets). That the notes did not enjoy the same currency as the cards is evident, for he speaks of the difficulty of passing the notes in exchange for the services of which he stands in need. Quite generally he says prices are higher in paper than in specie.

The amount of card money remaining limited, and the expenses of the government increasing, without apparently a corresponding expansion in the amount of exchanges authorized to be drawn, the country began to fill up with treasury paper, especially the unaccepted notes or orders on the treasury. Thus governor Beauharnois, writing to the minister in October, 1740, desires to bring to his notice the great quantity of notes in circulation, issued partly at Montreal and partly at Quebec. As the governor complained, there was no proper check on these issues. In most places of issue everything was in the hands of the commanding officer, or some other single individual appointed to look after supplies. In this way the field was being prepared for Bigot, who is not to be accused of creating a system which he found on his arrival all too temptingly arranged for him.

The same year, 1740, de Beaucourt, again writing from Montreal, complains that he has no money, and has been compelled to borrow from the merchants, not having time to go down to Quebec to get letters of exchange. As they refuse to grant letters of exchange for the treasury notes which he has given, he finds himself completely discredited.

Thus we perceive the beginning of that over-issue of treasury paper, which ultimately destroyed its own credit and that of the cards as well. And yet throughout the second period the cards were penuriously limited in amount to prevent this very danger. The reason for the over-issue was that the treasury paper in its origin had nothing to do with currency, but was simply used as part of the financial machinery of the government. Yet, from passing into circulation by reason of the small supply of money, and, when increased in amount,

ceasing to be freely and completely converted into exchanges, it produced a dropsical condition of the currency, and vitiated the normal function of the card money. Meantime, as if to emphasize the contrast, a temporary improvement took place.

About 1740 the restriction on the exchanges drawn on the French treasury, hitherto limited to 250,000l., was removed, and the amount drawn for rapidly increased under the influence of another open struggle between the English and French colonies in America. At the same time Canadian trade had reached a very flourishing condition, with remarkable consequences for the currency and exchanges.

Meanwhile, the proportion of treasury paper to card money was rapidly increasing, though owing to the removal of the restriction on the exchanges, it ceased to injuriously affect the currency of the colony. In the autumn of 1741, there was returned to the treasury, for conversion into bills on France, 176,000l. in card money, and about 464,000l. in receipts and notes. Letters of exchange were drawn to the extent of 622,063l. 13s. 7d., which may have included the amounts for Isle Royale and Michillimacinac. All the cards presented were converted in full. Of the treasury paper, three-fourths were converted into exchanges, and the remainder paid in card money.

This transaction completed, there remained in the Canadian treasury only 52,000l. in cards. Of this, 15,000l. was sent to Montreal, 22,000l. set aside for the purchase of provisions, etc., leaving only 15,000l. in the treasury at Quebec for current expenses.

This same year it is reported that the Canadian exports of all kinds have exceeded the imports by about 300,000l., causing an advance in the price of French goods to the extent of ten or twelve per cent. As a consequence of the favourable balance of trade, taken in connection with the very great increase in the exchanges drawn by the government, for the first time in the history of Canada exchanges on France were at a discount, and card money passed to a premium. The treasury receipts were well sustained, and only the treasury notes, or unaccepted orders, were below par. When the last vessels had sailed the

merchants and others sought to convert the surplus exchanges into currency for use in the internal trade of the country.

In the presence of this situation, the governor and intendant again urged the feasibility of issuing an extra 200,000l., or at the very least, 120,000l. of card money.

Having brought the country to this high water mark of monetary soundness, we may pause before beginning the descent towards the era of the Conquest.

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2.

TITUS POMPONIUS ATTICUS—ROMAN BANKER

ALTHOUGH there is no end to the writing of new books, yet there would seem, at all times, to be room enough for a new edition of the Letters of Cicero. Why these letters preserve their interest, the world over, is not hard to understand; they deal largely with the most interesting period of Roman history, and then they are by common approval the best written letters in the world. Those of them that were written to Atticus possess a peculiar attraction for us, because they enable us to become acquainted with a Roman banker who was not only successful in his business, but who accomplished a scheme of life which he had laid out for himself beforehand, and who succeeded in obtaining a name in literature far beyond his expectations. Atticus, like most men in his line of business, was a man of peaceful instincts, but unfortunately for his mental composure he lived at a time which was very far from peaceful. In his youth the republic had already given signs of the break-up which was ultimately to overtake it. Sulla, who was then in power, favored the aristocrats at the expense of the multitude, and these short-sighted patricians took advantage of their position to grab and confiscate everything in sight. The breach between the aristocracy and the populace was gradually widening, and these latter were looking about for a leader whereby they could resist the encroachments of covetous Senators. Their desire for leadership explains the popularity of Catiline, who was little else than a fraud, and also of Clodius after him, who was no better.

At length when Julius Cæsar, who was probably the instigator of the efforts both of Catiline and of Clodius, saw what he could do by means of popular support, the term of the Republic was up, and that noble regime ended in a total collapse. For a part of the time, during which the agony of

the Republic went on, Atticus was away from Rome, and hence it is that we have so many interesting details concerning these events, because, although he lived in Athens, yet the Eternal City seemed to be in his mind all the time, and he was only too eager to get letters from Cicero, who was at the centre of affairs in Rome. It is unfortunate for us that the replies of Atticus to these letters have not been preserved. Still, from those of Cicero we are enabled pretty well to make out what he said and thought.

When Atticus was in his twenty-second year, an event occurred which apparently aroused him at once to formulate in his mind the theory of life, by which he henceforth regulated his existence. His brother-in-law had been put to death by Sulla, and although he was himself on friendly terms with the great Dictator, yet he determined that it would be safer for him to renounce all idea of mingling in politics—a decision to which he strictly adhered.

In order to carry out this idea the more effectually, he resolved to quit Rome, and to take up his residence in Athens, with all his belongings, estimated at $80,000. During his stay in Athens, which was about twenty years, he occupied himself in the cultivation of Greek art and letters, combining therewith a ranching business in Epirus, where he had acquired an extensive tract of land. In order that his farming operations might be made fairly profitable, he joined thereto a trade in slaves, whom he fattened and trained as gladiators, possibly to be sold for the purposes of the great shows at Rome. An operation of this kind seems to us to be somewhat reprehensible for a banker, but it only goes to show that when the times change we change in them, and it also illustrates how far the public mind will drift away from sane notions under the influence of a fad. A consular returning to Rome from his province at the expiration of his term of office, had but one thought in his mind. This was to secure a triumphal entry into the city. He was generally pretty well supplied with ill-gotten gains wherewithal to buy wild animals and gladiators for the exhibition of games expected of every returning conqueror. It may readily be believed that the Roman public did not closely scrutinize his claim to be considered a real conqueror; it sufficed

for them that he should make a good display, and, very often, the request for a triumph was based on little else than a small bush fight with a few marauding barbarians. At any rate, there was a lively demand in these times for gladiators, and as Atticus had a good eye to the main chance, he no doubt saw better opportunities to make money in an article of luxury like this, than in the farming of corn, wine and oil. It must be explained, however, in justice to him, that there was a trade in gladiators, whereby they were let out to the smaller towns for mimic fighting, in which there was no killing done; and thus it may appear that he was a pagan showman, somewhat after the manner of Barnum.

Atticus returned permanently to Rome in 687, or seventeen years before the great struggle between Pompey and Cæsar. He came back in order to take possession of an estate bequeathed to him by his uncle Cæcilius, which consisted of real estate in the city, and of cash, valued altogether at $400,000. This large fortune, added to what he had before, equipped him with a capital of half a million dollars, wherewith he henceforth carried on the business of banking in Rome.

Banking in Rome in latter republican days, was conducted largely upon accommodation paper. There was a borrowing public sufficiently large to keep up a steady supply of notes, consisting, as it did, of three orders of patricians. There was first the nobleman of large possessions in lands and slaves, whose needs for ready cash were always considerable, on account of the enormous establishment he had to maintain. Then, there was the politician of senatorial rank, who was constantly in want of money for purposes of political corruption, and for the means whereby his popularity should be kept up with the proletariat by pandering to their desire for amusement. A loan to a borrower of this kind could scarcely be rated A 1, yet no doubt it was always transacted in view of his immediate chances of getting a province to govern, when he was sure to make a haul. In addition to these two classes, there was a third class of borrowing aristocrats, namely, the new men who had received the benefits of the land which had been confiscated by Sulla, and who being in possession of a large landed property, required cash for the purposes of vulgar display.

The legal rate of interest in those days, was 12% per annum, but the borrowing rate varied from 1 to 4% per month. By a custom of the trade, the interest on a loan was payable in cash at the Ides, or on the 15th of each month ; and although the loan may have been made for a longer term than thirty days, it would seem to have been exigible upon default in the payment of interest. At any rate, the lender appears to have retained the right to change the rate of interest every thirty days. Cæcilius, who had also been a banker by profession, did his lending at an invariable rate of 1% per month. He is reported by Cornelius Nepos as having been a man of difficult nature—"difficilima natura"—meaning thereby that he was as hard as nails. It was therefore not from any tender regard for his clients that he was moderate in his rate, but rather that he might get good paper. Atticus apparently did not follow in his conservative footsteps; he took greater risks, but is reported to have been very vigilant in looking after his customers, and to have been rather inflexible on the due date of the note. It is quite evident that he was keenly alive to the monthly changes in the rate of interest, because Cicero says, in writing to him on one occasion: "I will give you a point ; interest went up at the Ides," and then the writer chuckles at the idea that this bit of information would give infinite pleasure to his financial correspondent. As bearing upon the risks which he took, in view of larger profits, there is an allusion made by Cicero to a loan which Atticus made to Julius Cæsar, who was at that time carrying on the conquest of Gaul. The financial position of Cæsar then, may be compared to that of a second class American railway corporation. He constantly had a large floating debt, subject to a good deal of renewal. The advance which Atticus had with him amounted to $150,000, but at the same time Cæsar owed considerable amounts to Pompey, which apparently were somewhat in arrears. Atticus, by his superior vigilance, sailed in and got his money, to the detriment of Pompey, who had to wait. The chagrin and disappointment of the great Pompey was in consequence a matter of secret merriment between the correspondents.

There was another mode of investment, which consisted of advances to the Provincial municipalities, which was

considered less reputable in its character, and which, on that account, was avoided by staid and respectable bankers. Nevertheless some very prominent persons did indulge in that kind of business on account of its tempting returns; but inasmuch as there was a taint attaching to it, they generally carried the transaction in the name of an agent, who went out to the scene of operations in some political capacity connected with the government of the Province, or probably as one of the farmers of the revenue.

The official position of the agent facilitated him in the collection of the interest, and where the pro-consul was friendly, it insured the services of the military to browbeat the borrower, when necessary.

It is reported that Pompey sometimes dabbled in these discreditable transactions, but our surprise is greatest when we find that Brutus also engaged in them. The popular conception of Brutus is that of a man with a pale face and a dreamy eye, who spent much of his time in the philosophical contemplation of the sublimer virtues, and whose private conduct was regulated strictly in accordance with the dictates of a pure and lofty spirit. Junius Brutus, who killed Cæsar, has never been considered as an ordinary assassin: he is supposed to be the high-minded lover of his country, who could not endure to have his fellow-citizens enslaved by a would-be king, and yet we find this man of exalted political principles stooping to a transaction in money, which we should now-a-days characterize as a boodling operation.

About 702 certain Salamanians from the Island of Cyprus, had come to Rome with the object of borrowing money for their municipality. They found that there was a defect in their borrowing powers which hindered them from getting the money, or which at any rate obliged them to pay a higher rate of interest for it. In their quandary, they appealed to Brutus to aid them, and when he had found out how much they were willing to pay, he undertook to pass a bill through the Senate which should make their loan legal, and then he took it on his own account through an agent named Scaptius, charging the modest rate of four per cent. per month for the money. The loan was a weak one, and caused him trouble from the start. In order

to extricate himself from this difficulty, he appealed to Atticus for his influence with Cicero who had just gone out to the government of Cilicia. Atticus prudently withheld from Cicero any knowledge as to the connection of Brutus with the loan. He recommended Scaptius to the kind offices of the pro-consul, and Cicero, without knowing any more about the transaction, undertook to assist him, but he soon found out very much to his disgust, that Scaptius was one of those individuals who at the present day are said to "want the earth." He would not forego a dollar in his exorbitant interest, and besides that he wanted a situation whereby he should be at liberty to torment the weary and insolvent Salamanians. Cicero, who had already issued a proclamation reducing the rate of interest upon arrears of debt within his jurisdiction to 12% per annum, could not abide the crushing demands of this man. He therefore advised the debtors to deposit the money in a temple, which was the legal way at that time of stopping the accumulation of interest, and having done this he wrote Atticus that he washed his hands of this discreditable matter. Great was his surprise to learn thereafter, that Junius Brutus was the principal in this transaction, and greatly was he perturbed in spirit to think that his quondam philosophical friend should descend to such heartless extortion.

The space of time extending from the return of Atticus (687) to the commencement of the civil war between Cæsar and Pompey (703), was a period of rather violent commotion for a man of his quiet tastes, yet it would seem scarcely possible that he could have foreseen the outcome of their wrangling, or predicted anything half so disastrous as the dramatic encounter which occurred at Pharsalia. The situation resembled in more than one important respect the present Spanish war. Cæsar, the stronger man of the two, seemed to be sincerely desirous of evading the resort to arms, and Pompey, the weaker man, kept on shuffling in a bombastic manner without preparing for the collision, which, when it did occur, exhibited to the surprise of everybody that he was thoroughly incompetent.

This period, although it was filled up with political agitation, was for those like Atticus who survived it, a time to be remembered for its stimulating effects upon the imagination.

The conquest of Gaul, as it advanced step by step, opened out a commercial outlook such as Rome had never seen before. It was a Klondike opening out to view, but it was even better than that, because it was at once productive to the mother country, and its first year of peaceful administration yielded $20,000,000 to the Roman treasury.

The mental awakening also, which went along with these agitations, and which was in a measure produced by them, resulted in permanent works of literature, which have been the admiration of the world ever since. Cæsar, who united in his personality the highest qualities of a statesman and a general, comes down to us in literature as one of the lords of language. With all deductions made from the orations of Catiline, for the somewhat nauseating reiteration by Cicero of his own praises, yet it is manifest to anyone that these discourses, when adequately translated, are marvels in their clearness and splendour of expression. Catullus the lyric poet, is to this day the consummate worker in words, and is spoken of by Tennyson with emulous admiration. And finally, in the department of higher thought, Lucretius did in a striking manner anticipate the theory of evolution, which in this generation has been elaborated by Herbert Spencer.

The best wits of the day were republican in sentiment, and so was Atticus, although he continued to make a great show of neutrality in politics. He gave literary entertainments in the modest mansion on the Quirinal hill, inherited from his uncle, considered by those who partook of them as being meagre in the fare, for it is said by his biographer Nepos that they were remarkable more for their attic salt than for their sumptuousness.

His friends did not fail to upbraid him for his settled determination not to interfere in affairs of state, and it required some wriggling on his part to defend himself, when it was apparent to them how he inclined. He used to say with a manifest allusion to the exceeding corruption of the times, that he was not rich enough to be a politician, and again, he professed to be a follower of the precepts of Epicurus, according to which contentiousness and war were things abhorrent to the soul. During

the culminating events of the civil war these reasons became too transparent for further use, and finally he had to claim exemption from military duty on the ground that he was past the age. It must be admitted that his defence was not heroic, especially when judged by the standard of his own day. But there is a touch of modernity about it which arrests our attention, for Lucretius, his contemporary, foretold that the war spirit would cease in time, and be succeeded by a commercial era, surpassing it in glory.

It may be supposed from the correspondence that he had a better reason for keeping aloof from the republican, which he did not reveal, and this was, that both he and Cicero had discovered how hollow the pretensions of Pompey were to the title of " Magnus," popularly accorded to him.

We see from the replies of Cicero that Atticus had been quietly in favour of a more conciliatory behaviour to Cæsar. This was advice that Cicero would not willingly receive. He pretended to be under everlasting obligation to Pompey for services rendered in connection with his return from exile, but apart from that, there was his political record in which he had repeatedly extolled Pompey to the skies. It is reasonable to believe, however, that literary jealousy of Cæsar blinded him. Be the reason what it may, they kept twisting their hands in helpless indecision until Pompey was utterly routed. Then, each one for himself, crept into favour with the conqueror as best he could.

It is probable that Atticus conformed at once without a word ; but concerning the reconciliation of Cicero, this was a matter for more diplomatic treatment. Cæsar, who wanted an ingenious talker to defend his own dubious deeds, invited him over. Those who wish to know how cleverly one man may compliment another whom, in his inmost soul, he hates like poison, should read the " Pro Marcello " of Cicero.

Sudden transitions in politics are embarrassing, especially when one has as many things to unsay as Cicero had ; but Atticus, who was endowed with the golden gift of silence, lightly treated somersaults of this kind. He used to say, rather fantastically, that one must always bend with the times. He performed two similar evolutions subsequently. He submitted

to Marc Antony, whom he conciliated by making advances, without interest, to his wife Fulvia. And finally he accepted the empire, gradually winning his way into the graces of Augustus.

We must construe the vacillation of Atticus in political matters with a certain amount of charity, because although the victory of Cæsar was ultimately advantageous to the nation, still the primary motive to action in both Cæsar and Pompey alike, was a desire for personal aggrandisement.

Putting this perplexing question aside, we see more clearly that as a man, Atticus had exemplary virtues, which were then somewhat rare. His biographer says that he was not a liar, and that he could not endure liars ; and inasmuch as he was not fond of law, it may be presumed that when a customer deceived him he did not capias him, but quietly dropped the account. Unlike many of his neighbours, he was not the owner of a fine mansion at every fashionable resort. The unpretending dwelling of his uncle was good enough for him, and he loved to preserve it in its old-fashioned state. Greatly did he differ in that respect from his friend Cicero, whose villas were manifold.

He had the faculty of making friends and of keeping them. It is therefore with a great sense of propriety that Cicero dedicated to him his celebrated essay "De Amicitia." The author had reason to know from long experience how cheerfully he responded in all friendly offices, and no one was more exacting in that respect than Cicero. He was always up to the neck in private and domestic trouble. His son was a drunkard, his brother was an impossible person who was always in hot water, and his wife was violent and unsympathetic, and not altogether to be trusted with money. Besides that his financial affairs were continually in confusion, the sorting of which fell to Atticus.

By an untimely stroke of fate Cicero's daughter Tullia died, and this was for him a sorrow's crown of sorrow, because she was an accomplished woman, whose talents he had cultivated in studies akin to his own. It will be seen therefore that he, who was supersensitive under adverse fortune, was in especial need of the sustaining sympathy of a close friend, and it was in Atticus only that he found a friend altogether after his own

heart. The passages in his letters relating to the death of Tullia mark the characteristics of both men. Cicero had met with an inconsolable loss, the magnitude of which he proposed to make visible, by building a temple to her memory which should be costly. It was to have columns in front of it, which it appears were taxed at that time as being articles of great luxury. Then it was to be placed at some spot well in view of the citizens, and on that account hard to acquire. The financial arrangements therefor were left to Atticus, and he was expected to raise the necessary money out of a debt due to Cicero, which had quite evidently gone into the doubtful column.

Atticus, who appreciated the monetary difficulty, and who besides, was not a man who loved vain display, suggested Tusculum, as a site more suited to the circumstances of the case, because Cicero's Tusculanum was his own place of predilection, and the spot to which he generally retired to refresh his spirit by calm study. But Cicero, whose genuine feeling of grief was tangled up in a rank growth of false sentiment, due to the desire for self-glorification, hankered for a site in Scapula's garden, close to the Campus Martius, a thoroughfare of the city, where at all times the required crowd was assembled to witness to the gravity of his loss.

This project, which he so earnestly desired, suddenly dropped out of view, owing to the thickening of political troubles consequent upon the death of Cæsar. In the confusion that ensued Antony masqueraded as the man designated by Cæsar to take his place at the head of affairs, and Cicero burned with shame and indignation at the excesses which he was committing. The temple and the pillars and all had slipped out of his mind, giving place for the materials of that great commination whereby he was to blast the name of Antony to all future ages. It is herein that his sense of loss takes a higher range, and instead of being the expression of regret for the death of one person, it is a lamentation for the Republic, which was just then dead.

If Tullia in her second state sublime preserved that hoarding sense of earthly things in which Cicero believed as well as Tennyson, she must have looked down upon him with smiling approval.

Cicero was killed by Marc Antony's men in 708, and Atticus survived him by twelve years, and having in that interval found favor in the eyes of Augustus, he improved his opportunity to make a family connection near the Throne. Attica, his daughter, concerning whom Cicero speaks so pleasantly, was married to Aggrippa, the favorite of the emperor, and it was through that connection that his granddaughter became the wife of Tiberius, the step-son of Augustus and heir to the empire.

What he thus did with the deliberate intention of adding lustre to his name was, humanly considered, a well-conceived plan, whereby he should afterwards be remembered for a measureable time at least, but what he less consciously effected as the correspondent, companion, and literary editor of Cicero's works, is his memorial, outlasting that other in an incalculable degree.

Atticus died in the placid surroundings of his own home, and was attended to the grave, as Nepos says, by all the good people—(Comitantibus omnibus bonis).

He was buried alongside the Appian Road at the fifth milestone.

THOMAS MCDOUGALL

Quebec Bank, Montreal, Aug., 1898

POSTAL NOTES AND MONEY ORDERS

THE announcement has recently been made by the Post Office Department of Canada, of the issue of "Postal Notes," and it may be of some interest to examine the differences between these and the ordinary money orders of the department and other money orders, such as have been issued for a short time by the express companies in Canada and are just now being issued by the chartered banks.

The money order business of the Government had grown by 1897 to the following figures for the year ended June 30th, 1897.

Number of money order offices in Canada at that date, 1,349 (on 1st July, 1897, 378 new money order offices were established, making a total of 1,725 for the latter part of that year).

Number of Money Orders issued for year	1,162,209
Total value of " " " " "	$12,987,230

These figures showed an *increase in number* over each of the two preceding years (viz., 31.057 over 1895-96, and 70.157 over 1894-95), with a *decrease in amount* (viz., $94,629.74 less than 1895-96 and $258,759.31 less than 1894-95). Indeed the continued fall in the average amount of the money order is marked.

	Average Value of Orders issued	Average Commission received
1868.....	$37.18	33.21 cents
1878.....	26.10	21.10 "
1888.....	17.30	12.85 "
1890.....	15.37	12.31 "
1895.....	12.07	9 80 "
1896.....	11.56	9.42 "
1897.....	11.17	9.0634"

One reason for this, no doubt, is the development of banking facilities, the much larger proportionate number of people

who keep banking accounts, and the consequent use for remittances of bank cheques. We know it has grown to be a custom with retailers to send cheques to wholesale houses, leaving the latter to pay the commission thereon—a species of "sponging" to which competition has led the wholesale houses to submit. The use therefore of bank cheques, bank drafts (which have been cheapened in cost), and of late years express company money orders, has no doubt lessened the demand for the larger post office money orders on which the commission was expensive; while on the other hand there has been no doubt a greater diffusion of trade, a very great development of small trade transactions with the larger cities and between different communities (such as, for example, the mail orders of large departmental stores) calling for remittances of quite small amounts.

The post office money orders have thus been increasingly used for the smaller amounts only—the part of the business which by itself is quite unprofitable, as it has been estimated in the department that the average cost to the government of a money order is 9.610 cents. (Report of the Deputy Postmaster General, 1897). The total cost of the money order system during the year was estimated at $111,694.95, while the gross commission received was $105,332.57, and the net accruing to the department, $74,675.62.

It was felt advisable, therefore, to make some revision of the charges for money orders, and a new scale was instituted April 1st, 1897. It will be convenient for comparison hereafter to give here along with the old and new rates on Post Office money orders the charges on Express Company and Bank money orders, and also the rates on the new postal notes:

	Old Rate Government Money Orders	New Rate Government Money Orders	Express Money Orders	Bank Money Orders
	Cents	Cents	Cents	Cents
For Orders up to $2.50 ..	2	3		
" " 3.00 ..	..	..	3	
Over $2.50 " 4.00 ..	2	4	..	8
" 3.00 " 5.00 ..	..	..	4	
" 4.00 " 5.00 ..	5	4	..	
" 5.00 " 10.00 ..	5	6	6	
" 10.00 " 20.00 ..	10	10	10	10
" 20.00 " 30.00 ..	20	12	12	12
" 30.00 " 40.00 ..	20	15	15	14
" 40.00 " 50.00 ..	30	20	18	
" 50.00 " 60.00 ..	30	24	20	..
" 60.00 " 70.00 ..	40	28	..	..
" 60.00 " 75.00 ..	..	..	25	..
" 70.00 " 80.00 ..	40	32	..	..
" 75.00 " 100.00 ..	..	..	30	..
" 80.00 " 90.00 ..	50	36	..	..
" 90.00 " 100 00 ..	50	40	..	..

For amounts exceeding $50 banks usually issue ordinary drafts at low rates.

For a Postal Note for		20 cents.....	1c.
do	do	25 cents.....	1c.
do	do	30 cents.....	1c.
do	do	40 cents.....	1c.
do	do	50 cents.....	1c.
do	do	60 cents.....	2c.
do	do	70 cents.....	2c.
do	do	80 cents.....	2c.
do	do	90 cents.....	2c.
do	do	$1.00.....	2c.
do	do	1.50.....	2c.
do	do	2.00.....	2c.
do	do	2.50.....	2c.
do	do	3.00.....	3c.
do	do	4.00.....	3c.
do	do	5.00.....	3c.

It was felt, however, that to make an effective saving on the money order business the smaller amounts must take a simpler and more attractive form, one costing the department less proportionately in book keeping, forms, etc., and the "postal notes," which under the name of postal orders have been in use in England, along with the money order system, since January 1, 1881, have been introduced.

NOTE—In Great Britain the average cost to the Department of a Money Order has been estimated at about 3d., while in the United States estimates have ranged between 8 and 10 cents.

The name postal note some may think not entirely fortunate, as it suggests something to pass from hand to hand, and as such might be suspected of an intention to become a sort of currency, but that is not contemplated, as will be explained later. The designation "note" was chosen in the department to prevent any confusion between this instrument and post office money orders. In Great Britain the only distinction in name is that the older and larger is called a "money order," and the smaller and less formal instrument a "postal order." Both being issued by the post office, the distinction does not seem great enough. The latter might have been called "postal cheques," but the designation "note" has been in use elsewhere (in New Zealand since 1886), and their being labelled "not negotiable" was against their being called "cheques."

There was another and very important reason for giving to the public a cheap and quickly obtainable medium for transmission of very small sums—namely, to prevent the use of postage stamps for remittances and payments. The use of postage stamps for these purposes had grown to large dimensions, and the government was subject to a large loss thereby, for, except in city offices, the post masters are paid (on a sliding scale) according to the "revenue," so called, of the offices —which amounts broadly speaking to a very large percentage on the face value of the stamps sold through them. It is easy to understand how this system could be abused, and that often the amount of stamps apparently used at an office bore no relation to the amount of postal business actually done. It is curious, indeed, to hear the devices adopted by some post masters for increasing the "revenue" (?) of their offices—how some have paid their grocery bills in stamps, and how one enterprising official in a country town, it was discovered, was paying his daughter's fees at a large seminary in this way, which made the net payment by him very satisfactory to himself in comparison to the usual fees. It was estimated two years ago by the department, that as much as $100,000 per annum face value, in postage stamps, was sent into Toronto in the shape of remittances from the country. As the government redeemed unused stamps at a deduction of only 5%, it can be seen to what a heavy loss the department was subject by the misuse of

postage stamps as a medium for payment. To do away, therefore, with what was in a large measure a fraudulent use of stamps these have now been made irredeemable from and after October 1, 1898, and that there might be as little excuse as possible for their use in even very small sums, the "postal note," obtainable with much more celerity and ease than a money order, and much cheaper for sums under $5, has been brought into use.

The form of Government money orders, and most of the regulations regarding them, are of course familiar to most of us, but it may be worth while setting out some particulars regarding this new issue by the Government of documents for the transmission of money.

The postal note is printed on thin, tough paper, much in the shape and size of a bank note (slightly larger), and is thus convenient for folding.

There are to be sixteen denominations from 20c. up to $5, and each denomination is watermarked in letters and figures with its relative amount. Of these only six have at the time of writing (Sept. 28th, 1898) been brought into use, viz., 25c., 50c., 70c., $1.00, $2.50 and $5.00. Three more, 40c., $1.50, $2.00, will shortly be ready for issue, later on 30c., 60c., 80c., 90c., $3.00 and $4.00 will be included, and finally that for 20c. *Odd cents* up to nine in a remittance may be made by affixing to the face of a note postage stamps to the required amount which must *not* be cancelled. The notes require only the signature of the official handling them, and one impression of the office stamp, and are issued with name of payee and place of payment blank, so they can be purchased with as much ease nearly as postage stamps. The purchaser is warned that before parting with the note he "must" fill in name of payee and "may" fill in the name of the money order office at which payment is desired; but as no register is kept of the purchasers, it is plain that although they are marked "not negotiable" these notes can pass from hand to hand for a time if so desired, and the holder who finally decides to cash one has only to fill in his own name as payee, name of office at which he presents it and sign the receipt at foot. However as there is no object in paying a premium on what is to be used as ordinary money, and there is

a penalty for non-presentation after three months from the end of the month of issue, there is evidently no intention nor any likelihood that these should in any degree be supplementary to the present currency of the country or displace any portion of it. These are to be regarded therefore as only another medium provided for the *transmission* of money in small sums.

These notes are, as I have said, by their terms made "not negotiable," as the department does not wish to have more than one person to deal with, but the chartered banks are evidently to be utilized, not only in order that the document may be made safer to the purchaser and payee, but that objection as to the payee having to make a visit to the post office specially is to obviated—*by the Banks!*

So much handling of these notes by Banks is evidently expected that it may be worth while quoting in full the regulations sent to the postmasters in this relation:

(From the Book of Instructions to Postmasters)

PAYMENT OF POSTAL NOTES PRESENTED THROUGH A BANK

25. 1st. When a postal note bears across its face an addition of the word "bank" between two parallel transverse lines, either with or without the words "not negotiable," or simply two parallel transverse lines either with or without the words "not negotiable," that addition constitutes a "crossing," and the note is crossed *generally*.

2nd. When a postal note bears across its face an addition of the name of the bank between the lines, either with or without the words "not negotiable," that addition constitutes a "crossing," and the postal note is crossed *specially* to that bank.

26. The following rules must be observed with regard to "crossed" postal notes:—1st. A postal note crossed *generally* must not be paid except to a bank. 2nd. A postal note crossed *specially* must not be paid except to the bank to which it is crossed. 3rd. No postal note may be paid even though presented by a bank unless the name of the payee be inserted in the body of the note.

27. If a postal note which is crossed, whether generally or specially, is presented for payment by or through a bank, by some person well known to be in the employment of the bank, if the name of such bank is written or stamped on the face of the note, *that name may be accepted as a sufficient receipt* for the amount of the note, and the note may be paid without any other

receipt; provided, that when a postal note is crossed specially to a second bank as agent for collection, the written or stamped name of such second bank upon the face of the note may be accepted under this regulation.

28. A postal note which is crossed generally or specially, if presented for payment by or through a bank, may be paid at any Money Order Office in the Dominion of Canada, notwithstanding that the blank has been filled in with the name of some particular money order office, or left unfilled in that particular.

29. When postal notes are presented for payment by a bank, the postmaster must satisfy himself that the notes are genuine, that they are impressed on the face with the name of the bank, that in the event of three or more months having elapsed since the last day of the month in which any one of them was issued, the requirements* of Rule 21, sub-section 4, have been complied with.

It will be noticed that the Department is content with the written or stamped receipt of a bank with or without that of the payee named in the body of the note. It is stipulated by the Department that "after this note has once been paid, to whomsoever it is paid, the Postmaster-General will not be liable for any further claim."

It seems as if there were some awkward possibilities for the banks in connection with these documents. We have here an intimation to the public that the banks will handle these notes, and any holder of one can by "crossing" it force his own bank or the bank of any subsequent holder, either to cash it, or to take the invidious position of refusing to deal with a Government voucher. The non-negotiability of the instrument will not be understood by the public, or if understood will be forgotten or ignored, and in any case where the real owner of the note has not received value he might put the bank to some trouble,—not the Department, who have cut themselves free from any claim.

However, objections of this kind may be more technical than practical. As the maximum of an item of this kind is only $5, the amount of actual loss could only be small, and while there may be some little trouble to the banks as regards these items, no doubt they will willingly assist in what is a

*i.e. the penalty paid by stamps on back of note.

commendable effort of the department to adjust the provision of a public facility (i.e., the transmission of very small sums) without loss to the country. It is confidently estimated that within three years the use of these cheaper instruments will be such as to save the government from any actual loss on the business, while the contingent gain through making stamps irredeemable, as has been indicated, will be immediate.

In addition to the trouble of sending for repayment to the post office all postal notes cashed, the date of each note will require careful scrutiny, as a penalty is exacted for non-presentation for payment within three calendar months after the last day of the month of issue. The penalty is the payment again of the amount of original commission for every such period of detention, arranged by affixing a postge stamp or stamps to the back of the postal note, which stamps are to be cancelled by the postmaster at time of payment.

Information for the public, by way of either suggestion or regulation, are printed on the face of each postal note, but, of course, these will not be really studied by one out of fifty people who will handle the documents.

The issue of money orders by express companies was begun in Canada in 1892; the Canadian Express Company began the practice then, and were followed by the Dominion Express Company about 1896. They have both made comprehensive arrangements for the payment of these orders in the United States and certain foreign countries, and this competition the banks must recognize. The experience of the express companies varies, so far as the writer has been able to learn. One company states that its average money order is not above $10, while another from figures exhibited, seems to average over $20. The fact that these orders are payable in the United States particularly, and also in certain foreign countries, and that they are obtainable at hours when banks are closed, gives them some advantage. One express agent has stated that the most important demand from him for these orders is late in the afternoon or in the evening. Another agent has stated that a large part of his business in this line is a demand from mercantile houses in settlement of small amounts, as for example,

a requisition will come in for a number of these orders, ranging in amount up to $10.00. One express office in Ottawa sells an average of between $400 and $500 per day of these orders.

Consideration of all the circumstances, however, and examination of the rates will reassure bankers that there is a place for the new bank money orders, and with proper introduction they will no doubt be largely used, with advantage to the public. The chartered banks have apparently been well advised in placing the minimum commission on any order at 8c. (see rates previously quoted). They have however distinctly the advantage in rate on certain sums. They are at present only domestic in their range, but for ordinary small business transactions within the boundaries of our own country they should commend themselves to people at all events who have any relations with or knowledge of banks, while for the transmission of very small sums it is open to the banks to suggest and assist in the use of the new postal notes.

As an addendum to these remarks it may be useful to give the figures of the Home Government money orders and postal orders. If space permitted it would be interesting to any student of the subject to see the analytical figures in the Imperial Postmaster General's Report to 31st March, 1898, but for the present we content ourselves with the figures of the grand totals which are as follows:

Number of M.O.'s issued	for year ending March 31st, 1898,	11,128,258
Amount " " "	" " "	£32,114,579
Number of postal orders	" " "	71,380,975
Amount " " "	" " "	£26,014,582

On the latter, Rates of Commission (or as it is called in Britain) "Poundage" are ½d. on 1s. and 1s. 6d., 1d. on 2s. to 10s. inclusive, 1½d. on the larger postal orders up to 20s., which is the limit of amount. The issue of postal orders began, as has been said, Jan. 1st, 1881. Postal orders for 12s. 6d. and 17s. 6d. were abolished 31st May, 1884. Postal orders for 2s., 3s., 3s. 6d., 4s., 4s. 6d., and 10s. 6d. were established 1st June, 1884.

In the United States they have tried from time to time varying forms of the character of postal notes, but these are

treated in their reports as an integral part of the money order system and their figures for the year ending June 30th, 1897, are :—

Total number of orders issued.....	26,113,233
" amount " " "	$188,071,056

It is understood some confusion in accounts has resulted from their issues of postal orders or notes.

The foregoing statement has been prepared very hurriedly for the present issue of the JOURNAL, but it may give some information as regards the new governmental issue, as well as suggest efforts for the success of the chartered banks' issue of money orders.

Acknowledgments are made to Mr. G. F. Everett, superintendent money order branch, P. O. Department, a studious observer of the drift of business in his department, for assistance in the preparation of this paper.

Ottawa, Sept. 28, 1898 ROBERT GILL

BANKING AS A PROFESSION*

SOME people think a bank is the place in which to put a boy who is of no use for anything else. And it must be admitted that very moderate capacity, accompanied by good character, is sufficient to insure his job to many a man who spends his whole life in a bank. He learns to enter the cheques in one column of a ledger, the deposits in another, and to strike a balance: and he may jog along on that very comfortably, remaining as innocent of all knowledge concerning the business of banking as the woman who scrubs the bank floor. But while this is possible it is by no means common. The bookkeepers in banks are generally men of more than average intelligence, and it is the greatest drawback to banking as a profession that the majority of those who enter its ranks are of necessity condemned to lifelong drudgery as bank employees, and never become bankers. Unfortunately this seems to be particularly characteristic of banking in the United States. There are several reasons for it. Our system does not lend itself to the gradual evolution of a banker so well as the branch system. In Canada, for example, a young man soon gets to be a teller at a small agency. If he is capable he will begin to show it in the telling box, not so much by the rapidity and accuracy of his note counting as by the knowledge of his customer's responsibility which he will soon acquire and display. From teller to the accountantship of a branch is an easy step in advancement. In this position he is in charge of the office work, he has joint custody with the manager of all cash and securities, he is authorized to sign for the bank, all minor questions that arise are referred to him for decision, and thus he begins to use his own judgment, to be clothed with some authority and to assume some responsibility. He ceases to be an

*Read before the Ninth Annual Convention of the Minnesota Bankers' Association, held at St. Paul, July 28-29, 1898.

irresponsible piece of the bank's machinery, and becomes part of the guiding force of the machine. While not responsible for the loans, he is free to consult with the manager about them and to express his opinion on them, especially on those of which he does not himself approve. If he shows good judgment, independence of thought and self-reliance, he is marked for an agency. When that comes, his evolution from bank clerk to banker may be considered complete. He is now in charge of a banking business, he makes or refuses loans, he loses money, perhaps, and gains experience, and according as he proves himself capable, the business under his care increases or is driven away. It is not uncommon in Canada for a man to attain this position as young as, say, twenty-five. But even then the first is usually a small agency where the amounts loaned are light, and the important positions come later when he has shown capacity in the lesser ones. All through these steps of promotion you will notice his employer has been the same, and the ability displayed in minor positions has been noted and rewarded by an employer having many higher positions in his gift. Unfortunately our system puts only one, or at most a very few responsible, well-paid positions in the gift of an employer. Consequently promotion is very much slower, for the ability displayed in minor positions is known only within the institution. The gulf between bank clerk and banker is therefore, with us, much wider and harder to bridge than it is where the branch system of banking prevails.

Another thing which militates against the attractiveness of banking to ambitious young men in this country is the want of its general acknowledgment as a profession. We lead the world in railroading, in mechanical pursuits, in agricultural industry, in general business ability, but in financial skill we lag behind in the race for national supremacy. This is equally apparent in our unscientific currency system, which casts the blighting breath of suspected instability over our entire financial fabric, and in the undeveloped condition of the banking profession. So far as my observation goes, high class banking is practised among us only in spots. It is far from being general. One of the fundamental principles of good banking is that the bank should not furnish the capital for its customers to do business upon. The customer should possess his own capi-

tal, and require assistance from the bank only at certain seasons and for specific purposes. There ought to be a time in each year when the customer owes the bank nothing. Indeed ideal banking does not include single name paper at all, but is confined to the discounting of customers' bills receivable, representing an actual purchase of goods by the maker from the endorser, and to loans upon convertible collateral security. We have gone so far along other lines that this no doubt seems more ideal than practical, but I am at least sure that the best criterion of a bank's loans is the proportion of them that can be collected at maturity, if desired or required. One has only to apply such principles to the ordinary banking practised among us to recognize how far we fall short. The number of special partnerships between banks and their customers is legion. Or, to go into details for a moment, I do not think a bank can be thoroughly well managed, at least in cities, without something in the nature of a credit bureau being established. Data covering the average balances of customers' accounts, full details of their assets and liabilities, commercial agency and other reports, the growth or decrease in their business, etc., should all be available at a moment's notice. Many of our largest banks have no system of tabulating such information, but I will venture the assertion that there is not one of them which could not have avoided losses, both past and future, by its establishment. No details are so insignificant in banking that they may be considered unimportant. There are at present three law suits, involving large amounts, before the Chicago courts, belonging to three different banks, all of which turn chiefly upon the date on which certain collaterals were taken. For the credit of the profession in Chicago, I am sorry to have to admit that not one of the three banks can prove this all-important point by its records. There are several reasons for all this, but the chief one is the total lack of uniformity in the training of men for the business. It is only within the past few years that boards of directors and the general public have begun to think that training counts in banking. Until recently bank cashiers and presidents were just as likely to be selected from any other line of business as from the ranks of bank men.

It is still quite common to think that a man can run even a

large bank as a kind of side-show to his other important business affairs. This idea is the costliest one that ever entered into shareholders' heads, but in spite of the long list of failures caused by the mixing up of the bank's affairs with its president's, the idea dies slowly. It is still the exception rather than the rule to find a bank president who could fill any other position in the bank as well as the man in it. Many of them are absolutely ignorant of bookkeeping, have no knowledge of accounts, and even domestic exchange transactions, to say nothing of foreign, are a kind of continual mental puzzle, which to-day they think they grasp, and to-morrow cannot recall.

I am referring now to bank presidents who are the active managers of their respective banks, and whose salaries as such are by far the largest in the bank. There is, however, a common arrangement by which the president holds his position by virtue of his standing in the community, or his large ownership in the bank, takes only a nominal salary, gives his counsel and advice, but does not pretend to be a banker nor the active manager of the business. This arrangement is often a wise and successful one. But where it exists there must still be an active manager, in the person of vice-president or cashier, and he at least ought to be a thoroughly trained banker. The predominance of men not so trained among the occupants of such positions is in my opinion a great drawback to our profession. It tends to keep our most capable young men from entering its ranks, and for the most part only those are attracted who have no thoughts of a career, but are well pleased to go to "work in a bank." In countries where the profession, as such, is more fully recognized, young men enter a bank as a career, looking forward to the time when they shall sit in the manager's chair. This is a fine thing for the profession, even although, as we know, the majority can never reach their goal.

But, it may be asked, will training make a banker? No, it will not. If a man has not natural shrewdness, good judgment of human nature, practical common sense, level-headedness, courage, faith and self-reliance, which all go to form that sixth sense by which a banker almost intuitively accepts good loans and rejects doubtful or dangerous ones, he will never successfully fill a managerial position. Bankers, like poets, are born, not

made. But it is equally true that just as long years devoted to the study of versification, modulation, and the choice of words, added to the divine gift of nature, made Tennyson the finished English poet of our century, so training in accounts, exchange, collections, discounts and correspondence, added to natural capacity, will make a finished banker, capable, as opportunity may develop him, of rising to be the trusted handler of other people's millions. A born banker will begin learning his business from the day he enters a bank, and go on learning it daily until he dies. During the first few months, merely from going messages, he will learn what is legal due diligence in handling collections and cashing cheques, what is a correct endorsement on a negotiable instrument, the various reasons for which cheques are returned, who in the community pay their bills promptly, who do not, who draw cheques for which there are no funds, whose uncertified cheques on other banks may be safely accepted and the documents surrendered, and many other things, too numerous to mention, but all worth knowing to a banker. Indeed, in banking, as in games of skill, there are many things which if not learned young are never learned. As the young man progresses he will master the entire system of bookkeeping and correspondence. He will invent new and easier methods of his own, for no one with the right stuff in him is ever content to go on doing needless things simply because they have always been done before. It is astonishing how much needless making of entries may be avoided by study. Cheques in some banks are entered three times in different places before they are returned to the customer, in others about thirteen times. The record is as complete in one case as in the other, and I am not sure but that all entries more than two are superfluous. Our young man must above all things fight against the doing of things by rote. That is what kills the ambition and curtails the career of the majority. To help him to resist this insidious temptation he should study subjects connected with his profession, and thus keep his mind fresh and well stored. As suggestive of what studies will best help him, I would recommend those prescribed by the Institute of Bankers in Scotland for the examinations which must be passed by its members. For the degree of Associate Member the following are the sub-

jects: Geography, algebra, arithmetic, English composition, bookkeeping, bank books, exchange and clearing-house system and rules, note circulation, interest and charges, negotiation of bills and cheques, and history of banking. For the higher degree of Member the subjects are more formidable, viz.: Principles of political economy, stocks and stock exchange transactions, history and principles of banking and currency, principles of law of conveyancing, bankruptcy, mercantile law, law of bills of exchange, etc. In addition to these examinations lectures are attended and prizes given for essays. All the Scotch banks set the seal of their approval upon their clerks who pass the two examinations by paying them a bonus of five pounds and ten pounds, respectively. The benefits of this old institute are thus summed up by its ex-secretary: 'It helps to employ the leisure time of young bankers at the important period when their career in life is beginning; it indoctrinates them in the principles of their profession, and the rules which guide its practice; it confers on them diplomas the value of which is recognized by their chiefs: from being unknown it makes an employee known, and thus opens for him a pathway to distinction; it teaches habits of study and a love of knowledge, and it develops latent talents of which their owners might never have been conscious.' When I add that about two hundred and fifty young men annually present themselves for these examinations, does not this go a long way towards accounting for the position in the banking of the world held by the sons of that little land? It will be a great day for American banking when a similar institution is started in our own country.

The most striking characteristic of American banking at the present time is the universal tendency to smaller profits. Not only is money getting cheaper, but competition is so keen that the temptation to gain business by doing it for nothing is proving too strong for many bankers. This tendency will help to hasten the day of the trained professional banker in preference to the amateur who spent the best part of his life at something else. For while the natural shrewdness of the successful American business man is frequently enough to make the untrained banker the equal of the trained one so far as making safe loans goes, the former is always at a disadvantage when it

comes to profits to be made in domestic or foreign exchange, or the scientific study of individual accounts for the purpose of ascertaining their value or loss to the bank. As the rates of discount are reduced these other matters must receive more attention, or no money will be made in the business. The professional banker is seldom inclined to do business for the fun or glory of it. He studies his customers' accounts and treats them in matters of charges as they are fairly entitled to be treated. While some are entitled to free exchange, a general par list, as adopted by many banks, renders more than half of their accounts not only profitless but the producers of an actual loss. And besides, it is responsible for the abominable system of sending cheques for collection through circuitous routes. Sometimes they thus pass through six or eight banks, and I have known instances of cheques passing through Chicago twice on their checkered career towards final payment.

In London, where interest rates are so finely cut, the banks, as a rule, charge a commission on the entire annual turnover of an account. Wherever the business of banking has been brought to its highest state of perfection, there you will find the banks the stiffest in such matters. I remember spending a day in London interviewing various banks, trying to induce them to accept a good account on better terms than the bank made where the account was kept. In every case the answer was the same. I was courteously but firmly told that these terms were the lowest the business could be done on with a profit, and if I had no other reason for changing the account I had better leave it where it was.

I have in mind a large bank in a certain city, let us say on the Yukon River, which charges off a debit balance of about $15,000 per year at exchange account. Comparing this bank's business with two others in the same city whose profits in exchange are known to me, I figure the profit should be $35,000 per year. This makes a difference of $50,000 per annum, which would pay a 5 per cent. dividend on a capital of $1,000,000. But, it may be asked, does not the bank in question gain as much in profitable deposits by such liberal treatment as it loses in exchange? My answer is, that both of the banks used for comparison have increased in deposits in recent years faster than

the one in question, notwithstanding the determination of their managers not to do business for nothing. It is almost needless to add, that the bank I refer to has a managing officer who was getting old before he became a banker, while the other two are run by men who have been bankers since they were boys.

The one thing above all others which helps a bank to get profitable deposits is its reputation for good management of its assets. The most important asset of any bank, and the criterion of the condition of all the rest, is the mental and moral equipment of its managing officers. Doing business for nothing may seem to succeed for a time, but such looseness of management does not create a permanent reputation, and in time generally becomes apparent in the loans as well as in the profits.

If banking is worthy the name of a profession there should be certain things universally considered unprofessional within our ranks. Giving services without profit or at an actual loss should be unprofessional. Solicitation of business by offering to work more cheaply should be as unworthy a banker as we consider it unworthy a doctor. Reflections on the character or solvency of a competitor should be, and, I am sure, generally are, considered in the same category, and I think borrowing from one's own bank should be added to the list. The positive qualifications for a good banker are not of the brilliant or showy kind. But they must be of the solid, enduring kind. He is the trusted agent between the poor lender and the rich borrower. His responsibilities are of a sacred character. No bank ever fails without some helpless widow or orphan having their little all swept away. The business prosperity and the business character of any community are largely in his keeping. Bad banking will bring ruin, careless banking will bring loose business methods in an entire community. Success as a banker is within the reach of any man of average ability, fair education and high character, who, possessing the natural talents of shrewdness and discretion, adds to them by persistent effort, familiarity with accounts, wide knowledge of general business, special training in banking, some acquaintance with commercial law, experience in analyzing statements, correct judgment of men, the gift of saying "no" firmly but not offensively, the courage to do business with decision and self-reliance, based upon careful investi-

gation, and, above all, the high moral purpose to be controlled by no other thought than the best interests of his shareholders.

In conclusion, let me say to the young men of our profession: Do not be discouraged although your immediate outlook be narrow. You have chosen a most honorable profession. Stick to it. Although the difficulties in the way of your promotion are great, as I have shown, they are not insurmountable. This country has produced many individual bankers who rank with any in the world. Such men are always in demand. Be optimistic enough to believe that our glorious country has not yet seen its best days. Its development during your lifetime is going to surpass, in commercial greatness, anything the world has ever seen. And as all commercial roads lead into the bank, banking will develop with it. This means more and more responsible, well-paid positions within your reach. Do not expect great riches. They occasionally come legitimately to a banker, but the one whose mind is bent upon gaining them is a dangerous one for his shareholders. But aim at a high place in your profession. Success will mean at least a comfortable living for your family, a position in the community second to none in power and usefulness within commercial lines, the opportunity to save a moderate competency and to insure those dependent upon you against want in case of your death. This is as much as life offers to any, even the rich, and it is a reward well worthy your best efforts. The only way to rise is to do well your present duty. Learn by your mistakes and the mistakes of others. All bankers who succeed make mistakes. The banker who never lost a dollar is like the North Pole, much discussed but hard to discover, and when he is found he had better be sent there; the rushing business done in that region would just suit him. There is no calling in which chance plays a smaller part in achieving success than ours. Your success depends upon yourself. Your capital in life is your reputation for ability, trustworthiness, experience, self-reliance, courtesy and character. Strive to maintain and increase it. With such a reputation firmly established you are well-armed for the battle of life, and no one can take it away from you but yourself.

DAVID R. FORGAN

UNION NATIONAL BANK, Chicago, July, 1898

5.

NOTES ON BRANCH-BANKING AND ITS DEVELOPMENT IN CANADA

"THE Bank of——has opened a branch . . . etc."

The frequency with which, during the past ten or twelve months, such an announcement as the above has appeared in the press or has been intimated by private circular, together with the remarkable activity that has been, and is still being, displayed in banking circles throughout the country, cannot fail to have attracted the particular notice not only of every bank officer, but also of the outside business public—even of those the least observant.

While the visible outcome of this period of activity (a period inaugurated at the time of the first exodus to the newly discovered gold-fields in the Yukon-Klondike region) may be seen in a considerable extension of the branch-banking system throughout Ontario and Eastern Canada, these results are shown in a more marked and significant degree in the recent developments of banking operations over that immense territory bounded on the east by the vigorous city of Winnipeg, and on the west by the Pacific sea-board. After brief "prospecting" tours to the coast, successive parties of head-office officials, appreciating the solid resources and the latent possibilities of these Western Provinces, without exception reported upon them favorably. Further than this, their recommendations have been, for the most part, promptly acted upon. Witness the number of newly located branch-banks at date (August, 1898), open for business in the wheat-growing and ranching provinces of Manitoba, Assiniboia and Alberta; at the ore-mining and smelting centres of Rossland and Kootenay; at the terminal ocean-ports of Vancouver on the mainland (B.C.) and Victoria, and even at Dawson City.

On referring to the November, 1897, issue of *Verney's Bankers' List* we find that the number of branch-banks actually

within the Dominion of Canada and Newfoundland (exclusive of private banks, loan and investment companies, etc.), was 558. In August of the present year this total had risen to 601—a nett increase of no less than 43 branches of the chartered banks in nine months! These figures (and the undersigned is satisfied that they are correct) point to that creditable expansion of the spheres of operation now enjoyed by the majority of our banks—emphatically to that over, what may be termed, virgin territory. And this expansion, it should be remembered, is due to wholly natural causes, deliberate, but always progressive; with no degree of truth can it be declared to be the consequence of a 'boom,' so-called, in the banking world, or, indeed, of any artificial influence or of any mischievous policy.

Pursuing the subject of branch-banking further, it may be of interest to observe what circumstances, as a rule, lead to the selection of any certain locality, township or village, as the case may be, for the opening by a bank of a new branch; and, secondly, what conditions are considered essential to justify such selection.

The determining upon a new locality may be the result (as was seen at the time of the general extension of the eastern banks westward, already referred to) of a tour of personal investigation on the part of one or more of a head-office staff, action following according to, and guided by, recommendations thereafter received. Again, it is well known that no sooner does a hamlet become exalted to the rank of a village, than the business folk of that settlement, hitherto nursed by a private banker, seek the advantages to be derived from the presence among them of a local branch of a chartered bank. Should enquiries prove satisfactory, it will be readily understood that such village will not be obliged to wait any great length of time ere its branch-bank is opened for business. Sometimes it may happen that a community, dissatisfied with the accommodation or treatment received at the hands of an existing local bank, will petition the management of another institution (regarded for some reason or other with more favor) to establish a branch of its own in direct opposition with the aforementioned bank. And then again, though infrequently, a branch of one bank may

be opened in immediate *succession* to a retiring branch of another bank—occupying even the same quarters. Two instances of this kind have been seen of late, viz., at Alliston, Ont., and at Chaboillez Square, Montreal. Lastly, by the amalgamation of a private banking business, a chartered bank may establish a branch with that business as a foundation, and with the late banker appointed to the branch-managership.

Such, briefly, are the several circumstances which lead to the selection of a new locality in the ordinary extension of banking operations. Now, as to the conditions believed to be essential to justify such selections.

A bank, in order to secure a sound, all-round business, spreads its branches over a wide area. Thus, a bank may have branches in each, or in several, of the following classes of locality, grouped generally as—(1) commercial, (2) industrial, (3) maritime, (4) agricultural, (5) mining and (6) residential—each of them being, in a sense, independent of the others as to prosperity or failure. No banking institution in Canada can be accused of "keeping its eggs in one basket." It is to this system of branch-banking, effecting as it does the absorption of business differing so distinctly in nature and so varied in risk, that many banks have from time to time owed their survival of local disaster.

It is necessary that a variety of circumstances be fully considered prior to opening for business in any centre of any one of these classes of locality. These are:—

a. Population, its character and occupations—more particularly of that class likely to support and to make use of a bank.

b. The description, volume and condition of local trade and industries, and the probabilities as to their future expansion or decrease.

c. The value of natural resources of the locality and their state of development.

d. The extent of present and of possible competition from other banks.

It happens in cases that a new branch will be unable at outset to show a profit on its year's working. Knowing, however, such branch to be operating in the centre of a *growing* district, a bank can usually afford to maintain it at a loss during

the first year or two of infancy, content to look forward to a future lucrative business as a reward for its enterprise. Certain it is that the first bank to open in a new district will secure (and will deserve to secure) the cream of whatever business that locality may offer.

Some statistical notes in conclusion. The *average* ratio of branch-banks (chartered) to population may be accepted as approximately 1 to 5,000. This population in the cities of Montreal and Toronto, the populations of which amount to "hundreds of thousands," becomes appreciably less, namely, about 1 to 8,000. It is doubtful, however, whether figures dealing with populations as a whole are of much value; the amount of business that a new branch is likely to secure in any given district depends upon the class and occupations of the community, and cannot, it stands to reason, be measured by a bare, indiscriminate census.

Following are two comparative tables compiled from the detailed returns in Messrs. R. G. Dun & Co.'s reports of September, 1895, and of August, 1898, the one table for the purpose of illustrating the remarkable growth of branch-banking in leading centres of the Dominion during a period of rather under three years; the second, to show the total of branches accredited each province in Canada and Newfoundland in September, 1895, and at date. The figures speak for themselves.

TABLE I

CITY	Sept. 1895	Aug. 1898	CITY	Sept. 1895	Aug. 1898
Montreal	33*	42	Halifax, N.S.	8	8
Toronto	30	34	St. John, N.B.	5	5
Quebec	15**	17	Winnipeg	10	11
Ottawa	12	12	Vancouver	3	7
Hamilton	8	9	Victoria, B.C.	3	5
London	6	6			

*Including 3 branches of the late Banque du Peuple.
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TABLE II

PROVINCE	Sept. 1895	Aug. 1898	PROVINCE	Sept. 1895	Aug. 1898
Ontario	271	275	Manitoba	20	40
Quebec	108	120	British Columbia ..	12	32
Nova Scotia	63	72	P. E. Island	7	8
New Brunswick	31	32	Newfoundland	4	4
N. W. Territories..	9	18	Total of br. banks	525	601

A. GORDON TAIT

Westmount, Montreal, 23rd August, 1898

THE ANNUAL MEETING OF THE CANADIAN BANKERS' ASSOCIATION

IT is the expressed hope of the members of the Council that a large number of Associates will attend and take part in the proceedings of the approaching annual meeting of the Association (26th, 27th and 28th October). A discussion of important questions in the field of practical banking could probably not be had under more favourable circumstances than attend these annual gatherings, and Associates, without regard to rank, are invited to bring before the meeting,—by means of a paper, a letter to the Secretary, or otherwise,—any matters the discussion of which might prove interesting or profitable.

CORRESPONDENCE

"THE BANKING MONEY POWER"—RESERVE FUNDS OF CANADIAN BANKS

To the Editing Committee :

DEAR SIRS,—It would perhaps have been interesting if the contributor of the article "The Banking Money Power in Canada" in the July issue of the JOURNAL, had given statistics showing the extent to which the Rest accounts of the banks have been built up from payments in cash by shareholders by way of premiums on new issues of stock. The point is apparently alluded to indirectly in the statement that the Rest account "*as a rule* represents a portion of the profits saved and reinvested in the business of the bank." I think that on examination it would be found that the Rest accounts, taken together, are quite largely composed of premiums paid for stock. If this is the fact it much strengthens the argument of your contributor respecting the moderate dividends paid by the Canadian banks.

ASSOCIATE

QUESTIONS ON POINTS OF PRACTICAL INTEREST

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

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

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

Promissory note with joint and several makers, one of the makers being really a surety for the other—Protest

QUESTION 152.—Is it necessary to protest a note drawn in favour of a bank by joint and several promissors, one of whom is really a surety for the other; is he not in effect an endorser?

ANSWER.—It is not necessary to protest such a note. The contract of the makers of a note is to pay the note without any conditions, and it is their duty to find it and pay it. If a party promises to pay who is in fact a surety, his obligation is that of maker, so far as notice is concerned, but in other respects he is entitled to the rights of a surety; *e.g.*, he might be discharged by any improper dealing with securities.

Bank draft—Right of issuing bank to stop payment

QUESTION 153.—A purchases a draft on Toronto from a bank, and endorses it over unconditionally to B, and mails it to him. Some days later A asks the bank to stop payment of this draft on the ground that an error of some kind has been made, the nature of which he declines to state. (1) Has the bank any power to stop the payment of the draft at the request of A? (2) If the bank refuses this request, would A have any ground for action?

ANSWER.—1. The bank has the "power" to dishonour its own obligation by refusing payment, but it would not be justified in doing so on the mere request of A, without explanation of his reason for making it. The bank as drawer would in any case be liable to the "holder in due course" of the draft. Whether B would prove to be such the facts do not show, but his endorsee for value (his bank for example) would probably be.

2. A has no ground for action if under such circumstances as are mentioned the bank should, notwithstanding his request, pay the draft.

Joint Deposits

QUESTION 154.—Deposit receipts and savings bank deposits are often payable to either of two parties. Is this sufficient, or would the following (from the rules of a bank in India) be better: The bank continues to grant deposit receipts "payable to either or survivor" in the case of two persons, and "payable to them, or any one of them, or to the survivors or survivor in the case of three or more"?

ANSWER.—When a deposit made in the name of two parties is intended to be payable to either of them or to the survivor, the issue of a receipt payable to them or either of them is sufficient. By the law in Ontario such a deposit becomes payable to the survivor in case of the death of one of the joint depositors, so that it is not necessary to express this in the receipt.

With regard to similar deposits made to the credit of three or more persons, the same point would be sufficiently covered by making the money payable to them, "or any one of them." In the case of the death of one or more of the joint depositors, the deposit would become payable to the survivors or survivor, and, as before, we would consider it unnecessary to express this.

Use of abbreviation "Ltd." on bills of exchange given by a limited company

QUESTION 155.—If an incorporated company signed paper, i.e., notes, drafts, or cheques, with the word "limited" abbreviated so as to read "Ltd.," would the said paper be in any way invalidated?

ANSWER.—Such an abbreviation would in our opinion in no way affect the company's liability on the paper.

United States stamp duty—Express company money orders

QUESTION 156.—The express companies are not affixing a two cent stamp to their orders payable in United States, allowing the payee to meet this expense. By this means they are attracting much of the smaller draft business formerly done by the Canadian banks. Are they within the Act regulating this matter?

ANSWER.—If these orders are issued in Canada the American Act does not apply to the issuers, but only to the drawees, who would be bound to stamp them before payment. If they were issued in the United States without being stamped it would of course be a violation of the law.

As regards the effect of this in the way of competition, we would suppose that the payees would object to being made to pay the 2c. stamp duty, and that in the long run the charge would come back on the purchasers of the orders.

Powers of attorney held by brokers anthorising bank officers to transfer bank stock

QUESTION 157.—Is the manager justified in acting on a power of attorney from a shareholder of the bank, which authorizes him to sell and transfer certain of its shares on behalf of the shareholder, and to receive the consideration money, etc., when the same is handed to him by a broker, with the request that the transfer be made to his nominee, the proceeds of the shares not being paid to the manager on behalf of the shareholder, but left to be disposed of by the broker?

ANSWER.—We think that a bank officer would not be justified in acting on such a power of attorney in the way mentioned. If as a matter of fact the shareholder did not get the proceeds from the broker, the officer acting as attorney would probably be responsible to him therefor, unless he could show that the broker had authority from the shareholder to receive the money.

It is not unusual for such powers of attorney to be given, but we think the banker should require in every case that they should be accompanied by a letter from the shareholder, indicating how they are to be used.

Cheque presented for payment after the drawer's death

QUESTION 158.—A cheque was presented, for which there were funds, but was refused because the drawer had died on the day before presentation. In a similar case a few years ago within my knowledge the drawee bank paid rather than stand

suit. What is the law in the matter, and what is the effect as regards the drawee bank, if a cheque is paid after it has notice of the drawer's death?

ANSWER.—By Section 74, Bills of Exchange Act, it is declared that "the authority of a bank to pay a cheque" is "terminated by notice of the customer's death." It is therefore clear that in the cases mentioned the bank would have no right to pay the cheque. If it should nevertheless do so its ability to get back the money would depend on the good will of the parties. If the cheque were given in payment of a just debt, and if the estate is solvent, no doubt the payment would be ratified by the executors, or the creditor would assign to the bank his claim against the estate. If the executors refused to recognize the payment, and if the creditor refused to assign his claim, the bank would have to lose the amount. The same result would probably follow if the cheque so paid proved to have been given otherwise than in payment of a debt, e.g., as a gift.

Stamp duty on sterling bills

QUESTION 159.—Are sterling bills ever drawn so that the bank purchasing is not charged with the English stamp duty on them—that is, if a Canadian bank buys a draft of £200 on a Glasgow firm, could the bill be so drawn as to make it incumbent on the drawee to pay for the bill stamp, and is this ever done?

ANSWER.—We have never heard of purchasers of bills on Great Britain making special arrangements about the stamp duty there. The fact that the bill has to be stamped at the expense of the purchaser is one of the considerations which fix the price. The English Act requires the holder of such a bill before he presents it for payment to affix the proper stamps. Apparently the only way in which the drawee could be made to pay the stamp duty would be to add the amount to the face of the bill.

Forged endorsements

QUESTION 160.—1. The finder of a lost cheque which is payable to order, forges the endorsement, and negotiates it with a bank where he is known. On presentation for payment the drawee bank observes that the payee's signature is forged, and refuses the cheque. The forger cannot be found. Who loses the money?

2. If the drawee bank had not detected the forgery, but by oversight had paid the cheque, and only discovered the fact a month afterwards, have they recourse against anyone?

QUESTIONS ON POINTS OF PRACTICAL INTEREST

FORM FOR QUESTIONS

The Editing Committee

Journal of the Canadian Bankers' Association, Toronto.

Please give your opinion on the following point $\frac{\text{by mail*}}{\text{in the next issue of the Journal}}$

Question : .....

.....

.....

.....

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If the question does not call for an answer by mail, the enquirer's name need not be given if he so prefers.

*If answer is desired by mail, stamp should be enclosed.

ANSWER.—1. The bank which cashed the cheque must lose the money, unless it can recover it from the forger.

2. Unless there was something in the "oversight" which would render the payment one not made "in good faith and in the ordinary course of business," the drawee bank would be entitled to a return of the money from the bank to which they paid it, provided notice of the forgery was given to the latter in accordance with the terms of sec. 24 of the Bills of Exchange Act as amended in 1897.

Business transacted by banks for the Dominion Government

QUESTION 161.—Under the new regulations of the Post Office Department, we receive a cheque from the postmaster daily to take up the orders which have been cashed by the bank through the day. This cheque we have to remit daily to Ottawa. In a bank with 20 to 25 branches, apart from the labor involved, this would mean an addition to its postage charges of probably $100 for the year. Do you not think the government should make some allowance for this extra expense?

ANSWER.—We do not think that the banks should be expected to do work or incur expenditure in this way without remuneration.

Contributions to the JOURNAL

QUESTION 162.—Are the pages of the JOURNAL open to contributions from subscribers who are not associate members?

ANSWER.—Yes. See the announcement in the front of the JOURNAL.

Bills of lading

QUESTION 163.—If a client ships on a local railway bill 500 barrels of flour with the B/L reading "To the order of John Smith & Co., Demerara, S.A., notify John Smith & Co., New York," could Smith & Co. turn over the 500 barrels to a steamship company for furtherance to destination without taking up the local railway bill?

ANSWER.—We do not think that John Smith & Co. of New York could exercise any control over this shipment, but the railway company would, we think, without requiring the surrender of the railway receipts be justified in delivering the goods to a steamship company, to be forwarded to their destination, in accordance with the understanding on which they have received them. No doubt they would be the readier to act if pressed to do so by the New York house.

Please refer to reply to Question No. 109.

Bills drawn on Canada "payable with exchange"

QUESTION 164.—A sight draft for $1,000, drawn in New York on a firm in New Glasgow "payable with exchange," is sent to a bank in Halifax, thence to the agency of another bank in New Glasgow. The latter agency presents bill and demands ¼ of 1% exchange. On the day the draft is presented other banks in New Glasgow offer to sell drafts on New York for ⅛ of 1%. Can the bank presenting collect more than ⅛ of 1% as exchange. You might also state whether the fact of the draft having been sent through a bank in Halifax, makes any difference as to the rate of exchange?

ANSWER.—Assuming that what the draft means is that the acceptor shall pay $1,000, plus the cost of transferring the same to New York, and that the current rate of exchange on New York at the place of payment is ⅛%, the acceptor is bound to pay, and the holder to accept that rate.

What is the proper rate is a question of fact, to be determined as other questions of fact are; in the last resort by an action at law.

The holder of the draft can collect only the amount of the same and the exchange; he cannot make the acceptor pay anything in the nature of a collection charge. Nor does it make any difference that it has passed through a number of collecting agents. All that the acceptor is concerned in is to comply with the order contained in the draft, to pay $1,000, and in addition the current local rate of exchange on New York, whatever that may be.

Deposit in name of "A. B., sheriff," or "A. B., assignee"

QUESTION 165.—A deposit account is opened in the name of "A. B., sheriff," and another in the name of "A. B., assignee." On A. B.'s decease to whom are the moneys in the accounts payable?

ANSWER.—Moneys standing at the credit of "A. B., sheriff," or "A. B., assignee," can only be paid out on the cheques of his executors or administrators, unless there be some local statute otherwise providing.

Identification of the payee of a cheque

QUESTION 166.—A, known to cashier, makes the acquaintance of B at an hotel, and introduces him (B) to the bank for the purpose of getting a cheque cashed on another town, but A does not endorse cheque. The cheque is returned protested

for non-payment, and B turns out to be a sharper, and meantime has departed. Do you think the bank can recover the amount from A, although he has not endorsed cheque?

ANSWER.—So far as the question goes it indicates that what A told the bank was true, i.e., that B was really B. If this is all he is not liable.

If A made representations to the bank on the faith of which they cashed the cheque he might be liable, but even then fraud must be proved. We might again quote the following proposition bearing on the point, from the judgment of Lord Herschell in *Derry v. Peek*:

"First, in order to sustain an action in such a case there "must be proof of fraud, and nothing short of that will suffice. "Second, fraud is proved when it is shown that a false repre- "sentation has been made, (1) knowingly, or, (2) without belief "in its truth, or (3) recklessly, careless whether it be true or "false."

Chattel mortgage on growing crops where land mortgaged to another party

QUESTION 167.—Jones's farm is mortgaged to a loan company, and his growing crops are covered by a chattel mortgage to a private banker. The loan company take proceedings to sell the farm. Will the chattel mortgage hold good against them or can the company take the crop without paying the private banker?

ANSWER.—The law on this subject is clearly settled in Ontario by the case of *Bloomfield v. Hellyer*, reported in Appeal Reports, vol. 22, p. 232, the head note of which is as follows:

"A mortgagor after default is, as far as crops growing "upon the mortgaged land are concerned, in the position of a "tenant at sufferance, and cannot by giving a chattel mortgage "upon the crops confer a title thereto, upon the chattel mort- "gagee to the prejudice of the mortgagee of the land, or any- "one claiming under him, who has entered into possession of "the land before the crop is harvested."

The result of this decision is that the mortgagor can by chattel mortgage grant to the chattel mortgagee only such interest in the growing crops as he himself has, and, as this interest is subject to the right of the mortgagee of the land to enter, upon default, and take possession of the land, including the crops, the chattel mortgagee would have no claim against the mortgagee of the land, because he took possession and removed the crops.

Collections requiring presentation by mail

QUESTION 168.—We receive for presentation a draft drawn by a firm in England on a party resident in a village adjacent to our office, from which there is a daily mail to this city, delivered here during business hours. We have no convenient means of presenting the draft personally, but we send the usual power of attorney slip for his signature. Are we justified in holding the draft for a few days, or does the bank incur liability if the draft is not presented through a notary within two days?

ANSWER.—You are not bound, unless you have special arrangements in the matter, to accept the duty of collecting agent, but if you do accept in this case you are bound to take steps to have the bill presented within a reasonable time, and if not accepted on the day of presentment, or within two days thereafter, to treat it as dishonoured.

The two days' limit mentioned in section 42 does not apply in the case you describe, but only to a bill which has been presented; we do not think that to advise the drawee that you are holding the draft, and to ask him to sign a power of attorney enabling you to accept, is a presentment. The only question involved in this particular phase of the matter is whether by delay in the actual presentment you have failed in your duty as collecting agent to such an extent as to bring yourself under liability to the owner of the bill. To form an opinion on this point it would be necessary to have all the facts.

Books on Banking Law

QUESTION 169.—What are the principal publications bearing on the law of banking in Canada, and giving legal decisions, etc.?

ANSWER.—The only Canadian book on banking law is Maclaren's commentary on the Bank Act (see the advertisement of Carswell & Co., in the JOURNAL). On the general subject of banking there is the English publication "Grant's Laws of Bankers and Banking Companies."

On cognate subjects Maclaren's "Bills of Exchange Act, 1890" (Canada), Chalmers' "Bills of Exchange, Notes and Cheques" (English), and "Byles on Bills," are standard publications. Any of these can be obtained through Carswell & Co. Chalmers' is an excellent book, as it discusses the clauses of the Bills of Exchange Act seriatim, with general matter in addition, but it has to be read with a careful eye to the two or three points where our Act differs from the English Act.

For legal decisions, the columns of the JOURNAL, as you probably know, contain full reports of all English and Canadian cases of direct or indirect interest to bankers.

Reports furnished by banks on the standing of their own customers

QUESTION 170.—Does a bank incur a liability by answering an enquiry as to the standing of a party, by saying "we consider them good," or "in our opinion they are good for any of their business requirements," prefacing their report "confidential and without responsibility," as would appear to be the case from the decision of the Queen's Bench Division, England, in *Marshall & Sons v. Brown, Jansen & Co.*, reported in the July JOURNAL?

ANSWER.—The case referred to arose out of an alleged fraudulent misrepresentation, and was decided against the bank apparently because the jury considered that, under all the circumstances connected with the customer's account, the bank's report could not have been given in good faith.

If a jury were convinced that a report from a Canadian bank was given with intent to deceive, or under circumstances which implied fraud, the bank would no doubt be held liable, notwithstanding the clause repudiating responsibility for the report. The statement of Lord Herschell in *Derry v. Peek*, quoted in the reply to question 166, shows what may constitute fraud in this connection.

Collections sent to private bankers

QUESTION 171.—A bill for collection is sent by a bank to a private banker, who is a customer of the bank, there being no chartered bank in the place where the bill is payable. The cheque received from the private banker in payment is dishonoured. On whom must the loss fall?

ANSWER.—Unless there was an understanding with the customer that the cheque should be sent to the collecting agent employed, of such a character as to make it clear that he had approved the selection of the agent, the bank must bear the loss. This point was fully dealt with in our reply to question 38, Volume III.

Forged and irregular endorsements

QUESTION 172.—Bank "A" deposits a cheque through the Clearing House against Bank "B." The cheque bears several endorsements, one being by power of attorney. There are funds to meet the cheque. A month or so after the clearing Bank "B" finds (1) that the power of attorney is not legal, or (2) that one of the endorsements is a forgery. Bank "B" asks Bank "A" to take back the cheque, and Bank "A" replies

that under the rules of the Clearing House the demand should have been made before 12.30 on the day of clearing the cheque.

The cheque bore the endorsement of the clearing bank as follows: "The Bank of ——, Montreal," and not the stamp, "Prior Endorsements Guaranteed, etc." Which bank loses? Is a guarantee of such endorsements necessary?

ANSWER.—The rule of the Clearing House respecting the return of items before 12.30 has no bearing on a case of this kind. The point involved is simply this: What is the position of a bank which, after the lapse of a month, discovers that one of the endorsements on a cheque, paid by it in ordinary course to another bank, is forged or unauthorized?

The answer to this is that, under the Amendment to the Bills of Exchange Act, passed in 1897, the bank which received the money under these circumstances is bound to repay it, provided notice is given in accordance with the terms of the Act.

A guarantee of such an endorsement is not needed to establish this right, and the "Conventions and Rules" have no special bearing on the question, except to this extent, that by Rule 6 the stamp of the depositing bank is declared to be the endorsement of the bank. Under the amendment referred to the money may be recovered from the party to whom it was paid, or from an endorser who has endorsed subsequent to the defective endorsement, so that the bank receiving the money in this case would be liable on both grounds.

Bill sent for collection in an indirect manner

QUESTION 173.—A bank in Kingston cashed for a customer, who endorses it, a cheque payable in Sault Ste. Marie, where it has no branch. It sends it to its Toronto branch, which turns it over to a bank having a branch at that point. The cheque is dishonoured and returned through the same channel to Kingston. Can the customer of the Kingston bank claim undue delay (1) in presentment, or (2) in the notice of dishonour?

ANSWER.—(1) If the cheque was sent forward promptly from Kingston to Toronto, and from Toronto to Sault Ste. Marie, and presented in due course after reaching there, the presentment was, we think, duly made within the terms of sub-section 2b of section 45, Bills of Exchange Act (q. v.) We do not think that the customer could complain of delay only because the bank sent the cheque to Toronto instead of sending it to Sault Ste. Marie direct. The only question is whether the delay thereby caused rendered the presentment one not made within a reasonable time, but we think that, having regard to the usage of banks, such a mode of presentment is permissible.

(2) The question suggests that the return of the cheque was relied on to serve as notice of dishonour, and if so the return through the same channel, if each step is within the limit of time allowed by law, would be sufficient. If notice of dishonour had been sent to the customer by the bank at Sault Ste. Marie, delay in returning the cheque would have no effect on the customer's liability.

Cheque payable to bearer, endorsed to order

QUESTION 174.—Where a cheque is made payable to bearer by the drawer, can it be endorsed payable to order by a subsequent holder so as to bind the bank upon which it is drawn to recognize such endorsement?

ANSWER.—Under sub-sec. 3 of sec. 8, Bills of Exchange Act, it is declared that "a bill is payable to bearer which is expressed to be so payable." This seems to preclude the possibility of such a bill being made payable otherwise than by bearer, and when a cheque is so drawn the drawer's instructions are not affected by an endorsement and the bank is protected in paying it to the bearer, in accordance with its terms.

In the July number (vol. v., p. 447), we replied at some length to a question as to an endorsement "to order" following a blank endorsement, which is dealt with in the same subsection; see question 136.

Power of attorney to a minor

QUESTION 175.—May one under age be lawfully appointed the attorney of a merchant to conduct his bank account?

ANSWER.—Yes; the fact that he is under age does not disqualify him.

Attorney for a person trading under a firm name

QUESTION 176.—John Brown, who carries on business under the name of John Brown & Co., gives a power of attorney signed "John Brown" only. Has his attorney power thereunder to sign for John Brown & Co.?

ANSWER.—It is customary, and the better practice, that the constituent should describe himself in the power of attorney as "carrying on business under the name and style of John Brown & Co.," but we think that a duly constituted attorney of John Brown may bind his principal, to the extent of the authority conferred upon him, under any name in which the principal carries on business alone.

It is to be noted, however, that a power of attorney in which the business name adopted by the constituent is described would probably be held to limit the attorney's authority to transactions connected with that business. Thus a power of attorney from "John Brown, trading as John Brown & Co.," would cover transactions arising out of the business of John Brown & Co., but it would probably not cover transactions for another business carried on by the same man under another name.

Power of attorney signed by one member of a firm

QUESTION 177.—Are the acts of an attorney under a power signed by one member of a firm binding on the other members, or should all sign it?

ANSWER.—A power of attorney signed by one partner is binding upon the rest in so far as the matters included in it are within the scope of the partnership, and to this extent it need not be signed by the other partners. We should say that it would be a prudent act on the part of the bank to require all to sign, but this is a matter of prudence, not of law.

Restrictions in a deed of partnership

QUESTION 178.—If by the terms of the deed of partnership special restrictions are fixed as to the mode in which the partnership may be bound, would these affect the bank in the absence of actual notice?

ANSWER.—We think that the bank would not be bound by these restrictions unless it has actual notice.

Clearing house systems

QUESTION 179.—Every clearing banker in London, England, keeps a clearing account with the Bank of England, where is also kept an account known as the "Clearing Bankers' Account." Daily settlements are made by crediting or debiting this account as balances happen to be in favour of or against each bank, without the employment of coin, or currency. Why has this simple system not been introduced in Canada in preference to the more cumbrous method of settlement by exchange of "legals?"

ANSWER.—The immediate settlement in London is made by a cheque or voucher, representing a transfer from one account to another, but that does not cover all the work involved, for the clearing banks probably make deposits in and withdrawals from the Bank of England daily. Settlement

under our clearing system involves only one deposit or one withdrawal daily, and that in large notes good only between banks, so that the system cannot properly be called "cumbrous," even as compared with London.

The London system has grown out of the unique position of the Bank of England, and could probably not be copied anywhere else in the world. Canadian banks would not generally be likely to keep their reserves in the form of a deposit with another bank, even if a bank willing to accept such deposits should be found.

QUESTION 180.—Would it not greatly facilitate business if clearing bankers were to meet twice daily? Thus items to hand by the morning mail would be cleared the same day, without the present delay of twenty-four hours?

ANSWER.—The chief disadvantage in the delay in clearing items received by the morning mail may be obviated by presenting the cheques to be marked; the only other we see is the delay in regard to out-of-town items.

It seems to us that to clear all items in one early clearing each day much economizes labour. It is easier to examine one long list of cheques than two short ones, and the present arrangement leaves the afternoon, when other business is active, free.

We shall be glad, however, if our questioner will state what he thinks would be gained by the change which he suggests.

Legal

THE LEGAL SIGNIFICANCE OF "NO PROTEST" INSTRUCTIONS

THE subjoined document, covering the opinion of the Counsel for the Association on a most interesting legal question, is published by the kind permission of the banks concerned in the matter to which it relates:

Re Bank Y and the Bank of Z. A—— & Co.'s Draft on B——

"Although the amount involved in this case (the decision of which has been left by agreement between the two banks to me) is small, yet the principle involved is important. I have taken considerable trouble to ascertain all the facts and to consider the law applicable. The facts agreed upon by the two banks are as follows:

"1. A——& Co., customers of the Montreal Branch of Bank Y, drew a sight draft on B——, of Vancouver, for the sum of $100, payable at the branch of the Bank of Z in Vancouver.

"2. To this draft A——& Co. attached a slip with the words 'No protest,' and discounted it at Bank Y, Montreal, the proceeds being placed to their credit at that bank in the usual way.

"3. Bank Y endorsed the draft to the Bank of Z, the 'no protest' slip being still attached, and included it in its deposit with that bank on the 19th of June, 1897. The amount, less discount and proper charges, was accounted for by the Bank of Z to Bank Y in the usual way.

"4. In due course the draft was forwarded by the Bank of Z to its branch in Vancouver, and was in due course presented for acceptance on 30th June, 1897. Acceptance was refused.

"5. On the same day the manager of the bank in Vancouver enclosed the draft in a letter, with the postage paid thereon, addressed to Bank Y, Montreal, and deposited it in the post office at Vancouver. The letter was as follows: 'I return refused S.D., B——, $100. Writing.' This letter was lost in the mails, and has not yet been found.

"6. Nothing appears to have been done by anybody with respect to the draft from the 30th June until the 9th September, when the manager of the Bank of Z, Montreal, wrote to the manager of that bank in Vancouver, calling attention to the draft which was sent on the 19th June, and stating that 'this item is still outstanding in adjustment and does not appear to have been credited or accounted for by you; please explain.' On the 13th September the agent at Vancouver replied as follows: 'S.D., B——, was returned direct to Bank Y, Montreal. I regret the error.'

"7. On the 18th September the manager of the Bank of Z at Montreal wrote to Bank Y, Montreal, as follows: 'The accompanying deposit of $100 is for a sight draft, B—— ($100), deposited by you through the clearings on the morning of the 19th June last. Our Vancouver office writes me under date the 13th inst. that this item was returned to you in error.' This was the first information which the Bank Y received with respect to the draft since the 19th of June.

"8. On the 18th September, A——& Co. were notified by Bank Y of the dishonour of the draft, but they refused to consent to their account being charged with the amount of it on the ground that their position had been prejudiced by the delay in informing them that the draft was dishonoured.

"9. A—— & Co. claim that their position was prejudiced, and that on account of the delay they practically lost the amount of the draft. This claim, however, is disputed, and I am not able, from the statements made upon this point, to come to any conclusion as to the fact, but in the view I take of the law applicable to the case a decision upon this question of fact does not seem to be material.

DECISION

"The all important fact in this case, and one upon which the decision must turn, is that A——& Co. attached to the draft the 'No protest' slip when presenting it to Bank Y for discount. This slip was still attached when the draft was sent to the Bank of Z. The words 'No protest' used in this connection signify much more than an instruction that the formal instrument known as a protest, drawn up and signed and sealed by a notary, should be dispensed with. The words mean that the steps necessary to fix the liability of the drawer upon dishonour of the draft are dispensed with by him. It was not only the right of Bank Y, but its duty, when sending the draft to the Bank of Z for collection, to keep the 'No protest' slip attached. The result, therefore, in law, was that A——& Co., as drawers of the draft, incurred the ordinary liability upon it as drawers,

and dispensed with the requirement which would otherwise have been necessary to continue this liability after dishonour, viz., that due notice of dishonour should be given to them. I think, therefore, that A——& Co. remained liable as drawers of the draft after dishonour, whether the Bank at Vancouver did or did not conform to what might otherwise have been required with respect to notice of dishonour. It is, therefore, unnecessary for me to decide whether the lost letter of the 30th of June from the agent at Vancouver amounted in law to notice of dishonour.

"I think that Bank Y, by handing the bill to the Bank of Z with the 'No protest' slip attached, not only authorized it not to send notice of dishonour to the drawer, but also authorized it not to send notice to Bank Y itself as endorser of the draft. Up to this point, therefore, A——& Co. and the Bank Y were liable as drawers and endorser to the Bank of Z as holder, and this liability was not affected by want of notice of dishonour. Had Bank Y retired the draft, thus becoming the holder, A—— & Co. would have continued liable upon it as drawers to Bank Y as holder.

"The question which remains is: have A——& Co. been discharged from their liability by what has taken place since the 30th June, when the draft was dishonoured, or by the fact that they were not informed of the dishonour until the 18th September?

"Nothing was done affirmatively by either bank which would discharge A——& Co.'s liability. The claim they make is that, because they did not receive notice until the 18th September that the draft was dishonoured, they lost the opportunity of collecting the amount of it from B—— between the 30th June and the 18th September. I am clearly of the opinion that this fact, if it be a fact, did not technically discharge A——& Co. from their liability as drawers. If they have any claim because they lost the opportunity of collecting the draft from B——, it would be because some duty which was owed to them by the two banks, or one of them, had been neglected, and that they had suffered loss by reason of such neglect. Their claim would not be a matter of defence to an action against them as drawers of the draft; it would, if it existed at all, form the subject of a counterclaim or cross action for damages. The question, therefore, is whether either bank owed any duty to A—— & Co. to notify them of the dishonour of the draft.

"This question arose in the case of *Woodman v. Thurston*, 8 Cushing (Mass.), 157. The action was against the endorser of a promissory note who had, when endorsing, waived demand and notice. The defendant contended that notwithstanding the

waiver there should have been a demand upon the maker and notice to the defendant within a reasonable time after the note became due, but this contention did not prevail.

"The same point arose in *Emery v. Hobson*, 62 Maine, 578, the case being heard by a bench of six judges. The Chief Justice, in delivering the opinion of the Court, says: 'The defendant endorsed the cheque, waiving demand and notice. An endorser who waives demand and notice is not entitled to any demand on the maker or notice of non-payment.'

"I have not been able to find any case establishing any duty of the kind suggested, and I am not prepared to hold that upon principle any such duty exists; on the contrary, I think that upon principle the holder of a bill of exchange who discounts it with an express waiver of notice of dishonour on the part of the drawer, is entitled to act upon such waiver and refrain from giving notice, and I cannot see that the effect of the waiver is modified by any implied or indefinite duty as to giving such notice at some later date. The drawer, having dispensed with notice, is liable on the bill without it, and if he wants to learn whether the bill has been paid or dishonoured he should make enquiries, and he cannot complain if, not having made enquiries, he finds that he has allowed an opportunity of collecting the bill to pass.

"I think, therefore, that A—— & Co. are still liable as drawers upon the bill, and that upon proper proceedings being taken in the case of the lost bill the amount can be collected from them. And, as some question may arise as to whether the action should be brought by Bank Y or the Bank of Z, I recommend that if proceedings become necessary the action against A——& Co. be brought by both banks as plaintiffs.

(Sgd.) Z. A. LASH"

TORONTO, 12th Sept., 1898

FORGED AND UNAUTHORIZED ENDORSEMENTS

OWING to the inquiries which are repeatedly being made relating to the position of parties negotiating or acquiring bills bearing a forged endorsement, the Editing Committee of the JOURNAL think it well to reprint the text of the recent amendment to the Bills of Exchange Act.

61 VICT., CHAP. 10

"AN ACT RESPECTING FORGED OR UNAUTHORIZED "ENDORSEMENTS OF BILLS

"*Assented to June 29th*, 1897

"Her Majesty, by and with the advice and consent of the "Senate and House of Commons of Canada, enacts as follows:

"1. Subsection 2 of section 24 of *The Bills of Exchange* "*Act*, 1890, as amended by section 4 of chapter 17 of the stat- "utes of 1891 intituled 'An Act to amend *The Bills of Exchange* "*Act*, 1890,' is hereby repealed, and the following subsections "are substituted therefor:

"2. If a bill bearing a forged or unauthorized endorsement "is paid in good faith and in the ordinary course of business, "by or on behalf of the drawee or acceptor, the person by whom "or on whose behalf such payment is made shall have the right "to recover the amount so paid from the person to whom it was "so paid, or from any endorser who has endorsed the bill subse- "quently to the forged or unauthorized endorsement, provided "that notice of the endorsement being a forged or unauthorized "endorsement is given to each such subsequent endorser within "the time and in the manner hereinafter mentioned; and any "such person or endorser from whom said amount has been "recovered shall have the like right of recovery against any "prior endorser subsequent to the forged or unathorized en- "dorsement.

"3. The notice of the endorsement being a forged or "unauthorized endorsement shall be given within a reasonable "time after the person seeking to recover the amount has "acquired notice that the endorsement is forged or unauthorized, "and may be given in the same manner, and if sent by post "may be addressed in the same way, as notice of protest or dis- "honour of a bill may be given or addressed under this Act."

62.

Queen's Bench Division, England

The Bechuanaland Exploration Company, L'd, v. The London Trading Bank, L'd*

The Secretary of a company stole from his employers some bearer debentures, which he hypothecated to a bank as security for an advance.

Held, that evidence of mercantile usage that such securities are negotiable by delivery in the same way that bills and notes are negotiable, is admissible, and that the courts will recognize such usage when established by the evidence.

This action was brought to recover twenty debentures of the Beira Junction Railway, L'd, for £100 each. These debentures were stolen from the plaintiffs by their secretary, one Evans, since deceased, and deposited by him with the defendants in the ordinary course of business to secure advances made to him by the defendants. By their defence the defendants pleaded that the debentures were issued subject to the condition that they should be transferable by delivery if not registered, and that it is the custom of merchants, bankers, and others to buy and sell such debentures and to advance loans of money upon the security of them by mere delivery as negotiable instruments transferable by delivery; that the plaintiffs, having allowed the debentures to be in the power of Evans, were estopped from denying that the debentures were transferable by delivery.

Mr. Justice Kennedy . . . The main issue, and in my view really the sole issue, in the case is whether these debentures ought or ought not to be treated as negotiable instruments, so as to give the defendants, who became *bona fide* holders for valuable consideration, a good title to the extent of their advances to Evans upon the debentures as against the plaintiffs, who claim to recover the property of which Evans fraudulently deprived them. The debentures are, according to their tenour, payable to bearer, or, when registered, to the registered holder for the time being on presentation of the debenture. Endorsed upon each of them are several printed conditions. The third, fourth, fifth, and sixth of the conditions are in substance as follows:—(3) Except when registered this debenture is transferable by delivery, but the company will at any time, upon request of the bearer whilst unregistered, register him and his nominee in the register below mentioned as the holder of this debenture, and endorse a note of such registration thereon, and the company will also at any time, upon the

Times Law Reports.

request in writing of the registered holder, his executors or administrators, cancel the registration and the note thereof endorsed thereon, and thereupon this debenture will again become transferable by delivery. The fourth condition provides for the register, and the fifth for the registration of debenture-holders therein. Under the sixth condition every transfer of the debenture when registered is to be in writing under the hand of the registered holder or his legal personal representative, and before registration of the transfer proof must be given to the company of the title and identity of the transferee. The 11th condition provides that the principal moneys shall immediately become payable if a certain default is made in due payment of interest or a winding-up order is made, or a resolution is passed otherwise than for purposes of reorganization, reconstruction, or amalgamation.

Now, it is, I think, unquestionable, and it was not disputed at the Bar, that such a debenture as this, if viewed according to its tenour merely and without regard to mercantile usage, does not belong to the class of negotiable instruments which the law has recognized as such, by virtue either of the ancient law merchant or by virtue of statute (such as bills of exchange, promissory notes, and Exchequer bills), and the delivery of which confers a good title to the person who acquires them in good faith and for value, notwithstanding a defect in the title of the transferor. It is most like a promissory note payable to bearer; but it is prevented from ranking as such by its conditions. Evidence was, however, adduced by the defendants of a usage of the mercantile world in recent times to treat "debentures to bearer" of this kind as negotiable instruments; and the defendants contend that if I am of opinion that the usage has been proved I ought to recognize and give effect to it by upholding their title to these debentures. The plaintiffs contend that the usage has not been proved; they further contend, as a matter of law, that evidence of it was not properly receivable; that, even if the custom was proved, it cannot, being of recent introduction, be treated as part of that law merchant which courts of justice are bound to know and recognize. There are therefore to be decided two distinct questions—the first of fact; the second of law. Is there a usage of the mercantile world to treat such debentures as negotiable instruments, passing like promissory notes or banknotes by mere delivery from hand to hand accordingly? If there is such a usage, ought it in a court of law to have the effect of attaching the quality or incident of negotiability to the contract contained in the debenture, so that the property in that chattel and all rights upon it may, upon delivery of it, be acquired by a person who is not the owner?

His Lordship then reviewed the evidence and said:

Upon the question of fact, I am of opinion the defendants have sufficiently proved the usage of merchants which they sought to establish, both in point of extent and duration. Indeed, in respect of duration, I am led by what appears in the report of *Crouch v. Crédit Foncier of England*, a case upon which in regard to the point of law the plaintiffs mainly rely—to infer that the time during which it has been the mercantile practice to treat these debentures to bearer as negotiable instruments really exceeds the time which appears from the oral evidence adduced before me by the defendants. The debenture in the case referred to was issued by an English trading company in 1869. Assuming the usage or custom proved in the present case, I have to say whether, in my judgment, I ought to give effect to it. The plaintiffs contend that I ought not to do so, and that evidence to prove it was not admissible. As to the admission of evidence, if the grounds which I proceed to consider of the plaintiffs' contention as to the absolute incapacity of modern mercantile usage to obtain legal ratification in respect to the negotiability of instruments issued in England by an English company, and not recognized as negotiable by the ancient mercantile law, and not made such by statute, are good, it follows, I agree, that evidence of such a modern mercantile usage is irrelevant and, therefore, inadmissible. The contention of the plaintiffs rests upon the reasoning of the considered judgment of the Court of Queen's Bench in *Crouch v. Crédit Foncier of England*. The defendants assert that the judgment has been authoritatively disapproved, although it may be that the decision may be justified upon the ground suggested in the judgment of the Exchequer Chamber in *Goodwin v. Robarts*. The matter is one of commercial importance, and of considerable legal difficulty. The propositions of law which are involved in this judgment may be summarized thus: 1. The general rule of law is that a chose in action cannot be transferred at law at all, and parties cannot merely by their own act annex to a contract the incidents of negotiability, that is to say, a right of action thereon, in the holder for the time being in his own name, and a title both to the document containing the contract and to all rights under the contract, irrespective of defect in title of the person from whom the holder acquired it. 2. Such incidents can be annexed to a contract only by virtue either of statute or of the ancient usage of merchants which has been adopted by and now forms part of the law. 3. The modern usage of merchants cannot annex such incidents to a contract if the instrument containing it be made by an English company in England, which does not come within the category of negotiable instruments created by statute or adopted by the

common law from the "ancient law merchant." 4. The modern usage of merchants may annex the character of negotiability to bonds and like instruments of a foreign or colonial government. The correctness of the second and third propositions is, it appears to me, essential to the validity of the judgment, and essential also to the success of the plaintiffs' case in this action. So far as I am aware there was no appeal against the judgment, but in 1875 came the case of *Goodwin v. Robarts*. It appears to me that upon the vital question of the effect of modern mercantile usage, such as, I think, has been sufficiently proved in the present case, it is impossible to treat the reasoning of the Court of Queen's Bench in *Crouch v. Crédit Foncier of England*, and the reasoning of the Exchequer Chamber in *Goodwin v. Robarts*, as capable of reconciliation. I read the judgment of the Exchequer Chamber in the later case as plainly disapproving of the reasoning of the judgment in the earlier case. It cannot, I think, be maintained that the reasoning of the judgment upon this question of the effect of modern mercantile usage in *Goodwin v. Robarts* was unnecessary to the decision; nor, I think, can it be maintained that the two judgments are capable of reconciliation upon the ground that the instrument in question in the earlier case was an English instrument, and the instrument in question in the latter case was, though issued by a London agent, to all intents and purposes the scrip of a foreign government. Further, in *Rumball v. Metropolitan Bank* a Divisional Court treated *Goodwin v. Robarts* as decisive in an action in which a similar question arose upon an English instrument—a scrip certificate to bearer issued by a joint stock company. It appears to me that having regard to the decisions of the Exchequer Chamber in *Goodwin v. Robarts* and *Rumball v. Metropolitan Bank*, coming, as I have, to the conclusion that there has been a sufficient proof of a mercantile usage to treat the debentures in question in this case as negotiable, I cannot refuse to follow these decisions, which appear to me to practically overrule the decision in *Crouch v. Crédit Foncier of England*, and to govern this case. Further, I see no negligence or any conduct raising an estoppel in what the plaintiffs did, but for the reasons which I have given there will be judgment for the defendants with costs, but execution will be stayed.

Judgment for the defendants.

SUPREME COURT OF CANADA

Burns & Lewis et al. v. Wilson and the Sanford Mfg. Co., Ltd.*

In order to give a preference to a particular creditor, a debtor who was in insolvent circumstances executed a chattel mortgage upon his stock in trade in favour of a money-lender by whom a loan was advanced. The money, which was in the hands of the mortgagee's solicitor, who also acted for the preferred creditor throughout the transaction, was at once paid over to the creditor, who, at the same time, delivered to the solicitor, to be held by him as an escrow and dealt with as circumstances might require, a bond indemnifying the mortgagee against any loss under the chattel mortgage. The mortgagee had previously been consulted by the solicitor as to the loan, but was not informed that the transaction was being made in this manner to avoid the appearance of violating the acts respecting assignments and preferences and to bring the case within the ruling in *Gibbons v. Wilson* (17 Ont. App. R. 1).

Held, that all the circumstances necessarily known to his solicitor in the transaction of the business must be assumed to have been known to the mortgagee, and the whole affair considered as one transaction contrived to evade the consequences of illegally preferring a particular creditor over others, and that, under the circumstances, the advance made was not a *bonâ fide* payment of money within the meaning of the statutory exceptions.

Appeal from the judgment of the Court of Appeal for Ontario affirming the judgment of the Honourable the Chancellor, by which the plaintiff's action was dismissed with costs. A statement of the case is given in the judgment of the Court now reported, which was delivered by

SEDGEWICK, J.—In the spring of the year 1895 one Eliza Barnet Cheyne commenced the clothing business in Toronto, and by the first of the month of November in that year had become indebted to the W. E. Sanford Company of Hamilton in the sum of about $4,700, and had also become indebted to the firm of Burns & Lewis, of London, and to other merchants in an amount exceeding $3,000. This indebtedness was to a considerable extent overdue at the time that the mortgage, which is now in controversy, was given. About the end of October the Sanford Company, hearing that Miss Cheyne was about to be proceeded against by some of her creditors, sent an agent to her and suggested that she should make an assignment for the general benefit of her creditors, the object being to have the assets divided ratably among the creditors. She refused to execute such an assignment, but it was agreed that her father, who all through appears to have been her business manager, and who alone on her side gave evidence in the case, should go to Hamilton for the purpose of entering into some arrange-

Supreme Court Reports.

ment looking to the liquidation of the Sanford Company indebtedness. He accordingly came to Hamilton and met there the principal officers of the company. These gentlemen retained the services of a firm of solicitors (Scott, Lees & Hobson) in the matter, which firm were, and had been for years previously, the solicitors of Mr. James D. Wilson, a retired merchant and money lender of Hamilton, who had frequently before advanced money to various parties, and upon such securities as were recommended to him by his solicitors. At the meeting between Cheyne and the company it was apparent that Miss Cheyne could not pay her debts as they became due, and that it was an absolute necessity, if her business was to continue, that she must get by some means or other a very considerable extension of time. It was present also to the minds of the parties that she could not give an assignment of her property to the Sanford Company by way of security or by way of preference, because that would be in violation of the statute respecting assignments and preferences; but it was known that under a recent decision of the Ontario Court of Appeal in the case of *Gibbons v. Wilson*, it was held in effect that it was not contrary to law that a debtor in insolvent circumstances might legally give a mortgage upon the security of his property to a third party and with the proceeds pay a single creditor in full, to the detriment of his other creditors, and that too, even although the lender of the money were aware of the fact that such was his purpose and object in obtaining the loan when giving the security. It was then also ascertained that Mr. Wilson would be willing to advance whatever money the solicitors wanted upon the securities mentioned by them. It was further understood that in the event of Miss Cheyne giving a chattel mortgage to a third party he would advance her money sufficient to pay the Sanford debt. That security would enable her to hold her other creditors at bay so far as her assets exigible in execution were concerned until the moneys due under the security were paid. It was thereupon agreed that Miss Cheyne should give a chattel mortgage to Mr. Wilson upon her stock in trade, he advancing the amount of the Sanford debt, $4,775, and that the mortgage should be payable with interest at eight per cent. per annum by weekly instalments of $100 each, the final instalment to be paid on the 11th of November, 1899. It was agreed further that the money received from Wilson should be handed over to the Sanford Company, thereby wiping out their indebtedness; further, that the Sanford Company should execute an instrument of indemnity guaranteeing to Wilson the amount of his loan, the solicitor to hold this security and to deal with it as the necessities of the case might require. There was in addition some kind of an indefinite understanding that the Sanford Company should con-

tinue to supply Miss Cheyne with goods to enable her to carry on her business (this promise on the part of the company forming to a very considerable extent the inducement under the influence of which Miss Cheyne became a party to the transactions), and that she should at once give to the Sanford Company a second chattel mortgage upon her stock, including subsequently acquired property, in consideration of the sum of $916, the amount of the value of the goods which they were then to advance, the money secured under such instrument to be paid forthwith. Previous to this final arrangement Mr. Scott, the partner of the solicitor, Mr. Lees, had a personal interview with Mr. Wilson, and had in effect informed him that he wanted this money upon the security of a chattel mortgage covering the stock and goods owned by one Miss Cheyne in Toronto. Mr. Scott, who was aware of all the circumstances, had not given Mr. Wilson any further information upon the subject than I have stated, Mr. Wilson having the fullest confidence that so far as he was concerned, Mr. Scott's assurance that he would be fully protected was all that was necessary. He had never known or heard of Miss Cheyne before. In fact he did not know whether she was single or married, but as already stated he knew from his experience that he might place the most implicit reliance upon the advice of his solicitor, Mr. Scott. In pursuance then of this arrangement, Miss Cheyne executed the chattel mortgage in favour of Wilson, and Wilson gave the money to the solicitors; the solicitors gave the money to the company, the company gave the bond of indemnity in favour of Wilson to the solicitors, and within a week the Sanford Company sent goods to the extent of $916 to Miss Cheyne, and on the 5th of November she gave the chattel mortgage above referred to, to the company, payable forthwith. Two weeks afterwards the Sanford Company, without Wilson's knowledge, took possession of the whole of the property covered by the mortgages, advertised the same for sale, and realized a sum not quite sufficient to pay off the two mortgages, leaving nothing whatever for the appellants, Messrs. Burns & Lewis, nor for any of her other creditors. An action was commenced on the 15th of November, 1895, a fortnight after the date of the mortgage, to set it aside, the defendants being Miss Cheyne, Mr. Wilson and the Company. Upon the trial the learned Chancellor for Ontario decided, although with very great doubt, that the transaction was valid, and his finding was sustained by the Court of Appeal upon the authority of *Gibbons v. Wilson*, and it is from that judgment that this appeal is taken.

The law upon the subject is contained in the Act Respecting Assignments and Preferences of Insolvent Persons (Revised Statutes of Ontario, ch. 124), and the Amending Acts, 54 Vict.

ch. 20 and 58 Vict. ch. 23. Section 2 of the principal Act (R.S.O.) ch. 124, was repealed by the Act of 1891, a new section of that Act being substituted therefor, and it enacts, among other things:

First—

That every assignment of property made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay, or prejudice his creditors, or any one or more of them, shall as against his creditor or creditors injured, delayed or prejudiced, be utterly void.

Secondly—

That every such transfer to or *for* a creditor with intent to give such creditor an unjust preference over his other creditors or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void.

And further that a transaction of that kind shall be presumed to be made with intent and to be an unjust preference if made within sixty days previous to the time when any action is taken to impeach it. These provisions are, however, subject to section 3 of the principal Act, which enacts, among other things, that nothing in the preceding section, to which I have referred, should apply to any *bonâ fide* assignment of property which is made by way of security for any present actual *bonâ fide* advance of money.

The Act of 1895 above referred to only affects this case in so far as it adds to the existing rights of the attacking creditors. In order to arrive at a conclusion as to whether this case comes within the statute the case must be looked at from three points of view, viz.: First, from the view of the debtor; secondly, from the view of the creditor; and thirdly, from the view of the lender. I do not think there can be any question here but that Miss Cheyne, as a matter of fact, was a person in insolvent circumstances and unable to pay her debts in full at the time she executed the instrument impeached. There is a question, however, as to the intent with which she did it. Did she do it with the intent to delay her creditors, or with the intent to give a preference to the company, or only with the intent of enabling her to carry on her business? While this latter intent no doubt did exist there can be no question but that such intent was to be carried out by so protecting her property that her other creditors could not by any means avail themselves of it for the payment of their claims. In other words her desire to carry on her business was to be attained by setting her other creditors at defiance through the medium of this chattel mortgage, which for four years at least was to remain in existence against them. There was therefore clearly an intent on her part to hinder, delay, and prejudice her creditors.

Now, from the point of view of the company: It was admitted at the argument, and it is unquestionably correct, that they could not have taken this mortgage in their own names. Had they done so it would at once have come within the statute and been void as an unjust preference.

The principal question in controversy is as to Wilson. Was this mortgage, so far as he was concerned, by way of security for a "present actual *bonâ fide* advance of money?"

Now I admit that an insolvent debtor may sell or mortgage his property for money and then pay that money to one of his creditors, even though in doing so he should give a preference to that creditor over all of the other creditors, and further that such a transaction cannot be successfully attacked under the statute, even though the lender knows of the debtor's intent to effect such preference, and we have so held in *Campbell v. Patterson.* The payment of money to a person in exchange for property of that person does not *per se* affect in any way the quantum of his assets available for his creditors generally, and there is no principle of law which compels any man bargaining for or taking security upon goods to make any inquiry either before or afterwards as to what disposition it is intended to make of the money or property transferred. He is not debarred from completing the transaction even although aware of its purpose. Is Mr. Wilson in that position here? He endeavours to shield himself by setting up his ignorance. It was at first contended at the argument before us that Mr. Scott was not his solicitor, and even if it were held that he was, the solicitor's knowledge was not his knowledge. The first contention was abandoned, but the other was pressed. So far as this point is concerned we are of opinion that his solicitor's knowledge necessarily acquired in connection with these same transactions was his knowledge, and that he must be held to have known what his solicitor knew. It was in our view the same as if the solicitor had Mr. Wilson's money in his hands for the purpose of investing it in such a way as the solicitor might think expedient, he having a power of attorney to carry on the business in the same way and to the full extent that his principal might have done. Under such circumstances, the defence of ignorance on the part of the principal would be of no avail as against the knowledge of the attorney. Now, in our view all of these transactions must be viewed as one transaction. Each of its constituent facts had relation to every other in connection with it, and all must stand or fall together. The defendant company were rightly desirous of payment or security for their debt. They called in the aid of a solicitor to advise as to how this desire might be accomplished. The solicitor had, in substance, in his possession funds of his principal

with full powers of investing them. Both he and the company knew that the debtor could not give a security direct to the company. That would undoubtedly be a violation of the statute, but the solicitor suggests: "In your interest I can get over the statute. I have read *Gibbons v. Wilson*; I will take my client's money and pay you and get Miss Cheyne to give a chattel mortgage to me, you at the same time giving me a bond of indemnity that I will eventually get back my money." It was a happy suggestion, is immediately adopted, and the transaction is completed upon these lines. I may have drawn too strong inferences from the admitted facts, but it is clear that substantially the transaction was just as I have stated. I do not think that under these circumstances the money, even although it was Wilson's money, was given in good faith to Miss Cheyne. The whole intent and object of the scheme, so far as the company was concerned, and so far as its solicitor (he being Wilson's solicitor as well) was concerned, was to secure the payment in full of the Sanford claim, the necessary consequence of which was, and was known to be, that all the other creditors would be, at all events, hindered and delayed in their remedies, if not, as matters subsequently turned out, defeated altogether. The money was not money paid to Miss Cheyne at all. The chattel mortgage was a mere instrument taken by the company to secure the object they had in view. Wilson himself was a like instrument used by them to aid in the same purpose, nothing more than a mere portion of the machine devised by the solicitor to work out his ingenious plan. It was not upon the security of the Toronto goods that the solicitor paid the company, but it was because he knew, whether by verbal promise or by reason of the written indemnity of the company, they would protect him and Wilson from all loss in the matter, and under these circumstances it seems to me an impossible task to show that there was a *bonâ fide* payment of money by Wilson to Miss Cheyne. On the contrary it was a *malâ fide* payment to the company for the purpose of avoiding the statute under the guise of a colourable or fictitious payment to Miss Cheyne.

It is satisfactory to know that all the money due to Wilson has been realized from the sale of the proceeds, the same having been paid over to him since the commencement of this action, by the company.

We are of opinion that this appeal should be allowed. The result will be that the money received by the company from Wilson, instead of being devoted exclusively to the company's benefit, will now be divided *pro ratâ* among themselves and their fellow creditors.

There will be judgment for the appellants, and they will have judgment in the court below as asked in their statement of claim, with costs.

Appeal allowed with costs.

COURT OF APPEAL, ONTARIO

Mail Printing Co. v. Clarkson*

Where an estate is being administered under the Assignments and Preferences Act, R.S.O. ch. 124, claims depending upon a contingency cannot rank, but only debts strictly so called.

An advertising contract gave the advertiser in consideration of the sum of $1,000 the right to use certain advertising space in a newspaper at any time within twelve months, the advertiser agreeing to pay at the end of each month for the space used in that month, and at the expiration of twelve months, whether the space had been used or not, to pay $1,000, less such sums as might have in the meantime been paid. The advertiser before using any space, and before the expiration of twelve months, made an assignment for the benefit of creditors pursuant to R.S.O. ch, 124:

Held, reversing the judgment of Boyd, C., 28 O.R. 326, that the $1,000 would not necessarily become due by effluxion of time, and that the newspaper company could not rank.

This was an appeal by the defendant from the judgment of Boyd, C.

The defendant was the assignee for the benefit of the creditors of Samson, Kennedy & Co., under an assignment made, pursuant to the provisions of R.S.O. ch. 124, on the 9th of December, 1895. The plaintiffs claimed that they were entitled to rank against the estate in the defendant's hands for $1,000 under the following agreement:

We the undersigned agree with the Mail Printing Company to advertise our regular business announcements for twelve months from this date, for the sum of one thousand dollars, payable as used monthly, for which we are to have the right to occupy the space of twenty thousand lines agate, in the advertising columns of the daily or weekly Mail and Empire, or in Farm and Fireside, upon the conditions specified below and on the back of this contract. In consideration of the Mail Printing Company agreeing to furnish them with space at the reduced rates above mentioned they agree that should they not avail themselves of the right to occupy the said space within the said specified time, such failure shall not relieve them from the obligation to pay the Mail Printing Company at the expiration of said time the said $1,000, less such amounts as may have been previously paid on account of this contract.

SAMSON, KENNEDY & CO.

Toronto, July 22, 1895.

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* *Ontario Appeal Reports.*

Upon the back of the contract there were certain conditions as to the measurement and position of the advertisements, and also the following special conditions:

Advertisements at all times to be subject to approval of the managing director of the Mail Printing Company, who reserves to himself the right to insert or otherwise.

If this contract is broken through insolvency or other cause the Mail Printing Company shall have the right to cancel the contract and charge at the casual single insertion rate for the space occupied under the contract.

Advertisements left out by accident at any time, or for the reason that the special space contracted for is otherwise occupied, will receive insertions at end of contract to make good the omission.

In case of errors or omissions in legal or any other advertisements, the company do not hold themselves liable for damage further than the amount received by them for such advertisement.

At the time of the assignment of Samson, Kennedy & Co. for the benefit of creditors no space had been used under this agreement.

The action was tried at Toronto on the 25th of February, 1897, before Boyd, C., who, on the 6th of March, 1897, gave judgment in the plaintiffs' favor.

The appeal was argued before Burton, C.J.O., Osler, Maclennan, and Moss, JJ.A., on the 23rd of September, 1897.

BURTON, C.J.O.: The agreement on which the plaintiff bases his claim appears to have been prepared with great care, and is apparently very fair and equitable in its terms, and advantageous to all parties, and the claim itself is one which one would struggle to sustain if possible to do so.

Notwithstanding the weight which is undoubtedly due to the opinion of the learned Chancellor, I am unable to agree in his conclusion in holding that at the time of the assignment anything in the nature of an existing debt had arisen under the contract.

In *Grant v. West* (1896), in this Court, we held that a claim for unliquidated damages not reduced to a judgment before the date of the assignment was not provable.

It is contended with much force that the word "claim" is very wide, but we were forced to hold in that case that wherever a claimant was referred to, the language of the statute seemed to point to a claim against one who was a debtor, and sub-section 4 of section 20, which is so much relied on in the present case, was, in our opinion, indicative of a very clear intention to confine it to claims for debt—*debitum in presenti*—though it might be *solvendum in futuro*.

The learned Chancellor has treated this as a debt of that description. He goes so far, indeed, as to treat it as not essentially different from the case of a promissory note payable at a future time.

I am unable to adopt that view. So far as the agreement might have been acted upon by actual advertising a debt would have arisen for the space used each month, and if the whole space had been exhausted the claimants would have been entitled to the full $1,000 before the expiration of the term; they might also at the expiration of the twelve months have been entitled to the full sum of $1,000, although the firm had not availed themselves of the space to which they were entitled; that would depend upon the due performance of the engagement on the part of the plaintiffs; but how can it be said that at the date of the assignment there was a debt existing although the payment of it was deferred? The $1 000 would not become due necessarily by the mere effluxion of time; the contract was entirely executory; it might or might not ripen into a debt; that depended upon circumstances. In declaring upon such a contract after the expiry of the twelve months, my impression is that under the old form of pleading it would have been necessary to aver and prove that the plaintiffs had always been able and willing to afford the space stipulated for, and, in any event, the non-ability or refusal to supply the space when properly required would have afforded a complete answer to the claim.

The case differs, therefore, essentially from the case of a promissory note, where the debt actually exists the moment the note is signed, although not payable, it may be, for months afterwards.

I think, with great respect, that this was not a debt payable *in futuro*, and was, therefore, not provable upon the estate, and that we must allow the appeal.

OSLER, J.A.: The claim which is provable under the Act is one by a creditor against a debtor. It must be a claim which is due or presently payable at the date of the assignment, or a claim which has not yet "accrued due," to use the language of the Act, but which is about to do so, and the amount of which may, for the purpose of proof, be ascertained by the application of the simple method prescribed by sec. 20, sub-sec. 4, viz., by deducting interest therefrom for the time which has to run before the claim becomes due. For this purpose, therefore, the time of payment is, as it were, accelerated, to use the learned Chancellor's expression in *Tillie v. Springer* (1892), and the result may even be, if the estate prove sufficient, that the claim, subject to this deduction, will be paid in full, just as if it had been actually a claim due at the date of

the assignment. This sub-section indicates the character of the claim which, though not yet payable, may be ranked for as if it were—a claim, namely, which is only not payable because the time for payment has not yet arrived, and the amount of which, therefore, for the purpose of immediate payment out of the fund assigned, may justly be ascertained by making a proper abatement. Such would be the case of a promissory note not yet due, or payable by instalments, or of any other contract to pay a sum of money absolutely and at all events.

Where, however, the time for payment has arrived at the date of the assignment, though the right to payment may depend upon some condition precedent having been performed, I do not say that such a claim is not one which may be ranked for, and the claimant shown to be a creditor within the Act, on proof of the condition having been performed. This would be wholly different from setting up the claim, and attempting to rank for it, not only before the time for payment had arrived, but before the performance of the condition precedent, and dispensing with the latter altogether.

To apply these observations to the case before us: For all monthly payments earned on account of the whole yearly charge at the date of the assignment there would clearly be the right to rank. There were, however, none such, as the insolvents had used none of the space they were entitled to. So also, if the year had then elapsed at the expiration of which the $1,000 would have been payable, less any sums which might have already been paid thereon. But it is clear that in that case the plaintiffs would have been obliged to prove either that the whole space contracted for had been used by the insolvents, or that they had always been ready and willing to furnish it to them, and circumstances are readily conceivable in which they might be unable to prove the latter. Therefore the $1,000 was not a sum payable absolutely, and at all events, at the expiration of the year, as in the case of a promissory note for the like amount. The conclusion necessarily is that the space not having been used, and the year not having expired, at the date of the assignment, the plaintiffs were not then creditors of the insolvents within the meaning of the Act, inasmuch as from the very nature of the case they could not prove performance of the conditions precedent, which, quite apart from the effluxion of time, they would have had to prove in order to show themselves entitled to the money in question. There could be no breach of the contract, regarded as a contract in a certain event to pay the $1,000, until the expiration of the year, and *non constat* that anything would ever be payable thereon. Such a case as this is not provided for by the Act, and therefore I am obliged to say that the appeal should be allowed.

Maclennan and Moss, JJ.A. concurred.

COURT OF APPEAL, ONTARIO

Webster v. Crickmore*

Where a preferential security, given while R.S.O. (1887) ch. 124, as amended by 54 Vict. ch. 20, was in force, is attacked within sixty days, evidence of pressure is not admissible to rebut the presumption of intent to give a preference.

An agreement to give security, made in good faith, may, even though it is indefinite in its terms, avail to rebut the presumption of intent to prefer, but where the giving of security is deliberately postponed in order to avoid injury to the debtor's credit, or to avoid the statutory presumption, the agreement to give the security is of no avail.

Judgment of ARMOUR, C.J., reversed, BURTON, C.J.O., dissenting.

This was an appeal by the plaintiff from the judgment at the trial.

The plaintiff was an execution creditor of the defendants the Crickmores, and brought the action on the 15th of December, 1896, to set aside as preferential and void, a chattel mortgage for $2,000, made on the 17th of October, 1896, by the Crickmores, who were then in insolvent circumstances, in favour of the defendants Strickland and Poussette, as collateral security for a then existing indebtedness. The defendants Strickland and Poussette pleaded that the chattel mortgage was given in pursuance of an agreement made in February, 1896, when a readjustment of then existing securities was arranged, and also that they had taken the chattel mortgage in good faith without knowledge, or notice, of the insolvent condition of the Crickmores.

The action was tried at Toronto, on the 9th of September, 1897, before ARMOUR, C.J., who dismissed it with costs.

The plaintiff's appeal was argued before BURTON, C.J.O., OSLER, MACLENNAN and MOSS, JJ.A., on the 3rd and 4th of February, 1898.

OSLER, J. A.:—Omitting certain *obiter dicta* concerning former decisions, the findings of the learned Chief Justice are as follows:—

"I think the transaction was perfectly honest and straightforward with regard to taking the mortgage. I think Mr. Poussette (one of the defendants) knew that these parties (the mortgagors) were in difficulties, that Crickmore himself was insolvent, and I think he had reasonable grounds for believing that Mrs. Crickmore was also insolvent, and I think they were in

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fact insolvent according to my view, but I think it was an honest debt, and that pressure was exerted and that he had a right to take the chattel mortgage, and that the chattel mortgage is good."

As to an agreement to give the chattel mortgage, the learned Chief Justice said :—" I cannot understand that there was any prior agreement to give the chattel mortgage. I think there was a prior agreement to give security, but there were no particular chattels specified, or anything of that kind. It was an agreement to give security— that only shows that the transaction was not fraudulent. I think it was a perfectly honest transaction, and unless it is rendered invalid by reason of the statute, it is perfectly good." The action was accordingly dismissed, apparently on the ground that the transaction was an honest one, and that pressure had been exerted upon the mortgagors to carry it out.

The evidence as to the agreement is very vague. Such as it was, it was a verbal agreement in February, 1894, in such terms as these : " Well, of course, we can give you a mortgage on those too (the chattels) if you require it. We will give you security on anything that we have." It was not more specific than that, and no attempt was made to have it carried out until the following October, when the mortgagors were insolvent. Mr. Poussette said that one of the reasons why he had not asked for it sooner was that Crickmore did not wish to have it registered against his property, and he was willing to accommodate him as much as he could.

It appears to me that a chattel mortgage taken under these circumstances, however honest the debt for which it is taken, cannot be supported by such an agreement consistently with the decision of the Supreme Court in *Clarkson v. McMaster* (1895), and of this Court in *Clarkson v. Ellis* (unreported). I do not rest my judgment on the ground that the agreement was a verbal one, and so perhaps avoided by the statute 59 Vict., ch. 34, sec. 4 (O.), passed soon after it was made—for I think an honest verbal agreement, even as indefinite as the above, may be available to rebut the intent to prefer, when the instrument is not attacked, or the assignment is not made, for more than sixty days after it is given—but on the ground that the taking of the mortgage was deliberately postponed until the debtors were in a state of insolvency, and that it was not, from the very first, intended to be taken until the circumstances of the debtors should render it necessary to do so.

If the agreement is eliminated, the case comes within the words of the Act, for the action to set aside the mortgage was brought within sixty days after it was given. It is then presumed, as the Act stood at the time it was given, to have been made with the prohibited intent, and that presumption is, I think, for reasons I have given elsewhere, not a rebuttable one.

It has always appeared to me that the object of the Legislature in the case of instruments made within the arbitrary period of sixty days before they were attacked, or before the debtor made an assignment, was to shut out all enquiry as to the intent with which they were given, and to avoid them for the benefit of the general body of the creditors. That principle is by no means novel. It is found in the 133rd section of the Insolvent Act of 1875, as it at first stood. If the instrument was executed earlier than sixty days before it was attacked, or before the assignment, it might be supported by proof of anything which would rebut the intent to prefer, but if the debtor's affairs were then in so precarious a state as to make insolvency inevitable sixty days afterwards, it was intended that the creditor should not have the advantage he had attempted to secure, at the expense of the other creditors. Of course if it had been given in pursuance of a prior valid agreement it might be supported on a different ground. It would not then be within the statute at all.

Here, the agreement, for the reasons I have mentioned, is one which it is not open to the creditor to invoke, and then his security is destroyed by the Act, the improper intent being inferred, and not being open to be rebutted by evidence of pressure, or of other facts which might have been introduced for that purpose had the attack upon it been delayed a little longer.

As regards the much debated subject of pressure, I must add that whenever it is available to support an instrument attacked as being an unjust preference, I consider the law thereon in this Province to be as it is stated in such cases as *McCrae v. White*; *Long v. Hancock*; *Molsons Bank v. Halter*; and *Slater v. Oliver*.

MACLENNAN, J.A.:—I also am of opinion that the appeal should be allowed.

MOSS, J.A.:—The learned Chief Justice found, and I agree, that there was in fact no prior agreement. But if there had been I think the principle of *Clarkson v. McMaster* should be applied to the case. An agreement that the giving of the chattel mortgage is to be postponed—because to file it would injure the debtor's business — until his desperate circumstances make it wholly imprudent as well as unnecessary to longer refrain from taking it, is I venture to think as much opposed to the policy of the law as the actual taking of a chattel mortgage under an agreement that it is not to be filed as required by the statute. In each case there is concealment from the other creditors of the mortgagor and the dealing should be treated as void *ab initio*.

With respect to the defence of pressure, in the view I take

of the case, and having regard to the change wrought in the language of sub-secs. (1) and (2) of sec. 2 of 54 Vict. ch. 20 (O.), in the process of recent revision of the statutes of Ontario, I do not feel called upon to express any opinion as to the extent of the conclusive or non-conclusive effect of the presumption created by these enactments in their unaltered form. But the argument pressed upon us that the pressure found to have been exercised in this case must, notwithstanding the date of the transaction, be considered in dealing with the question of intent, and that taken in connection with the finding of honesty and good faith, it is sufficient to uphold the transaction, renders it necessary to consider the question whether pressure can be at all invoked to support a transaction occurring within sixty days of an action to impeach it, or of the date of an assignment for the benefit of creditors.

With great respect for those who entertain a different opinion, I am of opinion that in any case coming within the prescribed conditions of sub-section 2 (*a*) and 2 (*b*) of section 2 —assuming the presumption to be rebuttable—the doctrine of pressure is excluded as an element in displacing intent to give an unjust preference. I am unable otherwise to account for the presence in these sub-sections of the words " whether the same be made voluntarily or under pressure."

There is no doubt that before the Legislature enacted these provisions there was much dissatisfaction with the existing state of the law relating to pressure, and it seems plain that the intention was to deal with the question of preferences to creditors.

Sub-section 2 (*a*) and 2 (*b*) are directed against preferences to favoured creditors as opposed to transactions entered into with intent to defeat, hinder, delay, or prejudice creditors generally, and were certainly intended to effect some alteration in the existing law with respect to preferences.

Under the then existing law a gift, conveyance or transfer, made to a creditor by a debtor in insolvent circumstances, or unable to pay his debts in full, of his own mere motion, and as a favour proceeding voluntarily from himself, was presumed to have been made with intent to prefer or give an unjust preference. But no such presumption arose with regard to a conveyance, or transfer, made under pressure from the creditor, and not originating with the debtor.

The object of the Legislature in enacting the amendments contained in sub-sections 2 (*a*) and 2 (*b*) was to abolish the application of the doctrine of pressure in support of any transaction having the effect of a preference made within sixty days before an action to impeach it, or an assignment under the Act, but to leave the law untouched as regarded transactions not coming within the sixty days' limit.

It is in substance declared that as regards any transaction with or for a creditor, which has the effect of giving that creditor a preference over other creditors, it shall, if within the sixty days limit, be presumed to have been made with intent to give an unjust preference, and to be an unjust preference although it may have been made under pressure.

There is, in effect, a declaration that the same presumption shall be made in the case of a transaction made under pressure as in the case of a transaction shown to be the outcome of the voluntary or spontaneous act of the debtor.

The presumption is to be made notwithstanding that the impeached conveyance, or transfer, was made under pressure. A transfer to a creditor made voluntarily, and a transfer to a creditor made under pressure, are put upon the same footing as regards presumption of intent. The element of pressure is eliminated from the latter transaction, as it always was from the voluntary transfer by the very nature of the case. The statute declares pressure to be as nothing against the presumption in the prescribed circumstances.

Then coupling it with something else cannot give it vitality to assist in displacing the presumption which the statute declares shall exist notwithstanding the fact of pressure. The sum total cannot be increased by adding nothing to something.

I think the effect of the legislation is that in seeking to displace the intent and to negative unjust preference in a transaction coming within the conditions of these sub-sections pressure is to be left out as a factor.

The result as regards this case is that there is nothing to rebut the presumption of intent to give a preference, and having regard to the other circumstances the transaction comes within sub-section 2 (*a*) of section 2.

Appeal allowed, BURTON, C.J.O., dissenting.

SUPREME COURT, STATE OF WASHINGTON

Dennis v. Moses*

Laws providing that a contract, loan, bond, or mortgage may be paid in any kind of lawful money or currency of the United States, a provision therein to the contrary notwithstanding, and declaring unenforceable a provision for payment in a particular kind of money or currency, are invalid, as being an attempt to legislate on a subject belonging exclusively to the federal government.

This action was brought to foreclose a real estate mortgage given to secure payment of a note for $1,500. The note and mortgage contained a stipulation that the debt should be pay-

*Pacific Reporter.

able only in gold coin of the United States of the present standard, in contravention of an Act of the State relating to the payment of obligations, and it was urged as a portion of the defence that the debt could be satisfied in any kind of lawful money. This contention was upheld by the lower court, but the judgment was reversed on appeal to the Supreme Court of the State.

SCOTT, C.J.: Regarding the Act relating to the payment of obligations (Laws 1897, p. 91), I desire merely to announce the conclusion reached by the other members of the court as I understand it, viz., that it is a subject upon which a State cannot legislate, but belongs exclusively to the general government. In its practical effects it is of no consequence, although the principle is an important one. The precise point as to whether a State can provide that no contract shall be enforced as payable in any particular money, but may be discharged in any kind of lawful money, regardless of the stipulations of the parties, in the absence of national legislation permitting such contracts, does not seem to have been decided elsewhere. Personally, from the limited examination I have given it, in view of its present at least inconsequential effect, and the opinion of the majority, I can see no objection to sustaining such a law. But it follows, from the holding of the other members of the court, that this contract must be enforced according to its terms, and that the Act is inoperative.

REAVIS, J.: The effect of the statute making the contract for specific money soluble in lawful money of the United States involves a federal question, and seems to have been determined by the controlling authority,—the Supreme Court of the United States. The power of the State to declare a legal tender is limited to gold and silver coin. All "lawful money" of the United States is not a legal tender for private obligations by the laws of the United States; but, under the grant of power to coin money and regulate the value thereof, the Federal Supreme Court has, I think, decided that the question relating to final payment in private contracts is one exclusively of federal jurisdiction, and vested in Congress. The legal tender and gold contract decisions, taken in connection with the recent case of *Woodruff v. Mississippi*, 162 U. S. 291, 16 Sup. Ct. 820, are controlling here. The jurisdiction of the federal court would not, in this case, have been sustained on any other principle than complete federal control of such contracts. This conclusion, I think, is manifestly apparent from both the majority and minority opinions given in the case. A different question would be presented in contracts made by the State, or municipal corporations controlled by the State.

Anders, Gordon and Dunbar, JJ., concurred.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Year ending 30th June—	1897		1898	
Free	$40,473		$51,447	
Dutiable	66,242		73,695	
	$106,715		$125,142	
Bullion and Coin	4,665	$111,380	4,389	$129,530

EXPORTS

For the year ending 30th June—				
Products of the mine	$11,311		$13,998	
" Fisheries	10,365		10,792	
" Forest	31,319		26,533	
Animals and their produce	39,159		44,243	
Agricultural produce	18,101		33,234	
Manufactures	9,420		10,455	
Miscellaneous	155		147	
	$119,833		$139,402	
Bullion and Coin	3,478	$123,311	4,632	$144,034

SUMMARY (in dollars)

For the year ending June—	1897	1898
Total imports other than bullion and coin	$106,715,000	$125,142,000
Total exports other than bullion and coin	119,833,000	139,402,000
Excess of exports	$ 13,118,000	$ 14,260,000
Net imports bullion and coin	1,187,000	243,000

IMPORTS

Month of July—				
Free	$ 3,724		$ 6,225	
Dutiable	5,332		10,520	
	$9,056		$16,745	
Bullion and Coin	330	$ 9,386	337	$17,082
Month of August—				
Free	$ 4,610		$ 5,351	
Dutiable	5,890		7,211	
	$10,500		12,562	
Bullion and Coin	1,046	$11,546	1,528	14,090
Total for two months		$ 20,932		$ 31,172

EXPORTS

Month of July—				
Products of the mine	$ 1,049		$ 887	
" Fisheries	903		936	
" Forest	5,696		5,019	
Animals and their produce	4,913		3,013	
Agricultural produce	2,267		1,506	
Manufactures	919		742	
Miscellaneous	5		17	
	$15,752		$12,122	
Bullion and Coin	23	$15,775	117	$12,239
Month of August—				
Products of the mine	$ 1,263		$ 981	
" Fisheries	807		750	
" Forest	4,003		4,474	
Animals and their produce	4,267		4,586	
Agricultural produce	1,363		1,240	
Manufactures	793		911	
Miscellaneous	9		16	
	$12,508		$12,961	
Bullion and Coin	45	$12,553	167	13,128
Total		$28,328		$25,367

SUMMARY (in dollars)

For two months, July and August—

	1897	1898
Total imports other than bullion and coin	$ 19,556,000	$ 29,307,000
Total exports other than bullion and coin	28,260,000	25,083,000
Excess	*Exp.* $ 8,704,000	*Imp.* $ 4,224,000
Net imports of bullion and coin	1,308,000	1,581,000

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

(000 omitted)

	Montreal		Toronto		Halifax		Hamilton		Winnipeg		St. John	
	1896-7	1897-8	1896-7	1897-8	1896-7	1897-8	1896-7	1897-8	1896-7	1897-8	1896-7	1897-8
	$	$	$	$	$	$	$	$	$	$	$	$
September	44,763	55,080	24,870	32,466	5,036	5,164	2,829	2,971	4,630	8,035	2,283	2,620
October ..	48,999	59,340	29,242	35,736	5,387	5,817	3,131	2,970	7,585	13,291	2,292	2,464
November	50,215	59,166	29,129	34,211	5,063	5,580	2,856	2,878	8,895	13,550	2,362	2,442
December	51,033	56,509	33,146	35,986	5,547	5,386	3,051	3,094	7,736	9,784	2,566	2,738
January ..	43,577	60,334	31,117	37,836	5,135	5,009	2,863	3,028	5,009	6,347	2,200	2,417
February .	38,480	62,332	24,592	33,414	4,208	4,446	2,591	2,663	3,851	5,517	2,016	2,022
March ...	40,654	67,625	26,673	39,012	5,215	5,285	2,799	3,021	4,289	5,968	2,144	2,148
April	45,092	50,003	28,236	33,035	5,077	4,472	2,900	2,858	4,161	6,240	2,314	2,254
May	46,600	56,475	29,059	34,374	5,270	4,798	2,655	2,932	5,014	8,683	2,430	2,513
June	54,616	56,475	29,842	36,960	4,792	4,997	2,544	3,001	5,531	7,397	2,566	2,592
July.....	52,831	60,423	33,892	35,727	6,308	5,851	2,638	3,117	5,616	6,316	3,116	2,927
August ..	49,240	55,578	29,640	32,390	5,554	5,551	2,442	2,655	6,298	6,180	2,874	2,059
	566,100	699,340	349,438	421,147	62,592	62,356	33,299	35,188	68,615	97,308	29,163	29,196

STATEMENT OF BANKS acting under Dominion Government charter for the months of June, July and August, 1898, and comparison with August, 1897:

LIABILITIES

	30th June, 1898	31st July, 1898	31st Aug., 1898	31st Aug., 1897
Capital authorized	$74,758,684	$ 75.258,684	$ 76,258,684	$ 73,258,684
Capital paid up	62,303,137	62,303,449	62,407.759	61,959,547
Reserve Fund	27,555,666	27,555,666	27,555,666	27,070,799
Notes in circulation	$ 36,539,103	$ 36,553.546	37,299,496	$ 34,454,386
Dominion and Provincial Government deposits	6,872,080	5,325,983	5,748,413	6,637 438
Public deposits on demand	82,313,900	81,886,549	84,306,117	74,949,375
Public deposits after notice	144,749,443	147,169,605	149,972,984	135,068,821
Bank loans or deposits from other banks secured	.....	.....	.....	100,000
Bank loans or deposits from other banks unsecured	2,553.424	2,590,918	3,418,628	3,858,637
Due other banks in Canada in daily exchanges	164,198	117,496	133,783	126,619
Due other banks in foreign countries	492,502	542,116	502,360	360,692
Due other banks in Great Britain	3,225,326	2,922,629	2,557,089	2,116,546
Other liabilities	497,468	390,709	223,523	359,491
Total liabilities	277,407,434	277,499,629	284,162,483	$258,032,070

ASSETS

Specie	$ 9,283 030	$9,465,955	$ 9,656,747	$ 8,724,780
Dominion notes	15,214,505	16,023,154	17,579,203	17,613,363
Deposits to secure note circulation	1,915,070	1,989,645	1,983,983	1,880,678
Notes and cheques of other banks	9,663,728	8,323,217	9,055,625	7,909,618
Loans to other banks secured	50,000	50,000	25,000	29,677
Deposits made with other banks	3,615,020	3,459,505	4,188,193	4,598,522
Due from other banks in Canada in daily exchanges	212,651	183,989	204,478	165,951
Due from other banks in foreign countries	21,279,953	19,327,662	25,553,817	27,913,770
Due from other banks in Great Britain	8,230,112	10,513 602	11,483,170	12,249,663
Dominion Government debentures or stock	4,901,627	4,898,866	4,899,211	2,767,379
Public municipal and railway securities	34,264,288	35,398,909	35,117,485	27,355,818
Call loans on bonds and stocks	20,066,715	21,885,337	21,475,172	16,606,104
Current loans and discounts	222,413,538	220,193,092	218,077,369	202,457,187
Loans to Dominion and Provincial Governments	1,649,231	1,127,009	1,777,447	1,297,002
Overdue debts	2,855,867	3,139,168	3,127,450	3,636,793
Real estate	2,132,908	2,074,619	2,071,962	2,047,917
Mortgages on real estate sold	570,820	570,512	559,135	564,170
Bank premises	5,740,154	5,820,351	5,830,126	5,641,285
Other assets	1,574,645	2,504,062	2,019,555	2,345,474
Total assets	365,634,052	366,948,842	374,685,325	$345,805,354
Loans to directors or their firms	8,357,874	7,559,666	7,255,148	$6,678,798
Average amount of specie held during the month	9,277,085	9,502,007	9,727,955	9,492,800
Average Dominion notes held during the month	15,096,177	15,432,953	16,459,260	16,586,384
Greatest amount of notes in circulation during month	37,478,083	37,699,706	38,138,731	34,928,862

CANADIAN BANKERS' ASSOCIATION

SUPPLEMENTARY LIST OF ASSOCIATES

(NAMES OMITTED FROM THE LIST PUBLISHED IN THE JULY ISSUE)

Blanchard, E. R	Banque de St. Hyacinthe
Burn, Geo	Bank of Ottawa
Clouston, E. S	Bank of Montreal
Coulson, D	Bank of Toronto
Duncan, D. H	Merchants Bank of Halifax
Farwell, Wm	Eastern Townships Bank
Fyshe, Thomas	Merchants Bank of Canada
Gamble, R. D	Dominion Bank
McLeod, H. C	Bank of Nova Scotia
McDougall, Thomas	Quebec Bank
Prendergast, M. J. A	Banque d'Hochelaga
Reid, Geo P	Standard Bank of Canada
Saunders, A. L	Bank of Ottawa
Schofield, Geo. A	Bank of New Brunswick
Stikeman, H	Bank of British North America
Strathy, H. S	Traders Bank of Canada
Tait, A. Gordon	Merchants Bank of Halifax
Thomas, F. Wolferstan	Molsons Bank
Thorne, E. L	Union Bank of Halifax
Turnbull, J	Bank of Hamilton
Walker B. E	Canadian Bank of Commerce
Wallace, H. N	Halifax Banking Company
Webb, E. E	Union Bank of Canada
Weir, W	Banque Ville Marie
Wilkie, D. R	Imperial Bank of Canada
Willis, John L	Traders Bank of Canada