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## CANADIAN CURRENCY AND EXCHANGE UNDER FRENCH RULE

### I. BEFORE THE INTRODUCTION OF CARD MONEY*

THE general expansion of life in Europe during the fifteenth century, found special expression in the new commercial enterprise which began its rapid development in the latter part of that century and continued through the following one. The

* To avoid numerous references throughout the article it may be stated here that the chief sources for this study are the following:—

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

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

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

"Jugements et Délibérations du Conseil Souverain de la Nouvelle-France," Vols. I. and II.

"Lettres, Instructions et Mémoires de Colbert." Par Pierre Clément.

"Traité Historique des Monnoyes de France." Par M. Le Blanc.

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

Canadian Archives, *Correspondance Generale*, Vols. I, III, VI, VII.

various countries of south-western Europe were eagerly overrunning the maritime world in search of new lands and that likely treasure with which the experience of Spain had encouraged their imaginations to fill them.

The Norman seaports of France were those best prepared to respond to the expanding trade of the country. The increasing demand for foreign goods, which followed the introduction of Italian luxury and art with the home-coming of Charles VIII, stimulated French shipping. There followed a rapid expansion of the trade and enterprise of such Norman towns as St. Malo, Dieppe, Rouen and Harfleur. Norman sailors roamed the ocean in many directions, but the fisheries of Newfoundland first attracted them to the northern coasts of America. There was little in the fishing industry to fire the imagination of romantic knights or excite the cupidity of kings and courts. It was therefore left to be developed into a very profitable trade by private enterprise, while more ambitious schemes were attracting the attention of the court, and squandering French life and treasure in other parts of the world.

When, after a hasty ransacking of America, the search for the still fabled riches of Cathay was once more resumed, efforts were made to get round the American continent which barred the way. Expeditions under royal patronage visited the northern waters of America, Verazzano leading the way in 1526, but vanishing somewhere in those stormy seas on a second attempt. Cartier followed him and discovered that the St. Lawrence route was not likely for some time to prove a successful highway to the East. But the Indians in the neighborhood of Montreal told him, what even then they understood that all Europeans wished to know, that by the shores of great inland seas of fresh water there was abundance of the precious metals. Thus the closing of one avenue of royal interest in Canada opened the door upon another. It also brought to a close the period of prosperous unmolested development of Canadian resources by private enterprise.

It is not necessary to record the list of dismal failures of gold-laced and high-titled schemes which followed, and which called forth the following observation from Montaigne, an

interested spectator: "I am afraid our eyes are bigger than our bellies, and that we have more curiosity than capacity: for we grasp at all, but catch nothing but air."

However, in the intervals of these gorgeous failures, there was going on, as best it might, during the sixteenth century, a good deal of private trade with the Canadian shores. The growing luxury of Europe was making a market for furs. These being obtainable at small prices from the Indians, afforded a much more profitable return than the fishing industry, which the fur trade at first supplemented, but afterwards almost supplanted.

Tadousac, at the mouth of the Saguenay, became the centre of the fur trade for a time, and here we come upon the first regular system of exchange carried on in Canada. It was simply a system of barter. Those early merchant adventurers laid in a stock of goods before leaving France, consisting mainly of arrow tips, swords, hatchets, knives, kettles, cloaks, blankets, hats, caps, shirts, various cloths, biscuit, tobacco, and various other trinkets. At first little liquor seems to have been disposed of. With these they sailed across the Atlantic, exchanging them with the Indians at Tadousac, or at other points, for furs such as beaver, elk, lynx, fox, otter, marten, badger and musk-rat. Returning to France they disposed of their furs and repeated the operation the next season.

Trade growing, competition increasing and profits falling, efforts were made by some to obtain from the king a monopoly of the trade, usually on condition of establishing a colony and supporting missionaries. Lescarbot, the first Canadian historian, puts the case for the monopolists in its best form when he says, "Whether is it better to have the Christian religion and the glory of France extended, or to have certain individual merchants grow rich who do nothing for either. These individual merchants will neither plant colonies nor save the souls of the heathen. Further, through the competition of the merchants, beaver is selling at 8½ l, whereas at the operation of the monopoly it was selling at 50 sols (2½ l)."

This gives the keynote of the general policy for the future. A monopoly of the Canadian trade was to be given to those who would undertake to colonize the country and

support missionary enterprises. The earlier holders of this monopoly did little for colonization or the spread of the faith, but interested themselves only in the commercial privileges. Champlain was the first to take any real interest in the building up of a permanent colony in Canada. In 1608 he began at Quebec, the first colonial settlement on the St. Lawrence. In 1609 Du Monts' patent of monopoly, upon which Champlain was working, expired and, as he failed to get it renewed, the following year the St. Lawrence swarmed with private traders eager for furs. So strong was the competition that they ran their vessels up to Montreal in the hope of intercepting fur-bearing Indians. This did not afford a very promising outlook for Champlain's colony, which hoped to live largely by trade with the Indians. However, this first year's experience somewhat checked the ardor of the private traders, though they still continue to come in considerable numbers. In 1611 there were 13 vessels at the head of navigation at Montreal. As these traders had no other interest in the country than the season's profits, their free trade system naturally came in for severe criticism at the hands of Champlain, who pointed out the impossibility of establishing a colony by their methods. Yet, when monopoly was once more established, he found that the various partners through whose hands it passed were actuated by precisely the same motives as the free traders, desiring to use their monopoly privileges to enrich themselves, not to establish a colony.

What few colonists were first settled at Quebec were not permitted to trade with the Indians or with one another; they were not permitted to manufacture articles for sale which might compete with the wares of the company; neither could they send anything to France or receive anything in return, on their own account. They must dispose of their surplus produce to the company and receive goods in return, both selling and buying being at prices fixed by the company. This system involved a very simple form of exchange for both the Indians and colonists. Such regulations effectively neutralized all Champlain's efforts. Only eighteen colonists were taken out during the fifteen years of the monopoly; all others were simply servants of the company. The company itself hardly remained for two

years in the same hands, though in one form or another it lasted for fifteen years, from 1612 to 1627. In 1627 we come upon the first truly national colonial policy of France. This was embodied in the colonial scheme of Cardinal Richelieu, the great minister of Louis XIII. Under his direction was formed the "Company of One Hundred Associates," possessing extraordinary privileges and expected to achieve great things. Its purpose was part of a great national policy which had for its object the elevation of France as a nation to the first place in Europe. This policy was certainly successful, but in the concentration of all the forces of the country upon its object it ultimately led to disaster through the disregard of the rights of the individual citizens.

Among the numerous rights which the company obtained was that of the entire trade in skins and furs, and for fifteen years a monopoly of all other Canadian commerce on land or sea, with the single exception of the cod and whale fishery. The settlers of Canada were thus cut off from all part in the external trade of the country. They were to be permitted to trade with the Indians and with one another, but the beaver skins which they obtained must be handed over to the company, or its agents, at the rate of 40 sols (2 l) per pound. The people were also forbidden to trade with any others than the Indians.

The capital of the company, which was fixed at 300,000 l, one-third of it paid up and the remainder on call, was the smallest feature in it.

We may gather from these conditions the limits within which exchange would be confined in the colony. There being but one channel, the company, through which all imports and exports were carried on, there could be no occasion for the use of letters of exchange or other medium between Canada and the mother country except for the bringing in of money or capital by the colonists or the sending of contributions from France for religious or other special purposes. All commercial exchange was merged in the business of the company. In Canada itself, after the settlers had ceased to be dependent on the company, there would be occasion for considerable retail trade and a corresponding need for a medium of exchange, especially for small coins.

The dealings with the Indians took the shape of direct barter and the product of that trade passed to the company in exchange for other goods for sustenance and barter. The need for a medium of exchange was, therefore, confined within pretty definite limits. To meet this need there was one article of universal acceptance which answered all the purposes of a medium of exchange, except for small currency, and that was the beaver skin. To a certain extent other furs shared this position, but none so adequately as the beaver, especially when the price at which it was receivable by the company was fixed.

The "Company of One Hundred Associates," though important as expressing in its organization and purpose the general French colonial policy for the next century, was destined to failure from the outset. Its first fleet of ships, coming with provisions, stores and settlers, was intercepted by the English under Kirke, and nineteen out of twenty vessels captured or destroyed. The following year Canada passed for a time into the hands of the English. The colony contained at the time only five families of settlers and about twenty acres of cleared land.

When Canada was restored to France in 1632, the company resumed its powers, but most of the original enthusiasm had evaporated in the meantime. Its privileges were transferred to a small association within the other, which, following the lines of its predecessors, took little interest in anything beyond the immediate profit from the trading monopoly.

Champlain, who still retained his interest in the colonization scheme, and who had gone out again as the first Governor of the country with 150 colonists, died in 1635, and no one seemed ready to take up his work. However, the Jesuits and other missionaries had now established themselves in the country, and were exciting a new interest in it through their famous letters or relations which were eagerly read throughout France.

In 1644 Montreal was established on a half religious, half military and wholly commercial basis, by a grant from the company to the Seminary of St. Sulpice.

In 1645 the company gave up its trading monopoly to the people of Canada, on condition of being relieved from the burden of maintaining the religious, civil and military establish-

ments of the colony, and of receiving 1,000 pounds of beaver annually. This freedom had for a time a stimulating effect upon trade, but it was soon found that a few Quebec merchants, owing to their central position and control over the foreign trade, enjoyed a virtual monopoly of the colonial traffic. This was further favored by the fact that all furs had to be brought to a central store to be received and taxed, in order to provide for the expenses of the colony and the subsidy to the company.

Notwithstanding these drawbacks, the change greatly enlarged the range of Canadian business transactions and necessitated a corresponding enlargement of the machinery of exchange. Letters of exchange began to pass freely between the colony and France, while the growing contributions from France in support of the missions and other religious institutions, must have added considerably to the business of exchange. An increasing quantity of coined money must have been coming into circulation at this time, for a little later we find that though still scarce outside the trading centres of Quebec, Three Rivers and Montreal, yet coined money was in regular use, especially for filling in the gaps between uneven barter.

During this time the colony was slowly growing, but after the Iroquois began to harass the outlying settlements, agricultural immigration almost ceased. Quite a number of merchants came to trade but few to settle. From 1650 to 1662 French interest in Canada may be summed up in two words—the conversion of the heathen by the missionaries, and the obtaining of their furs by the merchants.

The troubles of the Fronde distracted France itself and naturally lessened the interest in Canada. During this period money became scarce in France and was considerably increased in value. Values in Canada followed suit, though probably not responding very rapidly or very accurately. In 1653 an edict was issued in France with the object of restoring the currency to its former value, and to that end its nominal value was reduced by one-sixth. In accordance with this edict, the Council of Canada, the following year, July 18th, 1654, passed an ordinance declaring that the gold and silver coins of France having been reduced to their former values, the money in Canada should be reduced to the same basis, there being

added to it, however, "on account of the risks of the sea," one-eighth of its value in France. As small coins of copper or other alloy were not affected by this ordinance, we may assume that they did not suffer a similar reduction.

Inasmuch as there was little foreign sale for Canadian products other than furs, and yet a considerable need for French goods, any money which was brought to the colony by merchants or others naturally tended to return to France in payment for goods.

It was to prevent what little money there was in circulation, and especially the small change, from going out of the country, that the Government of the time, following a plan often resorted to in France itself in earlier times, artifically raised the value of all coined money.

An ordinance of the Council of Quebec of October 7th, 1661, states that the means hitherto adopted for attracting money to Canada and retaining it in the country had completely failed. The value in Canada being so nearly the same as that in France, there was no special inducement to bring money and little loss in carrying it away. Hence to remedy this condition, both for the public good and in the interests of trade, the Council ordains that from this time on the quarter ecu should pass in Canada at the rate of 24 sols, and the other gold and silver coins in like proportion.

The quarter ecu was a silver coin, issued in 1602, and discontinued in 1646, the value of which was 16 sols; hence its value in Canada was raised fifty per cent. above its real value in France. But if it had already been in circulation at an increase of one-eighth, or at 18 sols, being now raised to 24 sols, it would be current at an advance of one-third on its previous value in Canada. However, it must have been circulating at more than 18 sols, for we find that its new value was supposed to be approximately an increase of one-fourth on its previous value. This ordinance required the same proportionate increase to be made in the values of all the other gold and silver coins. But such a general statement could not be accurately applied, especially where the existing rates seem to have been but roughly adjusted. Hence it was found necessary the following year, March 20th, 1662, to publish a detailed tariff giving the

value at which each gold and silver coin should circulate. These values, according to the ordinance, were calculated on the basis of an increase of one-fourth, "as has been the previous practice." In this tariff the quarter ecu is rated at 26 sols, 8 deniers. From this and other values in the list we learn that they were at least one-third above the standard rate in France. However, from this time till the next change of the law in 1672, these ratings held good, and were understood to be an advance of only-one fourth. In making his report on the finances of Canada in 1669, Talon calculates all the funds sent to Canada on the basis of an increase of one-fourth.

These facts will serve to explain, in the few references to money matters which are met with in Canadian documents of the period, statements to the effect that the "money of the country" was circulating at an increase of one-fourth over the "money of France." They also quite dispose of the commonly accepted idea that in Canada money was first legally raised in value after 1670. The copper coinage was dealt with on a basis of its own.

Two small coins, the sol and the liard, were doubled in value, the sol being made to pass current for 24 deniers by Governor d'Avaugour in 1662, and the liard being rated at 6 deniers apparently at an earlier date. To some extent these regulations had the desired effect, for they virtually made the coins a kind of French goods which the merchants found it profitable to dispose of for furs at their enhanced values. But as the people could not afford to keep on hand anything that would sell or exchange, a great influx of coin was not possible until a larger market was provided for the country's produce. The special values given to the sol and the liard produced their natural effect a little later, as we shall see.

So completely at this time had the national interest in the building up of the Canadian colony died out, that it was seriously proposed to make the country a dumping ground for criminals. To protest against this plan and to urge the claims of New France upon the Government, Pierre Boucher, of Three Rivers, was sent to France in 1662, and there laid the situation before the court. Colbert had become chief minister the year before, and was reviving and improving upon the policy of Richelieu.

He resolved to have the king take over the colony from the decayed and indifferent "Company of One Hundred Associates," now dwindled to forty-five. Canada was to be made, as in Richelieu's original plan, an important colony, capable, by the development of its trade and industry, of becoming a large factor in the national expansion of France, especially on the side of her naval power which, like Richelieu, Colbert considered to be an all-important element in the development of a great state.

In 1663 an edict was issued creating the Sovereign Council of Quebec, though a body of more limited powers had been in existence for some time.

In order to obtain exact information as to the actual condition and future possibilities of the colony, Colbert sent out a special commissioner to make enquiries along specific lines. But even before sending out his agent he was convinced that the transfer of the trading privileges of the company to the people had been injurious to the colony. In their anxiety to get furs the inhabitants neglected the work of clearing and cultivating the soil. Colbert had evidently made up his mind to place the trade of the country once more in the hands of a company. But he desired the people to understand that in any such change the colony would not suffer, as the revenue derived from the fur trade would be expended in the country for its improvement.

Colbert permitted no time to be lost in the execution of his new schemes for the colonial, commercial and naval expansion of French power. In November, 1663, the Marquis de Tracy was commissioned to visit the American colonies, as lieutenant-general, with large powers and ample means in men and materials for the removal of all obstacles, the settlement of all disputes, and the placing of the colonies on a new footing of prosperity and progress. He went to the West Indies first, and did not reach Canada till 1665. In the meantime, however, Canada began to feel the stimulus of the new interest which was being raised in France. Just before this new period there were but 2,500 people in the colony, 800 of whom were in Quebec.

All accounts agree that there was little money in the coun-

try up to the year 1664. As already stated, French money in general was considerably over-rated. The need for small change was, of course, the most pressing, for while large transactions might be carried on by barter, it would be a very inconvenient system for small exchanges. The scarcity of money was felt in all the colonies, but a general remedy was first definitely sought and applied by Colbert. The suggestion for it seems to have come from the colonies themselves. The plan adopted followed the practice already established in Canada. The most pressing complaints, however, came from the West Indies.

In the year 1663, in which Colbert began to unfold his ideas of colonial expansion, an arret of the Council (in France) was passed, providing for the coining of 100,000 livres worth of money in silver and copper, for the use of the West Indies. But it did not take effect at once, the organization of the new company suspending all other matters for a time.

Meanwhile in Canada, increasing trade seems to have brought more money to the country. It naturally took the form of the cheapest coin—cheapest in France, dearest in Canada—being at the time sols, liards and doubles. In consequence of this extra importation we find an arret of the Sovereign Council of Quebec, passed April 17th, 1664, reducing the value of the liard to three deniers, it being previously current at six. In connection with this it is explained that both the liard and double were greatly over-rated on account of the previous scarcity of money, but that now certain people were making a trade of bringing in large quantities, and fearing that it might increase to the ruin of the colony this reduction is made.

On July 17th of the same year another arret is passed again reducing the liard from three to two deniers, in order, it is said, to prevent the profit on it from leading to its greater import. The normal value of the liard was three deniers and of the double two deniers, and as they seem to have circulated in Canada on a common basis, the only one upon which there could be a profit at three deniers was the double which appears to be aimed at in this arret.

At the same time the merchants of Quebec were anxious for the introduction of more money in general, and in a petition

to the Council, in France, June 14th, 1664, we find a characteristic French-Canadian request, to the effect that since the colony had now a little surplus grain his Majesty is asked to send out a regiment with money to buy and eat it in the country. They complain also that owing to the scarcity of money they can not get their debts collected. This was evidently true enough, because we find that on Nov. 17th a complaint is presented to the Council on behalf of the farmers living at a distance from Quebec. Owing to the want of mills in many districts the farmers were forced to come to Quebec to get their grain ground, and it was complained that the grain was seized upon by the merchants in payment of past debts. The Council forbade the seizures until mills should be erected.

Just here it may be noted that wheat was at one time a limited legal tender in Canada. By a determination of the Council of Quebec, July 30th, 1664, fixing the price to be charged for goods sent out by the king, a difference is made in some cases between the price in money and the price in grain. For instance, a tub of lard was valued at 80l. if paid for in grain and 75l. if paid for in money. Further light is thrown upon this point by a complaint presented to the Council to the effect that, there having been an arret established that wheat should be taken at the rate of 100 sols (5l.) per minot in payment of old debts, as also to facilitate the carrying on of business in the country, this was found to be very prejudicial to business, inasmuch as the price of wheat was inconstant. After considering this complaint the Council ordained, May 29th, 1665, that for the future those who were obliged to receive payment in wheat should be required to accept it only at current prices. The arret here referred to was evidently an ordinance of the Intendant Talon, who wished to provide an opportunity for the settlers to make use of their surplus products for the purchase of supplies. The making of wheat a legal tender at current prices was obviously a very indefinite settlement of the difficulty and could hardly have worked smoothly. At any rate we find, on March 19th, 1669, an ordinance passed, requiring the merchants to take the wheat of their debtors in payment at the rate of 4l. per minot. Talon brought the matter up on the ground that some creditors were refusing

to take wheat in payment of debts, or, if so, at a very low price. The ordinance, however, was to hold good for only three months from the date of its issue.

We have seen that Colbert believed that the commerce of the colonies could best be promoted by the establishment of trading companies. But instead of a number of small independent companies he proposed to establish two strong companies, one for the East and the other for the West Indies. The West India Company, which covered all the American colonies and part of Africa, was formally established on May 28th, 1664, and was even more favored by the government than Richelieu's company. Yet, notwithstanding all its extraordinary privileges and favors, it became bankrupt in eight years, and in 1674, the king resumed all the grants made to it. Though Canada was granted as a feudal possession to the company, yet the king continued to nominate the Governor and Intendant and otherwise direct the development of the colony.

The company being fully established, Colbert resumed consideration of the plan for a separate colonial coinage. In 1665 we find an arret of the Council which ordained the issue, from the mint in Paris, of a special coinage to the extent of 100,000l., exclusively for circulation in the countries granted to the West India Company. In the explanation which accompanies the arret it is stated that, from what the company represents, it is necessary to send to the islands and mainland of America a quantity of small coins, especially for the convenience of the working people. In the West Indies they were accustomed to receive their wages in sugar and tobacco, which were saleable only in France, whence the returns came the following year. As the other colonies paid their laborers in money, there was a tendency to leave the French Islands. It is also pointed out that money current in France would not remain in the colonies, those who trade to them being more anxious to bring back money than goods. Hence the king has been requested to issue a special coinage for the colonies which should have a distinct stamp and be artifically raised in value in order that there might be no inducement to take it out of the country.

This arret was not put in execution before 1670, when the

king issued a declaration that he was about to strike a special coinage for the islands and mainland of America. It reproduces much of the explanations in the arret of 1665, but adds, among other things, that the issue was to consist of two silver coins, one of 15 sols and the other of 5 sols and a double of copper of the value of two deniers. These coins were not to be taken to France on pain of confiscation and special punishment.

Though some of this new coinage was apparently used in Canada, yet it was specially intended for the West Indies, as may be gathered from the correspondence with Talon. In Colbert's letter of instruction to M. de Bouteroue, when going out to Canada as Intendant, and dated April 5th, 1668, he says: "With reference to the money it will not be necessary to make any considerable change in a country so undeveloped as that, but it will be necessary to take particular care that any evil, should there be any such there, should not increase, while at the same time he must seek to reduce it gradually."

We have already seen how the threatened over-supply of liards was prevented, by reducing their value. After the arrival of de Tracy and the troops that came with him, apparently with their pockets filled with cash, money became more plentiful in Canada. According to the Mère de l'Incarnation, writing at the time, "Money is common at present, the gentlemen have brought much with them. They pay in money for all they buy, as well for their food as other necessaries." In consequence of this and the increasing trade, the colony was next threatened with an over-supply of sols which, as already explained, were circulating at double their normal value. On January 10th, 1667, complaint is made to the Council of Quebec, that the sols are being brought from France in large numbers while other coins are taken away, until there is now almost no other in circulation. The Council ordains that from the first of February next, sols shall be current for only 20 deniers each, but for the rest of this month (January) they will be received by Sieur de la Chesnaye, in payment of public dues, at the old rate of 24 deniers. On the 31st of January it was found necessary to

make special arrangements to give warning of the change and to extend the time for receiving the sols at the old value, for the benefit of Three Rivers and Montreal.

Though the reduction on the sols was slight as compared with that on the deniers, yet it evidently affected the people to a much greater extent. A very general complaint seems to have been raised by the people on account of the loss with which they were threatened by the reduction about to be made. A subscription was opened, headed by de Tracy, the Governor, the Intendant, the West Indian Company and a number of others, to provide a fund to meet these losses on the part of the poor people. Incidently this indicates that money was now freely circulating among all classes in the colony. The same fact is further illustrated by a matter which came before the Council on Oct. 29th, 1668. The price at which the Company was to receive beaver had been fixed at 10l. per pound for the best grade. The company claimed, however, that all they could get for it in France was 8l. per pound. Hence to prevent themselves from suffering loss they had raised the prices of their goods in like proportion. But it was pointed out before the Council, that, inasmuch as now-a-days people no longer always purchased their goods with beaver but often with money, this practice was obviously unjust to the cash buyers. This being recognized, Talon proposed to reduce the price of beaver to 9l., on condition that the company should reduce the price of its goods; which being agreed to, the Council fixed it by an Act.

Returning to the matter of a special coinage for the colonies, which had taken practical shape in the West Indies in 1670, it would appear that the king had originally intended to make a special issue for Canada as well. In a memoir addressed to Colbert, dated Nov. 10th, 1670, Talon says that when he was in France the king had declared his wish to have a coinage struck suitable for the country, and which would remain in circulation in it. He considers that such a measure would be of the highest benefit to the country, and promises to do his duty in the matter when the necessary orders are issued.

In another part of the same memoir he intimates that the merchants of Canada are very anxious that the sum annually

set aside by the king for the assistance of the colony should be sent out in the shape of money, not in the form of goods. The reason for this was that the merchants desired to have the entire supply of goods in their own hands. This, Talon says, would simply result in the people paying twice as much for their supplies as the rate at which they are now furnished from the king's stores. Besides the present arrangement permits him to exchange the goods for grain with the settlers. He has undertaken to send goods to convenient places for exchange and to bring back wheat. Without doing this some of the new settlements would be entirely ruined. This plainly indicates that Talon was the author of the ordinance, already referred to, making wheat a legal tender at a certain price. It will be observed that there is no lack of harmony between Talon's approval of a special coinage for the colony and his disapproval of having the king's contribution to the colony sent in the shape of money, which, under the circumstances, would simply return to France for the purchase of fresh goods for the merchants.

Replying to Talon the following spring, 11th Feb., 1671, Colbert says: "Before the king can adopt any resolution with reference to the striking of a coinage for Canada, it will be necessary to know the required denomination and weight, also the circulation it would probably have in the colony. After that His Majesty will announce to you his intentions on the subject." This would seem to indicate that the coins already struck for the West Indies were not intended for use in Canada.

In a letter to Talon the following year, dated June 4th, 1672, Colbert writes: "His Majesty has considered the proposal to strike a special coinage for Canada, and as he considers it good and advantageous, he will issue the necessary orders to have it struck and sent out the following year." This purpose, however, was never carried out. It was apparently determined in the meantime to have the ordinary coins of France circulate in the colonies at an enhanced value. Thus we find an arret passed by the Council of State, Paris, 18th November, 1672, stating that the money issued for the Islands, etc., has been found to be of very great benefit, hence not only is it to be continued, but the current money of France is to be permitted to circulate

there also, but with increased values; the piece of 15 sols to pass for 20 sols, the 5 sol piece to pass for 6 sols 8 deniers, and the sol of 15 deniers to pass for 20 deniers, and other pieces in proportion. Henceforth all exchanges or contracts are to be reckoned in money, and not in sugar or any other goods. The sol of 15 deniers here mentioned was already increased one-fourth of its standard value.

Charlevoix says that this arret was made to apply to New France, and that in consequence the value of money increased one-fourth in Canada and resulted in much confusion in all the exchanges with France. Here, however, Charlevoix is partly mistaken, because for ten years at least the French money in Canada had been circulating at an advance of one-fourth or over. As we have just seen, the sol, the chief coin of the country, was reduced from 24 to 20 deniers, which is the value to which the arret raised it. In the introduction to a memoir on the card money prepared for the Council of Marine and given in Zay, considerable confusion is also found, the information obtained being either inexact or misunderstood. It is supposed, for instance, that the distinction between money of France and money of the country came in with the arret of 1672, which was certainly not the case, as there are numerous instances in which this distinction is mentioned from 1654 on.

Money becoming a customary medium of exchange, merchants were less willing to accept produce in lieu of it. We have already noticed that objection was made to taking payment in wheat. After 1672 contracts were being drawn requiring payments to be made in money. The two staple skins of the fur trade were the beaver and moose, which were receivable at fixed prices by the treasury of the colony, whether under company management or not, and afforded the chief basis for taxation at the rate of one-fourth of the beaver and one-tenth of the moose. The beaver seems to have been accepted in ordinary trade without much question, but after 1672 the merchants were beginning to refuse the moose skins. Hence the Council found it necessary to pass an arret, Sept. 27th, 1674, ordaining that the moose skins should pass current as a legal tender at their market price, and prohibiting anyone from refusing to accept them in payment of debts.

An agitation was made in 1679-80 to have a reduction made in others of the current coins, especially the four-sol piece, which it was sought to bring to its value in France. This, however, was refused, and on December 2nd, 1680, an arret was passed requiring that all coins should circulate in Canada at the same rate, namely, at an increase of one-third of their value in France. As we gather from subsequent ordinances, this was apparently intended to apply to foreign coins as well.

After Duchesneau became Intendant he proposed to the Government to send out to Canada 30,000 crowns, in order to increase the money in circulation; to which Colbert replied, on April 28th, 1677: "That which you propose with reference to the money, namely, the sending of a sum of 30,000 ecus to Canada, is not thought expedient. It is necessary that the trade, labor and industry of the people should attract money into the country. You yourself admit that Canada is as fruitful as France, and in addition to being able to produce all that France can, it has the fisheries." The truth was that Colbert, compelled to find money to support the operations of Turenne and Condé in Europe, had none to spare for the colonies.

At this time Canada was anticipating Colbert's advice to attract money to it by trade, although it was in a direction not at all relished by France and one that was to cause no end of trouble for the future. Canadian traders had discovered that the English and Dutch merchants of Albany, Boston and New York were anxious to buy furs, and at much higher prices than could be obtained in Canada. They were willing also to pay for them either in dollars (piastres) or in goods, the goods being cheaper than in Canada. Further, by selling to the English the tax of one-fourth on the beaver would be escaped. Under these circumstances a very lively trade was developed with the English colonies. Against this traffic the Government, both in France and Canada, directed all its verbal engines, but without much success. The highest officials in the colony, Governor and Intendant included, mutually accused one another of taking part in this illicit trade for personal gain. As one result of this traffic a steady stream of Spanish coins began to pour into Canada, consisting chiefly of the piastre or Spanish dollar and its fractions, one-half, one-fourth and one-eighth.

The farmers of the revenue were naturally much disturbed over the loss of revenue through the loss of beaver. The merchants of Quebec interested in the trade with France were also aggrieved, as it meant a loss of profit to them on both exports and imports. It was found, too, that though the English were paying high prices for beaver, yet they were unloading on the French traders all their worn and light coins. Numerous complaints were presented to the procureur general, and through him to the Council, on account of the merchants refusing to receive the coins. Hence an arret was passed September 17th, 1681, supplementing that of December 2nd, 1680, ordaining that all foreign money, gold or silver, should pass by weight, but increased by one-third of its value, according to the usage of the country. The full piastre was to be accepted at 3l. 19 sols 1 denier, while the light coins were to be reduced in value at the rate of 11 sols for every grain which they lacked in weight. It was forbidden to any one to refuse to accept these coins at this valuation.

In a country like Canada where it was simply impossible to ascertain the weight of coin in every transaction, this ordinance could not be worked. But, though this was soon discovered, yet owing to the quarrels between the Governor and Intendant, the business of the Council was so obstructed that it was not till January 13th, 1683, when de Meulles had succeeded Duchesneau as Intendant, that the matter could be remedied. The agent of the farmers of the revenue desired the Council to treat all foreign coins as France did, by entirely prohibiting their circulation. This, however, the Council refused to do unless the farmers of the revenue would undertake to buy up all the foreign money then in the colony, which of course they were not prepared to do. Hence the Council ordained that the piastre should pass current for four livres, if of full weight, and at decreasing rates according to the degree of their lightness. To get over the difficulty of constant weighing, they were to be stamped with a *fleur de lis*, and those of light weight were arranged in four classes, to be distinguished by Roman numerals stamped on them, while a scale of value was arranged for them. Similar provisions were made for the fractions of the piastre. None were to circulate without being stamped, and none to be refused that bore the stamp.

This arrangement seems to have settled the difficulty for the time. Governor De la Barre, writing to M. de Seignelay, in November, 1683, thus refers to the matter: "We experienced serious embarrassment in the month of January last in regard to dollars. They were here in some number, and a quantity of them being light caused considerable disorder among the lower classes. It not being customary in this country to weigh them, induced the Intendant and me to assemble an extraordinary session of the Council, at which it was resolved, subject to his Majesty's pleasure, to have the dollars of weight marked with a *fleur de lis*, and those which were light with some cypher fixing their value. This was done and is now in operation without any noise or difficulty."

This brings us to the eve of the introduction of card money in 1685, the nature and effects of which will be considered in the next paper.

ADAM SHORTT

QUEEN'S UNIVERSITY, Kingston, March, 1898

# THE REPORT OF THE MONETARY COMMISSION

## TO THE EXECUTIVE COMMITTEE OF THE INDIANAPOLIS MONETARY CONVENTION

NON-PARTISAN efforts to improve the banking and currency of the United States have been frequent ever since the present system was established. Chief among these perhaps have been the untiring labors of comptrollers of the currency, since the close of the Rebellion, to perfect the legislation regulating the exercise of the discount and deposit functions by national banks. But during the last decade, and particularly since the crisis of 1893, the attention of those interested in the matter has been directed to the larger problems presented by the distribution of American credit and the character of the American currency. Public men and students, periodicals and organizations have proposed measures of relief, now from the inelasticity of the circulation and the dangers of a fiduciary currency inadequately protected, now from the financial difficulties of the Government and the excessive restriction of banking enterprise. Sometimes the proposals have been so comprehensive as to include the reform of all four main evils and of their corollary disadvantages as well.

An example of the endeavor directed against particular defects can be found in the action taken by the American Bankers' Association in 1894, when they approved the Baltimore plan of note issue against general assets. It is probable that this vote and the subsequent agitation were due in part to the work of Walker, Hague and other Canadians, who, in print or on the platform, had criticized the faults of a specially secured issue and given their criticism point by describing conditions at home. The Baltimore scheme of note issue, or the principle on which it was based, was advocated in the United States by Horace White, Cornwell, Conant, J. F. Johnson, Dunbar and

others. The weight of opinion in the academic symposium on the currency question, published by the *Review of Reviews* in the summer of 1896, was likewise in favor of some such plan. So, too, the proposals with respect to legislation on the bank note issue advanced by Eckels during his term of office as comptroller of currency, and the recent suggestions of the secretary of the treasury, contemplate the issue of a part, at least, of the total bank note circulation without special security.

But the most promising of all, in many ways, whether we consider efforts to improve parts only, or the whole system of legislation on banking and currency, is the organized and energetic movement of which one of the latest results is the report of the Monetary Commission to the Executive Committee of the Indianapolis Monetary Convention.

The movement began in a meeting of the Governors of the Indianapolis Board of Trade on the 18th November, 1896, at which H. H. Hanna suggested that the governing boards of the more important boards of trade in the States of the Central West should be invited to send delegates to a meeting proposed to be held in Indianapolis on the 1st December, 1896. The suggestion being adopted, invitations were sent out and on the date named, representatives of commercial organizations of St. Louis, Chicago, Cincinnati, Milwaukee, Minneapolis, St. Paul, Louisville, Columbus, Cleveland, Toledo, Grand Rapids and Indianapolis appeared at a preliminary conference. Here it was decided to invite the boards of trade, chambers of commerce and commercial clubs in all cities of the United States, having 8,000 or more inhabitants in 1890, to send delegates to a convention to meet in Indianapolis in January, 1897, for the purpose of discussing the currency question from a non-partisan standpoint.

Some three hundred delegates, from one hundred and eight cities in twenty-seven states, came together at Indianapolis in response to this call on the 12th January, 1897. In the afternoon of the second day they adopted resolutions declaring "that it has become absolutely necessary that a consistent, straightforward and deliberately-planned monetary system shall be inaugurated, the fundamental basis of which should be:—first, that the present gold standard should be maintained; second,

that steps should be taken to insure the ultimate retirement of all classes of United States notes by a gradual and steady process, and so as to avoid injurious contraction of the currency or disturbance of the business interests of the country, and that until such retirement, provision should be made for a separation of the revenue and note-issue departments of the Treasury; third, that a banking system be provided which should furnish credit facilities to every portion of the country and a safe and elastic circulation, and especially with a view of securing such a distribution of the loanable capital of the country as will tend to equalize the rates of interest in all parts thereof."

The president of the Convention was instructed to appoint an executive committee whose duties should be to advocate the policy thus announced, to urge Congress to authorize the President of the United States to appoint an expert monetary commission who should consider the entire question and report to Congress at the earliest day possible, and, failing in this, to appoint a private commission of eleven members who should devise a plan of reform and report their work to a proposed second meeting of the Convention. The numerous resolutions and communications bearing upon currency reform which had been presented to the Convention were all to be referred to this commission.

In spite of Mr. McKinley's special message in support of their proposal, the efforts of the committee at the extra session of Congress in the spring of 1897, were unsuccessful. The bill authorizing the appointment of a commission, which passed in the House, was held up in the Senate. Accordingly, the committee chose the following private commission, the names of whose members will emphasize the character of the selection with regard as well to ability and experience, as to geographical representation and "distribution in different lines of business."

George F. Edmunds, Vermont, Ex-Senator, at large.

Charles F. Fairchild, New York, Ex-Secretary of the Treasury and Banker, Eastern States.

C. Stuart Patterson, Pennsylvania, Director Pennsylvania Railroad Co., Eastern States.

Stuyvesant Fish, New York, President Illinois Central Railroad Co., Eastern States.

T. G. Bush, Alabama Railroad President and Iron Manufacturer, Southern States.

J. W. Fries, South Carolina, Cotton Manufacturer, Southern States.

L. A. Garnett, California, Financier, Pacific Slope.

W. B. Dean, Minneapolis, Wholesale Hardware Merchant, Northwestern States.

G. E. Leighton, Missouri, retired manufacturer, Southwestern States.

J. Laurence Laughlin, Illinois, Head Professor of Political Economy, University of Chicago, Central Western States.

R. S. Taylor, Indiana, Lawyer, Central Western States.

The commission met in Washington on the 22nd September, and began the work appointed for them. Active correspondence was established between the commission and persons fitted by practical experience or scientific investigation to deal with monetary problems, and contributions solicited not only upon the general subject, but also in reply to the list of specific questions drawn up by the commission.

The preliminary results of their deliberations, based upon this correspondence and the material already at their command, or collected in the course of prolonged and diligent investigation, appear in the report already mentioned. Since its publication, the recommendations in the report have been submitted to a second meeting of the Monetary Convention, held at Indianapolis late in January of the present year. This second convention comprised four hundred and seventy-five delegates of the same commercial bodies throughout the United States from whom delegates had been asked for the first meeting. Strong resolutions endorsing the commission's plans were adopted by a unanimous rising vote, thus "demonstrating that the work of the first year had accomplished the great object of unifying the forces making for sound currency in the United States along one line of action." A bill embodying the recommendations has also been prepared and introduced into the House of Representatives, the prospect now being that the sub-committee of

the Committee on Banking and Currency to which it was referred will report upon it early in April. Meanwhile, the Executive Committee is "organizing the whole country and pursuing a propaganda of education along the lines of the plan laid down with as much effect as it knows how to command."[1]

The document whose history we have thus sketched, begins with an explicit acceptance of the principles formulated in the resolutions under which the commission was appointed. Then follows a statement of the results anticipated from the enactment of the proposals into law. Comment upon the preface, however, will be more appropriate after the body of the report has been considered. This is divided into six parts, dealing in turn with the facts as to the currency, the standard, the silver currency, the demand obligations of the Government, the banking system and the details of the plan for currency reform. The importance of the subject warrants us, perhaps, in looking first at the discussion of the standard.

## I

The commission show how forced circulation of depreciated legal tenders before and after 1866 perverted popular opinion upon monetary questions and prompted, first, the successful outcry against prompt retirement of these obligations, and then, the call for greater issues of a paper currency avowedly irredeemable. They point out that the agitation for free coinage of silver arose only after that metal began to fall in value, and was then taken up by friends of cheap money as a more promising issue than unlimited greenbacks. The last presidential campaign has made the argument in favor of gold as the single standard too familiar to permit the repetition, in any detail, of the remaining discussion under this topic. It is enough to note that the familiar distinctions between the functions of money as a standard of value and as a medium of exchange, between money and money's representatives, are carefully drawn, and then used

[1] I am indebted to Mr. H. H. Hanna, Chairman of the Executive Committee of the Convention, for this information as to the progress of the movement since publication of the report.

to explain the possibility of safely using other forms of currency than gold alone, provided these are always convertible into what must have a market value independently of legal tender laws, *i.e.*, the standard. The commission insist that the poor and helpless suffer most from the degradation of the standard, while the constant convertibility of representative currency permits the use of as much thereof as the convenience of the people may require. But "if the standard of value be lowered there necessarily follows a loss of public confidence, a lessened use of credit and credit forms of currency, and a consequent diminution of the effectiveness of the currency." "The gold standard, therefore, does not mean gold monometallism, and it necessarily results, not in contraction, but in the greatest possible expansion of the currency within the bounds of safety." Proposals for international bimetallism are gently, but incisively, dismissed with the remark that an earnest effort has been made to realize the hope of solving by this device the problem of the standard, but it must now be abandoned. The commission recommend, therefore:

"1. An explicit legislative definition of the gold standard, and a pledge that it will be maintained.

"2. A requirement that all obligations, public and private, unless otherwise stipulated in the contract, shall be payable in conformity with that standard.

"3. The adoption of a plan for the gradual retirement of the outstanding note issues of the Government."

## II

What these last mentioned issues are, appears under the heading "The Facts as to the Currency," where the amount, qualities, legal position and origin of the ten different kinds of currency in use in the United States are stated with great detail. The mere enumeration of varieties is something of a task, for the list includes gold coins, standard silver dollars, subsidiary silver coins, minor coins, gold certificates, silver certificates, treasury notes of 1890, United States notes or greenbacks, currency certificates and national bank notes. Upon the gold coinage, the subsidiary silver and the minor coins, little adverse criticism is offered. For the gold certificates outstanding against

equal amounts of gold coin entrusted to the treasury's care, and for the currency certificates issued to banks in denominations of $10,000 in return for equal deposits of United States notes, the commission simply propose retirement and cancellation, and this because the business of receiving and returning special deposits which would need to be continued, were reissue of the certificates permitted, is of no advantage to the treasury.[1]

That part of the currency with which most fault has been found in this as in other quarters, consists in standard silver dollars, silver certificates, treasury notes of 1890, Unites States notes and national bank notes.

In round numbers 452,000,000 legal tender silver dollars have been coined by the United States Government. More than $67,000,000 have never been in circulation at any one time, and but $60,000,000 were outstanding on the 1st November, 1897, the date to which the currency statistics presented usually refer. The bulk of this vast coinage lies in the vaults of the treasury, $384,000,000 being a special deposit, against which silver certificates, not a legal tender, have been issued in denominations of $1, $2, $5 and upwards. Of this sum the treasury holds $11,000,000, the public $373,000,000. The treasury also owns 19,000,000 silver dollars not covered by certificates.

The treasury notes are the creation of the "Sherman" Act of July 14, 1890, which provided that this legal tender paper "redeemable on demand in coin" should be issued in payment for obligatory purchases of silver bullion to the amount of 4,500,000 ounces per month. $46,000,000 of the $155,000,000 issued before the repeal of the silver purchase clause of the Act in 1893 have been redeemed in silver and cancelled. The notes for $109,000,000 still outstanding or lying in the Government's tills are practically covered by the bullion, costing $104,000,000, which the treasury holds against them.

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[1] The expediency of stopping forthwith the issue of gold certificates is possibly open to question. The Government has exceptional facilities for storing precious metals, and until the suggested reforms of the currency system are completed, might well continue to be the custodian of that part of the country's stock of gold which it is well to keep at all times easily accessible. But the point is at best a minor one.

Like the silver certificates, the United States notes have been issued in large and small denominations. But except for duties or imports and interest on the public debt, they are a legal tender in payment of all debts public and private. Since the 1st January, 1879, they have been redeemed in gold coin when presented at the sub-treasuries in New York and San Francisco. The amount technically outstanding has remained at $346,681,016 since the act of May 31st, 1878, prohibited the further retirement and cancellation of greenbacks, but $87,000,000 of this sum are in the treasury, $48,000,000 being held against currency certificates, and the balance as so much cash liable to reissue whenever appropriations cannot be supplied from other moneys. The total amount of greenbacks, treasury notes of 1890, and silver outstanding on the 1st November, 1897, was $908,708,088, of which $847,000,000 were in the hands of the public and $61,000,000 in the treasury but liable to reissue.

The item of national bank notes is not so considerable, although this paper is receivable at par in payments to and from the United States, except for duties on imports and interest on the public debt; receivable at par also in discharge of any debts to any national banking association; and redeemable at the treasury. National banks have found better uses for their capital than investment in United States bonds, costing high premiums and bearing low interest, in order that they may enjoy the privilege of issuing circulating notes up to 90 per cent. of the par value of the bonds deposited. Only $230,000,000 of these bond-secured bank notes are outstanding, and of this amount the treasury holds $5,000,000.

## III

The defects of the currency system thus outlined are described as:

"1. The vast amount of Government credit currency without a certain and adequate provision for its redemption, and the consequent diminution of public confidence in the continued maintenance of the gold standard.

"2. The continuance in circulation of Government promises

to pay, which, when made a legal tender, constitute a forced loan, which are secured only by such resources as the exercise of the taxing power can render available, and which are payable only at the will of the debtor.

"3. The failure to provide the means for a gradual and sufficient increase of the volume of the currency to meet the needs of an increasing population and an enlarging commerce.

"4. The want of a natural outflow and inflow of the currency when and as, and only when and as, the agricultural, manufacturing and commercial interests of the country require, at a given time, either a greater or a less quantity of currency in circulation.

"5. The failure to secure such a distribution of the loanable capital of the country as will tend to equalize the rates of interest in all its parts.

"6. The confusion of the fiscal functions of the treasury as the receiver of the public revenue and the disburser thereof under congressional appropriations with its issue and redemption functions in exchanging and redeeming the currency.

"7. The circulation of different forms of Government currency having different qualities as to legal tender and receivability for Government dues.

"8. The circulation of silver dollars of full legal-tender quality whose nominal value as coins so largely exceeds their value as bullion, that they offer tempting inducements to successful counterfeiting.

"9. The circulation of a national bank currency based upon Government bonds, presupposing a continuing issue of those bonds, diminishing the loanable funds of the banks, and, by reason of their bond basis, incapable of increasing in volume with a temporary demand for more currency, and of decreasing with the cessation of that demand."

The first, second, seventh and eighth counts of this indictment, *i.e.*, those directed against the Government's issues, will probably be approved much as they stand by everyone who sympathizes with the general purposes of the Indianapolis movement. Neither is the criticism in the sixth count calculated to provoke objections from persons who understand the effects of the present organization of the treasury department. For the confusion of fiscal functions with those of issue and redemption has made public confidence in the convertibility of the paper currency too dependent upon the preservation of equilibrium in the budget. Through its obligation to redeem greenbacks the

treasury has become the chief source of the supply of gold coin and bullion; it has become responsible not only for the safe keeping but also the maintenance of the country's principal reserve of gold. And yet that reserve consists merely of the treasury's balance of free gold. It may be reduced below the danger point, now commonly placed at $100,000,000, by expenditures in excess of revenue, or by withdrawals of gold for export purposes. More or less distrust of all classes of Government demand paper arises whenever such a reduction occurs; if it happens during a financial stringency, the popular apprehension, whether well founded or not, is sure to be greatly increased.

In like manner, the lack of proper elasticity urged against the currency system as a whole in the third and fourth charges, and, in connection with other recognized defects, against the national bank issue in the ninth charge, being a patent fact, will hardly afford ground for dispute. But the analysis of elasticity pursued in the third and fourth charges was hardly necessary. To be sure, there are two wave-like movements, two varieties of regular fluctuation, in the economic activity of communities largely engaged in agriculture and extractive industry. One of these, completed within the year, is due to the influence of the seasons; the other, extending over a longer period, has been variously described as the cause, concomitant and effect of "good times" and "hard times." In progressive communities, without doubt, the crest of each longer wave rises higher than the one just before it, just as the waters of a swelling stream come further up the banks each day the flow increases. Without doubt also, these movements ought to be reflected in the amount of currency in circulation. But if the volume of a currency varies in accordance with the annual fluctuations in the demand of commerce, agriculture and manufacture, for media of exchange, it will also expand to supply the needs of an "increasing population and enlarging trade," and contract as the demand for circulation is lessened by depression. Automatic increase or diminution of its volume in adjustment to the activity of business is the very essence of elasticity in a currency. It matters not whether the ups and downs of trade are rapid and frequent or gradual and prolonged. Susceptibility to slowly working influen-

ces is merely a consequence, or rather an incident, of adjustability to quicker fluctuations. One may not presume ignorance of this fact on the part of the commission, so the dubious distinction in the third and fourth counts should be regarded merely as a device of exposition. It must be remembered that the report is intended for a wide circle of readers, with many of whom popular statement, pleasantly flavored to suit long-cherished prejudices, is sometimes more effective than precise and logical argument.

## IV

The second group of recommendations brought forward by the commission relates to the silver currency and the demand obligations of the Government.

Realizing that the people of the United States, by reason of the enormous amount of silver coined into dollars between 1879 and 1893, the subsidiary coinage and the treasury's holdings of silver bullion, have invested heavily in that metal, they propose to keep the present stock of silver in active circulation. Realizing, further, that this can be effected only by promoting, in every possible way, the use of silver certificates in place of the clumsy dollars, they propose that the currency of all denominations below $10 shall be silver coin or silver certificates for equal amounts of silver dollars held in the treasury, supplemented by gold coins of the denominations of $2.50 and $5. Such an arrangement could easily be perfected within the term of five to ten years, which the commission propose for the completion of their reforms. The present circulation of notes for $5, or less, is about $354,000,000. $199,000,000 of these, being treasury notes or greenbacks, would be changed into higher denominations and eventually retired to make way for the like quantity of silver certificates for $1, $2 and $5, into which it is intended to convert paper of this sort now outstanding in higher denominations. The commission believe that the trade of the country will easily absorb these four hundred and odd millions of silver and its representatives, and prevent any considerable quantity of such "large change" from coming in for redemption. The Government, nevertheless, has received face value for every coin or certificate issued, and in spite of their market value as bullion, the

silver coins ought to be exchangeable for gold at their nominal value. The nature of the reserve to be provided for such exchange will appear further on.

The demand obligations of the Government, properly so called, consist of United States notes and the treasury notes of 1890. The greenbacks must be redeemed in gold on demand, because the law so commands, and the treasury notes, although they are nominally redeemable in gold or silver coin at the discretion of the secretary of the treasury, because the Government has pledged itself "to maintain the two metals on a parity with each other upon the present legal ratio," and would repudiate this promise by offering silver alone when the holder of the notes asks for gold.

With respect to these issues, the commission propose immediately to reform the traditional methods of redemption, and eventually to retire both sorts of paper. Reasons for the change are adduced from the commercial, financial, monetary and political points of view. But as a summary of their argument, or arraignment, though in the most condensed form, would require much space and involve some repetition, it seems better to proceed forthwith to the particulars of their plan. Briefly stated they are:

1. The separation of the note-issuing and redeeming operations of the treasury from its ordinary fiscal operations by the creation of a division of issue and redemption, and the transfer to it of the gold reserve and other resources held against obligations; the Government notes to be paid in gold coin on demand through that division. This division, it should be noted, is also to be charged with all business relating to the exchange of coins, and that relating to the national banks. It is further to be entrusted with the gold, United States notes, and silver dollars and bullion now held against gold, currency and silver certificates and treasury notes of 1890 respectively. Its accounts are to be kept distinct from the fiscal accounts of the treasury; the accounts relating to national banks distinct from all other accounts.

2. The reserve transferred to this division shall consist of gold coin and bullion equal in value to 25 per cent. of the outstanding greenbacks and treasury notes, and of a further sum of gold equal to 5 per cent. of the total coinage of silver dollars. The secretary of the treasury shall be in duty bound to keep the gold reserve at the point necessary to secure prompt redemption

of all notes and silver dollars presented and to preserve public confidence. The funds for this purpose will be obtained by transfer of surplus revenue from the fiscal division if possible. But the secretary of the treasury will also be authorized, at his discretion, to sell silver bullion for gold, and to borrow lawful money whenever he thinks it necessary ;

(*a*) to augment the reserve in this division, on 3 per cent. gold bonds, redeemable after one year and payable in twenty years ;

(*b*) to supply temporary deficiencies in the fiscal department, on certificates of indebtedness bearing interest at not more than 3 per cent., payable to bearer in from one to five years after date, to be issued in denominations of $50 and multiples of $50 at the treasury department, the sub-treasuries, and United States depositories, and at selected post-offices ;

(*c*) or, whichever the object in view, on inscription on the books of the treasury, transferable at the will of the creditor and payable on the agreed date of maturity. But no higher rate of interest than 3 per cent. may be paid, and none whatever on inscriptions reduced by withdrawals to less than $50.

By the first of these innovations the treasury will be enabled to liquidate its silver assets at favourable turns of the bullion market ; the second will provide the possibility of keeping the gold reserve at the proper height, independently, in great measure, of budgetary vicissitudes ; the third will make it easier and cheaper to increase and to retire the Government's floating debt ; and the fourth change, including as it does provision for the acceptance of small sums at every money-order office for transmission to Washington and inscription on the books of the treasury free of cost to the person so credited, ought to attract would-be investors in the public debt who lack facilities for keeping bonds, and will doubtless "make it possible to place Government loans by a real popular subscription." Indeed, all these methods of borrowing are in the direction of what the French have called the "democratization of the national debt."

3. Notes to the amount of $50,000,000 to be cancelled as paid, cancellation thereafter not to exceed the increase of bank notes. After five years the notes paid to be retired at a rate not exceeding twenty per cent. per annum of the amount then outstanding ; at the end of ten years the legal-tender quality of the notes then outstanding to cease.

4. No note, once paid, to be reissued otherwise than in exchange for gold, except that, in case of an excessive accumulation of redeemed and uncancelled notes in the Division of Issue and Redemption, the Secretary of the Treasury may use

them in the purchase of United States bonds for the benefit of the Division of Issue and Redemption; such bonds to be held in that division and sold for the benefit of the redemption fund when directed by the Secretary of the Treasury.

The practical effect of the third provision would be the immediate cancellation of the first $50,000,000, provided the appropriations made in the intervening sessions of Congress do not greatly reduce the Treasury's present holdings of greenbacks and treasury notes. In the lack of express statement, it is difficult to suggest the reasons for restricting subsequent cancellations, unless we suppose that to the desire of preventing extraordinary pressure upon the reserve within any particular term, there was joined a fear lest undue contraction might otherwise occur from time to time during the period of transition. The greater weight probably attached to the latter consideration. At any rate, the possibility of contraction is unmistakably suggested in the fourth provision, and in the commission's explanation of that paragraph it is mentioned in as many words.

## V

The American banking system, it is hardly necessary to say, is made up of numerous and comparatively small local banks. Each is confined, by law in most cases, by preference in a few, to a single locality and a single office as the scene of its operations. Each bank, furthermore, is dependent upon the neighborhood in which it works for all save an inconsiderable fraction not only of its loan and discount business, but also of the capital, deposits and other funds from which it meets the local demand for credit. And finally, the privileges of issue accorded State banks are rendered nugatory by the federal tax of 10 per cent. upon their notes, while no national bank is permitted to issue notes otherwise than against the special security of United States bonds, and then only to 90 per cent. of the par value of the bonds deposited with the Government.

So far as the safety of the circulation thus permitted is concerned, the results have been satisfactory. No holder of a national bank note has ever lost a cent by it. Whatever the losses suffered by shareholders and depositors in the past, their

interests are at present carefully guarded in most respects by the punitive legislation against malfeasance by bank officials and employees, and by explicit definition of the business in which the banks may engage. But the circulation of national bank notes has decreased, while the banks themselves have increased both in numbers and capital. The growth of the system moreover has not been so general and systematic as to bring the American organization of credit to the highest standard of efficiency. The different loan markets of the country show vast differences with respect to the relative abundance of loanable capital at their disposal, and as a consequence, wide inequalities in their usual rates of discount. But the criticism offered by the commission in this part of the report applies particularly to the note circulation. That is open to grave objections:

"1. It presupposes a continuing issue of government bonds, when it ought to be the national policy to steadily reduce and ultimately extinguish the debt of the United States.

"2. The investment in bonds diminishes the funds of the bank available for loans to its customers.

"3. Such a currency does not increase in volume with a temporary demand for more currency, nor decrease with the cessation of the demand."

In seeking to do away with these objectionable features, it is proposed, in the first place, to retain the general principle of a uniform national system. But the supervision and inspection of banks working under federal statutes are to be improved by providing for more frequent and thorough examinations, the payment of fixed salaries to bank examiners instead of fees, the rotation of examiners in the inspection of individual banks, for public reports, regular or special, at the call of the comptroller of the currency, and for making it penal for any bank to lend money or grant a gratuity to an examiner of banks, and penal for the examiner to receive it.

The second suggestion is that the note issues be based upon "those readily convertible assets which represent the exchangeable wealth of the country in its natural products and manufactured goods." This means, of course, that circulation is to be secured by the general credit of the issuing banks instead of by special deposits of bonds, and constitutes, perhaps, the most important feature of the entire scheme.

Following are the regulations under which the new right of issue is to be exercised :

(*a*) A bank's circulation shall not exceed the amount of its paid-up and unimpaired capital, exclusive of the portion thereof invested in real estate; notes shall be of a uniform design and quality and shall be made a prior lien as well upon all the assets of the issuing bank, as upon the personal liability of shareholders; no notes for less than $10 shall be issued.

(*b*) Up to an amount equal to 25 per cent. of its capital a bank may not issue notes in excess of the bonds it has on deposit with the treasurer of the United States, the value of these securities to be determined annually on a three per cent. basis by the secretary of the treasury; circulation in excess of 25 per cent. of a bank's capital may be issued without further deposit of bonds; beginning five years after the measure becomes law, the deposit of bonds required is each year to be reduced by one-fifth of the 25 per cent. of a bank's capital.

(*c*) Upon notes outstanding in excess of 60 per cent. and not over 80 per cent. of its capital, a tax of 2 per cent. per annum, upon circulation in excess of 80 per cent. of its capital, one of 6 per cent. per annum, shall be payable by the issuing bank. (From the draft of bill which accompanied the reviewer's copy of the report, it appears that notes of a national bank shall be deemed and held to be outstanding whenever the comptroller of the currency shall have supplied them to the issuing bank in blank, and shall not have been returned to the comptroller for cancellation or covered by an equal amount of money deposited with the treasurer of the United States). In order to meet the expenses of the treasury in connection with the national banking system, a tax of $\frac{1}{8}$ per cent. per annum upon its franchises, as measured by the amount of its capital stock, surplus, and undivided profits, shall be imposed upon each bank, in place of the present tax of 1 per cent. per annum upon circulation.

(*d*) A common guaranty fund, equal to five per cent. of the total circulation of bank notes, shall be formed and held in the division of issue and redemption in order to insure prompt payment of the notes of any defaulting bank. Towards this purpose, national banks shall be required to pay to the treasurer a sum of gold equal to five per cent. of the notes called for, before any of the notes contemplated in the plan will be issued to them by the comptroller of the currency. On the failure of any bank to redeem its notes, they shall be paid from the guaranty fund and proceedings taken to collect from the assets of the bank, or from the stockholders if necessary, the amount already expended in behalf of that bank, and a further sum to cover its notes still outstanding. In case the guaranty fund is reduced by

any operation to an amount less than 5 per cent. of the total circulation, solvent banks shall be assessed for contributions in proportion to their notes outstanding, sufficient to make the impairment good. Upon depositing lawful money with the treasurer of the United States, or returning its notes for cancellation, a bank shall be entitled to the return of a corresponding portion of its unimpaired contribution to the guaranty fund. Proceeds of the circulation tax and interest accruing from investment of any part of the guaranty fund are to be held in the division of issue and redemption as a supplementary fund, to be used only when the guaranty fund becomes inadequate to bank note redemption, and not to be taken into account in calculating assessments for the replenishment of the fund or in repayment of contributions thereto.

(*e*) The shareholders shall be jointly and severally liable for the debts of a failed bank, each to an amount equal to the par value of his shares, and not ratably one with another, in case the assets of the bank are insufficient to discharge its obligations.

(*f*) The present system of national bank note redemption shall be continued, with a constantly maintained redemption fund of 5 per cent. in gold coin, and with power conferred on the comptroller of the currency, with the approval of the secretary of the treasury, to establish additional redemption agencies at any or all of the sub-treasuries of the United States, as he may determine. The new notes shall also be receivable at par in payment of debts to the national banks and of dues to the United States, except duties on imports.

(*g*) Reserves of lawful money equal to 25 per cent. and 15 per cent. respectively of their deposits shall be kept by the two classes of banks now authorized by law. Neither its own notes nor its contributions to the bank note guaranty and redemption funds shall be counted by any bank as a part of its reserve or cash assets.

As the third group in the series of bank reforms it is proposed that the organization of national banks with a minimum capital stock of $25,000 be permitted in places of four thousand population or less, and that provision be made whereby branch banks may be established with the consent of the comptroller of the currency and approval of the secretary of the treasury.

And, finally, the commission have provided that, two-thirds of their stockholders consenting in writing, national banks may accept the new legislation within one year from the date of its enactment into law, while national banks which do not, within the year, accept the privileges and undertake the liabilities thus

conceded and created, shall be dissolved, saving the remedy for liabilities and penalties previously incurred. State banks fulfilling the conditions of the Act, may become national banks under the same name and with the same officials they formerly had.

The suggestions with respect to an improved supervision are probably due as much to the lessons of experience as to the purpose of meeting the altered conditions which adoption of the plan may be expected to bring about. So too, the change with respect to the additional liability of shareholders can be explained by difficulties which have arisen under existing laws.[1] The proposed amendment will make it possible to collect the full amount of his "double" liability from every solvent shareholder, regardless of what may be obtained from others. Concerning the new franchise tax, the commission remark that "the issue of circulating notes is only one form in which a bank expresses its demand liability." In October, 1897, the country banks were responsible for more than 72 per cent. of all notes issued, while the banks in the reserve cities had issued less than 19 per cent., and those in the central reserve cities, New York, Chicago and St. Louis, about 9½ per cent. "Surplus and undivided profits and capital show the profits and property of banks, and these are certainly more legitimate objects of taxation than the mere instruments which banks may be called upon by their customers to issue to serve chiefly the convenience of those customers. This tax makes as equitable an apportionment of the expenses of the system as can be devised."

## VI

In the main, however, the argument by which the commission support their banking scheme may be more fitly termed brief and scanty than full and exhaustive. Possibly the usefulness of these reforms seemed so obvious that justification was

[1] According to the courts:

"The amount contributed by each shareholder should bear the same proportion to the whole amount of the deficit as his own stock bears to the whole amount of the capital stock at its par value. And the solvent shareholders can not be made to contribute more than their proportion to make good the deficiency caused by the insolvency of other shareholders." *United States* v. *Knox*, 102 U.S., 422.

thought superfluous. Or it may be that an examination of the probable effect of the proposed legislation was postponed to the final report appearing in April. Here, at any rate, there is no endeavour to answer the question: How will they work? suggested by the measures we have last described. This reserve, moreover, is maintained in apparent indifference to the probability that the results expected from the other features of their currency system will not be obtained unless the effects of the proposed reforms of banking are exactly those intended. What the commission hope their plan will accomplish, so far as possible, if enacted into law, is summed up at the beginning of the report. The eight items in their list will be indicated with detail sufficient for our purpose by the following four:

1. To remove, at once and forever, all doubt as to what the standard of value in the United States is, and is to be.

2. To establish the credit of the United States at the highest point among the nations of the world.

3. To relieve the treasury from its present burden of keeping good the country's gold reserve.

4. To provide an elastic currency.

The first of these will probably be enjoyed for so long a time as the President of the United States and a majority of Congress are unwilling to adopt another standard. With regard to the second, however, one may well believe that the hope of raising the credit of the country to this pinnacle, simply by the adoption of an improved currency system, if not coloured by politics, is at least a trifle too sanguine. Factors, whose unfavorable influence upon the credit of the United States is probably greater than that of the faulty monetary legislation, are the divided management of the budget and the instability of the tariff policy. Until these have been eliminated from the situation, it seems rather unlikely that the American Government will be able to borrow at lower rates than other leading states.

With respect to the third end in view it must be remembered that the commission intend that ten years will pass after the enactment of the plan, before the reforms are complete. During this period the Government will be charged with the redemption and retirement of the $409,381,953 of greenbacks,

treasury notes of 1890, and currency certificates outstanding on the 1st of November, 1897. Whether these charges will be met out of surplus revenue or by floating new loans, the reviewer ventures no opinion, for speculation upon the product of the Dingley or other tariffs is as unprofitable in these pages as would be an attempt to forecast congressional appropriations during the next five sessions. But inasmuch as the treasury has redeemed only $507,000,000 of United States notes in the last nineteen years, and only $46,000,000 treasury notes in the last seven years, the commission's project seems unlikely much to lighten the treasury's task of redemption during the first decade of its operation.

The prospect of subsequently reaching this end may be considered good or bad according to the great or slight probability that the proposed bank note currency will be really elastic. Now elasticity is a quality which may easily be defined so as to imply all the other desiderata in a circulating medium. A currency is elastic when the adjustment of its volume to the varying demands of trade for instruments of exchange is automatic, immediate and unfailing, whether we consider these variations from the standpoint of time or of place. The elastic currency must therefore be ultimately secure, and the source of issue easily accessible, otherwise doubts as to its value, or the inconvenience of procuring it, might hinder its expansion when trade becomes brisk; it must also be convertible without trouble and without cost, else the corresponding contraction when trade grows dull might be delayed.

If the new circulation is not elastic in this sense of the word, there is slight probability that the Treasury will be afforded the needed relief. After the retirement of greenbacks and treasury notes, the Government will still be exposed to calls for gold in exchange for silver dollars. That the demand paper of the United States in circulation will consist exclusively of silver certificates, exchangeable only for silver coin, is a point of minor importance. At most, it would necessitate but a single step more in the process of redemption. To change certificates for dollars, and dollars for gold, is almost as simple as changing certificates forthwith for gold. Should it be cheaper, easier and more expeditious to obtain gold in this way than to procure redemption

of bank notes, the duty of supplying gold for export will still rest upon the treasury, and not where it ought to lie, upon the banks.

Is it true, then, that the commission have devised an elastic currency? Whatever the security of the circulation, and there seems to be little reason for doubting it, whatever the ingenuity and excellence of the other features of their system, the theoretical approval or rejection of their Indianapolis project must be decided, in the last instance, by the probabilities in this single regard. But the prospect of prompt legislative action upon this or other currency plans is so slight as to make the venture of a positive answer to the question unnecessary at this juncture, if not ill advised. It will suffice to examine the forces working for expansion and contraction, and the facilities provided for redemption.

Persons inclined to doubt, in general, the capacity of the new currency for expansion adequate to the country's business needs, could justify their misgivings by no less an authority than ten out of the eleven members of the commission itself. To be sure, two of their references to the possibility of undue contraction will scarcely challenge criticism except from those who insist upon rather a formal logic or oppose efforts whatsoever to placate the friends of cheap money. In the third passage, however, the commission have deliberately proposed a *deus ex machinâ*, in the person of the secretary of the treasury, endowed with discretionary powers "to prevent any injurious contraction." They intend, in fact, that this minister shall be authorized to reissue accumulations of redeemed greenbacks and treasury notes in excess of what may be lawfully cancelled, by using them in the purchase of United States bonds, to be held in the division of issue and redemption, and sold again at the secretary's discretion, for the benefit of the Government's redemption fund. The commission are at no pains to reconcile the manifest inconsistency of this safeguard for the transition period with their claim of elasticity for the proposed bank issues, in spite of the likelihood that such a circulation will never be elastic if it is not so during the first ten years of its emission. Nor do they attempt otherwise to justify the somewhat questionable policy of investing a single official

with the power arbitrarily to expand or contract the country's circulating medium. The commission seem to have been quite indifferent to these consequences of the provision. At any rate, Professor Laughlin, whose admirable criticism appears below,[1] was the only member to point them out.

Viewed as a question of detail, on the other hand, the probability that the bank note currency will expand *when* expansion is needed, depends in part upon the willingness of banks now in the national system, or intending to enter it, to accept the new rights and incur the new liabilities for which the plan provides. Assuming that the volume of credit currency now outstanding is thought not excessive, and assuming further, in the absence of a contrary statement, that the commission do not contemplate a considerable increase of the gold circulation, the banks will be expected to have issued at least $409,000,000 notes by the end of the first ten years in order to replace the Government paper retired and cancelled. If the plan be put in force at once, if the banks during the next decade increase in numbers and capital as they have increased since 1888, and if they all remain in the reformed system, they could provide enough substitutes for greenbacks and treasury notes, without incurring the tax on circulation, though the total issues would be within a few millions of the 60 per cent. limit.

It must be remembered, however, that solvent banks will be liable for contributions to the Bank Note Guaranty Fund, if necessary, up to the amount of their outstanding circulation, as often and as soon as that fund becomes impaired. The commission argue, indeed, that the assessment necessary to make up the ascertained deficiencies of the year 1893, the most disastrous one

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[1] The undersigned, while heartily agreeing in general to the above plan, dissents from the principle involved in Section 14, by which the secretary of the treasury is empowered to reissue United States notes in purchase of bonds. Believing that the increase of the circulation should not be left to the decision of Government officials; that no official should be exposed to the pressure which would thereby be created; that the issue of gold in redemption of the notes would prevent contraction; and that it is inconsistent with the principles on which an elastic bank currency has been recommended, because notes should not be issued by the Government in an emergency when bank issues have been above provided for exactly such an occasion.

J. LAURENCE LAUGHLIN

since the establishment of the national system, had all the banks of the country then been circulating notes up to 80 per cent. of their capital stock, would have been only a fraction of one per cent. But the analogy is drawn from experience under regulations different from those here in question, and on the whole, more difficult of evasion. That all banks now in the national system will think it wise to incur an indefinite and possibly great contingent liability of this character, is by no means certain. In the absence of any limit upon the amount for which they may be assessed within the year, some banks, and among them, perhaps, many of the largest and strongest, may flatly refuse the tempting but equivocal lure of valuable circulating privileges, and, in renouncing altogether the powers granted by Congress, arrange to continue their corporate existence under the legislation of the States.

Banks remaining under federal control would then be obliged, in many cases, to increase their share capital, either by converting their rests into stock or by opening subscriptions to new shares, before they could utilize the larger opportunity to issue notes and help in providing adequate expansion. Unless the right of issue should prove very valuable, there would be some States in which even resort to this expedient would be restricted because of the manner in which national bank shares are assessed for taxation. Where par value is taken as the basis, regardless of what the market value may be, banks must aim to keep nominal capital as low as possible and broaden the basis of their business when they need to, by increasing the items of surplus and undivided profits.

Whether expansion will occur *where* it is needed, is another question, involving other considerations. Fulfilment of the commission's hopes in this regard appears to be doubly conditioned. There will needs be an improvement in the present distribution of banking facilities in the United States, in point both of the number of banking offices and the lending power available in certain sections. The change can be accomplished, in part, by the opening of new offices in neighborhoods now provided with insufficient facilities or none whatever. But it also involves such a readjustment of the present machinery of credit that the existing inequalities in the relative abundance of

loanable capital as between different sections may be reduced, and the extraordinary differences in local discount rates, consequent upon these inequalities, may disappear. This second phase of the improvement is essential because people of many communities, particularly of those in recently settled or rapidly developing districts, have practically no means of obtaining a needed increase in their circulating media except by anticipating returns from goods in process of production, on the way to market or awaiting sale. An expansion of credit must therefore precede an expansion of the currency. Unless the lending power capable of effecting the one expansion is available, the other cannot be enjoyed.

The commission have nowhere explained exactly what methods they propose for securing "such a distribution of the loanable capital of the country as will tend to equalize the rates of interests in all parts thereof" mentioned in their instructions, although the relaxation of the capital requirements for banks in small towns and the authorization of branch banking, are obviously intended for this purpose. Their document would have been stronger had the latter change been accorded attention commensurate with its importance, for there is no more grievous reproach against the existing system than the defective distribution of the funds available for short-term loans. The other proposal, on the contrary, appears to the reviewer to be ill-advised. Aside from the doubtful expediency of permitting banks with only $25,000 capital to issue notes against their general assets and to open branches, it is not shown that such banks will be able to relieve the dearth of capital in communities of less than 4,000 inhabitants. What persons in such neighborhoods need is not authority to lend themselves their own savings, but the chance to borrow from other districts better off in point of worldly goods.

The proposal to permit the establishment of branch banks is much the more pertinent suggestion. Through these agencies, communication, better than any previously existing, can be established between business communities where the supply of capital is abundant and the rate of interest low and those where the converse of these conditions is the rule. A progressive equalization of discount rates, due to new competition in locali-

ties where credit is now expensive, may be expected if banks make use of the right to open branches, and any necessary expansion of the currency will probably occur more closely to the point at which the need arises than would be possible without branch banking. For a branch, particularly of a bank with offices in one or more of the leading money markets, can be conducted with profit where an independent local bank, with its more elaborate organization and its inability to command cheap capital, might easily starve to death. It is almost a cause for criticism, then, that the commission have made the increase of branches conditional upon the consent of Government officials. But if the power is to be so exercised as merely to restrain excessive spreading out, especially by small and weak banks, the friends of sound practice will have no reason to complain. A regulation which is perhaps more likely to hamper the proper increase of branches, is the provision that notes shall be deemed outstanding as soon as the comptroller of the currency has despatched them to the issuing banks. Directly its circulation approaches 60 per cent. of its capital, a bank will lose the advantage of using unissued notes as a costless form of till-money, especially at branches. Notes in excess of 60 per cent. of its capital will cost a tax of 2 per cent., in excess of 80 per cent. one of 6 per cent. per annum, though they lie in the bank's own vault. It is conceivable that this provision may not only retard the growth of branch banking, but also cause the discount rate in certain communities to remain on a higher level than it otherwise would.

And yet the privileges of circulation and of conducting branches, even as thus restricted, are so valuable, that the proposed currency will probably be given every expansion which the commerce of the country may require.

But will the contraction, when necessity for contraction arises, be equally certain and sufficient? Provision for this assurance is usually the most difficult problem confronting the framers of bank note legislation, and the one whose solution is most urgent. As a force working for expansion, the self-interest of the banks may be relied upon as unremitting and strong, stronger possibly than even the desire of the public to obtain negotiable credit. But have the commission succeeded in so

harnessing self-interest to their system that it will also pull the other way? Other things being equal, a bank will prefer to pay out notes of its own, when they may be issued against its general credit, and demand redemption upon the notes of other banks which may come into its possession. Will other things be equal under the proposed system? Assuredly not, unless, according to the ruling rate of interest where it works, the bank can avoid incurring the taxes of 6 or 2 per cent. imposed on issues in excess of 80 or 60 per cent. of its capital stock. Assuredly not also, if redemption is a process so tedious or expensive that the gain of interest on circulation of its own notes is eaten up before the money on notes of other banks comes in. The one contingency can be postponed, to be sure, if banks using large amounts of currency increase their capital stocks, but the other can be avoided only when adequate facilities for redemption are at hand.

In neighborhoods where banks are commonly used, a well ordered process of redemption falls naturally into two chief stages, the one movement being that of the notes to the tills of the nearest banks, and the other, that of the notes from these tills back to the bank whence they were issued. Elaborate legal machinery is not needed to insure the occurrence of the first movement, for it is practically complete when the banking members of the community pay the greater part of their spare currency into the local banks, for the purpose either of making deposits or of paying their debts. In aid of this movement, therefore, it was quite enough to require, in retaining the provision of the statute now in force, that every national bank shall receive at par, in the payment of debts to it, the notes of any other national bank. Receivability at par in payment of dues to the United States is hardly essential, though calculated to conciliate popular opinion of the currency, and facilitate, in some cases, its circulation without discount or question. Like those touching the first, the provisions bearing upon the second movement have been borrowed from the existing legislation. In addition to the redemption obligatory upon them at their own offices, it is proposed that national banks shall maintain with the Government a gold redemption fund constantly equal to five per cent. of their circulation, and that notes

of national banks, whether assorted or not, shall be redeemed in lawful money at the treasury or at any sub-treasuries designated by the comptroller of the currency when presented in sums of $1,000 or multiples of $1,000. But no liability for such redemption shall rest upon the United States beyond a proper application of the Bank Note Guaranty and Redemption Funds.

The point whether banks will be able to pay out none but their own notes, if it is to their advantage so to do, now lapses into minor importance. In the main, it is a question of their qualifying for sufficient circulating powers. But that banks will find it worth their while to pay out only their own paper in business with the public, is by no means satisfactorily proved. And yet, if our analysis is correct, the demonstration of this probability ought to have been made the fundamental proposition of the commission's whole argument. It is too much to expect the public to complete both stages; unless the banks send the notes back to their source, the forces working for redemption cannot well be general, constant and competitive; without insistent redemption of currency, there can be no proper contraction; without contraction, no elasticity; and without elasticity in their currency system, the commission's hopes in regard to other features of their scheme are most unlikely of fulfilment.

Aside, however, from a general assurance that the provision for contraction will be ample, the commission vouchsafe no forecast of what may be the practical workings of the mechanism for redemption. Nor have they even sought to force a redemption by the simple expedient of forbidding every national bank to pay out the notes of other banks. Under such a regulation, or any other likely to have the same effect, we might look forward to a situation in which each section or district would be using an elastic circulation composed, for the most part, of the issues of banks doing business in that neighbourhood. Judging from the experience of Canada, with existing arrangements, the reviewer is inclined to think that the bulk of the notes issued in any section under such conditions, would be redeemed by way of offset against each other in the daily or weekly exchanges of the local banks. Notes of remote banks would be withdrawn from the local circulation and forwarded to the

nearest place of redemption. Paper escaping the competitive action of the local banks would drift steadily and rapidly toward the commercial centre of the section, and thence, if none were on the spot, to the nearest redemption agency. The constant vigilance and continued preparation necessitated by the unremitting redemption to which banks are exposed under such circumstances, would be of priceless service in impelling them to keep their assets liquid, their practice sound, and their liabilities within the lines of safety. Whenever the call for currency under such circumstances falls off, contraction of the circulation is automatic and immediate, because the demand for redemption is prompt and persistent. If the option of circulating competitor's notes or claiming their payment is to lie with the banks, the methods of redemption must also be cheap for those who ask it.

Systematic redemption necessitates, in its practical aspects, the outlay of much time and care in forwarding, receiving, assorting and presenting notes. How great might be the volume of such transactions in the United States is suggested by the experience of Canadian banks. Information obtained through the courtesy of gentlemen at the head of some six typical institutions, indicate that the average life of a bank note ranges between twelve and thirty-six days, according to the nature of the issuing bank's circulating business, the mean interval between the issue and payment of a note being a little less than four weeks. In other words, the Canadian bank pays out within the year, and therefore must redeem, from ten to thirty times $100 for every $100 of its average circulation. Though the contrasts between the Canadian and American banks, particularly in point of average capital, numbers and the development of branch banking, are more striking than the similarities, the issue of notes upon general credit and mutual guarantee of ultimate redemption are peculiar both to the Canadian system and the one proposed for the United States. In case, then, the immediate convertibility of notes is tested with equal frequency, a supposition possible only if we assume that the facilities therefor will be equally good, and the competition of American banks equally keen, some agency or other will necessarily be charged with

handling masses of notes amounting each year to sums from ten to thirty times as great as the average circulation of the national banks. Supposing that the banks issue only enough to fill the space left by the retirement of Government paper, and that the life of the note is four weeks instead of twelve days, the volume of redemption operations, counting any note but once, would rise to nearly $5,000,000,000, a sum equal in mere dollars to more than one-fourth of the total clearings in the United States, outside of New York, during the year 1897.

Is the task of conducting this enormous business, vastly more onerous, difficult and risky in many details than the clearing of checks, to be shifted to the various clearing houses, and are balances only to be settled at the treasury? Or is it to be turned over to the banks of redemption in various centres which may be established with a view to profits from the non-interest bearing deposits that country banks might be willing to maintain in order to forestall calls for gold redemption at their own offices? Or again, is the burden of mediating the redemption of notes not set off against each other by local banks to rest altogether on the treasury? If that is the intention, what may be the justice of abolishing the tax on circulation, through which the expenses incurred in business with the national banks have been covered, and substituting for it a single franchise tax, when a considerable, perhaps the larger, proportion of the treasury's outlay in this business will be the direct result of its redemption operations? If the treasury alone is to prosecute the business of redemption, what is the prospect that redemption will be speedy and otherwise so inexpensive as to induce banks unfailingly to seek it? What are, after all, the reasons for supposing that the demand for redemption will be prompt and persistent, and that the methods will be cheap? For positive answer or convincing argument in reply to these queries, one may search the report in vain.

R. M. BRECKENRIDGE

## COLONIAL PREFERENTIAL TRADE IN ENGLAND AND CANADIAN CAPITAL

IN Canada agricultural and allied interests vastly preponderate over any other. It is estimated that in Ontario alone, which farms about half the cultivated acreage of the Dominion, there are nearly a thousand million dollars invested in agriculture. The vessels annually leaving the shores of Canada are freighted with products of the farm and forest of the value of fifteen dollars to every dollar's worth of other manufactures.

England is the great market open to such wares as are offered for sale by Canada. But what England buys from Canada is but a fraction of the food and other raw products purchased of other great national shop-keepers. The prospects in this field for future Canadian enterprise are almost boundless.

As a nation we are justified, no less than an individual would be, in securing the sale in that market of our own particular commodities, by all honorable means. In more than one department we have already obtained the precedence through the intrinsic merit alone of our goods, but that England should give us, together with other dependencies of the Empire, a preference over the foreigner, in making her purchases, is a suggestion which appeals powerfully to colonial purse and national sentiment. England, however, is herself a trader, and looks for success only as she carries on national business, on the same principles of thrift and homely common sense with which the successful individual conducts his affairs. She must consult first of all her own interests; therefore she buys in the cheapest to sell in the dearest market. To support her large manufacturing population she imports the food which she exchanges for her manufactures, and fifty years in the enjoyment of free imports have placed her in the front rank of commerce. She is hardly likely to again tax the food of her people.

Three-fourths of her trade is outside the colonies, but supposing for the sake of argument, she were induced to hamper this by customs duties for the sake of preferential trade with the colonies. Our position doubtless would then be very much improved, but we should still find *within* the "*ring fence*," formidable rivals. Under existing conditions India and Australia each supply the mother country with twice the value of the latter's imports from Canada.

But more powerful than sentimental arguments must be brought forward to reconcile the British taxpayer to such a fiscal change, and Canadians may once for all make up their minds that they find a fair field but no favors in that market. Merit and relative cheapness alone appeal to British purse-strings. Canadian cheese and Danish butter are alike recommended by their quality; neither is debarred by nationality. The success we have met with in the production of the former article, is shown by the fact that we now annually export over 160,000,000 pounds, as compared with 60,000,000 pounds exported by the United States. These figures are the more striking when we compare them with those of thirty years ago, when we only had 5,000,000 pounds to our credit, as compared with 60,000,000 pounds marketed by the Americans.

Energy and enterprise scientifically applied will go far toward maintaining the satisfactory position certain of our products have won, but with these essentials to success it is as important to secure *cheapness in production*, if we are to overcome the geographical advantages of European rivals.

It is here that a tangible preferential trade may, if we will it, be ours. For cheapness in production depends on cost of living, and Canada may be made the cheapest country in the world to produce in. Cheap in an economic, not a bad, sense. She can only become so by an appreciation of the true and invariable laws which affect the growth of her capital. The capital at any given time in operation may be divided into three classes. First—that fund representing the accumulations of profits of past years of successful industry, owned by the people themselves, and which may be called "*native capital.*" Secondly—a fund borrowed by home industry to supplement its own accumulations. Thirdly—investments of foreign capitalists.

In each case capital is expected to reproduce itself and to earn the market rate of interest. In addition there must be a profit, for without the expectation of this the investment would not be made. It is plain therefore, as far as this country is concerned, that the first fund is the most important, for in this case the capital is reproduced and both the interest and profit earned are retained. In the second case profit only is retained, the interest being refunded to the lender. While in the third case both profit and interest are the property of the foreign capitalist and may be withdrawn.

It is to this first fund of capital that reference is made by Sir Robert Peel, speaking in 1849 of the situation in England, and his words are applicable to-day to Canadian affairs:

"The capital of the country is the fund from which alone the "industry of the country can be maintained. The industry of "the country will be promoted as the capital employed in its "maintenance shall be increased. The augmentation of capital "must depend upon the savings from annual revenue. If you "give for certain articles produced at home a greater price than "that for which you can purchase those articles from other "countries, there is a proportionate diminution of the saving "from annual revenue." We must aid in the augmentation of this first fund of capital, viz.—that which is the result of "saving," by removing all protective duties which increase the cost of living and production. The result will be increased productive powers and decreased cost of production. This will give us an immense advantage over our highly "protected" rivals in America and Europe. With an equally good if not better article than theirs, we shall undersell them and lead in the field of commercial rivalry. These first principles of political economy, simple and broad, we must adopt in our fiscal legislation of the future, if we would have true "preferential trade" in the markets of Great Britain.

H. M. LAY

London, March 5, 1898

## RULES RESPECTING ENDORSEMENTS

AT the annual meeting of the Association on the 6th of October last, a committee consisting of representatives of the Bank of Montreal, Merchants Bank of Canada, Bank of British North America, Banque d'Hochelaga, Dominion Bank, Canadian Bank of Commerce and Imperial Bank of Canada, was appointed "to prepare a set of rules respecting endorsements on cheques and other items, to be adopted in respect to all exchanges between banks in Canada," and to report to the executive council, who were empowered to take measures to bring the same, if approved by them, into force throughout Canada. At the regular meeting of the Council held in Montreal on the 26th of February, the report of this committee was submitted with the draft set of rules recommended by them and approved by Mr. Lash, counsel for the Association.

The rules recommended were unanimously adopted by the executive council, and by circular of the president addressed to the various banks in Canada it has been requested that the same be brought into force on the 1st of April at all branches of the chartered banks in Canada.

The report of the committee and the rules as adopted are subjoined:

*To the President and Council of the Canadian Bankers' Association, Montreal:*

GENTLEMEN:—The Committee on "Rules respecting Endorsements" appointed at the last meeting of the Association have carefully considered the matter committed to them.

They have communicated with the various Clearing Houses, Bankers' Sections, and sub-branches of the Association with whom they were instructed to confer, and have given careful consideration to the recommendations received.

They have further considered the rules adopted by the Clearing Houses in Montreal and Toronto, which were originally prepared by the counsel of the Association for the Bankers' Section of the Toronto Board of Trade; and they now beg to report as follows:

They are of opinion that the rules above referred to, which are submitted herewith, are the best which can at present be devised, and they submit the following considerations bearing on the matter :—

I. The following points seem to be settled, and must be recognized in dealing with this question :

(*a*) That a wholly stamped endorsement, if authorized, is in law a valid endorsement.

(*b*) That the custom of using wholly stamped endorsements is too convenient, and has become too strongly established to leave any hope that its discontinuance is practicable.

(*c*) That the Bills of Exchange Act, with the recent amendment thereto, protects banks fully in respect to cheques, bills and promissory notes, assuming that they receive something which clearly constitutes an endorsement.

II. Your Committee are of opinion (having carefully considered the objections urged) that the endorsement of the depositing bank required by Rule 6 (which may be made without any officer's name) is sufficient, taken in connection with the fact that the rule applies only to exchanges between banks; and that it is for some reasons preferable to a fuller endorsement.

III. Your Committee are advised that on payment of a cheque bearing a restrictive endorsement, the bank paying it would not ordinarily (under the recent amendment to the Bills of Exchange Act) be in any different position towards the bank to whom it is paid, as regards its right to recover the money, than if the endorsement were not restrictive; nevertheless, to avoid disputes, a rule is recommended (No. 7) which makes it clear that these endorsements have the same effect in this respect (*i.e.*, as to the right to a return of the money) as a regular endorsement.

IV. The rights of banks receiving or paying non-negotiable instruments, such as deposit receipts and letters of credit, are not governed by the Bills of Exchange Act, and even if the endorsements thereon are genuine it does not follow that the payments are properly made. A guarantee of the endorsement is therefore insufficient, and your Committee have recommended the use of the special endorsement embodied in rule No. 9.

All of which is respectfully submitted.

J. H. PLUMMER,
Chairman

Toronto, 4th February, 1898

## CONVENTIONS AND RULES RESPECTING ENDORSEMENTS

### MODE OF ENDORSEMENT

1. An endorsement may be either written or stamped, in whole or in part.

### REGULAR ENDORSEMENTS

2. A regular endorsement within the meaning of these Conventions and Rules must be neither restrictive nor conditional, and must be so placed and worded as to show clearly that an endorsement is intended.

If purporting to be the endorsement of the person or firm to whom the item is payable (whether originally or by endorsement), the names must correspond, subject, however, to section 32, sub-section 2, of the Bills of Exchange Act, which is as follows :—

> "Where, in a bill payable to order, the payee or endorsee is wrongly "designated, or his name is misspelt, he may endorse the bill as therein "described, adding his proper signature; or he may endorse by his own "proper signature."

If purporting to be the endorsement of a corporation, the name of the corporation and the official position of the person or persons signing for it must be stated.

If purporting to be made by someone on behalf of the endorser, it must indicate by words that the person signing has been authorized to sign; *ex gr.*, "John Smith, by his attorney, Thomas Robinson," or "Brown, Jones & Co., by Thomas Robinson, their attorney," or "Per Pro. or P.P. the Smith Brown Company, limited, Thomas Robinson."

IRREGULAR ENDORSEMENTS

3. An endorsement, other than a restrictive endorsement, which is not in accordance with the foregoing definition of a regular endorsement, or which is so placed or worded as to raise doubts whether it is intended as an endorsement, is an irregular endorsement within the meaning of these Conventions and Rules.

RESTRICTIVE ENDORSEMENTS

4. Section 35 of the Bills of Exchange Act defines a restrictive endorsement as follows:

> "An endorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as for example, if a bill is endorsed 'pay D only,' or 'pay D for the account of X,' or 'pay D or order for collection.'"

The following further examples should be treated as restrictive endorsements within the meaning of these Conventions and Rules, without prejudice, however, to their true character, should the question arise in court, viz.:

"For deposit only to credit of..... ....."

"For deposit in ..... bank to credit of

....."

"Deposited in.....bank for account of

....."

"Credit.....bank."

FORM AND EFFECT OF GUARANTEE

5. A guarantee of endorsements shall be in the following form or to the like effect:

"Prior endorsements guaranteed by.....

.....(name of bank)."

It may be written or stamped, but shall be signed in writing by an authorized officer of the bank giving it.

By virtue of such guarantee and of these Conventions and Rules, the bank giving same shall return to the paying bank the amount of the item bearing the guarantee, if, owing to the nature of any endorsement, or to its being forged or unauthorized, it should appear that such payment was improperly made.

ENDORSEMENT BY DEPOSITING BANK

6. When one bank deposits with or presents for payment to another bank (whether through the Clearing House or otherwise) a bill, note or cheque, the

item so deposited or presented shall bear the stamped open endorsement of the depositing or presenting bank. Such stamp shall contain the name of the bank, its branch or agency, and the date, and shall for all purposes be the endorsement of the depositing or presenting bank, and, except as hereinafter specified, no further or other endorsement shall be required, whether the item be specially payable to the bank or otherwise, or be payable at the chief office or elsewhere.

RESTRICTIVELY ENDORSED ITEMS

7. If a bill, note or cheque bearing a restrictive endorsement be so deposited or presented, the depositing or presenting bank shall *ipso facto*, and by virtue of these Conventions and Rules, be deemed to have guaranteed such endorsement in accordance with section 5 hereof, and shall be liable to the paying bank to the same extent as if such guarantee had been actually placed upon the item, but payment may, notwithstanding, be refused until the restriction be removed.

IRREGULARLY ENDORSED ITEMS

8. If a bill, note or cheque, bearing an irregular endorsement as above defined, be so deposited or presented, the depositing or presenting bank shall endorse thereon the guarantee referred to in section 5 hereof, but payment, may, notwithstanding, be refused until the irregularity be removed.

LETTERS OF CREDIT, DEPOSIT RECEIPTS, ETC.

9. When a letter of credit, deposit receipt, or other item not negotiable, and to which the provisions of the Bills of Exchange Act do not apply, is so deposited or presented, a receipt and indemnity in the following form, or to the like effect, shall be written or stamped thereon, signed in writing by an authorized officer of the presenting or depositing bank, viz.:—

"Received amount of within from the within named bank, which is hereby indemnified against all claims hereunder by any person."

AGREEMENT AS TO PRACTICE

10. While it is understood that in general, for convenience of the depositing or presenting bank, no objection will be made to a restrictive endorsement, or to an irregular endorsement if the guarantee above provided for be given, yet in view of the responsibility which a depositing or presenting bank incurs in connection therewith, each bank undertakes to make all reasonable efforts to have all endorsements on items deposited or presented by it made regular in order that its customers and the public generally may ultimately be led to adopt a regular and uniform system.

It is also understood that endorsements regularly made within the meaning of these Conventions and Rules shall not be objected to except for special reasons to be assigned with the objection.

## PRIZE ESSAY COMPETITION, 1898

The following subjects have been selected by the Essay Committee, for the next Prize Essay Competitions :—

### SENIOR COMPETITION

I. Stern Bros. & Co., wholesale manufacturers of boots and shoes, Montreal, apply to the Canada Bank for a credit of $25,000 to $30,000 by way of unsecured loans, and $80,000 on trade paper. They furnish the following balance sheet, dated the 1st September, 1897:

ASSETS

| | |
|---|---|
| Real Estate, with Factory, Plant and Machinery.. | 72,379 82 |
| Open Accounts | 49,637 64 |
| Bills Receivable | 7,594 32 |
| Merchandise manufactured and in process | 92,633 40 |
| Patents for making the Stern Shoe | 8,000 00 |
| Cash in Bank | 1,732 02 |
| | $231,977 20 |

LIABILITIES

| | |
|---|---|
| Bills Payable | 40,491 60 |
| Due to Commercial Bank | 10,000 00 |
| Accounts Payable | 42,739 12 |
| Mortgage on Factory | 35,000 00 |
| Surplus | 103,746 48 |
| | $231,977 20 |

The firm have under discount with their bankers $78,263 of their customers' paper, of the average quality of that furnished by retail boot and shoe dealers. They state that their sales for the year were $247,000, of which $43,000 were for cash, and they claim to have made a little progress during the year, notwithstanding the unfavorable business conditions which prevailed. Their terms to the trade are "four months, 1st April and 1st October."

Their account has hitherto been kept at the Commercial Bank, and they assign no other reason for wishing to change than a personal preference for the manager of the Canada Bank.

State comprehensively your impressions of the application from the information thus afforded?

II. John Scott & Co., Wholesale Hats and Caps, Ottawa, a firm of several years' standing, have been customers of the Canada Bank for one year. At the time of the transfer of their account they submitted the following balance sheet, dated 30th April, 1897:

ASSETS

| | | | |
|---|---|---|---|
| Merchandise | | | 69,071 53 |
| Fixtures | | | 1,762 40 |
| Accounts and Bills Receivable | | | 19,762 68 |
| Cash | | | 469 13 |
| Real Estate | | | 14,000 00 |
| Warehouse | $20,000 ; | Mortg'd for $9,000 | |
| Block of Stores in Almonte | 8,500 ; | " 5,500 | |
| | $28,500 | $14,500 | |
| | | | $105,065 74 |

LIABILITIES

| | |
|---|---|
| Accounts Payable | 21,609 52 |
| Bills Payable | 27,920 35 |
| Surplus | 55,535 87 |
| [Customers' Paper under Discount, $42,740] | |
| Annual Sales stated at $150,000 | $105,065 74 |

Upon the strength of this they were accorded a credit of $50,000 on trade paper. The course of the account during the year, taking the figures at the end of each month, was as follows:

| | Over-draft | Trade Bills | | Over-draft | Trade Bills |
|---|---|---|---|---|---|
| May, '97, | | $45,410 | November, '97, | | $45,260 |
| June, | | 44,960 | December, | | 43,780 |
| July, | | 44,200 | January, '98, | | 43,770 |
| August, | $4,647 | 42,740 | February, | $4,461 | 42,490 |
| September, | 1,276 | 40,820 | March, | 1,620 | 40,810 |
| October, | | 46,510 | April, | | 44,940 |

the overdrafts in August and February being required owing to the fact that their bills payable were as usual heavier in those two months than at other times in the year.

They now apply for a renewal of their credit, and furnish the following statement of their affairs, dated 30th April, 1898:

ASSETS

| | |
|---|---|
| Merchandise | 71,621 41 |
| Fixtures | 1,912 52 |
| Accounts and Bills Receivable | 18,489 66 |
| Cash | 714 29 |
| Real Estate, less Mortgages | 14,000 00 |
| | $106,737 88 |

LIABILITIES

| | |
|---|---|
| Bills and Accounts Payable | 50,610 54 |
| Surplus | 56,127 34 |
| [Customers' Paper under Discount, $44,940] | |
| | $106,737 88 |

Their Sales during the year are stated at $148,000. The larger part of the sales consists of spring and fall goods dating from 1st April and 1st October. Terms to the trade: four months.

Explain fully your views as to the various points involved, and show in what manner you would deal with the application, including among other things any discussions you might have with the customers and your head office. State what your judgment on the application is, and the reasons for it.

A FIRST PRIZE OF - - - $100
A SECOND PRIZE OF - - - 60

—

JUNIOR COMPETITION

Does banking in Canada offer as satisfactory a career to a young man as other forms of business or professional life?

A FIRST PRIZE OF - - - $60
A SECOND PRIZE OF - - - 40

—

Competitors eligible for the Senior Competition will comprise managers and senior officers who have had a banking experience of not less than ten years.

Competitors eligible for the Junior Competition will comprise all under twenty-eight years of age, whose banking experience does not reach ten years.

The essays in either subject are not to exceed 7,500 words. *All essays must be typewritten*, having the writer's nom-de-plume or motto, also typewritten, subscribed thereto, and be mailed not later than the 30th day of June, under cover addressed to the President, Canadian Bankers' Association, Toronto.

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

A Special Committee will examine the essays and decide the prize-winners. The Prize Essays will remain the property of the Association.

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

D. R. WILKIE,
President

## QUESTIONS ON POINTS OF PRACTICAL INTEREST*

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

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

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

### *Note with Date and Place of Payment Blank*

QUESTION 91.—If in a note the date and place of payment are omitted, may the holder insert them?

ANSWER.—It would be a material alteration within the terms of the Bills of Exchange Act for the holder of a note to insert the place of payment. See sub-sec. 2, sec. 63 of the Act.

As regards the insertion of a date, where the date has been omitted, the rights of the holder are governed by section 12 of the Act.

### *Post-dated Bills*

QUESTION 92.—What risk, if any, does a bank run in discounting a note dated ahead of the day of discount?

ANSWER.—A post-dated bill is by sub-sec. 2, sec. 13 of the Bills of Exchange Act, declared to be not invalid by reason of the post dating. A bank, therefore, would run no more risk in connection with a post-dated note than with an ordinary note.

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*[NOTE BY THE EDITING COMMITTEE:

The labors of the Committee in answering questions this quarter have been much increased by reason of the response by the Associates to the request recently made of them by the Secretary-Treasurer. The Committee are, however, very glad indeed to have these columns well filled, since their value is thereby greatly enhanced.

Several questions are received too late to be dealt with in this number.]

### *Bills Payable in Sterling Drawn on Points in Canada*

QUESTION 93.—(1) Can a bank legally pay a demand draft, payable in sterling, drawn upon it by an English bank, at a less rate than that provided in section 71 (d) of the Bills of Exchange Act?

(2) At what rate should a cheque be paid when drawn in sterling, though otherwise upon an ordinary cheque form, dated, say, Toronto, and sent for collection by an English bank?

ANSWER.—(1) The rate at which a bank should pay a sterling demand draft, drawn on it by an English correspondent, is fixed by section 71 (d) of the Bills of Exchange Act. If the bill is drawn simply for so much sterling money without any reference to a rate of exchange, it should be paid at the rate for sight drafts at the place of payment on the day the bill is payable. If, however, it is payable at "the current rate of exchange," this does not necessarily mean the demand rate. Sixty days' sight has always been the "usance" between England and this country, and we think the sixty day rate would probably be accepted by the courts as "the current rate of exchange." If there seems to be any conflict because of the bill being payable on demand, it will disappear if the bill is read in this way: "On demand pay to ..... pounds sterling, calculated at the sixty day rate of exchange."

(2) It would be unusual for a cheque to be drawn in Canada, upon a Canadian bank, payable in pounds, shillings and pence. If such a cheque were drawn we think the bank would have the right to refuse payment, but it would probably be justified in regarding it as an order to pay the currency value of a similar amount of British gold, i.e., to convert the sterling money at $4.86\frac{2}{3}$. In remitting to an English correspondent for such a cheque it would have to be treated as drawn for the amount in Canadian currency computed as above, and the exchange calculated accordingly.

### *Provincial Government Cheques*

QUESTION 94.—In view of section 103 of the Bank Act, must banks collect Provincial Government cheques at par?

ANSWER.—Section 103 of the Bank Act does not apply to cheques of the Provincial Government or any of its departments.

### *Canadian Bank Notes*

QUESTION 95.—Is the custom of agencies of Canadian banks in the United States of discounting the notes of their own banks, in contravention of section 56 of the Bank Act?

ANSWER.—We do not think that for a foreign office of a Canadian bank to redeem its own notes at a discount is a contravention of section 56. We think it improbable that the section would be held to apply outside of Canada. There are difficulties in its application there respecting questions of legal tender, exchange, etc., that would lead to this conclusion.

### *Redemption of Partially Destroyed Notes*

QUESTION 96.—By what authority in law do some banks and the Receiver General's assistants pay torn or mutilated notes sent them for redemption, at less than the full amount?

ANSWER.—We do not know of any authority for the practice mentioned respecting the redemption of mutilated notes, but it is reasonable, and all banks which issue notes are interested in its maintenance as a matter of self-protection. The promissory note of a bank is in law very much the same as any other promissory note, and in case of its destruction, in whole or in part, the holder would theoretically have the same right to recover as if it were the promissory note of a private person. If he brought suit in such a case he would have to satisfy the court as to the facts and provide suitable indemnity. The provision of indemnity in connection with missing parts of a bank note is, however, difficult if not impossible, and because of this the practice has grown up of allowing a proportionate amount for the portion of the bill which is presented for redemption. It is reasonable, and it might be difficult to establish even at law a larger claim.

### *Joint Deposits*

QUESTION 97.—(1) In the event of a deposit being made to the credit of two parties, father and son, payable to both or either, would the Government be entitled to succession duty on the death of the party who made the deposit?

(2) In such a case would the son be entitled to hold the money against other heirs?

(3) In the event of the death of the party who made the deposit could the bank be sued by the other heirs should it pay the amount to the survivor?

(4) If one of two parties who have a joint deposit with the bank, payable to both or either, dies, and under his will bequeaths a portion of the deposit to a third party, can the bank legally pay the survivor (a) if it has no knowledge of the will; (b) if it has knowledge of the will.

(5) It is the practice of some banks not to pay to the survivor in these cases without the production of a probate of the

will or letters of administration, and then to require the consent of the legal representatives of the deceased depositor. Is it not a pity that the practice is not uniform?

ANSWER.—(1) The right of the Government in the matter seems to be settled by the Act of 1893, chap. 5, sec. 4 (d), the substance of which is that if the deceased person had been absolutely entitled to the amount of the money so deposited, the succession duty must be paid. The sub-section quoted mentions a beneficial interest passing by survivorship, and it is clear that this legislation does not affect the relations between the bank and the survivor.

(2) We think he could, but there might be circumstances connected with the matter which would affect his title.

(3) The executor or administrator might, of course, sue, but as the survivor has a right to draw the money the bank would be technically protected in paying it to him. If a suit were brought it would be prudent for the bank to pay the money into Court.

(4) The will of the deceased joint depositor would not affect the bank's position one way or the other. The most that could be said is that the legatee might have a claim on the money in the hands of the survivor.

(5) We think that most banks recognize the right of the survivor of two joint depositors to control the deposit, which right exists whether the deposit is by its terms payable to either of them or to both, but there will no doubt always be some who will take the extra precaution which you mention, but which in the absence of anything like fraud we believe to be unnecessary.

You speak of the person "making the deposit" as if there were some distinction between the joint depositors; but we think that when money is paid in to the credit of two parties it must be regarded (so far as the bank is concerned) as deposited by and the property of both, and the person who pays in the money as the agent of both.

### *Past-due Note with Two Promissors held as Collateral to a Renewal Note taken from One of Them*

QUESTION 98.—A note was discounted by a bank on which were two joint promissors, one of the two, to the knowledge of the bank, having added his name as a surety for the other. At maturity the bank renewed the bill for the debtor, taking a note signed by himself alone, but retaining the original note as collateral security. This was done without notice to the guarantor. Is the latter released by this extension of time?

ANSWER.—The position of the parties in a case of this kind was fully discussed in the judgment of the Supreme Court of Canada in *Gorman v. Dixon*, reported at page 418, vol. III of the JOURNAL. The whole question involved in the present case is whether there was an understanding between the bank and the debtor that, notwithstanding the time given, the bank's claim against the surety was to be retained. The fact of the retention of the joint note seems to indicate this, and if such were the understanding, Smith would, under the ruling in the case referred to, still remain liable.

### *Sterling Bill Payable at the Current Rate of Exchange*

QUESTION 99.—*(a)* A bill of exchange is drawn by a firm in London, England, on a merchant in Canada, in sterling, at sixty days' date, to be paid at maturity at the current rate of exchange. When this bill falls due what rate of exchange should be taken in converting it into our currency?

*(b)* In the event of there being a difference between the sterling rates of the presenting bank and the bank at which the bill is made payable, could the latter bank tender the holder of the bill in payment a demand draft on London, England?

ANSWER.—*(a)* See answer (1) to question 93.

*(b)* A bill drawn on a party in Canada, payable in sterling money, can only be paid in lawful money of Canada. The holder is not bound to take a draft on London. The obligation is one which the acceptor must meet in legal tender money, which, of course, a draft on London is not. Any dispute as to the rate must be settled just as other similar disputes are settled, in the last resort in a court of law.

### *Cheque to Order Deposited Unendorsed*

QUESTION 100.—*(a)* A. Jones deposits with his bank a cheque, which he neglects to endorse, the cheque being made payable to his order. His banker endorses on the cheque: "Deposited to the credit of A. Jones," and signs his name as manager of the bank. Would this constitute an endorsement?

*(b)* If the cheque was not paid when presented at the bank on which it was drawn, could the banker, who endorsed it as stated above, recover the amount of the cheque from A. Jones?

ANSWER.—*(a)* This is not an endorsement.

*(b)* The bank could, we think, recover the money from its customer, not because he was liable on the bill which he had neglected to endorse, but because the bank had given him value

for it on the understanding that it would be endorsed over to the bank, and that the omission of the endorsement was a mistake which he must make good or return the money. The bank has, however, a right to demand the customer's endorsement under sub-section 4 of section 31 of the Bills of Exchange Act.

### *Acceptances Domiciled at the Acceptor's Bankers—Rights and Duty of the Banker*

QUESTION 101.—A. deposits with a bank a sum of money in open account, upon which he from time to time issues cheques. At length, however, he accepts a draft, making it payable at the bank where his funds are. When the bill falls due and is presented at the bank for payment is the bank bound to pay it, the acceptor's account being in funds but no authority having been given the bank to charge acceptances to his account?

ANSWER.—In *Bank of England v. Vagliano* the judgment of Macnaghten, L.J., contains the following statement of the law in the matter:

"The relation of banker and customer does not of itself, "and apart from other circumstances, impose upon a banker "the duty of paying his customer's acceptances.

"If authority is wanted for this proposition it will be "found in *Robarts v. Tucker*, where it was said by the Court "that 'if bankers wish to avoid the responsibility of deciding "'on the genuineness of endorsements, they may require their "'customers to domicile their bills at their own offices, and to "'honor them by giving a cheque upon the banker.' That "implies that bankers may refuse to pay their customer's "acceptances, and that such refusal is not inconsistent with the "relation of banker and customer, or a breach of the banker's "duty to his customer."

"If a banker undertakes the duty of paying his custom- "er's acceptances, the arrangement is the result of some special "agreement, expressed or implied."

The answer to the question would therefore be that in the absence of special circumstances governing the case, the bank would not be bound to pay its customer's acceptance in the case mentioned, but would be entitled, having paid it, to charge the amount to his account.

### *Redemption of Circulation*

QUESTION 102.—A customer of a chartered bank in Coboconk has a cheque for $50,000 on another chartered bank in Lindsay. He wishes to take up a note in the Coboconk bank.

Upon tendering the cheque he is informed that there will be $50 exchange, whereupon he goes to Lindsay, draws the cash in notes of the Lindsay bank and tenders them in payment of the note. Can the Coboconk bank refuse to take them? Or can it exact a charge that would reimburse it for the express charges to the nearest point of redemption for the Lindsay bank's notes? If the Coboconk bank cannot make a charge it is bound to be at a loss. If it had cashed the cheque at par it would have been out two or three days' interest; by not cashing it at par it is out the interest and express charges.

ANSWER.—The bank is not bound to accept any money in payment of a note, except such gold coin as comes within the terms of the Currency Act, notes of the Dominion Government, commonly known as legal tenders, or its own notes. It is, therefore, as a matter of legal right, in a position to exact whatever charge it may choose to ask, as a condition of its accepting payment by cheque on another bank, or by notes of another bank.

QUESTION.—(Submitted in continuation of the subject of the above question and answer)—If bank notes are redeemable at par all over Canada, by arrangement at specific points and by courtesy or mutual agreement wherever a bank has a branch or there is a branch of a chartered bank, how could a charge be exacted or the notes be refused without breaking through this arrangement? Suppose they had been deposited instead of offered in payment of a note, I do not see what is to prevent any bank being loaded up with a lot of other bank notes on which it will have to pay express. If the rule applies to small amounts why not to large ones?

ANSWER.—In answering the previous question we had, of course, reference entirely to the legal point involved; but we would think it very much to be regretted indeed that banks should take the position of refusing the notes of other banks offered in payment of debts, when the same are presented in a reasonable way and are legitimately in the hands of the party presenting them. Probably if a case occurred where, to get rid of uncurrent notes requiring transportation to a distance, any bank should pay out such notes knowing that they were to be tendered to another bank in payment of a debt, the latter would be quite justified in refusing to take them except at a discount.

We are not aware that there is any mutual agreement between the banks that they will unconditionally redeem the notes of other banks at all points. This is undoubtedly the practice, and it would be unfortunate if anything should happen to break it; but, looking at the matter simply from the legal

standpoint, the bank need not take on deposit notes of other banks if it chooses to refuse them, and it is not bound to take any money that is not legal tender in payment of a debt. If it waives its legal rights, and accepts notes of other banks on which it has to pay express charges, this must be regarded as done because the practice fits in with the common interests of all the banks.

### *Appropriation of Payments*

QUESTION 103.—M—— & Co. are in the habit of discounting with their bankers sight drafts against shipments of produce to the United States. One of the drafts, for $75, was returned dishonored and charged to the account of M—— & Co., increasing their overdraft to $150. Some time afterwards the firm sent the bank for discount their note for $100, endorsed by another party, and the proceeds of this note were remitted by the bank to M—— & Co. When the note fell due the firm sent the bank $100 to take it up, but the bank credited the amount instead to the overdrawn account and protested the note. Would the bank have recourse to the endorser?

ANSWER.—Upon the statement that the $100 was sent the bank to pay the note, the bank would have no right to apply it upon the other debt. The debtor has the right, when paying money, to appropriate it to any indebtedness which he may specify, and the creditor cannot change the appropriation without the debtor's consent. Therefore the note of $100 must be regarded as paid and the endorser discharged.

On the general subject of appropriation of payments the case *in re Exchange Bank; The Queen v. Ogilvy*, will be found instructive. (JOURNAL, vol. V., p. 258.)

### *Insanity of a Deposit Customer*

QUESTION 104.—A customer of a bank, who has become insane, has a balance at his credit. Before becoming insane he accepted drafts payable at the bank. The manager of the bank knows that the customer has been placed in an asylum, but has not been notified by anyone of his insanity. Would the bank be safe, under such circumstances, in charging the acceptances to the customer's account?

ANSWER.—The insanity of the customer, to the knowledge of the bank, has the effect of revoking this authority, and the bank would not be justified in paying the acceptances. That the bank have not been officially notified of the customer's insanity does not signify; the fact that it is known to them is sufficient.

### *Married Woman in Province of Quebec—Right to Operate a Bank Account*

QUESTION 105.—Can a married woman (in the province of Quebec) operate a bank account without the authority of her husband, even when living in community with him, provided the balance does not at any time exceed $500 (or when the aggregate does not exceed $500)?

ANSWER.—The case of such a depositor would be covered by sec. 84 of the Bank Act, and she would be free to deposit and withdraw money without her husband's consent, provided that the balance does not *at any time* exceed $500, no matter what the aggregate amount of the transactions may be.

### *Married Woman—Bank Account in Her Spinster Name*

QUESTION 106.—What is the best way to transfer a bank balance standing in the name of a spinster to her married name? Is a declaration of transmission an actual necessity?

ANSWER.—We think no declaration is necessary. The only question involved is one of identity. The heading of the account may be changed on advice from the depositor that in consequence of her marriage she takes and will hereafter sign her married name; or she may draw for the balance due her and redeposit in her new name.

If she had money at her credit in her maiden name, and drew a cheque in her married name, the bank (assuming that it was aware of all the facts) would not only be quite safe in honoring the cheques but probably would be bound to do so.

### *Promissor and Endorser both Bankrupt—Right of Holder to Rank on their Estates*

QUESTION 107.—A and B are holders of a note, the promissor and endorser on which are both bankrupt. After a lapse of time each estate pays a dividend (or arranges a compromise) of sixty cents on the dollar. Can A and B prove for interest to date of payment, or can they, after collecting sixty cents from one estate, collect more than forty cents (or as much more as will pay principal and interest in full) from the other?

ANSWER.—In making up claims to be filed with an assignee in bankruptcy the rule is to compute interest to the date of the assignment, the reason for this being that the property is assigned in trust to pay the obligations of the debtor existing at the date of the assignment.

As regards the holder's rights against the different parties, he is entitled, as holder, to recover from the promissor the full

amount of the note with interest to date of payment, notwithstanding that he has received a part from the endorser; but if he receives more than one hundred cents on the dollar and interest he becomes a trustee as to the excess for the endorser or other parties concerned. After he has collected from the promissor's estate all that it will pay, his dividend from the endorser's estate cannot exceed the balance of his claim and interest. If he has received the endorser's dividend first, and the dividend from the promissor's estate overpays him, he must pay back the excess to the endorser's estate. If he only collects enough from the promissor's estate to pay his claim in full after applying what he has received from the endorser's estate, the latter would be entitled to the balance of the dividend, if any, from the promissor.

We assume that as between the promissor and endorser the note under consideration is one which the former ought to pay; also that there is no Bankruptcy Act in force containing provisions which would conflict with the views expressed.

On the question of collecting interest from the endorser's estate, the dividend on which would pay balance of principal and interest in full, we think that the claim must be regarded as one against the endorser, for which the claim on the promissor is the security, and that whatever is recovered from the security may be applied, so far as the claim on the endorser goes, first to interest and then to principal, leaving the endorser liable for the balance. This in effect gives a claim for payment of principal and interest in full, when the dividends, as in the case you mention, would more than cover the debt in full.

The question mentions a compromise, as to which it is to be noted that the acceptance of a composition from the promissor, coupled with his discharge, might discharge the endorser from liability as well, if his consent were not obtained, or if the rights against him were not reserved.

### *Rights of Endorsers Among Themselves*

QUESTION 108.—A B sends C D a three months' note in settlement for an invoice of goods. C D, finding he cannot discount the note, returns it to A B, asking that another name be added, in order that he may be able to negotiate it. A B gets E F to endorse the note, and returns it to C D, who endorses it beneath the signature of E F, and negotiates it. The note is dishonored, and E F retires it after maturity. What is the position of C D and E F; who is the first endorser? If C D, then E F, as the subsequent endorser, must have the right to recover from him. Can C D set up that E F endorsed as

surety for A B; and if so, is it a good defence on the part of E F that he endorsed, at the request of A B, to enable C D to get the note discounted?

ANSWER.—The question involved here is entirely one of fact. If E F endorsed as surety for C D, the latter must protect him; if he endorsed as surety for A B, and to make A B's note more satisfactory to C D, E F has no recourse against C D. The order of the names is not material upon the true facts being shown.

*Bills of Lading as Security*

QUESTION 109.—A bank receives from the shipper of goods a bill of lading (railway receipt) issued by a railway company for goods deliverable to a third party, as security for a draft drawn on the party to whom the goods are shipped. In the event of dishonor can the bank, because it holds the receipt, get possession of the goods without the consignee's authority, or can the shipper get the goods without the surrender of the railway receipt by the bank?

ANSWER.—The duty of the railway company would be to deliver the goods to the person to whom they have been shipped, and they would ordinarily, we believe, deliver them without production of the receipt. If he refuses them, they would, no doubt, be justified in delivering them to the shipper. The possession of a receipt or a bill of lading in this form would not, we think, give the bank any rights as against the Railway Company to get back the goods.

*Securities under Section 74 of Bank Act*

QUESTION 110.—A bank gives a credit to a grain buyer, and arranges, for his convenience, to cash his grain tickets, taking a note and security under Section 74 covering the grain, whenever the amount paid reaches a certain sum. Would it be best for the bank to open two accounts, one for the grain tickets paid, to be credited with the proceeds of notes when security is taken, the other for credits for proceeds of grain sold, and debits showing the application of the proceeds of the grain on the notes? Would the security in such a case be valid?

ANSWER.—There might be some advantage, in the way of keeping a fuller record of transactions, in having two such accounts, but we do not think that the validity of the security would he affected thereby, one way or the other. That depends on all the facts in connection with the account, and the mere division of the entries could not make any difference.

The payment of the customer's grain tickets, assuming that he has not provided money in advance for the purpose, consti-

tutes the loan, which is afterwards to be secured by assignments under Section 74. It is therefore essential that before paying any grain tickets the bank should hold from the customer a written promise to give security.

QUESTION 111.—A bank advances money to buy hides, taking security on the same under Section 74; the bank and the customer agree that the latter may manufacture them into gloves without prejudice to the bank's security. Will the bank's security cover the gloves while in process of manufacture or after completion, or would it be necessary to take a chattel mortgage to protect the bank?

ANSWER.—We think that under section 76 of the Bank Act an assignment or security under section 74 would continue to cover the goods described in it during the process of manufacture, and would hold the manufactured goods after the completion of the same.

A chattel mortgage would not improve the matter unless there were some irregularity in the security under section 74; the assignment under section 74 could only in the case mentioned be attacked on the score of its validity under the Act, and in a simple case such as you put that risk should amount to nothing.

### *Bill of Exchange Accepted by Two of Three Drawees*

QUESTION 112.—A bank negotiates an unaccepted bill of exchange drawn upon three persons who are not partners. Two of these accept, but the third refuses, and the draft is protested, for non-acceptance by him. The bill is not paid at maturity. What is the position of the bank as regards its claim upon the two who have accepted?

ANSWER.—The parties who did accept must be regarded as acceptors of the bill, and under all the liabilities which the law attaches to them as such.

### *Insurance on Property Held as Security*

QUESTION 113.—Referring to question No. 90, if a bank notifies a customer that it has assumed possession of goods assigned to it under section 74 of the Bank Act—although allowing the goods to remain on the customer's premises—ought it to require a transfer of the insurance into its own name, or would the policies issued in favor of the customer—loss being payable to the bank—be sufficient to protect it, in case of fire?

ANSWER.—The fact that the bank has taken possession of goods assigned to it under section 74 should, as a matter of

precaution, be notified to the insurance company, as it might be held to be a change material to the risk under the conditions of the policy, but notwithstanding the fact that the bank takes possession, its interest is still that of a mortgagee, and the customer remains the "general owner."

### *Perpetual Ledgers*

QUESTION 114.—Are *perpetual* current account ledgers under any legal disability?

ANSWER.—If by "perpetual" ledger is meant one from which the leaves can be removed and fresh pages substituted, we do not think that this involves anything that can be called legal disability. It is conceivable that part of the record might get lost, or its genuineness be impugned because of the apparent ease with which a false sheet could be inserted, but the position of a customer's account is always a matter of proof, and the facts can be evidenced in any way.

As to the expediency of using such a ledger, we would say that we think there are sufficient practical objections to outweigh its apparent advantages.

### *Account in Name of "Job Smith, 'Sheriff'"*

QUESTION 115.—Job Smith, sheriff, places a sum of money in current account in his name as sheriff, the money deposited being court funds. Smith is dismissed from office and a successor appointed. Would a bank be justified in paying Smith the amount on his cheque signed "Job Smith, sheriff"—he no longer holding office—or would an order from the court be necessary? Or again, could the bank pay his successor without incurring liability?

ANSWER.—Unless the bank has had some special arrangement with the sheriff, covering an intimation that the money at his credit is official money payable to himself or to his successor in office, or unless there is some local statute which controls the matter, the deposit in question must be regarded as one which is repayable to Job Smith personally. Under ordinary circumstances, where an account is opened in the name of "Job Smith, sheriff," the word "sheriff" must be regarded as a mere description.

### *Deposits Payable to Two Persons or Either of Them*

QUESTION 116.—The holder of a deposit receipt, on account of his age procures a renewal receipt in favor of himself and wife "or either of them" so that either may draw the money.

Subsequently the wife presents the receipt endorsed by her husband (his mark witnessed), and asks for a renewal in favor of herself alone. The deposit receipt is one which is marked "not transferable." Does the bank take any risk in renewing the deposit receipt in the form which she desires?

ANSWER.—We think not. The original depositor, while he was in a position to deal with the deposit as he pleased, placed the amount at his wife's disposal, and the bank is therefore justified in acting on her instructions.

QUESTION 117.—A deposit receipt is issued which is payable to two persons or either of them; in the event of both dying, leaving wills disposing of the amount in different ways, what course should the bank take?

ANSWER.—Assuming that they did not die simultaneously, but that one survived the other for a longer or shorter time, the deposit became payable to the one of the two depositors who survived the other, and after his death to his executors. The claims of the beneficiaries mentioned in the two wills must be settled between the claimants and the executors of the survivor. The bank is not concerned.

### *Deposit Receipts "Not Transferable"*

QUESTION 118.—Would not the bank's responsibility as to the proper disposal of moneys held on deposit receipt be lessened if the words "not transferable" were omitted from such receipts?

ANSWER.—We think not. A deposit receipt as ordinarily worded, in which the bank undertakes that the money "will be accounted for," is not transferable in the sense in which promissory notes are transferable. The addition of the words "not transferable" does not alter the effect of the form; it merely calls attention to its nature. On the other hand if the deposit receipt were so worded that it was in effect a promissory note, and so negotiable in the ordinary sense, the bank would be liable to any holder of the receipt to whom it might be negotiated, and would lose some advantages, as, for instance, the right to hold the funds against a debt of the depositor.

### *Security Taken for Current Advances*

QUESTION 119.—Can banks legally take security under section 68 of the Bank Act, to secure *current* liabilities (business or accommodation paper under discount, but not yet matured).

ANSWER.—There is no doubt of a bank's right to take security for an unmatured debt under section 68 by way of mortgage on real estate or chattels.

### *Life Policies as Security*

QUESTION 120.—A bank holds an insurance policy of $5,000 upon the life of a customer (properly assigned to it and acknowledged by the company) as security for advances. The customer fails owing the bank $3,000, and the premiums are subsequently kept paid up by the bank, otherwise the policy would be lost. The insolvent dies before his estate is finally wound up, and the assignee, who has knowledge of the bank's security, claims on behalf of the estate the $2,000 resulting from payment of the policy over and above the bank's claim. Could the bank be compelled to surrender the money to him?

ANSWER.—So long as the bank holds the policy as security only, and has not foreclosed the rights of the creditor or his assignee, or obtained a release of their interest in the policy by other proper means, it is bound to account for any surplus. Any premiums the bank pays to keep the policy alive would, of course, be added to its claim on the policy.

### *Currency of Canada Convertible*

QUESTION 121.—Is the currency of Canada a convertible or an inconvertible one?

Can I take $1,000 in legal tender notes to the Receiver-General and demand gold?

Can I demand gold or legal tenders for bank notes if I present them at place of issue?

If I present them at a country branch, can I still insist on being paid in gold or legals?

Section 57 of Bank Act provides for payment of $100 in legals when demanded, but I cannot find answers to the above in the Act.

ANSWER.—The currency of Canada is convertible. The Government will pay gold for legal tender notes when presented to the proper officer, and the banks are bound to pay gold or legal tenders for their notes when presented at the place of payment. Whether or not the bank is bound to redeem its notes in gold or legal tender at any country branch depends upon the terms of the note itself. In practice they are usually made payable at the head office only, and while the bank is bound to receive them in payment of debts at any office, it is only bound to

redeem them at the place or places where they are made payable. There is a further provision as to redemption agencies respecting which please see reply to Question 82.

Section 57 of the Act does not touch this question. Its effect would appear to be merely to impose on banks the duty of paying up to $100 in legal tenders, and so far to deprive them of the right to meet their obligations in gold.

### *Deposit with Private Banker Guaranteed by a Bank*

QUESTION 122.—Does the guarantee of a deposit receipt of, or deposit account with a private banker come within the powers of a chartered bank? Can a branch manager give such a guarantee, and would he be personally liable if the bank were held not to be liable?

ANSWER.—A guarantee of this kind is probably within the scope of the bank's powers, and binding on it if given for a proper consideration. The right of a branch manager to bind the bank by such a guarantee depends on the circumstances; and the facts would have to be carefully ascertained before an opinion could be expressed. The case would, however, be so unusual and open to objection, that the presumption would be against his authority.

If the bank proved not to be bound by his act, he would, if the guarantee was in itself not *ultra vires* of the bank, be responsible to the creditor for any damages sustained through relying on his implied warranty that he had authority to bind the bank. If, however, the guarantee were held to be *ultra vires*, then the manager would not be responsible.

The power of a bank to enter into a guarantee will depend upon the nature of the transaction. If the transaction be one which "appertains to the business of banking" within the meaning of section 64 of the Bank Act, it would be within the bank's powers.

It was held by the court in Montreal that a bank was not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charterparty. *Johansen v. Chaplin.*

### *Municipal Accounts*

QUESTION 123.—Is it essential under the provisions of the Ontario Act to make better provision for the keeping and auditing of Municipal and School Accounts, that the treasurer of a municipality should keep the municipal account at a chartered bank; and is it obligatory on his part to pass all transactions through the account?

ANSWER.—The Ontario Statute respecting Municipal and School Accounts (60 Vict., chap. 48) recognizes, by section 20, the deposit of municipal funds in chartered banks, private banks and companies.

We are not aware that there is any legislation making it obligatory on the part of the treasurer to pass all transactions through the bank account.

### *Old Issues of Canadian Bank Notes*

QUESTION 124.—Why is it that old issues of Bank of Nova Scotia and Merchants Bank of Halifax notes are not worth their face to-day?

ANSWER.—We presume that the notes referred to were issued before 1st July, 1871, and that they are consequently payable in the old currency of Nova Scotia. Such obligations are by section 10 of the Act respecting the currency, 1886, payable in the equivalent of the currency of Canada, of which 97⅓ cents is made equal to $1 of the old currency of Nova Scotia.

### *Refusal of Bank to Pay Customer's Cheque for which there are Funds*

QUESTION 125.—May the teller of a bank refuse to cash a cheque which is correct in every particular and for which there are funds? The case in mind is one where the teller had accidentally become aware that it was the drawer's intention to order the bank not to pay, but the teller knew of no reason why the drawer should stop payment, and no such notice had been received by the bank when cheque was presented.

ANSWER.—As the customer who drew the cheque is the only person who would have any right to complain of its refusal, and as the teller's action was in accordance with his wishes, although not formally notified, the refusal was in order. We think the teller took the risk of the drawer changing his mind, and of making the bank liable for having refused a cheque for which there were funds.

### *Domiciliation of Bills by the Acceptors*

QUESTION 126.—May not the drawee of a draft accept it payable where he pleases? If such acceptance is not satisfactory to drawer or endorsers, can they object?

ANSWER.—Under section 19 of the Bills of Exchange Act, s.s. 2, an acceptance to pay at a particular specified place is in effect declared to be a general acceptance, and is one which the

holder cannot refuse. This provision might give rise to difficulties, as for instance, if the drawee were to make the bill payable at some unreasonably distant place. In practice, however, it works well enough, and it protects banks against the discharge of prior parties, which might result but for this provision, through taking an acceptance naming a different place for payment from that specified by the drawer.

### *Insufficient Funds for a Cheque*

QUESTION 127.—Would you think it well to amend the law so as to give to the holder of a cheque for which there are not sufficient funds, a right to receive whatever amount there may be at credit of the account?

ANSWER.—We think that it is now permissible for a bank to accept a cheque for part of its amount, and of course, subsequently to pay the partial amount, but it is not obligatory, and we think that as a practice it would be open to objection. As far as the interests of the banks are concerned we think that any legislation giving the holder of an unaccepted cheque rights against the bank would be highly undesirable. At present banks are responsible only to their own customers for what they do, or omit to do, in respect to any unaccepted cheque, and to alter this position would involve serious consequences.

### *Endorsed Note lost in the Mails and not presented for Payment on Date of Maturity*

QUESTION 128.—A customer deposits with the bank a note for collection, on which there is a good endorser. The note is payable at a distant point, and when deposited for collection has still two months to run. The bank forwards it at once to its agents for collection, but on enquiry ten days after maturity of the note they find that their letter had never been received. The makers of the note are worthless. Was not the endorser discharged for want of notice, and would not the bank be responsible for neglect in not looking for an acknowledgment of the letter?

ANSWER.—Unless there were some exceptional circumstances connected with the case, any responsibility for the loss of the bill in the mails must fall on the bank. The liability of the endorser, however, would be preserved, if when the cause of delay ceases to operate, even although the note were ten days overdue, presentment be made with reasonable diligence and notice of dishonour sent. Section 46 of the Bills of Exchange Act excuses delay in presentation when "caused by circumstances beyond the control of the holder, and not imputable to his

default, misconduct or negligence." We think that the bank's neglect to see that the letter was acknowledged was not negligence within this section, and that the delay was beyond its control. There appear to be no English cases covering the point, but there are some American cases in which it was held that delay in the post office, when a bill is mailed in good time, is a valid excuse for delay in presentation.

### *Telegraphic Transfers*

QUESTION 129.—A bank at E. F's request sends this telegram to a correspondent: " Notify and pay to A. B. ten thousand dollars to be applied on account of C. and D. bonds." The money is paid by the correspondent to A. B. with directions to apply as above, but A. B. does not apply it as directed. Can the bank or its correspondent be held responsible by E. F., on the ground that the correspondent should have seen that the money was applied as directed?

ANSWER.—We think not. The instructions were to pay the money to A. B., and to inform him of the application to be made of it. If these instructions were carried out the matter would rest entirely between E. F. and A. B.

### *Deposit in name of Deceased Executor*

QUESTION 130.—A bank issued a deposit receipt to John Jones, executor. John Jones is now dead. The deposit receipt is not mentioned in his will. Are his executors legally entitled to withdraw the money?

ANSWER.—The executors of a sole trustee or surviving trustee become the trustees in his place and consequently have authority to deal with the deposit which he held in his lifetime as trustee. As the deposit receipt mentioned was not the testator's own property, it would not, of course, be mentioned in his will.

### *Cheque Drawn on an Altered Form*

QUESTION 131.—The name of the bank printed on a cheque was ruled out, and that of the one at which the drawer kept his account written in. Would this under any circumstances be a material alteration?

ANSWER.—Any change made in a cheque before the drawer signed it is not an " alteration " in any sense. If the change were made after the cheque was issued, it would, of course, invalidate the cheque, and the question sometimes arises as to the

propriety of paying a cheque drawn on an altered form where the alteration is not initialed by the drawer. Ordinarily, no doubt, the surrounding circumstances justify the payment of such a cheque.

*Bank Stocks held "in trust"—Trustees and the Double Liability*

QUESTION 132.—A trustee accepts a transfer of stock in a bank, describing himself as a trustee but without stating for whom. In case there should be a call for the double liability would he be personally responsible?

ANSWER.—Yes. See section 44 of the Bank Act

*Trust Funds Deposited in a Private Bank*

QUESTION 133.—A solicitor or trustee deposits a client's money in a private bank, without instructions from the parties interested. In case of loss would he be held personally responsible?

ANSWER.—This would depend altogether on the facts. If, *e.g.*, there were no better place of deposit available, and the alternative would be to retain the money in his own house at risk of robbery, and if the other circumstances made the course one which any prudent man would adopt in dealing with his own moneys, the trustee would probably not be under personal responsibility.

## LEGAL DECISIONS AFFECTING BANKERS

### NOTES

*Rules respecting Endorsements.*—Elsewhere in this issue of the JOURNAL will be found the text of the rules respecting endorsements which have been approved by the council of the Association.

It will, we think, be an important step forward if the understanding between banks on this point is uniform all over Canada. The matter of the exchange of endorsed items is one which has given rise to a good deal of friction and unnecessary labor in the past, and this we may hope to see remedied in the future, although there will no doubt be cases for which the rules do not provide. The advantages of having officers of the banks, wherever stationed, accustomed to the same mode of dealing with exchanges, are obvious. Hitherto, removal from one point to another has necessitated in some measure the learning of a new system.

The recent amendment of the Bills of Exchange Act, and a clear understanding everywhere as to what endorsements are to be regarded as regular, should put the whole business of exchanging items between banks in Canada on the most satisfactory footing.

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*"One-man" Companies.*—The judgment in *Rielle v. Reid* is, we think, the first in which the conversion of a private business into a joint stock company, undertaken for the purpose of getting private assets out of the reach of creditors, has been dealt with by the courts in Canada. The judgment protects the rights of creditors of the company, but for the rest declares the assets to be liable for the debts of the private business, and gives equitable orders for their realization. We have had several

cases in Canada where creditors have been set at defiance from under cover of such an incorporation. Hereafter, with this judgment in view, attempts of this kind are not likely to be so glaring.

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*Material alteration.*—In a case which recently went to the Ontario Court of Appeal (*Boulton v. Langmuir*), among other matters the question of what constitutes a material alteration came up. The date of a note payable on demand with interest was changed by the payee to a later date, and notwithstanding the fact that the effect of this was to benefit the maker, it was held that this was a material alteration which rendered the note void. In dealing with this point in the case Osler, J.A., remarked:

"To alter the date of a note was to make it appear to be a different contract from that which the defendant had entered into, both as regards the date at which it became an existing contract, and the time from which it bore interest. I do not see that the fact of its being thereby made in one respect more favorable to the defendant affects the question of the materiality of the alteration. It is the change in the contract, not the surrounding circumstances, which the law regards."

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*Cheque mailed by an Insolvent about to make an Assignment.*—There are some interesting points in *Halwell v. Township of Wilmot*. The court found that the property in a cheque sent to a bank by mail for credit of an account, passed as soon as the cheque reached the bank. There was a further finding that the property in the cheque passed irrevocably, by virtue of the Post-office Act, as soon as the letter was posted. If the latter be literally true, it is clear that banks would incur responsibility if they permitted parties sending remittances by mail for the credit of others to alter the disposition to be made of these funds after they have been mailed.

In the judgment in appeal it is laid down that as soon as the bank had received the cheque, with instructions to credit it to the township, whether any entry had been made or not, the right to the money passed to the township and could not be rescinded.

*Securities under Section 74 of the Bank Act.*—In a carefully considered judgment delivered in the case of *Conn v. Smith*, the creditors of an insolvent have been denied the right to follow moneys received by a bank as the proceeds of goods on which it had held security under section 74 of the Bank Act, which security was alleged to be invalid under section 75 of the same Act. The court held that the clause respecting preferences, giving creditors the right to follow the proceeds of goods the transfer of which would have been invalid against creditors, should be limited to transactions invalid against creditors *qua* creditors, and not extended to transactions which might be declared invalid for reasons other than those designed to protect creditors. The transactions attacked in this case, if invalid, were so because they were contrary to the limitations imposed by parliament upon banks, and not because of any interference with the rights of creditors.

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*Valuing Securities—Joint Promissors.*—In *Bell v. Ottawa Trust and Deposit Company* the judgment is of interest chiefly because of its bearing on the cognate clause of the Ontario Act respecting Assignments. The case came up in the administration of the estate of a deceased partner, who was a joint promissor with his firm on certain notes, under a clause in the Act respecting the administration of estates of deceased insolvents having reference to the valuation of securities. This clause is identical in effect with the clause in the Act respecting Assignments. It was held that the security upon an asset of the firm (certain timber limits) was not security on the estate of the deceased partner, nor security on the estate of a third person for whom he was indirectly or secondarily liable, as his liability was direct and primary. The bank was therefore permitted to rank on the personal estate without valuing the security. Questions of this kind arising under the Act respecting Assignments might be affected by section 5 of that Act, which deals with liabilities of a party in his personal capacity and as a member of a co-partnership.

*Signature to Promissory Note obtained by Fraud.*—The judgment of Lord Russell of Killowen, C.J., in the somewhat notorious case of *Lewis v. Clay* will, we think, be read with much interest. The circumstances were altogether remarkable. A member of a great English family, by representing that he had some private documents relating to his sister's divorce, which he wished to get witnessed but did not wish his friend to see, got the latter to sign some papers which were in reality promissory notes for large amounts, in favour of a money lender. The latter in an action to recover the amount of the notes from this friend lost his case. It is somewhat difficult to understand the findings of the jury on the questions asked them with respect to the defendant's action in signing his name under these circumstances, and it may be that the learned chief justice's deductions from the facts as found by the jury are inevitable, but the case opens up possibilities which are rather appalling to bankers. Had the judgment rested on the ground that the plaintiff, as the payee named in the note, was one of the immediate parties and stood in a different position towards the makers than would a holder in due course, the outcome would have seemed less surprising to business men, but the chief justice declares emphatically that a holder in due course to whom the bill had been negotiated would be in no better position.

There is no doubt that where a person has been induced by fraud to sign his name to a contract without any intention of making any contract at all, and believing that the document was not a contract, and if the signature is given without negligence, the party is not liable. This is one of the ordinary risks which people who handle notes in the way of business have to take, but it really seems to us that a man who has such unbounded confidence in a friend as to put his signature to documents which he has not seen, though he has every chance of examining them, ought to bear the consequences of his act if his friend betrays him.

We are not aware whether the case has been carried to appeal. If it has, the judgment of the higher court will be looked for with interest.

## COURT OF APPEAL, ENGLAND

### The Queensland National Bank v. the Peninsular and Oriental Steam Navigation Company*

**Carriage of specie under implied warranty that the specie room is reasonably fit to resist thieves.**

This was an appeal from the judgment by Mr. Justice Mathew, taking commercial cases. The action was brought to recover £5,000 damages for the loss of 5,000 sovereigns which were being carried on board the defendants' steamship Oceana from Port Jackson to London. The plaintiffs, under a bill of lading, shipped ten boxes, each containing 5,000 sovereigns, on board the Oceana to be delivered at Lloyd's Bank, London. The bill of lading contained exceptions (*inter alia*) of loss by robbers or thieves by sea or land, defects, latent or otherwise, in hull or its appurtenances, or from any act, neglect, or default whatsoever of the pilot, master, mariners or other servants, or of the agents of the company. The boxes in question were placed in the bullion room, and during the voyage the bullion room was broken open and one of the boxes was stolen. The plaintiffs in their statement of claim alleged that there was an implied warranty that the Oceana had such a bullion room as to make her a fit vessel for the carriage of bullion, and that the bullion room was so defective that the vessel was not fit for the carriage of bullion. It was ordered that, before the questions of fact were tried, the preliminary question of law should be determined whether there was any warranty by the defendants under the bill of lading that the room in which the bullion was stowed was so constructed as to be reasonably fit to resist thieves. There was nothing in the bill of lading referring to a bullion room, but it was admitted that the Oceana had a bullion room and that the plaintiffs knew it. For the purposes of this argument it was assumed that the bullion room was defective. Mr. Justice Mathew held that there was an implied warranty in the bill of lading that the bullion room was in a reasonably fit condition to resist thieves, and decided the preliminary question in favor of the plaintiffs. The defendants appealed.

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* *Times Law Reports.*

The Court dismissed the appeal.

Lord Justice A. L. Smith said that there were very large exceptions in the bill of lading, and, apart from an implied warranty, the defendants would in all probability have an answer to the claim by showing that the loss was caused by thieves. The question, however, was whether upon this bill of lading there was an implied warranty that the bullion room in which the gold was placed was reasonably fit to resist thieves. It seemed to him that the foundation of Mr. Justice Mathew's judgment was this, as stated by that learned Judge:—"I assume, for the purpose of my decision, that the vessel in question, the Oceana, like others of her class, was furnished with a receptacle for bullion and valuables, usually called a specie room; and that the contract in the bill of lading was entered into with the knowledge and upon the footing that this receptacle had been provided for the safe carriage of the gold mentioned in the bill of lading." That assumption, upon which the learned Judge based his judgment, brought the case within the decision in the *Maori King v. Hughes*. In his (the Lord Justice's) opinion that assumption was fully borne out by the admissions made during the argument in the Court below. It was argued that there was no implied warranty that the bullion room was reasonably fit to resist thieves. The parties contracted on the footing that there was a bullion room. What was a bullion room for? Not to resist the waves or fire; it was for the purpose of securing the gold in it from thieves. It was said that gold could be carried in other parts of the ship. That was not the issue raised before Mr. Justice Mathew. The question was whether there was a warranty that the bullion room was, at the time when the ship started, reasonably fit to resist thieves. Upon the authorities which had been referred to, in his opinion there was such a warranty.

Chitty and Collins, L.JJ., concurred.

## QUEEN'S BENCH DIVISION, ENGLAND

### Lewis v. Clay*

The defendant's signature as joint maker of certain promissory notes was obtained on the misrepresentation that he was merely witnessing the execution of some private papers, the true nature of the documents being concealed. The plaintiff, the payee of the notes, was not a party to the fraud.

*Held*, on the finding by the jury that there was in fact no want of due care in the signing of the defendant's name in this manner, that he was not precluded from setting up the true facts: that he did not sign with the intention of giving promissory notes or undertaking any obligation; and that the plaintiff could not recover.

*Semble*, that even if suit were brought by a "holder in due course" to whom the notes had been negotiated, it would make no difference in the result.

This case was tried before Lord Russell of Killowen, C. J. The facts appear sufficiently in his Lordship's judgment, as follows:

This is an action brought by the plaintiff as payee against the defendant to recover from him, as one of two makers, the amount of two joint and several promissory notes dated respectively June 15, 1896, one for £3,113 15s., payable three months after date, and the other for £8,000, payable six months after date. The name of the other joint and several maker on each promissory note is that of Lord William Nevill. It is admitted that the genuine signature of the defendant appears as maker on each of the promissory notes, which had been prepared in the plaintiff's office, and also that his genuine signature appears on two letters, one dated June 15 referring to the note of smaller amount, and one dated June 21, 1896, referring to the note of larger amount, authorizing the plaintiff to pay the proceeds to Lord William Nevill. The latter brought the promissory notes and letters to the plaintiff, who, it is admitted, gave value for them, and who is found by the jury to have taken them in good faith. The defendant contended that he was not liable on the ground that he had never been asked, and that he never intended to put his name on any bill or promissory note, or to take upon himself any contractual obligation or legal liability of any kind. He explained that he had just come of age in June, 1896; that he had known Lord William Nevill intimately for some years; that he and Lord William Nevill were members of the same Ascot party in that month; and that on Sunday, June 21, Lord William Nevill had come to his bedroom and asked him to witness some deed or document; that he produced a roll of papers covered up by blotting or other paper, in which there were four openings; that upon the

* *Times Law Reports.*

defendant asking what the document was about, Lord William Nevill said he would show it if the defendant insisted, but he would rather not, for that it was a private matter, that he wanted a power of attorney, and that it had to do with his sister, Lady Cowley's marriage settlement, and to certain divorce proceedings then pending; that he (the defendant) did not insist on seeing the document, trusting to Lord William Nevill; that upon this the defendant signed his name, he believed four times, and he thought Lord William Nevill signed twice in the openings. He said he had signed his name with the single intention of witnessing the signature of Lord William Nevill. He added that up to that time he had had no reason to doubt the honour of Lord William Nevill, and that, so far as he knew, no one who knew Lord William had. The following questions were put to the jury, who gave the answer appended to each:—(1) Did the plaintiff take the promissory notes in good faith? [It is admitted he took them for value.] Answer.—Yes. (2) Is the defendant's account of the circumstances under which he signed his name substantially true? Answer.—Yes. (3) Was the defendant, in signing his name as he did, recklessly careless, and did he thereby enable Lord William Nevill to perpetrate the fraud? Answer.—No; not under the circumstances. (4) Were the signatures to the documents given by the defendant in misplaced confidence in the statements of Lord William Nevill as to their nature? Answer.—Yes. (5) Did the defendant sign his name to be used by Lord William Nevill for any purpose he chose? Answer.—No. (6) Did the defendant attach his signature to the documents without due care? Answer.—No, not under the circumstances. I have now to consider in the light of these findings which of the parties is entitled to judgment. It is clear that the proof of the signature of the defendant to the promissory notes, coupled with proof of their delivery to the plaintiff under the apparent authority of the defendant, makes out a *prima facie* case for the plaintiff. Is it a conclusive case? Here two questions arise—(1) Is the defendant precluded or estopped from setting up the true circumstances under which his name came to appear on the documents in question? (2) If not, do those true circumstances afford an answer in point of law to the plaintiff's claim? As to the first question the defendant is not, in my judgment, estopped or precluded from setting up the actual facts upon any principle of law. Apart from statute such preclusion or estoppel can only arise (in circumstances like the present) where the defendant had so conducted himself that it would be contrary to natural justice to permit him to assume a position inconsistent with that which he had ostensibly occupied, or which he led others to believe he occupied, and upon which others had, mis-

led by his conduct, been suffered to act. In the present case the suggestion on the part of the plaintiff is that the defendant had not used due care in signing his name, and that he had signed in misplaced confidence in Lord William Nevill. The jury have found that there was, in fact, no want of due care in the circumstances in signing his name as he did; but it was urged that the finding as to misplaced confidence was sufficient, and the authority of a distinguished American Judge in the case of *Putnam v. Sullivan* was cited. What does misplaced confidence mean? It may mean confidence placed where you know or ought to know it is not safe, or confidence placed where you have every right to believe it is safe, but where it is afterwards betrayed. The former, I think, is the case the learned Judge had in his mind, and the facts there may afford evidence of want of due care; but that clearly is not here the meaning attributed by the jury to misplaced confidence, for they have found that there was in the circumstances no want of due care on the part of the defendant. Taking the findings together they amount to this—that the defendant was in the circumstances guilty of no want of due care in placing confidence in the statement made by Lord William Nevill, and accordingly in signing his name as he did; and I decline to hold that the placing of confidence as here shown, which is afterwards betrayed, where it is not recklessly or negligently so placed, in any way precludes the defendant from setting up the facts as a defence. I conclude, therefore, the defendant is not, upon any principle of law, estopped or precluded from setting up the true facts. How, then, is the plaintiff's case put? It was argued that whatever was the law before or apart from the Bills of Exchange Act, 1882, the facts here did not under that Act afford a defence as against a "holder in due course," which, it was said, the plaintiff was within section 29, and that the question must be determined by reference to that Act alone. I think this argument involves a misconception both of the plaintiff's position and of the scope and effect of the Act of 1882. It will be apparent from a consideration of the facts of the case that the plaintiff was not a "holder in due course" at all, but that he was, in fact, simply the named payee of two promissory notes. Further, an examination of sections 20, 21, 29, 30 and 38 relating expressly to bills, and sections 83, 84, 88 and 89 relating to promissory notes, will make it quite clear that "a holder in due course" is a person to whom, after its completion by and as between the immediate parties, the bill or note has been negotiated. In the present case the plaintiff is named as payee on the face of the promissory note, and therefore is one of the immediate parties. The promissory notes have, in fact, never been negotiated within the meaning of the Act. I desire to say

here that, even if the plaintiff were "holder in due course," it would, in my judgment, make no difference in the result. But is the contention right that the Act of 1882 must alone be looked to? I think not. That Act was intended to be mainly a codification of the existing law, but it is not merely a codification Act, for some alterations of the law are clearly effected by it and it does not purport to be exhaustive, for by section 97 the rules of the Common Law (including the Law Merchant), save in so far as they are inconsistent with the express provisions of the Act, continue to apply. But I agree that in determining questions of liability on bills or notes it is proper to examine the Act before turning to the case declaratory of the Common Law decided before that Act. It is unnecessary to set out the provisions of the Act and to comment in detail upon them. It is enough to say that there is nothing in the Act which prevents the defendant from setting up the defence that he never made the promissory note in question—which is the real defence here. It would, indeed, be strange if it did. For the purposes of the present case the question is precisely the same as if any other contract than one by promissory note had been written on the documents, to which the defendant was induced to sign his name—for instance, if it had been a contract of guarantee or suretyship. Then the question would have been—Did the defendant make the contract of guarantee or suretyship? Here it is—Did he make the promissory notes sued upon? The question, then, is, on the facts as they are now found to be—Did the defendant make the promissory notes in question? If he did not, then the finding of the jury that the defendant was not guilty of any want of due care establishes that he is not precluded from saying so. That there is a *prima facie* case on the plaintiff's evidence that he did, I have already said; but is that *prima facie* case rebutted and displaced by the defendant's evidence? According to that evidence it must, after the findings of the jury, be taken to be the fact that he thought he was witnessing a deed or document; that he was so told; that he had no idea of signing and was not asked to sign any bill or promissory note, or to undertake any contractual obligation of any kind. A promissory note is a contract by the maker to pay the payee. Can it be said that in this case the defendant contracted to pay the plaintiff? His mind never went with such a transaction; for all that appears, he had never heard of the plaintiff, and his mind was fradulently directed into a different channel by the statement that he was merely witnessing a deed or other document. He had no contracting mind and his signature obtained by untrue statements fraudulently made, to a document of the existence of which he had no knowledge, cannot bind him. It is as if he

had written his name for an autograph collector, or in an album. The case differs in no material respect from one in which a genuine signature is deftly transferred by delicate contrivance from one document to another, and so skilfully as to escape notice under ordinary examination. Or, again, if the body of the promissory notes had been fraudulently written above, and after his signature had been made, it would have been forgery, and in such case it is clear no recourse should be had upon it. Can it make any difference as to resulting contractual obligation that the body of the note was without his knowledge filled up before he was fraudulently induced to put his name in the belief that it was something wholly different? I think not. In plain reason it must be said that the use to which the defendant's signature was applied was in substance and effect forgery, whether or not it amounted to the criminal offence of forgery. I think it well to point out that cases like the present differ widely from those in which the party sought to be charged has agreed and intended to enter into contractual obligation by bill or note but has been defrauded into agreeing, or been defrauded in the manner in which the bill or note has been dealt with. In such cases he is liable, on principle and authority, to anyone who has dealt with the bill or note in good faith and for value. It was in argument admitted that the case of *Foster v. Mackinnon* is in point, and is an authority binding on me if the Bills of Exchange Act of 1882 has not altered the law as there declared. I find that the law has not been so altered. I see nothing in the Act to warrant the suggestion that it has been altered, and it is noteworthy that all the text-writers dealing with the Bills of Exchange Act, 1882 (including, indeed, the draftsman of the Act), treat that case as an existing authority. The facts in *Foster v. Mackinnon* were that an old man of feeble sight was induced—without, as the jury found, any negligence on his part—to sign his name on the back of a bill by the fraudulent statement that it was a guarantee which, in fact, he had undertaken to sign. The Court of Common Pleas (consisting of Chief Justice Bovill and Justices Byles, Keating, and Montagu Smith) held that he was not liable, and this in an action by what was then called a *bonâ fide* holder for value and without notice, of which "holder in due course" is now the legal equivalent. In these islands, cases in litigation of frauds such as that here practised are of rare occurrence, partly because of the existence and character of our stamp laws, but in the United States of America, where no such laws exist, there are many authorities dealing with points similar to that in the present case. The great weight of United States authorities supports the view of the common law expressed by the English Judges. I have thought it right to say so much, but in truth these authorities

are not necessary for the purpose of this case. They are all cases where the bills or notes had been negotiated to persons now called "holders in due course." It follows, if such a holder cannot in a case like the present recover, *a fortiori* that the plaintiff—who, as named payee, is one of the immediate parties—cannot recover. In the result, therefore, my judgment must be for the defendant, and the plaintiff must be enjoined from in any way dealing with the notes, and the same must be cancelled so far as they purport to be the notes of the defendant.

A stay of execution as to costs was granted, in view of an appeal.

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## CHANCERY DIVISION, ENGLAND

### In re Castell and Brown, limited—ex parte Union Bank of London*

A company gave its debenture holders a floating charge on all its real and personal property, present or future, but retained in its possession the title deeds. The debentures contained a stipulation that no charge should be placed on the property in priority to them. The title deeds were subsequently deposited with a bank as security, the company giving the bank an equitable mortgage with an agreement to execute a legal mortgage when required.

*Held*, that the bank was entitled to rely on the fact that the company had possession of its title deeds as evidence of its right to create the charge in the bank's favor, and that the bank's charge must have priority.

The question in this case was whether the bankers of a company who had advanced money to the company on the security of its title deeds were entitled to priority over the company's debenture-holders notwithstanding that the property comprised in the title deeds was comprised in the debenture security and by the terms of the debenture itself the company was expressly forbidden to charge such property in priority to the debenture charge. It appeared that the above company was formed in December, 1884, and in May, 1885, issued in pursuance of its borrowing powers debentures to the amount of £28,000. Each debenture purported to charge all the property of the company whatsoever and wheresoever, both present and future, including its uncalled capital for the time being, and was endorsed with conditions. These were, amongst others, that the debenture was one of a series for securing principal moneys not exceeding in the whole at any time two-thirds of the

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* *Times Law Reports.*

amount of the company's paid-up capital for the time being, and that the debentures were to rank *pari passu*, and that the charge was to be a floating security, but so that the company was not to be at liberty to create any mortgage or charge upon its freehold or leasehold hereditaments in priority to the debentures. No legal mortgage of the freehold or leasehold hereditaments was ever made to the debenture-holders, and the title deeds remained in the possession and under the control of the company. In April, 1892, the directors of the company opened an account with the Union Bank of London, and were allowed by the bank to overdraw on depositing the title deeds of the company's leasehold property. The overdraft was paid, but the deeds remained in the custody of the bank, and in August, 1895, the bank allowed a second overdraft on the company giving a memorandum of equitable charge on the deeds and an undertaking that the company and all other necessary parties would on demand make and execute valid legal mortgages in favour of the bank. The interest on the debentures being in default the above action was instituted by the debenture-holders, and in July, 1896, the usual judgment was made for the appointment of a receiver and directing inquiries as to the charges and their priorities. In April, 1896, the company had passed resolutions for voluntary liquidation, and in June, 1897, an order was made for the continuation of the liquidation under the supervision of the Court. In February, 1897, the bank was served with notice of judgment in the action. At that date the overdraft at the bank amounted to £220. The bank stated that until served with notice of judgment they had not had any notice of the company having issued any debentures, or that it had created any charge upon the property comprised in the deeds deposited with the bank. The company being stated to be insolvent the bank claimed to have a prior charge for £220 and interest, and to retain the deeds until their debt was paid.

Mr. Justice Romer said,—This is a question of priority between two equitable encumbrancers. The debentures are prior in date. But the Union Bank at the date of its charges had no notice, express or implied, of the prior encumbrance, and obtained possession of the title deeds, and, under the circumstances of the case, claims priority. If the equities of the two encumbrancers are in other respects equal, then, of course,

priority depends upon the dates of the charges. But the question is whether, under the circumstances of this case, the bank has not the better equity so as to entitle it to priority. Now, as between equitable encumbrancers in determining priority, the possession of the deeds has always been treated as a circumstance of great importance. And, indeed, in some of the numerous cases which show this there are observations of the Judges who decided them which go very far. . . . I do not think a prior equitable encumbrancer would lose his priority where he did not obtain the deeds, and the deeds came to the hands of the subsequent encumbrancer through no default of any sort on his part. I therefore proceed to enquire into the circumstances under which, in the present case, the deeds came into the hands of the bank. In the first place, I cannot hold that there was any negligence on the part of the bank. When making its advances to Castell and Brown, Limited (which I will hereafter call the company), it found the company in possession of the deeds in question, and, apparently, able as unencumbered owner to charge the property. The company purported as such unencumbered owner to give a charge to the bank, and I think the bank was, under the circumstances, entitled to rely upon obtaining a charge free from encumbrance. It is suggested on behalf of the debenture-holders that the bank ought to have made some special enquiries of the company. But it is not suggested that the bank wilfully abstained from making enquiries, and as the bank had no reason to suppose that the company was not fully able to give a valid first charge, and found the company in possession of the deeds which showed no encumbrance, I think the bank was not bound to make any special enquiry. It is said on behalf of the debenture-holders that it is so common for companies to issue debentures that the bank ought to have assumed there were some in this case, or, at any rate, to have specially enquired about debentures. But every company does not issue debentures, and moreover, every debenture does not charge property of the company, and certainly not property the title deeds of which were left with the company. It might just as well be said, because it is common for private individuals to mortgage their properties, that a person asked to make advances to a borrower who appears to be unencumbered owner, and has the deeds showing him to be such owner, is bound to assume that the borrower has previously mortgaged, or to make special enquiries of him on the footing that he has previously mortgaged. Such a contention appears to me unreasonable. I therefore hold that there was no negligence on the part of the bank; and I now look to see how it was that the company retained possession of the deeds, notwithstanding the issue of the debentures. The reason appears to me to be

obvious. The debentures were only intended to give what is called a floating charge, that is to say, it was intended, notwithstanding the debentures, that the company should have power, so long as it was a going concern, to deal with its property as absolute owner. And I infer it was on this account that the company was allowed to, and did, retain possession of the deeds. In other words, the debenture-holders, notwithstanding their charge—and, indeed, by its very terms—authorized their mortgagor, the company, to deal with its property as if it had not been encumbered, and left with their mortgagor the deeds in order to enable the company to act as owner. It is true that, having given this general authority to the company, the debentures purported to put a certain special restriction on its exercise. By the first condition it was provided that, though the charge was to be a floating security, the company was not to be at liberty to create any mortgage or charge upon its freehold or leasehold hereditaments in priority to the debentures. This restriction was, no doubt, quite valid as a private arrangement between the company and the debenture-holders. But can the debenture-holders, under the circumstances, set it up as against the bank taking its securities without notice? I think not. I take it to be established that if a first mortgagee, even though he has the legal estate, authorizes the mortgagor to retain the deeds in order that the mortgagor may thereby as ostensible owner of the property be able to deal with it, though only to a limited extent, yet if the mortgagor takes advantage of the deeds so left with him to deal with the property to an extent beyond what was authorized, then the mortgagee cannot set up his charge as against a purchaser for value without notice who claims under the unauthorized dealing and relied on the deeds and the apparent ability of the owner to deal with the property free from encumbrances. . . . In my opinion, the bank has a stronger equity than the debenture-holders and is entitled to priority. I may add that if I am not mistaken in my inference that the deeds were allowed to remain with the company because the debentures created a floating charge only, and it was intended that the company should be authorized to act as owner (subject to the special conditions imposed by the debentures), then I cannot see why the debenture-holders should not have obtained possession of or control over the deeds in some shape or form, and they would come within the series of cases which have decided that a first mortgagee, even a legal one, who negligently leaves the deeds in the hands of the mortgagor, is postponed to a subsequent mortgagee who obtains the deeds without notice. I therefore declare that the bank's charge has priority and their costs will be added to their security.

## COURT OF APPEAL ONTARIO

## Halwell v. Township of Wilmot*

The transfer by the defaulting treasurer of a municipality to the bankers of the municipality of the accepted cheque of a third person for the amount due by him to the municipality cannot be impeached under the Assignments and Preferences Act, the duty to make good his wrong being sufficient to protect the transaction.

Judgment of Ferguson, J. affirmed.

The cheque was sent by the treasurer by post in a letter to the bankers and this letter was received by the bankers in the afternoon, but the amount was not credited in the bank books to the municipality till next morning, and before this was done an assignment for the benefit of creditors had been made by the treasurer :—

*Held*, that the property passed as soon as the cheque reached the bankers and that the assignment was not a revocation of the transfer.

*Per* Ferguson, J.—The property in the cheque passed irrevocably by virtue of the provisions of the Post Office Act, R. S. C. ch. 35, section 43, as soon as the letter was posted.

Judgment of Ferguson, J., affirmed on other grounds.

This was an appeal from the judgment of Ferguson, J., before whom the action was tried at Stratford, in November, 1896. The case was submitted to the Court by means of written admissions signed by counsel, in lieu of evidence, and the facts of the case appear to be as follows :

One Alfred Kaufman was the treasurer of the township of Wilmot, and as such had in his hands from time to time several thousand dollars, which moneys he had for some years used as his own. He became insolvent and judgment against him having been obtained by one of his creditors, execution was issued to the sheriff of Waterloo on the 26th February, 1896. On the 27th February at about 3.30 p.m., the sheriff seized the goods of the said Kaufman at the village of Baden where the latter resided.

On the 24th February, with a view to making good his deficiency to the township, Kaufman through Turnbull & Barrie of Galt, arranged with Irwin, a private banker in that town, to lend $3,400 on a chattel mortgage with the note of James Livingston (surety for Kaufman to the township) for a like amount as collateral. This money was paid by Irwin on 25th February to Turnbull & Barrie, who on 27th February mailed their check for the amount in favor of Alfred Kaufman or order

*Ontario Appeal Reports.*

(accepted by the bank) to the said Kaufman. The letter containing this cheque could not have been received by Kaufman until after the seizure by the sheriff.

On the evening of the 27th or morning of the 28th, Kaufman endorsed the cheque and mailed it to the Canadian Bank of Commerce, London, who received it after banking hours on the 28th, and on the following morning, the 29th, placed the amount to the credit of the "township of Wilmot, A. Kaufman treasurer," as instructed.

On the 28th February, at about 9 o'clock p.m., Kaufman made an assignment to the plaintiff for the benefit of his creditors.

The plaintiff brought action to have it declared that the moneys so paid to the township were the property of the general creditors, on the grounds that the property in the cheque passed to the plaintiff by virtue of the assignment, and that in any case the payment constituted a fraudulent preference.

FERGUSON, J. . . . It was, however, contended that the cheque, though endorsed by Kaufman and deposited in the post office as aforesaid, was under a command or mandate by Kaufman given to Dewar, the manager of the bank at London, contained in the letter enclosing the cheque, and that Kaufman had at the time of executing the assignment to the plaintiff, an existing right to revoke or recall this mandate, Dewar being Kaufman's agent for the purpose of this mandate, and that this right passed to the plaintiff by the assignment under the words in this respect of section 4 of R. S. O. ch. 124, the word "rights" being one of these words.

Section 43 of R. S. C. ch. 35, not only says that "from the time any letter, packet, chattel, money or thing is deposited in the post office . . . it shall cease to be the property of the sender," but goes on to say that it "shall be the property of the person to whom it is addressed or the legal representatives of such person."

This language seems as clear and strong as any words in which a law could be expressed, and I have not found anything in the Act to qualify it.

In England, as here, the sender of a letter cannot get it returned after it has been posted, and if the endorsee of a bill authorizes the endorser to send the bill through the post office, the bill as soon as it is posted becomes the property of the endorsee.

Here, it is true, there was not in form or in so many words,

authority from the endorsee to send the endorsed cheque by post, but the sender was the treasurer of the virtual endorsee and he gave his instructions to the bank as such treasurer.

The money was raised (this very cheque obtained) by him for the purpose of making good moneys belonging to the township which he had wrongly taken or misapplied. The cheque was endorsed by Kaufman no doubt with the intention of passing the property in it, and was mailed by him as before stated.

Taking these circumstances into consideration, and looking at the clear and strong language of the Act, R.S.C. ch. 35, sec. 43, before referred to, I arrive at the opinion that Kaufman had not, at the time of or immediately before making the assignment to the plaintiff, the right that was contended he had, and that such alleged right could not have passed to the plaintiff by the assignment.

As to the alleged fraudulent preference contended for, I am treating this cheque (which was not the cheque of Kaufman himself) as being a security for money, and not money. This, I think, I am bound to do by the case of *Davidson v. Fraser*,[1] although that case was not (in respect to the character of the cheques) precisely like the present case. As I understand the case, however, I think enough appears to bind me as above.

The duties of Kaufman as treasurer of the township were to receive and safely keep all moneys belonging to the corporation, and to pay out the same to such persons, and in such manner, as the laws of the Province and the lawful by-laws or resolutions of the council of the municipal corporation should direct: 55 Vict. ch. 42, sec. 250 (O.), which is the same as the former enactment on the subject; the condition of the bond given by Kaufman and his sureties adds the words "and duly account for and pay over all moneys which may come into his hands by virtue of his office."

He was entrusted with the moneys of the corporation, he had defined duties to perform, and for the performance of these he had given security. I cannot discover any reason for saying that he was not a trustee, and I think it manifest that he was a trustee for the benefit of the township.

Then, being such trustee, he had misappropriated a part of the trust moneys, and being so in default, and, as I think, criminally liable in respect of the default, he made this effort to restore and replace the moneys that he had so wrongly taken or misappropriated.

In the case of *Molsons Bank v. Halter* the learned Chief Justice says: "The question we have to determine is, in the abstract, whether a conveyance or mortgage by a defaulting

[1] See JOURNAL, Vol. IV., p. 114.

trustee to his co-trustees, made when the defaulter is in a state of insolvency, with the object and intent of making good to the trust estate moneys which he has abstracted from the trust fund and appropriated to his own use, is to be considered a preference of one creditor to another, or as having the effect of such a preference within this second section. Again concurring with the learned Judges who formed the majority in the Court of Appeal, I am of opinion that the answer to this must be in the negative, for the reason that the persons for whose benefit the security was given were not creditors within the meaning of this section of the statute, but have rights higher than those of creditors."

The learned Chief Justice refers to several English authorities which he says are precisely in point, deciding that the doctrine of fraudulent preference has no application to such a state of facts as the evidence before him disclosed, and in some of these it is broadly laid down that in such cases the relationship is not that of debtor and creditor at all, but the relationship of trustee and *cestui que trust.*

If, then, I am right in thinking that Kaufman was a trustee, and that the relationship of trustee and *cestui que trust* is the one that existed between Kaufman and the corporation of the township, the reasoning of the learned Chief Justice is of direct application here, although it may be said that the case before him was not, in all respects, precisely like the present case, and the doctrine of fraudulent preference not having, as I think I am bound to say that it has not, any application to the case, then the fact that the assignment was made within the sixty days mentioned in the amending Act, does not make any difference one way or the other

On the whole case, after the best consideration I have been able to give the subject, I do not see how the plaintiff can succeed in his contentions, and I am of the opinion that the action fails. The action should, as I think, be dismissed, and it is dismissed with costs.

The appeal from this decision was argued before Burton, C. J. O., Osler and Maclennan JJ. A., and dismissed. We quote from the judgment of Burton, C. J. O.:

The question of whether there has been a fraudulent preference depends, as has been frequently said, not upon the mere fact that there has been a preference, but also on the state of mind of the person who made it, and the tribunal adjudicating upon the matter must find out what he really did intend.

It is clear, I think, upon the evidence here, that the money was borrowed and transferred, not from any particular regard that the debtor had for the parties whose moneys he had mis-

appropriated, but for his own benefit in order to shield himself from the consequences of a breach of trust. The learned Judge has found that that was his motive and I do not think that an appellate court could interfere with such a finding unless it was manifestly erroneous.

But it is contended that the money deposited with the Bank of Commerce, at London, at the time of the making of the assignment, belonged to Kaufman and therefore passed to the assignee.

It may be conceded that where a debtor, for his own convenience or for any other motive, delivers money to another person to be paid to his creditor in discharge of his debt, until the money is actually paid over or the assent of the creditor to such disposition of it has been given, the debtor may appropriate it to any other purpose; but it appears to me that this case is very different.

The marking of the cheque by the bank was to enable the holder to use it as money, and was a clear intimation that funds had been set apart for its payment to the holder. This equivalent for so much money is acknowledged by Kaufman to belong to the township and is remitted by him to the bank, not as his agent, and to await further instructions—for he had no account at the bank—but treating them as the bankers of the township, and it appears to me that no actual credit in their books was essential; and the failure of the bank so to credit it would not deprive the township of its right to the amount of the cheque.

The money was so received by the bank before the assignment, and was so received by them with notice that it belonged to the township, and was to be placed to their credit, and it would seem to be clear that it was not the intention of the debtor to reserve to himself any right or power to undo what he was doing, and that he intended that it should be irrevocable, and that having admitted the money to be the money of the township, any attempt on his part, individually, to revoke the instructions given would be futile, and having parted with any control over the money before the assignment, the execution of that document could not vest the property in the assignee nor revoke the disposition which had already become complete by the receipt of the money by the bankers on behalf of their customers.

## HIGH COURT OF JUSTICE, ONTARIO

### Rielle et al v. Reid et al

A merchant in insolvent circumstances formed a joint stock company, he and his wife subscribing for all the stock, except a few shares, which were allotted to employees of his, these forming the five directors. They, then, as directors and shareholders, appointed him manager for five years at a salary, and all his assets were assigned to the company :—

*Held*, that the company was the mere alias and agent of the assignor, and the assignment a fraud on his creditors, and must be set aside, subject, however, to the rights of the creditors of the company.

*Salomon v. Salomon*,[2] distinguished.

This was an action brought by the executors of the last will of Thomas McLerie Thomson, late of Toronto, who died on September 20th, 1889, against John Bailey Reid, Minnie Reid his wife, and The Reid Company of Toronto, Limited, claiming on behalf of themselves and all other creditors of John Bailey Reid, that the Reid Company of Toronto be declared to be merely an alias or trustee of John Bailey Reid, and that its assets be declared to be liable for the payment of his debts; that all the transfers, grants, conveyances, or declarations of trust at any time made to or in favour of such company by the said John Bailey Reid, be set aside and be declared to be fraudulent and void as against his creditors; that in the event of the claims of the plaintiffs and other creditors not being paid forthwith, that the said company be wound up by the Court under the provisions of the Winding-up Act; that a receiver be appointed of the estates, rights and credits of both John Bailey Reid and the said company; and that an injunction issue against both of the said defendants to restrain them, their servants and agents, from any dealings with their property to the prejudice of the plaintiffs or any other creditors of him the said John Bailey Reid, whether by simple contract, specialty, judgment, or otherwise, howsoever; that the defendant Minnie Reid be declared a trustee for the defendant John Bailey Reid of all such share or interest as she now holds in the said company, by virtue of the shares in the said company standing in her name; and for all proper directions and further relief.

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[1] *Ontario Reports.*

[2] See JOURNAL, Vol. IV, p. 213.

The action was tried at Toronto, before Falconbridge, J., in October, 1896, and March, 1897. The facts as proved in the evidence are fully stated in his lordship's judgment as follows:

I find on the evidence that J. B. Reid* was in 1894 largely indebted to the plaintiffs and others, principally the outcome of land transactions of a speculative character; that he was fully alive to the situation, which was serious, and in fact desperate, unless some very quick and unexpected turn should take place with reference to the values of property in the districts in which he was interested. In August, 1894, the evidence shows that the margin in the properties had dwindled down to a point not appreciably distant from zero. For four years under his own management, the properties had not seemed to be capable of carrying themselves. There were heavy taxes both local and general as regards properties of this description; and in this and similar localities, there was no immediate prospect of improvement in prices or rentals. The situation had been aptly described by Messrs. McMurrich & Co., in their letter of December 6th, 1893, when they say, . . "The properties are not realizing nearly enough to pay the interest and taxes, so that the mortgagees will be losing money by taking possession of it. We have been carrying it so far in hopes of improvement."

I do not see the force of the verbal evidence, and the argument thereon based, that the estate of George Reid, Jr., was to indemnify J. B. Reid against certain of these mortgages. That does not seem to be the effect of the writings, and at any rate there was no security for such indemnity except the mortgaged property itself; but J. B. Reid covenants to indemnify his brother's estate as to properties which are conveyed to him.

Therefore, at the time of the formation of the company, the business was all he had with which to pay his debts, and he had nothing but the business property to protect except some money and personal notes which he says he had in the safe.

About this time he had a conversation with Mr. Strathy, the manager of the bank with which he was then doing business. J. B. Reid told Strathy he was taking action to form a company. Strathy asked the object, and Reid said to get over the difficulty which might arise in connection with his personal covenants on mortgages given by him and George; that he

* J. B. Reid carried on business as a lumber merchant, and the Reid Company of Toronto was incorporated under the Ontario Joint Stock Companies Act, for the purpose of trading in lumber, timber, coal, wood, etc. On September 1st, 1894, J. B. Reid conveyed to the company all his stock-in trade, book-debts, good-will of his business, his business premises, and all other his real and personal estate.

wished to place himself in a position to avoid payment of them. The company was formed a short time after this conversation took place.

I have no hesitation in accepting Mr. Strathy's version of this conversation as being in substance true, and as throwing a side light on the whole transaction.

Mr. J. B. Reid denies Mr. Strathy's statement only in very faint and general terms. He thinks Mr. Strathy has misconstrued what he (Reid) said, or is terribly mistaken, but his own account of what he said, viz., that he had been so worried and bothered in connection with his brother's estate . . owing to mortgages on real estate . . "that I did not want people coming after me to have the same trouble," is not very lucid or satisfactory.

The facts of the case, therefore, present no difficulty.

. . . As I understand their position, the plaintiffs do not set up a case of preference but the intent to defeat, delay, etc., and it seems to me that the elaborate argument of defendants' counsel as to the difference between the Statutes of Elizabeth and the R. S. O. ch. 124, does not apply: 35 Vict. ch. 11, now R. S. O. ch. 96, section 5.

If it was necessary to prove the intent of J. B. Reid, that has been fully proved by the circumstances, and by the weak denial of J. B. Reid against the positive affirmation of Mr. Strathy.

As regards Mr. J. B. Reid and the defendant company, the facts appeared to me to be so clear at the trial that I reserved judgment only for the purpose of considering Mr. McCarthy's strenuous and ingenious argument as to the effect of recent English decisions which he contended stood effectually in the way of the plaintiffs' recovery.

For as to the facts there was but one conclusion. The situation being as I have above stated, J. B. Reid proceeds to form his company. No outside assistance is invoked, no foreign capital invited. The husband and wife own all the stock but three shares, one of which is allotted to Mr. Loughead, book-keeper of J. B. Reid, another to Mr. Cherry, erstwhile yard foreman, and another to a solicitor of the former firm. They were all five directors.

On September 7th, 1894, at a meeting of directors, it was moved by Mrs. Reid, seconded by Mr. Cherry, and carried, that Mr. Reid be engaged as manager of the company for five years at a salary of $2,000, payable weekly on his giving security, etc. . .

And at a meeting of the same five shareholders held on the same day, this arrangement for Mr. Reid's engagement was solemnly confirmed.

At a meeting of directors held September 14th, 1894, by-laws were enacted, a call of 10% was made, the salary of Mr. Reid, the manager, was increased from $2,000 to $3,000 a year and a re-arrangement or manipulation of the stock was made.

At a meeting of shareholders held September 20th, 1894, there were confirmation and approval of all resolutions and transactions of the directors up to date except that on motion of Mrs. Reid, seconded by Mr. Cherry, Mr. Reid was not required in the security he was to give the company to include therein the shares held by Mrs. Reid "as she holds those shares in her own right and objects to put them in as such security."

So that J. B. Reid goes on managing the concern as before the incorporation, he is assured $3,000 a year, and the property, should the transaction be upheld, is effectually placed beyond the reach of creditors.

*In re Carey, Ex parte Jeffreys*,* seems to be quite in point, but Mr. McCarthy contended that this case was reversed in the judgment of the House of Lords in *Salomon v. Salomon*. I do not think it touches it. In the latter case a solvent trader sold a solvent business to a limited company consisting of the vendor and six members of his family. The company became insolvent and went into liquidation and creditors sought to make the vendor liable. *In re Carey* is not referred to in the arguments or judgments.

In the present case the company was and is the mere alias and agent of J. B. Reid, and there was fraud on creditors both of which propositions are negatived in *Salomon v. Salomon*.

As to the stock held by Mrs. Reid, notwithstanding the many suspicious circumstances attendant on the manipulation of the life policies, yet I conceive it to have been out of J. B. Reid's hands and now out of my power to interfere with the declaration in favour of his wife made by J. B. Reid, even though the endorsement evidencing the same may not have been made on the day it bears date. She will be, however, held to her counsel's offer to transfer her shares for $2,000 if plaintiffs so elect.

There will be judgment for the plaintiffs, declaring that the defendant company is the agent of defendant J. B. Reid, and that the several conveyances and transfers made by defendant J. B. Reid to defendant company of defendant J. B. Reid's freehold and leasehold estates and of his business assets, goods, chattels, book-debts, stock-in-trade, lumber, shingles, office furniture, plant and fixtures, and other property and effects, are as against the plaintiffs and the other creditors of

*See JOURNAL, Vol. III, p. 124.

the defendant J. B. Reid, fraudulent and void, and that the assets of the defendant company are part of the general assets of the defendant J. B. Reid, and are liable to be applied towards satisfaction of his debts, subject, however, to the rights of the creditors of the company, and that the said conveyances and transfers be set aside so far as necessary to give effect to the above declaration; and for the appointment of a receiver with the directions usual in cases of this nature as to the duties of the receiver and as to the proceedings to be taken for proof of creditors' claims and realization of the property in default of payment, with full costs of suit to plaintiffs including costs of all the examinations for discovery.

The receiver to be appointed shall deal with both classes of creditors as the law directs.

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## High Court of Justice, Ontario

### Conn v. Smith et al

The plaintiff, a creditor of an insolvent, alleged that in regard to certain pledges made by the latter to a bank, there had been no contemporaneous advances, and that the pledges were invalid under section 75 of the Bank Act, and claimed to be entitled to obtain moneys received through disposal of the pledges and to apply them in payment of creditors' claims, by virtue of the provisions of section 1 of 58 Vict., ch. 23 (O.).

*Held*, that the provisions of the last named Act upon which the plaintiff relied should be treated as limited to transactions invalid against creditors as such, and not as extending to transactions declared invalid for reasons other than those designed to protect creditors.

The insolvent had been in the habit of buying hops from time to time, and giving the bank pledges of the same for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his bookkeeper his warehouseman, and the latter issued warehouse receipts to the bank in substitution for the pledges theretofore held, there being no further advance made when the new securities were given:—

*Held*, that this exchange of securities should be treated as authorized under sub-sec. 2 of section 75 of the Bank Act.

This was an action by a simple contract creditor of the defendant Smith to recover judgment for a debt, and on behalf of all creditors of Smith to recover from the defendants, the Merchants Bank of Canada, certain moneys and property of the defendant Smith alleged to have come to their hands by means of breaches of the Bank Act. The facts are stated in the judgment.

The action was tried before Street, J., without a jury, at Brockville, in November, 1897. We quote the judgment as far as it relates to points of law of interest to our readers :—

STREET, J.—In all, thirteen transactions between the bank and Smith are attacked by the pleadings and particulars delivered in the action, besides a small item of interest which was not gone into. Eleven out of these thirteen transactions related to pledges of hay and grain made by the defendant Smith to the bank, in or prior to the year 1893, to secure advances made by the bank to him. It was alleged by the plaintiff that there had in these transactions been no contemporaneous advance, and that the pledge, whether in the form of a bill of lading or a warehouse receipt or a direct pledge, was invalid under the 75th section of the Bank Act, 53 Vict. ch. 31 (D.). It was not disputed that the bank had long prior to the commencement of this action disposed of the hay and grain pledged to them, and had received the proceeds, and had applied them as received in satisfying moneys advanced to the defendant Smith, and maturing from day to day. The greater part if not the whole, of these moneys was so received by the bank during the course of constant daily transactions with the defendant Smith, who carried on a large business in buying and selling produce, and taken into account in daily or other frequent settlements with him.

The plaintiff claimed, as one of the creditors of Smith, who had ceased before the commencement of this action to meet his liabilities, to be entitled to obtain the moneys so received by the bank, and to apply them in payment of creditors' claims under section 1 of ch. 23 of the Ontario Statutes of 1895, entitled "An Act to make further provision respecting Assignments for the Benefit of Creditors, which is as follows :—

"In case of a gift, conveyance, assignment, or transfer of "any property, real or personal, which in law is invalid against "creditors, if the person to whom the gift * * was made "shall have sold or disposed of the property or any part "thereof, the money or other proceeds realized therefor by such "person may be seized or received in any action by a person "who would be entitled to seize and recover the property if it "had remained in the possession or control of the debtor or of "the person to whom the gift * * was made, and such right "to seize and recover shall belong, not only to an assignee for "the general benefit of the creditors of the said debtor, but "shall exist in favor of all creditors of such debtor, in case there "is no such assignment."

It appears to me to be unnecessary to enquire whether the

defendant Smith was or was not insolvent at the time of these transactions, because it is plain that there was sufficient pressure used by the bank (supposing the plaintiff's view of their nature to be correct) to exclude the intent of a fraudulent preference. They were, therefore, not "invalid against creditors" by virtue of anything contained in the Act respecting assignments and preferences by insolvent persons, ch. 124, R.S.O., or in any Act *in pari materiâ*.

In interpreting the clause of ch. 23 of the Ontario Act of 1895, above quoted, regard must be had to the context and to the specific objects of the legislation of which it forms part. These are the prevention of frauds upon creditors and the prevention of unjust preferences of one creditor over another by insolvent persons. Transfers of property under certain circumstances are by these enactments declared invalid against creditors, and by the section of the Act of 1895, above quoted, where the property transferred has been sold by the transferee so that it cannot be seized in specie, an action to obtain from him the proceeds is given to the creditors of the transferor.

The provisions of these Acts, it will be observed, are directed against the acts of persons in insolvent circumstances who may be endeavoring to prevent the proper and equal distribution of their assets amongst their creditors. The plaintiff, however, seeks to treat the section of the Act of 1895 as applicable to transfers of property which are invalid or voidable for reasons in which the rights of creditors as such are not in any degree involved. If the eleven transactions between the bank and the defendant Smith were invalid, it is not because they interfered with the rights of creditors, but because they were contrary to the limitations imposed by Parliament upon the banks in their dealings with personal property. The considerations applicable to money received in the course of such transactions as these, seem very different from those applicable to money received by means of the transfers declared void as against creditors; and where the effect of giving to the Act of 1895 the extended application contended for by the plaintiff would be so far reaching, I think the safe course is to treat the words "invalid against creditors" as limited to transactions invalid against creditors *quâ* creditors, and not as extending to transactions declared invalid for reasons other than those designed to protect creditors.

I do not desire to be understood as determining the question as to the right of the bank to have held these goods against any and every person. In the view I have taken of the other objections to the plaintiff's right to recover, it becomes unnecessary to do so.

A different state of facts is disclosed by the evidence bearing upon the claim of the plaintiff to a quantity of hops still remaining unsold, which were held for the bank in a warehouse under a receipt given by one Hiscox, the lessee of the warehouse. The defendant Smith says that he was in the habit of buying hops from time to time and giving the bank his own direct pledges for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his book-keeper, Hiscox, his warehouseman, and Hiscox issued warehouse receipts to the bank in substitution for the securities or pledges theretofore held by the bank, there being no further advance made when the new securities were given. The 2nd sub-section of the 75th section of the Bank Act, enables the bank on receipt of the goods, to store them and take a warehouse receipt for them without forfeiting any existing right, and I think this exchange of securities may be treated as being authorized under that sub-section.

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## High Court of Justice, Ontario

## Bell v. The Ottawa Trust and Deposit Company

A partner who has individually joined as a maker in a promissory note of his firm for their accommodation is not "indirectly or secondarily liable" for the firm to the holder within the meaning of 59 Vict. ch. 22, sec. 1, sub-sec. 1, but is primarily liable, and in claiming against his insolvent estate in administration the holder need not value his security in respect to the firm's liability.

This was an appeal from the certificate of the Master at Ottawa, made in the course of the administration by the Court of the estate of Peter McRae, deceased. The Ottawa Trust and Deposit Company were the administrators of the estate.

The appeal was argued before MacMahon, J., at Ottawa in June, 1897, and the facts of the case are fully stated in his lordship's judgment following:

MacMahon, J.:—This is an appeal by the Union Bank of Canada from the certificate of the Master at Ottawa, finding that the security held by the bank for their claim filed against the estate of Peter McRae, is on the estate of a third person for whom the estate of the said Peter McRae is only indirectly, or secondarily liable, and that it must, therefore, be valued as provided by the statute.

The bank filed against Peter McRae's estate on two promissory notes as follows:—

Ottawa, February 24th, 1896.

"On demand we jointly and severally promise to pay to the order of the Union Bank of Canada at their office in Ottawa, the sum of thirty thousand two hundred and seven $\frac{41}{100}$ dollars for value received.

"(Signed) McRae Bros. & Co.
"P. McRae.
"H. McRae."

"$30,000.00. Ottawa, May 1st, 1896.

"On demand we jointly and severally promise to pay to the Union Bank of Canada or order, at their office in Ottawa, the sum of thirty thousand dollars for value received.

"(Signed) F. W. Powell.
"Hector McRae.
"P. McRae.
"H. McRae, } Executors estate late
"P. McRae, } John Nicholson.
McRae Bros. & Co."

Certain timber limits, the property of the firm of McRae Bros. & Co., were assigned by them to the bank as collateral security for the payment of certain promissory notes and any renewals or part renewals thereof. The above are renewals, or renewals in part, of such notes.

The learned local Master in the well-considered reasons for his judgment, finds as to a note dated the 29th January, 1892, for $42,000 (of which one of the above is a part renewal), that it was made in order to raise money from the bank, with which to meet notes originally given for the purchase price of the limits now in question, and to pay current expenses in connection with the lumber business of McRae Bros. & Co.

I do not stop to consider if this is, on the evidence, a proper finding, for, granting that it is so, I think it cannot affect the question arising on this appeal.

Peter McRae, when he individually signed the notes in question as one of the makers thereof, was a member of the firm of McRae Bros. & Co. And it was not questioned that, as to the estate of Peter McRae, the firm of McRae Bros. & Co., were third parties.

There is a deficiency of assets in the estate of Peter McRae to meet the claims of creditors, and the Act respecting the estates of insolvent deceased persons, 59 Vict. ch. 22, sec. 1, sub-sec. 1, provides: "On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor in proving his claim shall state whether he holds any security for his claim or any part thereof, and shall give full particulars of the same, and if such security is on the estate of the deceased

debtor, or on the estate of a third party for whom the estate of the deceased debtor is only indirectly or secondarily liable, the creditor so proving his claim shall put a specified value on such security," etc.

It has been found that as between the individual partners and the firm of McRae Bros. & Co., of which Peter McRae was a member, that he was an accommodation maker of the notes, and on that ground the learned Master held that the estate of Peter McRae "is only indirectly or secondarily liable," and consequently the bank must value its security before ranking on the estate of the deceased. It has been by only regarding the position, rights, and liabilities of the makers of the notes *inter se* that the confusion has arisen.

Peter McRae, as a maker to the promissory notes, became directly and primarily liable thereon to the bank. "The implied contract of a maker of a note is that he will duly pay it on its being presented to him; and he is *primarily liable* thereon and stands in that respect in the same situation as the acceptor of a bill:" Chitty on Bills, per Lord Mansfield, C. J. in *Heylyn v. Adamson*. "The maker or signer of a promissory note by signing and delivering it, becomes at once under an absolute obligation to pay it according to its tenour, to any holder to whom it may be due at maturity; and such holder must look *to the maker in the first place* and demand it of him in the manner prescribed by law, before he can look to any other party:" Parsons on Notes and Bills. We have already seen that the maker of a note and the acceptor of a bill have nearly the same rights and duties. Both are the *principal debtors* to be called on before any other parties can be made liable": *ibid.* "The position of the maker of a note is similar in most respects to that of the unconditional acceptor of a bill. He is the *primary debtor*, the endorsers being only secondarily liable until after dishonour and notice:" Maclaren on Bills.

Peter McRae could not be directly or primarily liable, and also "indirectly or secondarily liable" to the Union Bank as a maker of the notes, and it is only where the estate is indirectly or secondarily liable *to the creditor*, that the creditor is compelled to value a security held by him on the estate of a third party.

Had Peter McRae, instead of being one of the makers of the notes in question, given a guarantee to the bank for the payment of the indebtedness of McRae Bros. & Co., his estate would then have been secondarily liable to the bank, which before ranking, must have valued any security obtained from McRae Bros. & Co. Where, however, the creditor is claiming on negotiable instruments—bills of exchange or promissory notes—legislative interpretation has been given to

the term "indirectly or secondarily liable," as meaning an endorser or guarantor thereon, because the second sub-section of section 1 provides that: "If the claim of the creditor is based upon negotiable instruments upon which the estate of the deceased debtor is only indirectly or secondarily liable, and which are not mature or exigible, the creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof, but after the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim."

Peter McRae, as maker of the notes, being primarily liable to the creditor thereon, his estate does not come within the Act as being indirectly or secondarily liable, and the bank is, therefore, not obliged to value the securities held by it when filing its claim against the estate.

The appeal must be allowed, with costs out of the estate.

# UNREVISED TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

| *Six months ending December—* | 1896-7 | | 1897-8 | |
|---|---|---|---|---|
| Free | $21,634 | | $25,619 | |
| Dutiable | 31,990 | | 34,350 | |
| | $53,624 | | $59,969 | |
| Bullion and Coin | 4,478 | $58,102 | 2,732 | $62,701 |
| *Month of January—* | | | | |
| Free | $ 2,637 | | $ 3,722 | |
| Dutiable | 4,801 | | 6,088 | |
| | $7,438 | | $9,810 | |
| Bullion and Coin | 28 | $ 7,466 | 77 | $ 9,887 |
| | | $ 65,568 | | $ 72,588 |

EXPORTS

| *Six months ending December—* | | | | |
|---|---|---|---|---|
| Products of the mine | $ 5,146 | | $ 7,524 | |
| " Fisheries | 7,066 | | 7,003 | |
| " Forest | 18,623 | | 19,320 | |
| Animals and their produce | 25,231 | | 31,067 | |
| Agricultural produce | 8,960 | | 19,544 | |
| Manufactures | 4,783 | | 5,248 | |
| Miscellaneous | 100 | | 72 | |
| | $ 69,911 | | $ 89,779 | |
| Bullion and Coin | 3,212 | $ 73,123 | 987 | $ 90,766 |
| *Month of January—* | | | | |
| Products of the mine | $ 1,145 | | $ 1,621 | |
| " Fisheries | 406 | | 523 | |
| " Forest | 588 | | 440 | |
| Animals and their produce | 2,478 | | 2,527 | |
| Agricultural produce | 939 | | 3,533 | |
| Manufactures | 532 | | 856 | |
| Miscellaneous | 8 | | 13 | |
| | $ 6,098 | | $ 9,513 | |
| Bullion and Coin | 50 | $ 6,148 | 849 | $10,362 |
| | | $79,271 | | $101,128 |

SUMMARY (in dollars)

| | | |
|---|---|---|
| Total imports for seven months, other than bullion and coin | $61,062,000 | $69,779,000 |
| Total exports for seven months, other than bullion and coin | 76,009,000 | 99,292,000 |
| Excess of exports | $14,947,000 | $29,513,000 |
| Net imports of bullion and coin | 1,244,000 | 972,000 |

STATEMENT OF BANKS acting under Dominion Government charter for the months of November and December, 1897, January and February, 1898, and comparison with February, 1897:

LIABILITIES

| | 30th Nov., 1897 | 31st Dec., 1897 | 31st Jan., 1898 | 28th Feb., 1898 | 28th Feb., 1897 |
|---|---|---|---|---|---|
| Capital authorized | $ 73,258,684 | $ 73,758,684 | $ 74,258,684 | $ 74,258,684 | $ 73,458,685 |
| Capital paid up | 62,288,636 | 62,289,326 | 62,292,614 | 62,294,922 | 61,831,391 |
| Reserve Fund | 27,283,999 | 27,515,999 | 27,580,999 | 27,580,999 | 26,728,799 |
| Notes in circulation | $ 40,143,878 | $ 37,995,123 | $ 35,011,722 | $ 35,823,923 | $ 30,409,197 |
| Dominion and Provincial Government deposits | 6,232,184 | 7,386,908 | 7,437,798 | 6,819,130 | 6,081,085 |
| Public deposits on demand | 80,402,878 | 81,881,687 | 79,195,911 | 78,939,572 | 65,097,602 |
| Public deposits after notice | 139,528,801 | 140,120,460 | 140,704,038 | 140,799,375 | 126,937,852 |
| Bank loans or deposits from other banks secured | 11,000 | 2,000 | ..... | ..... | 117,654 |
| Bank loans or deposits from other banks unsecured | 3,581,511 | 3,127,781 | 3,300,764 | 2,821,895 | 2,587,137 |
| Due other banks in Canada in daily exchanges | 124,208 | 331,631 | 196,982 | 185,007 | 77,003 |
| Due other banks in foreign countries | 305,737 | 340,136 | 376,143 | 509,585 | 355,138 |
| Due other banks in Great Britain | 575,030 | 656,266 | 1,058,837 | 2,067,557 | 2,489,107 |
| Other liabilities | 997,621 | 534,006 | 551,358 | 731,345 | 438,251 |
| Total liabilities | 271,902,920 | 272,376,076 | $267,833,734 | $268,697,468 | $234,588,105 |

## ASSETS

| | | | | | |
|---|---|---|---|---|---|
| Specie | 8,757,736 | 8,268,023 | $8,498,424 | $ 8,619,198 | $ 8,246,676 |
| Dominion notes | 17,437,778 | 17,726,048 | 16,422,086 | 14,873,224 | 15,768,201 |
| Deposits to secure note circulation | 1,883,067 | 1,883,067 | 1,883,067 | 1,883 067 | 1,846,218 |
| Notes and cheques of other banks | 9,526,045 | 11,826,314 | 9,168,922 | 9,775,768 | 5,473,393 |
| Loans to other banks secured | 11,000 | 2,000 | ..... | ..... | 195,483 |
| Deposits made with other banks | 4,914,564 | 4,321,539 | 4,485,359 | 3,918,650 | 3,120,378 |
| Due from other banks in Canada in daily exchanges | 192,422 | 268,524 | 165,406 | 319,781 | 119,679 |
| Due from other banks in foreign countries | 28,410,443 | 23.547,288 | 23,015.439 | 20,793,570 | 16,668,157 |
| Due from other banks in Great Britain | 16,579,039 | 15,519,940 | 15,101,061 | 12,109,646 | 9.146,840 |
| Dominion Government debentures or stock | 3,662,532 | 4,731,099 | 4,572,955 | 4,800,686 | 2 794.416 |
| Public municipal and railway securities | 29,778,402 | 30,743.200 | 30,577,381 | 32,819,699 | 23,043,562 |
| Call loans on bonds and stocks | 18,930,378 | 19,859,822 | 20,001,729 | 21,497,983 | 13,764,862 |
| Current loans and discounts | 205.723 909 | 205,931,017 | 207,532,321 | 211,659,749 | 208,732,374 |
| Loans to Dominion and Provincial Governments | 1,470,955 | 1,820,403 | 1,086,965 | 1,264,404 | 386,023 |
| Overdue debts | 3,391,838 | 3,238,285 | 3,230,417 | 3,232,918 | 3,697,930 |
| Real estate | 2,045,435 | 2,093,188 | 2,143,100 | 2,153,466 | 2,022,991 |
| Mortgages on real estate sold | 580,863 | 560,663 | 558,085 | 581,283 | 472,413 |
| Bank premises | 5,696,742 | 5,697,933 | 5,746,375 | 5,751,886 | 5,646,185 |
| Other assets | 2,139.633 | 2,093,550 | 1,708,421 | 1,520,786 | 2,217,616 |
| Total assets | 361,132,969 | 360,133 088 | 355,897,624 | 357,575.974 | $323,303,595 |
| Loans to directors or their firms | $7,562,652 | $7,689,989 | $7,712,397 | $ 7,581,920 | $ 7,912,382 |
| Average amount of specie held during the month | 8,729,054 | 8,546,677 | 8,305 202 | 8,618,517 | 8,475,155 |
| Average Dominion notes held during the month | 17,033,825 | 17,530,208 | 16,590,821 | 15,592,966 | 15,730,996 |
| Greatest amount of notes in circulation during month | 42,303,141 | 40,309,118 | 37,575,524 | 36,099,032 | 30,974,636 |

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

(000 omitted)

| | MONTREAL | | TORONTO | | HALIFAX | | HAMILTON | | WINNIPEG | | ST. JOHN | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1896-7 | 1897-8 | 1896-7 | 1897-8 | 1896-7 | 1897-8 | 1896-7 | 1897-8 | 1896-7 | 1897-8 | 1896-7 | 1897-8 |
| | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| March ... | 36,643 | 40,654 | 26,087 | 26,673 | 4,357 | 5,215 | 2,516 | 2,799 | 4,286 | 4,289 | | 2,144 |
| April .... | 37,589 | 45,092 | 26,111 | 28,236 | 4,790 | 5,077 | 2,729 | 2,900 | 4,032 | 4,161 | | 2,314 |
| May .... | 44,324 | 46,600 | 27,796 | 29,059 | 5,064 | 5,270 | 2,733 | 2,655 | 4,246 | 5,014 | 2,413 | 2,430 |
| June .... | 43,129 | 54,616 | 28,384 | 29,842 | 4,550 | 4,792 | 2,775 | 2,544 | 4,094 | 5,531 | 2,418 | 2,566 |
| July..... | 44,796 | 52,831 | 30,494 | 33,892 | 5,467 | 6,308 | 2,847 | 2,638 | 4,961 | 5,616 | 2,879 | 3,116 |
| August .. | 41,574 | 49,240 | 25,128 | 29,640 | 5,556 | 5,554 | 2,367 | 2,442 | 4,646 | 6,298 | 2,602 | 2,874 |
| September | 44,763 | 55,080 | 24,870 | 32,466 | 5,036 | 5,164 | 2,829 | 2,971 | 4,630 | 8,035 | 2,283 | 2,620 |
| October .. | 48,999 | 59,340 | 29,242 | 35,736 | 5,387 | 5 817 | 3,131 | 2,970 | 7,585 | 13,291 | 2,292 | 2,464 |
| November | 50,215 | 59,166 | 29,129 | 34,211 | 5,063 | 5,580 | 2,856 | 2,878 | 8,895 | 13,550 | 2,362 | 2,442 |
| December | 51,033 | 56,509 | 33,146 | 35,986 | 5,547 | 5,386 | 3,051 | 3,094 | 7,736 | 9,784 | 2,566 | 2,738 |
| January .. | 43,577 | 60,334 | 31,117 | 37,836 | 5,135 | 5,009 | 2,863 | 3,028 | 5,909 | 6,347 | 2,200 | 2,417 |
| February . | 38,480 | 62,332 | 24,592 | 33,414 | 4,208 | 4,446 | 2,591 | 2,663 | 3,851 | 5,517 | 2,016 | 2,022 |
| | 525,122 | 580,158 | 336,096 | 386,990 | 60,160 | 63,618 | 33,288 | 33,582 | 63,971 | 87,433 | 24,031 | 30,147 |

## ERRATUM

VOL. V., p. 46—Alter the 6th and 5th lines from the foot of page, to read

banking system of the State of New York, from which also the National Bank system of the United States was largely copied.