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OF THE

CANADIAN BANKERS' ASSOCIATION

SEPTEMBER—1894.

EDITORIAL NOTES.

The chief event which has transpired in connection with the Association since our last number was the highly successful meeting at Halifax, full reports of which are printed in this issue. Owing to the limits of our space only a portion of the important papers read at the meeting are printed this quarter; the next number will contain others, including Mr. Fyshe's brilliant paper on "Joint Stock Companies."

The Editing Committee have much pleasure in announcing that they have arranged to publish Mr. R. M. Breckenridge's elaborate and valuable essay on "The Canadian Banking System." It is a full and succinct account of the history and development of banking in Canada, written after a thorough and painstaking examination of all the records available, by a student well qualified for such work. Those who read his article on "Free Banking in Canada," in our March number, will, we are sure, be glad to welcome this more important contribution, which cannot fail to be a very valuable record for future reference. The essay would in itself more than fill two ordinary numbers of the JOURNAL, and must therefore be

presented to our readers in instalments, but the Committee will do their best to see that other matters of current interest are not neglected.

LEGAL DECISIONS.

Lien Notes.—The very important judgment of the Court of Appeal for Ontario in *Dominion Bank* v. *Wiggins* is printed in full in the usual column. The case has excited much comment, as it deals with documents which are largely used in connection with the banking transactions arising out of the sale of agricultural implements, organs, sewing machines, etc. No doubt the view of the Courts is contrary to the generally accepted opinion as to the negotiability of lien notes, but it must be remembered that it does not decide upon the rights existing between the vendor and vendee, and those rights after all are the most important considerations involved in such cases.

How far a lien note could be framed to make it negotiable and yet do all that is effected by the lien note as now commonly in use, is difficult to say, but it could no doubt be done. In the case before the Court, however, the language of the contract appended to the promissory note (if that name may still be given it) was such as to give the greatest scope for the application of the principles of common law affecting contracts of buying and selling. Not only the title to the article sold, but the right of possession, was retained by the vendor, so that the whole document became a mere contract to be carried out on both sides at a certain date, the vendor then to deliver the article, the purchaser then to pay for it. The use of the article by the purchaser in the meantime was a concession not provided for by the written agreement.

In respect to such contracts as this the law imposes a mutual duty on the parties; on the one to deliver such an article as the agreement calls for, on the other to pay the purchase money; and failing the due performance of the obligation of either party the other is relieved. This is what has happened in this case, and the fact that the contract was such that this principle of law was applied, is of course fatal to the negotiability of the instrument. On this principle, the purchaser's promise to pay

was conditional on the performance of something by the payee, and was therefore not a promissory note within the terms of the Bills of Exchange Act.

It would follow that such documents as that sued on in this case are not transferable by mere endorsement, but would have to be formally assigned in the same way as any other claim of non-negotiable character.

Post-dated Cheques.—A decision rendered in the English Court of Appeal last July (*Royal Bank of Scotland* v. *Tottenham*), touches several points of interest to bankers, chiefly as to the status of holders who acquire post-dated cheques before the day of their date. In the case referred to, the bank received the cheque and gave credit for it two days before its date. Before it became payable the drawer stopped payment, and on an action on the cheque it was held by the trial Judge as well as by the Court of Appeal that a post-dated cheque was valid (that point being expressly covered by the Bills of Exchange Act), that its negotiation by the bank was in order, and that the Bank became thereby a "holder in due course," entitled to the usual remedies against all the parties to the instrument as soon as the day on which payment could be demanded came round. The judgment rests on a section of the Bills of Exchange Act which is alike in the English and Canadian Acts.

On another point the Court held that so soon as the bank had given credit to any person for a cheque paid in to his account it became holder thereof for value, confirming a previous judgment of the same Court.

The brief report of the case does not state the fact, but it may be assumed that the cheque was not drawn on the plaintiff bank. The position of a bank which has cashed a post-dated cheque on itself before the day of its date, payment of which is within due time afterwards stopped by the drawer, is very different. Under ordinary circumstances it would have only the rights against the drawer which the payee would have had; usually a very doubtful and shadowy claim.

Right of Recourse—Right of Action.—Judgment was given in the same Court on the same day on another case under the Bills of Exchange Act (*Kennedy* v. *Thomas*), touching on a

nice point of procedure worth noting here. An action had been brought on a dishonored Bill of Exchange, the writ being issued at four o'clock on the day on which it became due. The holders relied on that section of the Bills of Exchange Act which gives the holder a "right of recourse" against all parties immediately on the dishonor of a bill, but the Court of Appeal held that this did not mean or include "right of action," that the acceptor had the whole of the day of maturity wherein to pay, and that an action could not be commenced until the following day.

Rights of Co-Sureties.—In the case of *Morgan* v. *Hill* (in *re Parker*), the Chancery Division H.C.J. (England) decided that a surety who has paid off a debt is entitled to prove against the estate of a co-surety for the whole debt, although he can actually recover only the proportion due to him as between co-sureties. The distinction is a very important one, as it would enable the surety in many cases to recover the full amount due by his co-surety, instead of a dividend thereon. The rights of sureties in such cases are defined by the Mercantile Law Amendment Act, in force here in the same form as in England. As is well understood, a surety paying his principal's debt stands in the shoes of the original creditor, but the Act provides that, notwithstanding this, he shall not be entitled to "recover" from a co-surety more than the proportion which he should justly pay. In this case the Court held that "recover" did not mean "shall not prove for" or "shall not bring an action for," but that a surety would have the same right to sue for or prove for the whole debt as the original creditor, the amount to be recovered only being limited by the Act.

PROCEEDINGS OF THE THIRD ANNUAL MEETING OF THE ASSOCIATION.

The third Annual Meeting of the Association was held in the Legislative Council Chamber, Provincial Buildings, in the city of Halifax, Nova Scotia, on Thursday and Friday, the 26th and 27th days of July, 1894.

The chair was taken by the President, Mr. B. E. Walker.

The following members were represented :

	REPRESENTED BY
The Bank of Nova Scotia	Thos. Fyshe, Esq.
The Merchants' Bank of Halifax,	D. H. Duncan, Esq.
The Union Bank of Halifax	A. L. Thorne, Esq.
The People's Bank of Halifax	John Knight, Esq.
The Bank of New Brunswick	Geo. A. Schofield, Esq.
The Canadian Bank of Commerce	B. E. Walker, Esq.
The Bank of Toronto	J. Henderson, Esq. (proxy).
The Bank of Ottawa	Geo. Burn, Esq.
The Bank of Hamilton	H. M. Watson, Esq. (proxy).
The Imperial Bank of Canada	B. Jennings, Esq. (proxy).
The Merchants' Bank of Canada,	J. C. More, Esq. (proxy).
The Molsons Bank	H. Markland Molson, Esq. (proxy).
La Banque Jacques Cartier	A. L. De Martigny, Esq.
The Union Bank of Canada	E. E. Webb, Esq.
La Banque Ville Marie	H. Frost, Esq. (proxy).

The following Associates, in addition to those representing Members, were present :

Messrs. E. D. Arnaud, Annapolis; F. H. Arnaud, Charlottetown, P.E.I.; J. F. Blagdon, Halifax; G. W. G. Bonner, Halifax; W. M. Botsford, Halifax; Vere C. Brown, Toronto; N. R. Burrows, Halifax; D. Hughes Charles, Woodstock, Ont.; D. R. Clarke, Halifax; A. E. Ellis, Halifax; W. H. Gossip, North Sydney, C.B.; V. G. Gray, Halifax; S. J. Howe, Halifax; D. Kenway, Mitchell; R. C. Macpherson,

Paris, Ont.; W. F. Mitchell, Fredericton; M. Morris, Seaforth; J. C. Paterson, Owen Sound; Edson L. Pease, Montreal; E. M. Saunders, Thorold; W. P. Sloane, Toronto; W. S. Stephens, Meaford; W. B. Torrance, Halifax; G. C. Wainwright, Ottawa; W. J. Wallace, Picton; R. S. Williams, Goderich; E. P. Winslow, Almonte.

The following visitors were also present:

Z. A. Lash, Q.C., Toronto; H. R. Melville, Barbadoes, W.I.

Letters of regret were placed upon the table from Messrs. Geo. Hague and William Weir, of Montreal.

After the President, Mr. B. E. Walker, had called the meeting to order, the Secretary, Mr. W. W. L. Chipman, read the notice calling the meeting.

The President then declared the third annual meeting of the Association open and ready for business.

Mr. J. T. P. Knight, Cashier of the People's Bank of Halifax, on behalf of the representatives of the Halifax Banks, heartily welcomed the visiting bankers. In the course of his address of welcome he said:

Mr. President and Gentlemen of the Bankers' Association: The pleasant task has been assigned to me to welcome you to the city of Halifax. You may be able to judge how ill-qualified I am to address you in appropriate words and how my *confrères* have recognized this when I tell you that the form of invitation to me to present this address to you was disfigured by a preliminary statement that one man had married a wife and he could not be present, another man was likely to be fishing and was therefore not available, and that another man was never known to address anybody save on business, and "so we are compelled to rely on your feeble efforts." (Laughter.) This is my apology on this occasion. I know I am ill qualified for the task, but I feel that it must be done.

I say to you, Mr. President, that while we down by the sea are unable to express ourselves in graceful periods and can give you no well-rounded sentences to show our joy, we are nevertheless ready at a moment's notice to accede to any request of yours, and to say that if there is anything that you see and we

do not offer it to you, it is only necessary for you to ask for it. You can take away anything we have to present—providing you give us suitable security. (Laughter.)

When at the meeting at Toronto last year, as the only representative from the Maritime Provinces, I suggested to the members of the Association that Halifax would be a pleasant meeting place for the Association in the year 1894, I made this suggestion at the request of some of the local giants of the financial arena. I explained to you then that I was not quite certain whether these gentlemen who instructed me to suggest Halifax were in earnest or not, and I am not at liberty to disclose what they said to me on my return when I announced that I had been absolutely successful in working up the Association to the belief that we had a city down here worthy of your attention. (Laughter.) Deplorable as it is for me to admit that the invitation I extended to you was extended only in the form of a pleasantry, I am bound to say that I am certain that those gentlemen of the Association who suggested Halifax as your meeting-place had no idea that you would thus respond to our wishes. (Laughter.) But we are heartily pleased that you took in earnest what was intended in jest, and I can only say to you that when I had suggested to you my doubt as to the invitation being in earnest, the suggestion was simply based on their fear that we were not qualified to properly entertain you. Before you leave our city we hope to give you some evidence either at early morning or late at night of our desire that you should enjoy yourselves.

We are unable to present to you the freedom of the city in a silver casket, but we say to you sincerely that you are welcome to our clubs and to our homes, and the invitation to our homes is presented to you most enthusiastically by those of us who took the precaution to send their families to the country. (Laughter.)

I trust that the visiting members of the Bankers' Association will consider Halifax the most pleasant and beautiful summer city in British North America. A gentleman on my right, Mr. Schofield, insists on interpolating the words " St. John." Well, we can meet at St. John next year, and then you can

make comparisons of fun-making and fog, etc. I want to remind the Association that when your President of 1893 apparently demurred at the mention of Halifax as a meeting place on account of the distance it was from Toronto, civilization and Christianity—(laughter)—I then suggested that it was just according to the point of view, etc. We think Toronto is a long way off and you regard Halifax as being "quite a distance." But you have come that distance and we ask you to make yourselves thoroughly welcome. We will do our best to see that every member enjoys himself in our way; of course, it must be in our way, a simple and innocent way.

Mr. President, on behalf of the members of the Association in the city, I would like to say that it gives us great pleasure to extend a welcome to you personally. We know the value of your services and we sincerely trust that you may be President for many years to come. (Applause.) I know that without you a great deal of useful work would be neglected, and I take great pleasure in expressing this as the sentiment of the whole Association. (Applause.)

Before closing I want to refer to the loss that the Association has recently sustained in the death of Messrs. Brodie and Murray Smith. I made the acquaintance of the former gentleman last year in Toronto. While it is right to infuse as much pleasure as possible into life, we all have to recognize the streaks of sadness in it, and I cannot but recall the quickness with which friendship sprang up between Mr. Brodie and myself, and that I was looking forward with pleasant anticipations to meeting him again when the sad news of his death reached us. He was one of those warm-souled, lovable men, whose presence a great many members of this Association must personally miss. I think it is a severe loss to the Association when two such men as Mr. Brodie and Mr. Murray Smith are recorded on the death roll of their institution.

I wish I could put in more graceful and forcible language what every member of the Bankers' Association resident in Halifax feels in desiring to make you all thoroughly welcome and in hoping that you will take nothing away with you—(pause and laughter)—nothing but the most pleasant recollections of your visit to Nova Scotia. (Applause.)

The President, in reply to this address, said:

Mr. Knight and fellow-members of the Canadian Bankers' Association: If we had any doubt a year ago in Toronto as to the seriousness of the invitation of the representative from Halifax, and especially any doubt as to the Christian quality of the community down at Halifax, it was perhaps owing, not to the manner of the speaker, but to the actual words used by Mr. Knight in giving the invitation. He did not say, "Come to Halifax," or "Come unto us." He said, "Go to Halifax," and then he entered into an elaborate explanation to show that he did not mean what most people in the western world do mean when they say, "Go to Halifax." (Laughter.) Perhaps I ought to say that I think that even if there had been no invitation from Mr. Knight, the meeting would have taken place here in Halifax this year. This Association is nothing if not co-operative, and if not animated by a desire to bring together in friendly conference the various bankers of the Dominion of Canada. If we are to co-operate and become united for the furtherance of good financial legislation and the advancement of the business interests of the banks, we recognise that we must know each other personally and that we cannot accomplish the best purposes of the Association by correspondence. It is just as true in banking as in the business world, that personal contact is worth any amount of correspondence. If we wish to do the greatest amount of good to the Association as individuals, we certainly should meet in friendly personal conference. The mere publishing of papers is one thing, but the friendly discussion and the attrition of mind characteristic of our annual convention is another and better thing. The Association would have met in Halifax this year, even without Mr. Knight's kindly invitation. Geographically this was in a certain sense the turn of the Maritime Provinces.

While the number of members who have come here from Quebec and Ontario is not as large as I desired, it must not be forgotten that there were several difficulties to be confronted. In the first place Mr. Chipman, our energetic secretary and treasurer, worked daily for a fortnight to get the railways to name their reduced fares, but when the railway companies eventually did state the fares it was too late for many members

to take advantage of them. Most of the younger Associates in Ontario had already arranged for their holidays, and it was not practicable for them to alter their arrangements. As for many of the senior members, it was almost too much to expect them to take their holidays in participating at such a gathering. To them long meetings are wearisome, and it was hardly to be expected that some of them should come so far. Some of them were in England and others were in the Northwest making the annual journeys that men must make who have large interests in that section of the Dominion. However, there are about fifty members present at this meeting, and after all that is a good many bankers to bring together in such a comparatively small country as Canada.

As for what Mr. Knight says about the lack of gracefulness in his periods and the want of fitting words to express his sentiments, I think we all remember the fact that our meeting last year would have been very dry but for Mr. Knight, who contributed the humor to our deliberations needed to make them interesting and enjoyable. I sincerely hope that no matter what his duties to his own institution may be, he will always attend our meetings, and even if we should go to Winnipeg we should take care that Mr. Knight attends, even if the Association has to engage a special car for him. (Laughter.)

Mr. Knight complains that we do not take him seriously. But we do. We realize that with the executive ability and firmness that is necessary in a banker to enable him to say "No" and sometimes perform unpleasant duties, there are other qualities quite consistent with those which enable us to lead an entirely different life outside the bank. We all wish that we could lift care from the brow and throw ourselves into the pleasanter side of life as readily as he does.

On behalf of the gentlemen from Ontario and Quebec, and especially on behalf of those who have been detained at home, I desire to thank the Halifax gentlemen for the hospitable spirit manifested by them. I think that in future, in Montreal and Toronto, we shall have a different conception of what a convention of this Association should be, and we shall give more consideration to pleasures outside of our meetings. We are,

perhaps, a little too serious in Toronto and Montreal, and do not relax ourselves from business cares as easily as we should.

Gentlemen of Halifax, I thank you again very heartily for the hospitality that we have received and are to receive at your hands during our visit. (Applause.)

On motion of Mr. D. H. Duncan, seconded by Mr. George A. Schofield, Messrs. B. Jennings and E. D. Arnaud were appointed scrutineers to receive the votes of the meeting.

On motion the President's address was deferred until the afternoon session.

The report of the Executive Council was then read by the Secretary as follows:

To the Members and Associates:

The Executive Council beg to report as follows regarding the work of the Association during the past year:

INSOLVENCY LEGISLATION.

In the last report of the Executive Council reference was made to the proposed bankruptcy legislation, and your attention was drawn to the fact that copies of bills prepared by the Boards of Trade of the cities of Montreal and Toronto had been examined and a memorandum on the subject had been prepared. In January last a draft bill was prepared under the instructions of the Minister of Finance and submitted as a confidential document to some of the Boards of Trade and to this Association. Arrangements were at once made by the Executive Council to obtain from the bankers in Halifax, St. John, Montreal, Toronto, Winnipeg and Victoria expressions of opinion on the draft bill. Reports were received from Halifax, St. John and Toronto, and as the discussion of these reports took place in Montreal the Council had the benefit of the personal opinion of the chief officers of almost all banks having their head offices there. The Council also had the advantage of the presence of the Superintendent of Branches of the Bank of British Columbia. The result of this discussion is set forth in the memorandum dated 17th February, 1894, prepared for submission to the Minister of Finance, a copy of which was sent to all Banks in Canada whether Members of the Association or not. In April, as you know, a bill was introduced in the Senate. In

the main this bill followed pretty closely the suggestions made by the bankers. There had been a difference of opinion among the members of the Association on the question of permitting compositions, but the Council received reliable information to the effect that no bill would be considered by the Government which did not permit of compositions. There were other features in the bill which were not altogether in accord with the views of Bankers, but which it seemed unwise to resist. Immediately on the introduction of the Senate bill the Counsel for the Association, Mr. Lash, prepared a memorandum for the use of the Executive Council indicating the difference between the Senate bill and the views expressed by this Association. A meeting of the Executive Council was held at Ottawa, and it was arranged that Mr. Lash should watch the course of the bill and endeavor to have the views of the Association carried out as far as possible.

It would be impossible for the Council to enter into a discussion of the various sections, but in their opinion the most serious ground for dissatisfaction arises from the amendment offered on behalf of the merchants to the original Section 62 (now 61), adopted by the Senate. Regarding this Section an exhaustive argument was prepared by our Counsel, dated 19th May, 1894, copies of which were distributed in confidence to the chief officers of the various banks and a supply of which are now on the table.

It is also to be noticed that in the first Senate bill, Section 36 (now 35) the debtor applying for composition and discharge is only required to pay fifty cents in the dollar. Our recommendation was that the minimum should be sixty-six and two-thirds cents.

The bill, as you know, passed the Senate, but was not taken up by the House of Commons during the session which has just closed.

OTHER LEGISLATION.

In accordance with his standing instructions, Mr. Lash examined all bills introduced in the Dominion Parliament and the Ontario Legislature with a view of calling attention to any which seemed to affect specially the interests of banks.

In the Ontario Legislature there were several bills relating to the Assessment Act, to which he called the attention of the President, but as it did not seem likely that the bills would become law, he was requested simply to watch their progress, in order that action might be taken if necessary. They did not become law. During the last week of the Session a bill was introduced relating to assignments of book debts, which, if it became law, would have prejudicially affected the interests of banks. As there was not time to have a meeting of the Council called, your President instructed Mr. Lash to oppose the bill. An interview with the chairman of the committee to which it was referred and a communication to the chairman setting forth some grounds of opposition, were sufficient to prevent its being further considered during the Session, and it was thrown out. The Council, however, are of opinion that an effort will be made next Session to have a bill of a similar kind passed.

A bill was introduced in the Dominion Parliament by the Government relating to the formation of Joint Stock Companies. This subject does not directly affect banks, but any general law on so important a matter cannot be without interest to them. The attention of your President was called to some very objectionable provisions in the bill, but as it was not likely that the House of Commons would be able to consider the bill this year, and as the advisability of banks interfering directly with legislation of the kind should be first carefully considered, no action was taken with reference to it.

Some private bills containing clauses objectionable to banks were introduced into the Dominion Parliament, and on the attention of the proper authorities being called by Mr. Lash to these features, they were removed.

DOMINION NOTE ACT.

On the 4th instant the Honorable Minister of Finance gave notice that he would move the following resolution:

"That it is expedient to amend the Act respecting Dominion Notes, Chapter 31 of the Revised Statutes, by substituting the words 'twenty-five' for the word 'twenty' in the fourth line of Section 3."

On learning that this very important notice had been given,

the President conferred with such members of the Executive Council as he could reach in the time at his disposal, and submitted to the Honorable Minister of Finance an argument in connection with the working of the Dominion Note Act. Subsequently, the Minister of Finance added to his resolution the following section :

" The Minister of Finance and Receiver-General shall not issue Dominion notes beyond the limit of twenty million of dollars without having gold available for their redemption to an equal amount of the additional issue."

And the whole was adopted in the Committee of the House on 14th instant.

The Council believe they may safely state that it is not the intention of the Government to make further issue of legal tenders unless entirely covered by gold.

THE JOURNAL.

Perhaps the matter of greatest importance in connection with the year's work, apart from the Insolvency Legislation, is the establishment of the JOURNAL of the Association, in accordance with the resolution passed at the last annual meeting. The first two numbers were published in Montreal, the labor incident thereto falling almost entirely on the Secretary-Treasurer of the Association. Your Council thought it advisable to appoint an Editing Committee, and this was done at a meeting in December last. The following were appointed members of this Committee for the balance of the year :

J. H. Plummer (Chairman), Assistant General Manager, Canadian Bank of Commerce.

J. Henderson, Inspector, Bank of Toronto.

E. Hay, Inspector, Imperial Bank of Canada.

Corresponding Members.

George Burn, General Manager, Bank of Ottawa.

E. Stanger, Inspector, Bank of British North America.

John Knight, Manager, People's Bank of Halifax.

At the suggestion of the Montreal members of the Council the printing of the JOURNAL was transferred to Toronto. The report of the Editing Committee will be presented to you separately, and if the Members and Associates approve of the

action of the Executive Council, they will be asked to elect annually an Editing Committee, who will be responsible for the very important duty of conducting the Journal.

LEGAL TENDER NOTES.

The Executive Council has had before it, almost since the formation of the Association, the desirability of certain reforms in connection with the issue by the Dominion Government of legal tender notes.

1. The Minister of Finance has been asked to permit the issue of legal tender notes of the denominations of $500 and $1,000, to be crossed with a phrase indicating that they are only to be used by and between banks, or in the course of their dealing with the Receiver-General of Canada.

2. It is also desirable that the practice of redeeming legal-tender notes only in the cities indicated on the notes be discontinued, and that every legal-tender note be redeemable at any office of the Receiver-General.

3. After correspondence with the Finance Department, the President had an interview with the Deputy Minister, at which the latter promised to recommend to the Treasury Board that the two points already referred to be conceded, and that the Government also make arrangements for the issue of certificates against gold coin lodged, all subject to conditions which the President will explain to the Members and Associates.

SUB-SECTIONS OF THE ASSOCIATION.

Under Article X. of the Constitution, sub-sections of the Association may be formed, and strong expressions of opinion as to the desirability of the formation of such sub-sections have been made. As you are aware, sub-sections were formed at Ottawa and Winnipeg, and while it was impracticable for the Bankers' Section of the Board of Trade to become a sub-section owing to its earlier existence, it has affiliated itself with our Association, and the natural division of the objects of the two bodies was at once recognized. During the past year a Bankers' Association was formed in the city of Montreal, to be known as the Bankers' Section of the Board of Trade of Montreal. Mr. Hague, in his address to you a year ago, expressed the hope that the Bankers' Section of the Montreal Board of

Trade, when formed, would become a sub-section of this Association, but the report of the Committee of Montreal bankers appointed to discuss the formation of the body, states that the majority of the bankers upon whom the representative of the Committee called favored "the formation of a city organization, to be affiliated with the Board of Trade, provided it were separate and distinct from the Canadian Bankers' Association."

The report of the Winnipeg sub-section will be submitted hereafter and covers a statement regarding the failure and liquidation of the Commercial Bank of Manitoba.

AMENDMENTS TO THE BANK ACT AND BILLS OF EXCHANGE ACT.

Certain resolutions have been passed at annual meetings and meetings of Council directing the Executive Council to obtain if possible amendments to the Bank and Bills of Exchange Acts. It is understood, however, that nothing is to be done regarding these matters until the Executive Council considers the time opportune for suggesting such amendments to the Government. For the purpose, however, of keeping the resolutions before their successors, the Executive Council beg to mention below the business not discharged by them :

1. Motion by Mr. Burn regarding an addition to Section 84 of the Bank Act. (See page 322 of the Journal.)

2. Motion by Mr. Prendergast regarding Section 51 of the Bills of Exchange Act. (See page 323 of the Journal.)

3. Motion by Mr. Ward in Executive Council regarding Clause 80 of the Bank Act, that whenever legislation affecting the Bank Act is before the House, steps be taken in the direction of enabling banks to collect the rate of interest stipulated to be paid.

MEMBERS AND ASSOCIATES.

In the first report of the Executive Council the list of Associates is stated at 444 (exclusive of 33 entitled to enrollment ex-officio as being chief executive officers of banks), and by the end of the first subscription year the number was 469 and 33 ex-officio, a total of 502. When the second annual meeting was held only 132 Associates and 21 Members had renewed, owing, as we know, to the fact that practically nothing

had been done for the younger Associates. This was the subject of serious discussion at the last annual meeting, which resulted in the establishment of the Journal, and the Executive Council is now gratified to be able to state that the number of Associates stood at 20th July as follows:

Old Associates	353
New " 1894	202
Ex-officio	30
Total	585

116 Associates in arrear not being included.

PRIZE ESSAY COMPETITION.

The essays submitted in the first competition and reported upon at the second annual meeting were referred to a committee of three General Managers, only two of whom acted. This was not a satisfactory arrangement, and at the meeting of the Executive Council on 14th February, 1894, the following minute was passed:

"The President proposed the formation of a committee of five to examine the prize essays, to consist of four officers of not lower grade than manager, to be selected by Council from among four banks, the Secretary-Treasurer to be the fifth member."

The report of this committee has already been published in the Journal of the Association.

LECTURES ON BANKING, COMMERCIAL LAW, ETC.

At the initial meeting of the Association in December, 1891, and at the two subsequent annual meetings, the question of arranging for lectures on subjects more or less connected with banking has been referred to, and a strong desire has been expressed that something in this direction should be attempted. The Journal is now fairly started, and the Executive Council hope that during the ensuing year something practical will be decided on with a view to the establishment of a series of lectures, no matter how modest their scope may be at the outset.

All respectfully submitted on behalf of the Executive Council.

B. E. WALKER, *President.*

The President said that before adopting the Report of the Executive Council he wished to say a few words, and desired, first, to call attention to the fact that printed memoranda, prepared by the Executive of the Association, regarding the Insolvency Bill, were on the table. A word might be said respecting the policy of the Association towards insolvency legislation. It was known that many bankers doubted the wisdom of any insolvency legislation, but it was recognized early that if the Association adopted an attitude in opposition to all such legislation, it would be powerless to aid in bringing about desirable amendments to any insolvency measure which might be proposed by the Government, and therefore the fact that certain bankers did not believe in insolvency legislation had never been officially announced. The policy of the Association had been to watch vigilantly the proposed insolvency legislation and to use every exertion to shape such legislation so that a good measure would be secured. The Association desired a good bill —not a bill in the selfish interest of bankers, but a fair measure, which, by being good for the country as a whole, must also be good for all financial interests in the country.

He thought that the Association had succeeded moderately well in their efforts, except in regard to section 62 (now 61). With respect to that section the view of the Senate was favorable to the contention of the merchants and adverse to that of the banks. What the attitude of the Association should be towards the whole bill unless section 62 is altered, he perhaps ought not to say personally, but he thought the passage of the bill, as long as it contained such an objectionable section, should be prevented if possible. He could not believe that legislators in this country would support such a provision if they fully realized what they were doing. He did not believe that the bulk of the merchants realized what they were doing in permitting their advocate to contend for section 62 (now 61) as at present drawn.

In regard to Provincial legislation in Ontario, the counsel of the Association, being in Toronto, was employed, in addition to his main duty of examining all bills brought before the Do-

minion House, to examine all bills that came before the Ontario Legislature and in any way affected the interests of banks. It should be remembered that a great deal of legislation, ultimately brought forward in other provinces of the Dominion, originates in Ontario.

The report of the Executive Council suggests that the Association should not interfere in such nominally outside matters as the Joint Stock Companies' Act without careful consideration. His own feeling was, that while the Association might endeavor to watch all such legislation, it should at the same time take care not to interfere, except where it was necessary to defend and secure the distinct rights of banks.

Regarding the Dominion Note Act, he thought the paragraph in the report of the Executive covered the whole subject. He had a paper which he had prepared for the Minister of Justice, and if time permitted he might read it at a subsequent stage of the proceedings, because it covered what he considered to be the point of view of bankers towards the Dominion note issue.

Regarding the endorsed legal tenders a resolution would be necessary. The report of the Executive Council merely stated that the Government had consented to do the things indicated in the report subject to a certain condition. After several efforts with the Finance Department by this Association and others, the Deputy Minister had stated to him in a recent interview that he would advise the Government to permit legal tender notes of the denominations of $500 and $1,000 to be crossed with a phrase so that they could be circulated among banks without the risk of robbery.

The Deputy Minister also undertook to advise the Government to arrange to redeem all legal tender notes at any office of the Receiver-General, no matter where the notes were originally issued. But the condition under which these things are to be granted to the banks is that the banks shall pay the expense of any new notes to be issued. Mr. Courtney, the Deputy Minister of Finance, refuses to permit the mere printing of a phrase across the present legal tender notes ; he requires that a new plate be prepared. A resolution regarding this matter will be necessary at a later stage of this meeting.

As to the prize essay competition, it was hoped that the Associates present would approve of the plan that was adopted for judging the essays. It was felt that if representatives from four banks of the grade of Manager or upwards could be secured, they, together with the Secretary-Treasurer, would be certain to pass a fair judgment. He (the speaker) found himself in the previous year in the disagreeable position of having awarded prizes to his own officers, and he did not propose to be placed in that position again. This coming year *it should be insisted upon that the essays be type-written.* There were thirty-four essays altogether in the last competition. It was a very great pity that the officers of many banks in Canada did not take part in this competition. Of the thirty-four competitors only four received prizes, but there are thirty-four men who in the most distinct manner have gained by that competition. The poorest writer of them all has had the advantage of making an effort and studying something that he would not otherwise have undertaken. The fact that three of the four prizes were won by officers of the bank of which he was General Manager was to him in one sense very regrettable, but it was to be accounted for mainly because a larger proportion of the officers of his bank were competitors than in the case of other banks. He hoped that the heads of all the banks would encourage their officers to compete for these prizes, so that the essay competition would be a live one, affording every year increased evidence of its benefits. He felt sure that many young men, when they are called upon to fulfil very responsible duties in their respective institutions, will be glad that they had undertaken in previous years to study subjects which in later life they would not be able to undertake from lack of time.

He hoped that something would be done during the ensuing year towards arranging for a few lectures on subjects connected with banking. If such lectures could be given in the various cities the advantage of such a scheme would soon be manifest.

He moved the adoption of the report, and said he would be glad to hear a full discussion upon it.

Mr. H. Markland Molson seconded the adoption of the report of the Executive.

Before the motion was put Mr. Fyshe said he desired to make some references to the Insolvency Bill, but it was decided to defer the discussion upon the bill until the arrival of Mr. Lash.

The report of the Executive was then adopted unanimously.

The report of the Editing Committee was then read by the Secretary as follows :

TORONTO, 23rd July, 1894.

To the Executive Council, Canadian Bankers' Association.

The Editing Committee beg to submit the following report of their work during the past year :

They assumed charge of the JOURNAL immediately after the issue of the number for December last, so that two numbers have been issued under their supervision. The average cost of each of the four numbers (forming Vol. I.) including postage, has been about $160. For the coming volume, owing to the larger number of subscribers that may be hoped for, and a possible enlargement of the JOURNAL, an estimate of $700 for the four numbers may be made. The subscription list in December last numbered less than 500; at present there are including all members and associates, and those who subscribe without being associates, close on 700 who receive the JOURNAL regularly. This list is capable of still further extension, and your Committee have endeavored to do what was possible in this direction by sending specimen copies to bank directors and others likely to be interested. Many of these have shown a very gratifying readiness to subscribe, and a warm interest in the JOURNAL.

Your Committee have also endeavored to create a more active interest in the JOURNAL on the part of the younger men among the associates, but their efforts have not been as successful as they could wish. They feel that the usefulness of the JOURNAL depends greatly on the amount of interest taken in it by those for whom it is prepared, and they earnestly press the associates to support it in every way, by articles, letters, suggestions, questions and notes respecting points of banking law and practice, etc, etc.

Your Committee have to express their thanks to the following gentlemen :

To Messrs. R. M. Breckinridge and J. W. Hamilton, for original contributions of a most interesting kind ; to Mr. Stevenson, for permission to reprint his article on the early currency of Canada ; to Messrs. Frederic Hague and the members of the firm of Messrs. Blake, Lash & Cassels, for legal information ; to Messrs. B. Austin, E. D. Arnaud, F. W. S. Crispo, Geo. Gillespie, F. W. G. Johnson, F. H. Mathewson, Thos. Young, and others, for letters, clippings, suggestions, etc They are under obligation to others for help in various ways, among whom they should mention Mr. Vere C. Brown, who has supervised very carefully the work of bringing out each number.

All of which is respectfully submitted.

J. H. PLUMMER, *Chairman.*

MR. HENDERSON said that in regard to this report he would like to call attention to the effort that was being made by the editors to produce a satisfactory JOURNAL. In order to accomplish that object it was important that the Association should recognize that the JOURNAL depended for its success in a great degree upon active aid from the associates. Any success hitherto was largely due to Mr. Plummer, who had done almost the entire work. It was unfair, however, to expect Mr. Plummer to bear such a disproportionate amount of the labor of making the JOURNAL successful, and the Editing Committee were exceedingly anxious that all associates should send in contributions. The Committee would like to have a large supply of contributions to draw from, so as to make a really creditable JOURNAL, and one thoroughly representative of the best thought of the Association. The Committee did not want all the articles to be of a serious kind. He thought that many of the members of the Association could furnish reminiscences of their banking experiences which would be worthy of publication in the JOURNAL for the benefit of posterity. He wished to acknowledge the valuable assistance rendered by Mr. Vere Brown in connection with the JOURNAL. If the time ever came when the JOURNAL would require that an editor should devote the whole of his time to it, he did not think the Association could secure a

better man than Mr. Vere Brown, who had already shown the possession of excellent taste for literary work. (Applause.)

On motion of MR. J. HENDERSON, seconded by MR. JOHN KNIGHT, the report of the Editing Committee was adopted.

MR. FYSHE thought that the thanks of the Association were due to the gentlemen who had done so much for the JOURNAL. It was a gratifying thing to have an organ of this Association so admirably conducted. Work of the kind could not be done without a great deal of trouble, and he had reason to believe that the work of the Editing Committee and corresponding members had been cheerfully and well done. He had much pleasure in submitting the following motion :—

"That the thanks of the Association are due, and are hereby tendered, to the Editing Committee and Corresponding Committee for their valuable services in connection with the JOURNAL."

MR. GEO. A. SCHOFIELD seconded the motion, which passed unanimously.

The President then called upon Mr. Lash, to present any information he might have in relation to the Insolvency Bill. Mr. Lash said :—

Mr. President and Gentlemen,—

The subject of insolvency has been so much discussed lately that I need not say anything in reference to the general question. I will simply take up the bill as it was introduced in the Senate and point out some of the difficulties that were met with in endeavoring to carry out the wishes of the banks.

In the first place, after the bill was first drafted and had been distributed among some of the banks, and probably among all the Boards of Trade, I went to Ottawa at the request of the Executive of the Association to have an interview with the Department of Finance, and to urge the views which had been expressed by the bankers in a memorandum prepared by the Executive of this Association, to which the President has already referred. I spent considerable time with a gentleman in the Finance Department, who had been specially instructed to prepare the draft-bill by the Government. I was then in-

formed that it was not a Government measure, in the shape in which it was at that time. I mean by that remark that it had not been considered by the Government in Council, but was merely a draft of the Finance Department not yet adopted by the Government. But the officers in charge were able to express an opinion as to what the Government would do with respect to two or three general questions. The matter of composition and discharge was discussed, and I learned quite clearly, early in our interview, that no bill would be introduced which did not contain clauses relating to composition and discharge. My instructions were to explain that there were differences of opinion in the Association in respect to that particular question, some members being of opinion that there should be no composition allowed at all, and others, not having a very strong opinion against composition, entertained strong views with respect to the maximum and minimum of the amount to be paid in order to procure a composition and discharge.

I endeavored, under instructions from the Association, to have the clauses so drawn with reference to composition that they would be at all events workable and as simple as possible, and although the whole scheme as now presented in the bill which passed the Senate, was not entirely acceptable to the banks, yet it was a vast improvement upon the scheme as first outlined in the draft-bill.

Another question upon which some very strong expressions of opinion were made by the Association was that relating to the appointment of what are called the Official Receivers in the bill. The scheme which was first suggested, that the Receiver should be a mere guardian of the estate, and have nothing to do even with the taking of stock, or reporting to the first meeting of creditors the condition of things, was very objectionable, and I was instructed to endeavor to get the bill so changed before the introduction that at all events sufficient information would be given at the first meeting of the creditors by the person who was to take charge of the estate in the first instance. The bill as eventually introduced in the House did contain clauses which accorded with the views of the Association in that respect, Certain modifications were however made in the bill when before

the Senate, and, on the whole, although not entirely satisfactory, the amendments were regarded as a great improvement over the first draft.

Objections were constantly urged to the great expense connected with the administration of estates under the old Act, and it was said that under the present bill the expenses would not be very much less. That is a subject which I think lies deeper than the surface. The more one considers the scheme of an Insolvent Act, and the more one undertakes the drafting of clauses to carry out the rights of creditors as against the debtors' estate, the more difficulties appear in the way of a simple Act not full of detail machinery. If there were but a few simple clauses giving creditors the right to put an estate into bankruptcy, and declaring that the assets should be realized with the least possible expenditure of time and money, and further declaring that all should share ratably in the result, they would be utterly unworkable without some detailed machinery to produce these results. The only way in which such simple provisions could be worked out would be to allow the Court to do everything, otherwise the Act itself must provide some machinery for the creditors, and the officers in charge of the estate.

The Act as drawn is rather complicated with respect to that machinery, but I am free to confess that it is as little objectionable in that respect as, I think, it can be made. So far as expenses are concerned everything is left to the creditors. They are to say what the various persons concerned in the administration of the estate are to receive, and as much control is given to the creditors in this respect as could reasonably be expected.

With reference to the section which the banks are so much interested in—section 61 of the bill as it passed in the Senate—the circumstances were these: Under the first Act as prepared by the Finance Department, but not submitted to the Government, a section somewhat similar to No. 61 was inserted, but on giving to the Government officers in the Finance Department the reasons which the bankers had against the presence of that section in any Act, I am happy to say that I met with no difference of opinion on the subject Those who were in charge of the draft Act, after hearing what had to be said on the sub-

ject, were convinced that the bankers' contentions were correct, and they said that the section was introduced merely because they found it in a previous Act. But being a matter of considerable importance, involving of course a large principle, I was informed that it would be submitted specially to the Minister of Justice and the Council, before being introduced. It was submitted to the Government in Council and the Minister of Justice, and the conclusion arrived at by the Government was that the arguments made by the banks were logical and should be acceded to, and accordingly in the bill as introduced in the Senate the banks were given the right to rank upon the estate of each person whose name was upon a bill or note for the full amount, until the banks hed received from the estate the hundred cents on the dollar; but for the purpose of voting they should value the security of the person primarily liable and deduct that from the claim. That was the way it was introduced in the Senate, but in the Committee of the Senate strong opposition was made on behalf of Boards of Trade, and the majority of the members of the Committee were induced to reverse the decision of the Government, and to strike out the section which the Government had introduced, and to put in what is now section 61. In the Senate itself a vote was taken, but on looking at the Hansard report it appeared that there was not a very intelligent debate on the subject; only a few spoke at all. There were only 29 members present when the vote was taken, the decision of the Committee being adopted by a vote of 17 to 12.

I may mention that in reference to the question of composition and discharge, there was a very great improvement in the present measure over the state of the law under the old Acts. Under the old Acts the whole administration of insolvent estates, including application for discharge, and for confirmation of a composition and discharge, was vested in the County Courts—not in the Superior Courts Under the bill as introduced in the Senate, and as it is now in the bill before you, the administration of all that part of the Insolvency proceedings relating to the discharge of the debtor, and to composition and discharge, is vested in the Superior Courts, making what we all believe is a very considerable improvement, and removing from the administration that variety of decision which must neces-

sarily take place when the Courts are scattered all over the country, and where there is no real unison of action.

I am, of course, tolerably familiar with the details of the Act, and I shall be very happy to answer any questions which may be asked with respect to the construction or meaning of various parts, or with respect to the omission of any subject.

MR. FYSHE:—Was it not considered by a majority of the bankers objectionable to make it compulsory that all estates should pass into the hands of an Official Receiver?

MR. LASH:—Before the bill was drafted in the Finance Department the question of introducing a Government bill on the subject must necessarily have been considered in Council. The details of it were not considered first, but the main machinery of the bill must have been considered. First: Was it to be an Act to be put in operation at the instance of the creditor only, or were debtors to be allowed voluntarily to make assignments, and go into liquidation? On that point I was informed that a decision had been come to by the Government, and that they had determined that the bill was to assume the character of a creditors' bill only, allowing creditors to place a debtor in insolvency, but not allowing a debtor, as was the case in a previous Act, to voluntarily make an assignment. I do not recall whether the Association gave me any instructions, or came to any conclusion upon that point, but if I had received any direction it would have been of no value because of the decision the Government had arrived at. So I set to work to try and get the machinery, to be provided in the bill, of such a character as to be expeditious, and as cheap as possible.

I may mention that the first draft required a notice to be served on the debtor by the creditor in any proceeding against the debtor—even though the allegation was that he was about to abscond. Three days' notice was necessary to be served on the debtor in such a case, and the same requirement applied even though he had absconded! But the bill as now drawn allows all initiatory proceedings to be *ex-parte* except in the one case, where the allegation is that the debtor has ceased to meet his obligations as they become due.

I may state also that in the first bill nothing was said about

incorporated companies. The Association were of opinion (now that business was being done in such a way that firms were frequently turned into incorporated companies) that it would be a serious omission to leave incorporated companies out of the Act, and would result in having merely a partial Insolvency Law. When the bill was before the Senate, the Committee of the Senate introduced certain clauses at the instance of the banks by which the bill was made to apply to incorporated companies as well.

MR. DE MARTIGNY thought that section 12, sub-section 2, of the bill would be embarrassing to creditors in certain instances.

MR. LASH recognized that there might be some cases where the operation of this clause would not be satisfactory to creditors, but believed that such cases would be very few. In order to make the section apply, bad faith must be shown as against the creditors. The objection taken by Mr. De Martigny had force in it, however, and an effort would be made to have the clause modified if the bill was taken up next session.

MR. FYSHE said that with regard to the matter of official receivers, it must be obvious to the Association that these officials would be simply Government officials, and would not charge themselves with any great responsibility or trouble in looking after an estate. This provision would also add very materially to the expenses of the estate. He thought that in any insolvency bill there should be provision made for a class of receivers or liquidators who might have charge of an estate from the very beginning, and to whom the estate might be assigned, and in whose hands it might be kept until it was wound up. A trust company would be an appropriate selection for such an office. In Nova Scotia the prevailing idea was that a very efficient method for winding up insolvent estates could be found in these trust companies. No one could question their honesty or efficiency, and after a few years they would acquire invaluable experience.

THE PRESIDENT said that such an idea had already been suggested by Mr. Lash, and an effort had been made to induce the Government to give to trust companies the status of both an official receiver and a liquidator under the bill.

MR. LASH said that if there was one proposition more than another in which there was unanimous expression of opinion in Committee, it was that they would not allow the man who got the estate first, to keep it. Although there was a full meeting of the Committee of the Senate when this proposition was under discussion, there was not a man who raised his voice against it, and any member of the Committee who spoke at all spoke strongly against allowing the first man to continue in control of the estate.

MR. FYSHE expressed the opinion that the bill as a whole would not be deterrent of bankruptcy.

MR. LASH replied that as an illustration of the spirit in which the bill was dealt with, it might be mentioned that according to the view of some of the Senators it was a great boon to be allowed to go into bankruptcy. In eloquent tones some of the Senators demanded to know why the farmer should be kept under the harrow and not allowed to "take advantage" of this Act! The pet phrase of some of the Senators was to "take advantage" of the Act.

MR. SCHOFIELD asked if the figure for discharge was not at first placed at 66⅔ cents in Committee?

MR. LASH said it was, but the House subsequently brought it down to 50 cents.

MR. SCHOFIELD said that he wished to make a few remarks about the amount fixed for a discharge. Mr. Lash had stated that the Government had decided in favor of inserting a provision for composition and discharge. Whatever differences of opinion, therefore, there might be among bankers in regard to the wisdom of such a provision, it did not seem worth while to discuss that question because the Government had decided that any insolvency bill must have such a provision. But when it comes to a question of what amount should entitle a man to get his discharge, under a deed of composition, there should be full and careful consideration given the matter. The original clause provided a proportion of 66⅔ cents, and this was altered by the Senate to 50 cents. From what Mr. Lash had said, of the number who were present in the Senate, it evidently is not settled as to whether it should be 66⅔ cents, or 50 cents. It seemed a very undesirable

thing to have any sum mentioned at all. It was utterly impossible to fix any amount that would be equally just in all cases. The Act was to govern in all cases, but there were some cases where, owing to dishonesty of the debtor, 90% would not be a sufficient amount to entitle him to his discharge. Again, from the opposite standpoint, an honest debtor, by the accident of circumstances over which he had practically no control, might become insolvent and after investigation of his affairs 50% would be entirely too much to expect from him. It would be very much wiser and better to leave that matter entirely in the hands of the creditors, subject to the provisions of section 34, which provided that any deed of composition must be executed by a majority in number of the creditors, and three-fourths in value. When the requisite number of creditors were willing to agree to a deed of composition and discharge upon a payment of 45%, they being satisfied that that was all the debtor could pay, they ought not to be restrained by any Act of Parliament. It was an unnecessary interference with the rights of the parties. It was sometimes said that these deeds of composition were executed frequently through sympathy, but after all that was a matter which must take care of itself. If such a large proportion of creditors were willing even from motives of sympathy that a man should get his discharge on paying less than 50%, that was a matter which in course of time would adjust itself.

MR. FYSHE said that this argument left out of question the important fact that the public were interested in this phase of the matter as well as the creditors. Creditors were often found doing unjust and vicious things, and he had seen an estate dealt with in such a way as to be a scandal to the community. The interests of the community were of more importance than the interests of creditors. If one debtor succeeded in making a nice settlement through the influence of friends and persistent wire-pulling, everybody knew that there was a chance for others to do the same thing. It was a mistake to approach this question from the creditors' point of view at all. It should be looked at from the standpoint of what was for the general good. Personally he did not attach much importance to a discharge. If a man had not been dishonest he should not be denied his

discharge, but by no possibility should the law allow a man to make money out of his bankruptcy. There was apparently no way to avoid that result except by taking the estate out of his hands. An insolvent really had no right to his estate. He was simply relegated to the position of the great army of people who had to make their living by hiring themselves out. He, the speaker, would not withhold a discharge from a debtor, unless the debtor had been positively wicked.

THE PRESIDENT said that his own personal disposition was to agree with the views of Mr. Fyshe, that an insolvent should be regarded as commercially a dead man, but unfortunately an Insolvency Act of that kind could not be obtained, and it was necessary to deal with the present situation as we find it. If a man failed and his estate was wound up, and he had been honest, he would undoubtedly get his discharge no matter how little he paid, so that the worst that could happen to him, as an individual, was that he would have to wait for a year. But if you say to a debtor that he must pay 66⅔ per cent., as soon as his balance sheet shows that he cannot pay much more than that, he will resort to the Bankruptcy Act, and if the sum is reduced to 50 per cent., the debtor simply has so much more leeway, and will in many cases wait until his assets are depleted so much further before meeting his creditors.

MR. HENDERSON said that it was very doubtful whether the country wanted an Insolvency Act. The bankers had not been anxious for it, and there had been no general demand in the community for it. The movement appeared to have originated with a few merchants in one Board of Trade who tried to make the Government believe that the country was crying out for insolvency legislation. With regard to the remarks against the specifying of a fixed percentage for a discharge, he thought there would be very few cases where an honest debtor could not obtain the unanimous consent of his creditors to a discharge, where he was able to pay 45 per cent., or even less. The greater good of the community required the fixing of the discharge of a debtor at as high a point as possible.

MR. FYSHE said that although there has been no Insolvency Act since 1879, in his opinion no honest insolvent had since

then suffered from lack of a discharge, notwithstanding the fact that there is no provision for a discharge.

MR. BURN asked if the Government were under the impression that the bankers wanted an Insolvency Act?

MR. LASH said he thought some of the members were under that impression. It might be wise to take an expression of opinion on this matter from the Association for the guidance of the Executive Council.

MR. THORNE thought it would be well that some expression of opinion should be recorded on the minutes of this Association, to indicate that the Association disapproved of the bill in its present form, and urging that any insolvency legislation should be framed more in the line suggested by Mr. Fyshe, whereby the insolvent estate is taken entirely out of the insolvent's hands. The public would approve of such a measure. The feeling in the Maritime Provinces was strongly against preferences. It was very desirable to have the estate of the insolvent distributed ratably, and in the most expeditious manner, among the creditors.

MR. LASH said that one of the chief evils of the old Act was the facility with which insolvents got their discharge. At the expiration of the year from the date of the insolvency, under the old Act, the debtor was at liberty, if he had not already received a discharge from his creditors, to apply to the Court, and on showing that he had conformed to the requirements of the Act, and had obeyed any orders made in respect to him, the Court granted his discharge as a matter of course, unless there was opposition. Opposition could be made to his discharge upon various grounds, but all such opposition cost money, and there was no provision in the Act under which the assignee could oppose the discharge at the expense of the estate. If there had been such a provision it would not likely have been resorted to in many cases, because at the end of a year the great majority of the estates would have been wound up and distributed. Experience showed that creditors would not furnish money for the purpose of opposing the debtors' discharge. Opposition meant the employment of a lawyer, and the examination of the debtor, and the procuring of evidence, etc. The result was, that as a rule the creditors did not resort to the

Court, and the debtor got his discharge. In dealing with this difficulty the Association made the suggestion in regard to the present bill that the Government should appoint in each Province one solicitor, or proctor, in insolvency, at least, and if necessary more, to intervene in all matters where insolvents made application for discharge without consent of creditors; and the Government were also asked, in order to pay the expense connected with this idea, to assess the insolvent estates a certain percentage upon the amount of composition and dividends, and thus form a fund whereby in every case there would be somebody whose special duty it would be to investigate the state of affairs connected with the application for a discharge, and prevent the Court from giving a discharge unless the proctor certified that there was no opposition, or unless after hearing the opposition the Court decided to discharge the debtor. This proposition was put before the Government and was acknowledged to be based upon a very good principle, but the Government were indisposed to take the responsibility of inserting such a provision.

MR. HENDERSON suggested that a committee be appointed to draft a resolution embodying the views of the Association as indicated by this discussion.

MR. FYSHE moved the following resolution, which was seconded by Mr. Thorne, and passed:

That Messrs. Fyshe, Schofield, Henderson, and Lash be and they are hereby appointed a committee to draft a resolution embodying in a general way the views expressed this afternoon upon the insolvency question.

The meeting adjourned until 11 o'clock the following day.

The Report of the Winnipeg Sub-Section was here read by the Secretary as follows:—

WINNIPEG, 14th June, 1894.

To the Executive Council, Canadian Bankers' Association:

GENTLEMEN,—I beg to advise you that the Annual Meeting of the Winnipeg Sub-Section of the Canadian Bankers' Association was held on the 7th inst. MR. A. WICKSON, Manager of

the Merchants Bank of Canada, was re-elected President, and MR. F. H. MATHEWSON, Manager of the Canadian Bank of Commerce, was re-elected Secretary.

When this Sub-Section was organized, it was originally intended to extend it, so that all the bankers in the North-West would be associated with it, but up to the present time it has been felt advisable to confine it to the bankers residing in Winnipeg.

The Sub-Section has been instrumental in bringing about the establishment of a Clearing House in Winnipeg, which was put into operation on 4th December, 1893, and the advantages afforded by its establishment are much appreciated by the members.

Several matters of more or less importance were discussed at our meeting, and concerted action taken thereon.

Twelve meetings of the Sub-Section were held during the past year.

The members of the Sub-Section felt the advantage of having an organization last July, when the Commercial Bank of Manitoba stopped payment, as through it the banks were enabled to act together.

As some particulars respecting the Commercial Bank of Manitoba and its failure may be of interest as matters of record, the following information is submitted :—

The Commercial Bank of Manitoba practically succeeded in an incorporated shape the business of McArthur, Boyle & Campbell, private bankers.

The incorporation took place 19th April, 1884, at which time the authorized capital was $1,000,000, subscribed to the extent of $500,000, and paid up to the extent of $100,700. The capital was afterwards increased as follows: Authorized $2,000.000 ; subscribed $740,700 ; paid up $553,410.

The Bank suspended 3rd July, 1893. A condensed statement of its affairs at that date is as follows :—

Notes in circulation	$ 419,135 00
Due Provincial Government	84,294 20
Deposits payable on demand	495,882 43
Deposits payable after notice	137,176 44
Loans from other banks in Canada, secured	202,583 57
Other liabilities	5,197 82
Total	$1,344,269 46

ASSETS.

Specie and Dominion notes	$ 4,130 26
Deposit for note circulation	19,750 00
Deposits in other banks	85,795 87
Notes, cheques and balances, other banks	26,308 88
Current loans	1,636,260 58
Overdue debts	104,702 18
Real estate	41,158 76
Mortgages on real estate held	12,122 38
Bank premises	10,150 00
Other assets	13,789 07
Total	$1,954,167 98

The liquidation which had taken place at the end of a year is shown by the following figures:—

Notes in circulation	$ 12,440 00
Deposits payable on demand	557,393 10
Deposits payable after notice	22,920 81
Other liabilities	3,042 24
Total	$595,796 15

ASSETS.

Deposit for note circulation	$ 14,750 00
Deposits in other banks	81,045 39
Notes, cheques and balances due, of other banks	4,484 37
Current loans	536,790 72
Overdue debts	465,536 66
Real estate	32,501 06
Mortgages	14,221 35
Bank premises	11,832 38
Other assets	10,063 25
Total	$1,171,225 18

The reduction of liabilities effected during the year was as follows:—

ASSETS.

June 30th, 1893	$1,954,167 98	
" " 1894	1,171,225 18	
		$782,942 80
Received from calls on unpaid stock		760 00
		$783,702 80

LIABILITIES.

Preferred claims paid since July 3rd, 1893.

Bank circulation redeemed	$406,695 00
Provincial Government deposits	84,294 20

Other liabilities paid since July 3rd, 1893.

Loans from other banks	$172 583 57	
Corporations	30,000 00	
Interest on circulation	5,581 84	
Net disbursements	14,324 22	
Offsets	54,900 54	
Bad debts, written off	15,323 43	
		$783 702 80
Total reduction liabilities		$783,702 80
Total reduction assets		$783,702 80

On July 3rd, 1893, Mr. F. W. Ferguson was appointed Chief Liquidator, Messrs. J. S. Ewart and J. M. Ross, advisors, provisionally. On Sept. 12th, 1893, the appointment of Mr. Ferguson was confirmed, with J. S. Ewart and Wm. Hespeler as advisors.

On Sept. 16th, 1893, the bank notes were redeemed as to the public, and at the same date as to the great bulk held by the banks, and the balance before the 3rd Nov. following. The banks accepted the notes after suspension freely, relieving the public from all inconvenience and fear.

The names of the members of our Association, and the banks which they represent, are as follows:—

A. Wickson - - - - -	Merchants Bank of Canada.
A. Kirkland - - - - -	Bank of Montreal.
F. L. Patton - - - - - -	Union Bank of Canada.
W. G. Nicholls - - - -	Molsons Bank.
J. B. Monk - - - - - -	Bank of Ottawa.
C. S. Hoare - - - - -	Imperial Bank of Canada.
Geo. Crebassa - - - - - -	La Banque Nationale.
H. N. Boire - - - - - -	Banque d' Hochelaga.
F. H. Mathewson - - - -	Canadian Bank of Commerce.
D. Simpson - - - - - -	Bank of British N. A.

Yours truly,

ARTHUR WICKSON, *Chairman.*

F. H. MATHEWSON, *Secretary.*

MR. GEO. BURN made a verbal report from the Ottawa Sub-Section. He said that no very serious question arose during the past year before the Ottawa Sub-Section. A meeting of the Sub-Section was held on 22nd of September last, the particular object for which it was called being to discuss the rate of interest allowed on deposits, but on account of the fact that two of the managers were absent, and several of the others were not empowered to act, no decisive action was taken. The only agreement that was arrived at was that the managers would notify each other if any departure were being made from the then existing custom. Fortunately there had been no serious trouble experienced at Ottawa such as had occurred in Winnipeg.

On motion these two reports were received, and ordered to be embodied in the minutes of the proceedings of the Annual Meeting.

The meeting adjourned until 3 p.m.

AFTERNOON SESSION.

July 26th, 1894.

The meeting resumed at 3 o'clock, the President in the chair.

On motion of MR. BURN, seconded by MR. FYSHE, the following resolution was unanimously adopted:—

"That Messrs. M. J. A. Prendergast and Edson L. Pease be re-appointed Auditors, and that the thanks of the Association be tendered them for valuable services during the past year, and to Mr. A. M. Crombie for services during the absence of Mr. Prendergast.

The President then delivered his Annual Address as follows:—

PRESIDENT'S ADDRESS.

When at the second annual meeting in Toronto, a little over a year ago, we elected a President to fill the position which Mr. Hague had occupied for the year and a half which measured the short existence of our Association, I little expected, as you know, to address you to-day. It had been understood that the Presidency would be offered to one of the bankers of Toronto, but we in turn, while deeply conscious of the honor, desired that it should be offered to the chief of our leading bank, both for his own sake, and because of his high position, and, as you know, he was elected. Mr. Clouston, however, was unwilling to accept the office. The Executive Council were then courteous enough to request the bankers of Toronto to express an opinion as to who should be appointed to fill the vacancy for the balance of the year, and we desired that the honor be conferred upon our highly esteemed friend and veteran banker, Mr. James Stevenson, but because of advancing years he also declined, and when the Executive Council met, 6th December, 1893, I was appointed. Up to this time Mr. Hague had not been relieved of the duties of the office, and I ask you to remember that I therefore

only assumed them a little over seven months ago. This must be my excuse for many things which might otherwise have been accomplished.

While on the one hand a mere business association having in view the interests of the banks of Canada as a whole, we are on the other hand a scientific association, consisting of a body of associates anxious to understand the principles of banking and finance; and after the manner of scientific societies, it is expected that the President will set forth annually before the associates the events of the past year which are deemed of importance as objects of study for those concerned about the science of banking and finance. Although he may do so, he will not be expected to discuss the causes and effects of actions with much fulness, and he will perhaps have done his duty if he merely indicates the events worthy of record and study. In any event, on this occasion it is the less necessary that the causes and effects of the recent panic in the United States should be set forth by me, as the senior essay in the prize competition of the year deals with that matter, and the paper by the winner of the first prize has been printed in our journal.

I will not, therefore, rehearse the facts connected with the crises in South America, Australia, Italy and elsewhere, during the last three or four years, and the effects in London and the bourses of Europe, which seem to have been a prelude to the American drama of 1893, although perhaps not in any very direct way contributing to it. The historical events in the United States, dating back even to 1836, the logical outcome of which was the terrific panic of last summer and autumn, are the real prelude to the drama, and I had the honor of speaking to you on that subject at the dinner of the Association in Toronto, although I have not yet quite reconciled my conscience to the unwarrantable advantage I took of your comfortable after-dinner condition in asking your attention at such a time to such a tedious subject. I will then, with your permission, merely sketch rapidly the leading events in the United States connected with banking and finance, and in another paper which I hope to read during this meeting I will ask your attention to one particular feature of United States panics, from the close study of which we in Canada may learn something.

In the closing days of the Republican administration the fear of trouble from the operations of the Sherman Silver Purchase Act was so strong that it was fully expected resort would be had to the power which the Secretary of the Treasury possessed to sell bonds in order to strengthen the Treasury gold-reserve. The gold-reserve which had maintained an average as high as $200,000,000 throughout 1888, fell in the succeeding years as follows:

1889,	maximum	$197,000,000,	minimum	$182,000,000
1890	"	190,000,000	"	148,000,000
1891	"	149,000,000	"	117,000,000
1892	"	125,000,000	"	110,000,000

By February, 1893, the reserve had declined still further to $108,000,000, the lowest point touched since the redemption of specie in 1878, although two or three times it had fallen nearly as low. Large exports of gold had taken place, and further large exports being in sight, some of the leading New York banks, viewing with alarm the fact that there was in the Treasury only $8,000,000 over the reserve of $100,000,000 supposed to be held against the War Legal Tenders, voluntarily deposited with the Treasury a few millions of gold. Humiliating as it was to the Treasury, it was hoped the action would help to renew confidence.

While these alarming gold shipments were going on, the agitation for the repeal of the purchasing sections of the Sherman Silver Purchase Act was daily growing stronger, and at the same time the public dislike of monopolies, which had already produced the Anti-trust Act of 1890, was manifesting itself in many ways, and many of the large industrial companies, especially the so-called Trusts, were distinctly losing credit because of the exposure of their methods of making money, both in the conduct of their business proper and in the stock-jobbing connected with their bonded debts and capital stocks. So that when President Cleveland took office and it was known that to silver agitation, gold shipments, and shaky trusts, there was to be added all the uncertainties of a thorough revision of the tariff, the time was surely ripe for great events.

By the middle of April, Secretary Carlisle, in obedience to

the law, suspended the issue of gold certificates, that is, Treasury certificates for which the actual gold was held in trust, the gold-reserve against legal-tenders having fallen to $100,000,000, the point at which he was required to take this action. In Canada the public began to be anxious as to what our trade and financial relations with the United States would be should that country fall from the gold to a silver basis, which to some seemed every day more probable. At this moment Secretary Carlisle apparently determined to stop paying in gold the legal tenders of 1890 issued under the Sherman Silver Purchasing Act. Had this been done the worst would soon have happened, but President Cleveland promptly interfered, and it was made clear to the public that the reserve of $100,000,000 would be broken into for any purpose necessary to protect the credit of the United States Government.

Large gold exports continued, and the receipts of the Custom House, about the only source apart from the sale of bonds by which the Treasury could obtain gold, had so changed in complexion that whereas the proportion paid in gold or gold certificates had been not far from the entire receipts at one time, the payments were now entirely in legal-tenders. The public had been demanding before the inauguration that the first act of the new President should be to call congress together and repeal the purchasing sections of the Sherman Silver Purchase Act, that being the only thing likely to restore credit, but the President seemed strongly averse to acting hastily. Later it was said, perhaps in grim satire, that the Administration wanted the politicians to have an object lesson first. Towards the close of April meetings were held between Secretary Carlisle and the New York bankers, and while an attempt to borrow $50,000,000 for the Government in connection with a bond issue failed because of inability to agree as to terms, the result of the interviews was to steady matters, and it was thought that the dread of a suspension of gold payments was about at an end.

May opened with the collapse of the National Cordage Co. and a wild panic in industrial and railroad stocks, values falling in every direction, banks stopping discounting commercial paper, while the appalling news every day from Australia

unnerved many London operators who might otherwise have come to the support of the New York stock market. The panic was now fully under way, gold shipments were still being made and by the end of May the gold reserve had fallen to $90,000,000.

During the latter part of the month demands upon New York banks for loans and re-discounts from the west and south became alarming in extent, and with the opening day of June bank failures in the west began. There had been fourteen failures of national banks from March to the end of May. During June and July about 100 National banks suspended, while of all kinds of banks about 200 failed. At the end of the year this had reached for financial institutions of all kinds, National, State, savings and private banks, and trust and mortgage companies, to 600, of whom about 200 had by that time resumed. By the middle of June three things of considerable interest to bankers had taken place:

1. Savings banks in some cities had effectually stopped runs by uniting in a public statement that the legal notice would be required.

2. Banks to a large extent, and all over the country, refused to credit or undertake the collection of cheques, drafts or other bills, unless owners remained responsible for the payment of the drafts eventually remitted by the bank where the bill was payable.

3. The New York banks decided to issue clearing-house certificates.

Just before and after the decision to issue clearing-house certificates there had been extraordinary shipments of currency from New York to the west, for many days at the rate of $1,000,000 per day. Nothing in the trade situation seemed to warrant this and eventually it became clear that it was due to a a loss of confidence in the general situation which made banks and individuals in the west desire to have any cash they could command within immediate reach. This dread spread rapidly over the whole country to such an extent that Comptroller Eckels in speaking at the meeting of the American Bankers' Association, stated that the drain upon the deposits of National banks alone

from 4th May to 12th July amounted to $193,000,000, while he estimated that as much more had been drawn from State, savings and private banks.

On the 26th June, news came that the Indian Government had closed the mint to the free coinage of silver. However great the consternation, and the inability to understand the policy of the Indian Government, after the first few days of excited discussion, one thing became clear, that the purchasing sections of the Sherman Silver Purchase Act must be repealed if absolute ruin was to be averted. But on the very day when in England the statementwas made in Parliament, a body of silver agitators in Washington were organizing to prevent repeal. On the 30th June, the President at last issued his message calling Congress for the 17th of August. June closed with a money panic, the rate for call loans being for a few hours in the neighborhood of 75 p.c. p.a., but trouble was averted by the bold action of several banks in taking out several millions of clearing-house certificates and lending freely to the brokers.

In July and the first part of August, the striking features were the scarcity of currency and the expedients resorted to to supply the wants of the very restricted business that was being done. At the outset, as you will remember, it was merely the hoarding of gold that was feared, but now everything in the nature of currency was being abstracted, and, owing to the inelastic nature of all paper currency in the United States, there was practically in many places no financial machinery for the carrying on of business. But the nature of this hoarding of currency is misunderstood by many. It will not do to lay the blame upon the private individual who sought safety in a stocking, or, what is practically the same, a safe-deposit vault. The New York savings banks were said to have increased their holdings of cash by $10,000,000, and Trust companies suddenly developed a yearning for large cash-reserves, although some had been content to lean on the banks before. But more serious than all was the attitude of the country banker who desired to sleep comfortably at night whether city bankers were able to do so or not, and who, after being satisfied with a reserve consisting largely of credit balances with bankers in reserve cities, say in New York, suddenly wanted not only to increase the percentage

of his reserve, but to have it all in cash in his own vaults. This of course was his strict right, but it wrought very great mischief, and is one more added to the many defects arising from the presence of innumerable small banks instead of comparatively few large ones with branches.

When this scarcity was at its height a very high premium was paid for currency, and such rates as 2 and 3 per cent. lasted for many days. Naturally many devices were suggested to minimize the difficulty. A Buffalo banker proposed that Buffalo banks should issue specially prepared drafts on New York for such sums as 1, 2, 5 and 10 dollars, payable to bearer, and secured by deposit of collaterals lodged with the Buffalo clearing-house for one-third more than the amounts issued. Western grain men talked of moving the crop with post-dated cheques, while border banks, mindful of ante-bellum days, obtained Canadian bank-notes and circulated them.

Banks were enabled to settle between themselves in any particular city by clearing-house certificates, loans, or other devices, but no machinery was created to enable the banks in the large cities to settle with banks in other large cities, and in many cases there was absolute dead-lock. New York would not send currency to Chicago. Philadelphia was unable to pay New York or other cities. What percentage of the entire inland exchanges were thus affected I am unable to say, but as the inland exchanges of the National banks alone have amounted to sixty-three billions in a year, some idea may be formed of the discomfort arising from the paralysis referred to.

The sale of gold and paper currency at a premium, chiefly by New York specie brokers, at first excited the indignation even of bankers, and this fact shows how unwilling we are sometimes to take the only medicine that will effect a cure. Even the premium induced few people to part with their hoards, but it induced gold imports. August had opened with a complete collapse in the speculation in pork, following upon similar conditions in wheat. Railroad and other stocks had fallen enormously, and the export of the now released pork and wheat, together with foreign buying of the now low priced securities, created an exchange situation, which, further aided by the premium paid for gold to arrive, resulted in importations large

enough to bring relief. By the middle of August there was $23,000,000 of gold on the way out. By the end of the month an entire change for the better had taken place, currency came readily from its hiding places, and the panic, as such, was over.

Meantime Congress had assembled, the President had issued a message recommending immediate repeal of the purchasing sections of the Sherman Silver Purchase Act, and with the wrecks of hundreds of banks and industries about, factories closed in every direction, railroads in the hands of receivers, and that army of idle men which eventually reached a million—all as the object lesson, Congress began its debate. We cannot say that the House was slow to come to a conclusion, for by an overwhelming vote they decided for repeal on the 30th of August. A month later the Senate was still arguing; early in October there was serious talk of compromise; about the middle of October the remarkable continuous session took place, giving the silver men a physical victory, and not until the first of November did the Senate, and then only by a majority of eleven, vote in favor of repeal. On the 3rd the President approved, and a sanguine people imagined that honest money had won a victory for all time. Many, indeed, when the tariff bill was introduced at the end of November, felt that the country could safely give its undivided attention to that important subject and that no dangerous schemes would be attempted in the interest of silver. But the question of using the seigniorage on the silver was under discussion when the purchase sections of the bill were repealed, and within seven weeks a bill to coin the silver held as bullion into standard dollars and thus turn the seigniorage on the same into money, was offered. This particular bill opened the discussion, which in the end took shape in another bill to which I shall refer later.

Apart from this financial matters were improving. Gold receipts at the Custom House, a barometer of public confidence in regard to the maintenance of the gold standard, had fallen during the first half of 1893 to one per cent. of the total receipts. But during the last half the proportion had risen to one-third, and this very great improvement dated from the issue of the call for Congress to meet regarding the repeal of the purchase

sections in the silver bill. Many of the miners of Colorado had already turned their attention to gold instead of silver, and the world's product of gold for 1893 is said to be the largest on record. On January 17th, bonds were at last offered for sale to the extent of $50,000,000, and early in February bids were accepted and in accordance with the terms of sale, payments were made therefor in gold. Although the Government were facing an enormous deficit between receipts and expenditures, and were proposing a great reduction in tariffs at the same time, the facts I have quoted practically reinstated the Treasury in public confidence. But on 10th February, Senator Bland, the author of the Silver Act of 1878, introduced a Seigniorage bill which was passed by the House by a vote of 168 to 129, on 1st March, and by the Senate on 19th of that month. So strong was the political force in favor of the measure that some of the best informed financial journals, even those favorable to Mr. Cleveland, believed that he would approve the bill, but on 29th of the month it was vetoed. To outsiders like ourselves the bill seems to be so amazingly dishonest that it is impossible to understand how it received such support even from those who merely wished to throw one last sop to the silver advocates, and who honestly thought the country wanted more currency. The intention of the Sherman Silver Purchase Act was that the silver bought should be held as bullion unless more actual silver dollars were wanted by the public, and all knew that no more would be required. The silver was represented, not by the issue of silver-certificates, as under the Bland Act, but by legal-tender notes payable at the discretion of the Secretary of the Treasury in gold or silver, Congress having expressed the policy of the United States to be that the parity of gold and silver should be maintained. This Seigniorage bill proposed that the bullion should be coined into standard dollars. So that if there was in the Treasury fifty dollars worth of silver bullion, which was, however, enough in weight to make 100 standard dollars, the additional fifty dollars should be issued in legal tender notes—shorn of all verbiage, introduced to give another appearance to the measure, this was its true meaning. Had the bill become law, fifty-five millions of legal-tenders based on nothing but the credit of the Government would have been

issued. As a matter of fact the legal-tenders already in circulation, issued under the Sherman Act of 1890, far exceed the market value of the silver bullion held against them, owing to the decline in the price of silver since it was purchased.

There is still another question perhaps of greater interest to us than anything I have mentioned, and certainly of greater importance to the United States than anything except silver repeal. I refer to the necessity of reform in the banking system. The question has been persistently and ably discussed by the great financial journals of the United States, and has been the most prominent feature in the reports of the Comptroller of the Currency for years past. Several proposed systems are now before the people, more than one being copied largely from our own system, so far as security for bank-notes is concerned. It is the subject also of earnest study in the universities and the journals strictly devoted to economics, and yet there is so little settled opinion on the subject that it would be almost fruitless for us to discuss it until some action is taken or public feeling is further developed. One of the burning points is the repeal of the tax upon State-bank circulation, levied by the Federal Government during the war, but retained ever since. An attempt to have it repealed failed, and this is about the only actual result of the agitation for banking reform as yet.

In order, however, that banking reform may be effective, means should be found, either to relieve the Treasury from its present responsibility of providing gold, when required for export or other purposes, or to increase its power of obtaining gold. This would doubtless involve the funding of the war legal-tenders and the legal-tenders issued under the Sherman Silver Purchase Act. Although many bankers and economists in the United States see the necessity for this course, it is hard to believe that the people who control the polls, misled as they are as to their true interest, will consent to non-interest bearing legal-tenders being funded into interest bearing bonds. Without this reform, however, the Treasury must remain more or less at the mercy of the general public and the banks. It is practically required by law to redeem in gold about $500,000,000 of paper money, representing the two issues of legal-tenders above

referred to, and it has no source of obtaining gold except by the sale of bonds or by the receipts from dues to the Government. For a short period following the panic, as we saw, the Treasury experienced several months during which the proportion of gold paid into the New York Custom House maintained an average of about one-third of the whole receipts, and this, together with the sale of the bonds referred to, in February, built up the reserve to fair proportions. But gold being again required for shipment, and the reserve beginning in consequence to rapidly fall, the bankers and the public again became alarmed and the receipts of gold at the Custom House in the month of June fell to less than one per cent. of the whole, a repetition of the worst experience in 1893. In the four months ending with the close of June the Treasury had suffered a loss of gold, this time amounting to $40,000,000. The people of the United States certainly should be courageous enough to admit failure. They may as well face the fact at once that they have imposed upon the Treasury a contract impossible of performance should conditions arise which we now see may arise at any moment. It is reasonably safe to assert that the business and financial interests of the United States cannot be placed on a sound basis until a cure for this evil is found.

At the moment, however, questions of currency and finance are hidden behind the confusion of tariff debate, the amazing exposures of political corruption, and the business disorganization and losses incident to strikes upon a scale never witnessed in America before, and perhaps not elsewhere.

Some lay critic may tell me that the incidents more or less connected with banking and business in Canada during the past year would have been a more fitting subject for my remarks, but our Associates will not, I think, agree with this view. The addresses at the bank meetings and the reports of the Executive Council and Sub-Sections of this Association cover a fairly complete history of the events in Canada during the past year. It has been a quiet and uneventful year for us, and remarkably so considering the conditions elsewhere in the world. This may be, however, but a happy accident, and we may have unpleasant history forced upon us at any moment. It is by the study of important events, occurring where the stage is larger than in

Canada, that we may learn how to be prepared when we have serious trouble to meet.

During the year we have suffered the loss of one of our Associates, Mr. J. L. Brodie, chief executive officer of the Standard Bank of Canada. Owing to his delicate health he was rarely able to attend conventions of bankers, especially if it involved travelling from home. During the year 1893 he was, however, Chairman of the Bankers' Section of the Toronto Board of Trade, and was at all times ready with wise counsel, which, from his long experience as a banker, both in India and Canada, he was well prepared to give. A short sketch of his career appeared in the last number of our JOURNAL.

At the conclusion of his address the President said, "I must apologize for the extended character of my address. I have been merely repeating facts of history, well known to all of you, but it may be considered as in the nature of a record to appear in the JOURNAL, in view of the fact that the year has been one of the most memorable that any of us have passed through, or perhaps are likely to pass through." (Applause).

MR. FYSHE said that before the Association proceeded with other business, he begged to move a resolution thanking the President for his extremely interesting address. It was indeed a matter of great importance to have on record the events so skilfully and ably detailed by the President. The successors of the present members in years to come would find the admirable and comprehensive record of this subject as written by the President intensely interesting.

MR. WEBB seconded the resolution of thanks to the President, which was carried amid applause.

The Report of the Secretary-Treasurer, dated 31st May, 1894, was then read as follows:—

GENERAL STATEMENT.

Balance brought forward		$4,288 68
Revenue account:		
Subscriptions—Members, 1893	$ 740 00	
" " 1894	2,680 00	
Associaties, 1893	194 00	
" " 1894	463 00	
		$4,077 00
Bank interest		113 68
		$8,479 36

Charges account		3,802 96
Office furniture		224 70
Cash account :		
In bank	$4,423 64	
On hand	28 06	
		$4,451 70
		$8,479 36

Certified

M. J. A. PRENDERGAST, } Auditors.
EDSON L. PEASE, }

MR. E. L. THORNE moved the following resolution, which was seconded by MR. G. A. SCHOFIELD, and carried :—

"That the Report of the Secretary-Treasurer be received, and referred to the Auditors for final examination, and thereafter printed."

MORNING SESSION.

July 27th, 1894.

The Association met at 11 o'clock, the President in the chair.

The members proceeded to elect office bearers for the ensuing year.

A ballot having been cast, the Scrutineers submitted the following Report :

HALIFAX, July 27th, 1894.

To the Members and Associates, Canadian Bankers' Association :

GENTLEMEN,—We the undersigned Scrutineers beg to report the following elections : —

AS HONORARY PRESIDENTS.

Hon. Sir Donald A. Smith, K.C.M.G., President, Bank of Montreal.

J. Stevenson, Esq. General Manager, Quebec Bank.

AS PRESIDENT.

B. E. Walker, Esq., General Manager, Canadian Bank of Commerce.

AS VICE-PRESIDENTS.

Geo. Hague, Esq., General Manager, Merchants' Bank of Canada.

Duncan Coulson, Esq., General Manager, Bank of Toronto.

D. H. Duncan, Esq., Cashier, Merchants' Bank of Halifax.

G. A. Schofield, Esq., Manager, Bank of New Brunswick

AS EXECUTIVE COUNCILLORS.

E. S. Clouston, Esq., General Manager, Bank of Montreal.
R. R. Grindley, Esq., General Manager, Bank of British North America.
F. Wolferstan Thomas, Esq., General Manager, Molsons Bank.
W. Farwell, Esq., General Manager, Eastern Townships Bank.
J. S. Bousquet, Esq., Cashier, Banque du Peuple.
Thos. Fyshe, Esq., Cashier, Bank of Nova Scotia.
D. R. Wilkie, Esq., Cashier, Imperial Bank of Canada.
R. H. Bethune, Esq., General Manager, Dominion Bank
Geo. Burn, Esq., General Manager, Bank of Ottawa.

Yours truly,

B. JENNINGS
E. D. ARNAUD } Scrutineers.

The Committee appointed on the previous day in regard to insolvency legislation now reported, recommending the following resolution, which on motion of MR. J. HENDERSON, seconded by MR. GEO. A. SCHOFIELD, was unanimously adopted :—

"RESOLVED, that the main object of any Bankruptcy Law should be the discouragement of reckless trading, which produces bankruptcy.

"That the best way to accomplish this object is to render it impossible for a bankrupt to gain any advantage out of his bankruptcy :—

"*Resolved further*, that this Association is not prepared to affirm that a general Bankruptcy Act would be beneficial to the community at large: but should the Government decide to introduce such an Act during the next session of Parliament, this Association should not actively oppose its passage so long as its provisions embody the above principles, and do not unjustly discriminate against the rights and interests of banks :—

"*Resolved further*, that any provision which would compel the holders of negotiable instruments to treat the liability of the parties primarily liable thereon as security for the payment thereof, and to value such alleged security and deduct the amount thereof from the claim made upon the estate of the

other parties, would unjustly discriminate against the holders of such instruments, and that any bill containing such provisions should be opposed."

On motion of MR. GEO. A. SCHOFIELD, seconded by MR. GEO. BURN, the following resolution was adopted:—

"RESOLVED, that the Executive Council be empowered to carry out the arrangements with the Dominion Government referred to in paragraph 5 of the Council's Report, provided the various banks of Canada are willing to defray the necessary cost of such changes: provided further, that nothing in the arrangements made shall interfere with the conversion, when presented by a bank, of such special notes into other legal tenders, or gold."

On motion it was resolved that those Associates who had paid a fee of two dollars before the last annual subscription had been reduced to one dollar, be credited with the additional payment, which should be treated as their subscription for the ensuing year.

MR. Z. A. LASH, Q.C., then read a paper on "Warehouse Receipts, Bills of Lading, and Securities under Section 74 of the Bank Act."

On motion of MR. D. H. DUNCAN, seconded by MR. J. C. MORE, the following resolution was unanimously adopted:—

"That the thanks of the Association are due and are hereby tendered to Z. A. Lash, Esq., Q.C., for his valuable paper read before this meeting, and that Mr. Lash be requested to permit it to be published in the JOURNAL."

MR. FYSHE read a paper entitled "The Growth of Joint Stock Companies, their Possible Beneficial Results to Society and their Indirect Effect on Credit and Banking."

At the conclusion of this paper the President congratulated the Association on having the opportunity of listening to such a brilliant and philosophical treatise on a most interesting subject, and on motion of MR. J. HENDERSON, seconded by MR. E. E. WEBB, it was unanimously resolved that the thanks of the Association be given Mr. Fyshe for his very valuable paper.

The President read a paper prepared by himself and entitled, "The Clearing House Certificate."

A paper "On some Popular Fallacies Concerning Banks," by Mr. E. Stanger, of the Bank of British North America, and one by Mr. L. P. Snyder, of the Traders' Bank of Canada, Elmira, on "The Need of a Universal Canadian Bankers' Cipher Code," were read by the Secretary.

The President also read to the meeting the argument which had been prepared and submitted to the Government on behalf of the Association in regard to the Dominion Note Act.

On motion of MR. B. JENNINGS, seconded by MR. E. E. WEBB, it was resolved that the present members of the Editing Committee and Corresponding Committee of the JOURNAL of the Association be re-elected as members of such Committees respectively for the ensuing year.

After some discussion as to where the next Annual Meeting should take place, the following resolution was unanimously adopted on motion of MR. E. E. WEBB, seconded by MR. A. L. DE MARTIGNY :—

"That it be recommended to the Executive Council that the next Annual Meeting of the Association be held in the City of Quebec."

The following resolution, moved by MR. A. L. DE MARTIGNY, and seconded by MR. H. M. WATSON, was unanimously adopted :—

"That the thanks of this meeting be and they are hereby tendered to the Halifax bankers and citizens, to the President and Committee of the Halifax and City Clubs, to the Royal Nova Scotia Yacht Squadron, and to the officers of the Wanderers' Amateur Athletic Club for their kind hospitality during our visit. Also that the thanks of this meeting be and they are hereby tendered to the Hon. Robert Boak and the Hon. Premier Fielding for placing the Legislative Council Chamber, and the House of Assembly Chamber, at our disposal as places of meeting."

On motion of MR. G. A. SCHOFIELD, seconded by MR. THOS. FYSHE, the following resolution was unanimously adopted :—

That the best thanks of the Association are due to the President for the unvarying tact and courtesy with which he has presided over our meeting.

After a short response from the President the Third Annual Meeting was declared closed.

W. W. L. CHIPMAN,
Secretary-Treasurer.

B. E. WALKER.
President.

Note by the President respecting the Section of the Report of the Executive Council headed "Dominion Note Act."—In making their report the Executive Council had before them the letter of the Deputy Minister of Finance to the President, dated 16th July, stating that on the 14th inst. a resolution had been adopted in Committee of the House covering the two sections quoted. Owing, apparently, to the clerical error of some departmental officer, the bill was presented without including the second section. The President has addressed the Deputy Minister of Finance on the subject, but in consequence of the absence of the latter no reply has been received down to the hour of going to press.

WAREHOUSE RECEIPTS, BILLS OF LADING, AND SECURITIES UNDER SEC. 74 OF THE BANK ACT OF 1890.

BY Z. A. LASH, Q.C.

In order properly to understand and appreciate the provisions of the Bank Act with reference to warehouse receipts, bills of lading, and assignments of goods under the provisions of Section 74, it is necessary to glance at the previous legislation upon the subject.

Prior to 1859 the rights and powers of an incorporated bank, in the various Provinces now forming the Dominion of Canada, depended upon the provisions of its charter and upon the general law. There was not then, as there is now, a general Bank Act treating all incorporated banks alike. Each bank then had its own charter, to which it looked for its powers. The charters were not all alike, and some possessed powers which others did not possess, or were subject to restrictions not applicable to others.

In some respects a bill of lading and a warehouse receipt are similar. Each is a receipt or acknowledgment that goods have been received by one from another, but the legal effects at common law of these documents were very different. A bill of lading, being an acknowledgment by a carrier that goods had been received for carriage, was an instrument well known to commerce, and by the custom of merchants peculiar incidents were attached to it, the most important of which was that, upon its transfer, the property in the goods mentioned in it passed to the transferee.

A warehouse receipt, however, had not by custom any peculiar incidents attached to it, and its mere transfer did not pass to the transferee the property in the goods.

The first statutory provision in the old Province of Canada, specially dealing with bills of lading and warehouse receipts, and specially referring to banks generally in connection therewith, was that contained in Chapter 20 of the Statutes of 1859, en-

titled "An Act Granting Additional Facilities in Commercial Transactions." Prior to that statute the rights of banks generally, to acquire bills of lading and warehouse receipts as securities for advances, depended upon the general law and upon the provisions of the charter of each bank.

I do not propose to discuss the rights (if any) which may have been possessed under the general law. The matter is now regulated by statute. I confine my remarks to the statutory provisions.

The Act of 1859 referred to provided that, notwithstanding anything to the contrary in the Charter or Act of Incorporation of any bank in the Province, any bill of lading, or any receipt given by a warehouseman, miller, wharfinger, master of a vessel or carrier, for cereal grains, goods, wares or merchandise stored or deposited, or to be stored or deposited, in any warehouse, mill, cove or other place in the Province, or shipped in any vessel or delivered to any carrier for carriage, might by endorsement thereon by the owner of, or person entitled to receive such cereal grains, goods, wares or merchandise, be transferred to any incorporated or chartered bank in the Province, or to any private person, as collateral security for the due payment of any bill of exchange or note discounted by such bank in the regular course of its banking business, or any debt due to such private person; and being so endorsed should vest in such bank or private person all the right and title of the endorser to or in such cereal grains, goods, wares or merchandise, subject to the right of the endorser to have the same re-transferred to him if such bill, note or debt were paid when due.

The Act made provisions enabling the bank or private person to sell the goods in question in the event of default in payment of the bill, etc., and it contained the proviso that no transfer of any such bill of lading, or receipt, should be made to secure the payment of any bill, note or debt, unless such bill, note or debt was negotiated or contracted at the same time with the endorsement of such bill of lading or receipt.

It will be observed that this Act applied both to incorporated banks and to private persons. There were but five kinds of persons entitled under it to give a receipt for goods,

etc., which might be transferred as collateral security, viz., a warehouseman, a miller, a wharfinger, a master of a vessel or a carrier.

It will also be observed that no transfer of the bill of lading or receipt could be made to secure the payment of any bill, note or debt, unless such bill, note or debt was negotiated or contracted at the same time with the endorsement of the bill of lading or receipt. There was no provision allowing the bank to acquire the security, after the negotiation of the bill or note, upon a prior promise that the security would be given. This was subsequently allowed as will hereafter appear.

The Courts decided that the warehouseman, miller, wharfinger, master of a vessel or carrier, entitled to give a bill of lading or receipt under the statute, must have been a person occupying the position of a bailee of the goods, not being himself the owner.

In the same year, 1859, the statutes of the late Province of Canada were consolidated, and the provisions I have referred to were embodied in Chapter 54 of the Consolidated Statutes of Canada, which was entitled "An Act Respecting Incorporated Banks."

In 1861 this chapter of the Consolidated Statutes was amended, and it was provided that where any person engaged in the calling of warehouseman, miller, wharfinger, master of a vessel or carrier, by whom a receipt might be given in such his capacity for cereal grains, goods, wares or merchandise, was at the same time the owner of such cereal grains, goods, wares or merchandise, any such receipt given and endorsed by such person should be as valid and effectual for the purposes of the Act as if the person giving such receipt and endorsing the same were not one and the same person.

It was further provided by the amending statute that all advances made on the security of any bill of lading or receipt should give to the person or bank making such advances a claim for the repayment thereof, on the grain, goods, wares or merchandise mentioned therein, prior to and by way of preference over the claim of any unpaid vendor.

This statute introduced for the first time the principle

under which the owner of goods, himself in possession thereof, might borrow money from a bank upon the security of the goods, and practically give to the bank a mortgage upon the goods in the form of a warehouse receipt. It will be observed, however, that the persons entitled to do this were confined to five kinds already mentioned, viz., those engaged in the calling of warehouseman, miller, wharfinger, master of a vessel or carrier, and the receipt must have been given in that capacity.

The provision giving the bank a prior claim for repayment of advances over the claim of any unpaid vendor of the goods mentioned in a bill of lading, etc., was important, as under the law of the then Province of Lower Canada, and, under certain circumstances, under the law of the Province of Upper Canada, the claim of the unpaid vendor of the goods would prevail over that of the person making advances upon the security of the goods.

In 1865 the provisions I have alluded to were further amended by Chapter 19 of the Statutes of the Province of Canada for that year, which although expressed to be an amendment of the Act respecting Incorporated Banks, forming Chapter 54 of the Consolidated Statutes of Canada, is strangely enough entitled "An Act Granting Additional Facilities in Commercial Transactions."

This Act provided for the transfer to a bank or private person of any cove receipt or any receipt given by a cove keeper or by the keeper of any wharf, yard, harbor or any other place, for timber, boards, deals, staves or other lumber, laid, stored or deposited in or on the cove, wharf, yard, harbor or other place of which he was keeper; and by it the list of persons entitled to borrow money from a bank upon the security of his own goods, under the simple form of a warehouse receipt, was enlarged so as to include persons engaged in the calling of cove keeper or of the keeper of any wharf, yard, harbor or other place, but the goods upon which he could so borrow must have been timber, boards, deals, staves or other lumber.

The Act also provided that advances made on the security of any such cove receipt, etc., should give a claim for repayment on the timber, boards, etc., prior to the claim of any unpaid

vendor or other creditor, save and except claims for wages of labor performed in making and transporting such timber, boards, etc.

In 1867, during the first session of the first Parliament of Canada, an Act was passed, being Chapter 11 of the Statutes of that year, entitled "An Act respecting Banks." This Act extended to the whole Dominion of Canada, the charters of the various banks incorporated by the various Provinces before Confederation. It was in substance a consolidation of the Acts relating to banks, which had been passed by the Province of Canada, and it repeated the provisions relating to bills of lading and warehouse receipts which were then in force and to which I have alluded.

In 1871 a general Act relating to banks and banking was passed, being Chapter 5 of the Statutes of that year, and, although not so named in the statute, it has been generally referred to as "The Bank Act of 1871."

Sections 46 to 50 inclusive, repeated in the main the enactments theretofore existing with respect to warehouse receipts and bills of lading, but there were some important differences. It will be remembered that the provisions already alluded to enabled a bank to acquire these documents as collateral security for the due payment of any bill of exchange or note discounted by the bank in the regular course of its banking business. Section 50 of the Act of 1871 enabled the bank to acquire them as collateral security, not only for the due payment of any bill of exchange or note discounted by the bank in the regular course of its banking business, but also "for any debt which might become due to the bank under any credit opened, or liability incurred, by the bank for or on behalf of the holder or owner of such bill of lading, etc., or for any other debt to become due to the bank."

Section 47 repeated the old provision that no bill of lading, etc., should be transferred to secure the payment of any bill, note or debt, unless such bill, note or debt were negotiated or contracted at the time of the acquisition thereof by the bank, but these words were added: "Or upon the understanding that such bill of lading, etc., would be transferred to the bank, but

such bill, note or debt may be renewed or the time for the payment thereof extended without affecting such security."

It will be remembered that the list of persons entitled to borrow money from the bank upon the security of their own goods under the simple form of a warehouse receipt, included only persons engaged in the calling of warehouseman, miller, wharfinger, master of a vessel or carrier, cove keeper or keeper of any wharf, yard, harbor, or other place, and, with respect to the cove keeper or keeper of any wharf, yard, harbor or other place, the goods upon which he could so borrow must have been timber, boards, deals, staves, or other lumber. Section 48 of the Act of 1871 extended this list so as to include a curer and packer of pork, or a dealer in wool, and it declared that in the case of the curing and packing of pork a receipt for hogs should apply to the pork made from such hogs.

In 1872, by Chap. 8 of the Statutes of that year, it was declared that the provisions contained in sections 46, 47 and 48 of the Bank Act of 1871 should extend to cereal grains in process of being converted into malt and flour, and to malt and maltsters, and also to hogs when converted into bacon and hams.

In 1880, by Chap. 22 of the Statutes of that year, the right of a bank to hold and acquire a warehouse receipt or bill of lading as collateral security was confined to the case of "collateral security for the payment of any debt incurred in its favor in the course of its banking business," and the list of persons, entitled to borrow from a bank on the security of their own goods under the simple form of a warehouse receipt, was further enlarged and made to include a saw miller, manufacturer of timber, curer or packer of meat, tanner or purchaser of agricultural products.

In 1888, by Chap. 27 of the Statutes of that year, this list was further enlarged and made to include a distiller, and manufacturer or dealer in cotton.

The various Acts prior to 1888 were revised and consolidated and embodied in Chap. 120 of the Revised Statutes of Canada.

No change in the subjects under discussion was made until the Bank Act of 1890 was passed.

The introduction and gradual extension of the principle under which a person obtaining advances from a bank might, as the security for such advances, practically give a mortgage in a very simple form upon his goods in his own possession, has been mentioned. This mortgage was really a fiction created by statute. It was absurd that important commercial transactions should assume the character of a fiction. It was absurd that a man should acknowledge to have received in store from himself certain goods, and that a warehouse receipt should have been issued to himself in respect of them. It was also absurd that this could be done by a miller, pork packer, wool dealer, distiller, dealer in cotton, etc., and should not have been allowed in the case of other persons dealing in agricultural products or engaged in manufacture.

These considerations were presented to the Government on behalf of the banks when the present Bank Act was under consideration, and the Government was asked to abolish the fiction and to extend the principle to all those engaged in manufacture or dealing in agricultural and other products. The Government acceded to the request, and now under section 74 "the bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise upon the security of the goods, wares and merchandise manufactured by him or procured for such manufacture," and "the bank may also lend money to any wholesale purchaser or shipper of products of agriculture, the forest and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of live stock or dead stock, and the products thereof, upon the security of such products, or of such live stock or dead stock and the products thereof."

The Act still allows a bank to acquire and hold a warehouse receipt or bill of lading, as collateral security for the payment of any debt incurred in its favor in the course of its banking business, but by Section 2 the goods mentioned in it must be in the possession of the person giving it, as bailee in good faith and not as of his own property. The provisions under which the bank was allowed to acquire a warehouse receipt granted by a person for his own goods in his own possession, have been omitted from the present Act.

Section 64 provides that, except as authorized by the Act, the bank shall not, either directly or indirectly, lend money or make advances upon the security of any goods, wares and merchandise. This does not, of course, prevent a mortgage being taken upon goods by way of additional security for debts already contracted.

As a bank's right to acquire a warehouse receipt or bill of lading, and to lend money directly upon the security of goods, depends upon the provisions of the Statute, and as transactions of the kind are of almost daily occurrence, I propose to consider with some degree of minuteness the provisions of Sections 73, 74 and 75, and to offer some practical suggestions for the guidance of those who are called upon to act under those provisions. Bear in mind the rule that the bank shall not directly or indirectly lend money or make advances upon the security of goods, wares and merchandise. The exception is contained in Sections 73, 74 and 75.

Section 73—"The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favor in the course of its banking business." Under some of the earlier provisions, it will be remembered, the bank could acquire these securities only by a transfer by endorsement thereon by the owner of or person entitled to receive the goods. The bank could not have taken a warehouse receipt or bill of lading directly in his own favor, or have acquired it otherwise than by endorsement. This was modified by subsequent legislation, and under Section 73 of the present Act the document may be made directly in favor of the bank. I would, however, recommend that so far as possible a warehouse receipt should be in the form of a receipt by the bailee or carrier to the bailor or shipper, and that the bank should acquire it by transfer in the usual way.

The warehouse receipt which a bank may acquire and hold must be a receipt given by a person for goods in his actual, visible and continued possession as bailee thereof in good faith, and not as of his own property. The present Act does not contain the provisions in previous Acts, which declared that where a person engaged in the calling of warehouseman, etc., by whom a receipt may be given in such his capacity for goods, etc., was,

at the same time, the owner of the goods, such receipt, given and endorsed by such person, should be as valid and effectual for the purposes of the Act as if the person giving such receipt and endorsing the same were not one and the same person, and it would seem to follow that, if a person, though apparently a warehouseman, were really the owner of the goods mentioned in the receipt issued by him, such receipt would not afford to the bank any security as against execution creditors or others not claiming through the owner. This fact was pointed out to the Government when the bill was under consideration, but for some reason, not fully explained, the Act was not changed in this respect.

As a practical suggestion, I would recommend that before any advance is made upon the security of a warehouse receipt, the banker should satisfy himself that the receipt has been issued by a person for goods in his actual, visible and continued possession as bailee thereof, in good faith, and not as of his own property. The possession must be actual, it must be visible, and it must be continued; and the issuer of the receipt must be a bailee in good faith. This provision was doubtless inserted to prevent transactions of the kind reported in some cases in our courts, where apparent possession of a cellar or other portion of a warehouse was given by the owner to a clerk or some intimate friend, who then issued, as a warehouseman, a receipt for the goods in the cellar or other place, but where the practical control of the goods and of the place itself remained in the owner.

"Bill of Lading" is defined to include "receipts for goods, wares or merchandise accompanied by an undertaking to transport the same from the place where they were received to some other place, whether by land or water, or partly by land and partly by water, and by any mode of carriage whatever." It is not necessary to enlarge upon this definition. It is not likely that much difficulty will arise respecting bills of lading, as they are usually isued by some well known carrier.

"For the payment of any debt incurred in its favor in the course of its banking business." You will remember that in the Act of 1871 the words were "For the due payment of any bill of exchange or note discounted by the bank in the regular course

of its banking business, and also for any debt which might become due to the bank under any credit opened or liability incurred by the bank for or on behalf of the holder or owner of such bill of lading, etc., or for any other debt to become due to the bank." This extended provision does not now exist. The case is confined to a debt incurred in the course of the banking business. The distinction between a debt and other liability is well known to the law. For instance, the liability of a guarantor is not a debt, but should the guarantor supplement his guaranty by payment, a debt would then arise. A bank, therefore, could not acquire or hold a warehouse receipt or bill of lading as collateral security for a liability which it might incur as the guarantor of a customer.

Under Sec. 75 "The bank shall not acquire or hold any warehouse receipt or bill of lading 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, or upon the written promise or agreement that such warehouse receipt or bill of lading would be given to the bank."

"Unless such bill, note or debt is negotiated or contracted at the time," etc. The word "negotiated" evidently is intended to refer to the bill or note, and the word "contracted" to the debt, but a case may arise in which the word "negotiated" may apply to the debt as well as to the bill or note.

What is negotiation within the meaning of the clause? I am aware that bankers have acted upon the opinion that a warehouse receipt or bill of lading could be lawfully acquired as security for the payment of a note discounted for a customer, the proceeds of which were applied to retire another note or debt of his due to the bank. It is clear, however, under decided cases, that such cannot be done; the substance of the transaction must be looked to, notwithstanding the form which it may take. Mere bookkeeping entries cannot in such a case alter the true position. The note must be negotiated or the debt contracted at the time the bank acquires the security, or upon the written promise or agreement that the security will be given, and a note which is in substance a renewal of another note, or which is merely substituted for a liability of another

kind, such as a debt upon overdrawn account, is not a note negotiated or a debt contracted within the meaning of the statute.

In a reported case a bank held a warehouse receipt as collateral security for the payment of a note, and upon the maturity of that note the warehouse receipt was given up, a renewal note taken and a new warehouse receipt given as security for the renewal note: the Court held that the renewal note had been negotiated within the meaning of the statute, and that the acquisition by the bank of the second warehouse receipt was regular. This case was decided in 1885; the question was not again brought up till a few months ago, when a similar question came before the Court of Appeal for Ontario. The Court unanimously decided that the statute did not authorize the substitution of one security for another, and notwithstanding the fact that the bank had given up a valuable security, in consideration of getting the new security, their acquisition of the new security was held to be unlawful.

There is really no safe way of acquiring a warehouse receipt or bill of lading, under the sections of the statute now being considered, unless the transaction is a new one, not connected by renewal or substitution with some past transaction, and unless the receipt or bill of lading is acquired at the time of such new transaction, or upon the written promise or agreement that it will be given. I would make the practical suggestion that, until the debt, in respect of which a warehouse receipt or bill of lading is held, has been absolutely extinguished, the document should not be given up, but should whenever practicable be still held by a bank. The statute expressly allows the bill, note or debt to be renewed, or the time for the payment thereof to be extended without affecting the security afforded by the receipt or bill of lading.

"Or upon the written promise or agreement that such warehouse receipt or bill of lading would be given to the bank." It will be remembered that in previous Acts the words were, "Or upon the understanding that such bill of lading, etc., would be transferred to the bank."

The promise or agreement must now be in writing, and it must exist at the time the bill, note or debt is negotiated or contracted.

"Promise or agreement." The two words are not identical. An agreement is well-known to the law; there must be two parties to it; there must be a consideration for it, and as it must, under this statute, be in writing, it would probably be held that the writing must contain the names of the parties and disclose the consideration. The word "promise" seems to be a wider word than "agreement," and if from the writing it could be held that a promise to give the security had been made, it would probably be sufficient, although it did not contain the essentials of a legal agreement.

"Such warehouse receipt would be given." What does this mean? Does it mean that the precise warehouse receipt, which is actually afterwards acquired, must have been specially referred to in the written promise; or does it mean that a general promise to give a warehouse receipt upon goods would be sufficient? For instance, a merchant may require an advance to purchase goods. He offers to give the bank a warehouse receipt upon the goods so soon as they arrive. How should the promise be worded? Should it describe the warehouse receipt to be given by mentioning the warehouse, the warehouseman, the quantity and description of the goods? Or would it be sufficient if the promise were merely to give a warehouse receipt upon goods? The first would, of course, be clearly sufficient, but if the receipt actually given did not correspond exactly to the description of it contained in the promise, awkward questions might arise. I would not like to express a positive opinion that a promise of the general nature mentioned would not be a compliance with the Act. At the same time I would not like to say that it would be sufficient. A decision has been given by the Court in Ontario that the goods need not be in *esse* at the time the promise to give the warehouse receipt is made, and I think the statute does not require that all the particulars should be mentioned; in practice it would be well to avoid too much particularity. At the same time the general description should be sufficiently particular to identify the receipt which might afterwards be given. For instance, the kind of goods should be described, and, if practicable, they should be otherwise identified as manufactured by so and so, procured from so and so, etc.

The bank having acquired a warehouse receipt or bill of

lading, Section 73 goes on to say that it " shall vest in the bank, from the date of the acquisition thereof, all the right and title of the previous holder or owner thereof, or of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favor of the bank instead of to the previous holder or owner of such goods, wares or merchandise," and Section 77 declares that all advances made upon the security of any bill of lading or warehouse receipt, shall give the bank a claim, for the re-payment of such advances, on the goods, prior to and by preference over the claim of any unpaid vendor.

It will be remembered that, in certain cases under the previous Acts, the claim was prior not only to that of an unpaid vendor, but also to that of other creditors except claims for wages, etc. In the present Act the words " or other creditor " are omitted, and it is expressly provided that priority shall not be given over the claim of an unpaid vendor, who had a lien on the goods at the time of the acquisition by the bank of the receipt or bill of lading, unless the same was acquired without knowledge on the part of the bank of such lien. This qualification is new.

Sub-sections 2 and 3 of Section 73 are important. Time will not permit me to enlarge upon their provisions. Their meaning is reasonably clear. They are as follows:

" 2. If the previous holder of such warehouse receipt or " bill of lading is the agent of the owner of the goods, wares " and merchandise mentioned therein, the bank shall be vested " with all the right and title of the owner thereof, subject to his " right to have the same re-transferred to him, if the debt, as " security for which they are held by the bank, is paid.

" 3. In this section the expression 'agent' means any person " entrusted with the possession of goods, wares and merchan- " dise, or to whom the same are consigned, or who is possessed " of any bill of lading, receipt, order or other document used in " the course of business as proof of the possession or control of " goods, wares and merchandise, or authorizing, or purporting " to authorize, either by endorsement or by delivery, the posses- " sor of such document to transfer or receive the goods, wares " and merchandise thereby represented; and such person shall

"be deemed the possessor of such goods, wares and merchan-
"dise, bill of lading, receipt, order or other document as afore-
"said, as well if the same are held by any person for him or
"subject to his control, as if he is in actual possession thereof."

I have already referred generally to the provisions of Section 74. They will now be closely considered.

"The bank may lend money to any person engaged in business as a wholesale manufacturer upon the security of the goods, etc., manufactured by him or procured for such manufacture."

Sub-section 3 provides a form in which the security may be given and declares the rights acquired by the bank under such form. I think, however, that the security may be taken in any other way allowed by the law of the place in which the transaction occurs. For instance, in Ontario there is a Chattel Mortgage Act, which in effect makes void, as against creditors, any mortgage made by a person upon goods remaining in his own possession, unless certain forms are complied with and the mortgage filed in the proper office within a limited time. I think a bank might under Section 74 lend money upon the security of a chattel mortgage in the ordinary form.

"Person engaged in business as a wholesale manufacturer." What does this mean? I frankly confess my inability to give any satisfactory definition of a wholesale manufacturer. In the majority of cases the distinction between wholesale and retail is easily seen, but the nearer the dividing line is reached the more difficult the question becomes. The matter was debated before the Government when the Bill was under their consideration, and was further debated in Parliament when the Bill was before that body, but no one attempted to define the meaning of the term. It was thought best to let it remain indefinite, leaving the bank to avoid transactions in which the question might be raised, or to take the risk which might be entailed.

"The bank may also lend money to any wholesale purchaser or shipper," etc. The same question will arise here to which I have referred with reference to the wholesale manufacturer. I do not attempt to define a wholesale purchaser or shipper.

"Such security may be given by the owner and may be

taken in the form set out in Schedule C to this Act, or to the like effect." If instead of taking security, by way of chattel mortgage or otherwise, in accordance with the law of the place wherein the transaction is had, the bank thinks proper to take security in the simple manner authorized by the Act, the form set forth in Schedule "C" must be followed, or a form to the like effect.

Schedule "C" is as follows:—

"In consideration of an advance of ..... dollars by the (name of bank) to A. B., for which the said bank holds the following bills or notes (describe fully the bills or notes held, if any), the goods, wares and merchandise mentioned below are hereby assigned to the said bank as security for the payment, on or before the ..... day of ..... of the said advance, together with interest thereon at the rate of ..... per cent. per annum from the ..... day of ..... (or, of the said bills and notes or renewals thereof, or substitutions therefor, and interest thereon, or as the case may be).

"This security is given under the provisions of Section 74 of the Bank Act, and is subject to all the provisions of the said Act.

"The said goods, wares and merchandise are now owned by ..... and are now in ..... possession, and are free from any mortgage, lien or charge thereon (or as the case may be), and are in (place or places where goods are), and are the following—(particular description of goods assigned).

"Dated at.....18....."

The security must be given by the owner of the goods to be assigned. A question arises here, can the money be lent to one person and the security be taken from another? Or must the money be lent to the owner of the goods? The statute enables the bank to lend money to any person engaged in business as a wholesale manufacturer upon the security of the goods manufactured by him, etc. It does not say that the goods manufactured by him, or procured for such manufacture, must be owned by him, but upon the whole construction of the provision such would appear to have been the intention, and I would advise banks not to lend money to one person upon the security of goods belonging to another.

The question was once asked whether it was necessary that

the amount of the advance, or of the bill or note, should be mentioned in the form of security under Section 74. I think that the amount is an essential part of the form, and that if it be not given, the form would not be that set forth in the Act or to the like effect. I would recommend all banks to adhere closely to the words of the form, and so avoid questions that might otherwise arise. The arrangement of the various parts or clauses of the form is not material. For instance, the words, "this security is given under the provisions of Section 74 of the Bank Act," etc., might appear in another part of the form and yet it would be "to the like effect." The name of the owner of the goods should be stated, and the name of the person in whose possession they are should be given, but it is not necessary that they should be in possession of the owner; the place or places where they are must however be mentioned.

The only direction with respect to the description of the goods is contained in the concluding words of the form as follows: "And are the following (particular description of goods assigned)." This is certainly an important essential of the form, and is in most cases the most difficult to comply with. What is a particular description of goods? The verb "to particularize" is thus defined by Worcester: "To mention distinctly or in detail, to state by particulars, to show minutely, to specify."

In The Ontario Chattel Mortgage Act the following clause is contained: "All instruments mentioned in this Act, whether for the sale or mortgage of goods and chattels, shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished." Probably the particular description required by form C would be complied with, did the form contain the description required by the Chattel Mortgage Act. There have been several decisions by our courts under this clause, and in the absence of express decisions under "The Bank Act" (of which so far as I am aware there are none up to the present time) it would probably be wise to observe the principles laid down in those decisions.

It has been held that it is sufficient if the mortgage points out the subject matter of it so that a third person, by its aid, together with the aid of such enquiries as the instrument itself suggests, may identify the property covered. A description in

a mortgage of "all the goods now in a certain shop, etc.," was held sufficient, as a detailed description of the goods in such a case is unnecessary, because the particular shop being ascertained, the description covers all the goods in it with as much certainty as if each article were specified and described. If, however, the description be "the goods, etc., hereinafter particularly mentioned which are now situate in a certain shop," it is necessary to describe each article so that a third person, by the aid of the description and the aid of such enquiries as the instrument itself suggests, might identify the goods intended to be covered ; therefore where the goods in a mortgage were described as "all and singular the goods hereinafter particularly mentioned and described in the schedule hereto annexed, all of which goods, etc., are now situate, lying and being, etc." (describing the premises), but not stating that such goods were all the goods on the premises, and where it appeared that there were more goods of the same kind than the quantities specially mentioned, and where the particular description was not sufficient to enable the goods to be thereby readily and easily known and distinguished, the mortgage was held void. In the case referred to one of the learned Judges of the Supreme Court of Canada uses the following language: "If, however, to a general description is added a detailed one, by description of the articles, with the quantities of the different kinds of goods, and there are more goods of the particular kind than those mentioned, and from which the others could not be distinguished, none at all would be covered, either by the general description or the detailed one. For instance, a man gives all the horses in his stable, all the cows, and he gives five calves, and there are found to be ten calves, there the description would not cover the five calves, because you could not tell which five of the ten he meant to transfer. Where a difficulty arises in selecting out of larger quantities, specific articles of a less quantity or number, I think none would pass. A mistake in the description, however, of certain goods would not invalidate the sale of the whole, which, if it had not been for that particular description, would have been good."

Bankers should be careful to avoid describing goods as "so many feet of lumber," "so many bushels of wheat," "so many

sides of bacon," etc., unless such a description can be followed by such particulars as will identify the things described and enable a person, by the aid of such enquiries as the instrument itself suggests, to identify the property covered. If the intention is to cover all the lumber, all the wheat, or all the sides of bacon in a particular place, the description should say so, and the words "estimated to be about so many feet," "so many bushels," "so many sides," etc., might be added.

Care should be taken also to describe the place with certainty. For instance, if a man has two warehouses in the same place, and has goods of the same kind in each, the description should not say that the goods are "situate in my warehouse at such a place." The particular warehouse intended should be identified by reference to its precise situation, or to its number, if it be numbered, or to the material of which it is built, if the two differ in that respect. It may be said that to give a particular description is impossible in many cases, as a man will not give a security upon all the goods of a particular kind which he owns, and his warehouse may be so arranged that it is impossible to separate a portion of the goods from the whole, or to place any peculiar marks of identity upon a portion. If this be so, then the bank should not rely upon the security when making the advances, but if it be given it should be taken *quantum valeat* only.

The provision which prevents a bank from acquiring a warehouse receipt or bill of lading, unless the bill, note or debt is negotiated or contracted at the time of the acquisition or upon the written promise, etc., applies also to the acquisition of securities under Section 74, and what I have said on this subject in connection with warehouse receipts is applicable to the acquisition of securities under this section.

If the security be properly acquired by the bank and be in proper form, then by virtue of it "the bank shall acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt."

Turning to the clause defining the rights under a warehouse receipt, we find that it vests in the bank, from the date of the acquisition thereof, the right and title of the previous holder or

owner thereof. In other words, the bank acquires the property in the goods, and the right to sell them in order to obtain payment of the money advanced upon their security.

Questions will doubtless arise as to the rights of the bank (under a security taken pursuant to Section 74) with respect to grain (and other like merchandise), when the precise grain, in existence at the time the security was taken, has been removed, and other like grain substituted by the owner. As between the bank and the owner the question is not likely to arise. He could not set up his own wrong so as to deprive the bank of the right to take the grain which he had substituted for that which he had removed, but should an execution be placed in the sheriff's hands against the owner, and should the sheriff seize the substituted grain, the question would then arise. The matter has already been before the courts with reference to warehouse receipts, and it has been held that under certain circumstances the bank is entitled to the substituted grain. It is not improbable that the principles of these decisions would be followed. The subject, however, is an intricate one, and time will not permit of my pursuing it in the present paper.

To summarize what should be borne in mind whenever a bank is asked to advance money upon the security of a warehouse receipt;

1. It can be acquired only as collateral security for the payment of a debt incurred in its favor in the course of its banking business.

2. The receipt must be given by a person for goods in his actual, visible and continued possession as bailee thereof in good faith, and not as of his own property.

3. A note taken by way of renewal or substitution or otherwise, representing in substance, though not in form, a pre-existing indebtedness, is not negotiated within the meaning of the statute.

4. A warehouse receipt cannot be taken in substitution for one previously given.

5. If the receipt be not given at the time the bill or debt is negotiated, it cannot be given afterwards unless there be at that time a written promise or agreement to give it.

To summarize what should be borne in mind when a bank is asked to advance money upon the security of an assignment of goods under Section 74:

1. The borrower must be a *wholesale* manufacturer, etc. In deciding the question who comes under this definition give the benefit of the doubt to the bank and refuse the advance.

2. Follow closely form "C" in the schedule to the Act.

3. Remember that the description of the goods must be a particular description, and that the place where they are must be mentioned.

4. The money must be advanced at the time the security is taken, or upon the written promise that it will be given.

5. No change in the form of a pre-existing indebtedness, such as discounting a note and using the proceeds to pay off such indebtedness, will be regarded as an advance for which security in form "C" can be taken.

6. A security in form "C" cannot be taken in substitution for one previously given.

I have in the foregoing referred to the various parts of Secs. 73, 74 and 75 which relate to warehouse receipts, bills of lading and assignments of goods as security, up to the time of the acquisition thereof by the bank. Time will not permit of a consideration of the clauses relating to the rights of the bank, after acquiring these documents. Provisions are made for the realization of the securities in the event of non-payment, and for the punishment of those who wilfully make a false statement in a warehouse receipt, bill of lading or security, or, without the consent of the bank in writing, wilfully alienate, or part with the goods.

Section 76 is new. It is sure at some time to give rise to serious questions. It is as follows:—

"If goods, wares and merchandise are manufactured or "produced from the goods, wares and merchandise, or any of "them, included in or covered by any warehouse receipt, or "security given under section seventy-four of this Act, while so "covered, the bank holding such warehouse receipt or security "shall hold or continue to hold such goods, wares and merchan-"dise during the process and after the completion of such manu-

" facture or production, with the same right and title, and for " the same purposes, and upon the same conditions, as it held " or could have held the original goods, wares and merchandise."

One interesting question occurs to me. Suppose that two or more kinds of raw material enter into the manufacture of certain goods; the owner borrows from one bank a sum of money upon the security of one kind of raw material, and from another bank a sum of money upon the security of another kind. What are the rights of each bank with respect to the manufactured goods? I submit this question for your consideration.

ABUSES IN CONNECTION WITH BANK COLLECTIONS IN CANADA AT REMOTE POINTS.

BY E. D. ARNAUD.

One of the objects of an association such as ours is, I assume, to ascertain whether any defects exist in the methods in which banks carry on their daily operations and transactions with each other, and where we find an admitted defect, or an usage conceded to be a defect by a decided preponderance of opinion, to adopt the best practicable means for remedying it. There can be no doubt that banks acting in unison, or at the instance of a representative organization such as this, can much more readily and thoroughly carry out an improvement in methods, than any of us, or all of us, could ever hope to do by single-handed, unconcerted effort.

It was probably with this very idea in its mind that the Editing Committee of the JOURNAL invited the Associates to ask questions and make suggestions. I availed myself of the opportunity to address some remarks to the Editing Committee on some matters that had occurred to me, and one of which seemed to me to have a troublesome, unprofitable, and even dangerous side. I wish it to be understood that my point of view is somewhat limited, and that I speak more with reference to what prevails in the Maritime Provinces, although my recollections of Ontario and Quebec are that the practice I consider a nuisance, a grievance, and very bad banking, is not much less in evidence and existence there.

You are all aware of the severe competition between wholesale houses, you know how thoroughly every nook and corner of the Dominion is covered by their travellers, and how goods are sold right and left to village and wayside storekeepers living miles away from any banking point, and without any definite, clear, business-like bargain or understanding as to how the goods will be paid for, beyond the simple fact that "the firm will draw." This drawing is done not at all seldom before the goods are received, and sometimes before they are even shipped.

In most instances a "No Protest" instruction is attached, so that the drawer at least may not be put to expense. In many cases the drawees can only be reached by mail at stated times, twice, thrice or once a week. Delay, proverbially dangerous, is more than ordinarily dangerous in a matter of this sort, not to speak of the very much greater than ordinary draft on the care and attention of the officer in charge of correspondence and collections. The uncertainties, anxieties, the chances of accident are often aggravated by the absence, indifference, procrastination, or deliberate neglect of the drawee, and more than one, more than two or three requests for the prompt return of the document are unheeded.

It will happen not infrequently also that acceptance is refused because of some alleged difference in terms, or that goods are not up to sample, or according to order.

The question I want to raise is whether there is any good reason, anything not visible to the country banker, why a Provincial bank or branch should continue to transact such collection business, and at rates, even when acceptance is obtained without delay, altogether inadequate for work performed and risks assumed. The facilities of the post office are just as much at the service of the maker of the draft as of his banker, and quite as much at the service of the banker at Montreal or Toronto as of the collecting agent on whom the work is devolved at a nominal recompense. I am aware that my views must be somewhat modified in the case of large banks with numerous branches, doing or attempting to do through their own branches the work I have here described.

But even in their case I would humbly suggest that they are overdoing the thing, that they are assuming work which belongs to the credit and corresponding departments of their wholesale customers, and that they are making, when the bills are not discounted, debt collectors of themselves and sinking the banker, and that when the bills are discounted they are assuming risks which do not belong to legitimate banking.

These risks are well worth considering at the present time.

It is true we have had no panic or crisis like our neighbours across the border, but neither had we in 1873. My re-

collection is, however, that there were two or three years carrying and renewing of liabilities, until liquidation, sifting, weeding out, came at last.

Four, five, six, seven years after 1873, banks were wiping out their rests, reducing their capital, reducing their dividends, going out of existence. I do not wish at all to be understood as saying the conditions are the same. On the contrary, I think the experiences of those years have led to better methods, to sounder principles, to a more cautious selection of paper on the part of Canadian banks. But all the same, I think we have got to face the possibility, and I am inclined to say the probability, of hard times of some duration, and a reorganization of the loose and unbusiness-like methods governing the collection of unaccepted drafts in out of the way towns and villages seems very much in order.

The remedy rests more with the controlling minds of the larger banks than with rural bankers like myself. If I have established that we rural bankers have a substantial grievance, and that the metropolitan banks are assuming unbusiness-like and unwarranted risks, foreign to the science and art of banking, I shall have achieved my object, although I cannot close without expressing regret that the presentation of my view had not fallen into abler hands.

CORRESPONDENCE.

THE NEED OF A UNIVERSAL CANADIAN BANKER'S CIPHER CODE.

To the Editing Committee :—

The necessity of having at immediate command a telegraphic cipher code for use between this office and branches or agencies of other banks in Canada becomes more apparent to me each time I have occasion to wire funds to any other bank, or upon receipt of a message after the following manner, viz. :

"Toronto, July 10-94. Pay John Smith one hundred dollars. Remittance following. James Brown, Manager."

Before I have finished reading the question involuntarily arises at once, "Is it genuine?" and I never send such a message without feeling at the time of sending that the banker receiving it will regard it suspiciously. Neither my correspondent nor I dare take any risk with such messages.

As Patten says in his work on *Practical Banking*, "The "reasons for our hesitation must be evident to any banker. "They are found in the fact that under the present system tele- "graphy is a very loose business. A person can enter any large "telegraph office and send in any name any decent sort of a "despatch to anybody. For instance, a boy can go into the "office of the Western Union in Boston, and send in my name "a despatch to any of my correspondents anywhere, asking the "payment to anybody of any sum of money with the request "that the same be charged to my account. No remedy for this "state of things has so far been suggested. The difficulty can "only be met by setting up some system of identifying senders "of messages, which at present seems impracticable."

But what shall I do with the message I have received? Its very nature demands immediate action; the payee, doubtless, is in urgent need of the money, else the transmission would have been effected by mail; and I am ready to deliver the funds as soon as I can satisfy myself that the instructions received are genuine.

I may telegraph to the apparent sender over another line, or ask by telephone for confirmation of the message, but this course does not afford absolute security, as its purpose may be defeated by the collusion of rogues at the other end of the line. After all means available have been employed to obtain evidence as to the genuineness of the despatch, there still lurks within me a shadow of a suspicion that perhaps there may be after all something wrong about the transaction, and I do not feel entirely at ease until confirmation is received by mail.

Where there is but one telegraph office, and no telephonic communication, the trouble of obtaining confirmation can be more easily imagined than described.

To my mind, the difficulties and inconveniences referred to can only be overcome satisfactorily to all parties concerned by the use of a specially prepared cipher code between banks, similar to those now in use between offices of the same bank. All who have ever used cipher code-books appreciate the security and privacy afforded by them, and no one could be found to discard them after once using, for the publicity and insecurity of open telegrams.

The book need not be large or complicated. The list of phrases necessary to cover the transactions usually effected by telegraph between banks would not be very lengthy, and the work involved in the compilation of such a book need not be very difficult. As in all code-books, clearness and conciseness should be amongst its main features. In addition to the list of phrases, covering the instructions found by experienced bankers to be necessary, with corresponding code-words or ciphers, I would suggest having a cipher for each banking office in the Dominion, so that the receiver of a message could, by referring to his book, ascertain with certainty which office had issued the instructions.

Under the present custom, telegrams are usually signed "—— ——, Mgr," and in order to find out which bank sent the message, I have to look up directions, etc., and if the officials have been changed since the compilation of the list I am at sea altogether.

The first word in all messages constructed under the code I

am advocating should be the same: that is, some word selected to designate that the "Banker's Universal Code" (I call it such now for purposes of illustration) is being used, should be placed at the beginning of the message as a signal to show the reader where to look for the translation of the remainder. This method would prevent the use of the wrong code in translating, as doubtless some offices have a number of different books.

I would also suggest that the final word in the message be the cipher corresponding to the name of the bank sending the message, for the reason already stated.

If a code-book of the style advocated were used, the transmission of funds between banks could be carried on with absolute security, and the annoyance and inconvenience caused to all concerned under the present system would be avoided.

I should like to see steps taken in the near future for the adoption of this, or any other scheme, that will make the use of the telegraph in money transfers more secure, and reduce the risk of loss in connection therewith to a minimum.

I remain,

Yours respectfully,

L. P. SNYDER.

Traders Bank of Canada, Elmira, Ont., July, 13, 1894.

Legal Decisions Affecting Bankers.

The Dominion Bank v. Wiggins.

Bills of Exchange and Promissory Notes—Lien Note—Negotiable Instrument—Reservation of Title.

An instrument in the form of a promissory note, given for part of the price of an article, with the added condition "that the title and right to the possession of the property for which this note is given shall remain in (the vendors) until this note is paid" is not a promissory note or negotiable instrument, and the holder thereof takes it subject to any defence available to the maker against the vendors.

Judgment of the First Division Court of Peel reversed.

This was an appeal by the defendant from the judgment of His Honor Judge McCarthy, in the First Division Court of the County of Peel, and was argued before Maclennan, J. A., in Chambers, on 2nd of June, 1894. On 7th June His Lordship delivered judgment as follows:

The action is on three promissory notes dated the 13th of August, 1891, the first two for $308 each, payable on the 1st of March, 1892 and 1893, respectively, and the third for $309, payable on 1st of March, 1894. The action was commenced on 28th November, 1893, before the third note had become due according to its tenor, and claimed a balance of $200 on the three notes, all amounts due thereon in excess of $200 being abandoned. The notes are all expressed in the same terms except the date of maturity, and the first one is as follows:

"$308. "Brampton, Ont., 13th August, 1891.

"On the first day of March, 1892, value received, I promise to pay Haggert Bros. Manf'g. Co. (Limited) or order, three hundred and eight dollars, at the Dominion Bank, Brampton, with seven per cent. interest until due, and ten per cent. interest after due till paid.

"Should I sell or leave the land I now occupy, or make preparations to leave the Province, or should this note not be paid within one month after maturity, then in any such case it and all other notes given by me to Haggert Bros. Manufacturing Company, shall at once become due and payable, and suit may be entered and tried and finally disposed of in the Court

having jurisdiction at the place of payment hereof. The title and right to the possession of the property for which this note is given shall remain in Haggert Bros. Manf'g Co. until this note is paid."

At the trial it appeared that the notes had been given for a threshing machine and outfit, as it is called ; that the purchaser complained that it was defective and useless ; that it was sent back to the vendors a few days after the first note became due, was received by them, and was afterwards sold by them to one Boynton for $600 odd. The notes had been endorsed to the plaintiffs by the payees before maturity as security for their account, and they were not given up when the machinery was taken back, and there was no evidence that the property was taken back in the sense of cancelling the sale. When the property was re-sold, the proceeds, half cash and half on credit, were accounted for to the plaintiffs, and the cash was credited on the first note. At the trial credit was claimed by the defendants against the $200 sued for, for the remainder of the purchase money on the re-sale, and it was also objected that the last note was not due, and could not be sued upon by the plaintiffs before maturity. The result of this objection was that the learned Judge allowed the third note to be withdrawn from the claim altogether, and this part of his decision is not now complained of. It was then objected that the instruments were not negotiable promissory notes, and that the plaintiffs could not sue upon them ; and also that the plaintiffs took them with notice of some collateral agreement between the payees and the defendant, and that the payees having taken back the property the defence of want of consideration was open to the defendant.

The learned Judge gave judgment for the plaintiffs, and the defendant's agents moved for a new trial. This motion was supported by affidavits setting up a number of defences as against the Haggert Company, but not in any way affecting the title of the present plaintiffs, assuming them to be holders for value in due course, and that the notes are negotiable. The learned Judge held the notes to be negotiable and the plaintiffs to be holders for value, but he offered the defendant a new trial on condition of paying the costs of the last trial, and giving secur-

ity to the amount of $100 to abide the result. The defendant refused to accept a new trial on those terms, and brought the present appeal.

The case was argued with great ability for the appellant by Mr. Creswicke, and for the respondents by Mr. W. S. Morphy.

It is unnecessary to consider many of the points which were discussed, because I am of opinion that the notes are not negotiable, and that for that reason the plaintiffs can maintain no action upon them.

If the special matter contained in the instruments had stopped with the words "payment hereof," I should have thought the negotiability of the notes not affected. The only effect of that special matter down to and including those words is that in certain events the time of payment might be accelerated. It does not make payment in any way conditional, nor is there any more uncertainty in the time of payment than in the case of a note payable on or before a certain day, or of a note payable on demand: See *Chesney* v. *St. John*, 4 A. R. 150; *Wise* v. *Charlton*, 4 A. & E. 786; *Jury* v. *Barker*, E. B. & E. 459; and see also *Sears* v. *Agricultural Insurance Co.*, 32 C. P. at p. 601.

It is otherwise, however, with the remainder of the special matter contained in the instrument. It provides that "the title and right to the possession of the property for which this note is given shall remain in Haggert Bros. Man'f'g Co. until this note is paid." I think that stipulation is fatal to the instrument as a negotiable promissory note. It imports that the money which is to be paid is the consideration for the sale of property, and that neither the title nor the right to possession was to pass until payment. If that is so, it follows that the purchaser is not compellable to pay when the day of payment arrives unless at the same time he gets the property with a good title, and the payment to be made is therefore not an absolute unconditional payment at all events, such as is required to constitute a good promissory note. It is in effect a conditional payment. It is evident that even if when the note was signed possession was given, the payees could resume it at any time, for any reason, or for no reason; could do so next day, out of mere whim or caprice; and for anything contained in the writing, in the way

of agreement by the vendors, they could sell the property to some one else, while the note was current, even against the will of the purchaser. But whether the purchaser could interfere to prevent that or not, they could sell and make a good title to a purchaser for value without notice. Having the title and also the possession, such a sale with delivery would be unimpeachable as against the purchaser, and if such a sale were made, then clearly the maker of the note would not be liable to pay it at maturity. He could say I am ready to pay, but I want my property, and if it was not forthcoming, he could not be required to pay. But if the vendors still had the property, it is obvious that the payment of the money and the delivery of the property were to be contemporaneous acts, and neither of the parties was bound to perform his part, unless the other was ready to perform his. If that is the effect of the instrument as we find it, the payment is a conditional payment, and the instrument is not a negotiable promissory note, nor indeed a promissory note at all. This case is very much like *Third National Bank* v. *Armstrong*, 25 Minn. 530, referred to by the Chief Justice in *Sawyer* v. *Pringle*, 18 A. R. 218, to which my attention was directed by Mr. Creswicke.

I think that the appeal must be allowed with costs to the appellant both of this appeal and of the Court below, and that the action should be dismissed.

I may say that as the grounds of this decision may be of general interest and importance, I thought it my duty to confer with the other members of the Court before disposing of the appeal, and they agree in the conclusion which I have expressed.

Appeal allowed with costs.

PROVINCE OF QUEBEC.

SUPERIOR COURT.

La Banque Jacques Cartier vs. Gagnon, *et al.*

(Communicated by Frederic Hague, Esq., B.C.L.

The Bank in this case sues the firm of A. Gagnon & W. Langlois for the amount of a promissory note made by the firm and discounted at the bank.

One portion of the defence is curious and worth noting. The defendants plead that the note was signed "Gagnon & Langlois," whereas their proper firm name was "A. Gagnon & W. Langlois." It was conceded that the note was given in the ordinary course of the firm's business, and signed by one of the partners. Also proof was made that no other person of that name carried on business in the place.

The judgment was to the effect that both by English and French law it was not necessary that the exact firm name should be on the note in order to bind the firm, if it was evident that the name written was intended to do so. The rule followed on the point was that given in Byles on Bills, p. 51. The firm is not liable when the signing partner varies the style of the firm, unless there be some evidence of assent by the firm to the variation, *or unless the names used, though inaccurately, yet substantially describe the firm.*

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 30th June, 1894, with comparisons:

LIABILITIES.

	June, 1894.	May, 1894.	June, 1893.
Capital authorized	$ 75,458,685	$ 75,458,685	$ 75,458,685
Capital paid up	62,112,883	62,112,169	61,954,314
Reserve Fund	27,157,706	27,127,002	26,007,668
Notes in circulation	$ 30,254,159	$ 28,467,718	$ 33,483,413
Dominion and Provincial Government deposits	8,619,841	6,410,724	7,186,841
Public deposits on demand	65,006,011	62,926,305	64,975,445
Public deposits after notice	109,924,925	110,905,804	105,841,988
Bank loans or deposits from other banks secured	116,625	78,238	172,583
Bank loans or deposits from other banks unsecured	2,352,405	2,247,856	2,503,558
Due other banks in Canada in daily exchanges	168,796	127,524	253,587
Due other banks in foreign countries	121,213	193,246	210,628
Due other banks in Great Britain	5,521,705	6,487,109	4,751,476
Other liabilities	207,285	818,694	287,387
Total liabilities	$221,292,707	$218,663,313	$219,666,996

ASSETS.

Specie	$ 7,438,513	$ 7,539,763	$ 6,412,342
Dominion notes	14,016,698	13,982,924	12,135,327
Deposits to secure note circulation	1,831,979	1,813,584	1,761,259
Notes and cheques of other banks	6,462,944	6,164,182	7,333,408
Loans to other banks secured	90,000	.....	175,000
Deposits made with other banks	3,287,255	2,718,603	3,650,210
Due from other banks in foreign countries	15,650,822	15,024,744	17,331,728
Due from other banks in Great Britain	3,086,167	2,736,380	1,587,320
Dominion Government debentures or stock	3,157,413	3,187,438	3,191,492
Public municipal and railway securities	19,100,101	18,775,347	14,787,248
Call loans on bonds and stocks	14,600,915	14,637,324	14,880,373

	June, 1894.	May, 1894.	June, 1893.
Loans to Dominion and Provincial Governments	$ 489,722	$ 373,713	$ 1,751,016
Current loans and discounts	206,958,912	207,122,494	208,793,415
Due from other banks in Canada in daily exchanges	228,299	160,237	168,310
Overdue debts	2,811,395	2,791,922	2,326,010
Real estate	928,151	921,186	1,050,259
Mortgages on real estate sold	623,800	629,164	673,487
Bank premises	5,365,188	5,340,354	4,877,593
Other assets	1,413,954	1,336,887	1,477,589
Total assets	$307,542.429	$305,256,446	$304,363,580
Average amount of specie held during the month	$7,465,560	$7,468,402	$6,496,277
Average Dominion notes held during the month	13,769,073	13,699,257	12,372,373
Loans to directors or their firms	8,051,337	8,239,804	7,538,290
Greatest amount of notes in circulation during month	30,745,831	30,466,853	33,754,534

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 31st July, 1894, with comparisons:

LIABILITIES.

	July, 1894.	June, 1894.	July, 1893.
Capital authorized	$ 75,458,685	$ 75,458,685	$ 75,458,685
Capital paid up	62,156,255	62,112,883	61,954,773
Reserve Fund	27,160,750	27,157,706	26,631,245
Notes in circulation	$ 29,801,772	$ 30,254,159	$ 33,573,468
Dominion and Provincial Government deposits	6,470,573	8,619,841	6,734,509
Public deposits on demand	64,950,318	65,006,011	64,563,263
Public deposits after notice	111,633,147	109,924,925	106,458,471
Bank loans or deposits from other banks secured	89 268	116,625	153,266
Bank loans or deposits from other banks unsecured	2,705,296	2,352,405	2,616,681
Due other banks in Canada in daily exchanges	112,521	168,796	167,081

	July, 1894.	June, 1894.	July, 1893
Due other banks in foreign countries	$ 127,751	$121,213	$124,796
Due other banks in Great Britain	5,562,778	5,521,705	4,600,301
Other liabilities	263,131	207,285	327,591
Total liabilities	$221,716,648	$221,292,707	$219,319,527

ASSETS.

Specie	$ 7,779,735	$ 7,438,513	$ 6,597,642
Dominion notes	15,690,145	14,016,698	12,607,562
Deposits to secure note circulation	1,821,268	1,831,979	1,827,267
Notes and cheques of other banks	6,776,646	6,462,944	8,554,319
Loans to other banks secured	76,557	90,000	125,000
Deposits made with other banks	3,339,382	3,287,255	3,274,546
Due from other banks in foreign countries	17,251,515	15,650,822	15,616,213
Due from other banks in Great Britain	3,713,057	3,086,167	3,860,549
Dominion Government debentures or stock	3,133,230	3,157,413	3,188,572
Public municipal and railway securities	19,283,107	19,100,101	15,080,602
Call loans on bonds and stocks	14,677,518	14,600,915	15,141,457
Loans to Dominion and Provincial Governments	190,456	489,722	1,036,635
Current loans and discounts	202,720,760	206,958,912	206,937,558
Due from other banks in Canada in daily exchanges	102,332	228,299	124,121
Overdue debts	3,016,800	2,811,395	2,856,682
Real estate	942,359	928,151	918,768
Mortgages on real estate sold	623,463	623,800	668,861
Bank premises	5,396,612	5,365,188	4,892,584
Other assets	1,570,586	1,413,954	1,118,892
Total assets	$308,105,729	$307,542,429	$304,428,029

Average amount of specie held during the month	$ 8,021,844	$ 7,465,560	$ 6,369,996
Average Dominion notes held during the month	14,005,098	13,769,073	11,904,751
Loans to directors or their firms	8,104,682	8,051,337	7,808,506
Greatest amount of notes in circulation during month	30,913,384	30,745,831	34,773,994

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 31st August, 1894, with comparisons :

LIABILITIES.

	Aug., 1894.	July, 1894.	Aug., 1893.
Capital authorized	$ 75,458,685	$75,458,685	$75,458,685
Capital paid up	62,189,585	62,156,255	62,029,038
Reserve Fund	27,166,850	27,160,750	26,062,576
Notes in circulation	$ 30,270,366	$ 29,801,772	$ 33,308,967
Dominion and Provincial Government deposits	5,928,143	6,470,573	6,245,892
Public deposits on demand	66,389,701	64,950,318	61,437,993
Public deposits after notice	109,998,432	111,633,147	105,015,710
Bank loans or deposits from other banks secured	64,283	89,268	103,278
Bank loans or deposits from other banks unsecured	2,587,234	2,705,296	2,718,117
Due other banks in Canada in daily exchanges	184,251	112,521	132,048
Due other banks in foreign countries	96,806	127,751	169,273
Due other banks in Great Britain	5,163,386	5,562,778	5,538,573
Other liabilities	259,792	263,131	250,002
Total liabilities	$220,942,480	$221,716,648	$214,919,947

ASSETS.

Specie	$ 7,968,955	$ 7,779,735	7,706,937
Dominion notes	15,836,019	15,690,145	12,749,809
Deposits to secure note circulation	1,823,153	1,821,268	1,818,448
Notes and cheques of other banks	6,053,369	6,776,646	6,519,972
Loans to other banks secured	53,664	76,557	83,385
Deposits made with other banks.	3,310,476	3,339,382	3,228,902
Due from other banks in foreign countries	19,904,605	17,251,515	13,562,629
Due from other banks in Great Britain	3,539,880	3,713,057	3,364,470
Dominion Government debentures or stock	3,133,480	3,133,230	3,188,572
Public municipal and railway securities	18,919,546	19,283,107	15,378,187
Call loans on bonds and stocks	15,282,727	14,677,518	14,398,606

	Aug., 1894.	July, 1894.	Aug., 1893.
Loans to Dominion and Provincial Governments	$ 402,969	$ 190,456	$ 1,426,480
Current loans and discounts	199,908,340	202,720,760	205,956,200
Due from other banks in Canada in daily exchanges	185,299	102,332	125,270
Overdue debts	3,121,927	3,016,800	2,964,999
Real estate	934,671	942,359	912,783
Mortgages on real estate sold	618,759	623,463	660,395
Bank premises	5.444,965	5,396,612	4,914,737
Other assets	1,642,628	1,570,586	1,901,035
Total assets	$308,085,634	$308,105,729	$300,863,015
Average amount of specie held during the month	7,832,980	8,021,844	6,956,448
Average Dominion notes held during the month	15,500,434	14,005,098	11,744,457
Loans to directors or their firms	7,973,633	8,104,682	7,978,632
Greatest amount of notes in circulation during month	31,088,196	30,913,384	34,750,617

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

	MONTREAL.		*TORONTO.		HALIFAX.		HAMILTON.		WINNIPEG.
	1892-3.	1893-4.	1892-3.	1893-4.	1892-3.	1893-4.	1892-3.	1893-4.	1894.
	$	$	$	$	$	$	$	$	$
September..	50,240,258	43,767,089	25,036,156	24,505,010	4,351,105	4,993,555	2,922,972	3,091,370	
October	57,563,274	47,266,474	29 704,003	25,264,232	5,049,284	5,489,398	3,545,843	3,227,927	
November ..	57,738,128	47,291,960	30,998,827	25,997,046	4,869,873	5,158,297	3,478,297	3,150,008	
December ..	53,334,498	45,108,976	32,157,099	25,398,315	5,289,252	4,884,773	3,716,428	3,147,810	
January	50,498,973	42,796,705	30,226,941	27,267,606	5,044,466	4,931,374	3,292,386	3,087,576	4,318,346
February ..	46,149,389	35,478,026	23,704,495	19,209,967	4,202,569	3,981,482	2,830,935	2,671,799	3,132,537
March	50,791,417	45,715,370	26,282,197	22,893 878	4,759,004	4,744,920	3,124,681	2,739,064	3,510,411
April	42,274,827	40,942,256	26,974,686	21,473,195	4,906,327	4,467,920	3,122,325	3,078,330	2,958,886
May	49,629,342	45,585,937	25,747,669	24,173,820	5,334,245	4,871,141	3,510,787	2,977,806	3,455,639
June	47,244,749	44,704,941	25,823,084	21,965,613	5,105,122	4,471,084	3,204,246	2,753,625	3,329,427
July.....	49,301,208	45,223,709	27,043,625	23,763,087	5,510,016	5,492,685	3,274,564	2,682,632	3,570,221
August	47,414,660	44,383,794	22,311,189	21,779,292	5,414,015	5,407,770	2,847,937	2,546,135	3,695,874
	602,180,723	528,265,237	326,009,971	283,691,061	59,835,278	58,894,399	38,871,401	35,154,082	27,971,341

*NOTE.—These totals do not include the Bank of Toronto.