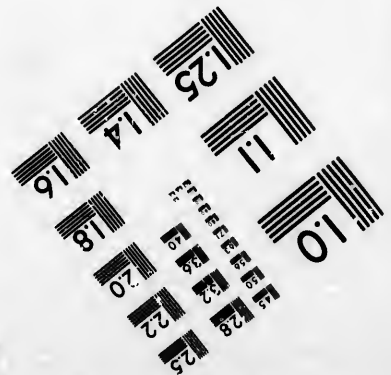
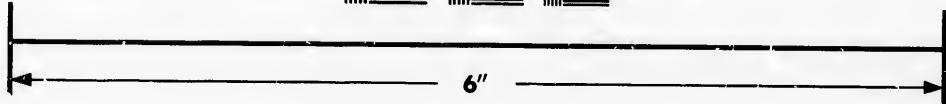
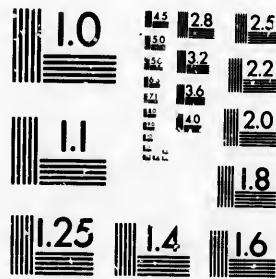


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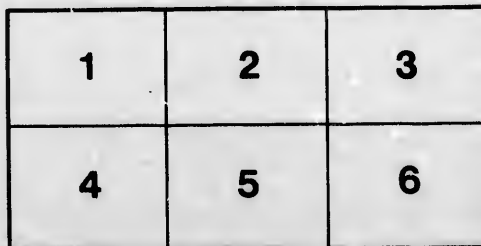
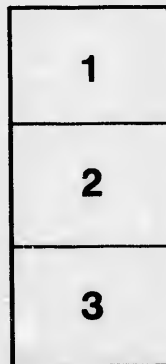
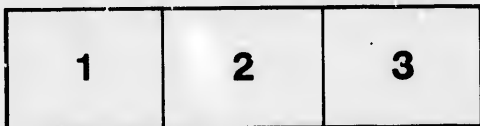
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# COMMERCIAL LAW;

ITS ORIGIN AND EARLY INCIDENTS.

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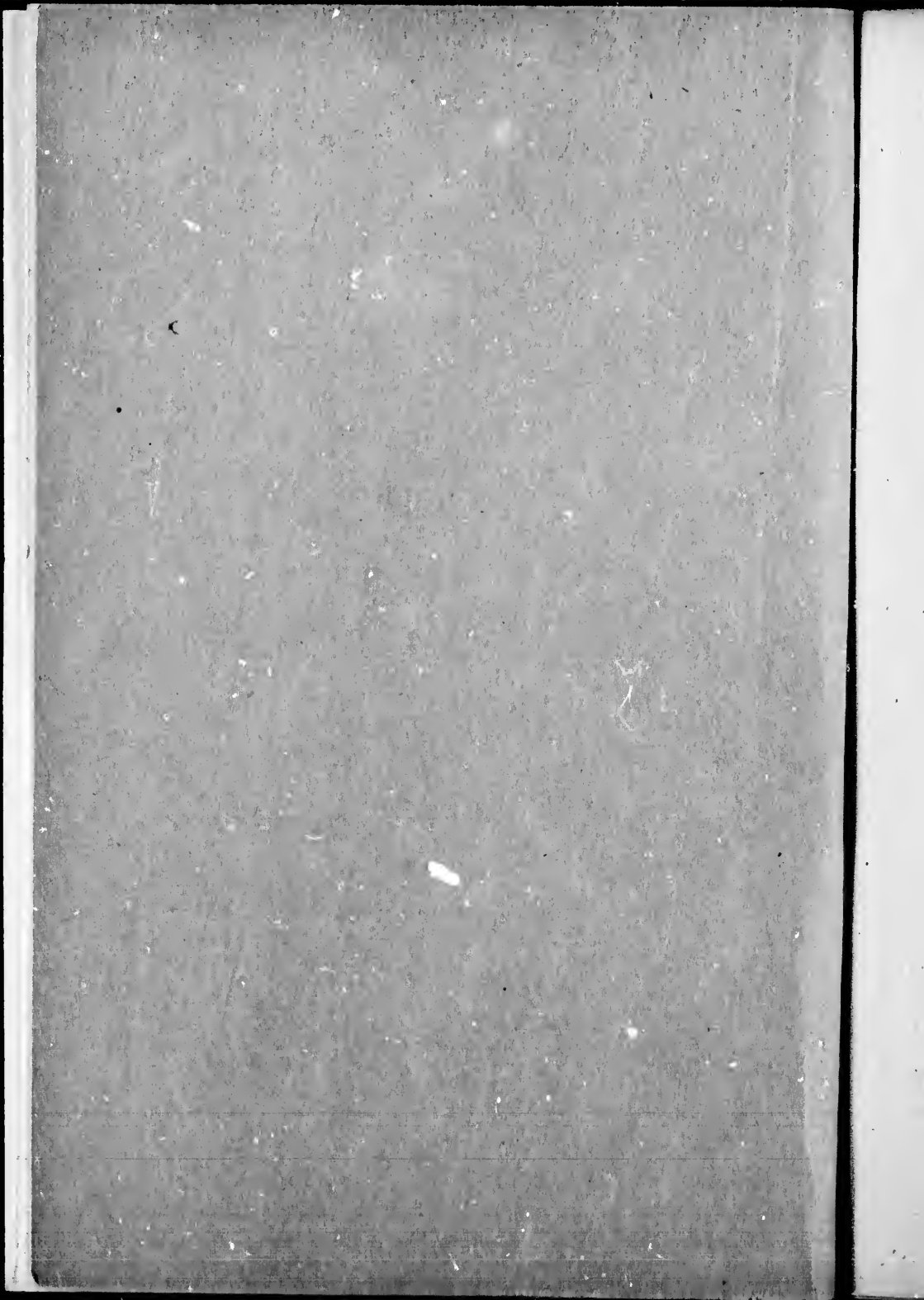
Inaugural Lecture by His Honor Judge Davis,

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# COMMERCIAL LAW;

## ITS ORIGIN AND EARLY INCIDENTS.

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The system of Commercial Jurisprudence is founded on the principles of natural justice and equity, or in other words, upon the reason and conscience, and cultivated judgment of man. In tracing its development from the crude material of early times, the student will note as he advances in this most interesting study, how certain, well-recognized, and far-reaching principles were practically applied from time to time to the numerous, ever-changing and complicated transactions of every-day life; how standards were recognized and adopted by which men in the exercise of ordinary judgment could readily test the soundness of those principles; how in the course of time, common sense illumined by the principles of truth, and morality softened or displaced rules and regulations strictly technical, until at length the system of Commercial Jurisprudence became, as we see it in modern times, more free from artificial subtleties, and more directly influenced by the principles of natural equity, than any other branch of jurisprudence. It seeks to enforce the obligations of conscience; it sanctions such regulations as in the cause of trade have been found beneficial. Its precepts are founded on common sense, and it speaks in language that all men of business can readily understand. In my endeavor to give the student a general outline of a subject so wide and comprehensive as that selected for the present lecture, much must necessarily be omitted, and much, owing to the necessity for condensation, be imperfectly explained, my object will be attained, however, if I can give the student even a dim and distant outline of certain prominent and interesting features of that system, from its crude, early stage, to its present state of high development. A sound legal education requires the student to commence by cultivating an



intimate acquaintance with the governing and guiding principles underlying the judicial system, and this is specially applicable with respect to Commercial Law. Four-fifths of the judicial business of the country, directly or indirectly involve questions of mercantile interest, and this is not surprising when we consider the vast and complicated ramifications of trade and commerce, man's busy brain is constantly at work, and ever on the alert to find an opening for enterprise and capital, we see everywhere around us hosts of Merchants, Manufacturers, Bankers, Brokers, Carriers, Loan and Insurance Societies, to say nothing of that large and constantly growing class of incorporated benevolent, or, *quasi* benevolent, societies, with high-sounding titles and magnificent pretensions, we can, therefore, understand the necessity for the student to grasp as soon as possible and endeavor to master the principles that govern and control this vast and complicated machine. To be a successful commercial lawyer, quick and acute in grasping and solving mercantile problems, not only requires a clear head and sound judgment, but a broad and comprehensive conception of first principles, the mere case lawyer, no matter how great his industry or careful his research, is always liable to error from trusting to imaginary and incorrect analogies, no profession requires so much strong common sense as that of law, a man may be an accomplished scholar, have great ability, great imagination, and great industry, but without that same strong common sense he will never make a great lawyer. The number of our courts, each in its order reversing the carefully considered decisions of those beneath, the overwhelming array of decided cases in the English, Canadian and American reports, which those courts are required to refer to, the conflicting decisions, the mass of irrelevant material to be waded through, the dissenting judgments and opinions of Judges, the distinguishing of cases, &c.,—all this occasionally lands the unfortunate votary of our judicial system in a labyrinth of difficulties and doubts, out of which it requires a great deal of common sense, indeed, and sharp discrimination to guide him. In view of all this, it is becoming more than ever necessary at the present day, in considering questions, to make sure that you are *correct in your governing principles*, and then consider

the matter in question with reference to *those principles*. You may then, for the purpose of further guidance or confirmation, go to work and spend all the time available at the reported cases. The governing principles of our commercial code, so multifarious, in its details and extensive in its application, are, notwithstanding, more simple and harmonious than an ordinary observer would imagine. The practical and enlightened views of a succession of able men in England, led by such as Mansfield, Kenyon, Ellenborough and Tenterdon, and followed up in more recent times by a host of distinguished judges, have constructed out of the crude material of their day and generation, a beautiful system, admirably adapted to the usages of civilized society, the peculiar requirements of our country, and the growing wants of an enlightened age. Students who take delight in the antiquarian study of old text books, will find little there on the subject of commercial transactions. In those early times, when the sword was mightier than the pen, mercantile dealings were of small importance, and regarded with contempt by the better class of society. The judicial mind of the country was engaged in the contemplation of real property, and the peculiar principles governing its transfer and descent, to the exclusion of everything relating to personal property; but in modern times most commendable industry is apparent, and great ability displayed in the different compilations relating to that part of the judicial system which I have under review. Still, each treatise appears to be written with reference to some particular class of cases, and wanting that unity of design between the different classes and branches of the system, without which there cannot be a perfect understanding of the whole. I shall not attempt, in one lecture, to give a connected outline even of the origin and growth of that great Commercial System which forms the centre of thousands of industries, and absorbs most of the capital of the world at the present day, as such an undertaking would require a series of lectures. I shall have to confine myself to a rapid sketch of those principles and circumstances which formed the original foundation of the Commercial System. Division of labor was in the first place necessarily attended with an interchange of commodities, being a direct barter in kind of the superfluity of one individual for

that of another. The necessities of the system of barter suggested the introduction of some medium of exchange, and certain metals from their durability, and their little variations in value, were adopted as the medium, and such medium received the name of money. From this introduction of money may be dated the origin of trade. In those early days the limited transactions by way of barter hardly deserved the name of trade, but by means of the money medium they became sales instead of barter. The difficulties attending the conveyance of articles intended for exchange being thus removed, sellers would resort with their commodities to places where there was a probability of demand; hence the establishment of markets and fairs. Transactions at these public markets were the earliest and simplest operations of traffic, being bargains for the purchase and sale of the different articles, carried out on the spot into immediate effect by delivery on one side and payment on the other. Some commodities being too bulky to be conveniently transported to market, and brought back if unsold, would be disposed of by samples, and in such cases an interval would necessarily take place between making the bargain and the delivery which was to complete it, and in this interval many questions would arise, involving complications between the buyer and seller. As wealth increased, men's wants also increased, and home commodities accumulated on the hands of the owners, and thus distant markets were looked for as an outlet for those surplus articles, as well as the centre of supply of those rare and remote articles that were required by the home producers. And thus the traffic of each place and region was pushed beyond the limits of its own neighborhood. Certain tracts of country were better suited to the growth and production of certain articles, while other tracts of country, where the raw material could readily be obtained, became a manufacturing centre. The long intervals between fairs and markets were found to be inconvenient, and the demand for all sorts of goods and productions increasing with the wants of the people, itinerant traders, under the name of peddlers, started into existence, and began to sell the productions of one district among the inhabitants of another, adding to the first cost such a profit as remunerated them for their labor and risk. The

transactions of the fairs and the packs of the peddlers were followed, and, in a great measure, superseded by the establishment of permanent shops. These shopkeepers stood between the producer and consumer, buying from the former in wholesale, and then retailing at an advance among the inhabitants of their own neighborhood. As wealth and population advanced, and the demand increased, it became necessary to add to the stock in each particular article, until at last it became expedient to confine the trade to some specific line of goods. So by degrees a body of shopkeepers was created, each dealing in some particular commodities, and, as the profit on the articles mainly depended on a speedy return of the cost of production, those who could purchase the largest quantities were able to procure them at the cheapest rates. Hence the formation of wholesale dealers, who being possessed of larger capital bought up the stocks of the producer and manufacturer, and disposed of them in smaller stocks to the retail dealers. And thus the steps between the producers and consumers were continually multiplied. These transactions between the owners of the raw material and the manufacturer, and between the manufacturers and wholesale dealers, and between the wholesale and retail dealers, residing probably, long distances apart, involved many questions of importance in regard to transmission between distant points, which in those early times would be attended with great difficulty, danger and expense. These circumstances led to the formation of another class of persons, who for a certain compensation undertook the safe conveyance of goods from place to place. This (being long before steam was dreamt of) would take place by means of wagons overland, and by barges on the navigable rivers. As trade and capital increased, lighter vehicles, for more expeditious transmission of lighter goods, were used; and canals were constructed between districts where the raw material was supplied and the manufacturing centres where it was worked up. The proprietors of those different systems of inland communication were classed indiscriminately under the name of "*common carriers*". Along the rivers and canals the owners of the soil, as the trade increased, required some compensation for permission to take on board and discharge the cargoes of the vessels that

navigated these waters. To avoid the inconvenience and risk of leaving freight exposed on the banks, wharves were constructed and buildings were there erected along the lines of communication, at which places goods might be deposited for loading or delivery. The proprietors of those places were called *wharfingers*, who undertook to keep the articles deposited there safe and undamaged for a reasonable remuneration, until they were carried away to their destined places. There away in those early times we may notice the birthplace and origin of that important branch of our judicial system relating to *common carriers* and *wharfingers*. In England the surrounding seas soon became used for the purpose of traffic, and the first efforts of her industry and enterprise gave rise to her coasting-trade, which was rapidly followed by the construction of "ports", "quays", "piers" and "docks". Some of these not being easily accessible for the larger vessels gave use to the employment of another class of men, who were called "*lightermen*", who undertook the unloading of those vessels, and transporting the cargoes to the docks. Complications soon arose from these sources, and another chapter was added to the judicial history of those early times. The spirit of enterprise which induced the expansion of traffic within the boundaries of England, soon broke through those contracted limits, and grasped the commodities of foreign countries. The flax of Ireland, and consequently its linens, were found to be better than those of England, while the woollen goods of England were better than those of Ireland, hence an interchange took place of the surplus woollen goods of one for the surplus linen fabrics of the other. In the same way an exchange of home products for the wines of France and Portugal, the silks of Italy, the hides and timber of the Baltic, and so on. Stimulated by wealth and the thirst of gain, commerce extended; remote lands were sought after, and "depôts" established there by a busy and overstocked community. Colonies and plantations were formed, and the civilized world brought closer together, each country contributing its peculiar products of the soil, or its works of skill, to the opening markets of England. Tea, brought from the remotest nation of the east, sweetened by sugar made in the far west, became the ordinary beverage of all classes in Eng-

land, while cottons manufactured there were worn by the inhabitants of the tropics, and her woollen goods by the inhabitants of nations bordering on the Arctic regions. From Brazil, the East Indies, and the islands of the Spanish Main, she brought the raw material for her cotton goods, and she dyed them with the juice of an herb she imported from Bengal, and with the blood of an insect reared in Mexico (cochineal). This wonderful traffic and intercourse soon brought to the front another important class of public carriers, viz., the "shipowners"; and, connected with these, another class, specially named "merchants". Originally the same person was shipowner as well as merchant, but the separation took place at a very early period. The shipowner who brought home his cargo of foreign products was glad to release himself from the risk, trouble and delay of dealing them out in small portions, by disposing of the whole cargo at an inferior price to someone, who in view of the resulting profit would undertake the job of distributing the cargo. If this speculation answered, the purchaser would then employ the owner of the vessel to bring him another cargo of similar commodities. This person's next step would be to establish a connection in the foreign market to purchase the goods, he supplying the money, and taking upon himself the whole risk of the adventure, and paying the shipowner a stipulated price for transporting the cargo. The same rules applied to the export trade. In this export trade the merchant by degrees stepped in between the producer or manufacturer and the shipowner, and took the risk as well as the profit of the sale in the foreign market, and employed the owner of the ship simply as his carrier, and the shipowners became what they are to-day, *public carriers by water*, and are governed by the same legal principles as *carriers by land*; but the relations between the shipowners and merchants are governed by a peculiar code affecting them alone, their engagements are generally the subject of special contracts, attested by formal documents called "CHARTER PARTIES". Sometimes the whole vessel is taken into the service of the merchant for a definite period, sometimes for a particular voyage. In the latter case he either takes the entire temporary control and ownership upon himself, or, leaving the possession of the vessel

to the owner, he has merely the right of stowage for his goods. In the former case he is called the "*charterer*", in the latter case the "*freighter*". Sometimes he merely stipulates for the use of a part of the vessel, paying for the carriage or freight of his goods at so much per ton, in this case no charter party is executed, but when the goods are put on board an instrument called a "*bill of lading*" is tendered by the shipper to the captain of the vessel for his signature, by this document the captain acknowledges the receipt of the goods on board, and engages to carry them safely and deliver them in good order to the person to whom they are consigned. A counterpart of this bill of lading is immediately transmitted to the consignee, another is left with the master of the vessel, and the original remains with the shipper. The property in the goods specified in the bill of lading may be transferred by the proper endorsement and delivery of this instrument, and the endorsee thereby becomes the owner. This system, simple in its origin, has expanded into a most important and complicated branch of our judicial system, and, apart from the code governing these direct transactions, a host of subordinate and incidental questions, sometimes of a very complicated nature, arise. The owner of the vessel hands over the command of the ship and the conduct of the voyage to some professional seaman, and here new relations spring up between the owner and captain, the captain and subordinate officers and crew. These relations involve questions of law, arising out of the agreements, rules and usages in such matters, of a wide-reaching and complicated character, and when to all this we add the laws and regulations as to the registry and transfer of vessels, home customs and the usages of foreign countries, the rules relating to partial losses, and expenses of necessary repairs of the vessel, together with the assessment of contributions under the name of "*average*", as well as the right to raise money for these and other purposes by hypothecating the vessel, called "*Bottomry*", or by hypothecating the freight, called "*Respondentia*", we can easily imagine how extended and complicated the subject becomes. The shipowner contracts to convey the goods in safety, qualified, however, with a wide exception as to the perils of the sea, and the acts of the Queen's enemies, he not being responsible for loss from tempest

or capture. The freighter must incur risk, as well as the vessel owner; he may lose his cargo by violence or accident, and have no redress. And the shipowner, in addition to the ordinary perils of the sea, is often exposed to loss, arising out of fraud, negligence, or other misconduct of his captain and crew, and for such consequences he is responsible to the freighter. To meet all these risks and consequences, a practice has arisen most important and beneficial in its character. A number of persons stipulate, in consideration of a premium, varying with the risk, to insure at their joint hazard both the shipowner and the merchant against all risks and contingencies; this is done by an instrument or contract called a "*Policy of Insurance*". This usage itself is of very ancient origin, for we find as far back as the 43rd year of the reign of Queen Elizabeth, in the preamble to chapter twelve of the statutes of that year, the following recital: "*By means of 'Policies of Insurance' it cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many, than heavily upon few, and rather upon them that adventure not, than those who do adventure, whereby all merchants, especially of the younger sort, are allured to venture more willingly and more freely.*" I may remark in passing, that to entitle the insured to the advantages of his insurance, he must act towards the insurer with perfect good faith; he must make no false representations, nor conceal any defects. The vessel must be in every respect fit for sailing, or as it is technically termed "*seaworthy*". She must enter on the voyage specified in the policy, and no other. There must be no intentional deviation from the line of that voyage; in short, no risk must be incurred that might not fairly be contemplated by those who agreed to indemnify. All this opens out to the student another extensive and interesting field of inquiry. Next in order come the regulations and rules with respect to customs duties imposed on those cargoes of imported goods. With reference to this, a most useful and convenient practice has arisen called *warehousing*, by this system payment of the duty is not exacted at the time of importation, but upon a "*bond*" being given by the importer for the payment of the duties at some definite period, the officer of



customs gives him a warrant, permitting him to land the goods and deposit them in some specified warehouse, and when so deposited they are said to be "*in bond*". The importer, though he has no actual possession of the goods, has access to them for the purpose of inspection or sale, and the warrant he holds serves as the symbol of his property in the goods. By the indorsement and delivery of this warrant he may make as valid and complete a sale as he could by the actual corporeal delivery of the goods. Besides these public warehouses, there are others belonging to private individuals, who make a profit as warehousemen, by permitting the deposit, and undertaking the safe custody of goods for the owner until he wants to dispose of them. The duties and responsibilities of these warehousemen form another important chapter of Commercial Law, which I will not dwell on at present. Having dealt very briefly with some of the incidents belonging in a primitive state of society to the transfer and delivery of commodities, as well as with the mercantile occupations springing from the wants and necessities of those early times, I will now refer with equal brevity to those incidents which relate to payment as the basis of traffic. *Reciprocity* of advantages was always the foundation of barter and traffic, and it might, therefore, be expected that no one would be willing to part with the possession of his goods without securing an immediate equivalent. It was on this supposition that money was introduced. The ancient practice invariably was the same as the general rule to-day, viz., that payment should be contemporaneous with delivery. But competition and the insufficiency of actual currency for the increasing transactions of trade gradually introduced the *credit system*, which has now become an established usage. In giving credit, the seller parts with his goods, trusting to the will and ability of the purchaser to pay for them at some future time; but the will is sometimes tainted with dishonesty, and the ability affected by unforeseen contingencies, hence the necessity for some law to regulate these matters. Accordingly, we find quite a comprehensive mercantile code springing into existence, for the protection of creditors so situated. The tradesman, not considering the buyer trustworthy, refuses to give him credit, except upon the guarantee of some third person, who

becomes responsible for the debt in case of the buyer's default ; and in order that no undue advantage may be taken of promises hastily and incautiously made by persons who had no interest in the transaction, but who merely desired to do a friendly act, the law steps in and says, this pledge, in order to bind the party, must be in writing. As traffic expanded and business ideas advanced, the person giving his goods on credit would think it desirable to get from his debtor a distinct promise to pay the sum due, with an admission that he had received value for it. Such a promise reduced to writing and signed by the debtor would at once dispense with all proof of the items of the claim, and of the price and delivery of the articles, hence the introduction of *promissory notes*. He who gave the note being called the "*maker*", and he who received it the "*payee*"; but though a good security for his debt, the promissory note was not originally available to the holder for the purpose of commerce, the maker being liable to none but the payee, the instrument was not transferable, and therefore, not convertible into cash ; but by degrees, to meet the convenience and necessities of trade, the practice grew up of passing these promissory notes from hand to hand, and conferring upon the holder for the time being all the right therein of the payee. This practice, which was for some time discountenanced by the law, at length received legislative sanction, and the practice of negotiating promissory notes was placed upon the same footing, and allowed to follow that which *always prevailed* in regard to another old and well-known instrument called a "*Bill of Exchange*", which may be described as a written order or request addressed by one person to another, directing the latter to pay to some third person, or his order, a certain sum of money, at some specified time ; the person giving the order being called the "*drawer*" of the bill, he to whom it is directed the "*drawee*", and the person in whose favor it is made the "*payee*". It may be payable at sight, or so many days after sight, or so many days or months after date. When drawn by a person resident abroad, upon some one at home, it is called a "*foreign bill*", and when both parties reside at home, it is called an "*inland bill*". In drawing "*foreign bills*" it is customary to give two or three of the same tenor or date,

so as to guard against unforeseen casualties, in which case it is stated in the body of the bill that it is the "first", "second" or "third" of exchange, either of which being paid, the rest became void. These very convenient instruments were invented by merchants living in different countries, for the safer and more easy remittance of money from one to the other, and the practice was found so convenient that it was subsequently extended to commercial transactions entirely within Great Britain itself. Some writers appear to think that the system did not originate in England, but was borrowed from some countries which preceded her in the pursuit of commerce. Others think that the practice of using 'bills of exchange' for foreign remittances was only an extension of the practice which already prevailed in regard to inland transactions. It certainly seems natural that, when the credit system was once established, the trader, whose available funds might not be sufficient to pay ready money for articles he was desirous of purchasing, should ask the seller to take an order on someone else who owed him a sufficient amount to cover the price of the article. By this means the seller had also an additional security, as it was probable the drawee would honor the "bill", and at maturity pay the money; and if he did not, the drawer would, at all events, be liable, and it afforded the creditor an expeditious and summary remedy against the debtor, for as in the case of a promissory note, so in a Bill of Exchange, it is unnecessary to prove the consideration for which it was given. The payee would take an early opportunity of ascertaining from the drawee whether he would satisfy the "bill" at the expiration of the specified time. If he signified his acceptance, either by writing on the "bill" or otherwise, he was then termed the "*acceptor*", and became liable as such for the amount of the "bill", not only to the payee, but to the drawer also, whose right to give the order he admitted by the act of acceptance. In the same way that the payee had been induced to take this "bill" in payment originally, another person would be willing to take it from the payee in purchase of other commodities; and as it purported to be payable to the *order* of the *payee*, as well as to the payee personally, he gave the order by endorsing his name thereon. In this way the "bill" might be passed from

hand to hand, and would increase the value of each transfer, inasmuch as the debtor had a claim, not only upon the original parties to the "bill", but also on every preceding endorser, who, in the eye of the law, guarantees the payment of all who followed him, in case of default by the person primarily liable. And though the payee in general presents the "bill" for acceptance as soon as possible, yet, when anything interferes to prevent this, any subsequent holder may do so at any time during the currency of the "bill". Sometimes when the drawee refuses for any reason, to accept the "bill", some other person, not a party in any way to the "bill", steps in to prevent the credit of the drawer, or any of the endorsers from being injured, and undertakes to pay the "bill" at maturity. Such a friendly assistant is termed an acceptor "*supra protest*", or an "*acceptor for honor*" and he thereby becomes liable for the payment of the "bill" to all those persons whose claim upon the "bill", extends to the party for whose honor he has accepted it. As these transactions were originally founded upon the supposition that the drawee had funds of the drawer in his possession, or owed him a debt, it was a natural application of the idea in bargains between commercial men, for the seller to draw a "bill" on the buyer, payable to the seller's own order, for the price of the goods sold, which "bill" the buyer immediately accepted, by this arrangement the buyer was not called upon for actual payment in cash until the maturity of the "bill", while at the same time the seller has not only an available security for his debt, but he could at any time, by endorsing his name on it, dispose of the "bill", and convert it into cash. This most convenient principle was further extended to that class of cases where persons had consigned goods to others to be sold on account. The consignor drew at once on the consignee, before the goods were disposed of, or perhaps before they were even received, for a sum of money short of their estimated value, upon the supposition that before the bill fell due, the drawee would have sold the goods, and have the funds on hand to meet the bill. Thus far this system was natural and convenient, but the facility for negotiating those instruments has of late years given rise to a practice very liable to abuse, and which has often proved most

injurious to legitimate trade. The use of money for a given period has always been of value in the market, and persons are always found willing to advance money for the sake of the interest, now to give cash for a bill not due is to advance that cash, and for which the person advancing it is entitled to interest for the time which must elapse before the bill becomes due. Subject, therefore, to the deduction of interest, which is termed the discount, the holder of a good bill, may at any time get the value of it in cash. Thus it has become an instrument not only for the purpose of barter, as originally contemplated, but for the express purpose of raising money. A man wants to borrow \$1,000, but knowing that his own credit is not sufficient to obtain a loan of the money, he applies to a friend to accept a bill drawn by himself, he undertaking at the same time to pay it at maturity. This bill, when accepted, is called an *accommodation bill*, and is taken by the drawer and cashed by someone who has the money to lend, the lender receiving the discount for the use of the money which he advances on the personal security of the drawer and acceptor. Promissory notes are used in the same way as the media for procuring loans, and a large proportion of the trade of this country a short time ago (not so much at present) was supported by transactions of that character. Although bills and notes, made and used in the way described, were in a general way cashed by all who had the command of money, yet, there was one distinct class, now well known, named bankers, whose peculiar business it was to deal with money as an article of profit, in that special line of securities. The origin of bankers appears to have been twofold. *First*, In the insecurity of property prevailing in countries imperfectly civilized, it was a common and convenient practice for those who had accumulated a sum of money to place it for safe keeping in the hands of some wealthy and reliable tradesman (as they were then called) of indisputable credit. This person would not let the money remain idle, but would employ it in trade, keeping sufficient on hand to meet the expected calls of the owner. At the same time the extravagance and necessities of the landed proprietors continually compelled them to borrow from the wealthy tradesmen, even at an exorbitant rate of interest, and by degrees the moneyed men

also found it to their advantage, without directly embarking in the trade themselves, to lend out their capital to others who were engaged in this business, upon such terms as to enable both parties to derive a profit from the employment of the capital. In a short time a separation took place between the tradesman and the man of capital, and the receiving of deposits and advancing money on personal securities, which the man of capital publicly professed to do, became a distinct and lucrative business under the name of *bankers*. *Secondly*, in the infancy of foreign commerce it was usual for the merchants of different countries to go in person to the great fairs and markets, where the principal transactions were carried on; but at that time payments were made in specie, and each merchant having only the current money of his own country with him, or perhaps the uncoined metal, there was a difficulty in effecting the exchange, hence, it became a matter of great convenience, as well as of trade and profit, to give the current money of the place, or such other money as the merchant required, in exchange for his foreign coin, or his bullion, as the case might be. And the persons, who carried on this traffic, having stalls or benches called "*Banques*" in those places of commercial resort, were thence called "*Bankers*". But whatever their origin may have been, the banking business of the present day forms a most important section of the commercial pursuits of the country. The profits of the business are derived from the advantageous employment of capital in the way of loan and exchange, and also directly or indirectly from transactions of a different character with respect to deposits, where accounts are opened with depositors, the depositor or customer each day sends into the bank whatever cash he has received in the course of his business, these amounts are placed to his credit, and when the customer requires to make any payments, he does so through the bank by means of cheques; thus the bank has the advantage of all balances not required for immediate use by the customer. Where there are many customers with large amounts deposited, this branch of the business is important and lucrative. In addition to the ordinary banks of the country, there is one gigantic banking institution in England, of a national character, called the Bank of England, which

was projected by a Scotch gentleman named Paterson, and its charter obtained in July, 1694. The history and operations of this wonderful institution would fill a large volume, but its peculiar feature is this : it is a creditor of Great Britain for large sums of money advanced at different times to meet the pressing wants of the nation. The greater part of this debt, due from the British Government to the Bank, amounting to an immense sum, is what is called funded ; that is, certain annual funds, raised each year by taxation on the people, are set apart in perpetuity to pay the interest on this debt. It is through the Bank of England that this interest, or, as it is called, the dividends on these funds, are paid to the public creditors in proportion to their respective shares in the stock. These shares are transferable, and whoever desires to invest in Government securities, may purchase from the owners of the stock at such price as the stock may be worth on the market. The value of these shares fluctuate very much, being affected by political incidents, and other causes ; hence, it has become a practice to traffic in buying and selling these shares under the name "Stock Jobbing". In referring to commercial transactions. I have assumed that they have taken place directly between the parties interested, but in extensive transactions between persons living a long distance apart, the business could not be managed conveniently without the intervention of some third party acting between the principals, and who could always be on the spot to catch the favorable times in the market. It is particularly necessary in a foreign trade to have agents living abroad, to secure consignments of goods exported, and dispose of them advantageously for the owner, and to purchase and ship home such foreign commodities as the merchant may want in return. These mercantile agents have therefore been long recognized as a separate and important class under the name of "*Brokers*"; but this general term comprehends several distinct kinds of agents. Those who are engaged in the sale or purchase of goods for their principals are either "*Brokers*" or "*Factors*". The brokers have not the possession of the goods, but simply make the bargains in the name and on account of the principals. When the broker closes the bargain, he gives the seller a memorandum of the sale, and the purchaser a memorandum of the purchase

(which are called bought and sold notes), and which bind the bargain just as much as if everything took place between the parties themselves. Factors are different from brokers, in this respect, that they have the actual possession of the goods, and deal with them as their own, and in their own names. Factors receiving and making consignments of goods on account of merchants being in another country are called Foreign Factors. When acting for merchants living in the same country they are called Home Factors. The profits of their business consist generally of a certain percentage on the amount of their sales or purchases. Sometimes Brokers and Factors render themselves responsible to their principals for the credit of the persons to whom the sales are made. In such cases an additional percentage is stipulated for, and the Broker is said to act under a commission of "*Del credere*", or guarantee. In addition to the class of Brokers referred to there are also "Ship" and "Insurance" Brokers, who are engaged in buying and selling, and chartering ships, procuring freight for vessels, and negotiating insurance on vessel or cargo. There are also "Bill" and "Stock Brokers", engaged in occupations which the name itself implies. In nearly every kind of business it may almost be regarded as a fact, that the chance of profit increases in proportion to the amount of capital invested. It therefore follows that if two or more persons agree in investing each a particular sum in an enterprise or business, the profit of each is likely to be greater than if he went into the business by himself, all other things being equal. Again, the management of an extensive business establishment requires a combination of skill and attention; and those who have a direct interest in the success of such an undertaking, will be more active and zealous than if they were not so interested, it is a natural and obvious expedient, therefore, to secure the union of such persons by a community of profit and loss, and from these considerations arose the practice of partnerships in business, and so necessary and beneficial has this system been found, that there are very few large establishments carried on by single individuals at the present day. A partnership is therefore a voluntary arrangement or contract between two or more persons for joining together their money, goods, labor, or skill, under an



agreement as to the division of the profits and losses of the proposed undertaking. In general, all the partners appear openly to the world, and constitute what is called the "*firm*". It very often happens, however, that capitalists embark their money in business without taking any part in the management, or allowing their names to appear; such persons are called "*dormant*" or "*sleeping partners*", and when discovered, are liable to the creditors of the firm with the other partners. There are also special partnerships formed for single ventures, where the liabilities are confined to those special transactions. In modern times, for greater convenience and the protection of society, special laws have been made for the registration of partnerships, and with a view to the more perfect arrangement of this branch of the commercial system. Other large combinations of money and skill, partaking somewhat of the nature of partnerships, but the creatures of legislation, and the outgrowth of man's wonderful energy and enterprise, have sprung up from time to time for the prosecution of great works, public and private, useful to the country, and sometimes, but *not always*, profitable to the adventurers. To companies of this class we are indebted for the gigantic railway system on this continent, as well as the canal and international marine systems, and many other monuments of wealth, enterprise and greatness, that surround us on every side. The last, and most extraordinary of all, has been just completed on our own territory, overcoming in its course obstacles considered insurmountable, and uniting with iron bonds the two great oceans that wash our eastern and western shores. By companies, also, dominions have been acquired, in bygone times, colonies have been settled, and commerce spread to the remotest corners of the earth. Some of these companies have been created by deeds, or articles of copartnership, others by Act of Parliament; but all have a common foundation and a common tendency, viz., to minister to the wants and necessities, as well as the enjoyment of mankind, and make every man indeed a citizen of the world. Without commerce, miserable and cramped would be the boundaries of man's domain; but with it, and resulting from it, using the beautiful words of Addison: "Our tables are stored with spices, and oils and wines; our

rooms are filled with pyramids from China, and adorned with the workmanship of Japan; our morning's draught comes to us from the remotest corners of the earth; we repair our bodies by the drugs of America, and repose ourselves under Indian canopies; the vineyards of France are our gardens, the Spice Islands our hotbeds, the Persians our silk weavers, and the Chinese our potters. Commerce distributes the gifts of nature, balancing the deficiencies of one country with what is superfluous in another, creates a demand for labor, finds employment for wealth, and multiplies and cheapens the productions of every country."

