Vol. III] [Number 3

JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

APRIL—1896

THE LAND MORTGAGE COMPANIES, GOVERNMENT SAVINGS BANKS AND PRIVATE BANKERS OF CANADA

THERE is perhaps no other country where the credit system has been so thoroughly developed as in Canada. What is meant here by the credit system is not merely that which is commonly understood by that term in the commercial world, whereby an individual is able to obtain possession of goods on his undertaking to pay for them at some future time, but the mechanism which collects and manipulates individual credit, and also creates credit of its own. The chief parts of this mechanism in every country are formed of institutions whose main business it is to gather into masses the casual or more permanent surpluses of individuals, and distribute them again to meet the needs of other individuals, or of the public as a whole. The efficiency of the system depends not only upon the thoroughness with which idle wealth is collected, but also upon the principles which govern its application to the development of the industries and natural resources of the country, as well as upon the regulations which control the credit created. The

Australian system appears to have failed largely because it permitted the application of casual wealth to satisfy wants of a more or less permanent character. The United States system broke down in 1893 because of the too stringent regulations which it employed to govern the maximum of created credit. And in England also it has frequently been necessary, in order to prevent widespread disaster, to relax the legal restrictions of the same nature as those which caused the trouble in the United States.

In Canada the system has grown by slow degrees, being amended periodically as experience suggested to meet the peculiar needs of the country. Its ramifications extend to the remotest parts, into every village, and into practically every house. It may be said that the whole business of the country is conducted on credit, and on credit supplied principally from within. The system has so permeated the every-day life of the people that almost everyone, from the capitalist to the laborer, has a bank account somewhere, and a five-dollar gold piece is looked upon with more suspicion than a five-dollar bank note.

The institutions which form the system in Canada are divided in theory, and to a large extent in practice, into classes, upon the basis of the duration of the credit in which they deal. The principal of these classes is represented by the chartered banks; after which the most important functions are performed by the loan companies. Following these is the Government, operating through the circulation of legal tender notes, and the post office and Government savings banks. Lastly come the private bankers, and the two large savings banks in the Province of Quebec—the City and District Savings Bank of Montreal, and La Caisse d'Economie de Notre Dame de Quebec.

There are no statistics available relating to the volume of business done by private bankers. The relative importance of the other parts of the financial system is indicated by the following figures:*

---

* The present article was written in June, 1895, when the latest figures of the Loan Companies obtainable were those for 1893.

Chartered Banks		
Total assets (1893)		$304,363,580
Loan Companies		
Total assets (1893)		133,250,285
Government	1893	
Circulation	$18,448,494	
Deposits	41,849,658	
		60,298,152
Quebec Savings Banks		
Total assets (April, 1895)		15,307,637
		$513,219,654

It is not the purpose of this paper to do more than refer to the chartered banks as forming part of the whole system. It is rather the intention to bring forward some points in connection with other parts, the importance of which has been somewhat overshadowed by the large measure of attention recently bestowed on the banks.

I

LOAN COMPANIES

THE history of loan companies in Canada may be said to have its commencement in 1844, when the Lambton Loan and Investment Company was started. At that time there appears to have been no legislation relating to institutions of the kind. The first Canadian Act referring to building societies was passed in 1846, and was to encourage the establishment of building societies in Upper Canada. Within the next three years Acts of a similar tendency were passed for Lower Canada, New Brunswick and Nova Scotia. Since then forty or more Acts have been passed by the several legislative authorities of what is now the Dominion of Canada.

Of the companies now in existence, eight were established before 1860, eight between 1860 and 1869, thirty-nine between 1870 and 1879, and fourteen between 1880 and 1889.*

A number of amalgamations have taken place among the companies, but it speaks well for the character of the management that there have been very few failures, and that in every instance where failure has occurred the public creditors were

*Statistical Year Book, 1893.

paid in full—a record which will well bear comparison with that of similar institutions in the United States.

The legislation under which the various companies now operate emanates from different authorities, and is rather confusing in the variety of its provisions. It is still a disputed point whether the control of loan companies is vested in the Dominion or in the provinces, and as a consequence of this conflict of authority there is general legislation on the subject by both the Dominion parliament and the provincial legislatures. Some of the companies are incorporated by the Dominion and some by one of the provinces, and a few, by way of making sure of their position, have sought legislation from both sources. To complicate matters still more both the Dominion and the provinces incorporate individual companies by special Acts, the provisions of which do not always correspond with those of the general Acts.

The contrast in this respect between the loan companies and the banks is striking, the latter having their limits clearly and distinctly marked out for them by one Act which reaches in its operation from the Atlantic to the Pacific.

One unfortunate effect of this diffusion of control is that there is no *complete* record available for reference of the loan company business throughout the Dominion. It is true that both the Dominion and the Ontario Acts require full annual statements from all the companies within their jurisdiction, under a penalty of $50 for every day they are late, but the authorities confess their inability to enforce compliance where the company does not yield it willingly. The last report issued by the Finance Department at Ottawa contains particulars from 82 companies, but it does not state how many are omitted. The Ontario Bureau of Industries presents, for the same year, reports from 86 companies doing business in Ontario, and of course there are others whose operations are confined entirely to provinces outside of Ontario. More than a brief reference to some of the provisions of the different Acts under which the companies are incorporated would be tedious and out of place here. Generally speaking they are intended—so far as the provisions which refer to the relations of the companies with the public are concerned—to mark the essential difference in nature

between the business they are framed to control and banking, although in so far as they permit the taking of deposits they violate this principle.

Liability of shareholders is limited to the amount unpaid on their stock. The issue of circulating notes is prohibited. The security upon which loans may be made is confined to real property and bonds, stocks, or similar collateral. But probably the most important provisions are those which regulate the borrowing powers of the companies.

All the Acts of the Dominion Parliament and the Ontario Legislature unite in requiring a certain amount of capital to be actually paid in before a company can begin business. The amount, however, varies. The Dominion "Companies Act" calls for $100,000. The Ontario "Building Societies Act" for $40,000, with an increase to $100,000 should the company desire to borrow more than the amount of its paid in capital. The private Acts, as a rule, follow the lines laid down in this respect by the general legislation.

The borrowing powers also vary according to the source from which they are derived. Under the Dominion "Companies' Act" a company cannot borrow at all unless twenty per cent. of its subscribed stock, with a minimum of $100,000, has been paid-up. If it takes deposits, whether it borrows in other ways or not, the deposits must not exceed in the aggregate the amount of its paid-up capital and cash combined. If it borrows only by way of debentures or other like securities, and not by way of deposits, the amount must not exceed four times its paid-up capital, *or* the amount of its subscribed capital, at the option of the company. If it borrows on both deposits and debentures or other securities, the aggregate borrowed, less the amount of cash on hand and in bank, must not be greater than the amount of principal unpaid on securities held by the company; nor must it exceed double the paid-up unimpaired capital.

Under the Ontario "Building Societies Act" a company is prohibited from borrowing until $100,000 of stock is subscribed, and $40,000 paid thereon. If the paid in capital does not reach $100,000 the company cannot borrow more than the amount that is paid in. If the paid in capital is $100,000 or

more the company's borrowing powers are largely extended. It can then issue debentures to an amount which, with all the other liabilities, shall not exceed twice the paid-up capital, *plus* the amount unpaid on the subscribed capital upon which not less than twenty per cent. has been paid. The total liabilities to the public, however, less cash on hand and in bank, must not be more than three times the amount paid on stock, nor must they exceed the amount of principal unpaid on mortgages held by the company.

In estimating the amount of paid-up capital on which the company is entitled to borrow, all loans to shareholders on their stock must be deducted in the case of all the Acts.

The Dominion Parliament has also passed legislation at various times specially to govern the movements of companies carrying on business in Ontario. The legislation of this kind which is now in force contains, so far as borrowing powers are concerned, at least, the same provisions as the Ontario Building Societies Act.

The private Acts of the Dominion and the Ontario Legislature resemble, as a rule, the general Acts in their main features. There are, however, variations made in some of them in important points. One company, for instance, operating under Dominion authority, and another operating under authority from the Ontario Legislature, are relieved from the necessity of having twenty per cent. of the capital paid-up before borrowing. Another, deriving its powers from the Dominion Parliament, refuses to recognize the validity of a transfer of its stock until the name of the transferee is entered in its register of *members*—not the register of transfers, as is usually the case.

It is difficult to see upon what principle of justice, or from what motive of policy there should be a variety of legislation, emanating from one source, governing different individual financial corporations, all of which perform exactly the same functions. What is sauce for the goose is sauce for the gander, contains a principle which should be applied strictly to all legislation relating to classes of individuals or of corporations possessing a semi-public character. Any deviation from it which confers special privileges, without strong motives of public policy for its excuse, has the same effect as the creation of a legal monopoly, and is open to the same objections.

The presence of general legislation for a class, and special Acts for individuals belonging to that class, is also illogical. We have, for instance, the Ontario legislature solemnly declaring, in effect, that the public interest requires loan companies which have not 20 per cent. of their capital paid-up to be prohibited from borrowing more than twice the amount of their actual paid-up capital, and we have the same legislature authorizing the Lieutenant-Governor in Council to permit a loan company with only 10 per cent. of its capital paid-up, amounting to $175,000, to borrow from the public the sum of $2,000,000! If it is in the public interest that other institutions of the same kind, with the same proportion and amount of capital paid in, shall only borrow $350,000, upon what grounds of justice, reason, or policy should this one company be given the extraordinary privilege of borrowing nearly six times that amount? Or if it is right that this company should be allowed to borrow so largely in proportion to its capital, why should other companies of the same kind not be given equal latitude? The same inconsistency is seen in Dominion legislation: at least one company which could not borrow at all were it incorporated under the general Dominion Act, being enabled through its private legislation to borrow, should it so desire, up to $5,000,000.

It is not intended for a moment to make any reflection upon the companies themselves that are thus favored. Both of those referred to happen to be well managed, and to stand high in public estimation; but the inconsistency of the attitude of the legislative authority is too gross, and the opening for abuse of power is too great to be passed by without notice.

Before leaving this branch of the subject reference may be made to the authority which is possessed by the Lieutenant-Governor of Ontario in Council, through the "Ontario Joint-Stock Companies Letters Patent Act," to incorporate loan companies and fix their most important powers, without regard to the provisions of the "Building Societies Act," and without an opportunity being allowed for public discussion. It was by means of this authority that the first of the two companies referred to above was incorporated, and that fact alone, when the exceptional powers conferred are remembered, should be sufficient to condemn the system of incorporation of loan com-

panies by letters patent, even if it were not manifestly opposed to reason and the public interests.

The accompanying list contains a great majority of the companies doing business in Ontario and the Eastern provinces, classified according to the Acts under which they are incorporated. In addition to these there are two companies doing business under Royal charter in British Columbia, and several others in that province and in Manitoba operating under local legislation, which have so far refused to make returns to the Dominion Government. Some six or seven small concerns doing business in Ontario, whose methods are not those of the legitimate loan companies, are also omitted.

Dominion Acts

	Head Office	Capital	Reserve
General Acts			
Canada Permanent Loan & Savings Co	Toronto	$2,600,000	$1,450,000
Imperial Loan & Investment Co....	do	703,558	155,000
Western Canada Loan & Savings Co	do	1,500,000	770,000
Canada Landed & National Investment Co	do	1,094,000	350,000
Real Estate Loan Co. of Canada ..	do	373,720	45,000
Barrie Loan & Savings Co	Barrie.....	117,500	10,000
Montreal Loan & Mortgage Co .. .	Montreal ..	500,000	300,000
Société de Prêts et Placements	Quebec	200,000	37,500
Hastings Loan & Investment Society	Belleville ..	209,097	21,000
Southwestern Farmers & Mechanics	St. Thomas..	140,782	10,000
Atlas Loan Co.	do	267,237	7,000
Special Acts			
Nova Scotia Permanent Building Society and Savings Fund	Halifax	616,548	
London & Ontario Investment Co..	Toronto	550,000	160,000
London & Canadian Loan & Agency Co	do	700,000	405,000
British Canadian Loan & Investment Co	do	398.493	112,000
Eastern Canada Savings & Loan Co.	Halifax	100,500	10,000
Manitoba & North West Loan Co.	Toronto	375,000	111,000
Credit Foncier Franco Canadien ..	.....	1,196,172	92,360
Imperial Trusts Company of Canada	Toronto	95,295	

Ontario Acts

	Head Office	Capital	Reserve
General Acts			
*Freehold Loan & Savings Co	Toronto	$1,319,100	$ 659,550
Building & Loan Association	do	750,000	112,000
Peoples Loan & Deposit Co	do	600,000	112,000
Ontario Loan & Debenture Co	London, Ont.	1,200,000	432,000
*Huron & Erie Loan & Savings Co	do	1,400,000	700,000
Dominion Savings & Inv. Soc	do	932,200	10,000
Agricultural Savings & Loan Co	do	619,000	120,000
Canadian Savings & Loan Co	do	727,650	200,000
London Loan Co	do	656,850	71,500
*Hamilton Provident & Loan Soc	Hamilton	1,100,000	300,000
Landed Banking & Loan Co	do	663,100	145,000
Ottawa Building & Loan Soc	Ottawa	115,324	
Southern Loan & Savings Co	St. Thomas.	400,000	64,000
Elgin Loan & Savings Co	do	212.634	19,000
Star Loan Co	do	192,800	27,169
Ontario Building & Savings Soc	Kingston	250,000	
Frontenac Loan & Inv. Soc	do	200,000	30,000
Lambton Loan & Inv. Co	Sarnia	498,513	244,000
Industrial Mortgage & Savings Co	do	196,321	15,807
Royal Loan & Savings Co	Brantford	499,300	100,000
Oxford Permanent Loan & Savings Soc.	Woodstock	234,671	20,500
Security Loan & Savings Co	StCatharines	274,256	
Ontario Loan & Savings Co	Oshawa	299,430	75,000
Midland Loan & Savings Co	Port Hope	360,000	80,000
Guelph & Ontario Inv. & Savings Co.	Guelph	422,350	148,500
Crown Savings & Loan Co	Petrolea	164,528	16,500
Chatham Loan & Savings Co	Chatham	211,853	12,750
Brockville Loan & Savings Co	Brockville	126,420	7,900
Owen Sound, Grey & Bruce Loan & Savings Co	Owen Sound.	141,100	1,400
Ontario Joint-Stock Companies Letters Patent Act			
Home Savings & Loan Co	Toronto	175,000	175,000
Ontario Industrial Loan & Inv. Co.	do	314,386	150,000
Toronto Savings & Loan Co	do	600,000	100,000
British Mortgage Loan Co	Stratford	311,978	75,000
Private Acts			
Land Security Co	Toronto	550,455	450,000
Central Canada Loan & Savings Co.	Peterboro	1,200,000	300,000

*These companies have also been brought under Dominion authority by special Acts of Parliament.

Quebec Acts

	Head Office	Capital	Reserve
General			
Quebec Permanent Building Soc..	Quebec	200,000	33,000
Permanent Building Society of District of Iberville	St. Johns ..	100,000	32,000
Private			
Sherbrooke Loan & Mortgage Co..	Sherbrooke..	123,300	3,471

Imperial Acts

	Head Office	Capital	Reserve
"*Companies Act*"			
North British Can. Inv. Co.....	Glasgow	486,666	97,333
North of Scotland Can. Mortgage Co	Aberdeen ..	730,000	355,266
Scottish Ontario & Manitoba Land Co.....	Glasgow....	916,701	12,166
Bristol & West of England Can. Land Mortgage & Inv. Co.	Bristol	136,023	21,900
Royal Charter			
Trust & Loan Co. of Canada.....	London,Eng.	1,581,666	852,427

The companies are not subject to an examination of their affairs by a public officer, as in the United States. But the Ontario Building Societies Act provides for the appointment of auditors by the shareholders, generally at the annual meeting, and also for the interposition of the Provincial Treasurer in case of evidence showing that a company is not in fit condition to continue its business.

That the formation of so many companies has been facilitated is perhaps to be regretted. It is always to the advantage of a country to have monetary institutions of undoubted strength, and the multiplication of their number beyond the point which provides for legitimate competition must tend either to weaken them, or, by increasing the relative cost of management and the relative amount on which dividends have to be paid, to maintain the rate of interest charged at a higher figure than it

might be reduced to if the operations conducted were greater in proportion to the capital invested.

The profits of the companies arise from loaning out on the security of real estate, bonds, stocks, etc., (*a*) the paid in capital, and (*b*) the money borrowed on debentures, debenture stock, or by way of deposits. A practice which prevails among the United States companies of selling individual mortgages at a lower rate of interest than that which the company contracted for, and taking the difference as profit, does not obtain in Canada. The usual rate of interest paid on debentures and debenture stock is four to five per cent., the average rate for 62 companies for 1893 being 4.51. The rate of interest on deposits for the same year was somewhat less, the average being about four per cent. Since then, however, some of the companies have reduced their rate to 3½ per cent. The rate of interest received on mortgage loans has, so far, seldom been below six per cent. in the East, and eight per cent. in Manitoba and the West generally, the average rate obtained by 62 of the principal companies in 1893 on all their business being 6.35 per cent. Taking the 1893 reports as a basis, therefore, there is a difference in favor of the companies between the rate of interest paid and the rate received of about two per cent. This difference is large when placed beside the half of one per cent. gross to which the Credit Foncier is restricted by the French law, and the contrast serves to illustrate forcibly the advantage to the borrower of limited competition in business of this kind, with proper regulations to prevent the abuses of a monopoly. The dividends paid by 69 of the Canadian companies in 1893 ranged from 5 per cent. to 11½ per cent., the latter rate being paid by only one company. The average for the 69 companies was 6.79 per cent. In 1887 the average dividend paid by 60 companies was 7.08 per cent. The figures for an earlier period have not been ascertained, but there is no doubt that with the general fall in interest which has been going on for many years back, the margin of profit on loan company business in this country has also been steadily declining. To this fact is probably due the tendency towards amalgamation among the companies which has been referred to.

The growth of loan companies in this country has been very marked. As has already been noted the Government returns, which form the only accessible source of information on the subject, are imperfect and unsatisfactory. Still they indicate the great increase which has taken place in the business of late years. A steady rise in total loans from $15,000,000 in 1874 to $115,000,000 in 1893, while the value of the total property owned increased during the same period from $759,000 to $17,900,000, points to a tremendous change in the economic condition of the country, and is not to be explained by merely incomplete reports. The development, however, has not been uniform throughout the Dominion. The accompanying tables show the distribution of the business among the three provinces of Ontario, Quebec and Nova Scotia in 1893. While the Ontario companies have been growing year by year, there has been practically no change in Quebec and Nova Scotia since 1881, when the Credit Foncier Franco-Canadien was established in Quebec. The reason for this probably varies in the two provinces, although in both the character and habits of the people have had most to do in producing the general result.

In Quebec the law operates against mortgage business by making a sheriff's sale cancel all liens on property, thus throwing on the mortgagee the obligation of watching constantly lest his security be sold without his knowledge for less than sufficient to cover the mortgage. Improvements on real estate, also, if made after the mortgage is effected, constitute a prior lien. The principal causes, however, are to be found in the backward state of agriculture; the lack of desire on the part of the habitant to raise himself from the rut which his fathers followed; the little new blood which enters the province; and the practice of subdividing the farms on the death of the owners. The question as to whether happiness is best promoted by progress, or by contentment with things as they are, is of course excluded here. But anyone who has travelled down the St. Lawrence and has seen the long, ribbon-like farms, with piles of stones down the centre, the sickly crops of hay and oats, the industrious habitant wielding his primitive scythe and cradle, and the ill-conditioned apology for horse-flesh, will have no difficulty, when he remembers that progress and prosperity in

Liabilities, by Provinces, for the Year 1893

PROVINCES	Number of Companies	Capital Stock Subscribed	Capital Stock fully paid up	Amount paid on Capital Stock not fully paid up	Accumulating Stock	Reserve Fund	Dividends declared and unpaid	Profits on Accumulating Stock	Contingent Fund and unappropriated Profits	Liabilities to Stockholders
		$	$	$	$	$	$	$	$	$
Ontario.....	72	87,345,402	18,985,228	13,980,683	690,732	10,397,000	989,488	46,873	949,356	46,039,363
Quebec	8	6,220,249	955,960	1,422,880	86,057	523,855	47,265	19,152	219,151	3,274,321
Nova Scotia..	2	201,000	.....	100,500	616,548	10,000	2,512	.....	4,646	734,207
Grand Total	82	93,766,651	19,941,188	15,504,063	1,393,337	10,930,856	1,039,266	66,025	1,173,155	50,047,892

PROVINCES	Deposits	Debentures payable in Canada	Debentures payable elsewhere	Debenture Stock	Interest on Deposits, Debentures and Debenture Stock	Owing to Banks	Other Liabilities	Liabilities to the public	Total Liabilities
	$	$	$	$	$	$	$	$	$
Ontario.....	17,932,089	9,355,629	42,942,963	2,613,395	790,265	162,764	661,006	74,658,113	120,697,477
Quebec	477,230	270,372	6,465,435	.....	18,041	.....	144,241	7,375,322	10,649,643
Nova Scotia.....	122,253	202,100	.....	.....	4,254	.....	500	329,108	1,063,315
Grand Total.....	18,531,573	10,028,102	49,408,398	2,613,395	812,562	162,764	805,748	82,362,544	132,410,436

Liabilities of the Scottish American Investment Company (Limited) not included

Assets, by Provinces, for the Year 1893

PROVINCES	Number of Companies.	A Current Loans secured on							Otherwise secured	Total	B Property owned	
		Real Estate	Dominion Securities	County or City Securities	Township Town or Village Securities	School Section Securities	Loan Companies Debentures	Loans to Shareholders on their Stock			Dominion Securities	Provincial Securities
		$	$	$	$	$	$	$	$	$	$	$
Ontario	72	100,782,388	.....	276,478	232,163	8,493	17,174	671,214	3,042,942	105,030,856	354,910	26,553
Quebec	8	9,152,712	.....	.....	1,000	.....	.....	82,934	90,431	9,327,079	.....	244,828
Nova Scotia ..	2	981,458	.....	.....	.....	.....	.....	.....	7,391	988,850	.....	.....
Total	82	110,916,559	.....	276,478	233,163	8,493	17,174	754,149	3,140,766	115,346,786	354,910	271,381

PROVINCES	B property owned											Total Assets
	County or City Securities	Township Town or Village Securities	School Section Securities	Loan Companies Debentures	Office Furniture and Fixtures	Cash on hand	Cash in banks	Office Premises	Loans secured on Real Estate held for Sale	Other Property	Total Property owned	
	$	$	$	$	$	$	$	$	$	$	$	$
Ontario	1,016,160	694,211	197,877	236,011	41,835	84,077	2,024,004	1,476,513	3,298,424	7,101,148	16,506,469	121,537,325
Quebec	.....	.....	.....	...	915	2,983	616,208	32,636	27,533	397,459	1,322,564	10,649,643
Nova Scotia	.....	.....	.....	.....	410	75	2,407	8,609	17,726	45,237	74,465	1,063,315
Total	1,016,160	694,211	197,877	236,011	43,160	87,136	2,642,619	1,517,759	3,298,424	7,543,845	17,903,499	133,250,285

the people as a whole are essential to the healthy continuance of any business depending on the public for support, in arriving at a conclusion as to why the loan companies' operations are not more extended in the province.

As regards Nova Scotia, Mr. John Knight, cashier of the Peoples Bank of Halifax, in the course of an interesting letter on the subject, says that "the Nova Scotian knows more than a little about many things, and thinks he knows everything." Among the things that he apparently knows is how to borrow, but he doesn't patronize loan companies, partly, perhaps, because he hasn't become accustomed to them and is a little shy of novelties. He goes rather to the private money lenders, who are said to be numerous in the province. Among the things he would appear not to know is that to encourage loan companies would have a tendency to lower ultimately the rate of interest he has to pay, by bringing into the province a considerable amount of additional capital. The people of Nova Scotia and of Quebec are similar in at least one respect; they do not change rapidly. Few immigrants come to either province, and as a rule the new arrivals do not stay. This living within themselves of course tends to conservatism in habits, and operates against the success of new ventures which depend upon the patronage of a large clientele.

Ontario, on the other hand, is restless and enterprising. Her lands, too, are more fertile, more valuable, and greater in extent, and her population more numerous and more subject to change than is the case in Quebec and Nova Scotia. All these features provide a greater basis for borrowing upon, and her people, a large proportion of whom are immigrants, or the descendants of immigrants from England and Scotland, where the practice of borrowing on the security of real property is common, are not slow to avail themselves of the fact. It would be interesting, if it were possible, to have the purposes for which the mortgages were put on the land tabulated for the different provinces. Such a statement would probably show very distinctly the reason why the mortgage indebtedness of one part of the country is, proportionately to its wealth, so much larger than that of others. In Ontario, if the writer's experience in one of the western counties can be taken as a criterion

of the whole Province, by far the greater part of the mortgage debt of the farmers—and it is with the farmers that we mainly have to do in this matter—represents either a portion of the purchase money for their farms, or else legacies which the son who inherited the homestead had to pay the other members of the family.

It would also be interesting to know the amount of mortgages held by private individuals. A recent estimate for the United States puts the amount held by private investors at 73 per cent. of the whole. The percentage in Canada would probably not be so high; still even in Ontario, where the loan company flourishes most, a very large proportion of the mortgages is in the hands of private people.

While contrasting the conditions, especially the agricultural conditions, of Ontario, Quebec and Nova Scotia, the following table, taken from the census of 1891, showing the quantities of some of the principal crops produced in each province, together with the area and population, may not be out of place:

	ONTARIO Area 219,650 sq. mls. Population 2,114,000	QUEBEC Area 227,500 sq. mls. Population 1,488,000	NOVA SCOTIA Area 20,550 sq. mls. Population 450,000
Wheat (bushels)	21,314,000	1,568,000	700,000 est'd.
Barley "	13,423,000	1,505,000	227,000
Oats "	47,140,000	16,825,000	1,559,000
Rye "	1,064,000	213,000	23,000
Peas and Beans (bush)	13,424,000	1.886,000	44,000
	96,365,000	21,997,000	2,553,000
Potatoes (bushels)	17,580,000	15,025.000	4,920,000
Hay (tons)	3,465,000	2,243,000	632,000

There are no returns showing the loan company business done in the western provinces, partly because, as already stated, the local companies there will not report to the Dominion Government, and partly because the principal portion of the business is done by Ontario companies, and this brings out another important feature of the Canadian loan company system as compared with that of the United States. The two systems are similar in that they facilitate the formation of many comparatively small companies, and in that they permit the issue of debentures and the taking of deposits, but in most other points they differ. In the course of a very full discussion

of "Mortgage Banking in America" in the March, 1894, number of the *Journal of Political Economy*, Mr. D. M. Frederiksen says:—

"Under an ideal system of mortgage banking, the capital available for permanent investment would be distributed where most needed. But the actual facts are different, and there is considerable friction impeding the free movement of such capital. In one part of the country the rate of interest paid on a mortgage loan is, with equal security, twice as high as another. So that in America the making of a mortgage loan is essentially a *local* transaction."

In Canada the case is different. The Ontario loan companies reach out from Nova Scotia in the east to British Columbia in the west, supplementing wherever necessary the capital of local concerns. In the returns for 1893, made to the Ontario Government by 24 companies, out of total loans of $64,000,000—$20,000,000 represented loans outside the Province. The effect of this national character of the Canadian companies is seen in the absence of such striking disproportion between the rates of interest paid in the east and in the west, as is noted by Mr. Frederiksen. As already stated, the rate does not vary in the different parts of Canada more than two per cent. at the outside, which does not more than mark the difference in the security.

The debentures issued by the companies are, as a rule, drawn for terms of three, five, seven or ten years, agreeing in this respect with those issued by the United States companies. In Europe land mortgage company bonds have an average life of 25 years or more. Canadian debentures must be for amounts of not less than $100; they are not known to be specially secured in more than one case and in that instance, as the company does not borrow in other ways, the holders are not much benefited by the security. The debentures are mostly held by the landed gentry in England and Scotland, especially Scotland. The total amount borrowed in this way, outstanding in 1893, was $59,436,500, of which $49,408,398 was payable outside Canada, and therefore, presumably, represented capital brought into the country. The addition of so large a sum to the available means of the country must have had a considerable effect

upon its industries, especially upon agriculture, and is a service for which the companies scarcely get as much credit as they deserve. The "Canada Permanent" claims to have been the pioneer in entering the English market, and takes a justifiable pride in the reflection that the high credit which it established there did much to make it possible for the other companies to swell the total amount borrowed from the old country investor to the above figure. The debentures are not listed anywhere, and they realize neither more nor less than their face value. As a rule they mature at only two half-yearly dates—generally in May and November.

The high esteem in which many of the companies stand in England and Scotland, as shown by the ease with which their securities are disposed of, is also shared in Canada.

The stocks, even of the best of them, do not, indeed, command as high a premium, in proportion to the dividend paid, as the stocks of the chartered banks, but this is rather a tribute to the standing of the banks than a reflection on the loan companies, since the stocks of the latter, when the capital is fully paid-up, do not yield a greater return than is usual from a good mortgage.

Probably the weakest point in the legislation governing loan companies, is the permission to take deposits. It would seem reasonable to suppose that the same considerations which led the framers of the Bank Act to prohibit loaning by the chartered banks on the security of real estate, should be sufficient to withhold from the loan companies power to receive deposits. It is of the essence of the credit system that the currency of assets should not be longer than the currency of liabilities, and where this principle has been neglected the result has invariably been trouble in the long run. Some of the larger and better managed loan companies have realized their responsibilities in this respect by keeping constantly on hand a cash, or the equivalent of cash, reserve of sufficient amount, but as a rule it may be said that the presence of an amount of cash sufficient to form a reasonable reserve in the hands of a company is due to accident and not design. An examination of the returns for 1893 shows how very general is the disregard of this most important matter. These returns (to the Dominion Government),

comprise, as already stated, 82 companies, 23 of which do not take deposits at all. Of the 59 that do, 24, showing an aggregate of $8,619,243 in deposits, held in cash and municipal debentures $332,268, or less than four per cent. Grouping these 24 companies so as to show more clearly how the above average is made up, gives the following interesting result:

No. of Companies	Aggregate of Deposits	Amount of Reserve	Percentage
6	$1,073,554	$ 2,257	¼ of 1%
4	888,673	7,914	1%
7	2,517,518	55,416	2¼%
3	2,700,050	138,920	5%
3	1,309,800	112,942	9¼%
1	129,648	14,819	11%
	$8,619,243	$332,268	4%

While it may be quite true that the investments made by the above companies are eminently sound and judicious so far as their ultimate safety is concerned, there can be no doubt that by grossly neglecting so vital a point as the maintenance of a proper reserve, the companies not only endanger their own credit, but also run the risk, should difficulty overtake them, of discrediting the whole loan company system of Canada.

It may be said that they rely on their bankers for assistance, but if their bankers were not able to assist them, what then? It is not in normal times that a reserve is actually needed, but in times of distrust, and it is when confidence is shaken that the banks have to strengthen their own position, and are least willing to lend money to a corporation which has all its assets invested in long-date real estate securities.

Some of the companies—nearly all of them in fact—retain the privilege of exacting notice of withdrawal from their depositors, but ordinarily the power is not used. They probably depend to some extent upon this for protection in case of difficulty, but experience has shown in other countries that reliance upon a reserved power of this kind is unsafe, and not at all calculated to inspire public confidence in the management of a corporation that uses it. The history of the United States savings banks during the summer of 1893 affords a good lesson in this respect. The experience of the Australian banks during the late crisis also points the same moral. In the case of the

Australian banks many of their deposits were of a special character, taken for a specific term of one or more years. Frequently, however, the depositor found that he needed the money before the term expired, and from an original desire to accommodate, it grew into an established custom among the banks to rebate deposits of this class whenever requested to do so. There was still, of course, the reserved power of refusal to pay on demand, but when the crisis came the banks found that they dare not assert it, and had to pay their fixed deposits as they did their ordinary deposits, on demand, or else suspend. The fact is that notice of withdrawal, to be effective, must be required constantly, otherwise the demand for it is recognized at once as a desperate resource.

Reference has already been made to the land mortgage company system of the United States. It may not be out of place to see how that system has worked so far.

The report of the New York State Superintendent of Banks in 1891, mentioned 167 companies doing business throughout the Union, distributed as follows:—

Kansas.....44	Texas.....3	Georgia.....1
Missouri 22	Minnesota....9	Florida 2
Nebraska.....23	Colorado 7	Vermont 1
Iowa.....18	Illinois 1	New Hampshire 4
North Dakota..10	Montana 1	Massachusetts ..3
South Dakota.. 8	Washington..5	Connecticut 5

The laws under which these companies are incorporated emanate from the different states. Most of the companies, however, extend their operations into the surrounding States, and many of them that are incorporated in the West take out licenses to do business in the wealthy Eastern States, where they can dispose of their securities with greater ease than in their own neighborhood. These securities are mainly individual mortgages, guaranteed or unguaranteed by the company negotiating them, and debentures nominally secured by pledge of mortgages in the hands of trustees.

As regards the special security given for debentures, it may be remarked in passing that the plan does not appear to have worked well in the United States. The trustees do not value the securities pledged, but simply hold whatever is placed in eir hands, and, according to the Massachusetts Report for

1894, "it is behind debentures that the poorest securities are found in mismanaged companies."

One of the principal points in the United States as contrasted with Canadian business, is that in the case of the former most of the companies are organized in the West, and do very little lending in the East, whereas in Canada the great majority of the companies are formed in the East. This is no doubt owing largely to the fact that land mortgage companies in the United States are of quite recent date, and that the rapidly filling western States presented opportunities for establishing a profitable business which did not occur in the East, where the field was already occupied by other institutions. The first issue in the United States of debenture bonds, which are the distinctive feature of land mortgage company business, is said to have been in 1881.

There seems to be, in some of the States at least, if not in all, no minimum amount of paid in capital required from the companies before commencing business, and the result is that there are a number of companies operating on a capital which, judged by our standards, is altogether inadequate. There are also apparently no restrictions on their borrowing. One company whose statement appears in the Massachusetts Report for 1895, shows a capital paid in of $3,000, with no reserve liability of stockholders, on the strength of which it has borrowed $32,500 on debentures, and $14,700 on bills payable. Although only organized three years previously, it claims $84,000 in surplus profits, and has managed to roll up an account in its favor for past due interest of $21,000!

In most of the States the companies are subject to Government examination, which, especially in the Eastern States, is often very effective. In both New York and Massachusetts the examiners have authority to issue and revoke licenses of foreign mortgage companies (*i.e.* companies organized under the laws of other States), and they apparently do not allow their powers to grow rusty. These officials are required to report annually to their State Legislature, and some of the reports thus made are very interesting as showing the history, character and methods of the institutions referred to. As it is not intended to enter upon an exhaustive examination of the United

States companies, but merely to give what must necessarily be a limited view of the general results which the land mortgage company system has attained in that country, our object will, perhaps, be advanced by quoting direct from some of the State reports.

The Massachusetts report for 1895 in reviewing the situation says: "This office (commissioner of foreign mortgage corporations) was established nearly six years ago, at a time when the investments of the people of this commonwealth in western mortgages amounted to ten or twelve million dollars annually. At the start some 75 foreign corporations were engaged in the business in this State, and in all 111 corporations have been under the supervision of the office during its existence up to date. Of these 111 corporations, 24 are to my knowledge still carrying on business. Four or five others may be still in active existence, but I have not been able to ascertain definitely about them. One company while in good condition gave up business on account of the hostile legislation of the State of Kansas. The *remainder have failed* and are either wound up entirely or are dragging along in the slow process of settlement and liquidation."

Among the causes of failure are enumerated the general depression; failure to bring the high plains of Kansas, Nebraska and Colorado under cultivation; the real estate boom; but above all "a reckless management or mismanagement of the affairs of many of the companies." What direction the mismanagement took may be inferred from the 1894 Report. Referring to four companies which failed during the year the commissioner says: "These four companies in their report of a year ago, carried on their books as assets 'stocks and bonds' at a valuation of $7,163,131, while their total capital stock at the same time was $8,705,350. The stocks and bonds so carried were of almost every description, national and savings banks, railroad, land, irrigation, coal mining companies, etc., etc., some good, some bad, some very bad, and were largely of corporations in which the officials of the company had personal interests"; while the 1895 Report states that "it is a noteworthy fact that the sound companies still in existence are those which have confined themselves most exclusively to loans upon farms, or to prudent loans on real estate."

New York does not appear to have presented so good a field for branches of these companies as Massachusetts. In 1893, when the latter licensed 43 companies, New York only reported 28. Of the 28, 18 have disappeared, leaving only 10 for 1895.

Although the conditions surrounding land mortgage companies in Europe are so very different from the conditions existing in America as to afford no fair basis for comparison in most respects of the work done by these companies on the two continents, a very brief reference to the companies in France and Germany, where land mortgage business is most prominent, may not be altogether profitless. The facts are taken from Mr. Frederiksen's paper, already referred to.

In France the Credit Foncier has a practical monopoly of the business, but its operations are restrained by strict legal regulations. Its president is appointed by the Government, and the profits it may charge are limited to one-half of one per cent. gross. The following are some of the items from its balance sheet in 1890:

Capital	170,500,000	francs
Surplus	35,277,077	"
Bonds outstanding, based on mortgages	2,011,316,084	"
" " " loans to communes, departments, etc	1,000,529,708	"

The shares are worth double their nominal value, the bonds draw three and four per cent. interest, the four per cents. being quoted at 104. Combined with these very satisfactory features, from the shareholders' point of view, is the fact that the borrower has to pay only four and one-half per cent. interest on his loan.

There is no monopoly in Germany, but in other respects the system to a great extent resembles that of France. There are about 30 mortgage banks in Germany, from the combined balance sheets of which, in 1890, the following figures are taken:

Capital	332,546,628	marks
Bonds, based on mortgages	2,831,479,902	"
" " loans to municipalities	35,393,600	"

The great bulk of the bonds bear three and one-half and four per cent. interest, the latter being quoted at one to two

per cent. premium. These bonds are said to be regarded in Germany as one of the safest forms of investment, ranking very little below Government bonds bearing a similar rate of interest.

The market value of the capital stock of these concerns is not given. The rate of interest charged on loans is said to be less than in France.

Although, as has been remarked, the conditions are so dissimilar as to afford in most respects no fair basis for comparison between the results attained by land mortgage companies on the two continents, the broad fact remains that it would have been impossible for the French and German companies to reach and retain the high credit which they enjoy, and to prove so eminently satisfactory alike to shareholders and borrowers, if their business had been divided among a number of comparatively small competitors.

II

GOVERNMENT SAVINGS BANKS

In these days when banks of all kinds are so numerous and form so essential a part of the commercial system, it is rather startling to remember that savings banks date no further back than the beginning of the present century, the first proposal to establish one being attributed to the Reverend Joseph Smith, of Wendover, in 1799. Government savings banks, however, are of a much more recent origin than this. The mother of them all is said to be the Post Office savings bank of the United Kingdom, which was created by Act of Parliament in February, 1861, and a tolerably prolific mother she has been. Her offspring are to be found, among other countries, in France, Belgium, Italy, Netherlands, Sweden, Australasia and Canada, and in every case, if a steady increase in deposits can be accepted as a measure of success, they have been successful.

The Act which brought the Post Office savings bank in Canada into existence was passed on the 20th December, 1867, during the first session after Confederation, its provisions being confined to the provinces of Ontario and Quebec. In September, 1885, Nova Scotia and New Brunswick were taken into the

system, and subsequently the other provinces and the territories were included. In 1893 the offices numbered 673, distributed as follows:—Ontario, 420; Quebec, 115; Nova Scotia, 44; New Brunswick, 30; Manitoba, 22; British Columbia, 15; Prince Edward Island, 7, and the territories, 20.

Prior to the establishment of the Post Office savings bank, a Government savings bank connected with the Finance Department had been in operation, with branches principally in the maritime provinces. This institution is now being gradually absorbed by the Post Office savings bank, as the position of superintendent at each of its branches becomes vacant. Since 1888, when the process of absorption was begun, fourteen offices, with aggregate deposits of over $2,000,000, have been transferred to the Post Office Department.

The following table shows the number of depositors in each of the Government savings banks by provinces, the amount on deposit and the proportion of that amount per head of the population on 30th June, 1893:—

Post Office Savings Bank, 1893

Provinces	Number of Offices	Number of Depositors	Amount on Deposit	Average Amount to each Depositor	Average Amount per head of population
			$	$ cts.	$ cts.
Ontario	420	86,403	17,547,380	203 09	8 13
Quebec	115	16,914	4,107,160	242 82	2 70
Nova Scotia	44	4,978	1,126,547	226 30	2 49
New Brunswick	30	3,137	870,501	277 49	2 71
Manitoba	22	645	76,044	117 80	0 43
British Columbia	15	1,643	352,438	214 51	3 08
Prince Edward Island	7	76	9,063	119 25	0 08
The Territories	20	479	64,061	133 74	0 59
Totals for 1893	673	114,275	24,153,194	211 36	4 87
" 1892	642	110,805	22,298,401	201 24	4 55
" 1891	634	111,230	21,738,648	194 44	4 48
" 1890	494	112,321	21,990,653	195 78	4 59
" 1889	463	113,123	23,011,422	203 41	4 85
" 1888	433	101,693	20,689,032	203 44	4 41

Government Savings Bank, 1893

Provinces	Number of Offices	Number of Depositors	Amount on Deposit	Average Amount to each Depositor	Average Amount per head of population
			$	$ cts.	$ cts.
Ontario	1	1,632	554,314	339 65	0 25
Nova Scotia	24	23,818	7,206,998	302 59	15 92
New Brunswick	10	16,372	6,300,305	384 82	19 61
Manitoba	1	3,726	691,639	185 62	3 89
British Columbia....	1	3,009	696,092	231 33	6 07
Prince Edward Island	2	6,482	2,247,116	346 67	20 59
*Totals for 1893..	39	55,039	17,696,464	321 53	3 56
" 1892..	39	54,796	17,231,146	314 46	3 51
" 1891..	40	56,149	17,661,378	314 54	3 64
" 1890..	41	57,297	19,021,812	331 99	3 97
" 1889..	44	58,114	19,944,934	343 20	4 21
" 1888..	50	57,367	20,682,025	360 52	4 41
*Grand total Post Office and Government savings banks combined—					
1893.....	712	169,314	41,849,658	247 17	8 43
1892.....	681	165,601	39,529,547	238 70	8 06
1891.....	674	167,379	39,400,026	235 40	8 13
1890.....	535	169,618	41,012,465	241 80	8 56
1889.....	507	171,237	42,956,356	250 86	9 06
1888.....	480	158,060	41,371,057	260 10	8 82

The next table shows the comparative growth of deposits in the two Government institutions since Confederation, to which has been added the deposits in special savings banks, principally, almost entirely in fact, made up of the deposits held by the City and District Savings Bank in Montreal and La Caisse d'Economie de Notre Dame de Quebec.

*The total population of Canada is used in working out the amounts per head.

Deposits with the Undermentioned Savings Banks

Year ended 30th June	Post Office Savings Banks	Other Government Savings Banks	Special Savings Banks	Totals
	$	$	$	$
1868	204,589	1,683,219	3,369,799	5,057,607
1869	856,814	1,694,525	3,960,818	6,412,157
1870	1,588,849	1,822,570	5,369,103	8,780,522
1871	2,497,260	2,072,037	5,766,712	10,336,009
1872	3,096,500	2,154,233	5,557,126	10,807,859
1873	3,207,052	2,958,170	6,768,662	12,933,884
1874	3,204,965	4,005,296	6,811,009	14,021,270
1875	2,926,090	4,245,091	6,611,416	13,782,579
1876	2,740,952	4,303,166	6,519,229	13,563,347
1877	2,639,937	4,830,694	6,054,456	13,525,087
1878	2,754,484	5,742,529	5,631,172	14,128,185
1879	3,105,191	6,102,492	5,494,164	14,701,847
1880	3,945 669	7,107,287	6,681,025	17,733.981
1881	6,208,227	9,628,445	7,685,888	23.522,560
1882	9,473,661	12,295,001	8,658,435	30,427,096
1883	11,976,237	14.242,870	8 791,045	35,010,152
1884	13,245,553	15,971,983	8,851,142	38,068,679
1885	15,090,540	17,888,536	9.191,895	42,170.971
1886	17,159,372	20,014,442	9,177,132	46,350,946
1887	19,497,750	21,334,525	10,092,143	50,924,418
1888	20,689,033	20,682,025	10,475,292	51,846,350
1889	23,011,423	19,944,934	10,761,061	53,717.419
1890*	21,990,653	19,021,812	10,908,987	51,921,452
1891	21,738,648	17,661,378	10,982,232	50,382,258
1892	22,298,402	17,231,146	12,236,100	51,765,648
1893	24,153,194	17,696,464	12,823,836	54,673,494

The amount per head of the population was in 1871 $2.96; in 1881, $5.44, and in 1891, $10.42. In 1893 it was $11.02 per head.

An examination of these two tables is very interesting, as showing the degree to which the Government savings bank, with a comparatively trifling number of offices, held its own in point of volume of deposits with the rapidly enlarging Post Office savings bank. It will be noted that in 1888, when the first steps were taken to amalgamate the two institutions, the aggregate amounts on deposit in each were almost identical, yet the Post Office savings bank had 433 offices open, while the branches of the Government savings bank numbered only 50.

*Rate of interest on deposits in post office and other Government savings banks reduced from 4 per cent. to 3½ per cent.

It will be observed also that the very large proportion of deposits held in the maritime provinces tends to confirm the statement made in the previous part of this paper, which referred to the presence of numerous private money lenders as a reason for the non-development of loan company business in those provinces.

Combining the figures for the two institutions, the average amount at the credit of each depositor, and the average per head of population was for 1893, by provinces, as follows :—

	Per Depositor	Per Head of Pop.
Ontario	205.61	8.18
Quebec	242.82	2.70
Nova Scotia	289.40	18.41
New Brunswick	367.46	22.32
Manitoba	175.63	4.32
British Columbia	225.40	9.15
Prince Edward Island	344.03	20.67
Territories	133.74	.59

The proportions, interesting as they are, would be still more so were it possible to separate in a similar manner the deposits in other concerns. One would then arrive at a decided opinion as to whether the large per capita percentage in the maritime provinces is due to greater wealth among the population or to a preference for the Government savings banks over the chartered banks and loan companies.

As regards the comparatively small aggregate and per capita deposits in the province of Quebec, the views of Mr. Cunningham Stewart in 1884, the then superintendent of the Post Office savings bank, expressed in a paper read before the Economic section of the British Association at its meeting in Montreal, may be mentioned. He said:—

"The people of the province of Quebec—that is, those of French-Canadian nationality, who represent five-sixths of the population of that province—are eminently frugal and simple in their manner of living and expenditure. While neither the same gross nor a like average amount of deposits could be looked for as in the richer province of Ontario, it might be expected that the French-Canadian rural population would, nevertheless, use the Post Office savings banks to a larger extent than the official records show to be the case. The old-

established savings banks in the cities of Montreal and Quebec have already been mentioned as having deposits of $9,250,000. The depositors in the former number (according to returns published on 31st December, 1883) 29,756, of whom 18,357 are of French-Canadian nationality, a large percentage being from the country districts round Montreal. Of the 12,541 depositors in the Quebec savings banks it may be believed that those of French-Canadian nationality are a large majority.

"It is possible that the French Canadian rural population, accustomed for generations to the institutions and simple customs inherited from their parent country, France, and to the system which makes the village notary to them the visible and personal medium through whom are executed on the spot all legal forms, do not grasp the abstract idea of a savings bank at the seat of government perhaps many hundred miles distant, which guarantees perfect security to their deposits from the moment when handed to the village postmaster. Having little contact with immigrants from the British Isles, the rural population of the province of Quebec have not, moreover, the opportunities of becoming familiar with the working of post office savings banks, which association with persons themselves depositors would afford."

To this may be added the fact noted by Mr. Stewart at the time, and which probably holds good now, that half the province of Quebec deposits in the Post Office savings bank were held in the cities of Montreal and Quebec.

Ontario, if one considered only her relative wealth, might be expected to show larger deposits in proportion to her population, but to anyone who has had any experience in country banking the figures are not surprising. Individual deposits in Ontario, as a rule, do not possess the element of permanency in any great degree. Many of them merely represent money which has been gathered together to meet some obligation not yet matured, and others are only awaiting an opportunity for investment in securities bearing a higher rate of interest. To a depositor in the Post Office savings bank, who finds it necessary to withdraw a whole or part of his deposit even once or twice a year, the delay and formality attending the process becomes irritating, and, when contrasted with the ease and sim-

plicity with which the same operation is performed in a chartered bank, in most cases ultimately effects a transfer of the deposit to one of the latter institutions.

The relation which the amount of deposits in the two Government savings banks bears to the deposits in other institutions is as follows:—

Chartered Banks (1893)	$174,776,722
Government Savings Banks (1893)	41,849,658
Loan Companies (1892)	19,747,167
Special Savings Banks (1893)	12,823,836
	$249,197,383

In 1884 an approximate classification of the depositors in the Post Office savings bank, according to occupation, was made, with the following result; the figures are, however, only approximate. A similar compilation has not since been attempted owing to the amount of labor involved. The number of depositors and the amount on deposit have doubled in the last eleven years; but in all probability the proportions borne by the different classes to the whole have not varied very greatly.

Occupation	No. of Depositors	To Credit of each Class	Average of each Class
		$	
Farmers	14,000	4,722,000	337
Mechanics	7,850	1,422,000	181
Trust accounts and young children	5,500	170,000	31
Laborers, including sailors	4,270	724,000	169
Clerks	3,000	522,000	174
Tradesmen	1,600	468,000	293
Farm and other male servants	1,470	277,000	188
Professional	1,572	392,000	249
Miscellaneous	1,680	215,000	128
Married women	12,000	2,350,000	196
Single women	10,500	1,275,000	120
Widows	3,240	708,000	214
	66,682	13,245,000	

The most striking feature exhibited in the above table is the large number of accounts held in the name of women. Mr. J. Cunningham Stewart in the paper mentioned suggested that

an explanation of the fact might be found in the difficulty which farmers and artizans experience in leaving their work to visit the post office, the money which really belonged to them being consequently lodged in the names of their wives or other female members of their families. The explanation is plausible, but in the writer's opinion, which is founded on experience, a better one could be derived from the natural timidity of women in money matters, taken in connection with the prestige attaching to an institution directly under Government control.

The machinery by which the system is worked is cumbersome as compared with that employed by private corporations. The accounts are all kept at Ottawa, and although deposits are received at a multitude of post offices throughout the country, the postmasters who receive them are not given power to bind the Government in any way, the onus of seeing that the money reaches its destination being thrown entirely on the depositor. In fact the Government, by statute, has divested itself entirely of responsibility in connection with the deposits. A depositor hands in his money to the postmaster, and has to wait two or more days for a valid receipt. He sends in notice of withdrawal, and has to wait the same length of time for a cheque, which is cashed by the nearest bank. If the postmaster to whom he gives the money pockets it, the depositor loses the amount, unless the Government voluntarily reimburses him. If somebody else presents his pass-book and by forging his name obtains possession of the deposit, the depositor, not the Government, is responsible. In all cases, of both kinds, which have occurred so far, the Government has eventually paid the loss, but it is at perfect liberty to refuse to do so if it chooses.

Interest on deposits is now at the rate of three and one-half per cent. Interest begins on the first of the month following that in which the deposit is made, and ceases on the last of the one immediately preceding that in which a withdrawal is effected. This process brings the net rate of interest paid down to about 3.40 per cent. The annual cost of management being about .25 per cent. of the amount at credit of depositors, the money costs the country, as nearly as can be estimated,

3.65 per cent., as against 3.27 paid on the $4,000,000 loan floated in England in 1888, and 3.43 on the $2,250,000 borrowed in 1892.

Deposits are restricted to $1,000 in any one year, and to an aggregate of $3,000 in all. In England the limits are £50 and £200 respectively. In France the limit for individual deposits is $400. In the Australasian colonies the limit varies, the highest being £250 for a total deposit.

In Canada, as in England, there are provisions whereby a depositor, when his deposit has reached the maximum, can, without expense, purchase Government stock with the money at his credit, and then begin again to deposit in the savings bank; but the restrictions in the Post Office savings bank proper are as stated.

The minimum amount received is one dollar; there is no system, as in England, of accumulating fractional sums by means of postage stamps until the minimum is reached.

The following table gives an interesting comparative view of the position of Government savings banks in some of the principal countries where these institutions have been established. It will be observed that the average amount due each depositor in Canada is nearly twice as large as in Australasia, and nearly four times as large as in Great Britain, which comes third on the list. The figures tend to show that the Canadian Post Office savings bank does not depend for its patronage upon those who might possibly be looked upon as forming a class which required paternal legislation in order to guard their interests, but that its depositors are drawn more from the well-to-do classes, and, presumably, more from the intelligent classes, than is the case in other countries. The table refers to the year 1892.

	Number of Depositors	Amount due Depositors	Average amount due each Depositor
Canada	165,601	$ 39,529,547	$238 70
Australasia	708,509	86,986,255	122 77
Italy	2,521,798	66,943,013	26 58
Netherlands	354,483	11,267,332	31 44
Sweden	300,299	1,461,460	17 55
Great Britain	5,452,316	369,151,256	67 30

The Canadian Post Office savings bank was the direct

outcome of the establishment of the parent institution in the United Kingdom, and was not called into existence by the urgency of any conditions in the country itself. The English proposal had its origin in the frauds perpetrated on the public under the old Trustee savings banks. The Act in which the scheme was embodied is entitled "an Act to grant additional facilities for depositing *small savings* at interest, with the security of the Government for the due repayment thereof." Had the experience of depositors in the United Kingdom been as satisfactory as the experience of depositors in this country as regards loss through failure or fraud on the part of the banks, it is safe to say that the English Government would never have ventured on the experiment involved in the formation of the Post Office savings bank. Circumstances in England were, however, peculiarly favorable at the time, not only to the success of the new institution in point of patronage, but also to the acceptance of the principle contained in so considerable a departure from the ordinarily received views of the functions of government. The restrictions placed upon the large private and joint-stock banks, in the interests of the Bank of England, had not encouraged those institutions to enter upon the business of gathering up the small savings of the class of people very numerous in England, as in all old and populous countries, who can only save by the slow and laborious process of strict self-denial, and public enterprise which had attempted, by means of the Trustee savings banks, to supply the shortcomings of the large banks in this respect, having conspicuously failed in its object, governmental intervention seemed to be the easiest way to meet the exigencies of the situation. In other words, the banking system proper of England was mainly designed to meet the needs of the business classes, and of the comparatively well-to-do, and did not form part, as the Canadian system does, of the social life of the people in general. In Scotland, where the banking system was framed on more popular lines, the same reason for intervention by the Government did not exist, and it is not, therefore, surprising to find that there, as in Canada, the principal advantage, from a depositor's point of view, possessed by the Post Office savings bank over the joint-stock banks, lies in the higher rate of interest paid by

the Government, and that in the opinion of those qualified to judge, if the advantage of a higher rate of interest were withdrawn, the public would, as was shown to be the case in Canada when the Post Office rate was reduced from four to three and a half per cent., prefer to deal with the banks.

But apart from the special circumstances of the case, it is clear that in a country like Great Britain, where capital accumulates so rapidly as to supply all public and private needs, and at the same time to afford a large surplus which yearly seeks investment abroad, the reasons against the government's reception of deposits lose much of their force. In a new country, however, the chief drawback of which is a lack of capital wherewith to develop its resources and assist its industries, governmental intrusion into a sphere peculiarly appropriate to the banks, needs to be justified by very exceptional conditions. That exceptional conditions did not exist in Canada at the time of the inception of the Post Office savings bank has already been stated, and the statement may be confirmed by the remarks of Mr. Stewart in the paper which has already been quoted. He says:—

"Public attention had been attracted by the marked success of the British Post Office banks, and several private individuals had addressed communications to the Government urging the adoption of a similar measure in Canada. . . . The proposed legislation received little attention in the Canadian press. At that time party politics were dormant, and the measure provoking no hostile criticism, it inspired little comment of any kind."

It must be remembered that competition by the Government in this branch of the banking business is not merely a matter affecting the chartered banks—were it so it might very well be allowed to pass without remark. The Government is an institution which is by its nature removed to a very large extent from most of the influences which operate on private corporations, and is in a position, within much wider limits than confine private corporations, to make its own conditions, without reference to the natural laws governing the accumulation and distribution of wealth. In the exercise of this exceptional power the Canadian Government has

generally maintained the rate of interest on deposits in its savings banks at a point above that which free competition under equal conditions would have determined. The chartered banks, which hold more than twice as large an amount of deposits as all the other deposit receiving agencies in the country combined, have had to follow suit; the discount rate has been adjusted to the rate paid on deposits, and in this way the Government's participation in the banking business has had the effect of a tax upon the whole business community, and has tended to retard the development of the country's industries. Were the Government actuated by a paternal desire to cultivate the habit of saving in an otherwise thriftless class, or were the country as a whole benefiting by obtaining a considerable loan at a lower rate of interest than the money could be borrowed at in the large money markets of the world, something at least could be said in favor of our Government savings bank system, although the general economical reasons against it would not be weakened. But with banks possessing the entire confidence of the people; with no special class among the population which cannot be reached by the ordinary means at hand; and in view of the fact that the loans raised by means of the deposits are costing the country more than the money can be borrowed for in England, the inevitable conclusion must be that the system was uncalled for in the first place, and is mischievous in its operation.

III

PRIVATE BANKERS

THERE is but little to be said in connection with the system —if that can be called a system which is controlled by no laws —of private banking in Canada. It is entirely different from the system which exists in England, where the private banks vie in point of means and volume of business with the large joint-stock institutions. There the private banks are amenable to public inspection; are compelled to publish periodical statements of their position; and they establish branches through-

out the country. Several of them have a capital and reserve fund of £1,000,000; one has 86 branches, while a number have 10 or more.

In Canada the private banker is strictly what his name implies. He makes no public statement of his affairs. He is prohibited by law from calling his office a "bank," or from using any term in connection with his business which would lead the most ignorant to confuse it with that of a public or chartered bank. He rarely establishes a branch. His means are small. His business, as a general thing, is largely merged in that of a chartered bank. He is, in fact, not a separate entity, but is rather an offshoot of the chartered banking system, whence he derives the greater part of his power of existence, and without which he would, in most cases, wither and die.

There are some 190 private bankers throughout the Dominion, distributed as follows:—Ontario, 150; Quebec, 7; Nova Scotia, 3; Manitoba and the North-West Territories, 23; New Brunswick, 4; British Columbia, 3. Of these about 90 are established in places which are too small to support a chartered bank.

To begin business as a private banker in Canada it is not necessary to have experience in the practical part, or knowledge of the theory of banking—at least that appears to have been the opinion of many who have tried it. The principal requisite is a line of credit from a chartered bank, and to get that, little more is required than enough capital to supply a margin of 25 or 30 per cent. in collateral security. The margin and the credit obtained, the private banker is ready to receive deposits, to issue drafts through the chartered bank with which he keeps his account, and to transact any further banking business with which the public may be prepared to entrust him. It might be thought that a private individual opening an office in this way, especially if he was not well known in the district, would not get many deposits, however much he might do in the way of lending; but experience shows that there is a class of people who are ready to place their money in the keeping of anyone who stands behind a railed counter, calls himself a banker, and offers a seductive rate of interest.

The history of private banking in Canada is not, when

compared with that of the other financial organizations, particularly creditable either to the private bankers themselves or to the country as a whole. There is no doubt that many of those engaged in the business now are well qualified for it, and fully deserve the esteem and confidence of those with whom they are brought into business relations, but the fact cannot be disguised that the losses sustained by the public in the past through private bankers have been severe, when the means and number of those engaged in the pursuit are considered. Reliable statistics on the subject are not available, but the knowledge of almost anyone who has been in a position at all favorable for observation during the last ten or fifteen years, will bear out the statement. The reasons for this unfortunate record may be said, broadly speaking, to be a lack of knowledge of banking principles, and deficient judgment in making loans. Specific faults developed have been engagement in outside speculations; the taking up of individual accounts too large for the capital employed; and the permitting of loans to stagnate. Above these, however, which are personal defects, is the faulty system which ignores the fact that, in proportion to requirements, there are few men who possess the characteristics necessary to successfully conduct a banking business, and provides no supervision in the public interest over those who fall short of the standard. The form which the supervision should take is not essential. It is not meant here to advocate a government examination, such as they have in the United States, as being the best and most effective which can be devised, nor indeed to urge the adoption of any particular system of inspection, but merely to state the patent fact that some check is urgently needed if the past history of private banking in Canada is not going to be repeated in the future.

In a chartered bank the person primarily responsible for a loan is the manager of the office at which it is made. Above him, however, and removed from local influences, are the general manager or cashier, the inspector, and the board of directors, all of whom criticize and suggest. Even although proposed loans are seldom if ever rejected by the ultimate authority, the fact that they have to pass before it and be subjected to dispassionate examination is sufficient to exercise a

purging influence upon those which are submitted, and to increase the care with which all relative information is collected by the manager. The frequent revisions of the existing loans, too, by the higher authorities, tend to prevent stagnation, and to keep the local officials on the alert.

But the private banker has no one to whom he is responsible, except the bank from which he draws his funds, and the power of revision exerted by it does not extend beyond the business represented by the notes pledged to it as collateral security. Removed from the bracing effect of publicity or criticism in any degree upon a considerable part of his business, he is practically thrown altogether on his own resources, and unless he happens to be a man of firm will and sound judgment, he is certain to be more or less subjected by the personality of his customers, or to be influenced, by the fear of results, to enter upon or continue transactions which contain the elements of future trouble.

The functions of the private bankers may be said to be simply to transact a lower grade of business than that done by the chartered banks, and to supply banking facilities to communities which cannot afford sufficient business to warrant a chartered bank in opening a branch there. Owing to the necessarily small volume of business which a private banker can do, to the proportionately high expense he incurs in doing it, and to the much greater risk he is at, the margin of profit on which he can safely work is much larger than is the case in a chartered bank. What that margin is depends on circumstances. The minimum should not be lower than four per cent., but the desire for business is often an irresistible temptation to take accounts at rates which do not cover the expense and risk. The rates at which deposits are taken are usually one per cent., and at the greatest two per cent., below the rate of discount charged by the chartered banks, the private banker arguing that if he has to borrow money from a chartered bank at, say, six per cent., to carry on his business, he can well afford to borrow from private individuals at five per cent. He takes little account of the radical difference in the character of the two kinds of loans, in that one is a steady time loan, and the other a loan repayable on demand, because he relies partly on the chance of no heavy call being made upon him without

notice, and partly on the assistance of the chartered bank where he keeps his account, to pull him through. If luck is against him on the first point, and he is unable to supply collateral sufficiently satisfactory to ensure help from his bank, there is, as a rule, no third resource to fall back upon, and the end is at hand.

A well regulated system of private banking would no doubt be of benefit to the country in so far as it enabled loans on personal security to be carried which could not otherwise be taken up by the larger banks. The present system of course does this, but its advantages are largely cancelled by the unsatisfactory way in which it has worked in the past, and the consequent distrust with which it is looked upon by the public. What appears to be wanted in order to put it upon a creditable footing are larger capital, restricted credit, more experience in the individuals engaged in the business, and, above all, some effective form of supervision.

MASSEY MORRIS

July, 1895

DISSOLUTIONS OF PARTNERSHIP

As many customers of a bank are partnership firms, and as partnerships are constantly becoming dissolved during the currency of the accounts, questions are continually arising as to the bank's rights and position upon the dissolution, and as to the proper course to be pursued in order that its position may not be prejudicially affected. Some explanations and practical suggestions on the subject may prove useful.

The dissolution of a partnership may occur in various ways, and the future of the business may thereafter take various courses. This paper will, however, be confined to the cases which most frequently occur, viz., where the firm is dissolved by the retirement or death of a member and where the business is continued by the remaining or surviving partners, either with or without a new partner, and where the firm has an account with a bank.

Take a common case. A, B and C are partners. They keep the usual bank account, have a line of credit on the firm's own name and a line upon customer's paper, and possibly the bank holds a guarantee or security from some third person. A retires from the firm, or dies; B and C wish to continue the business, and the bank is willing that they should do so, but is not willing to weaken its position by releasing A or his estate from the liabilities of the old firm. What is the best course to pursue?

It is commonly said that, notwithstanding its dissolution, a firm continues to exist so far as may be necessary for the winding up of its business, but this statement is only partially true. The continuing or surviving partners can doubtless deal generally with the partnership assets for the purposes of the liquidation, but it does not follow that they can as generally make the retiring partner, or the estate of the deceased, liable upon transactions into which they enter in the course of the winding-up.

For instance, they can sell the firm's goods either for cash or on credit, and transfer a good title thereto, but if they take a

note for the price, it does not follow that they can make the retiring partner, or the executors of the deceased, liable upon an endorsement of such note. The liability might or might not exist according to circumstances. It is not necessary, however, to follow out the details of a winding-up. It is proposed to deal with the case of a continuance of the business—not a winding-up—as it is where the business is continued that the practical difficulties usually arise.

There are generally three things to be borne in mind :

(*a*) The advances to the firm itself

(*b*) The customers' paper endorsed by the firm

(*c*) The guarantees or securities given by third persons.

The dangers surrounding each will be separately referred to :

1. *The advances to the firm itself—*

These may be by way of overdraft or represented by the firm's notes.

The danger in case of an overdraft generally consists in the fact that, unless care be taken, the result of continuing the account with the remaining or surviving members of the firm may be to extinguish it.

The danger in case of advances represented by the firm's own notes may arise in two ways :

(*a*) The notes may be given up and notes of the new firm taken instead, and the retiring partner be thus discharged.

(*b*) The new firm may have agreed with the retiring partner to assume the old firm's liabilities, and the bank, with notice of this, may renew the notes without his consent, and thus discharge him.

2. *The customers' paper—*

The danger in this case may also arise in two ways similar to the above, viz :

(*a*) The notes may be given up and new notes taken, bearing the endorsement of the new firm, thus discharging the retiring partner from his liability upon the old notes.

(*b*) The remaining partners may have agreed to assume the firm's liabilities, and the bank, with notice of this, may renew the customer's notes without the consent of the retiring partner, and thus discharge him from liability upon his endorsement.

3. *The guarantees or securities of third persons*—

The danger here would arise in this way, viz.: The security may have been given for the particular firm of A, B and C only, and the liability to the bank may have been changed from that of three to that of two only, and the security thereby lost.

How does an overdraft become extinguished by simply continuing the account?

There are various rules relating to appropriation of payments, the leading ones of which are well known. The debtor has the first right of appropriation. If he does not exercise it the creditor can do so, but if neither makes a special appropriation, then the law endeavors to get at the intention of the parties, and for this purpose one of its presumptions is, that the earlier items of one entire account are intended to be paid before the later items of the same account.

Apply this rule to the case of a firm's overdrawn current account in a bank, and suppose a dissolution and a continuation of the account, as before, with the remaining or surviving partners, and what would be the result? In the absence of something to show a contrary intention, the earlier debit items of the account would be discharged by the earlier credit items, and notwithstanding that the general debit balance had never decreased, the liability of the retiring or deceased partner would be discharged. He might be financially the strongest member of the firm, and yet the bank would lose him as its debtor. In an active current account this result might very soon be reached.

Why does taking new notes, for advances made to the firm, discharge the liability of the retiring partner?

Because, if the new notes were taken *in lieu* of the old—the old being given up—no claim would exist upon the old, against either the retiring or remaining partners, and as the new notes would not be endorsed by the retiring partner, his liability would consequently be at an end.

Why would the retiring partner be discharged, should the bank renew the old firm's notes without his consent, in case the remaining partners had agreed to assume the liabilities of the firm, and the bank knew of this?

The answer to this question depends upon the law of principal and surety.

For some time it was thought that two principal debtors could not change their relation to their creditor by any agreement between themselves, as to the liability for the debt, but it is now well settled in England and in Ontario that by such agreement one may become surety only for the other, and if the creditor have notice of this, he must recognize the change, and thereafter treat the surety as the law requires a surety to be treated.

As a rule, and subject to certain exceptions, some of which will be shortly explained, a surety is discharged if the creditor, in a binding way and without the surety's consent, gives time for payment to the principal debtor.

The reason for this is, that one of the most important rights possessed by the surety has been interfered with. He has the right, so soon as the debt matures, and even before the creditor demands payment, to compel the principal, by proceedings in court, to discharge the debt and thus relieve him from his liability as surety. If the creditor, without his consent, in some binding way, extends the time for payment of the debt, the surety cannot, till the extension expires, compel the principal to relieve him. This being an injustice to the surety, brought about by the act of the creditor, the law relieves the surety at once, and his liability to the creditor is discharged.

The result does not depend upon whether or not the surety is really prejudiced by the extension. A right of his has been interfered with, and no enquiry can be made as to the actual value to him of this right.

Therefore, if the Bank, without the consent of the retiring partner, who has been changed from a principal to a surety, should renew the notes, time for their payment would be given in a binding way, and the surety would be discharged. The same result would follow if customers' notes were renewed.

Why should the taking of customers' notes, bearing the endorsement of the new firm only, discharge the liability of the old firm?

For the same reasons explained where the old firm's own notes are given up and notes of the new firm taken instead.

Bear in mind that in each case it is assumed that the old notes have been given up, and the new ones substituted therefor. Reference will be made hereafter to the effect of keeping the old notes and taking the new as collateral, or by way of renewal only.

Why should the bank lose the benefit of a guarantee, or security, taken for the debt of three partners, because one of the three ceased to be liable therefor ?

The answer to this also depends upon the law of principal and surety, and will be readily understood. The liability of a surety depends entirely upon his contract; the creditor's claim against him is *strictissimi juris*, his liability cannot be extended beyond the scope of his contract, and his rights are carefully guarded by the law. If he has guaranteed the payment of a debt of three persons, he cannot be held for a debt of any greater or less number. If, therefore, the debt of the three no longer exists, the surety is no longer liable. There is, of course, nothing to prevent the contract of suretyship from being so framed as to make the surety liable, not only for the debts of the three, but also for those of any one or more of the three, and by properly reserving rights as against the surety the creditor may release and in other ways deal with his debtor without discharging the surety.

What then should be done, in order to protect the bank's interests in the various cases referred to, and, at the same time, to facilitate the successful continuation of the business by the remaining or surviving partners ?

So far no distinction has been drawn between a dissolution by death and a dissolution by the retirement of a partner. The legal positions are much alike, and the same principles apply, but when dealing with the cases in practice, there are important distinctions which must not be lost sight of, the principal one being that a retiring partner, being *sui juris*, can bind himself by any agreement which he may enter into, whereas the executors of a deceased partner can only bind the estate within the limits of their powers as executors, under the provisions of the will and the general law. If there be no will, the administrator, who derives his authority from the law, must act within the limits of such authority.

First, take the case of a *retiring partner.* If the bank is not willing to let him retire, and become discharged from his liability, in the way indicated, it can require him to enter into a proper agreement preserving the liability, and as the alternative, in case of refusal, would probably be disagreeable, the agreement would doubtless be made.

The terms, times and manner of liquidating the liability must necessarily vary in different cases; probably no two cases could be treated alike. There is nothing to prevent any terms which may be decided upon from being embodied in the agreement. No special form of words is required, but for the convenient and safe working of the account, and to avoid the dangers above alluded to, the agreement should provide:

(*a*) That notwithstanding the continuation of the account, or the form in which the accounts are kept, the liability of the old firm and the retiring partner shall continue until actual payment of the overdraft, and that the deposits of the new firm shall be first applicable to their withdrawals, unless such deposits are specially applied in payment of the overdraft, and that the liability of the new firm, no matter how taken, shall be collateral and additional to the liability of the old, and not in substitution for it.

(*b*) That the notes representing advances to the firm may be renewed from time to time, without prejudice to the liability upon the old notes, which should not be given up till actually paid.

(*c*) That customers notes may be renewed from time to time, and compromises made with them, and extensions granted, without prejudice to the old firm's liability in respect thereof.

(*d*) That the signature of the new firm upon renewal notes, etc., representing old firm's liabilities, whether upon customers' paper or otherwise, shall bind the retiring partner as if he were a member of the new firm, for that purpose.

(*e*) The agreement should expressly reserve, in the most ample way, all rights with respect to sureties and securities.

It is with regard to the bank's position as against sureties, that the greatest difficulty will arise, and a few words as to the legal position will not be out of place.

It has been already stated that, subject to certain excep-

tions, a surety is discharged if the creditor in a binding way, and without the surety's consent, gives time for payment to the principal debtor. One of the exceptions referred to is that such time may be given, and yet the surety will not be discharged, if, in the instrument giving the time (or possibly by collateral agreement made at the same time), the creditor expressly reserves all rights against the surety. The reason for this is that the effect of such a reservation enables the creditor, if he so desires, to proceed at once against the surety, and in turn it enables the surety to proceed at once against the debtor. No right of the surety is therefore interfered with, and his liability remains. An extension of time to the debtor, with such a reservation, seems, in this view, meaningless, but in practice the creditor does not proceed against the surety, and the surety does not proceed against the debtor, and the intention of the parties is really accomplished. This principle is now so well settled in our law that there is no difficulty in arranging to give time to the principal debtors, and yet not discharge the surety; but the real difficulty in the case under consideration is to preserve the liability of the principal debtors themselves, in the same form in which it existed at the time of the dissolution, for if there be a material change in the nature of that liability (for instance, if there be a novation, the liability of a new firm with a new partner being taken in lieu of the old), the surety, unless his contract allows it, will be discharged, and no reservation of rights in such case will avail.

Therefore the terms of the guarantee, or other security, should be carefully considered, and the agreement with the partners should be so framed, and the bank should so act, as to preserve, if possible, the benefit of the guarantee or security, and to accomplish this the agreement should, in express terms, provide for the continuation of the old firm's liability in all respects, until actually discharged by payment, notwithstanding the dissolution and the other matters provided for in the agreement.

Wherever possible customers' notes should be retained when renewals are taken, and it should be understood that the renewals are taken without prejudice to the liability on the old notes.

(*f*) The agreement should also contain a clause prevent-

ing the retiring partner from compelling the others to pay the old firm's liabilities before a stated time.

(*g*) It might also be convenient to provide in the agreement for the entrance of a new partner into the new firm.

If a new partner be taken in, the bank will not get the benefit of his liability for the old debts, unless he agrees with it to become liable. An agreement by him to this effect, with his partners only, will not enure to the benefit of the bank. If there be a new partner, care should be taken that the agreement with him be so worded as to prevent the discharge of the retiring partner, or the sureties, by novation—in other words, the liability of the new firm should be taken as additional and collateral to that of the old, and not in lieu of it.

Assume, however, that the retiring partner will make no agreement, and that the bank is willing to continue the account with the others, but still desires to preserve the liability of the retiring partner, what should be done?

It will be remembered that the rules relating to appropriation of payments, in default of special appropriation by either debtor or creditor, are based upon the presumed intention of the parties; they do not apply if a contrary intention exists; therefore the bank should so act as to clearly indicate that the intention is *not* to continue the account as one entire account, in which the earlier debit items would be discharged by the earlier credit items, but that its intention is to preserve the liability of all parties for the old debts, until they are actually discharged by payment.

This intention may be evidenced in several ways. The most satisfactory would be by an understanding with the remaining partners, and it would usually be best that the bank should open new accounts for all transactions subsequent to the dissolution, except such as are clearly and specifically connected with the payment or renewal of some portion of the old accounts.

It should also, when renewing the firm's notes, retain the old notes bearing the firm's name, and have it clearly understood that they are retained, in order that the liability of the retiring partner may be preserved, and that action may be brought upon the old notes in case the renewals are not paid.

The same practice should be followed, whenever possible, with customers' notes endorsed by the firm. The understanding should as soon as possible be evidenced by writing, and a formal agreement executed, and this agreement should follow, as closely as possible, the terms of the agreement above outlined. A writing is, however, not essential, as the understanding may be proved by verbal evidence, and sometimes it is not practicable to reduce the understanding at once to writing.

If the retiring partner stands on his legal rights and refuses to make any agreement, care must be taken to do nothing which would have the effect of discharging him in his character as surety, as by renewing notes, or otherwise by a binding agreement giving time to the other partners, without reserving rights as against him, or by changing in a material way the nature of the liability for which he has become surety.

Next take the case of the *death of a partner.*

Before the position can be properly understood, the articles of partnership (if any) should be examined, also the will (if any) of the deceased.

Provisions in the articles may be made as to the rights and position of the surviving partners, which would be binding on the executors of the deceased. Provisions may be made in the will which might be obligatory upon the executors, though not upon the surviving partners. The provisions in the articles might be modified or altered by agreement between the survivors and the executors, but the provisions in the will might be so drawn as to limit the authority which the executors would otherwise possess; on the other hand, they might materially enlarge their authority. Therefore, in any arrangement made, regard should be had to the terms of the articles and of the will. But, assuming that there are no such provisions, what is the legal position, and what should the bank do for its protection?

The executors of the deceased do not, of course, become partners with the survivors, and they have no right to interfere with the partnership business; they, however, represent the deceased for all purposes of account, and unless restrained by special provisions of the articles of partnership, they may obtain from the court the appointment of a receiver and have the business wound up. The surviving partners are the proper

persons to realize the assets and pay the debts of the firm, but it would be well, wherever possible, to procure the assent of the representatives of the deceased to any course intended to be followed.

As a rule, in cases of solvent partnerships, an agreement is come to, sooner or later, between the survivors and the representatives of the deceased, respecting the deceased's share in the business, and, as the bank's assent is generally required to such an agreement, the necessary provisions for preserving the liability of the deceased's estate may then be made; but as the business must go on pending the issue of probate or administration, and pending negotiations between the parties, precautions should be taken similar to those suggested where a retiring partner will not make an agreement preserving his liability, viz., the intention not to continue the account as one entire account should be evidenced by an understanding with the survivors, and, if possible, with the representatives of the deceased; and the necessary new accounts should be opened, covering the new transactions. The old notes should be retained when renewals are taken, and the old liability preserved unbroken as far as possible. The precautions with respect to sureties should also be observed.

Speaking generally, the right of the executors as against the surviving partners, is simply to have the share of the deceased ascertained and paid. If none of the surviving partners are themselves executors, the deceased's share may be fixed by agreement between the survivors and the executors, and a sale may be made to the survivors on such reasonable terms as prudent men would make, but if any of the survivors be executors they cannot, with safety, make sale to themselves of the deceased's share; if they assume to do so, they are liable to be called upon to account by those interested in the estate, and if the bank continues to deal with the survivors, and give them credit upon the assumption that they have become owners of the business, the sale may subsequently be impeached, and the bank may find itself a creditor of persons having liabilities much greater, and assets much less, than it supposed. If a surviving partner be an executor of the deceased, the assent to any sale to the survivors should, if possible, be obtained from those bene-

ficially interested in the estate; if not, the assent of the court to the sale should be obtained; otherwise the risk above referred to must be run:

To summarize:

1. The legal principles relating to a dissolution, by retirement of a partner and by death of a partner, are similar. The principal differences have been explained.

2. The dangers to be guarded against, in either case, are, with respect to

(*a*) The firm's overdraft

(*b*) The advances to the firm represented by its own notes

(*c*) The customers' paper endorsed by the firm

(*d*) The guarantees or securities of third persons.

3. The ways of avoiding these dangers have been shown, the principle running through them all being that the old liability shall, as far as possible, be preserved unbroken.

4. When dealing with executors or administrators, bear in mind the limits of their authority under the will or otherwise, and if a surviving partner be an executor, remember the precautions which should be taken in order to make valid a sale of the deceased's interest to the surviving partners.

September, 1895 Z. A. LASH

THE LEGAL RATE OF INTEREST

"To punish public outrage on morals or religion is unquestionably within the competence of rules, but when a government *not* content with requiring decency, requires sanctity, it oversteps the bounds which mark its functions, and it may be laid down as a universal rule that a government which attempts more than it ought will perform less. *A law-giver who, in order to protect distressed borrowers, limits the rate of interest, either makes it impossible for the objects of his care to borrow at all, or places them at the mercy of the worst class of usurers*, and so a government, not content with repressing scandalous excesses demands for its subjects fervent and austere piety, will soon discover that while attempting to render an impossible service to the cause of virtue, it has in truth only promoted vice."—MACAULAY.

ON 8th January, 1896, Mr. Mulock introduced in the House of Commons a bill to repeal section 2 of chapter 127 of the Revised Statutes of Canada, entitled *An Act Respecting Interest*, and to substitute the following:

"Whenever interest is payable by the agreement of parties, or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be four per cent."

Upon the second reading, on 9th January, after some debate, the bill was referred to the Banking and Commerce Committee. When the matter was taken up by this Committee, on 28th February, resolutions passed by the Boards of Trade of Montreal, Toronto, Ottawa and Halifax, protesting against the passage of the bill, were read, while a deputation of bankers* appeared before the Committee in person, in order to ensure that its members should not form their conclusions without having before them a full and clear statement of the objections to the measure. The matter was discussed at length, with the result that after an amendment to make the rate 5 per cent.

* The deputation consisted of: Messrs. H. Stikeman, General Manager Bank of British North America; A. Macnider, Inspector, Bank of Montreal; D. Coulson, General Manager, Bank of Toronto; B. E. Walker, General Manager, Canadian Bank of Commerce; D. R. Wilkie, General Manager, Imperial Bank of Canada; George Burn, General Manager, Bank of Ottawa; and W. Lake Marler, Manager, Merchants Bank of Canada, Ottawa; the latter gentleman presenting the argument of Mr. George Hague.

had been lost by 31 to 18, the Committee resolved unanimously that the bill should be reported against.

The debate which took place in the House on the second reading of the bill, indicates a very general misapprehension as to the origin of the present legal rate, as also that apart from those of the commercial community who, in the capacity of either borrower or lender, have much to do with instruments by means of which debts are recorded, the objections to a fixed legal rate of interest are not understood. Had it not been for the sensible view of the matter taken by the Hon. Mr. Foster in having the bill referred to a committee, so that those most concerned might have an opportunity to be heard, it is not at all unlikely that it would have been passed—with possibly a modification in the rate to 5 per cent.—with very little opposition. This being the case the publication here of the discussion and argument will form a valuable record should the question be brought up again at any future time, while the matter it contains is of considerable present interest.

EXCERPTS FROM THE DEBATE IN THE HOUSE OF COMMONS

MR. MULOCK on moving the second reading said: The principle of this Bill is a very simple one, and I am sure the measure will commend itself to the judgment of the House. Many years ago, in 1859, I think, Parliament fixed the legal rate of interest at six per cent. At that time the current rate of interest was considerably in excess of six per cent.—perhaps nine per cent. The rate fixed by Parliament was, therefore, about one-third less than the current rate. Since that time a change has taken place in the value of money, and to-day, I think, I am quite within the facts in saying six per cent. is the average current rate. Money is procurable at much less than six per cent., and I doubt if, in ordinary dealings between man and man, a higher rate than six per cent. is now given as a matter of agreement, except in rare cases. I have suggested four, because it is about a third under the current rate of six per cent., and six per cent. was years ago about a third under the then current rate, so four per cent. is about a third under the current rate of to-day. The only doubt in my mind is as to whether, instead of its being fixed at four per cent., we should not fix it at three per cent. to-day. However, I am prepared to hear suggestions in that direction, but not wishing to be unreasonable, I have endeavored as nearly as possible to adopt a scale in harmony with the scale adopted in 1859. It seems to me in the public interest that the legal rate, that is, the rate provided by law in the absence of an agreement, should not at least be in excess of, or even equal to, the highest going rate between parties. Six per cent. to-day, the legal rate, is an excessive rate for the law to impose in the way of damages or fine upon a debtor.

MR. COCKBURN: . . . When we consider what is ordinarily paid to a depositor for his money by those going to loan out that same money, when we reflect that the depositor usually gets from 3 per cent. to 3½ per cent., I think that when my hon. friend tries to fix the rate at an additional ½ per cent., which has to cover all the risk, with the expenses attending the management of it, he is undertaking a risk which I am sure I am safe in saying

he has never ventured to undertake, either in the loan company which he so ably controls, nor has he ever undertaken such a risk in the disposition of those funds of which he has charge as trustee. This effect, I think, must inevitably follow—perhaps that may have been an idea in the mind of my hon. friend—the effect must be to raise the price of money to the poor man. Of course, if 4 per cent. is to be the rate, we cannot expect that the capital which can find ready employment at 6 per cent., 7 per cent., 8 per cent. and 9 per cent., is going to find its way into Canada. There will be a gradual withdrawal of that capital to England and elsewhere, so that the amount of capital left on hand would be smaller, while the number of those who want to borrow it will remain the same. The inevitable result would be to force up the rate of interest still higher than it has ever been. The supply will be cut off, because there will be no inducement to the Englishman to put his money here, and my hon. friend who may now be contented with six per cent. on his mortgages, would be netting seven, eight or nine per cent.

MR. MULOCK: I suppose you are aware that we have so much money in the country that a great deal of it is sent out of Canada for investment.

MR. COCKBURN: Where is it sent?

MR. MULOCK: New York, principally.

MR. COCKBURN: In New York the rates were higher, so that if this law were to pass it would drain still more largely the country of money, which would be sent to New York. I am obliged to my honorable friend for the suggestion; it illustrates the very fact I am pointing out.

MR. MULOCK: Surely the honorable gentleman, as a banker, knows better than what he is saying now.

MR. COCKBURN: I know perfectly well what I am saying. Perhaps the object of my honorable friend's bill is not so much to raise the price of money as to manufacture farmers' votes.

MR. MULOCK: That is a piece of impertinence.

MR. COCKBURN: I wish also to point out to the House that in England, which has had an experience of centuries, which is the money market of the world, to which we all look as the guiding star in commercial matters, while the rate of discount for commercial paper may have been less than one per cent. for the twelve months, the legal rate of interest established in the courts on money in default is five per cent. Surely the honorable member is not going to hold out a premium to a man not to meet his legal obligation, and to remunerate the borrower for a breach of contract. If a man has borrowed from you $10,000 at six per cent., and you have made no arrangement with him as to the rate of interest in case of default, you do not wish him to be in a position of trying to keep you out of your money because he is going to make $200 on it by paying you four per cent. instead of six. I think that when the House has fully considered this matter—and I cannot help thinking that my honorable friend, with his long experience, will himself be convinced—it will arrive at the conclusion that apart from the little advantage that is going to be gained perhaps among the farming community during election time, there is nothing to be gained for the benefit of this country by passing such a proposal as that made.

MR. LISTER: Money has come down from ten and twenty per cent. to, say, six per cent. The statute which the honorable member for North York (Mr. Mulock) proposes to amend is a statute passed when high rates of interest prevailed many years ago. During all these years no attempts whatever have been made to reduce the rate of interest. No man will say that six per cent. was an unreasonable rate when people who went to the banks to borrow money would have to pay ten per cent. exchange and on mortgage from ten to fifteen per cent. Six per cent. was then not unreasonable when no contract was made between the parties. . . Money can be obtained on good security at five per cent.; it can be obtained from the banks at five and one-half to six per cent. if the security is good. Then upon

what principle should we retain the legal rate of interest which in the absence of a contract was fixed at six per cent., when money can now be borrowed at a lower rate than six per cent? . . . The honorable gentleman does not profess by this Bill to limit the rate of interest, to restrict the right of the individual to contract as to the rate to be paid. All it provides is, that where no contract exists as to rate of interest, then the rate shall be four instead of six per cent. . . . It does not follow that where the statute law provides that in the absence of contract there should be a certain rate of interest paid, the volume of business is affected, but only the man who allows an overdue note to remain in that condition. If the legal rate is four per cent., and he can obtain six per cent., he will say to the maker of the note that he must pay up the note. It has no influence whatever upon the volume of the money in the country, and it cannot affect the credit of the country whether it be one per cent. or two per cent., or if the law provided it should be nothing at all. As I pointed out to my honorable friend, the statute does not interfere with the contracting rights of individuals, and nearly every contract for the payment of money fixes the rate of interest to be paid. If the loan is by a bank, the discount is taken off at the time the money is advanced. It is covered on the face of the note, and all the bank would be entitled to recover would be the six per cent. after the maturity of the note. I need not tell my honorable friend (Mr. Cockburn), who is a banker, that banks are not in the habit of allowing overdue paper to remain in the bank any longer than they can help.

MR. COCKBURN: Let me ask my honorable friend (Mr. Lister), whether you would not force the bank to deal harshly with a man in that case, and whether it would not be in his interest to be in default instead of honestly keeping to his obligations.

MR. LISTER: The bank will make every individual whose note it holds pay up; no matter whether the interest is eight per cent. or nine per cent. If the borrowers allow their overdue paper to remain, their credit is destroyed, and it is not business anyway. Besides all that, the conditions can be made on a promissory note that after maturity it should bear interest at seven per cent. or eight per cent., or whatever may be provided. It all comes within the contract, and the contract can be made by the bank. So long as the statute does not interfere with the right to contract, no injury can be done to any person, . . This Bill is in the interest of the community at large, and in view of the fact that the rate of interest has come down from ten and fifteen per cent. to five and five and one-half per cent., we should reduce the rate of interest chargeable upon overdue paper, so as to conform with the reduced rate. I can see no objection to the Bill. On the contrary, I can see everything in favor of it. Nobody can be injured, because money is not worth more than four per cent., for that is all an individual can get for it. A man has money to pay his note, and, if he takes it to a bank, or to a loan company, the highest rate of interest he can get would be four per cent on deposit. I do not think you should exact from the people of the country more than they could get from our financial institutions for their money on deposit. I shall certainly support the Bill.

MR. SPROULE: I have no doubt that the object of the Bill is a good one, if we could carry it; but this Bill will not reach cases where the hardship is most felt in questions of interest. It is not because people are compelled to pay six per cent, that it is such a great hardship, but the trouble is when they are compelled to pay eight, or ten, or twelve, or even twenty per cent., as is the case in many parts of the country to-day. If the honorable gentleman's Bill went so far as to prohibit that, I would willingly support it. . . But provided this Bill should become law, any sharp business man—and they are the men who always get the high rate of interest—or the banks or the loan companies, can easily evade it by making a contract. . . If we could make four per cent. the general rate for business transactions all

through the country, then I would say that this legislation conferred a great boon upon the people.

MR. MACLEAN (York): If the argument of the honorable member from Toronto (Mr. Cockburn), is good for anything, it proves that the Act respecting interest ought to be repealed. But he does not go that far. If Parliament takes the position that it ought to make a legal rate of interest, then Parliament ought to keep in touch with the times, and, if the rate of interest has a downward tendency, Parliament ought to fix the legal rate in harmony with that decline. That is all this Bill proposes to do, and, if it does that, then Parliament ought to accept its responsibility and make the legal rate in harmony with the ordinary commercial rate. If the Bill does not remove all the grievances that exist, under the present rules and laws with regard to interest, it does, at least, afford some measure of relief to people who are paying interest, and to that extent it should be supported by the House.

MR. MARTIN: It seems to me that the honorable member (Mr. Mulock) has not gone far enough in this legislation, if he desires to have the rate of interest in cases of this kind fixed at four per cent., because he still leaves the law as it was with regard to interest upon judgment debts. . . In British Columbia it is six per cent. by express enactment of this Parliament; in Manitoba, four per cent., because there is nothing in the Interest Act which affects the question of interest upon judgments, and in Ontario it is six per cent., not because the Interest Act affects it, but because that was the law prior to confederation. If I am right with regard to this, and the honorable gentleman (Mr. Mulock) reduces the rate of interest in case of agreement or by law to four per cent., then there would be a very considerable inducement, as the honorable gentleman for Toronto (Mr. Cockburn) has suggested, for creditors to sue at once upon an overdue liability which carries interest, in order to escape the law, by which they would only get four per cent., and take advantage of the other law, by which on a judgment debt they would get six per cent. If this Bill is passed, it should be made to include judgment debts in all the provinces, and reduce the rate on judgment debts from six per cent. to four per cent.

MR. CAMPBELL: . . For my part, I would rather see the rate of interest fixed at five per cent. than four per cent. I believe that the present rate should be reduced. The rate of interest was fixed at six per cent. when money was quite freely going at from ten to twelve per cent., but now the rate has come down very much. The City of Toronto has borrowed large sums of money at three and one-half per cent., and I believe the City of Ottawa has floated its three and one-half per cent. debentures above par at 102 or 103. Gilt-edged mortgages can be obtained at five per cent. or four and one-half per cent. If a man wants to lend $1,000, and thinks he should have six per cent. for it, this Bill does not prevent him getting that, if he states it in the contract. . .

MR. COATSWORTH: . . Undoubtedly the tendency of the rates of interest for the last two or three years has been downwards. As one honorable gentleman said, a borrower can get money on gilt-edged security on mortgage as low as five per cent. . . Undoubtedly during the last five years there has been a decrease generally in the rates of interest, and I think it is a proper subject for the consideration of this Parliament whether the legal rate of interest should not be lowered. . . At the same time, until we have some expression of opinion from the business community, the boards of trade, the banks and other interests, some of whom would of course be against any reduction in the rate of interest, I think we ought not to pass the Bill. . .

MR. TISDALE: I agree with the proposition that it is desirable to lower the rate of interest, but I do not agree at all with the honorable gentleman that that can be done by legislation. . . I am for free trade in money, and my reason is this: I want to see the interest as low as possible; but I

am perfectly convinced, and I think history proves conclusively that the way to get low interest is to keep money free. Any one who has lived many years in Canada will remember the contest which took place at the time the usury laws were abolished. Those laws had the effect of compelling the borrower to pay high rates of interest, and the rates have tended to go lower ever since. I cannot remember a single case in which a man was ever convicted of usury. There were extensive law suits brought with the view of taking advantage of the law then in force, but they were almost always unsuccessful. . . I oppose this legislation on the broad principle that it is best for the borrower to leave money free. If you fix the rate of interest at four per cent. to-day, what will happen? Money cannot be borrowed at that rate, and the instant a note becomes due, if the maker of the note failed to meet it, he would be sued, and he would have to be sued, because he would not be able to borrow money to renew it at as low a rate as four per cent. . . While I would like, if possible, to reduce the rates paid by those who borrow on securities, I think it would be a step in the wrong direction to apply that principle to business transactions, as this Bill is designed to do, because the rate at which you can borrow money depends on the quantity of money in the market. With regard to borrowing from people who have money to lend and who live on the interest of it, the rate depends on the class of security and the plentifulness of money. . . On all lines I am strongly opposed to any attempt to interfere with the existing legal rate. I am satisfied that any attempt to alter it by legislation would simply make things worse for the man we would all like to see get the best of it, the man who pays the interest. . . I believe in letting well alone. There is no desire for a lesser rate by those who desire not to get an advantage.

MR MILLS (Bothwell): . . We owe in part the very low rate which has prevailed for some time in this country—first, to the freedom of contract with reference to interest, which has caused money to flow here for the purpose of investment, but also very largely in consequence of the general peace which has existed throughout the world, especially in those countries which are the great money lending centres of the world. Now, I think that the only point involved in this measure is a very simple one, and that is, whether the rate of interest proposed to be fixed by this Bill is very much below the average rate of interest that prevails amongst parties whose credit is fairly good. I do not think that you should judge in this matter by comparison with cases of loans extending over a period of a long time, made by persons who may be advanced in years and with large sums to invest, who do not care to be troubled looking constantly after avenues of investment, and to whom a permanent investment is of more consequence than a very large rate of interest. You should look at the ordinary transactions of life, that occur with reference to the lending of moneys, to the accommodation given in banks and elsewhere, for the purpose of enabling a fair rate of interest where no rate of interest has been agreed upon. Now, there is this to be considered in fixing the rate under these circumstances: What will be the effect upon the man who is a debtor, where credit has been given, say by the retail merchant and by various parties from whom loans are affected? What will be the effect upon the relations which exist between the debtor and the creditor in these cases? My impression is, that, if you fix a rate of interest very much below the ordinary rate, one of two things happens. The merchant will charge more for his goods when he parts with them on credit, or, if he sells at a narrow margin, he will press for immediate payment or for some security upon which there shall be a higher rate of interest than you fix. The ordinary merchant goes to the bank and obtains credit, and he gives credit to his customers. If the bank compels him to pay a rate very much higher than that which he charges to his creditors on overdue bills, of course, he will insist upon the settlement of the account, or upon a note being given in which the rate of interest is fixed. So that while it may be

that, as my honorable friend who moves this Bill has stated, that the present legal rate of interest, six per cent., is above the current rate of interest which is ordinarily charged, I am not at all sure that the rate he proposes is not too low, and that it will not lead to an immediate demand for the payment of all overdue bills and of due accounts, or for their settlement by bills or notes bearing a higher rate of interest than that named in this Bill. There are very many cases where men allow an amount to stand, between parties where the debtor is perfectly good, but is not prepared to make immediate payment, at the ordinary rate of six per cent., because he regards that as a fair charge. It seems to me that the House, in dealing with these questions, ought to be certain, as near as may be, what is the current rate between the parties, and to see to it that the rate fixed is not higher than that. My honorable friend from Kent (Mr. Campbell) has suggested five per cent. I am inclined to think that that is very near the right figure, and that if you were to go very much beyond that, you would be charging the party more than he could obtain the money for upon his note, if his security is good; and, if you put it below that figure, you will compel a settlement by notes, or bills, or cash, where otherwise an inconvenience of that sort need not be incurred. The whole question here is not a question in reference to free trade, or in reference to usury; it is a question as to what is a fair compensation looking at the present abundance of money, to the party who, for the time being, is exercising his forbearance towards a debtor, in order that the business of the country may be carried on with as little inconvenience as possible. You do subject the parties, who may be perfectly upright and ready to trust each other, to a certain amount of inconvenience, if you fix the rate of interest so low as to force an actual settlement at every moment when an account becomes due.

MR. FOSTER: The remarks of my honorable friend who has just sat down seem to me to get at about the kernel of this question. No doubt since the rate was fixed at six per cent. there has been a considerable lowering in the general rate of money. The whole question for the House to consider is, first, whether any change is to take place; and second, whether 4 per cent. is not too low in comparison with the general rate of interest. I am a little surprised to hear that money is loaned generally at so low a rate as five per cent. That is not my experience. And I think that we who come from the maritime provinces will be unanimous in saying that there is very much more loaned on mortgage in small sums at seven per cent. than at five, and very little loaned at less than six per cent. There is a good deal to be thought of when you undertake arbitrarily by law to interfere with the rate of interest in the country. I am not going to discuss the question to-night, because I have a proposition to make to the House which, I think, will bring the matter into better shape; and that is, that having had this discussion, the Bill be read the second time and referred to the Committee on Banking and Commerce, which is one of the best committees of this House, and that the whole matter be taken into consideration there. I am impelled to make this suggestion all the more because I have received a large number of representations from business men, from loan societies, and from the Bankers' Association, asking that they may be heard, and putting some pretty strong objections, as I look at them, to the lowering of the rate to four per cent. These gentlemen might be heard by the Government, and the Government might make up its mind whether it would declare in favor of four or five per cent, or whether it would oppose the Bill altogether; but I think it would be much better that these gentlemen should have a chance to be heard before the Banking and Commerce Committee, and of laying the peculiarly business aspect of this question before that committee. The subject will be discussed there, and, probably—though I am not going to make a prophecy—it may be decided that, while there should be a lowering of the rate of interest, yet four per cent. is too low a figure.

MR. MULOCK: . . I concede there is scope for difference of opinion. But, at all events, it is a fair subject of debate and consideration whether the existing rate is not too high. Now, to what class of people will this apply? Let us illustrate. Let it apply to the case of overdue bills mentioned by my honorable friend from Centre Toronto (Mr. Cockburn). Commercial paper discounted, how is that to be drawn? As a rule, notes are drawn for a fixed sum of money without reference to interest whatever, and the interest is deducted by the banker by way of discount. Three months after date the promissor promises to pay $100; in some cases, "with interest," is added; in other cases, and in most cases, without; so that as to the great bulk of commercial paper, there is no reference whatever to the subject of interest. The agreement, therefore, is not that interest shall be paid upon that note, the agreement is to pay a fixed sum of money when the note is due. The court allows interest or not on overdue paper, as a matter of damages, and the matter is in the direction of the court. The great class of cases to which this will apply will be the cases of money owing upon mortgages. Mortgagors are not in the habit of paying their mortgages when due, as makers of notes are. Mortgages run on for years after they are overdue. In some cases the rate of interest entered into may have been a high rate at the time the contract was made, and there has been a great change before the mortgage fell due, still the mortgage continues as an overdue mortgage. Now, it would apply to a case like that. If a mortgage were entered into five years ago bearing eight per cent. interest, to-day it becomes due, and what rate should he pay to-day? Should he be compelled to continue to pay his eight per cent., or should he get some amelioration, and if so, what? He has agreed to pay interest up to the end of five years, he has not stipulated what interest he is to pay afterwards. How much is he to pay?

MR. TISDALE; They generally put a clause in the mortgage to compel him to pay the same rate.

MR. MULOCK: I am not interfering with the right of contract.

MR. TISDALE: Then your argument is no good. . . .

MR. MULOCK: Five years ago the current rate of interest on the best securities was about two per cent. above six per cent. During those five years did we hear of debtors being oppressed? Did we hear of lawyers going about stirring up litigation, and usurious men oppressing borrowers? I have not heard of any such experiences. And if, when there was that difference of, say two per cent., within the last few years, there were no serious consequences, what right have we to assume that to-day, with the current rate at six per cent., if we fix the legal rate at four per cent., there will be a different state of affairs from what happened before? We can imagine consequences, but we have got the absolute evidence to prove that nothing injurious will follow. . . I have no objection to the Bill going to the Committee on Banking and Commerce, but I hope that will not be the end of it for this session.

MEMORANDA SUBMITTED BY Z. A. LASH, Q.C., ON THE ORIGIN OF THE PRESENT LAW AND AS TO THE COMMERCIAL TRANSACTIONS WHICH WOULD BE AFFECTED BY THE PROPOSED MEASURE

1. IN 1859 the present law, fixing the rate of interest where no agreement exists, at six per cent., was passed by the old province of Canada, and it has been assumed that the rate of six per cent. was then fixed for the first time. It has been stated that the prevailing rate of interest in 1859 was nine per

cent., and it has been argued that as six per cent. was declared to be the proper legal rate when the prevailing rate was nine per cent., the rate now fixed by statute should be made correspondingly lower than the now prevailing rate of six per cent. An examination of the legislation on the subject establishes the incorrectness of the premises and the fallacy of the arguments above mentioned. The prevailing rate of interest had probably little, if anything, to do with the fixing of the legal rate at six per cent. Certainly the rate was not fixed at six per cent. for the first time in 1859, for by an ordinance of the old province of Quebec, passed March, 1777, it was provided:

SEC. 5.—"It shall not be lawful upon any contract to take, directly or indirectly, for the loan of any monies, wares, merchandise or other commodities whatsoever, above the value of £6 for the forbearance of £100 for one year, and so after that rate for a greater or lesser sum or value, or for a longer or shorter time, *and the said rate of interest shall be allowed and recovered in all cases on which it is the agreement of the parties that interest shall be paid*, and all bonds, contracts and assurances whatsoever, whereupon or whereby a greater interest shall be reserved and taken, shall be utterly void." Persons offending forfeit treble the value of the monies, wares, merchandise and other things lent or bargained for.

This ordinance was of course a law against usury, pure and simple, and it is clear that the attempt to fix six per cent. as the legal rate takes its origin as part of the usury laws, and not because it was thought advisable to make the rate, when not agreed on by the parties, less by one-third or by any other proportion, than the prevailing rate of interest. In the old province of Upper Canada a law was passed in 1811 in similar terms to the ordinance of 1777 above quoted. The usury laws continued in force in Canada until 1853, when by 16 Vic., chap. 80, of the province of Canada, penalties for usury were abolished, and contracts and securities for a greater rate of interest than six per cent. were made void so far only as regarded the excess of interest above six per cent. It was in 1859 that the restrictions upon contracts with respect to interest were entirely removed, with certain limited exceptions, and by 22 Vic., chap. 85, passed in 1859, persons were allowed to agree for and recover any rate of interest which might be contracted for, but six per cent. per annum was *continued* as the rate in all cases where by agreement or by law interest was payable and no rate was fixed by the parties or by law. This enactment has been substantially continued to the present time.

An examination of the laws of the other provinces where a fixed rate of interest has been provided for, will show that this rate was also the outcome of early usury laws, and that it was not fixed because it bore any defined percentage to the prevailing rate of interest, or because the rate after default should be less than the rate agreed on before default took place.

2. Any change in the present law relating to the rate of interest when not agreed on by the parties, would affect the great bulk of commercial transactions in Ontario, and probably in the other provinces. Sec. 57 of the Bills of Exchange Act, gives to the holder of a dishonored bill the right to collect "interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case." The Ontario Judicature Act provides by sec. 85 that "interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it," and by sec. 86 that "upon any debt or sum certain payable by virtue of a written instrument, at a certain time, interest may be allowed from the time when the demand of payment is made in writing, informing the debtor that interest will be claimed from the date of the demand."

It will be seen that the following transactions would be directly affected by the proposed measure: (1) Bills of exchange, promissory notes and cheques; (2) All contracts under which interest is payable without a rate being fixed; (3) All written instruments under which any debt or sum certain is payable at a certain time, though no mention be made of interest; (4) All debts or sums certain payable otherwise than by virtue of a written instrument at a certain time (in other words, accounts) if the creditor demands payment and informs the debtor that he claims interest; (5) All cases in which it has been usual for a jury to allow interest.

It will be observed that in some of the cases above the law is permissive and says that interest *may* be allowed, but the courts have not, unless under very exceptional circumstances, withheld interest, so that although permissive in form, the law is substantially imperative.

SUMMARY OF THE ARGUMENTS PRESENTED TO THE COMMITTEE ON BEHALF OF THE BANKERS BY MESSRS. WALKER, WILKIE AND HAGUE

BEFORE the introduction of this bill there had been no expression of opinion in favor of such legislation, nor had anyone essayed to adduce evidence that a grievance existed among any portion of the community. And so far from the latter being the case, if this legislation were to be enacted, in any instance where through the carelessness or ignorance of a lender it might come to be applied, it is apparent that it would, in existing circumstances, be *creative* of a grievance.

No precedent could be found for the rate that was now proposed; and the rate is entirely unknown for ordinary loaning operations.

In the debate in the House the subject was discussed largely in its relation to mortgage loans, which it was urged could now be negotiated in parts of Canada at five to five and one-half per cent. on the best securities, and a great deal was made of the benefit which would accrue to the farmer from such a law. It has for a long time, however, been the practice to embody in all mortgage forms a provision for a stated rate of interest, in case of default in either principal or interest, so that the question has at present no practical bearing on this class of loans.

It is then with regard to the obligations of the mercantile community almost exclusively that the proposed measure should be considered, and for this business six per cent. is the minimum rate for the best class of transactions. Even municipalities have to pay from five to six per cent. for loans for current business, although they can borrow on debentures at a very much lower rate.

There are two aspects in which the proposed legislation should be considered: (1) on the assumption that such a law would in practice come to be applied to a considerable percentage of transactions which would be allowed to run past due without an agreement as to the rate of interest; and (2) on the assumption that the lenders would in almost all cases protect themselves in one way or other so as to render the law a practical nullity.

To deal with the matter in each aspect separately :

I

A legal rate of interest in a vast majority of cases only becomes operative when some contract has been broken—some bill, note or loan not paid at the time agreed upon. Whatever reasons there may be for fixing by statute the rate of interest to be paid where no agreement is made, no rate should be fixed which would be a direct inducement to the borrower to make default in the payment of his obligations, and any statute which would have this effect could not fail to be greatly detrimental to the public interest as a whole. It is clear that the proposed measure, if enacted, would have such an effect, unless lenders guarded against it by the manner of framing their contracts. A man might borrow money for three months at six per cent., refuse to pay at maturity, and by various devices obstruct the collection of the debt for a period of greater or less duration, for which time interest could only be collected at four per cent., no matter what the value of money might have been.

If, owing to the inducement held out to borrowers to make default in payment, this practice should largely prevail (and, as individuals are generally controlled by self-interest, it doubtless would if practicable largely prevail), the result could not fail to have an injurious effect upon the investment of capital in Canada, with the ultimate consequence of increasing the prevailing rate of interest, as low rates are dependent on a high class of security and promptness in payment.

As rates of interest fall, the tendency should be rather to keep the statutory rate higher instead of lower than the prevailing rate for mercantile transactions. Instead of rewarding the obligant for want of promptness in payment, the law should rather remunerate the lender for the breach of contract. That these principles prevail in Great Britain is evident from the fact that, although mercantile paper is frequently discounted at a fraction of one per cent. per annum, and seldom reaches the rate allowed by the courts when the parties have not agreed upon it, the rate so allowed largely exceeds the average rate upon mercantile transactions.

If such a law would indeed effect anything in the direction which it seems to be the intention that it should, it would only benefit dishonest borrowers, leading to breaches of contracts and litigation, while remedying no grievance.

II

Lenders, however, have at all times been able to protect themselves against legislation of this character, and that the present measure would not benefit debtors at the expense of the creditor class, experience abundantly proves.

Mr. Lister had urged that because of this—because the lender could and would protect himself, there could be no objection to the bill, altogether overlooking the trouble and irritation it would cause, and the inevitable disadvantage at which the poorer class of borrower would be placed.

If the lender did not provide in the contract for a higher rate of interest after default, his tendency would be in the majority of cases to press for payment of the loan so soon as due, thus entailing inconvenience and possible hardship upon the borrower, or forcing him then to make an agreement for a higher rate; whereas if the rate were left as it now is, viz., the same practically as the prevailing rate in commercial transactions, the lender, assuming the security to be satisfactory, would have no inducement on account of the rate of interest to inconvenience the borrower by pressing for immediate payment.

It was first declared many years ago by an eminent economist, and has since become recognized almost as a first principle of economics, that all legislation attempting to restrict the rate of interest for money operates as a tax on the *needy* borrower. Of the truth of this it is easy to find evidence.

In many of the western states of the United States where the legal rate of interest is lower than the current rate, provision is made in note forms for the insertion of a rate of interest to be charged in case of default, a situation which results in the borrower in most cases exacting a higher rate after maturity wherever it is possible to do so—that is to say, always in the cases of *needy* borrowers.

Prior to 1859, when no contract to pay a higher rate of

interest than six per cent. was allowed in Canada by law, it was the practice to take a bond from the borrower, agreeing to pay a commission on the loan, and the borrower had not only to pay the lawyer in such cases for drawing the bond, but whatever premium he had to pay was made heavy because of the risk of the transaction being declared illegal; and the more needy the borrower the more exacting were the terms. "The rate of interest is invariably increased according as the laws intended to reduce it become more severe, and diminished according as they are relaxed." *

If wholesale merchants had to accept four per cent. on the accounts in their books for goods sold, where no agreement as to the rate existed, they would doubtless head their accounts, "Interest at eight per cent. (or ten per cent.) per annum charged on overdue accounts," as was customary some years ago.

Under the operation of such a law as is proposed, if a well-to-do borrower discounted a line of trade bills with a bank, the latter would want a covenant from him to pay a certain rate of interest—at least six per cent.—in the event of any of these bills being dishonored, and the borrower would therefore have to insert in the notes taken from his customers—no matter what their credit and standing might be—a provision for the higher rate at maturity. To the merchant in high credit the necessity for stipulating as to the rate on the supposition of default being made would for a long time be regarded as an implied insult.

The effect of turning the attention of the lender to the necessity of protecting himself would inevitably result in other conditions being inserted in notes which are not in use now in Canada. The only kind of notes in frequent use here containing special contracts are lien notes, and these have been spoken of in Parliament more than once with a desire to make them illegal if possible. The condition of the laws in the Western States has frequently led to the use of note forms containing a confession of judgment, and while this might not be legal in this country, it serves as a further illustration of the results of laws of a similar character to that proposed by the present bill.

The Bills of Exchange Act in Canada has been brought into harmony with the English Bills of Exchange Act. In

*McCULLOCH: *History of Interest.*

England bills of exchange and notes have been divested of everything but the simple contract to pay, the result of the high position of English credit and commercial integrity, and it is a great credit to Canada that bills of exchange and notes are in the same position here.

From whatever aspect, therefore, the matter is viewed, it is clear that such a measure would be to the last degree undesirable and mischievous.

—

In the debate in the House the view seemed to be widely held that it is in the interests of a community that low rates of interest should prevail, and even that if it were possible to achieve that result by restrictive legislation, it would be desirable to do so. The theory involved herein that the prosperity of a country is heightened by the prevalence of low rates of interest, was strongly combated by the bankers. The case of Holland was cited, where from 1795 to 1817, with no usury laws in force, the rate of interest on ordinary mercantile business ranged from three to five and a half per cent.—lower than in any other country in Europe—while industries were decaying and trade steadily languishing. The lowness of interest in Holland was the necessary effect of the circumstances in which that country was placed; of the lowness of profits caused by oppressiveness of taxation and the deficient quantity of fertile soil. This is one of many such illustrations of the economic doctrine that the rate of interest is mainly determined by the profits of trade—that is, that the average rate of interest bears a well defined relation to the average profits obtainable from trade operations.

"Instead of a low rate of profit, and a low rate of interest, "for the one must be always directly as the other, being any "proof of the flourishing situation of a country, it is distinctly "and completely the reverse. High profits show that capital "may be readily and beneficially invested in the different "branches of industry, and wherever this is the case, it will be "better for the borrower to pay a higher rate of interest than "it would be for him to pay a lower rate in countries where "there is less facility of employing his stock with advantage. "The borrower who pays ten or twelve per cent. for capital in "the United States, generally makes a more profitable bargain

"than the English borrower who pays only four or five per "cent. It is obviously not by the circumstance of the rate of "interest payable on loans being absolutely high or low, but by "the proportion between that rate and the average rate of "profit, that we must determine whether they have been ob- "tained on favorable or unfavorable terms."*

We are not so rich in Canada that we can afford to advertise to investors at large that returns on capital are so low that we have made our legal rate one-third lower than that of any of the United States.

*McCULLOCH; *History of Interest*

PRIZE ESSAY COMPETITION, 1896

THE announcement of the subjects selected by the Essay Committee for the Competition of 1896 was made by circular to the Associates on 26th January. The following are the subjects and conditions:

SENIOR COMPETITION

The future of Banking.

A first prize of - - - - - $100
A second prize of - - - - - 60

JUNIOR COMPETITION

The best method of book-keeeping for a country bank agency, with suggestions for returns to head office.

A first prize of - - - - - $60
A second prize of - - - - - 40

CONDITIONS

Competitors eligible for the Senior Competition will comprise Managers and Senior Officers who have had a banking experience of not less than 10 years.

Competitors eligible for the Junior Competition will comprise all under 27 years of age, whose banking experience does not reach 10 years.

The essays in either subject are not to exceed 10,000 words. *All essays must be typewritten,* having the writer's nom-de-plume or motto, also typewritten, subscribed thereto, and be lodged with the Secretary-Treasurer not later than the 30th day of April.

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

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

The Prize Essays will remain the property of the Association.

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

NOTES AND MEMORANDA

THE magnitude of the South African gold mining speculations has made those which followed the earlier great gold discoveries of Australia and California appear almost insignificant. This is of course due in a great part to the fact that there is so much more substance in the mines themselves in the present instance, but the changed conditions of modern business are also largely accountable for the phenomena. Indeed, conversely, a better illustration could scarcely be found of the change that has taken place in the organization of the commercial system. The contrasts presented are interesting. In the Australian and Californian excitements participation in the gamble involved the sacrifice of business occupations, hardships to be endured, and the exertion of great physical effort. All this was saved to the acquirer of property in South Africa upon which the existence of gold—however uncertain the quantity—could be established, by the modern device of forming a joint-stock company, which, while enabling him to realize a large part of the *speculative* value of the property while still retaining the control, has shifted the burden of the gamble to the subscribers to the company's stock. In this manner the scene upon which the "mania" finds vent is transferred from the mines to the stock exchanges, the actual miners being but laborers.

It is to be remembered, of course, that the character of the mining in both Australia and California favored the working of small tracts by individuals, but one can scarcely doubt that even if production could be carried on in the same manner in South Africa, the mines would be controlled by corporations just as they are now.

It certainly is possible that the development of the South African gold fields may have the effect of disturbing the relation of value between commodities and gold to a greater extent than anyone now apprehends. It is true that the depreciation in the value of gold which ensued after the Australian and Californian discoveries was not of a serious degree. It is true, also, that

the world's stock of gold is so much larger now and the annual production so relatively small, that any increase in production would have to be very great before it would have a pronounced effect on the value of the metal, but estimates based on data which appear to be something else than guesswork, indicate that the production during the next thirty years may be enormous. On this point the unanimity of opinion among experts who have investigated the matter and reported on behalf of various interests, is striking.

From an article in a recent number of the *Investors' Review* dealing with the subject at some length we make the following excerpt:

"The gold districts, as far as they are at present known, all lie within the boundaries of the Transvaal; we may overlook the Knysna (Cape) failure, the poor gold deposits of the Free State, and the problematic treasures of Matabele and Mashona lands. The first important discovery was made by Mr. Moody in the De Kaap district, situated in the eastern part of the Republic, and now reached by a branch line of the Delagoa Bay Railway. It led to that huge inflation which drove Sheba £1 shares to £50, and ended with the wretched collapse caused by Mr. Gardner Williams' too pessimistic report. Soon after the De Kaap fiasco, the active "prospecting" which went on all over the country resulted in the discoveries near Witwatersrand, the escarpment which divides the watersheds of the Vaal and Limpopo rivers. The result of these discoveries was at first considerably hampered by the inaccessibility of the "Rand";[1] everything had to be sent thither by bullock-wagons, either from Natal or Kimberley, for the "rivers" are not navigable, because they are seething torrents when there has been much rain, and dry gulches when there has not. Moreover the woodless country supplied neither timber nor fuel, and hence none but the richest ores could be worked at a profit, at least 5 oz. of gold per ton being deemed necessary for paying work. Nevertheless the gold shipments from this district soon reached important figures, and in spite of numerous obstacles the production grew every month. The result was a gradual improvement in the means of access, culminating in the construction of the railway. Good coal fields were discovered in the neighborhood, the supply of native labor was well taken charge of by an excellent Chamber of Mines, the water supply was looked after, and going hand-in-hand

[1] Rand is Dutch for edge, escarpment.

with the technical improvements to which we shall refer presently, these changes brought about a cheapening of production which placed ever-increasing bodies of poorer ore within the reach of the industry.

"Extreme regularity constitutes, as is well known, the great feature of the Witwatersrand gold veins. The principal reefs, which run east and west, are three in number; they are called the Main Reef, the Main Reef Leader and the South Reef. The Main Reef is the thickest, but at the same time the poorest, body of ore; it only runs about six dwt. to the ton, and is not run by the principal companies, though in many cases it "stands developed." The Main Reef Leader runs as a rule from one foot to three feet away from the Main Reef, and sometimes directly along it; and the South Reef, which consists of a layer of rich "stringers," is on the average 150 feet away from the Main Reef. The dip of all these Reefs is to the south, at an angle which varies rather considerably: it is, for example, only between fifteen and thirty degrees on the Simmer and Jack, whilst on the City and Suburban it is between sixty and seventy. Generally speaking, the dip increases towards the west. There is also a difference in the quality of the ore, both horizontally and downward; but all these gradations are well known in the older portions of the Rand, that is to say, with here and there an exception, from the Simmer and Jack in the east to the Langlaagte properties in the west, a distance of about thirteen miles. Over the entire portion the contents of well nigh every mine have been thoroughly investigated, and are almost exactly known. The reefs run their regular course everywhere, and have neither "faults" nor erratic qualities of the opposite kind. Mr. Hamilton Smith, who examined this portion of the Rand for the Rothschilds, estimated it to contain, up to an inclined depth of 5,200 feet, gold to the value of £215,000,000. The same authority is willing to allow at least half that amount as representing the value of the other thirty miles of the Rand; and hence he believes that there is about £325,000,000 gold in this district,—an estimate which tallies very well with that of the German expert, Dr. Schmeisser, who was sent to these fields by his Government. . . .

"If one believes no more than one sees, the gold deposits of the Rand still appear marvellous. Even if there are no further discoveries, there is enough ore in sight to supply a solid basis for a great industry, although it lies in the nature of things that the veins must become exhausted—it is usually supposed in about thirty years from now. And a great industry has been reared. The long row of tall iron chimneys and yellow heaps of tailings, along which one travels for miles before the humble Park Station is reached, at once convinces

the visitor that this industry has reached dimensions which we in Europe do not realize; and closer acquaintance rather emphasizes this impression than otherwise."

Dealing, however, with the fabric of speculation, which has been reared on the reality outlined above, the writer has this to say:

"The principal aim of the Witwatersrand magnates was to hold the Rand firmly in their grip, come what may; and the way they have, in a two-fold sense, 'secured' control cannot fail to command admiration. Less than a dozen men, who mostly came from Kimberley eight years ago without extraordinary resources, have managed to hold the whole industry firmly in their grip throughout its career, from the time the whole 'interest' could be bought for a couple of millions until to-day; now it represents over £200,000,000, according to market quotations. Perhaps their hold is firmer now than it ever was before, for within these eight years they have acquired gigantic fortunes, which probably represent half the wealth of South Africa, and give them undisputed sway over the country.[1] To attain this end has been possible, because from the very start 'control' has been made the feature of Witwatersrand financing. To-day every company is controlled by one out of half a dozen rings; but there has never been a day when it was otherwise...

"How are prices inflated? Even on the basis of sanguine estimates the present quotations are dangerously high. Last year the yield was, say, 2,000,000 oz. of gold, worth £7,500,000; one-third of the yield is gross profit, and the latter therefore reached £2,500,000 or thereabouts; £1,580,000 was paid in dividends; and the rest must have been sunk into the properties. This year the yield may reach 2,500,000 oz.; next year, when there will be 50 per cent. more stamps at work than in 1894,[2] it will very likely reach 3,000,000 oz. Although it is questionable whether speculation should discount profits more than a year ahead, we will take the 1896 result as an admissible basis for the present prices. 3,000,000 oz. are worth £11,500,000, of which one-third, or £3,830,000, will be gross profits. Now, if the proportion of profits reinvested in the properties is the same as in 1894, that is, two-fifths, there will remain £2,300,000 for dividends. The present market value of Witwatersrand gold shares is over £150,000,000; a market value which would

"[1] It is only fair to say that they also deserve this because of their astuteness. The leading Rand firms have a well-equipped intelligence department, which keeps them well informed on all subjects, and enables them to put their finger into every pie."

"[2] 2,900 stamps will probably be crushing at the end of the present year."

yield on the average in 1896 the magnificent sum of 1.53 per cent., *without making allowance for the gradual exhaustion of the properties.* Not one of the best established mines now yields more than 3½ per cent. net to purchasers of their shares; but, owing to the existence of so many non-paying properties, the general average is reduced, on the basis of the returns for the past half-year, to barely one-third of that figure. Of course there can be no doubt of the result of such an inflation. May be our public has on the whole been clever enough to make the French pay the piper; but that a collapse must come somewhere, and come soon, is as clear as day. There never was a 'boom' yet that carried no 'break' in its wake, and the more exaggerated the rise, the more violent the reaction. And besides the inflated prices we have to think of the new promotions, whose lavish advertising has within a few months created a whole mushroom 'financial' press.[1] One shudders to think of the result."

The writer of the above could hardly have looked to see a partial fulfilment of his prophecy brought about so soon as was the case. The article appears to have been written in September, in the early part of which month the market quotations for the South African securities were at high water mark. In the early part of October a reaction set in, and the slump in values was so steady and continuous during the entire month, that in the last week, in order to avert a panic and disastrous collapse, it became necessary for Barnato to support the market. The total purchases made on his account and for the interests represented by him, are said to have aggregated £3,000,000—sufficient to save the market for the time being. In the brief space of about four weeks, however, the total market value of South African stocks—which in September was £215,000,000—had shrunk £71,000,000, or thirty-three per cent. The full extent of the disasters on the stock exchange which resulted from this enormous shrinkage was not revealed to the public, a number of the defaulting members having been carried over by wealthier members "in the general interest."

But severe as this experience has been, it was not such a catastrophe as the writer of the article quoted had before his vision—that has yet to come.

"[1]Nearly all new companies are nothing but "wild specs," especially the "Rhodesia" ones. The presence of gold in Rhodesia in paying quantities is disputed by most experts."

QUESTIONS ON POINTS OF PRACTICAL INTEREST

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

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

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

Bill for Collection Recalled after being Marked Good

QUESTION 25.—A bill is presented by a collecting bank on the morning of the day it falls due, and is duly "marked good" by the bank at which it is accepted payable. Later in the day the collecting bank receives a telegram from their correspondent to return the bill. What is the proper course for the collecting bank to pursue in view of the fact that the bill has already been marked good?

ANSWER.—The bank's duty in such a case clearly is to advise its correspondent of the acceptance of the bill by the bank at which it is payable, and to ask further instruction. It should not permit the cancellation of the "marking" in any event.

Prefix "Mrs." to a Signature

QUESTION 26.—Does the word "Mrs.," placed before a woman's signature as an endorsement, invalidate it in any way?

ANSWER.—No. The sole question in all these cases is that of identity, and assuming that the name with "Mrs." prefixed is written by the payee of the cheque, the endorsement is valid.

Stamped Endorsements

QUESTION 27.—(1) What does the following stamp signify to the bank on whom a cheque is drawn when placed on local cheques, as regards former endorsements?

For Deposit only
Through .....Clearing House
Feb. 19th, 1896
To the credit of the Bank.....
.....
pro Manager.

(2) Would a bank be justified in refusing to pay a cheque, made payable to John Smith and endorsed "John F. Smith," with the above stamp under Mr. Smith's name, without a guarantee of endorsement? Could a bank demand that the endorsement be guaranteed?

ANSWER.—(1) As to the effect of the common form of stamped endorsement of banks on cheques passed through the Clearing House, the reply to question 14 in the October number of the JOURNAL covers all that we could say. Under the law, as understood here, the presentation by any bank of an item for payment by the bank on which it is drawn, involves an implied representation that it has the right to collect the amount, and if any of the prior endorsements should prove to be forged or unauthorized, so that as a matter of fact it had not the right to receive the amount, it would be bound to pay it back.

The recent judgment in *London & River Plate Bank v. Bank of Liverpool*, reported and discussed in this number, is, however, very disturbing, and if not reversed on appeal, will entirely change what is supposed to be the position of the law on this point.

(2) A bank is not bound to, and we think should not, pay a cheque drawn in favor of "John Smith" or order and endorsed "John F. Smith," for the reason that the endorsement is irregular. It follows that if the bank is willing to cash the cheque, it has a right to ask whatever guarantee it thinks proper.

Deposits in the Names of Two Parties Jointly

QUESTION 28.—Some banks issue interest bearing receipts and open savings bank accounts to say "Jno. Smith and Robt. Jones, both or either," and pay the money on one signature. Suppose one of the parties dies, ought the bank to pay on the signature of the survivor?

ANSWER.—We understand that payment to the survivor is proper, even when the deposit is made without being repayable

to "both or either." The control of the joint deposit passes, by our Ontario law, to the survivor, and he is entitled to receive the amount from the bank. The point is, of course, much clearer when by the terms of the original deposit either party was entitled to draw the money.

Hour at which Bills may be Protested

QUESTION 29.—Can a cheque be protested for non-payment before three o'clock on the day of presentation?

ANSWER.—A formal protest of a bill or cheque cannot be effected before 3 o'clock; see section 51 Bills of Exchange Act. The presentment by the Notary may, however, be made at any time during the day. If, for instance, a Notary presented a cheque at the bank immediately after 10 o'clock in the morning and it was refused, it would be a valid protest if he were simply to hold the item in his hands, without taking any further steps, until after 3 o'clock, and then protest it without further presentation. Such a course would be very inconsiderate, but we are only dealing with the legal aspect.

It must be borne in mind that (except, perhaps, in the province of Quebec) a protest is a matter of no great importance; it is useful only as an evidence that the bill has been presented and dishonored, and that notices of dishonor have been sent to the parties. Evidence of any other kind is just as effective.

Writs of Garnishment

QUESTION 30.—Smith owes Jones, who cannot collect his debt. Jones hears that Brown is going to give Smith a cheque, and has a writ of garnishment issued and left at the chartered bank on which the cheque is drawn. The bank tells Smith that he had better go and arrange it with Jones, which Smith does. Could Smith have protested the cheque and held the bank liable? What action should the bank have taken in that case if they had failed to avoid the main issue as they did? The teller in this case held the cheque presented by Smith under the writ of garnishment, but suppose Smith had demanded same through his lawyer?

ANSWER.—We are advised that the garnishee order is quite ineffective in such a case, and that if the bank refuses to pay the party presenting the cheque merely on the ground that the money was attached by the writ, it would be liable to the drawer of the cheque for damages for dishonoring his cheque. We understand that only moneys due or accruing due can be held under garnishee proceedings. At the time the writ was served in the case mentioned there was clearly

no money due or accruing due to Smith. In the reply to question 16 in the October number and to question 19 in the January number, some principles that apply to the present inquiry are fully discussed.

Note Delivered without Endorsement

QUESTION 31.—(1) Is the maker of a note which is overdue protected in the payment of the same, to any one presenting it, upon having note delivered up to him without the endorsement of the payee?

(2) Can such possessor of a note (the note not having been endorsed over to him by payee, he could not, I take it, be considered the holder in law), be he Tom, Dick or Harry, enforce payment by suit against the *maker* without obtaining the payee's endorsement?

ANSWER.—The question involved in each case is whether the party in possession of the note is the owner of the claim which it represents. He might become so by an assignment as well as by endorsement, but unless he is able to show a good title to the note, he has no right to collect it or to sue the maker, and if, as a matter of fact, he has not a good title, the maker would not be protected against the true owner if he paid the note.

Post-Dated Acceptance

QUESTION 32.—A bill of exchange payable one month after sight is presented for acceptance on the 12th January. The acceptor writes his acceptance across it, but adds as the date "16th January." The holder pays no attention to the latter date, but treats the acceptance as of the 12th, presenting the bill for payment at maturity calculated from the 12th. The party refuses payment on the ground that the maturity must be calculated from the 16th, and the bill is protested for non-payment.

Is the holder justified in protesting the note, or having taken the acceptance without demur, is he obliged to abide by the date which the acceptor added?

ANSWER.—Section 54 of the Bills of Exchange Act declares that the liability of an acceptor is to pay a bill "according to the tenor of his acceptance." This seems to involve in the case put, that the obligation of the acceptor is to pay the bill at one month and three days after the 16th, the date which forms part of his acceptance. C therefore would not be justified in protesting the bill on the date mentioned, because he would have no claim on B until the time fixed by the acceptance should come round.

Under such conditions as the above the drawers and endorsers would be discharged, the holder having taken an acceptance which varied the effect of the bill as drawn. See the reply to question 24 in our January number.

Dower Interest in Encumbered Lands

QUESTION 33.—What general rule should be adopted by a banker in estimating a customer's financial position, where the assets of such customer consist of encumbered real estate, taking into consideration the possibility of a claim for dower against such lands? To what extent would the security of a loan to such a customer be affected by his marrying subsequently to the making of the loan?

ANSWER.—The only general rule we can suggest is that it should be assumed that in the event of the bank wishing to come against the property, it would sell for much less than the valuation put upon it; that the encumbrances would be increased by interest, taxes, insurance premiums, etc.; and that against any surplus then remaining, there would be chargeable the dower interest, which might exhaust the whole surplus. What this may amount to in money may be estimated by taking the present value, calculated according to the usual tables, of a life-annuity equal to one-third of the estimated income derivable from the full value of the property.

Upon marriage the property becomes charged with the dower interest subject only to existing mortgages.

LEGAL DECISIONS AFFECTING BANKERS

NOTES

The Right to Recover Money Paid to a Person not Entitled to Receive it.—In the answer to query No. 14 in the October number we discussed the question of the right of a bank that has paid a cheque or bill of exchange to another bank, to recover the money paid, upon it subsequently transpiring that the bank which received the amount had not a good title. The leading case in our courts on this point is *Ryan v. Bank of Montreal*, and the banks in Canada as a whole have undoubtedly been relying on the soundness of the principle of law on which that decision was based. Its equity needs no defence, for the bank presenting a bill for payment is the only one, in the nature of things, that can make sure that the links in its title are good. The bank on which a bill or cheque is drawn could not possibly be in this position ; it is its duty to know the drawer's signature, and to assume the responsibility for its genuineness, but it is manifestly out of the question that it should be made responsible for the genuineness of, or authority for, the endorsements. The bank presenting the item would only receive it on deposit from a respectable customer, and the responsibility of accepting his title should rest with it.

The judgment in *London and River Plate Bank v. Bank of Liverpool*, reported fully in another column, is, however, entirely contrary of this view. The Court there held that if after a bill is paid such an interval of time should elapse that the position of the previous holder *may* have been altered, the money cannot be recovered from him, notwithstanding that the endorsements on the bill should prove to be forgeries. The judgment will probably be appealed, and we have little doubt that it will be reversed. We have, however, in view of the emphatic opinions we have expressed from time to time on this point, thought it best to publish the present judgment in the case for the benefit of our readers.

The reasoning in the judgment will not, we think, bear very close examination. On one point this is especially the case, *i.e.*,

the reference to the position of the Bank of Liverpool, which received the money from the bank on which the bill was drawn, to the effect that it would be seriously compromised if it were now compelled to repay, because it was not discovered for some months that there was a defect in the bill, and meanwhile they had lost their right to give notice to the prior endorsers that the bill had not been paid. As has been frequently pointed out in our columns, the right to recover does not depend upon any notice of protest or dishonor, nor, indeed, upon any provision in the Bills of Exchange Act, but simply on the common principle that a bank receiving money which at the time it had no right to receive, is bound to pay it back, and the learned judge's argument would have been just as sound if he had reasoned in this particular case that the Bank of Liverpool would *not* be compromised if it were compelled to repay, because it had paid money to its immediate endorsers under an implied representation that their title to the bill was good, and had a right to recover it from them.

—

Blank Transfers of Shares—Assignments of Shares by Endorsement on the Certificate.—In *Fox v. Martin* and *Smith v. Walkerville Malleable Iron Co.* we have given full reports of legal findings bearing very directly on certain features of the ordinary banking business in Canada, connected with loans on stocks, where transfers are made on the back of the certificates and not at once registered in the books of the company. It is clear from these cases, and from other considerations that have from time to time been brought forward, that security acquired in this manner is surrounded by serious risks. It is not to be supposed that the large corporations whose stocks are freely dealt in on the faith of these certificates, would permit any transfer without their surrender, and possibly in their case the risk of this is trifling. There are, however, other risks even with the larger companies, one of which is indicated in *Fox v. Martin*—that is, that a transfer in blank delivered to a bank by a party who in most cases is well known not to be the owner of the shares, but to be merely carrying them for a client, if not completed by transfer on the company's books, might leave the bank open to a claim by the true owner. There is also the danger that the "irrevocable power of attorney," which such

transfers in blank usually contain, may be rendered invalid by the death of the party in whose name the shares stand.

The best protection against such risks would appear to be the completion of the transfer on the books of the company as soon after the receipt of the certificate as possible.

Securities Under Section 74 of the Bank Act.—In *Halsted v. Bank of Hamilton* we have a further discussion of the rights of banks with respect to securities taken under section 74 of the Bank Act, but we do not see that any new principle is involved in the judgment. The case seems to turn on the fact that although the Bank of Hamilton discounted certain notes for a customer, and at the time they discounted the notes took certain assignments of goods as security, the transactions did not amount to a "negotiation" of the notes in question, because by the terms of the contract the money was not placed to the customer's credit in such a way that he was entitled to draw against it. It is settled law that where a bank negotiates a bill or note, and actually passes the amount to the credit of its customer in the ordinary way, the bank becomes a holder thereof for value. The principles here involved were fully discussed in the case of *Royal Bank v. Tottenham*, the judgment in which was referred to in our issue of September, 1894. In the case under review the bank did not credit the proceeds of the particular notes in the ordinary way, and in effect never placed the amounts at the disposal of the customer at all, the subsequent cheques against the account being practically withdrawals of the proceeds of the customer's trade paper, credited to a second account, kept in the customer's name.

QUEEN'S BENCH DIVISION, ENGLAND

Metropolitan Bank, Limited, vs. Coppee*

Guarantee—Release of principal debtor—Assent of surety.

This was an action brought by the Metropolitan Bank, Limited, (of England and Wales) formerly known as the Metropolitan, Birmingham, and South Wales Bank, Limited, against

---

*From the fuller report in the TIMES LAW REPORTS.

Mr. Evence Coppee, of Brussels, claiming £1,965 6s. 5d. upon a guarantee. The substantial question was whether the defendant was liable in respect of an item endorsed on the writ, "past due bill," under the following circumstances: By an agreement in writing, dated January 1st, 1892, the defendant and one R. W. Soldenhoff jointly and severally guaranteed to the plaintiffs the repayment on demand of all moneys which should at any time be due to the plaintiffs from Evence Coppee & Co., Limited, on the general balance of their account with the plaintiffs to the extent at any one time of £2,000, such balance to include all interest, charges for commission, and other expenses. By the terms of the guarantee it was provided that the plaintiffs in any case were to be at liberty, without the further assent or knowledge of the defendant or Soldenhoff, at any time to grant to the firm of Coppee & Co., Limited, any time or indulgence, and to renew any bills, notes, or other negotiable securities, and to compound with the said firm or any person liable with them, as the plaintiffs might think fit, without discharging or in any manner affecting the liability of the defendant or the said Soldenhoff under the said guarantee. The bill was drawn by Evence Coppee & Co., Limited, and accepted by one Rogers, and the plaintiffs were holders thereof for value at maturity. The bill not being paid at maturity, the plaintiffs sued Rogers to judgment and issued execution against him and seized his goods. The case for the defendant was that, without the consent and against the instructions of the said Evence Coppee & Co., Limited, the plaintiffs withdrew the said execution, whereby the position of the said company as drawers to the said bill and sureties for the said Rogers was prejudiced. Under these circumstances the defendants contended that Evence Coppee & Co., Limited, were discharged from their liability to the plaintiffs as drawers of the said bill, and that the amount of such bill was not properly included in their account, and that the defendant was therefore under no liability for the same under the said agreement. The plaintiffs contended that Rogers was a person liable with Evence Coppee & Co. within the meaning of the guarantee, and that, even if the plaintiffs did act in the manner alleged, such acts did not by virtue of the terms of the guarantee discharge the defendant from liability.

They further contended that certain letters showed that the true transaction was that they had entered into a composition with Rogers, and that therefore by the terms of the guarantee the defendant remained liable.

Mr. Justice Collins, in giving judgment, said that after execution had been put in against Rogers some discussion took place, and a threat was made by Rogers that unless he had an opportunity of realizing his assets he would file his petition in bankruptcy, and that in that case the bank would get nothing. Thereupon a suggestion was made that if time were given to Rogers he might float some shares in Paris and pay the plaintiffs *pro rata* with the other creditors. It was quite clear that abandoning the security as against the principal debtor released the surety, and therefore abandoning the execution against Rogers released Coppee & Co. from liability, and, being released, their surety would be entitled to say he had to pay nothing, unless he had assented to the plaintiffs dealing with Rogers in the way they had, and therefore the question came down to one of construction upon the clause in the guarantee. Rogers might be viewed as a person liable with Coppee & Co. True, he was not a joint debtor with them, but it was upon the same instrument and for the same amount. Then, was what passed between the plaintiffs and Rogers a composition with Rogers? If so, the defendant would, under the terms of the guarantee, not be released. A guarantee ought to be construed strictly. The evidence was not very clear, but letters had been put in which made it pretty clear what the transaction was. Rogers threatened to petition if execution were levied. He held out hopes of being able to pay a composition if time were given. After some negotiations the plaintiffs consented to withdraw execution on the terms that Rogers should have a fortnight's time within which to see if he could realize any of his assets, and that he should pay them 5s. in the pound if he could find money so to do; and it was arranged between the plaintiffs and Rogers that they would accept 5s. in that way if Rogers were able to pay it. The arrangement was in effect an agreement to take something less than the whole debt. The plaintiffs let Rogers go on the terms that he should do the best he could. If they had not done that, they would probably have got nothing. That amounted to a compounding within the meaning of the guarantee, and there must be judgment for the plaintiffs.

Since the above report was set in type the judgment has been affirmed by the Court of Appeal.

The London and River Plate Bank, Limited, vs. The Bank of Liverpool, Limited, and others*

When a bill becomes due and is presented for payment, and is paid in good faith, and the money is received in good faith, if such an interval of time has elapsed that the position of the holder may have been altered, the money so paid cannot be recovered from the holder although endorsements on the bill subsequently prove to be forgeries.

Action tried without a jury before Mathew, J., in the Commercial Court.

On April 18, 1893, Hippolyto Garcia, a merchant in Monte Video, purchased, at the plaintiffs' branch establishment in Monte Video, a draft at 120 days' date, drawn on the plaintiffs in London, for £261 0s. 11d., and made payable to the order of Fueyo & Co. The bill was drawn as usual in three parts, and on April 19 Hippolyto Garcia sent the first of exchange to his correspondents, Fueyo & Co., in Havannah, in payment of an account. On April 22 he wrote again to them, sending the second of exchange. Neither of these letters ever reached Fueyo & Co. On June 20 a person calling himself Pedro Garcia was introduced to Messrs. Loychate & Co. of Havannah. He produced the first and second of exchange of the draft purchased by Hippolyto Garcia at Monte Video on April 18, and he asked Loychate & Co. to discount the bill. The bill then bore endorsements of which the following are translations: "Pay to the order of Don Hippolyto Garcia. Monte Video, April 18, 1893. Fueyo & Co." "Pay to the order of Don Pedro Garcia. Monte Video, April 20, 1893. Hippolyto Garcia." Both these indorsements subsequently proved to be forgeries.

At the request of Loychate & Co. the so-called Pedro Garcia indorsed the bill, "Pay to the order of Messrs. Larrinaga & Co., value in account with Messrs. Loychate & Co. June 20, 1893. Pedro Garcia."

Loychate & Co. informed Pedro Garcia that they could not discount the bill until they knew whether it would be accepted; and on June 21 they wrote to Larrinaga & Co. enclosing the first and second of exchange, and asking them to telegraph when the bill was accepted. The bill was received by Larrinaga & Co. in Liverpool on July 6, and was presented by them for acceptance at the head office of the plaintiffs on July 7, and

**From the fuller report in* THE LAW REPORTS.

was accepted. On July 10 Larrinaga & Co. telegraphed to Loychate & Co. that the bill had been accepted; and the next day Loychate & Co. paid to Pedro Garcia the discounted amount of the bill.

Pedro Garcia then disappeared, and could not now be found.

On July 12 Larrinaga & Co. wrote to Loychate & Co., acknowledging the receipt of the bill, "with which we credit your account subject to payment."

On July 31 Larrinaga & Co. paid the bill into their account at the Bank of Liverpool, and that bank passed the proceeds to the credit of Larrinaga & Co., who drew against the bill.

On August 19 the bill was presented for payment to the plaintiffs by Messrs. Glyn, Mills, Currie & Co., as agents for the Bank of Liverpool. It was paid by the plaintiffs; and the money was transmitted by Messrs. Glyn, Mills, Currie & Co. to the Bank of Liverpool.

On September 22 Messrs. Fueyo & Co. wrote to Hippolyto Garcia, asking for payment of their account; and on October 27 he replied, telling them what he had done on April 18 and 22, and sending the third of exchange. This reached the hands of Fueyo & Co.; and after some correspondence it was presented to the plaintiffs in London, and was accepted and paid by them on July 19, 1894. They then commenced this action against Glyn, Mills, Currie & Co., the Bank of Liverpool, and Larrinaga & Co., for the return of £261 0s. 11d,, as money received by the defendants for the use of the plaintiffs.

The action was discontinued as against Glyn, Mills, Currie & Co., and now came on to be tried as against the other two defendants.

MATTHEW, J.:—The learned counsel for the plaintiffs argued that if it could be shown that the plaintiffs had not been negligent when they paid the money over, it might be recovered from the Bank of Liverpool or from Larrinaga & Co. It was agreed that there was no evidence of negligence on the part of the plaintiffs; that when they paid the bill they paid it under the impression that it was a genuine bill, and that there were no means whatever of ascertaining that the indorsements on the bill were forgeries. It was said that the substance of the rule, that where there was

no negligence in a case of this sort, the acceptor paying a forged bill could get the money back, was recognized in the early case of *Price v. Neal.* In that case the acceptor of the bill (I am referring to one only of the two bills mentioned in the judgment), in the belief that the signature of the drawer was genuine, paid the amount. The bill turned out to be a forgery. In an action to recover the money paid to the holder, Lord Mansfield is reported to have said that the acceptor was bound to know the drawer's handwriting. From that it was argued that the foundation of the liability of the plaintiffs in such a case was negligence, and that if there was no negligence the acceptor was entitled to recover the money back. But that is not the decision. If the forgery was cleverly executed, reasonable care would not enable the acceptor to know that it was a forgery; and it would seem extraordinary that the right of the acceptor to recover the money paid to the holder should depend upon whether or not the forgery was cleverly executed. That is what it comes to. It was not said in that case that there had been negligence. Nor was it said that if there had been no negligence the action would lie. Neither of those propositions is laid down; and one or the other of them would have been indispensable to the position taken up by the learned counsel for the plaintiffs in this case. It seems to me the principle underlying the decision is this: that if the plaintiff in that case so conducted himself as to lead the holder of the bill to believe that he considered the signature genuine, he could not afterwards withdraw from that position; and no single case has been produced in which, where payment has been made on a forged indorsement to the holder of it in good faith, the money has been recovered back. This case was followed by another case, *Smith v. Mercer*, where it was said in the course of some of the judgments that, where a banker had paid a forged draft believing that it had been accepted by his customer, he ought to know his customer's signature. The same observations that I have made apply to that case. He may not be able by any amount of care to ascertain whether or not the acceptance was a forgery. That case, therefore, does not establish the principle for which Mr. Bigham contended. The true principle is developed in the clearest possible form in the case of *Cocks v. Masterman.* There was an intermediate case of *Wilkinson v. Johnson*, which stands by itself, and which we need not discuss. In *Cocks v. Masterman* the simple rule was laid down in clear language for the first time that when a bill becomes due and is presented for payment the holder ought to know at once whether the bill is going to be paid or not. If the mistake is discovered at once, it may be

the money can be recovered back; but if it be not, and the money is paid in good faith, and is received in good faith, and there is an interval of time in which the position of the holder may be altered, the principle seems to apply that money once paid cannot be recovered back. That rule is obviously, as it seems to me, indispensable for the conduct of business. A holder of a bill cannot possibly fail to have his position affected if there be any interval of time during which he holds the money as his own, or spends it as his own, and if he is subsequently sought to be made responsible to hand it back. It may be that no legal right may be compromised by reason of the payment. For instance, the acceptor may pay the bill and discover on the same day that the bill is a forgery, and so inform the holder of it, so that the holder would have time to give notice of dishonor to the other parties to the bill; but even in such a case it is manifest that the position of a man of business may be most seriously compromised, even by the delay of a day. Now that clear rule is one that ought not to be tampered with. It is one of the few rules of business which is perfectly clear and distinct at present, and, as it seems to me, it is unimpeachable. The rule has been recognized in the case of *Mather v. Maidstone*. In the particular case before me there cannot be a question that the position of the Bank of Liverpool would be seriously compromised if they were now compelled to repay this money, because it was not until months after that it was discovered that there was anything wrong with the bill, and meanwhile the Bank of Liverpool had lost their right of giving notice to Larrinaga & Co. that the bill had not been paid.

That leads me to refer to what was discussed by Mr. Carver, namely, the exact position of the Bank of Liverpool in the matter. The Bank of Liverpool and Larrinaga & Co. are both made defendants, and the plaintiffs' counsel was called upon to elect as to which he would proceed against. If Larrinaga & Co. had handed the bill for collection to the Bank of Liverpool, Larrinaga & Co. would be the proper defendants on the assumption of liability; if, on the other hand, the Bank of Liverpool were the holders of the bill by indorsement from Larrinaga & Co., the Bank of Liverpool would be the persons to sue, on the same assumption of liability.

In this case I am satisfied that the Bank of Liverpool were holders of the bill, that payment was made to them, and that they are entitled to retain the money. Therefore I think this action fails; and I give judgment for the defendants with costs.

Chancery Division, England

Fox vs. Martin*

Where the owner of shares in a joint-stock company delivers a blank transfer of the same to another for a special purpose, the delivery of the blank transfer by him to a third party would only convey such title as he had, and the third party holds the shares subject to the rights of the true owner.

The facts herein are as follows:

In September, 1893, the plaintiff, being the registered owner of shares in a limited company incorporated under the Companies Act, 1862, instructed the defendant Martin, a broker, to sell fifty shares at par for cash, agreeing to take Martin's acceptance for part of the purchase money to be received, with a view to accommodate Martin. The plaintiff, accordingly, forwarded to Martin a blank transfer of fifty shares signed by himself, the date, consideration, and name of the purchaser being in blank, accompanied by a certificate for the fifty shares.

Shortly afterwards the plaintiff also instructed Martin to sell another parcel of fifty shares in the same company at par, which were duly sold and transferred to a purchaser. The plaintiff, however, only received from Martin the purchase money for one transaction, which was paid by Martin, according to the terms agreed upon in respect of the first transaction, partly in cash and partly by Martin's acceptance. The plaintiff afterwards discovered that the first transaction had never, in fact, been carried out, but that Martin had deposited the blank transfer and certificate with one Barber, as security for Martin's own debt, with authority for Barber, in the event of non-payment, to fill in the name of a purchaser and deal with the same. The debt was not paid, and in consequence Barber filled in the name of a trustee for himself as purchaser for an expressed consideration of 5s., and sent the transfer so completed to the office of the company for registration, where it lay without registration being made from the 30th January, 1894, till the 16th of February following, when the company first received notice of the plaintiff's claim. Barber made no enquiry of the plaintiff, but believed that Martin had authority to deal with the shares in the way he did.

The plaintiff, on discovering the facts, brought this action

**From the fuller report in the* Law Journal Reports

against Martin, Barber and his trustee, for an injunction to restrain the registration of the transfer, and for the delivery of the transfer to be cancelled, and of the certificate. An interlocutory injunction was granted, and the shares still remained registered in the name of the plaintiff. The articles of the company did not require a transfer of shares to be by deed, and only empowered the directors to refuse registration of a transfer where either the shares were not fully paid-up, or where the company had a lien on the shares. Neither condition applied to the present case.

The action was tried in the Chancery Division before Kekewich, J., and judgment was delivered in favor of the plaintiff, based entirely upon the case of *France v. Clark*, which dealt with the precise point involved herein. The defence in the present case had relied upon *The Colonial Bank v. Cady* as overruling *France v. Clark*, but the Court held against this. In the course of his remarks dealing with the argument on this point, the learned Judge said:

I always hesitate to say anything which may seem to be criticism of a decision in the House of Lords. I follow the argument of Mr. Warrington (counsel for the defence), and it is impossible not to admit the force of what he says; but *France v. Clark* was cited by the appellants in the House of Lords. It was not referred to by the respondents, and it was not referred to by either of the Law Lords on whose speeches reliance is placed. It is not according to usage to overrule a case without fully referring to it and giving reasons for the difference of opinion. Here there is no express overruling of it, and it is possible—I do not say it is right—it is possible to read all the judgments or opinions in the House of Lords with reference to the matter in hand, without seeing in them any intention to overrule *France v. Clark*. Whether that is the right view or not I must leave to others.

—

As the principles of law involved are not re-stated in the present judgment, reference must be had for them to *France v. Clark*, cited, which was decided in the Court of Appeal in 1884. The judgment of the Court in that case, delivered by Lord Selborne, L. C., and covering a statement of the main facts, is therefore given following:

EARL OF SELBORNE, L.C.:—The plaintiff in this case

having occasion to borrow £150 from a person named Clark in February, 1881, and being entitled to ten fully paid-up shares of £20 each (not purporting to be transferable to bearer, but registered in his own name) in the Anglo-Egyptian Banking Company, deposited with Clark, as a security for repayment of that amount, the certificates of those shares, together with an instrument in the form of a deed of transfer, which he signed, leaving the date, the consideration, and the name of the transferee, all in blank. Very soon after he had received these documents, Clark, without the plaintiff's knowledge, handed them over in the same state in which he had received them to the present appellant, Mr. Quihampton, by way of security for an antecedent debt of £250 due to the appellant from himself. Having done this he (*i.e.* Clark) died in the following April, and after Clark's death the appellant, without any communication with the plaintiff, filled in his own name as transferee of the shares, and sent them in for registration to the company. . . .

That Clark could and did transfer to the appellant the benefit of his own pledge or equitable mortgage by deposit so as to entitle the appellant to stand in his shoes as to the £150 due to him on that security, and the interest thereon, was not disputed by the plaintiff; and the order now under appeal has, to that extent, given the appellant the full benefit of Clark's security. But the appellant claims more than this. He insists that he took the documents of title from Clark as a purchaser for valuable consideration without notice of the plaintiff's rights; that, when he filled up the blanks in the instrument of transfer, that instrument became legally operative, so as to give him a legal title to have the shares registered in his name; and that, being so registered, he is entitled to hold them against the plaintiff, or to sell them, for the purpose of realizing the full amount due to himself from Clark. On these points he has failed in the Court below.

The principal ground, as we collect it, of Mr. Justice Fry's decision, was, that the appellant's legal right could not be to anything more than that which Clark, as between himself and the plaintiff, could lawfully transfer; that Clark's legal right to the documents which he handed over to the appellant was at the most that of a bailee by way of pledge; and that nothing had occurred to justify in law a sale or alienation of the pledge to the prejudice of the plaintiff's right. We do not dissent from these propositions; but we think the same conclusion (viz., that Clark could only transfer to the appellant, by handing over these documents, such rights as he himself then had against the plaintiff) would be reached not less clearly, and perhaps more simply, if Clark were regarded in the light of an equitable mortgagee of the shares, which he certainly was.

The defence of purchaser for valuable consideration without notice, by any one who takes from another without inquiry an instrument signed in blank by a third party, and then himself fills up the blanks, appears to us to be altogether untenable. The observations of Bramwell, B., in *Hograth v. Latham* and of Stuart, V.C., in *Hatch v. Searles*—both cases of negotiable instruments, which this is not—and also of Turner, L.J., in *Tayler v. Great Indian Peninsula Railway Company* are opposed to any such notion, and so are plain and clear principles of justice and reason. The person who has signed a negotiable instrument in blank, or with blank spaces, is (on account of the negotiable character of that instrument) estopped by the law merchant from disputing any alteration made in the document, after it has left his hands, by filling up blanks (or otherwise in a way not *ex facie* fraudulent) as against a *bonâ fide* holder for value without notice; but it has been repeatedly explained that this estoppel is in favor only of such a *bonâ fide* holder; and a man who, after taking it in blank, has himself filled up the blanks in his own favor, without the consent or knowledge of the person to be bound, has never been treated in English Courts as entitled to the benefit of that doctrine. He must necessarily have had notice that the documents required to be other than they were when he received them, in order to pass any other or larger right or interest, as against the person whose name was subscribed to them, than the person from whom he received them might then actually and *bonâ fide* be entitled to transfer or to create; and if he makes no inquiry he must at the most take that right (whatever it may happen to be) and nothing more. He cannot, by his own subsequent act, alter the legal character, or enlarge in his own favor the legal or equitable operation, of the instrument. This, in our opinion, renders it unnecessary to consider whether, before the registration was completed, the company and the appellant had notice of the plaintiff's claim; for registration in the name of a transferee only gives complete effect to a prior valid transfer; registration does not make effectual a document which was, as between the alleged transferor and transferee, inoperative and of no effect.

It was said that when a man, in a transaction for value, does what this plaintiff did, and delivers a blank form of transfer to a creditor by way of security, together with the certificates of shares, his meaning must necessarily be that the creditor may complete his security by obtaining registration of the shares, either in his own or (possibly) in some other name; and that he, therefore, entrusts him with the requisite authority for that purpose. Granting this, what follows? Only that the creditor to whom such an authority is given may execute it or not, for the purpose of giving effect to the contract in his own favor, as he pleases; but not that, if he does not execute it, he can delegate

the like authority to a stranger for purposes foreign to and possibly (as in this case) in fraud of that contract.

The blank form of transfer in the present case conferred no legal title when the appellant took it from Clark, because, on the face of the instrument, there was no transferee, and this the appellant knew. The appellant certainly had no authority from the plaintiff to insert his own name as transferee, and we think that Clark could give him no such authority, especially for a purpose which, as between the plaintiff and Clark, would have been fraudulent. The filling up of the blank by the appellant with his own name was, in our opinion, so far as any legal effect is concerned, a mere nullity, . . . whether the instrument ought to be regarded as an imperfect deed, or in any other light. In point of fact the instrument purports to be under seal.

But it was pressed on us that the plaintiff had, by the blank transfer and certificate, enabled Clark to represent himself as the true owner of the shares, or as having power to deal with the shares as owner. The documents themselves showed that Clark was not the owner. Nor was there any evidence of any mercantile usage to the effect that holders of such documents as Clark handed over to Quihampton are treated as having the right to transfer shares referred to in the documents, as if such holders were the owners of such shares. In other words, there is no evidence that, as a matter of fact, blank transfers, accompanied by certificates of shares registered in the names of transferors, pass from hand to hand like negotiable instruments. The absence of any such evidence of mercantile usage not only distinguishes this case from *Goodwin v. Robarts* but renders the reasoning on which that case was decided wholly inapplicable to the case now before us, and makes it unnecessary for us to consider whether such a usage, if proved, would be sufficient to make a document of this particular nature negotiable in law. Nor is the absence of any such evidence a mere oversight; for it is worthy of notice that the defendant in his statement of defence pleaded a mercantile usage to the effect above mentioned, and then struck it out. It would, under these circumstances, be unreasonable for him to expect the Court to decide this case upon the assumption that there is such a usage. The inference is rather that no such usage can be shown to exist. It was contended that the cases of *ex parte Sargent*, before the late Master of the Rolls and *Roffe v. Roscoe*, before the Court of Appeal (but not reported), show that the holders of such documents can transfer them so as to confer a good title to *bonâ fide* holders for value, without any other notice of the nature of the transferor's title than the documents themselves give. There are, no doubt, some expressions in the judgments in those cases which may seem capable of being

interpreted in this sense. But the facts of those cases must not be lost sight of in studying the judgments pronounced in them.

We think that this appeal must be dismissed with costs.

COURT OF APPEAL, ONTARIO

Smith vs. Walkerville Malleable Iron Co., Ltd.

When shares in a joint-stock company are transferred to a party by a transfer which is not registered in the books of the company, accompanied by delivery of the certificate for the shares, he has no claim upon the company should they, before he presents the transfer for registration, permit a transfer of the shares on their books by the registered owner to another without the surrender of the certificate, and the company is within its rights in permitting such a transfer, notwithstanding the statement in the certificate that the shares will only be transferred on its surrender.

The main facts in this case are as follows:

On the 4th January, 1893, one H. F. White was the registered owner of 466 shares of the stock of the Walkerville Malleable Iron Co., of which company he was the Secretary. Between that date and the 14th of the same month he disposed of 404 shares to different parties. The transfers of these shares were made upon the company's books without the surrender of one of the relative certificates, No. 27 for 20 shares, which remained in White's possession. On 28th January he procured the issue of two certificates for the 62 shares then remaining in his name, No. 46 for 40 shares and No. 47 for 22 shares. All the certificates were in the following form:

"This is to certify that ———————— is entitled to ———— shares of $25 each of the capital stock of the Walkerville Malleable Iron Co., Limited, transferable only on the books of the company in person or by attorney on the surrender of this certificate,"

with a blank form of transfer on the back, of shares not specified as being the shares mentioned in the certificate, which included a form of power of attorney to transfer the shares in the company's books.

On 16th February he transferred 40 shares to one Ellis by endorsement on certificate No. 46; on 4th March following he transferred 20 shares to one Hunter by endorsement on the annulled certificate No. 27; and on 3rd April the 22 shares represented by certificate No. 47 were, also by endorsement of the certificate only, transferred to the plaintiff. On 22nd June, 1893, 20 shares were transferred on the company's books by

White to Hunter and duly accepted by the latter, without reference to or production of certificate No. 27; on 26th Dec., 1893, White executed a transfer on the company's books to one Lett, of 2 shares without reference to any certificate, the shares being duly accepted by Lett; and on 3rd January, 1894, Ellis' title to the 40 shares was completed by transfer and acceptance on the books, which exhausted White's holding of stock. Hunter transferred the 20 shares registered in his name to the president of the company in September, 1893, leaving with him the certificate No. 27.

About February, 1894, the plaintiff applied to the company to have the transfer of 22 shares assigned to him with certificate No. 47 completed, and the application was refused on the ground of course that all the shares which White had owned had already been transferred. He thereupon brought action against the company to compel them to complete his title by making the necessary entry in their book, or, should they be unable to do that, to pay as damages the value of the shares, on the ground that by virtue of the assignment endorsed on certificate No. 47, he had acquired a right to have 22 shares transferred to him.

The case was tried at the non-jury sittings of the High Court at Sarnia, in April 1895, before MacMahon, J., and judgment given in favor of the plaintiff. From this the present appeal was taken before the Court of Appeal, and has now been allowed (Hagarty, C.J.O., dissenting).

OSLER, J. A. :—In the consideration of the case I think we must leave out of view as immaterial the fact that the sale or agreement to Hunter was endorsed upon the old certificate No. 27. It was as between White and Hunter a valid agreement, conferring upon the latter the right, if White then owned the shares, to have them transferred into his name on the company's books.

The 5th section of the Joint-Stock Companies Letters Patent Act enacts that no transfer of stock, unless made by sale under execution, or under the order or judgment of some competent Court, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferror to the company, until entry thereof has been duly made on the books of the company. I do not understand that by this it was intended to provide that no action could be maintained against the company to compel

them to make a transfer on their books to a person who had acquired an inchoate title to the shares by assignment from the legal owner, and thus to complete his title to the shares so assigned, and the question therefore, is whether, the plaintiff, when he presented his certificate No. 47 and required the shares to be transferred to him, had a present absolute right to have that done. The answer to this depends, in my opinion, upon whether White had at that time a sufficient number of or any shares remaining at his credit on the company's books, which could be transferred to him under the power of attorney which he had given to the plaintiff. Share certificates are not negotiable instruments, nor do they purport to be so, passing the title to the shares by their mere delivery. The certificate issued by the company stated that White was entitled to 22 shares, transferable only on the books of the company (as the statute provides) and adding, 'in person, or by attorney, on the surrender of the certificate.' The latter provision is not required, either by statute or by the by-laws of the company (which we called for) and it has been held in more than one case that the stipulation is one which the company may waive, if satisfied, or otherwise, of the right of the transferee to be registered. In other words, the title of the transferee, or rather his right to have his transfer registered or entered, and thus to have his legal title, does not depend in the case of shares of the character of those we are now dealing with, upon his possession of the share certificate. On the face of the plaintiff's certificate there is no other representation than that White was then the holder of the number of shares mentioned therein. There is no warranty that his title would continue, or representation that the holder for the time being would, by merely having it in his possession, become entitled to the shares. The certificate purports to show the legal and not the equitable title, and if persons are content to deal on the faith of the certificate with the registered holder, without inquiring into the beneficial ownership, and without obtaining a legal title by transfer, they may find themselves ousted by an earlier equitable title. Everything stated in the certificate was true when it was issued, so that, as said by the Court of Appeal *In Re Ottos Kopje Diamond Mines* the plaintiff's cause of action must be looked for outside the certificate, and upon the assumption that the company cannot dispute the facts stated therein. In what respect then has the company failed in its duty to the plaintiff, if the whole of White's stock had been transferred in their books at the time when the plaintiff produced his power of attorney, and required it to be acted upon? If the transfer to Hunter—earlier than the plaintiff's transfer—could be shown to be invalid, the plaintiff would have made one step in the direction of proving his case, but if Hunter's right did not depend upon the possession or surrender of the certifi-

cate, afterwards transferred to the plaintiff, or of any certificate (and the shares themselves not being numbered, the assignment of them was not connected with any certificate otherwise than by being endorsed thereon), I cannot see how his title can be successfully impeached. Twenty shares, generally, were assigned to him, and were duly transferred without fraud on his part, into his name on the books of the company. When the plaintiff took his assignment and power of attorney on the 3rd April, 1893, the whole of White's shares were still at his credit on the company's books, and the shares assigned to him might, had he so desired, have been duly transferred to him, and his title thereto perfected under the 52nd section of the Act. By his own laches he enabled the holders of the other assignment to register before him, so that when he came forward the whole of White's holding had been exhausted, the legal title having passed into the hands of other *bonâ fide* purchasers.

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

MACLENNAN, J.A. :—"*In re Bahia & San Francisco Railway Co.*, and *Tomkinson v. Balks Consol. Co.*, it was decided that the very purpose for which such certificates as the one in question here are given, is to enable the person to whom it is given to sell his shares, and it has accordingly been uniformly held that a company is estopped from saying that a certificate so granted is not true. No question of that kind arises upon this certificate, because at the time it was issued it was in fact true. White was on the date of the certificate, the 28th of January, 1893, in fact entitled to twenty-two shares of the company's stock as were mentioned therein, and he continued to be so entitled afterwards, and until the 3rd of January, 1894, when he transferred forty shares, which was all he had left, to one Ellis. The certificate contains these words: 'Transferable only on the books of the company in person or by attorney on the surrender of this certificate. The plaintiff's contention is that no transfer of these shares could be validly made without surrender of the certificate, and that the transfer to Ellis was invalid to the extent of 22 shares, because White had not the certificate to produce, and did not produce it, for surrender, when that transfer was made, and the question is what is the meaning and legal effect of the stipulation in the certificate above quoted. Section 41 of the Act, R.S.O., c. 157, under

which the defendant's company is incorporated, enacts that the stock of the company shall be transferable in such manner only and subject to all such conditions and restrictions as by the Act or the by-laws of the company may be prescribed, and section 50 required a book or books to be kept to record the names and addresses of all past and present shareholders, with the number of shares held by each, and also all transfers of stock in their order as presented for entry, with dates and other particulars. By section 53 these books are to be open for the inspection of shareholders and creditors. By section 52, until entry in the books, no transfer, with certain exceptions not here material, are to be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and rendering them liable to creditors.

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

It is not alleged that the company had any notice of the plaintiff's claim, and no enquiry appears to have been made for the certificate. Was the company bound to refuse, or could they lawfully refuse, to transfer without the production of it? It is not necessary to decide that they could lawfully refuse, but I think it is clear they were not bound to refuse. The shares were standing in White's name. There had been no transfer made on the books; there could be no valid transfer made elsewhere; a transfer on the back of the certificate could be no better than if made by a separate document; the certificate itself could be of no value to any one else. It was not negotiable, and I confess I see no obligation, nor any good reason why the company should think it necessary to insist on its production. I think *Williams v. The Colonial Bank* is a decision in favour of the defendants, and the other cases cited do not help the plaintiff, for they were cases of estoppel, and only went to hold companies bound by their certificates, even when they were not true. Here the certificate was true, and the plaintiff might have had his shares if he had applied in due time, and might have had a transfer made on the company's books. The company have done him no wrong, and his only redress must be sought against White, who has defrauded him.

I think the appeal should be allowed, and the action should be dismissed with costs.

Burton, J.A., also delivered judgment, concurring.

High Court of Justice, Ontario

Halsted vs. Bank of Hamilton

Securities under Section 74 of the Bank Act. What constitutes "negotiation"

This was an action tried before Meredith, C.J., without a jury, at the London Winter Assizes, on 18th January, 1896. The question involved was as to the validity of certain assignments of goods given to the defendants, in Schedule C to the Bank Act, as security for advances made by them to one Zoellner, whose assignee for the benefit of creditors the plaintiff is. The following is a general statement of the facts of the case:

Zoellner was a customer of the Mount Forest branch of the bank. On 5th December, 1894, the bank held an assignment of his goods purporting to secure $4,000, in which amount he was indebted to them for direct loans. This assignment, however, was invalid, having been given in substitution of similar security, upon the renewal of the note to secure which the prior assignment was held: *Shepard v. Bank of Hamilton.* On the above date they effected a new arrangement with Zoellner for the conduct of his account, with a view to remedying the defects in their security.

On 7th December they discounted for Zoellner his note for $4,000 for what purported to be a new advance—a fresh assignment being taken to secure the same—and placed the proceeds to the credit of his general account, leaving the old note still running.

By the arrangement of 5th December, however, he was not free to withdraw these proceeds, except on certain conditions. The agreement was that a special or No. 2 account was to be opened, to which should be credited the proceeds of bills and notes of Zoellner's customers discounted or collected by the bank from time to time, and to which Zoellner's own notes discounted were to be charged at maturity; it being further stipulated that the balance in No. 1 account should not be drawn upon by Zoellner, except to such an extent as, by the discount of his customers' paper or otherwise, credits should be made in No. 2 account towards meeting the old notes at maturity. Thus while the bank were apparently making advances very largely

in excess of $4,000, they did not permit Zoellner's net liability to exceed that sum.

After 7th December, at intervals of about two months, *i.e.* on the 4th February, 1st April, 29th May and 23rd July, while one or more of his notes were still current, the bank discounted a new note (the amount being $4,000 in each case, except the last which was $3,670, a payment of $330 having been made by Zoellner), taking with each note a new assignment, and crediting the proceeds to No. 1 account.

The result of this procedure was that after the entries were made in connection with the note of 23rd July, the bank had running three notes of Zoellner's, dated 1st April, 29th May, and 23rd July, for $4,000, $4,000 and $3,670 respectively, while there were credit balances in Zoellner's name of $3,670 in account No. 1, and $4,150 in account No. 2, or $3,850 less than the amount of the three notes.

Zoellner shortly afterwards made an assignment for the benefit of his creditors, and the assignee brought this action to have the bank's claim upon the goods under the assignments given with the above three notes, set aside. Judgment was given in favor of the plaintiff.

The learned Chief Justice, after fully stating the facts, points out that

No money was paid by the defendants to Zoellner at the time the assignments were made, but the respective sums for which promissory notes were taken from him payable on demand were placed to his credit in account No. 1, on the respective days on which the assignments were made . . . but though the amounts of these alleged advances were so credited, and there were large sums . . standing at his credit . . . which so far as the defendants' books showed, he was entitled to draw, Zoellner was not in a position to draw any part of these moneys . . because of the arrangement which he had made with the defendants. . . .

The judgment then proceeds:

It is true, as pointed out by Mr. Scott, that an amount almost equal to the so-called advance of the 1st April, 1895, was checked out by Zoellner from his account No. 1, between that date and the 1st of May following, and that an amount almost equal to the so-called advance of the 29th May, 1895, was checked out of the same account between that date and the

22nd June following; but it will be observed that in each case the balances at the credit of Zoellner in account No. 2 were during the same periods increased by corresponding amounts, so that there was no substantial alteration of the state of his account between the dates referred to.

Is it possible that the assignments can, under the circumstances I have mentioned, be supported as against the creditors of Zoellner under the provisions of the sections of the Bank Act upon which the defendants rely (sections 74 and 75), and which alone can give them validity as against creditors?

Section 74 authorizes the bank to "lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him or procured for such manufacture." And section 75, so far as it applies to the circumstances of this case, prohibits the bank acquiring or holding any security under section 74 "to secure the payment of any bill, note or debt unless such bill, note or debt is negotiated or contracted at the time of the acquisition thereof by the bank."

Though in form it was otherwise, there was no debt contracted by Zoellner at the time the assignments were respectively acquired by the defendants, nor was there, in my opinion, any negotiating by him of a bill or note such as section 75 contemplates.

How, under the circumstances I have mentioned, can the transactions of the 1st of April, 29th March and 23rd July be treated as anything but mere book-keeping entries, having no real foundation to support them, and is it possible to come to any other conclusion than that they were merely clothed with the form which would apparently give them validity, while in substance and in fact they were intended to accomplish that which the Bank Act forbade being done?

It is, I think, impossible to treat any of the notes which the assignments purported to secure as having been "negotiated" in the sense in which that term is used in section 75, at the time the assignments were made; it is true that the form was gone through of taking the notes and passing the amount of them to the credit of one of the accounts, but contemporaneously with this an equal amount was placed to the debit of another of the accounts, and not a farthing of the amounts which the notes represented could be touched by Zoellner or made available by him for any purpose, unless he brought to the defendants and left for collection or discounted customers' paper, which would entitle him to credit in account No. 2 for an amount equal to that which he proposed to withdraw.

The decision *In re Carlew* is, I think, not applicable to

this case. In that case a banker was held to be the holder for value of certain bills of exchange received from a customer, although the amount of the bills was simply carried to the credit of his overdrawn account, no money being actually paid, and the result of the decision, probably, was to determine that the bills had been negotiated at the time the banker received them, but not, as I have endeavored to point out, negotiated in the sense in which section 75 of the Bank Act uses the term "negotiated."

The policy of the Act, as I understand it, is to permit a bank to take security by means of such assignments as those in question in this case, for an obligation incurred to it at the time the security is given and for that only. That is, I think apparent from the language of section 74, which is the enabling section, and authorizes the security to be taken where money is lent by the bank, and the language of section 75 must be read in the light of that provision. It is therefore the payment of a bill or note which the bank obtains in, or a debt which is incurred to it arising out of, a transaction in the nature of a loan by the bank to its customer, which may be secured in the exceptional manner in which the Act permits security to be given.

Having come to the conclusion that no loan or real advance was made by the defendants to Zoellner at the time of the assignments in question, or either of them were made, and that no real debts were then incurred by Zoellner, it follows in my view of the law that the assignments are invalid as against the creditors of Zoellner so far as they sought to be supported under the provisions of the Bank Act.

It was urged by Mr. Scott that even if invalid under the Bank Act the assignments were good as against Zoellner, and being good against him were also valid as against the plaintiff; but it is impossible to give effect to that contention. The provisions of the Bank Act not being available to support the assignments, they must stand or fall according to the general law of Ontario applicable to such instruments, and not being registered they are under section 38 of the Bills of Sale and Chattel Mortgage Act (1894) void as against the plaintiff who is the assignee for the general benefit of creditors within the meaning of the Act respecting assignments and preferences by insolvent persons.

There must be judgment declaring the assignments and each of them to be void as against the plaintiff, and the defendants must pay the costs of the action.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Six months ending December—	1894-5		1895-6	
Free	$22,960		$21,136	
Dutiable	28,046		32,535	
	$51,006		$53,671	
Bullion and Coin	3,564	$54,570	3,426	$57,096
Month of January—				
Free	$ 2,145		$ 2,690	
Dutiable	4,531		6,563	
	$ 6,677		$ 9,253	
Bullion and Coin	328	$ 7,005	492	$ 9,746
		$61,575		$66,842

EXPORTS

Six months ending December—				
Products of the mine	$ 3,132		$ 3,763	
" Fisheries	7,462		7,009	
" Forest	15,870		16,965	
Animals and their produce	24,606		26,442	
Agricultural products	12,196		8,827	
Manufactures	3,920		4,762	
Miscellaneous	80		115	
	$67,268		$67,885	
Bullion and Coin	1,275	$68,543	344	$68,229
Month of January—				
Products of the mine	$ 668		$ 590	
" Fisheries	513		850	
" Forest	552		727	
Animals and their produce	1,318		1,571	
Agricultural products	773		766	
Manufactures	420		697	
Miscellaneous	8		7	
	$4,253		$5,210	
Bullion and Coin	328	$4,581	2,664	$7,874
		$73,124		$76,103

SUMMARY (ACTUAL FIGURES)

Total imports for seven months, other than bullion and coin	$57,684,349	$62,925,935
Total exports for seven months other than bullion and coin	71,522,195	73,096,015
Excess of exports	$13,837,846	$10,170,080
Net imports bullion and coin	2,289,777	910,193

STATEMENT OF BANKS acting under Dominion Government charter for the months of December, 1895, and January and February, 1896, and comparison with December, 1894:

LIABILITIES

	31st Dec., 1895	31st Jan., 1896	29th Feb., 1896	31st Dec., 1894
Capital authorized	$ 73,458,685	$ 73,458,685	$ 73,458,685	$ 73,458,685
Capital paid up	62,196,391	62,196,496	62,196,496	62,510,552
Reserve Fund	27,665,799	27,715,799	26,458,799	27,470,026
Notes in circulation	$ 32,565,179	$ 29,429,065	$ 29,819,536	$ 32,375,620
Dominion and Provincial Government deposits	7,194,284	6,747,750	6,417,385	7,684,148
Public deposits on demand	67,452,397	62,493,728	60,419,199	68,917,542
Public deposits after notice	119,667,176	121,252,378	121,446,870	113,163,127
Bank loans or deposits from other banks secured	12,403	9,663	9,050	6,272
Bank loans or deposits from other banks unsecured	2,959,409	2,732,915	2,539,592	2,534,463
Due other banks in Canada in daily exchanges	139,538	137,958	90,997	158,380
Due other banks in foreign countries	219,541	171,654	177,187	166,115
Due other banks in Great Britain	4,326,912	4,645,748	4,265,396	3,531,682
Other liabilities	701,196	693,195	672,942	368,128
Total liabilities	$235,238,020	$228,314,138	$225,858,247	$228,905,558

ASSETS

Specie	$ 8,239,178	$ 8,193,570	$ 7,904,370	$ 8,018,151
Dominion notes	15 963,001	13,632,842	12,752,147	15,209,730
Deposits to secure note circulation	1,814,624	1,814,624	1,814,624	1,810,736
Notes and cheques of other banks	9,115,065	6,402,345	5,883,170	8,614,221
Loans to other banks secured	7,403	4,663	4 050	6,272
Deposits made with other banks	3,650,210	3,548,408	3,312,812	3,065,345
Due from other banks in Canada in daily exchanges	153 144	191,507	149,695	107,672
Due from other banks in foreign countries	17,897,593	19,533,123	18,662,882	25,299,986
Due from other banks in Great Britain	8,175,874	4,299,260	4,710,922	3,097,628
Dominion Government debentures or stock	2,830,276	2.990,803	2 991,549	3,124,594
Public municipal and railway securities	20,636,961	20,820,899	20,218,743	18,352,643
Call loans on bonds and stocks	17,089,307	15,909,298	14,083,576	17,791,638
Current loans and discounts	202,088,259	204,479,884	207,484,616	195,836 141
Loans to Dominion and Provincial Governments	748,312	193,648	382,073	1,424,196
Overdue debts	4,412,237	4,284.475	4,073,863	3,425,752
Real estate	1,332.394	1,300,177	1,447,906	919,938
Mortgages on real estate sold	550.343	565,891	567,634	575,679
Bank premises	5,651,487	5,658,999	5,661,382	5,480,573
Other assets	1,828,737	1,851,704	2,167,606	1,750,899
Total assets	$322,184,801	$315,676,305	$314,273,808	$313,911,995

Average amount of specie held during the month	$ 7,710,988	$ 8,408,199	$ 8,028,175	$ 7,723,589
Average Dominion notes held during the month	15,742,240	14,244,926	12,920,153	14,765,140
Loans to directors or their firms	8,274,874	7,983,597	7,888,462	8,034,039
Greatest amount of notes in circulation during month	35,014,003	32,307,557	30,474,786	34,450,532

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton and Winnipeg

(000 omitted)

	MONTREAL		*TORONTO		HALIFAX		HAMILTON		WINNIPEG	
	1894-5	1895-6	1894-5	1895-6	1894-5	1895-6	1894-5	1895-6	1894-5	1895-6
	$	$	$	$	$	$	$	$	$	$
March ...	45,715	42,464	22,894	22,332	4,745	4,174	2,739	2,462	3,510	2,929
April	40,942	41,906	21,473	21,961	4,468	4,414	3,078	2,611	2,959	3,093
May	45,586	51,969	24,174	25,698	4,871	4,964	2,978	2,704	3,455	4,156
June	44,704	52,353	21,965	26,772	4,471	5,090	2,753	2,913	3,329	3,865
July.....	45,223	51,902	23,763	26,838	5,492	5,739	2,682	2,972	3,570	4,038
August ..	44,383	49,314	21,779	23,235	5,407	6,264	2,546	2,726	3,695	3,937
September	46,855	45,251	20,078	22,543	5,062	4,694	2,686	2,706	3,975	4,008
October ..	55,730	53,298	25,750	28,437	5,452	5,613	3,155	3,402	6,786	7,911
November	51,838	54,397	25,214	28,633	5,021	5,444	3,092	3,363	6,607	8,503
December	47,351	54,138	25,700	33,728	4,874	5,462	2,834	3,224	5,199	6,641
January ..	48,376	46,663	27,961	33,095	4,997	5,705	2,831	3,227	4,067	4,977
February	37,793	38,123	20,493	28,544	4,118	4,709	2,461	2,686	2,721	4,052
	554,496	581,778	281,208	321,816	58,978	62,272	33,835	35,006	49,873	58,110

*NOTE.—These totals prior to November, 1895, do not include the Bank of Toronto.