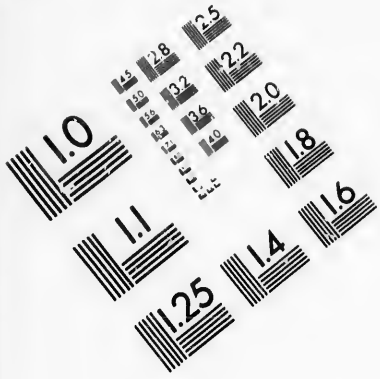

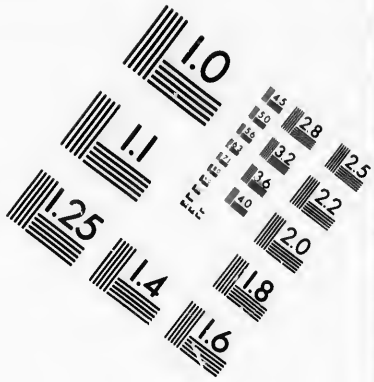

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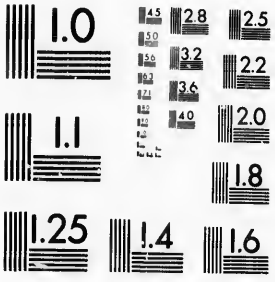

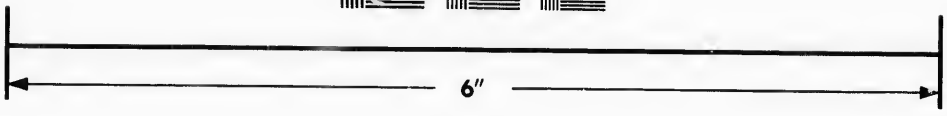

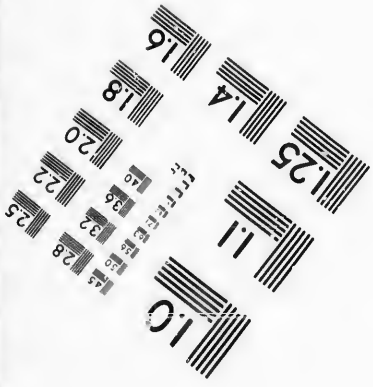

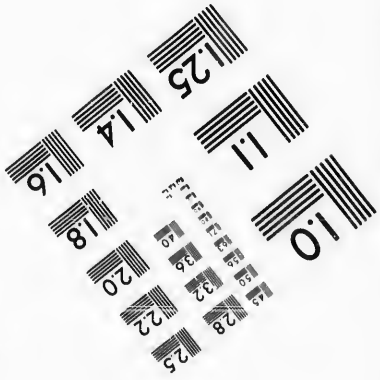

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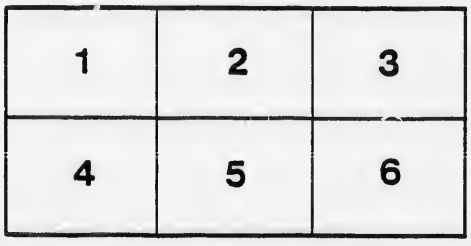

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(1868)

For Private Circulation.

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BETWEEN KERR, BROWN & MacKENZIE,

AND

BROWN, GILLESPIE & Co.

1868.—1870.

PREFACE.

The circumstances under which the following correspondence has been held are so fully narrated therein, that further explanations on the subject of the differences between Messrs. Brown, Gillespie & Co. and ourselves, are rendered unnecessary.

It is always an unhappy circumstance when differences arise between parties, to such an extent as to be irreparable by argumentative discussion or by the aid of mutual friends; and it is much more to be regretted when such differences arise in a mercantile community, and among those whose business relations have been heretofore intimate and friendly. We have endeavored, by every means in our power, to adjust these differences, and have hoped, through the intervention of third parties, that we should have succeeded in doing so, with what result the correspondence too painfully pourtrays. We should not have felt ourselves justified in engaging public attention in our disputes, from no higher motive than that of exhibiting what we deem to be the unjustifiable conduct of the parties at issue with us; and had the subject been restricted to the recovery or loss of a sum of money, to which we entertained no doubt that we were entitled, we should have been contented to forego our demand, without our present appeal to the verdict of others.

Messrs. Brown, Gillespie & Co. stand pledged to distribute the amount in dispute, among their creditors; and although we cannot believe that it was their

intention to have done so in the first instance, or that the settlement which they effected with their creditors, renders it at this time needful to divide an amount, which will be in some instances almost nominal, yet we can take no exception to this course; it was for this purpose that we relinquished the amount, and it was only because we believed that Messrs. B., G. & Co. could not justly retain it, that we made our claim upon them. But the dispute, as we have said in our last letter to them, has unfortunately become no longer a question of money, and it is because our personal honor has been assailed, and because we desire to meet this charge unreservedly, and believe that the perusal of our correspondence will fully vindicate us in the public estimation; it is from these motives, and from these alone, that we reluctantly bring the controversy under the notice of our friends, by the publication of the correspondence.

KERR, BROWN & MACKENZIE.

In view of the circumstances under which our liability upon Messrs. Brown, Gillespie & Co's. paper had been incurred, we felt ourselves justified in availing ourselves of every legal means to avoid the loss which threatened us; and as the Bank of Montreal were the *bona fide* holders of the note for $10,155, we consulted our Solicitors and others, including B., G. & Co., upon the advisability of endeavoring to induce the then holders to rank on the estate of B., G. & Co. The reply of our Solicitors is as follows :—

HAMILTON, 7th Feb., 1868.

MESSRS. KERR, BROWN & MACKENZIE,

Dear Sirs,

Referring to our conversation this morning, we understand that your firm are indorsers upon a P. N. of Brown, Gillespie & Co., for about $10.000, one-half of which, by arrangement between your respective firms, would, but for the suspension of B. G. & Co., have been paid by each.

If you retire this note, you will of course be restricted in your ranking to the one moiety of the amount, which would in fact constitute your claim against that firm, but the present holders of the note are under no such restriction, but are at liberty to rank and receive dividends upon the whole amount, and so long as the dividends so received do not exceed the amount, which, by the arrangement between you, they were to pay, you will be under no obligation to recoup that estate.

If, therefore, you can induce the present holders to rank on their estate, you holding yourselves liable to make good any deficiency, substantial justice will be done, and the transaction is one that cannot be impeached.

Yours truly,

BURTON & BRUCE.

We were induced to forego our pecuniary advantage, by the reiterated appeals which were made to us, and by the assurances that to do so would be the only method by which B., G. & Co. could be saved from Insolvency and themselves and their families from ruin. After the successful settlement of B. G. & Co. with their Creditors, consequent upon our relinquishment of our intended course, we addressed them the following letter, and the following correspondence was the result of our application to them :

HAMILTON, 22nd Feb'y 1868.

MESSRS. BROWN, GILLESPIE & CO.:

Dear Sirs,—

It must be obvious to you that the note of $10,155 00 was retired by us at the Bank of Montreal under a threat that the refusal, on our part, to do so would be attended by disastrous consequences to yourselves and perhaps to others also. We felt that we could not resist the immediate pressure thus brought upon us, but with a view to a future good understanding between our firms and ourselves indi-

vidually, it is absolutely necessary that a full explanation of the circumstances which called for this threat should be afforded us.

We are,
Dear Sirs,
Yours truly,
KERR, BROWN & MACKENZIE.

HAMILTON, 25th Feb'y, 1868.

MESSRS. KERR, BROWN & MACKENZIE,

Dear Sirs :

Your letter of 22nd inst., is before us and we are sorry that you should regard the visits of Mr. Gillespie and the writer as threats. We merely stated what we believed, and in justification of our statements to you we are permitted to enclose a letter from Mr. James Turner who was our authority.

We considered the matter so very serious that we intimated to Mr. Burton that we should have to assign if the cause of trouble were not removed, and we confidently believe now that such action would have been necessary had the note not been taken out of the way ; and, therefore, we beg to thank you for having done so.

Yours faithfully,
BROWN, GILLESPIE & CO.

HAMILTON, 25th February, 1868.

MESSRS. BROWN, GILLESPIE & CO.,

Gentlemen :

You have my permission to state that I was your authority for statements made to Messrs. Kerr,

Brown & MacKenzie, in relation to the note for $10, 155, although I did not say that a creditor would refuse to sign your deed of composition, still I am not surprised at your drawing such a conclusion, as I was most anxious about the whole matter and conversation took place in a hurried manner and under considerable excitement, as soon, however, as I learned that such was your impression, I at once undeceived you on that point.

To the best of my recollection, previous to 12:45, P. M. on Thursday last, I had no conversation with either of you in reference to this claim.

Had ranking not been reduced to its present position, I was then and am still of opinion such representations would have been made as would seriously affect prospects of your effecting a private settlement.

I am,
Yours truly,
JAMES TURNER.

HAMILTON, February 25th, 1868.

MESSRS. BROWN, GILLESPIE & CO.,

Dear Sirs:

We are in receipt of yours of this day's date.

Your only attempt to afford the explanations which we seek is the statement that Mr. Turner was the authority for your assurance that bankruptcy was impending, and that disastrous consequences to yourselves and others would result if we did not retire the note. And you enclose a note from Mr. Turner in support of this position.

Mr. Turner's note explains nothing, and we have again to call upon you for a candid explanation of the communications which Mr. Turner or any other person may have made to you, which seemed to you a justification of the pressure which you have brought upon our firm.

Yours truly,

KERR, BROWN & MACKENZIE.

HAMILTON, 26th Feb'y, 1868.

MESSRS. KERR, BROWN & MACKENZIE,

Dear Sirs :

We are in receipt of your favor of yesterday, and very much regret that you continue to press the subject referred to.

The communication which Mr. Turner made to us being confidential, you must recognize the impossibility on our part of making any further explanations without the consent of all parties concerned.

Yours faithfully.

BROWN, GILLESPIE & CO.

HAMILTON, 27th Feb'y, 1868.

MESSRS. BROWN, GILLESPIE & CO.,

Dear Sirs :

We are much surprised at the contents of yours of yesterday's date.

The facts of the case must be admitted to be as follows :—

We ranked on your estate for $10,155, which, after consultation with yourselves, with the Bank of Mon-

treal, and with others, and after openly declaring all the circumstances of the case to various parties interested, we considered that we were justified in doing.

At the meeting of your creditors this claim was not disputed, and the various interests represented accepted your statements and agreed to a composition of eleven and six-pence on the several debts set forth, including ours for $10,155.

Subsequent to the acceptance of composition by the creditors, we were waited upon by Mr. Turner, by Mr. Burton, our and your solicitor, by your Mr. Gillespie, and by your Mr. Brown; all these parties represented to us that most disastrous conseqnences to yourselves and to others would ensue if the note for $10,155 were not immediately retired by us; and your Mr. Brown represented absolute ruin to the interests of your firm if we refused so to retire it. Under this pressure and having no time to seek explanations, we acceded to these importunities, and now that we ask for an explanation of the circumstances which justified the pressure brought to bear upon us, we are first met with an unmeaning reply, and upon our intimation that this was unsatisfactory to us, we are informed that Mr. Turner's communication to you was confidential and that you cannot make explanations.

We will not trust ourselves to comment upon this matter further than to assure you, that we consider the course which you have adopted to be most unsatisfactory.

There is one material point, however, which cannot be overlooked, and an explanation of which does not appear to us to involve a breach of confidence, viz: the application of the $5077 50 which the estate

derives from the relinquishment of that amount of our claim. Having declared a composition of eleven and six-pence upon the $10,155, and $5077 50 of this amount being withdrawn, to whom will the composition upon this latter amount accrue?

We trust that this query will meet with a more candid reply than the other points in our present discussion have received.

We are,

Yours truly,

KERR, BROWN & MACKENZIE.

HAMILTON, 28th Feb'y, 1868.

Dear Sirs:

Yours of yesterday is before us and we beg that you will excuse the writer replying to it until the return of his partners from Montreal.

Yours faithfully,

BROWN, GILLESPIE & CO

To MESSRS. KERR, BROWN & MACKENZIE,
Hamilton.

HAMILTON, 5th March, 1868.

MESSRS. KERR, BROWN & MACKENZIE,

Hamilton,

Dear Sirs:

Your letter of 27th, ulto., receipt of which has alrcady been owned, would have been sooner fully acknowledged only our own affairs have preoccupied our attention. We regret that our previous communications have proved so unsatisfactory, and fear that the present will be no better in this respect, as

we cannot give fuller explanations in reference to the point at issue than we already have done. We admit your statement of the facts to be very correct, but are not aware of either Mr. Gillespie or the writer stating that your ranking on our estate for $10,155 would entail most disastrous consequences "on others."

We were most desirous that you should only rank as creditors for $5077 50, and this gives us the opportunity of stating that it was in your power legally to have ranked for the full amount, and although such a course would have forced us into insolvency, still we have no claim as a firm to ask you to waive your legal rights. The prompt manner in which you solved the difficulty, calls for more than the simple expression of our thanks, and it is therefore with our deep regret that a correspondence on the subject has been commenced, which we hope may terminate without destroying the good feeling so long existing between us, but cannot fail to cast a shadow over your kind act in retiring the note in full.

We have no hesitation in answering your last enquiry and enclose a report of the investigating committee from which you will see their opinion and which was concurred in by all our creditors in Montreal in so far that they read same before executing our composition deed; moreover, we are advised by our solicitors that were we to divide the amount thus gained to the estate (some $2300) among the creditors we would invalidate our deed of discharge. We therefore see no other course open but to retain the amount and we hope in this you will concur.

We are more satisfied to-day than when we first called on Mr. Brown on the 20th ulto., that if you had insisted on ranking on our Estate for the full

amount of our note we would have been compelled to go into insolvency, and hoping this letter may terminate the discussion of this unpleasant subject.

We remain,
Dear Sirs,
Yours faithfully,
BROWN, GILLESPIE & CO.

EXTRACT FROM REPORT OF INVESTIGATING COMMITTEE

HAMILTON, 21st Feb'y, 1868.

"Since the meeting of Creditors on the 19th inst. "the ranking of one Creditor has been reduced from "$10,155 to half that amount."

"The committee are of the opinion that the amount "there saved to the Estate would effect so trifling a "change on the total dividend that it should not render "any new proposition necessary."

JOHN YOUNG.
W. N. ANDERSON.
JAMES TURNER.

HAMILTON, 9th March, 1868.

MESSRS. BROWN, GILLESPIE & CO.,

Dear Sirs:

We regret that yours of the 5th, inst., should leave this question in so unsatisfactory a position.

It appears to us that you have scarcely been warranted in pressing us in so forcible a manner into the settlement which we have made, while you are precluded from affording us the required explanations.

We feel ourselves justified however in presuming that the monies realized by the retirement of the note will find their way into the proper channel eventually.

We are,
Yours truly,
KERR, BROWN & MACKENZIE.

The above letter was written, under the impression that B., G. & Co. were in need of all available funds at this period, and that after their composition should be paid, and they had recovered from their financial difficulties, they would not hesitate to return to us the monies they had in their possession, by our retirement of the note; we therefore waited until the date of the following letter, when we made the following application to them:

HAMILTON, January 29th, 1870.

MESSRS. BROWN, GILLESPIE & CO.,

Dear Sirs:

Reverting to our former correspondence on the subject of the $10,155 note, and especially to the hint which we offered in our letter of 9th March, 1868, we venture to hope that you are now prepared to pay over to us the monies which you have acquired by our retirement of such note, believing that the estate is sufficiently wound up to enable you to do so without inconvenience:

We are,
Yours truly,
KERR, BROWN & MACKENZIE.

HAMILTON, Ontario, 1st Feb. 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton,

Dear Sirs:

We have your favor of 29th, ulto., and have given its contents our most earnest consideration.

You are no doubt aware that when the change was made in the ranking on our estate by your retiring

the note in question, we then referred the whole facts to the scrutineers appointed at our meeting of creditors, and they recommended that "as the amount so "saved to the estate would effect so trifling a change "in the total dividend that it should render no new "proposition necessary." We further informed our creditors of the fact before obtaining their signatures to our deed of composition.

We seek to be guided in this matter by a spirit of strict commercial integrity, but fail to discover any difference in the position of your claim and that of other creditors.

We are sorry that we are not in a position to pay all our obligations in full, and we cannot see the justice of our liquidating your claim when we cannot do the same with the others.

Let us, however, have your reasons for pressing your claim at the present time.

Yours truly,

BROWN, GILLESPIE & CO.

HAMILTON, Feb. 2nd, 1870.

MESSRS. BROWN, GILLESPIE & CO.

Dear Sirs:

We have yours of 1st, inst., and are surprised at its contents. We are of course quite aware that you apprised your creditors of the altered position of your estate, by our retirement of the bill in question, and that they declined, under a full knowledge of the facts, to participate in the assets so acquired.

It is not necessary that we should impugn your statement that you "seek to be guided in this matter by a spirit of strict commercial integrity," and we

desire to give you credit for sincerity when you assure us that you fail to discover any difference in the position of our claim and that of other creditors.

We rejoice to infer from this assurance that this view of the matter forms the only difficulty in the settlement of our present claim, because we entertain no doubt that we are able to convince all parties willing to be convinced, that our position is wholly different from that of other creditors; and while we desire to give you credit for sincerity in the expression of your opinion to the contrary, we marvel upon what ground such an opinion is founded. We point your attention to the facts of the case—not our statement of the facts—but the facts incontrovertible and admitted by yourselves. You are aware that the original position of the transaction did not render it necessary for us to indorse your paper, and thereby become liable in case of the contingency of your suspension of payment, and that this proceeding on our part was exclusively in your interest. Having thus become jointly liable for the whole amount of our indorsation, we endeavored (as we consider in perfect honor) to save ourselves from the consequences of such liabilty, and you admit in your letter of March 5th, 1868, that we were in a legal position to do so.

After full explanations to all the parties interested, your creditors accepted the statement which you offered, securing us in the amount for which we had become liable. You admit our statement of facts, that at this stage we were induced to relinquish our position—our legal claim to the monies in question—by the assurance of Mr. Turner and Mr. Burton, in your behalf, and by that of your Mr. Gillespie and your Mr. Brown, that unless we did so, ruin to yourselves must ensue, we yielded to the pressure so emphati-

cally and so hastily brought upon us; in other words to save you from ruin we yielded our legal claims to the monies which you now enjoy, and thereby established a claim upon *your honor* and *integrity, as well as upon your generosity.*

You state in a former letter "the prompt manner "in which you solve the difficulty *calls for more* than "the simple expression of our thanks." We agree with you in this; the expression of your thanks would, in our opinion, be but idle words while you continued in the enjoyment of monies obtained from us under an appeal which induced us to sacrifice our own interests to the furtherance of yours.

In this view of the case—a view admitted by yourselves—we repeat that it surprises us that you should fail to discover any difference in the position of our claim and that of other creditors.

The facts are before you, and should convince you of the fallacy of your position.

We are,

Yours truly,

KERR, BROWN & MACKENZIE.

SATURDAY, Feb'y 5th, 1870.

MESSRS. BROWN, GILLESPIE & CO.

Dear Sirs:

We find our letter written you on Wednesday was dated January 2nd, instead of February 2nd. We await an answer to the same; meantime remain,

Faithfully yours,

KERR, BROWN & MACKENZIE.

HAMILTON, ONTARIO, 5th Feb'y, 1870.

MESSRS. KERR, BROWN & MACKENZIE.

Dear Sirs:

Yours of 2nd, inst., would have been answered before this but for the absence of our Mr. Brown, who only returned home last evening, and the matter will have our attention on Monday.

Yours truly,

BROWN, GILLESPIE & CO.

HAMILTON, ONTARIO, 7th Feb'y, 1870.

MESSRS. KERR, BROWN & MACKENZIE.

Hamilton.

Dear Sirs:

We are in receipt of your favor of 2nd, inst., and are surprised at your statement that your endorsing the note in question was exclusively in our interest. We cannot believe that you recollected the facts when so expressing yourselves. We must take exception to the expression, "admitted by yourselves," introduced so frequently throughout your letter; for while we are prepared to admit everything we have ever said or written on this subject, there is so wide a difference between us that we think the best course is again to state the facts as we understand them.

In July, 1867, your firm and ourselves made a purchase of sugar in Halifax, the money to pay for same when due was procured from the Montreal Bank in this city, upon our three notes for $10,000, each, (round figures) endorsed by your firm; these notes were discounted by the Bank of Montreal and proceeds invested in Sterling Exchange, £3000 of which

was paid over to your firm whilst we received a similar sum. Our firms were to pay respectively the half of each note as they matured, seeing that each had got sugar to represent same, but for our convenience (we believe) we retired the first, whilst you paid the second, and the third (the note in question) fell due after our suspension; it is clear, therefore, you received the same benefit in the transaction as we did. You had received Montreal Bank Exchange for the half of this note as well as of the other two, and should we think at once have paid your half and ranked on our estate for the other—the amount you actually had to pay on our account. We cannot see therefore how you can say that the transaction was "exclusively in our interest."

We now learn for the first time that it was in consequence of the "pressure so emphatically and so hastily brought upon you" by Messrs. Turner, Burton, Gillespie, and Brown, that you relinquished your position and retired the note in question.

We are informed by all these gentlemen that you distinctly refused to do so, and we had abandoned any attempt to change your decision, when subsequently you, without solicitation on the part of any one acting for us, voluntarily paid it.

We do not think you sacrificed your interests in retiring the note in question; you thereby saved us the disagreeable necessity of going into insolvency, which we would have been compelled to do had you retained your original position, being perfectly satisfied we would never have got our deed of composition perfected so long as you ranked on our estate for the amount in question; and whilst we admitted in our

letter of 5th March, 1868, (on our Solicitor's written opinion), that you were in a position to save yourselves from any loss (in consequence of the action of the Bank of Montreal), we do not for a moment believe that after we had gone into insolvency you could have retained that advantage.

We did feel grateful for being saved the disagreeable necessity of going into insolvency, and therefore expressed ourselves strongly in thanking you. We have no doubt but that the perusal of this letter will modify the views expressed in yours to which it is an answer.

We are,
Dear Sirs,
Yours faithfully,

BROWN, GILLESPIE & CO.

HAMILTON, 8th February, 1870.

MESSRS. BROWN, GILLESPIE & CO.

Gentlemen:

We expressed surprise at the contents of your letter of 1st. instant. We refrain from declaring the feeling which a perusal of your letter of the 7th instant, has called forth in us.

You are not at liberty to take exception to our expression "admitted by yourselves," for if you compare our statement of facts contained in our letter of February 27th, 1868, with the expressions used in ours of 2nd instant, you will fail to perceive any material discrepancy between them, and this statement of facts you unreservedly admit in your letter of March 5th, 1868.

You assure us that you fail to discover that our position is different from other creditors, and we may assume that if we can enlighten you upon this point your "strict commercial integrity" will induce you to relinquish the monies you have taken from us.

We pointed out in our letter of 2nd instant, the grounds on which we based our assertion that our position was wholly different, and we have now to consider the validity of your remarks in reply.

You deny our position that the transaction was exclusively in your interest, on the ground that we received the same benefit as you did therefrom; this is not a valid ground for taking issue with us on this point; you must show that we desired this benefit, that we sought it or readily entertained your proposition when it was made to us. We deny this, and reassert that we entered into the arrangement for your accommodation. Our assertion may appear to involve a direct contradiction without proof to sustain it. We can only support our statement by reminding you that we never sought your endorsation at any time, such transactions whenever they have occurred have been at your request and for your benefit. We must urge further that when the proposal was made to us, and a conference between ourselves, as partners, was held upon it, it was not considered by us as for mutual benefit, but the question was "shall we do it for them?"

If we are asserting a truth in this declaration we establish irrefragably our position, that the transaction was entertained by us "exclusively in *your* interest."

You must be much at a loss for arguments to sup-

port your views when you assert that you now learn for the first time, "it was in consequence of the pressure so emphatically and so hastily brought upon us that we relinquished our position." If you will refer to our letter of Feb'y 27th, 1868, you will find the same declaration made, and in yours of March 5th, 1868, you admit our statement of the facts to be "very correct."

But if the facts are as you now state them, to what purpose can you use the argument in proof that our position is not different from that of other creditors, which is the main point at issue between us? You urge; we decline; but subsequently yield. Do you mean to insinuate that we yielded *in our own interest?* and if not so in whose interest but in yours could we have yielded? Is this placing ourselves on the same footing as other creditors?

Your remark that you do not think we sacrificed our own interests in retiring the note in question, occasions us much surprise. We quote your own words from your own letter of March 5th, 1868.— "We were most desirous that you should only rank "as creditors for $5077.50, and this gives us the "opportunity of stating that it was in your power, "legally, to have ranked for the full amount, and "although such a course would have forced us into "insolvency, still we had no claim as a firm to ask "you *to waive your legal rights;* the prompt manner "in which you solved the difficulty calls for more than the simple expression of our thanks." Are we to understand from your remarks in your letter of 7th inst., that while we "waived our legal rights" and conferred so much benefit on you thereby, we were in fact sacrificing nothing, and that we were

conscious that we were making no sacrifice? If this be not your meaning we fail to see how your argument will help you, and admitting for the sake of argument that your new light on the subject is the correct one, that in fact no sacrifice was made on our part, and that we were conscious that we made no such sacrifice in retiring the note; in such case we are at a loss to understand for what act on our part we were entitled to the "warmest expression of your thanks." Your argument is in fact baseless, and if well grounded would not help you to establish your position, that we are only entitled to rank as other creditors.

After a careful analysis of the points raised in your letter of the 7th inst., we are only able to reduce them thus:

1st. That the endorsation was for mutual benefit.

2nd. That the pressure was removed and that our retirement of the note was a spontaneous act.

3rd. That we have sacrificed nothing by retirement of the note.

We have answered all these points conclusively, and have shewn that:

1st. The transaction was made for your benefit.

2nd. That the retirement of the note was to save you from ruin.

3rd. That if it could be established that we sacrificed nothing in the retirement of the note, nevertheless we believed that we were making such a sacrifice at the time we made it.

We have, therefore, established our position, that we are not to be considered as ordinary creditors, and claim that your "commercial integrity" calls upon

you to relinquish the money which we have advanced to save you, and which is now lying unappropriated in you hands.

We are unwilling to believe that you will continue to urge futile objections to our claim, and now distinctly call upon you for the payment of this money.

Meantime remain,

Faithfully yours,

KERR, BROWN & MACKENZIE.

HAMILTON, Ontario, 12th Feb. 1870.

MESSRS. KERR, BROWN & MACKENZIE,

Hamilton.

Gentlemen :

Your favor of 8th inst. has had our perusal, and we are much astonished to find that you still assert that the transaction whereby you became creditors of ours for $5000 odd was exclusively in our interest. Any discussion that the members of your firm may have had together cannot alter the fact that our notes endorsed by you were discounted to extent of $30,000 (round figures), the half of which amount you received in Sterling Exchange, and no doubt found it just as convenient as we did. The fact that you were endorsers instead of makers of the bills does not make the transaction peculiarly in our interest. It would have been quite as convenient for both of us if we had been the endorsers and you the makers. We think it idle to discuss the point as the facts prove that both firms were equally benefited by the facilities granted by the Bank of Montreal

discounting our joint names, and a fair division of the amount was kept by each of us. In yours of 2nd February, you state that you endeavored (in you considered perfect honor) to save yourselves from loss, &c., &c. We have no doubt that you considered that what you did was in "perfect honor," but we now regard the position to have been a very questionable one, and in which view we are sustained by many of our creditors who pronounce it to be one which should not be tolerated.

You were either creditors of ours for the amount that we justly owed you—say about $5000—or the Bank of Montreal was our creditor in consequence of you refusing to honor your paper. If the former, then you have been paid your composition on our indebtedness, but if the latter and the Bank had continued our creditor, our only course was insolvency, in which case our creditors would have retired the note, and afterwards have compelled you to pay it in order to make you rank on our estate for the amount we really owed you, so that as we have already stated in a former letter you would not have obtained any advantage by retaining your first position. You would only have had the odium of forcing us into insolvency without being gainers thereby.

You agreed with us to pay one half of the last note of $10,000, due in February, 1868, and our unfortunate inability to pay the other half never released you from your obligation both to us and the Bank. We feel warranted in saying that "strict commercial integrity" and good faith towards us should have induced you to have taken up the note or else have paid your half, being no more than the amount for which you had already received value in

the shape of sterling exchange from the Bank, in either case in equity the ranking on our estate should have been only for half the amount of the note, and in simple justice you should not have attempted to take an advantage over the shoulders of the Bank of Montreal.

In our letter of 5th March, 1868, which you quote so freely, we erred in stating that *you* held a legal position strong enough to save you from loss. We should have said the Bank of Montreal, as holders of the note could legally rank upon us for the whole note, but this would have been obviated, as we have shown, by our going into insolvency.

In answer to your emphatic demand for the payment of this money, we beg to state that we shall submit the matter to the original committee appointed at our meeting in Feb'y, 1868, and should they consider that you are entitled to be preferred we shall then submit the state of matters to all our creditors, and if they are unanimous in recommending a similar course we shall forthwith hand you the amount.

We regret indeed that you were creditors of ours, the more so because from the written opinion of our solicitor we placed your claim upon us in statement of liabilities as double the correct amount which we should have promptly refused to do had we then been as conversant with the position as we now are, and we may add that the difference hereby caused in the amount of our assets would not have induced us to offer more for the estate, and in conclusion we may state that though legally absolved from all liability we still feel morally bound to pay all who are our creditors in equity, 20s. in the £, and trust the time

is not far distant when we will be in a position to do so.

We are,
Gentlemen,
Yours faithfully,
BROWN, GILLESPIE & CO.

HAMILTON, 14th February, 1870.

MESSRS. BROWN, GILLESPIE & CO.,

Sirs:

It is time that our correspondence should close, for your letter of the 12th inst. reminds us of the instructions given by a pettifogging attorney, "You have no case, you must abuse the other side."

You seem entirely to have forgotten that the issue between us is that your view of commercial integrity forbids your payment to us of an unappropriated sum of money in your hands, derived from us, because you are unable to regard our position as differing from that of other creditors. We have defeated effectually this position, and you now have recourse to evasion and abuse. We make these charges distinctly, and proceed to prove them.

You express your astonishment at our assertion that the transaction whereby we became your creditors was exclusively in your interest, and you reiterate your assertion that the notes in question having been discounted by the Bank, the half proceeds of which we received, contradicts the above statement, any conversation which we may have had between ourselves as partners to the contrary notwithstanding. We call this an evasion, and fear it

is intended as such, for you cannot fail to have noticed, from our letter of the 8th inst., that we do not deny the self-evident fact which you state, but show you that the endorsation of your notes was *with a view* to promote your interests: does this declaration astonish you because the desire to serve you had indirectly a beneficial effect upon ourselves? Are you prepared to deny our repeated assertion that we would not have entered into the transaction for the purpose of our own benefit, and that our motive was to oblige you?

Our statement of the conversation between ourselves as partners does not impugn your assertion that we derived a benefit from the endorsation; but if the statement that such conversation was held be not a lie, it cannot fail to have convinced you that our motives were not those of self-interest, and that therefore we were in a different position to that of other creditors. We repeat that we think you cannot fail to have seen this, and having resolved to keep this ill-gotten money to yourselves, you are driven to evasion to sustain your position.

We proceed to sustain our charge that you are abusive: you point out the course which your views of "commercial integrity" should have induced us to pursue, and you add, "In simple *justice* you should not have *attempted to take an advantage*."

If we have been guilty of taking an "unfair advantage," we hold you as accessories before the fact, and participators in our crime, and think you should not only have been ashamed, but *afraid* to bring such a charge against us, in view of the facts of the case.

Were you not apprised of our intention to take the course we proposed with the Bank? and did not more than one of your partners, if not all of you, approve of that course? Are you prepared, at all events, to assert that either individually or as a firm, you objected to the course proposed? If then we acted within your knowledge and approval, how utterly at a loss you must be for an argument to sustain your case, when you are compelled to have recourse to insult without argument to uphold your position, as retainers of moneys which do not and cannot belong to you.

The fact is, your letter lacking sincerity and truth, overreaches itself: we illustrate this by showing your remarks thus:

"We have no doubt that what you did was in 'perfect honor.'"

"We feel warranted in saying that strict commercial integrity and good faith towards us should have induced you to have taken up the note, or else have paid your half, and in simple justice you should not have attempted to take an advantage," &c., &c.

While we are prepared to dispute the legal position that you assume, that in the event of insolvency your creditors would have compelled us to pay the note in question, we reiterate the assertion that this, like the other points that you raise, has nothing to do with the question.

The point at issue between us is, not what would have been the effects upon our future interests of such and such a course, but what were our motives towards you in pursuing such a course? If they were such as we state them to have been, we do not

stand towards you as other creditors, and therefore you have no right to appropriate to your own use moneys extorted from us by an appeal to our generosity.

Nothing can evince more strongly your desire to possess yourselves of these moneys at all hazard—even that of your reputation—than your proposal to consult the original committee, and in event of their differing from you in opinion, then to require the *unanimous* consent of your creditors to the payment of these moneys to us, well knowing as you must, that the unanimous decision of a number of individuals could rarely be obtained for any purpose, and feeling quite safe therefore, as you must do, that this appeal will not result in your having to give up the moneys which you have acquired.

As to your proposed payment to your creditors of 20s. in the £, we can only remark that we shall be happy to witness so desirable a conclusion, but we are unable to see what this alleged intention has to do with your retention of these moneys in the meantime. We do not anticipate that we shall receive any further baseless attempts at argument on this matter,—and are

Yours, &c.,

KERR, BROWN & MACKENZIE.

HAMILTON, 23d Feb'y, 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton,

Gentlemen:

Your letter of 14th inst., has had our attention, and certainly if the remark about the pettifogging

attorney is applicable to either side of the correspondence, there can be little doubt but you should have the credit of it. Your style of writing speaks for itself with any one who may take the trouble to peruse it. Argument gives way to bitterness and deep hostility which, in discussing this business difference between us, reflects no credit upon you. Instead of writing calmly and temperately, you seem to pen your letters with a desire to cause an estrangement where such should never exist.

We are not influenced by your dictatorial correspondence. When properly expressed, we are willing to accord to you the right to your opinion, but we claim that we are entitled to the same, this right, however, you appear to deny us, and seem to think that we should regard your assertions as facts. In reading your letters we are reminded of Shakspeare's words,

"I am Sir Oracle,
And when I ope my mouth let no dogs bark."

You charge us with being accessories and participators in the so-called "crime" of your endeavoring to take an "unfair advantage" over our other creditors in the amount of ranking on our estate, we can easily show that we were forced into the position by your action, and that you have no ground for making such a charge.

In making up our list of liabilities, in our preparatory sheets, we put you down as creditors, on account of this note in question, at the amount we actually owed you say $5,077.50, believing you would pay your own half, and for which you had received value, we however shortly after were informed that you intended taking such action as

would force us to pay a composition on the whole amount of the note, $10,155, we were anxions that you should only rank for the amount we actually owed you, and found on taking legal advice, that if the note in question were held by the Bank of Montreal, our estate would be compelled to pay on the whole amount. You snbsequently either lodged collateral securities or made an arrangement with the Bank of Montreal whereby (out of the usual course of business) the note at maturity was not paid by you, although subsequently you did. It was clear, therefore, that we had no other course open to us but to place the whole amount of the note as a liability, but we must distinctly decline any share or participation in the thing, it must rest on the shoulders of those who devised it, had we known then, the true position as well as we did afterwards, we never would have yielded, because we are warranted in saying that not even the Bank of Montreal could have ranked for the full amount of the note.

We wish you to understand that we are neither "ashamed" or "afraid" to discuss this matter anywhere. Your illustration of our want of sincerity and truth is an unfortunate one for you, as in the quotations you furnish from our letter of 12th inst., you have left out the words "you considered," which reconciles the supposed inconsistency and demolishes your whole charge. We are charitable enough to suppose this was not done designedly, but feel warranted in saying that it shows how superficially you have considered your subject, and on what trifling grounds you base so serious an accusation. We see no necessity of again referring to the point of the note discounted being entirely in our interest, as your futher remarks do not alter the facts of the case in

the slightest degree, and we can only express our suprise that intelligent men should endeavor to maintain so absurd an idea.

We have endeavored (we think successfully) to conduct our part in this correspondence in a temperate and becoming manner, and regret that you should have pursued a different course.

We have now to state in closing that the step intimated in our last will be taken, and the matter submitted to the original committee appointed by our creditors. Our creditors are the parties who have the best right to be consulted in such a matter, we would be acting unfairly to them and injuring our own reputation were we to accede to your demands and pay you in full without their sanction.

Yours faithfully,

BROWN, GILLESPIE & CO.

P. S.—We should have replied to your letter before now but for the absence of one of our firm.

B., G., & CO.

Feb'y 23d, '70

MESSRS. BROWN, GILLESPIE & CO.

Gentlemen :

We have yours of this date, and find on perusal that it contains nothing bearing upon the question at issue but what has been already stated and answered.

Yours, &c.,

KERR, BROWN & MACKENZIE.

HAMILTON, 8th March, 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton.

Gentlemen:

As intimated to you in previous letters we have submitted the correspondence between our firms to the original committee appointed by our Creditors, and now beg to enclose herein copies of our letter and their reply.

We are,
Gentlemen,
Yours faithfully.

BROWN, GILLESPIE & CO.

HAMILTON, 25th Feb'y, 1870.

MESSRS. JOHN YOUNG, MERCHANT, Hamilton.
JAMES TURNER, " "
W. N. ANDERSON, MANAGER, BANK B.N.A.,
Hamilton.

Dear Sirs:

We enclose copy of a correspondence between Messrs. Kerr, Brown & McKenzie and ourselves in which they demand payment from us of some $2500, an amount by which our Estate was benefitted at the time of our suspension in 1868, in consequence of their endeavoring over the shoulders of the Bank of Montreal to rank on our estate for double the amount we owed them.

You will, no doubt, (from having looked into our affairs on behalf of the creditors at the time) be well aware of the facts, and we shall not therefore,

enter into any details. Will you oblige us by reading over the correspondence and give us opinions on the following points:

Can the note in question be called an accommodation one, and were we the only parties accommodated in the transaction?

Would we be warranted under the circumstances in acceding to Messrs. Kerr, Brown & McKenzie's demands by paying them the sum?

Do you consider they have any better claim to this money than our other creditors?

Yours faithfully,

BROWN, GILLESPIE & CO

HAMILTON, 3rd March, 1870.

MESSRS. BROWN, GILLESPIE & CO.,

Hamilton.

Dear Sirs:

We now return you herewith the copies of the correspondence between Messrs. Kerr, Brown & McKenzie and yourselves, which we have carefully read.

To the three questions proposed to us in your letter of 25th ulto. we reply as follows?

First, we are of opinion that the note in question was not an accommodation one in the usual and ordinary sense of that term.

Second, we are of opinion—you would not be warranted, under the circumstances, in acceding to the demand made by Messrs. Kerr, Brown & McKenzie.

Third, we are further of opinion that they have no better claim to the money than any of your other creditors.

Yours respectfully,

JOHN YOUNG.
W. N. ANDERSON.

P.S.—We may add that the correspondence was sent to Mr. Turner, who returned it without any message, we therefore assume that he does not wish to join in this letter.

HAMILTON, 15th March, 1870.

JAMES TURNER, ESQ.,
Hamilton.

Dear Sir,

We have received from Messrs. Brown, Gillespie & Co. copy of a letter addressed to them by Messrs. Young & Anderson, answering certain queries submitted to the latter by the former. It is usual when matters are referred, for the opinion of a third party, to make such reference upon a statement of facts agreed upon by both parties; in the absence of such agreement, the decision adopted by the referee can only be regarded as a partial one, based upon the matter submitted by the one party, but not embracing all the facts in the case. It is true that Messrs. Young & Anderson have the opportunity of perusing the correspondence between Brown, Gillespie & Co. and ourselves, but we take exception to the queries which are submitted to Messrs. Young & Anderson upon this correspondence, as avoiding some of the most important features of the case, and thereby doing ourselves less

than justice. We have yet to learn the grounds on which Messrs. Young & Anderson have so readily replied to a case submitted by one side only, and without a personal conference with yourself, on the mere assumption that your return of the papers intimated a consent to a decision being given in your absence. We have reason to believe that your knowledge of the whole question in dispute between Brown, Gillespie & Co. and ourselves being much greater than that of Messrs. Young & Anderson, you would not consider that the facts of the case would be fairly met by a dry reply to the partial queries submitted thereon, and we would ask you therefore to favor us with an opinion upon a statement of facts agreed upon by both parties in the dispute, consulting with the other referees or otherwise as Messrs. Brown, Gillespie & Co. may desire.

We are,
Yours truly,
KERR, BROWN & MACKENZIE.

HAMILTON, 15th March, 1870.

MESSRS. KERR, BROWN & MACKENZIE,

Gentlemen,

I am in receipt of your favor of to-day with the accompanying copies of correspondence, and beg to say in reply that I perused and returned to Mr. Anderson the documents referred in joint letter of Mr Young and himself, making no comment thereon to either of those gentlemen, but addressing Mr. Adam Brown as per copy enclosed, from which you will notice I could under such conditions see no good likely to arise from reference; if therefore Messrs. Young & Anderson were cognizant of my having

written in this strain. they were justified in concluding that it was not my wish to join in the report.

My opinion all along has been, that the matter should be referred to some one entirely ignorant of the nature of the difficulty, I do not, however, feel justified in shirking responsibility, and will hold myself in readiness to give an opinion upon a statement of facts agreed upon by both parties to this dispute, consulting with the other referees or otherwise as Messrs. Brown, Gillespie & Co. may desire.

I am,
Gentlemen,
Yours truly,

JAMES TURNER.

Mr. Turner's enclosure addressed to Mr. Brown of B. G. & Co.

HAMILTON, 1st March, 1870.

My Dear Brown,

Whatever conversation I have had lately affecting matters in dispute between your firm and that of Messrs. Kerr, Brown & McKenzie has been with yourself; under such circumstances I address you personally in reply to the former's letter of 25th ulto.

As requested, I have read over the correspondence and although prepared for it to some extent, I am much distressed and exceedingly regret its tone.

You are well aware I should willingly have been of service, and even now, could I in any way assist in overcoming this deplorable estrangement would gladly do so, I cannot however see any good likely to result from an expression of opinion on the terms proposed in annexed extract, and the more so

as you informed me since my return from New York, that some of your former creditors had already expressed themselves opposed to any settlement.

I am,
My Dear Sir,
Yours truly,

JAMES TURNER.

Extract:

"We shall submit the matter to the original "committee appointed at our meeting in February "1868, and should they consider that you are entitled "to be preferred, we shall then submit the state of "matters to all our creditors, and if they are unani- "mous in recommending a similar course we shall "forthwith hand you the amount."

HAMILTON, March 16th, 1870.

MESSRS. BROWN, GILLESPIE & CO.

Sirs:

We forward herewith copies of a correspondence which has passed between Mr. Turner and ourselves, under date of yesterday.

We are of opinion that the answers of Messrs. Young & Anderson to the queries propounded to them do not meet the points involved in the differences between your firm and ourselves; we are surprised that such queries should have been submitted to those gentlemen in relation to our differences; and we are still more surprised that those gentlemen, in view of the whole correspondence, should have so readily replied to queries which obviously so partially embraced the subject in dispute; the more so as, unless we have greatly misunderstood both Messrs. Young & Anderson, we have had reason to believe that they

are not prepared to express an opinion that the justice of the case would be met by the replies that they have made to those queries.

Messrs. Young & Anderson are of opinion that notes endorsed by us at your solicitation and—if our statements are worthy of credence—against our own wishes, and purely with the desire to benefit yourselves—are not accommodation paper; we agree with them that they are not so "in the ordinary sense of the term;" but we think that the facts would have admitted a more ample explanation of their character, than their reply would convey.

Your referees (Messrs. Y. & A.) express an opinion that our firm has "no better claim to the money than any of your other creditors," had your queries been impartially laid before them, you would not have asked them—"Would we be warranted under the circumstances in acceding to Messrs. Kerr, Brown & McKenzie's demands by paying them the sum?" but the query would have been—"The money is lying in our hands, to whom are you of opinion should it *now* be paid; and if to the creditors, by what method shall it be so paid, seeing that yourselves, as the original committee of the creditors, have recommended that it should not be distributed among such creditors?" Our demands upon you have been based upon the assumption that the creditors have declined to accept these monies, and that you are not justified in applying them to your own use; our controversy has not been between ourselves and the creditors, but between ourselves and yourselves; we should never have objected to the payment of these monies to your creditors; we retired the note in question that they might have the benefit of such retirement, and it was only because the creditors had declined to receive that benefit that

we put in our claim to its proceeds. If you can see your way to an immediate payment to the creditors of these monies, we shall be quite satisfied, but we dispute your continued enjoyment of them under a specious proposal to pay your creditors in full at some future and indefinite period, and we stigmatize such a proposal—your enjoyment of the monies in the meantime—as unfair to all parties, and especially to ourselves, whose rank we deem to be far different from that of an ordinary creditor, Messrs. Young & Anderson to the contrary notwithstanding.

We have always been willing to leave the matter in dispute to indifferent third parties, upon a case submitted by both disputants, but we continue to view your proposal to be guided by the *unanimous* consent of creditors as a mere evasion, and we consider the readiness of your present referees to reply to your very partial queries, without personal interview with Mr. Turner, and without consultation with the other party engaged in the controversy, manifests a disposition so far removed from *indifference* as to preclude them from a further consideration of the subject on behalf of the parties conjointly.

We are,
Yours &c.,
KERR, BROWN & MACKENZIE

HAMILTON, 19th March, 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton,

Gentlemen:

We are in receipt of yours of 16th instant with enclosure as stated.

Your repeated assertion that the notes in question

were for our exclusive benefit can only be again denied, had your statement been correct what need was there for you to endorse more than $15,000 of our paper which was all that we got? You however endorsed for $30,000 getting $15,000 yourselves thereby making as much use of our name as we of yours the accommodation being as much to you as to ourselves.

In submitting to the original committee the correspondence we have simply carried into effect our intention conveyed to you in former letters. We asked their replies to the only points that we considered of consequence. The statements of both parties being in their hands and they cognizant of the facts of the case from the beginning,—more competent judges could not be wished for, and we only regret that Mr. Turner did not place his views in writing—whatever they may be.

It was scarcely to be expected that the questions we asked the committee should have been of your dictation as you seem to have expected.

Your are as well aware as ourselves that it did not devolve upon us to ask the committee what to do with the money gained to our Estate by your consenting to rank only for your just dues. This was answered by them two years ago, to the effect that it should be retained by the Estate, which was concurred in by all creditors of which you were apprized at the time. It puzzles us to learn by what reasoning you assume that this money was offered to and declined by our creditors for in our letter to you of 5th March 1868, we write that " we are advised by our solicitors " that were we to divide the amount thus gained to " the Estate (some $2,300) among the creditors we " would invalidate our deed of discharge, we therefore

"see no other course open but to retain the amount and "we hope in this you will concur."

You will excuse our borrowing some of your thunder, and exemplifying as follows in relation to your last production, see your letter of 14th February, "the fact is that your letter lacking sincerity and "truth overreaches itself which we illustrate by your "remarks thus."

Extract from your letter of 9th *March* 1868.

"We feel ourselves justified however in presuming that the monies realized by the retirement of the note will find their way into the proper channel eventually."

29 Jan'y, 1870.

"Referring to *our former correspondence* on the subject of the $10,155 note and especially to the *hint* which we offered in our letter of 9th March 1868, we venture to hope that you are now prepared to pay over to *us* the monies which you have acquired by our retirement of such note believing that the Estate is sufficiently wound up to enable you to do so without inconvenience."

8th Feb'y. 1870.

"We are unwilling to believe that you will continue to urge futile objections to *our claim* and now *distinctly call upon you for the payment of the money.*"

Extract from your letter of March 16, 1870.

"Our demands upon you have been based upon the assumption that the creditors have declined to accept these monies. * * *

"We should never have objected to the payment of these monies to your creditors. We *retired the note that they might have* the benefit of such retirement and it was only because the creditors had declined to receive the benefit that we put in our claim to its proceeds."

How do you reconcile these differences?

In yours of 9th March 1868 you expected us to hold this sum for your future benefit and your *demand* for the money in yours of 29th January last shows that you hoped we had reserved it for you, and yet you assume that we had also offered it to our creditors. We could not hope to divide the amount amongst our creditors and keep it for you as well. This is a rule in Arithmetic we have yet to learn.

It appears to us that having failed to get the whole amount to yourselves you are suddenly seized with the greatest anxiety for the interest of those creditors of ours whom two years ago you did your best to get an unfair advantage over.

It is morally refreshing however to see the change in your views from *demanding* the whole amount for yourselves to expressing the greatest concern that all should share alike. It pleases us much to learn of your changed views in this respect, as they now exactly accord with ours expressed to you in former communications viz: that we desired no preferences and hoped yet to pay 20s on the £ which would of course involve the payment of the monies in dispute.

The payment however of even a portion of our debts will not be hastened by any pressure you may bring upon us and as neither your action in the first place nor subsequent abusive correspondence deserves any courteous treatment at our hands it is not likely that we shall gratify your curiosity as to the date of such first payment.

You now express your desire to leave the matter to be adjusted by third parties. What is there to arbitrate upon? You do not now wish to be preferred but claim that you retired the note for the benefit of all our creditors. This somersault relieves

us entirely from the necessity of arbitration or any further correspondence.

We yet fail to see that even snpposing your assumption that our creditors had refused to partake of these monies, by what reasoning the whole amount should revert to you, the more so as your first action was against all interests but your own. You tried to be better off than other creditors, and failing this you are now much concerned that they shall have equal rights with yourselves, which is the happy result that we have been endeavoring to bring about in this controversy.

We can afford to allow your remarks about insincerity, evasion, &c., &c., to pass unnoticed, as we will not bandy such compliments with you, and would suggest the propriety of your attending in future to your own business and not worrying yourselves by interfering in ours.

We are,
Gentlemen,
Yours, &c.,
BROWN, GILLESPIE & CO.

HAMILTON, March 21st, 1870.

MESSRS. BROWN, GILLESPIE & CO.

Sirs:

Yours of 19th instant is received, and you must permit us to say that both style and matter do you but little credit.

We would not pay your mental powers so small a compliment as to suppose that you really misunder-

stood us, when you continue to deny our statement that the endorsation of your paper was "made in your exclusive interest;" neither of us can be ignorant of the fact that we mutually shared the proceeds of the discounted paper, but we have so repeatedly shewn in our correspondence that we intend to convey the assertion that we did not seek this advantage, that we did not need it, and would not have availed ourselves of it *excepting for the purpose of obliging you*, that you cannot misunderstand us on this point; and your continued pretence to do so, we can only attribute to a conviction of the weakness of your position, and consequent desire to evade the true points at issue between us.

It would be consistent with *dis*ingenuous minds to submit to an arbitration, such points only as such minds "considered of consequence" to the establishment of *their own* position, for our own parts we should not desire that the questions proposed to the committee; should be such as *we* might dictate, but we had a right to expect, from parties desirous of fair dealing, that the question submitted to or *entertained by* a Referee, should have been only such as would fairly meet both sides of the question, and we think that all right-reflecting persons will feel that a decision based upon a partial view can possess but little value.

So far from considering that it did not devolve upon you to ask the committee what to do with the money gained to the estate by our retirement of the note, we are of opinion that it was the only question left for consideration—upon your determination not to pay it to us; it is a question which has yet to be asked before a larger tribunal than that of the

"original committee," and the answer will be found to be very little in accordance with your present rapacious views. We have seen no decision from any one—committee or otherwise—that the monies in question "should be retained by the estate," the only allusion to the subject with which we have been favored, or have ever heard of, is that of the report of the "original committee," under date of 21st February, 1868, which states:—"Since the meeting of creditors on the 19th instant the ranking of one creditor has been reduced from $10,155 to half that amount, the committee are of opinion that the amount thus saved to the estate would effect so trifling a change on the total dividend that it should not render any new proposition necessary."

This report merely recommends that the terms of settlement agreed upon by the creditors should not be disturbed; it makes no allusion to the final disposal of the monies acquired by "the ranking of one creditor" to a reduced amount, naturally leaving its disposal to the parties from whom these monies were obtained, and to those in whose interest it was so obtained.

You have expended much useless labor and not a little discreditable language, in your endeavor to convict us of inconsistency, in first demanding the payment of these monies to us, and in subsequently expressing our concurrence that they should be paid to your creditors. Those who may hereafter have the opportunity of forming a judgment upon the whole question between us, will not fail to see our position throughout. You are in the possession of some $2500 derived from us at your earnest solicitation, and yielded by us for the purpose of protecting

you from insolvency; the disposal of this money when so relinquished by us, was presumably for the benefit of the creditors; upon their refusal to disturb the settlement determined upon, and consequent non-acceptance of these monies, we take it for granted that they will revert to us, but awaiting the period when you will have realized upon your assets, we content ourselves under date of the 9th March, 1868, "in presuming that the monies realized by the retirement of the note will find their way into the proper channel eventually." Your composition of 11s. 6d. in the £ having been paid, we renew our application for these monies, and, in doing so, it is evident that "our demands upon you have been based upon the assumption that the creditors have declined to accept these monies, and that you are not justified in your determination "TO RETAIN THE AMOUNT," as in your letter of 5th March, 1868, you propose to do; we assure you, nevertheless, that were the case otherwise—that were the monies about to be distributed to creditors—we should not be found opposing such an arrangement, or preferring a claim, to the prejudice of such creditors. We see nothing inconsistent in all this, and regret, *for your own sake*, that you have not displayed more logical discernment, and that you should have exhibited a desire to prop up a bad cause by resorting to the use of language which you are pleased to designate as "THUNDER," but which we fear would be more generally regarded as scurrilous and disreputable.

We fear that from the conduct you have evinced throughout this correspondence, there is little hope of our "hastening any payments" either to your creditors or ourselves, "by any pressure" that we may

bring upon you; we are quite willing to be judged by public opinion as to the rectitude of our own proceedings, and we must leave it to the same tribunal to say whether you are justified—we do not say in a failure, even though it should eventuate in realizing large profits to yourselves, but in the further application of $2500 to your own private purposes, which have been derived from us to save you from ruin.

We are,
Yours &c.,
KERR, BROWN & MACKENZIE.

HAMILTON, March 22nd, 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton.

Gentlemen:

We are in receipt of your favor of 21st inst., and whilst not replying to your assertions, we wish it on record that we by no means admit the truth of anything therein contained, all the points worthy of discussion have already been answered and disposed of, so that the subject is now thoroughly exhausted. It is and has been our intention from the first to divide the sum in question ($2,500,) rateably amongst all our creditors in equity, so soon as we found it convenient after our composition was paid—this is, we believe, in accordance with your present views, and such being the case, we see no need of further correspondence, which can only lead to personal recriminations resulting in no good.

Yours &c.,
BROWN, GILLESPIE & CO.

The last letter of Messrs. Brown, Gillespie & Co. indicated a final determination to refuse us the justice which we sought at their hands, yet, even at this stage, we were not without the hope that a reference to third parties might lead to an adjustment of our difficulties, and, with this view, we addressed the following letters to the parties herein enumerated :

HAMILTON, 29th March, 1870.

DONALD McINNES, ESQ.
JAMES TURNER, ESQ.

Dear Sirs :

You are aware that a correspondence has been going on for some time past between Messrs. Brown, Gillespie & Co. and ourselves, relative to the disposal of a sum of money in their hands, under circumstances which the perusal of our several letters herein enclosed, will unfold to you.

Messrs. Brown, Gillespie & Co. have obtained from Messrs. Young & Anderson, two members of the "investigating committee," certain replies to queries propounded by the former to the latter; but we are of opinion that the queries so submitted, were not such as the correspondence fairly demanded, and cannot be deemed to be a judgment upon the points at issue.

We are naturally anxious to learn the opinions of others upon the merits of *the whole* case, and we especially feel that we should not permit ourselves—without an endeavor on our part to stand acquitted

of such charges—to remain under the stigma which Messrs. B., G. & Co, endeavor to cast upon us, of being "wanting in strict commercial integrity," and in "good faith towards them," and with "an attempt to take an advantage."

As Merchants of long standing in this city, and as mutual friends of the parties engaged in the present controversy, we solicit your opinions on the points at issue; trusting that, although the position which we ask you to assume is not that in which you would yourselves seek to be placed, beneficial results may follow from the expression of your views thereon.

We have no desire, by any remarks of our own, to lead you to a partial judgment of the case, but would endeavor succinctly to lay before you the leading facts as the correspondence has disclosed them.

In July, 1867, Messrs. Brown, Gillespie & Co. and ourselves made purchases of sugar in Halifax, the payments for which would fall due at similar periods; but *not on joint account*, or in any way dependent on each other; each was a debtor by himself for his own purchases, and not otherwise.

Messrs. Brown, Gillespie & Co. proposed to us to make our several payments by means of discounts from the Bank of Montreal—say £6000 sterling; the discounts to be made in three several notes of $10,000 each, of which they were to be the makers, and ourselves the endorsers; we assert—and the truth of our assertion is not called in question—that we did not require or desire this Bank accommodation, and should have much preferred the settlement of our own purchases by ourselves, rather than incur a risk of loss, which, in the contingency of the failure of the

makers of the note, would—and as it has proved, has—fallen upon us. We, upon more than one occasion, had been called upon to grant accommodation paper to the firm in question, and from the close connection which existed between certain members of our respective firms, and from the kindly feeling which had heretofore been maintained, we were induced to accede to their proposal in the present instance; from the fact of its yielding an equal advantage to each, the discount cannot be termed *commercially* "accommodation," but nevertheless, we regarded, and still regard the transaction as paper given for the accommodation of the firm seeking it.

The contingency which we would have avoided—that of the failure of the makers of the notes—occurred previously to the retirement of the third note; and from the consequent inability of Messrs. Brown, Gillespie & Co. to retire such note, conjointly with ourselves, we became liable for the whole amount, and upon its payment by us would have ranked upon their estate for the sum of $5000, odds.

Feeling the hardship of our position—seeing that the note did not represent a mercantile transaction between us, and that we had been induced reluctantly to enter into it, we considered the practicability of avoiding the loss impending over us, and consulted with our solicitors and others upon the subject. Our solicitors' views will be seen by reference to their letter of 7th Feb'y, 1868. This letter was shewn to one or more of the partners of Brown, Gillespie & Co. and we assert—hitherto without denial—that they approved of the course proposed. The local Agent of the Bank here encouraged our application to the Head Office, and we had reason to believe that that

Bank would have facilitated our views. It would be idle to enquire individual opinions upon the expediency of the course proposed, being aware that upon this subject many men may entertain "many minds," but we would ask you whether the view expressed by Messrs. Brown, Gillespie & Co., in their letter of the 12th Feb. last, that they have no doubt that what we did we considered to be in "perfect honor;" or their subsequent expressions of a want of "commercial integrity," and of our doing our best to get an unfair advantage, are the more suitable terms to apply to the course which we took, with their approbation. In reference to the retention of the monies acquired by our subsequent retirement of the note, the correspondence so fully sets forth the facts of the case that we need not do more than direct your attention to them.

The note was retired by us for the benefit of the creditors, and it was only upon their relinquishment of claim to its proceeds, that we assumed to have an interest in them; at present these proceeds are enjoyed by Messrs. Brown, Gillespie & Co., and in their letter of 5th March, 1868, and subsequently, they declare their determination to *retain them*, a conclusion which we consider not only to be ungenerous to ourselves, but *unjust towards all parties.* In a letter received from them, under date of 22nd inst., Messrs. B., G. & Co. have materially altered the aspect of the case, and had they entertained and expressed the views which they now enunciate, at an earlier period of the correspondence, much of the acrimony which has passed between us might have been avoided. Messrs. B., G. & Co., in their letter, state "it is and has been our "intention from the first to divide the sum in question "($2500,) rateably among all our creditors in equity,

"so soon as we found it convenient after our composi-
"tion was paid." We cannot give them credit for sincerity in this statement, as their earlier letters so manifestly shew a contrary intention; nevertheless, as we ourselves state, under date of the 16th inst., "our "demands upon you are based upon the assumption "that the creditors have declined to accept these "monies, and that you are not justified in applying "them to your own use," there remains so slight a difference between us as to leave almost nothing in contention on this point. We do not understand the term "creditors in equity"—unless Messrs. B., G. & Co. especially regarded ourselves as such—but we think we may content ourselves with referring to you succinctly the question which we think should have been put before Messrs. Young & Anderson—would Messrs. B., G. & Co. be warranted in retaining to their own use, as they have heretofore proposed to do, the sum of $2500, odd, derived from us under the circumstances narrated in the correspondence, under a pretext of paying to their creditors at an indefinite period, their full indebtedness of 20s. in the £, or should they rather pay this sum over to us as having a better claim to the monies than they themselves have?

Although the last determination of Messrs. B., G. & Co. to distribute the sum among the creditors settles the question of our respective claims, providing there is no misunderstanding about "equity creditors,"—we are constrained to ask the query which we now place before you, in the belief that you will sustain us in the position that we have throughout assumed, that—the creditors having declined to accept the sum in question, it equitably belonged to us *rather than to B., G. & Co.*

It seems to us that, finding that they can no longer retain the money to their own use, without a sacrifice of reputation, Messrs. B., G. & Co. have at length resolved to force it upon the creditors at the rate of a cent or so in the dollar, rather than return it to us. We do not desire to enter into competition with the creditors for this money, but we are anxious to be assured that we have been justified in demanding it, as between ourselves and our correspondents.

We are,
Yours truly,
KERR, BROWN & MACKENZIE.

HAMILTON, 2nd Sept., 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton,

Gentlemen:

We delayed answering yours of 29th March, in the hope that a satisfactory arrangement of the difficulties existing between you and Messrs. Brown, Gillespie & Co., might in the meantime, be arrived at, and from an earnest wish not to endanger a consummation so much to be desired.

We gather from the correspondence, as undisputed facts, that the transaction, out of which your claim arose, was entered into for the convenience and at the request of Messrs. B., G. & Co.; that being naturally desirous of avoiding a loss on a transaction from which you had no gain, you consulted your solicitors, and were advised that the holders of the paper could rank on their estate for the full amount, and you acted upon that opinion with the approbation

of Messrs. B., G. & Co., and induced the holders to claim for the full amount on their estate.

In their letter to you of the 5th March, 1868, in reply to yours of the 27th of the previous month, they admit that you had waived your legal rights in order to save them from insolvency; that they had no claim on you as a firm to request such a concession, and that after the acceptance of the composition by their creditors that concession had been made at the pressing instance of themselves and others, in their interest, to avoid absolute ruin to themselves.

We observe in a later portion of the correspondence they depart from this position, and appear to question whether, under certain circumstances, you would have been legally entitled to enforce your claim in this way, but a very careful perusal of Mr. Blake's opinion seems to us to establish that that position could not have been interfered with at law or in equity, even if the estate had gone into insolvency.

At the time this pressure was brought to bear, the proposal of Messrs. B., G. & Co., for a composition, had been presented and accepted—the ranking in respect of your claim was for $10,155—and when you consented to forego your legal position and reduce this ranking to one-half the amount, no increase was made in their proposed composition, this difference, therefore, would not go into the pockets of the general creditors, but would become the property of Messrs. B., G. & Co., *after payment of the composition agreed on.*

This once accomplished, it appears to us to admit of no doubt, that the sum thus saved should morally and equitably belong to you.

The creditors might have claimed it, but the amount was so small that the committee of investigation recommended that the Dividend Sheet should not be disturbed, and the creditors waived any claim to participate in it—and they are, no longer creditors. We cannot think that it can admit of serious question that the money should be yours, as it was originally, and as it has always remained, *as between yourselves and Messrs. B., G. & Co.*, whatever objections might have been urged by other creditors.

The question is disencumbered of any difficulties, which might possibly have been urged, with more or less force, had the rights of third parties intervened. Here no such question arises, and we incline to think that much of the misapprehension, under which Messrs. B., G. & Co. have been laboring, has arisen from their losing sight of the fact, that no question arises here *between creditors*, all creditors have received what they voluntarily agreed to receive, and Messrs. B., G. & Co. find themselves possessed of a sum of money, which, but for your concession, would have been paid to you. Can it admit of doubt, how such money should be disposed of? We think not.

It is perhaps unnecessary, after this statement of our opinion, to answer definitely the queries stated on page 2 of your letter to us, because so far from your evincing any want of good faith or strict commercial integrity, or desiring to take any advantage, we are of opinion that you acted most generously in foregoing a legal advantage, to save your neighbors from disastrous consequences, and we think it only necessary to place the whole matter, in the light we have endeavored to place it in, before Messrs. B., G. & Co., to induce those gentlemen to take a similar

view, or at all events, to leave it to the arbitrament of disinterested parties.

We are,
Gentlemen,
Yours truly,
D. McINNES.
JAMES TURNER.

HAMILTON, Sept. 3rd, 1870.

ADAM HOPE, ESQ.,

Dear Sir,

On the 28th March last, we addressed a letter to Messrs. D. McInnes and James Turner, on the subject of our dispute with Messrs. Brown, Gillespie & Co., requesting them to peruse the correspondence which had passed between ourselves and B., G. & Co., and the opinion of Mr. Blake, in relation to the same, and also requesting them to give us their opinion upon the correctness of our position in demanding that the money should be repaid to us, in default of the creditor's acceptance of the same; and under all the circumstances detailed in the correspondence.

In consequence of the frequent absence from town of one or other of the above-named parties, there has been much delay, but we believe they are now prepared to favor us with their opinion, we would feel much satisfaction if you would add an expression of your own views to theirs, as we naturally desire to do that which is right and proper in the estimation of our fellow-merchants.

We are,
Yours truly,
KERR, BROWN & MACKENZIE.

HAMILTON, 6th Sept., 1870.

MESSRS. KERR, BROWN & MACKENZIE.

Hamilton.

Dear Sirs:

I have received your letter of 3rd inst., and I have to say that I have read the correspondence which has passed between you and Messrs. Brown, Gillespie & Co., relative to the way in which you ranked in their composition deed, in January, 1868, for a claim you had against them, as the makers of a note, on which you were endorsers for $10,155.

The facts of the case appear to me, as follows, viz:

1st. B., G. & Co. made a note in your favor for $10,155, which you endorsed, and which was discounted at the Bank, and the proceeds of which, each of you got half.

2nd. B., G. & Co. stopped payment before the note fell due, and you procured the Bank to rank on the estate of B., G. & Co. for the full amount of the note, and on this ranking, a composition was offered by B., G. & Co. and accepted by the creditors. Before, however, all the creditors had signed the formal Deed of Composition and Discharge, an objection was taken by some of the creditors to the Bank's ranking for more than half the amount of the note, and at the solicitation of B., G. & Co., you consented to waive what you held to be your legal right, and agreed to rank for said one-half amount of the note, and on which you were subsequently paid the composition.

3rd. You maintained that you had a legal right to rank, through a third party, for the whole amount of the note, and receive your composition dividends

thereon, and thus save yourselves from loss, and that you only consented to forego your legal position, at the urgent request of B., G. & Co, who represented that it would be ruin to them, unless you agreed to alter your mode of ranking.

4th. B., G. & Co's. composition was offered to and accepted by their creditors, based on your original ranking for the full amount of the note. You have only been paid the composition on one-half of the amount of the note, and it is understood that the creditors have waived any claim to the composition on the other half, and the funds for the same now remain in the hands of B., G. & Co.

5th. You demand that these unappropriated funds should be paid over to you; and on the other hand, B., G. & Co. hold, that such funds, if they do not legitimately belong to themselves, should, at least, be divided rateably among their creditors.

I have read the carefully prepared questions, fairly embracing the whole matter at issue, and which were submitted to Mr. Edward Blake, Q.C., admittedly one of the most able and eminent members of the Upper Canada Bar, and Mr. Blake, in his written opinion thereon, clearly sets out that you were entitled to rank, through a third party, for the full amount of the note, and could have collected the composition dividends thereon, and that no court of law or equity would have interfered, to prevent you from doing so. Now, if Mr. Blake is correct in the opinion he gives, and from his great legal knowledge and high professional standing, I think I am justified in concluding that he must be correct, then there can be no question, under all the circumstances of the case, that you have a clear moral claim to the unappropriated dividends, on the other half of the note, and I think you are fairly

entitled to ask B., G. & Co. to pay you the amount thereof.

I am aware B., G. & Co. have obtained a legal opinion adverse to that of Mr. Blake, and this, coupled with the relationship existing between members of the firms, renders the question one of very considerable delicacy, and I can easily appreciate the difficulty which a sensitively-minded person might experience in arriving at a satisfactory solution of the matter in dispute, satisfactory to his own mind and to that of interested parties.

I see, however, no unsurmountable obstacles to the settlement of this matter, aside from the feeling that has most unfortunately and most unnecessarily arisen in its preliminary discussion, and I would here say, that I cannot too strongly express my conviction that it is one of those cases where both parties should be prepared to exercise the greatest amount of toleration and forbearance, for the opinions and views of each other. It is not, I submit, a question for either party to dogmatize upon. It originates in a simple legal question, and that once solved, the rest, to a fair and candid mind, is all plain sailing.

I would venture, even at this stage of the dispute, to suggest, that the matter as submitted to Mr. Blake, be referred to two of the most eminent counsel learned in the law, in the City of Toronto, and mutually chosen, with the understanding, if Mr. Blake's opinion be confirmed, that the money should be paid to you, but, if otherwise, then that it shall be retained by B. G. & Co.

With these remarks,

I am,
Dear Sirs,
Yours truly,
ADAM HOPE.

HAMILTON, Sept, 6th, 1870.

Dear Sir :

You are aware that, for some time past, a correspondence has been going on between Messrs. Brown, Gillespie & Co. and ourselves, arising from a transaction entered into before their failure, and from their retention of monies we consider rightfully to belong to us.

In their letters, Messrs. B., G. & Co. use expressions toward us which we consider uncalled for and unwarranted; and being of course desirous of standing well with our neighbors generally, are anxious to have the views of those whose opinions we value, as to the strength of our position in this matter.

The transaction, at the outset, may appear purely one of business, and somewhat out of your province to analyze, it has now, however, acquired peculiar features. If you will kindly peruse the correspondence herewith enclosed, and pass your opinion upon its merits, we know it will be an honest and we believe a correct one.

We should not likely have addressed you now, but for a note you will find in the correspondence signed by Messrs. Young & Anderson, and will be glad if opinions quite as valuable as theirs, be found to differ from them.

We are,
Respectfully yours,
KERR, BROWN & MACKENZIE.

To E. CARTWRIGHT THOMAS, ESQ.
Sheriff, &c.

HAMILTON, Sept. 7th, 1870.

Dear Sirs :

Under yesterday's date, you request me to peruse the correspondence which has taken place between yourselves and Messrs. Brown, Gillespie & Co., and to express my "opinion upon its merits."

My near connection with a member of your firm, and the cordial, social relation which I hold with all the parties in the controversy, would furnish me with some excuse for declining to accede to your request. I feel, too, that I am exposed, with some degree of justice, to the imputation that my judgment may lean too much toward the cause of my own connection.

I have always held the opinion, however, that we are not selfishly to seek our own ease, but that each is bound to the other to promote the general welfare of all; and, therefore, when a serious difficulty has arisen between members of the mercantile community, hitherto in good standing, it behoves each and all, when called upon, to endeavor to promote the ends of justice between them; and in the hope that I may be instrumental in effecting a just issue between the parties, I accept the call which you have made upon me.

I have perused the whole of the correspondence in the case submitted to me, with great care, and with an earnest desire to be impartial, but it has affected me so strongly, with a conviction of the grievously false position in which Messrs. Brown, Gillespie & Co. have placed themselves, that I find it almost impossible to give expression to my views in moderate terms.

Messrs. B., G. & Co. seem unable to contradict your repeated assertion, that the accommodation of en-

dorsed paper for your several payments to your several—not conjoint—creditors, was sought by themselves, and I think there is no room to doubt that your endorsation of the notes in question was given to oblige them, rather than from a desire to procure for yourselves a Banking advantage. This fact, as the basis of the whole controversy, forms, in my mind, a very important feature in the case, and gives you a very strong cause in the appeal which you make for the return of the monies in demand. The payment of this money, which you claim, is resisted, in the first place, on the ground that you are regarded by Messrs. B., G. & Co. as occupying the position of creditors of the estate, and on this point they take positions severally contradictory to each other. In their letter of the 5th March, 1868, Messrs. B., G. & Co. "see no other course but *to retain the amount*" in question; in that of the 12th February, 1870, they declare themselves to be "morally bound to pay all who are creditors in equity, twenty shillings in the pound"; in that of the 23rd February, they regard the creditors as having "the best right to be consulted" as to the distribution of the monies in demand; and in that of the 22nd March last, they remark that "it is and has been our intention from the first, "to divide the sum in question, ($2500) rateably "amongst all our creditors in equity, so soon as we "found it convenient, after our composition was paid."

These several letters contradict each other, in that they contain; in one, a proposal to retain the amount; in another, an intention to pay 20s in the £, when in a condition to do so; in a third, the recognition of a duty to consult the creditors, as to the distribution of the monies in demand; and in the last, a declara-

tion that it has *always* been the intention of Messrs. B., G. & Co, "to divide the sum in question ($2500) rateably, as soon as convenient, after the composition was paid." I cannot fail to observe that, even in their letter of the 22nd March, Messrs. B., G. & Co. restrict their proposed payment to creditors, of the amount in dispute, to such time as they "*may find it convenient* after their composition." This term is of so ambiguous a nature as to warrant the presumption that it refers to the period when they shall have received the "unanimous" decision of their creditors; or to the period when they shall be able to pay all their creditors in full—restrictions, which in fact would be found to correspond with the original intention to "retain the amount." Had Messrs. B., G. & Co. intended from the first, to divide the amount in dispute rateably among creditors, *as soon as* their composition was paid, their declaration of that fact, at the commencement of the correspondence, must have settled the controversy; because, in such case, instead of discussing collateral issues, it was sufficient to have reminded you that you had relinquished your claim for the benefit of the creditors; that the amount in hand was about to be applied to the purpose intended, and that therefore you were not in a position to demand it from them. Under these circumstances, I cannot doubt that any candid reader of the correspondence will come to the conclusion that the original intention was to "retain the amount"—at all events until Messrs. B., G. & Co. were in a condition to fulfil their moral obligation to pay their creditors in full, a period which, in the general experience of the mercantile world, would reach beyond a calculable distance of time; and, if the monies in dispute be now rateably distributed among

creditors, it must be assumed that this course is taken under B., G. & Co's. conviction that they can no longer honorably retain them, and that they find a difficulty, under the circumstances, in restoring them to you.

Messrs. Brown, Gillespie & Co. express the opinion that the correctness of your endeavor to avoid the payment of the whole amount, is "very questionable"; they accuse you of having attempted "to take an advantage over the shoulders of the Bank of Montreal"; and they impugn your conduct therein, as a failure of "strict commercial integrity and good faith" toward them. These are very grave accusations to be made in relation to merchants, of such prominent standing as yourselves, but they will not be considered as entitled to much consideration, when it is reflected that such charges are inconsistent with their own statements, and they may probably be attributable to the irritated feelings to which your reiterated appeals for the return of the monies that you relinquished for their benefit, has given rise. Your vindication of such charges seems to me to be complete in the fact that you consulted themselves, as well as your solicitors, before taking the step, and also, that you have the approbation of eminent counsel, as well as mercantile authority, for the course pursued. In adopting this conclusion, I am not "begging the question" of the *legality* of your course; on this point there may be found the opinions of counsel on the other side; I only declare it as, in my opinion, an established fact that your endeavor to rank without pecuniary loss to yourselves, was the result of consultation with others, with the expressed or implied concurrence of Messrs. Brown, Gillespie & Co., and after the assurances of your solicitors, that "the transaction is one that cannot be impeached." It must not be

overlooked that you have an acquittal of these accusations, even from your accusers, since in their letter of the 12th February last, they express themselves as having "no doubt that you considered that what you did was in perfect honor," and they have not exhibited such new features in the case, as warrant them in their subsequent imputations upon your integrity.

You refer me especially, in your letter, to the note of Messrs. Young & Anderson. The opinions of these gentlemen should be entitled to much weight, but the nature of the queries submitted to them, and the sententious replies given to these queries, lead me to the conclusion that such replies are not the result of a careful perusal of the whole correspondence. I presume that all parties will unite in the opinion that "the note in question was not an accommodation one, in the usual and ordinary sense of the term," and the correspondence does not shew that you regarded it otherwise, or that you based your claim to a return of the monies, in B., G. & Co's. hands, on the ground of its being accommodation paper; the reply, therefore, is irrevelant to the point at issue, and, while I regard the query as having been unfairly put, I am of opinion that such query has been equally unfairly met, although without unfair intention. Messrs. Young & Anderson appear to have adopted the conclusion that yourselves and Messrs. B. G. & Co. occupy the relative positions of ordinary debtor and creditor, and as such, that you have "no better claim to the money than other creditors," and that, therefore, Messrs. B., G. & Co. are not warranted in paying to you the amount demanded. Does a consideration of the whole correspondence present this view? I am strongly of opinion that it does not; but rather that it establishes beyond a doubt that, under the peculiar

circumstances of the case, your claim is fully established. I base this opinion partially, on the fact of your having engaged in the bank transaction for B., G. & Co's. benefit, but specially in view of your having relinquished, or desiring to relinquish, what you believed to be a legal advantage, to your great pecuniary loss, in order to protect your friends from insolvency, and to enable them to make a settlement with their creditors on very advantageous terms. For this course they admit that you have earned "more than the simple expression of their thanks"; they express themselves as feeling "grateful," and I cannot but view their present desire to "retain the amount," as an extraordinary mode of expressing gratitude for favors acknowledged.

The whole controversy appears, to my view, to be narrowed down to a single point: a sum of money lies in the hands of Messrs. Brown, Gillespie & Co., obtained from yourselves, under extraordinary pressure, and yielded by you as an act of generosity, to save them from ruin; it is given for the purpose of facilitating a settlement with B., G. & Co's. creditors; the creditors decline to accept it—what will become of it? B., G. & Co. say, "there is no other course but to retain it"; you say, on the other hand, "if the money be not required for the purpose intended, return it to us,"—can there be a question as to the course to be pursued?

There has been much correspondence, and, almost necessarily under the circumstances, much acrimony; I desire to avoid a closer scrutiny of the controversy, lest I should appear as a partizan, rather than as a commentator on the text placed before me; but I cannot refrain from the expression of regret that Messrs. Brown, Gillespie & Co. should have committed them-

selves to a course, which I feel all impartial readers of the correspondence must unequivocally condemn, and I venture even yet to entertain the hope, that their cooler judgment, and an appeal to their own high sense of rectitude, will induce them to take the course which justice and honor demand.

I am,

Yours very faithfully,

E. CARTWRIGHT THOMAS.

To MESSRS. KERR, BROWN & MACKENZIE,
Hamilton.

We forwarded copies of this correspondence to Messrs. B., G. & Co., with the result which appears in the following letters:

HAMILTON, Sept. 9th, 1870.

MESSRS. BROWN, GILLESPIE & CO.

Gentlemen:

The letter of Messrs. McInnes & Turner will explain to you the cause of delay in our endeavor to induce you to do us justice in the matter in dispute between us.

We feel called upon to submit for your perusal, copies of letters, which we have addressed to the above named gentlemen, and to Messrs. Hope and Sheriff Thomas, with their replies to the same.

The controversy, for some time past, has unfortunately ceased to be restricted to a mere money question, and could be no longer determined by the payment of our claim, we stand charged with being

wanting in strict commercial integrity and good faith towards yourselves, and in doing our best to get an unfair advantage over others, and unless these charges be unreservedly withdrawn, we have no alternative left to us but to submit your accusations and the whole of the correspondence to the *fiat* of public opinion.

We are,
Yours &c.,

KERR, BROWN & MACKENZIE.

HAMILTON, 10th Sept., 1870.

MESSRS. KERR, BROWN & MACKENZIE,
Hamilton.

Gentlemen:

Your letter of 9th inst. has just been received, and we return you the correspondence to which you refer, having really no time or inclination to peruse it.

In your letter to us in connection with this dispute, under date of 21st March last, you say: "Were the "money about to be distributed to creditors, we "should not be found opposing such an arrangement," and in our reply, we stated that it had been and still was our intention to do so. We purpose carrying this out, and must decline further correspondence from any one on this subject.

We can have no possible objection to the alternative you give us, of submitting the matter to the public.

We are,
Yours, &c.,

BROWN, GILLESPIE & CO.

We feel that we have no alternative but to submit the whole matter to the consideration of our friends, in the confident belief that we shall thus stand acquitted of the charges which Messrs. B., G. & Co. would exhibit against us; and with a view to explain the circumstances which have induced Messrs. Brown, Gillespie & Co, at length, to pledge themselves to the relinquishment of the monies which they have heretofore declared their intention to *retain*.

With respect to the question of the legality of our position, we refer not only to the letter of our solicitors, but also to the following case submitted to Mr. Edward Blake, and to his letter in reply:

CASE FOR THE OPINION OF MR. EDWARD BLAKE.

The firm of A. B. & Co. were endorsers upon a promissory note for $1000, made by the firm of C. D. & Co., which note had been discounted by a Bank, who were the holders at the time of the failure of C. D. & Co.

By arrangement between the two firms, one moiety of this note was to be paid by each, the same having been discounted for their mutual benefit, and half of proceeds received by each.

Were the Bank entitled to rank for the full amount against the estate of C. D. & Co.?

Assuming them to be so entitled, could a party taking the note by transfer from them, stand in their position and claim the full amount from the estate of C. D. & Co.?

Would the fact that such third party was cognizant of the agreement between the two firms, restrict his right to rank for the full sum?

Could an individual partner in the firm of A. B. & Co., taking by transfer from the Bank and using his own funds in the purchase, acquire the rights of the Bank and rank for the full sum against C. D. & Co., notwithstanding the agreement between the two firms?

Assuming your answer to the foregoing to be in favor of the Bank and its assigns so to rank, would a Court of Equity interfere to restrict them in the exercise of their legal rights?

TORONTO, 6th April, 1870.

Dear Sir:

RE A. B. CASE.

Our Mr. Edward Blake has requested us to send you his opinion in the above, which is as follows:

1. I think that under the circumstances set forth in the case stated, the Bank could rank upon the estate of C. D. & Co., for the full amount.

2. I think that the Assignee of the Bank could stand in as good a position as the Bank, in this respect, and could also prove against C. D. & Co., for the full amount.

3. I do not think that the Bank or the Assignee would be bound by the arrangement made between A. B. & Co. and C. D. & Co., so as to restrict, in any way, their right to prove for the full amount.

4. I think that at law, an individual member of the firm of A. B. & Co. could sue C. D. & Co. for the full amount; but after a very full investigation of the authorities, I cannot think it at all clear, that this partner could in equity be allowed to claim for the full amount, or to prove for such full amount. It would be allowing the one partner to do that which alone he could not; I see a great difficulty in the proposition that the one partner, bound in a partnership transaction not to sue C. D. & Co., can, by severing himself from his co-partners, do that alone which, joined with other two, he could not—my present view would be against this right—but it is doubtful.

5. I do not think a Court of Equity would interfere with the Bank or its Assigns, in proving for the full amount. It is another question to consider what rights the Court would allow to C. D. & Co. against A. B. & Co., in case the holder of the note recovers from C. D. & Co. more than the one-half of the note—upon this point, I think a court of equity would interfere, in favor of the representatives of C. D. & Co., and cause A. B. & Co. to contribute their proportion of this indebtedness.

Yours truly,

BLAKE, KERR & BOYD.

To G. W. BURTON, ESQ., Q.C.,
Hamilton.