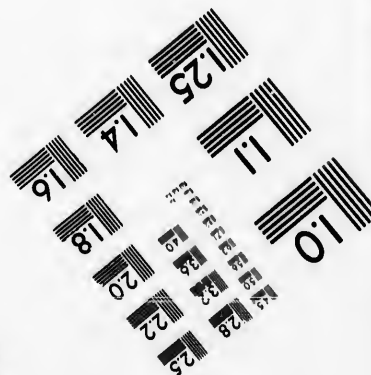
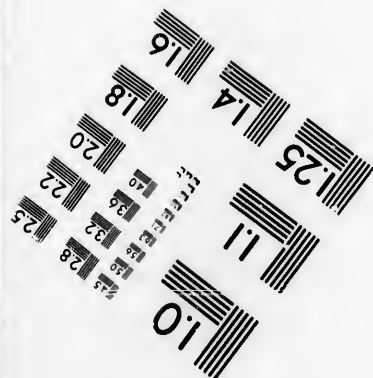
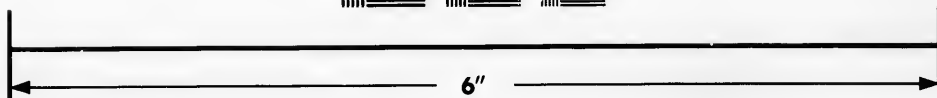
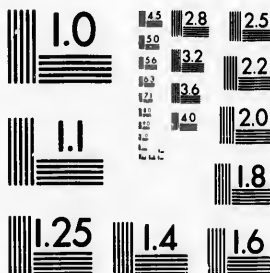


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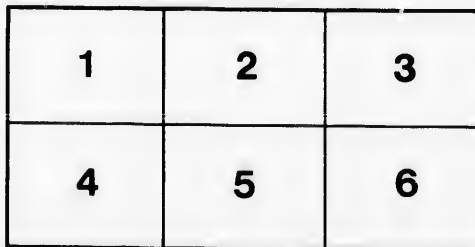
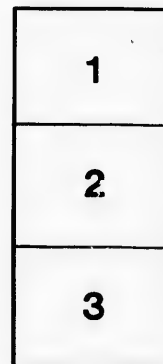
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A LETTER
RELATIVE TO
BANKING INSTITUTIONS
IN CANADA:

By MAURICE MASK, Esquire.

TO WHICH IS ADDED,
CHIEF JUSTICE SEWELL'S
PROTEST.

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LETTER

TO A FRIEND IN NOVA-SCOTIA

RELATIVE TO

BANKING INSTITUTIONS

AND OTHER

JOINT STOCK COMPANIES

IN

CANADA:

By MAURICE MASK, Esquire.

Hic niger est ; hunc tu, Romane, caveto.—Horace.

MONTREAL:

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A LETTER TO A FRIEND IN NOVA-SCOTIA.

DEAR SIR,

IN asking my opinion relative to Banking associations in the Canadas, and particularly as to those of this city, I fear you have imposed a task upon me which I shall not be able to discharge much to my own satisfaction, or to yours, within the compass of a reasonable letter; but as far as I am able to judge of their tendency, operation, and legality, and as far as I have been informed of their practices you are welcome to all I can tell you. If in your province, the evil consequences that have ensued in this, from precipitancy, self-sufficiency and avarice, in the management of those institutions, can be eschewed from our example, it may be recorded as the principal if not the only good that the Banks in Canada have produced.

THAT banking establishments may be rendered eminently useful in all commercial countries, when under proper management, and sufficiently *under the surveillance of the mercantile interest and of the government*) not to be able to assume to dictate to either,) cannot be denied, whilst on the other hand they may, if conducted on contrary principles, be productive of incalculable evil, and become what I think I shall succeed in proving ours to be both in law and in fact *common and public nuisances*.

THE evils they have occasioned and may produce will not be removed by the acts of Incorporation that have been applied for to our Legislature ; they might be in part remedied by the banks being bound hand and foot as it were, and by their mode of transacting business being regulated by an act of the Legislature, entering into the various minutæ of their operations, for which an act would be required like the Arabian Tales of one thousand and one sections ; but the very putting of any kind of trammels on such operations must paralyze them nearly into a state of annihilation. The main objection is to the very essence of them, that is to the association of a number of *mercantile* individuals for the purpose of monopolizing all the money and exchange business of the country, and controuling the whole remainder of the trading community. "Reform it altogether" is the only way. Put the laws in execution for their suppression and hold out encouragement for individuals or partnerships of from two to six persons (to which number the British laws have wisely restricted all private banking societies) to establish banks upon the same principles as the country bankers in England, and private bankers in London.

IN a new country like this, some danger was to be apprehended in establishing associated banks, from its throwing into our circulating medium several hundred thousand pounds more than existed before, being just so much more than had been previously found sufficient for the wants of trade. Nevertheless, thanks to the operations of our banks we have now less than the usual and requisite amount of circulating medium ; for specie has in a great measure disappeared, and the natural ti-

midity and prejudices of the Canadian population, added to the equivocal nature of our bank bills, and the facility with which they have been counterfeited, prevent bank paper as a substitute for specie from circulating any where but in the precincts of Montreal and Quebec. Whilst the banks were engaged in putting their notes in circulation, they were equally busied in purchasing up our specie, and sending it to a foreign market. How this will operate in the end I do not know, perhaps the country being now pretty well drained of Spanish dollars and American gold, (the species of coin they preferred to trade in,) and the demand for dollars having for the present decreased in the United States, the evil may cure itself; unless they should discover that some other description of specie will bear a premium in the States and fall to exporting it; in which case, the Lord have mercy upon us!!* This specie trade raised at one time a pretty hubbub amongst us. A knowing one aware that the French half crowns had fallen ten per cent. in value in the United States, started off and brought a cargo of them to Canada where they retained and still retain their original legislative value of 2*s*. 9*d*. Halifax. These he paid into the banks and the amount was placed to the credit of his account, which he then drew out in checks in the usual form and thus converted them into other specie. The bank directors having discovered that he had got the weather-gage of them, and being averse to competition in the specie trade, and mortal

* Since the above was written guineas and every species of heavy gold have become objects of speculation. In a country having no mint of its own and where the coins of other countries alone circulate, the same law which makes any coin current ought to prohibit its being dealt in as merchandise.

enemies to the maxim "live and let live," then adopted the illegal resolution of refusing to receive the half crowns at their legal rate. Now came the "hurly burly." They made a bold push at once, condemning this species of coin as nothing but old silver and refused to receive or pay them. It was nothing to them that they had been made a legal tender by an act of the Provincial Parliament. Their High Mightinesses seemed to view it as derogatory to their dignity to be bound by any such enactment; and as their original association was contrary to law, they appeared to consider themselves above the law in acting under it. This was followed by a puzzling, tantalising, contradictory conduct between the banks—one would not receive the half crowns as a deposit—the other would not take them in payment of bills due to them—one would receive them in payment but "did not like them"—the other would not receive them until tendered in due legal form by a notary public, whose august presence (strange to tell) had a greater influence on them than the law of the land. A legal decision put an end to the question as to the value at which half crowns were to pass; but this childish game was carried on till it produced an open rupture between our two banks. The smothered flame of jealous rivalry which had been gendered from the time when a second bank was talked of, burst out and in the arrogance of seniority, and reputed greater wealth and influence, one bank refused to take the bills of the other. This was a scheme the effects of which, by cutting off the nose to be revenged on the face "there needed no ghost come from the grave to tell us." The bank whose bills were thus stigmatised, collected all those of the other, on which they could lay their hands,

put their own bills into circulation in their place, and then instead of settling the balance at stated times between the two banks, as was before customary, when probably only a comparative small amount would be due from one to the other, the senior bank had to pay all their notes which the other held in hard cash. Had this magnanimous plan been carried on for a short time longer it would have drained the vaults of one bank of all their specie, and extensively circulated the bills of the other. But, would you believe it my dear Sir ? such was the petulant animosity with which this *bellum Bancorum* was carried on, that when this wise measure recoiled upon the devisers, a kind of tacit understanding, little short of a conspiracy, was entered into by some of the directors of one bank (mark, not all) not to make any payment to any person concerned with, or keeping cash at, the other bank, in the usual way by checks on their own bank, by which their bills or specie would get into their opponent's hands, but to pay them in the bank bills of the other bank, a quantity of which they procured and hoarded up for that special purpose !

SUCH was the first memorable fracas between these rival institutions. It is now over, and tranquility is restored to the moneyed public, but at the expense of a good deal of trouble and inconvenience at the time.

THIS relation will give you some idea of the talents of our bank directors as such ; but independent of this, their situations and occupations in life render them ill qualified to act in that capacity. Do not conclude from this that I mean any imputation against those gentlemen, in any other station than in their official seats at the

board of Directors. They are all respectable, "all honourable men," and men to whom the country is much indebted in various degrees, but not as bank directors. They are, with few exceptions, all mercantile men and engaged in various commercial pursuits, which is alone, be their talents what they may, incompatible with the impartial discharge of their duty as bank directors. They assemble in secret conclave twice a week, the bills sent in for discount are presented before them, they thus get acquainted with the moneyed transactions of all who apply, and this united with the information they get as to the other parts of the business of the applicants from their counting house and shop intercourse, totally destroys that secrecy which has been aptly termed "the soul of business." This puts every man who stands in need of an accommodation by the banks, under contribution to their good will, and may place him at the mercy, and subject him to the whims or caprice, of a competitor in the same trade. It has been said (but I do not vouch for the truth of it,) that the credit and circumstances of men are as freely discussed at these meetings as a piece of scandal at the tea table of an old maid. There is a tacit understanding amongst themselves, that whatever passes in the director's room is *sub rosa*, but out it comes by some means or other, and if the unfortunate fellow whose bill has been rejected, does not hear of it from some good natured friend to whom a director has told it as a *great secret*, he will soon discover it from the looks and demeanour of the first director he goes to make a purchase from, unless he carries the cash in his hand. It is said moreover that from the mutual hostility of the banks if you look into the black book (i. e. a book in which the names of persons whose notes are

decreed *not* to be discounted are entered) of the one bank, you will find it filled with the adherents and friends of the other and *vice versa*. Nay, not only is the note of hand of such a person stamped with disgrace, but even it is said if a bill with undoubted names, names of friends and customers of the bank sitting in judgment, comes before them, if it be contaminated by an endorser who belongs to the other party away with it—it is consigned to reprobation. The bank directors being engaged deeply in commerce they themselves occasionally require discounts from the banks. It has been said that when an application for perhaps a large sum has been made by one of them, the rest do not like to refuse, as it may happen that he may have to serve some of them a similar good turn at a future day. The director in question gets it; the amount he requires being large, swallows up all the funds the bank had for the purposes of discount that day, and many demands made for smaller sums are declined, and people equally in their respective lines deserving of credit with him, have their bills thrown out, their views disappointed, and perhaps from inability to meet a present pressing demand, their credit irrecoverably shaken; and all because they happen not to be bank directors or rather because they who are so are engaged in commercial transactions. On the same principle of “claw me, and I’ll claw thee” it is even said, that when from some explained or unexplained motive, one director is desirous of having a particular name put on the black list, his co-assessors do not object, trusting that when they have any avowable or unavowable cause to desire the same thing, they will find an equally compliant board. Nor is it any merit in a person so black-balled that he has never had a note

protested nor ever suffered a creditor to ask twice for his money, nor ever required one day's extension of time ; if the fiat has gone forth, he is cast out from the hallowed sanctuary of bank favorites, and it is decreed that " there is no health in him."

Thus you see, this clashing of interests and union of duties whilst it produces disappointments to others draws together the parties themselves in closer bonds. It has been alledged (for what will not scandal say ?) that some of the directors (who by their articles of association must be stock-holders) have got bills discounted, and had cash lent on the credit of the stock they held. In such a case do you think they were stock-holders ? or men of straw ? Another evil which both affects the prosperity of the banks, and the convenience of the public, arising from the narrow prejudices of our bank directors, is, that they have foolishly made it a rule not to discount bills for, or have any dealings beyond the receiving deposits, with persons not in trade* An ounce of knowledge and experience would have told them, that far the largest and best customers, of all banks and bankers, are people not in trade, landholders and others ; besides how absurd to suppose that none but persons in trade have occasion to draw, accept or endorse bills, that A because he lives in the country, and keeps neither store nor counting house, is less solvent than B. who sells tape by the yard or sugar by the pound !!

* A similar regulation exists respecting gentlemen of the law. But for this there may be some reason being conscious of the illegality of these institutions, there might be some risk in their coming in contact with men who practice law.

THESE you will perceive, are a few of the disadvantages arising from mercantile men being bank directors, and many others may occur equally injurious to the institutions and the public. It is usual whenever any proposal is made in parliament, tending to tie up the hands of ministry to curtail the power of the judges or officers of state, or even to restrain the royal prerogative to premise that the present ministers, judges or sovereign as the case may be, are all "good men and true," but that such restraints are necessary to guard against the future abuse of power, and this salvo is always taken as it is meant, as words of course; so in the instance under contemplation I beg to declare that the present men are all just and true, wellmeaning, and though forming a defective and imbecile board, yet not individually or willfully blameworthy. But who knows how soon an avaricious or unprincipled character may creep in. Such a man would, if he knew it was to make a fortunate speculation, prevent another from getting the loan of a little money for the purpose, rise from the director's board and go and make the purchase himself. Such things I say may happen and ought to be guarded against.

IN the present state of this country, and in that in which it must necessarily be for some years to come, the demand for foreign articles will exceed the value we can export to pay for them. The difference must be remitted in bills of exchange. Whatever will encrease the premium on these bills ought to be guarded against as it still encreases the balance of trade against the country. As our banks have acted they have encreased the premium considerably beyond its natural rate. When government wanted money in former times, bills were

generally at a discount, because few were making remittances in proportion to the amount necessary to pay the military establishment. Since the banks have laid hold of this branch, bills on England have invariably brought a premium, and will continue to do so. The Commissary General when in want of money advertises government bills for sale. The banks who have the command of cash, give in their offers, and a bargain is closed on the most favourable terms they can. By this means, and by having the sale of the bulk of the bills which the directors (the chief private drawers) have to pass, they become the holders of almost all the disposeable exchange, and merchants when they have to make a remittance, must purchase of them at the premium they choose to exact. In all cases the banks will demand a profit in addition to what it would have cost the remitter had he bought it at the first hand, had not the banks stepped forward and forestalled the market. I believe there are instances in which the banks on finding exchange brought a higher price in the United States have carried it there for sale; so that the Canada merchant had to pay not only the price exchange brought here, but also the highest rate which could be procured for it at New-York or Boston.

TRADING in specie (not the current coin of the country) is undoubtedly a legitimate pursuit for bankers, though in the mother country very few besides the bank of England purchase and sell bullion. Although there too, no public banks, and very few private ones, meddle with foreign exchanges, bills of exchange are equally a fair object for banking operations; but it is the Jewish traffic in the circulating medium, the abuse of these pur-

suits in forestalling, monopolizing, and controuling the transactions in them, which would otherwise be as it were *ferè natura*, and the system which our banks have practised with the view of enriching the few at the expense of the many, which have tended in the words of an act of Parliament I shall presently have occasion to quote, *to the common grievance, prejudice, and inconvenience of His Majesty's subjects, or great numbers of them, in their trade, commerce, exchange, and other lawful affairs.*

It will appear singular to you that schemes carried on in this way should ever be countenanced by the public, or that they should ever have attained the credit and consequence requisite to form any thing in the shape of a banking establishment. The first may be accounted for from the general embarrassment which prevailed, and the deceptive liberality of the banks in the outset, which drew many of the unwary into their books, who have never yet been able to extricate themselves. Such persons being still under the weight of their power, prefer being quiet, as they know they cannot with impunity either oppose or expose their conduct. To their first establishment many things concurred. Monied men who saw and felt the depressed and declining state of commerce, were anxious to embark their capitals in any undertaking whence a reasonable recompence could be expected, and they did not trouble themselves to enquire how that return was to be made. In this way they readily grasped at the idea of instituting banks, as an object which had the chance of meeting their expectations. The designing and ambitious saw in them the means or the contingency of becoming personally the masters of their neighbours' secrets and trade, by those means of

which a glimpse has before been given. The indolent or those who had more profitable ways of employing their clerks than in counting quarter dollars and York shillings, saw that by the banks they would have their labours abridged and their expenses curtailed. The needy looked forward to liberal discounts and abundant accommodation. These motives operated with some, with others of a cautious temper a different or additional inducement was required, to reconcile them to the establishment of banks. They knew that one effect of the want of a charter was to make the stockholders liable for the whole debts of the bank to the whole amount of private property they might have, and as no charter of incorporation was obtainable,* the fear of involving themselves beyond the amount of their shares, should any untoward accident happen to the banks, prevented many from readily joining in the scheme. To reconcile these people, and (as they thought or alleged) for their own safety, the more zealous advocates for a bank proposed one of the articles of association, by which "the joint stock shall alone be responsible for the debts and engagements of the company, and that no person who shall or may deal with the company, or to whom they

* The bills introduced in the House of Assembly in the sessions of 1817-18, and also those in the session of 1820-21, for the incorporation of the Lower-Canada banks, though they passed the Legislative Council, have met the fate of being reserved for his Majesty's approbation. In this way the bills of 1817-18 have been allowed to die the death of oblivion, and the same fate may be predicted of the more recent bills. A strong protest, it is said, was entered against them in the Council by the first law authority in the country, the Chief Justice of the Province.

" shall or may become in anywise indebted, shall on any
 " pretence whatever have recourse against the separate
 " property of any present or future member of the com-
 " pany, or against their persons, further than may be
 " necessary to secure the faithful application of the funds
 " thereof to the purposes to which by these presents
 " they are liable. But all persons accepting any bond,
 " bill, note, or other contract of this company, signed
 " by the president and countersigned or attested by the
 " cashier of the company for the time being, or dealing
 " with it in any other manner whatsoever, thereby re-
 " spectively give credit to the said joint stock or pro-
 " perty of the said company, and thereby respectively
 " disavow having recourse, on any pretence whatever,
 " to the person or separate property of any present or
 " future member of the company, except as before men-
 " tioned." This article then goes on to dictate to the
 Courts of law, and says that "all suits to be brought
 " against the company SHALL be brought against the
 " president for the time being," and "in case of any
 " suit at law, the president for the time being SHALL
 " have full power in his own name, and in behalf of the
 " company to prosecute to judgment and execution,"
 concluding, in the face of common sense and statute
 law, "it being expressly understood that all persons
 " dealing with the said company agree to these terms,
 " and are to be bound thereby." Absurd and illegal as
 this article is, the next exceeds it in absurdity and ille-
 gality. By it "for the information of all persons who
 " may transact business with, or in any manner give
 " credit to the company, every bond, bill, note, or other
 " instrument or contract, by the effect or terms of which
 " the company may be charged or held liable for the

" payment of money, shall specially declare, that pay-
 " ment shall be made out of the joint funds of the company,
 " according to the present articles of association, and not
 " otherwise." And it is declared " that no engagement
 " can be legally made in the name of the company un-
 " less it contain a limitation or restriction to the effect
 " above recited, and that the company expressly disavow
 " all responsibility for any debt or engagement which
 " may be made in their name, not containing a limitation
 " or restriction to the effect aforesaid."

It is a maxim in law (and those who deny maxims
 cannot be argued with) that no person can bind himself
 to do any thing contrary to law, and that no agreement
 or part of an agreement, or contract, that is contrary to
 law can be valid, but is from that circumstance utterly
 void and of no force against either party. Now, both
 by the common and written law of England, and by the
 civil law, on which the French laws are founded, every
 person concerned in an undertaking is liable for the full
 extent of that undertaking, and for all the claims that
 may be made upon it. So says likewise the *lex mercatori*,
 or custom of merchants, and the laws and usages relative
 to trade in Holland, and of the Hanse towns. To fancy,
 therefore, that such clauses as have been introduced into
 the articles of association of the Canada banks, which
 are contrary to law, could be binding either upon these
 companies, or upon any one who had a claim upon them,
 seems preposterous. A man may certainly in some cases,
 sign and be bound by a defeasance of his own rights,
 and the bank-customers who have signed the agreement
 inserted in their bank-books, as is practised here, to
 abide by those articles of association which I have been

quoting may probably be held to the tenor of them : but nothing upon earth could extend this to the holders of bank bills, who could not, supposing even the articles in question to be unobjectionable in point of legality, by any latitude of construction be converted into persons dealing with the company.

Be this as it may, in pursuance of those sage articles of association a clause was inserted in the bank-bills, as a salvo specifying that the bills are to be paid "*out of the joint funds of the association, and no other,*" implying that the private property of the stockholders was not answerable for the payment of the bills they might issue ; and that on an emergency they might evade the payment of the bills by the simple answer that "there are no funds belonging to the association." That such an answer is not an impossible one, however wealthy the individuals may be who compose the banks, or in whatever high degree of credit the banks may stand with the public will be evident from the following supposed case. Should, at a time of war with the United States, an actual invasion of the Province take place : and, under the fear of the vaults being robbed by the enemy, suppose a general meeting of the directors resolve that each shareholder should be allowed to withdraw from the banks either the whole or a part of his capital paid in, and that the shareholders did so, and carried off each his quantum of specie ; then there would be the answer ready, "there are no joint funds of the association in the chest," and as the stockholders do not consider themselves liable for the debts of the bank, the holders of bankbills might go whistle.

To return to my narrative, this evasive and ambiguous clause had however the desired effect. It lulled the doubting into security and raised the desire for banking, so that all ran full tilt in favour of the erection of banks upon these preposterous principles. The "still small voice" of reason was not heard, or was drowned by clamour and bold assertion—the necessary number of shares to enable them to commence operations was soon subscribed and their famous notes made their appearance. Here again they were met by the genius of commercial law who plumply told them that according to the *coutume de change* (generally received as the law of exchange throughout the commercial world) and to the law of England as established by precedent and analogy, no bill or note containing any species of condition, clause or proviso, or which was any other than an absolute unconditional and peremptory warrant or engagement to pay a specific sum of money, at a specific time and to a specific party, could be considered as a bill or note according to the custom of merchants, or within the meaning of any law or usage relative to bills of exchange and notes.—Still they went on sinning against conviction, and they inundated the country with a *monstrous mongrel anomalous abortion of bank paper*, totally unknown before, not expressing even the essential averment of "value received"* and which has no specific designation in legal process. You will have heard of the opinion delivered some time ago in Court here, from which it appears this clause relative to the joint funds of the association is a

* There is moreover a Provincial ordinance which directs that the words "value received" must be inserted in every note or bill to render it valid. Their later bills contain this essential clause.

mere farce. Each and every stockholder and every man who can be proved to have been one, and who has not given public intimation of his ceasing to be so, according to the law and practice in such cases, is liable for the due payment of these bills to the last shilling of property he possesses. It is true that in the legal questions that have hitherto arisen in which the merits of the bills of our banks have been involved, no decision has taken place, as to the mode in which the amount might be recoverable from the bank or from the stockholders; nor as to the real validity of them as notes or bills, (that they are a security for money is not denied, but so are many things that are not valid as bills) those vital questions having been blinked at, as there were always other points on which the decisions could turn so as to avoid them. But if it ever comes to issue and it is most likely to do so in criminal* cases, I will venture to predict that these notes would be solemnly declared to possess no more intrinsic value than that of the paper and the ink, and to be nothing more at best than very ill designed engravings of about the value of penny cuts printed for the amusement of children.

It is the invariable practice of all banking institutions in the mother country, that whenever a forgery is com-

* The prosecutions which the Banks have instituted against the utterers of the counterfeits of their famous notes, have all ended as yet in indictments for misdemeanors, in obtaining money or effects under false pretences. If they would but have the courage to bring one capital indictment against either a forger or utterer of their mongrel bills, they would probably be convinced from the result of such a prosecution, that their paper is merely paper, and that waste paper too but they dont wish to risk the question.

mitted on any of their plates—they immediately give the public notice of it—call in all the notes of that plate they may have in circulation—and put an end to the injurious consequences which might result both to the public and themselves from more of such counterfeit notes getting abroad by condemning the plate—with our banks the practice is different.—Although several forgeries have been committed, there is no word of cancelling the plates so forged nor of calling in these notes. When ever any person, who gets such a forged note on presenting it at the Bank, the word counterfeit is written or stamped upon it and the holder must pocket the affront without even the proper means being used to protect him against a similar loss.

From the unacknowledged consciousness of these circumstances, no doubt arises in a great measure the anxiety that is evinced to get acts of incorporation as the only means of self-preservation. How far such acts when obtained may operate to salve the sore places, or to cure the radical defects in the constitution of these associations; and in how far the provincial government even may have the power of complying with these wishes will best appear from the following abstracts from the acts of the British Parliament referable to this subject.

You know my way, to read a little of every thing as it comes before me, at my leisure moments. Sometimes logic, sometimes history, sometimes a little law, and the following which lately occurred in the course of my morning's reading (as a noble Lord used to say,) I think applicable to your queries.

IN Act 6, George I. cap. 18, which is by 14 George II. cap. 37, extended to America enacts as follows, viz.

§ "AND whereas it is notorious that several undertakings or projects of different kinds have been publicly contrived and practised, or attempted to be practised within the city of London, and other parts of this kingdom, as also in Ireland, and other his Majesty's dominions, which manifestly tend to the COMMON GRIEVANCE, PREJUDICE AND INCONVENIENCE of great numbers of your Majesty's subjects in their trade and commerce and other their affairs: and the persons who contrive or attempt such dangerous and mischievous undertakings or projects under false pretences of public good, do presume according to their own devices and schemes to open book: for public subscriptions and draw in many unwary persons to subscribe therein towards raising great sums of money, whereupon the subscribers or claimants under them do pay small proportions thereof; and such proportions in the whole do amount to very large sums; which dangerous or mischievous undertakings or projects do relate to several fisheries and other affairs, wherein the trade, commerce and welfare of your Majesty's subjects or great numbers of them are concerned or interested; and whereas in many cases the said undertakers or subscribers have presumed to act as if they were corporate bodies, and have pretended to make their shares in stocks transferable or assignable without any legal authority either by Act of Parliament or by any Charter from the Crown for so doing; and in some cases the undertakers or subscribers have acted or pretended to act under some charter or charters formerly granted by the Crown for some particular or special purposes therein expressed, but have used or endeavoured to use the same Charters for raising joint stocks and for making tra

or assignments, or pretended transfers or assignments for their own private lucre, which were never intended or designed by the same charters respectively; and in some cases the undertakers or subscribers have acted under some obsolete charter or charters, although the same became void or voidable by non user or abuser, or for want of making lawful elections which were necessary for the continuance thereof; and many other unwarrantable practices (too many to enumerate) have been and daily are, and may hereafter be contrived, set on foot or proceeded upon to the ruin and destruction of many of your Majesty's good subjects if a timely remedy be not provided: And where-as it is become absolutely necessary, that all public undertakings and attempts tending to the COMMON GRIEVANCE, PREJUDICE AND INCONVENIENCE of your Majesty's subjects in general or great numbers of them in their trade, commerce or other lawful affairs, be effectually suppressed and restrained for the future by suitable and adequate punishments for that purpose to be ascertained and established. Now for suppressing such mischievous and dangerous undertakings and attempts, and preventing the like for the future. May it please your most excellent Majesty, &c. that it may be enacted, and be it enacted, &c. That all and every the undertakings and attempts described as aforesaid, and all other public undertakings and attempts tending to the COMMON GRIEVANCE, PREJUDICE AND INCONVENIENCE of his Majesty's subjects or great numbers of them in their trade, commerce or other lawful affairs, and all public subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever for furthering, countenancing or proceeding in any such undertaking or attempt, and more particularly the acting or presuming to act as a corporate body or bodies, the raising or pretending to raise

transferable stock or stocks, the transferring or pretending to transfer or assign any share or shares in such stock or stocks, without legal authority either by act of Parliament, or by any charter from the Crown to warrant such acting as a body corporate or to raise such transferable stock or stocks, or to transfer shares therein, and all acting or pretending to act under any charter formerly granted from the Crown for particular or special purposes therein expressed by persons who do or shall use or endeavour to use the same charters for raising a capital stock or for making transfers or assignments or pretended transfers or assignments of such stock not intended or designed by such charter to be raised or transferred, and all acting or pretending to act under any obsolete charter, become void or voidable by non user or abuser, or for want of making lawful elections which were necessary to continue the corporation thereby intended, SHALL FOREVER BE DEEMED TO BE ILLEGAL AND VOID, and shall not be practised or in any way put in execution.

§ 19. And be it further enacted, &c. *That all such unlawful undertakings or attempts so tending to the common grievance, prejudice and inconvenience of His Majesty's subjects or a great number of them in their trade, commerce or other lawful affairs, and the making or taking any subscriptions for that purpose, the receiving or paying away money upon such subscriptions, the making or accepting of any assignment or transfer or pretended assignment or transfer of any share or shares upon any subscription, AND ALL AND EVERY OTHER MATTER AND THING WHATSOEVER FOR FURTHERING COUNTENANCING OR PROCEEDING IN ANY SUCH UNLAWFUL UNDERTAKING OR ATTEMPT, and more particularly the presuming or pretending to act as*

incorporate body or to raise a transferable stock or stocks, or to make transfers or assignments of any share or shares therein without such legal authority as aforesaid, and all acting or pretending to act under any charter formerly granted from the Crown for any particular or special purposes therein expressed, by persons making or endeavouring to make use of such charter for any such other purpose not thereby intended; and all acting or pretending to act under any such obsolete charter as is before described; and every of them shall be deemed to be a PUBLIC NUISANCE AND NUISANCES, and the same and all causes, matters and things relating thereto, and every of them, shall for ever hereafter be examined, heard, tried, and determined as COMMON NUISANCES, and are to be examined, heard, tried, and determined by or according to the laws of this realm, and all offenders therein being thereof lawfully convicted upon information or indictment, in any of His Majesty's Courts of Record at Westminster, or in Edinburgh, or in Dublin, shall be liable to such fines, penalties and punishments whereunto persons convicted for COMMON AND PUBLIC NUISANCES are by any of the laws and statutes of this realm subject and liable; and moreover shall incur and sustain any further pains, penalties and forfeitures as were ordained and provided by the statute of Provision and PROEMUNIRE made in the sixteenth year of the reign of King Richard II.

§ 20. And be it further enacted that if any merchant or trader shall suffer any particular damage in his, her or their trade, commerce or other lawful affairs, by occasion or means of any undertaking or attempt, matter or thing, by this act declared to be unlawful and will sue to be relieved therein, then and in every such case such merchant or trader shall and may have his or their re-

remedy for the same, by an action or actions to be grounded upon this statute, against the persons, societies, or partnerships, or any of them, who contrary to this act shall be engaged or interested in any such unlawful undertaking or attempt; and every such action or actions shall be heard and determined in any of His Majesty's Courts of Record aforesaid, wherein no assien, protection, wager of law, or more than an imparlance shall be granted or allowed; and in every such action the plaintiff shall and may recover *treble damages with full costs of suit.*

By Sect 21. Any broker bargaining, selling, buying or purchasing, or agreeing for the bargaining, selling, buying or purchasing any share or interest in such undertakings, or any stock or pretended stock, of such undertakers, *shall be incapable of acting as a broker for the future, and shall forfeit 500l. one moiety to the King and the other to the informer.*

Here strong enactments to form part of the act which established two Insurance Companies in London: let us now see what induced the Legislature specially to extend this law to the Colonies, although even without that extension the act seems by the words "other His Majesty's dominions," to have contemplated all the territories belonging to the Crown of Great-Britain.

THE 14th of George II. cap. 37, is entitled *An act for restraining and preventing several unwarrantable schemes and undertakings in His Majesty's Colonies and Plantations in America.* The preamble recites verbatim the 18th, 19th and 20th sections of the preceding statute; and

then as if the act was made in 1818 instead of 1740, and had been occasioned by the banking associations in this country, it proceeds thus: "*and whereas persons have presumed to publish in America a scheme for supplying a pretended want of medium in trade by setting up a bank on land security, the stock of such bank to be raised by public subscription for large sums of money whereof small sums were from time to time to be paid in and by the particular subscribers and to be managed by directors, treasurer and other officers, and dividends to be made as therein mentioned; and the said company of subscribers were to promise to receive the bills which they should issue for and as so much lawful money as should be therein respectfully mentioned in all payments, trade and business; and after the expiration of twenty years to pay the possessor the value thereof in manufactures; and sundry other schemes, societies, partnerships or companies have been and may be set on foot in America for the purpose of raising PUBLIC STOCK OR BANKS AND UNLAWFULLY ISSUING LARGE QUANTITIES OF NOTES OR BILLS THERE contrary to the true intent and meaning of the said recited act; and whereas doubts have arisen whether the said recited act doth extend to, or can be executed in His Majesty's dominions, colonies, and plantations in America, in regard that the information or indictment against the offenders therein mentioned, and likewise the actions to be grounded upon that act and thereby given to the merchant or trader who should suffer any particular damage were appointed to be heard and determined in some of His Majesty's Courts of Record at Westminster or in Edinburgh or in Dublin, so that the said act without further explanation or amendment may not be sufficient to suppress and prevent THE MISCHIEVOUS AND DANGEROUS UNDERTAKINGS AND ATTEMPTS therein mentioned, and thereby designed to be prevented and suppressed; For*

remedy whereof may it please your Most Excellent Majesty, that it may be declared and enacted, and be it declared and enacted, &c. *That the said recited act, and all and singular the paragraphs, clauses and expressions therein contained for suppressing, restraining or punishing the extravagant or unwarrantable practices therein mentioned, DID DO, AND SHALL EXTEND TO, AND ARE AND SHALL BE IN FORCE AND CARRIED INTO EXECUTION IN ALL AND EVERY HIS MAJESTY'S DOMINIONS, COLONIES AND PLANTATIONS IN AMERICA, and all and every the undertakings, attempts, matters and things in the said recited act mentioned or described and prohibited to be acted, done, attempted, endeavoured or proceeded upon within the city of London and other parts of this Kingdom, as also in Ireland or other His Majesty's dominions, AND ALL OTHER THE UNDERTAKINGS, ATTEMPTS, MATTERS AND THINGS HEREIN BEFORE MENTIONED OR DESCRIBED, ARE AND SHALL BE DEEMED TO BE ILLEGAL AND VOID IN HIS MAJESTY'S DOMINIONS, COLONIES AND PLANTATIONS ALSO, and shall not there be practised or in any wise put in execution; and that all offenders against the said recited or this present act, being thereof lawfully convicted upon information or indictment in any of His Majesty's dominion, colonies or plantations in America, shall be liable to such and the like fines, penalties and punishments whereunto persons convicted in Great Britain for COMMON NUISANCES, are by any of the laws or statutes of this realm subject or liable and moreover shall incur and sustain any further pains, penalties and forfeitures, as were ordained and provided by the statute of provision and PROEMUNIRE* made in the sixteenth year of the*

* The statute of Proemunire ordains that all who incur the pains and penalties thereof shall be put out of the King's protec-

reign of King Richard the second; and that if any merchant or trader hath suffered or shall suffer any particular damage in his, her or their TRADE, COMMERCE, EXCHANGE OR OTHER LAWFUL AFFAIRS, by occasion or means of any undertaking or attempt, matter or thing carried on, attempted or done in America, and by this or the said recited act declared to be illegal, and will sue to be relieved therein, then and in every such case, such merchant, trader or other person shall and may have his, her or their remedy for the same by any action or suit grounded upon this act against the respective persons, societies or partnerships or against ANY ONE OR MORE OF THE PERSONS WHO CONTRARY TO THIS ACT HAVE, OR HATH BEEN, OR SHALL BE ENGAGED OR INTERESTED IN ANY SUCH UNLAWFUL UNDERTAKING OR ATTEMPT, and every such action or suit (for what hath been or shall be so undertaken, carried on, attempted or done in America,) shall be heard and determined in any of His Majesty's Courts of Record within any of His Majesty's dominions, colonies or plantations in America, and in every such action and suit the plaintiff (in case he or she recover) may and shall recover TREBLE DAMAGES WITH FULL COSTS OF SUIT.

§ 2. And be it further enacted, &c. That all and every person and persons whatsoever, who shall be possessed of or entitled to any promissory note or notes, bill or bills which have been or shall be issued by any such societies, partnerships or

tion and for ever thereafter be incapacitated from holding any office of trust or emolument, shall forfeit all their property to the King and shall moreover be imprisoned during life, with the severe addition that the King shall not have the power of pardoning them. The highly penal nature of this statute has rendered it nearly a dead letter, but no law can be said to be obsolete, all which is not repealed is in force.

companies of persons in America shall and are hereby empowered to commence or bring at any time hereafter his, her or their action or suit in any Court of Record in any of His Majesty's dominions, colonies or plantations in America against the respective persons, societies, partnerships and companies who have or shall issue such notes or bills, or against any one or more of the persons who have been within the space of six years last past, or shall be hereafter engaged or interested in any such unlawful undertaking or attempt, or who shall have signed such note or notes, bill or bills, in order to recover present payment in lawful money of the full sum mentioned or expressed in such note or bill, to which payment EVERY SUCH PERSON IS HEREBY DECLARED TO BE PERSONALLY LIABLE, and in such action or suits the plaintiff or plaintiffs shall recover and have judgement for immediate payment by the defendant or defendants in lawful money of the full sum mentioned in such note or bill together with lawful interest for the same, from the day of the date of such note or bill with full costs of suit, though the time limited for payment according to the tenor of such note or bill shall not be come or past.

§ 3. Provided always that nothing herein shall extend or be construed to extend to inflict any of the fines, pains, penalties, forfeitures, punishments or treble damages aforesaid upon any person or persons whatsoever, who have or hath attempted, promoted, undertaken, assisted or carried on in America any of the matters or things declared to be illegal and void by this or the said recited act, if such person or persons does or do within ten days after demand made pay and discharge such sum or sums of money respectively as shall be secured or made payable by such note or notes, bill or bills. AND DESIST

FROM, GIVE UP, RELINQUISH AND WHOLLY FORBEAR TO ACT FURTHER IN ANY SORT DIRECTLY OR INDIRECTLY IN ANY SUCH MATTER OR THING ON OR BEFORE THE TWENTY-NINTH DAY OF SEPTEMBER, ONE THOUSAND SEVEN HUNDRED AND FORTY ONE, any thing herein contained to the contrary notwithstanding.

THESE acts I think speak for themselves. There would not be wanting in England *qui tam* attorney to bring actions and make their fortunes by penalties or compromises were such *nice sauces* erected there. You will perceive they apply equally to other joint stock companies, and would affect the Fire Insurance company as well as the banks; but your queries having been confined to the latter I will not lengthen this epistle, already too long, by any observations on the former, though many both with regard to their constitution and the mode in which they have been conducted occur to me as do likewise several relative to the *soi disant* Savings Bank here which has already so widely departed from the principles it set out with, and which form the basis of the parent institution of the same denomination at home.

I will conclude by expressing my hopes that from the delineation here given, the wise heads with you may avoid the rocks on which our wise acres here split, and may be warned in the words of Horace,

Hic niger est ; hunc tu, Romane, caveto.—Horace.

I remain, Dear Sir,

Your obdt. servant,

MAURICE MASK.

Montreal, 6th January, 1822.

Extract from the Journals of the Legislative Council, 2 Geo. IV. 7th March, 1821.

PROTEST

Of the Honourable Chief Justice against the passing of the Bills for the Incorporation of the Bank of Canada, Quebec Bank, Montreal Bank, and Quebec Fire Insurance Company.

I. Because this Bill proposes to incorporate a Company of private Bankers, which as such, has existed for two years, in Quebec, and thus constituting them a Public body to exempt the copartners of that company, contrary to the general principle of law in this respect, from all responsibility for the debts of their copartnership beyond the amount of the stock which they respectively possess; which provisions of the bill are repugnant to the British Statutes 6th Geo. I. cap. 18, and 14th Geo. II cap. 37—and consequently void under and by virtue of the British Statute 7 and 8 Will. III. cap. 22 Section 9. These several Statutes having been introduced into this Province, and especially declared to be law therein by the last clause of the 14 Geo. III. cap. 83, commonly called, the Quebec Act.

II. Because as the above-mentioned Statute 6 Geo. I. cap. 18, was intended by the Imperial Legislature at the time it was passed, to extend and to be in force as law in the British American colonies (as is declared by the 1st Section of the 14th Geo. II. cap. 37, which enacts, "That it did, doth and shall extend to all of them,") It was as, I conceive, the policy and the intention of the Law giver, to exclude the Colonial Governments

from all interference in the establishment of any public commercial companies of the description contemplated by the Statute, and therefore in the 18th Section, we find it enacted, "That the acting or presuming to act as a corporate body or bodies, the raising or pretending to raise transferable stock or stocks; the transferring or pretending to transfer or assign any share or shares in such stock or stocks *without legal authority either by Act of Parliament or by any Charter from the Crown* to warrant such acting as a body corporate, or to raise such transferrable stock or stocks, or, to transfer shares therein, shall, *for ever* be deemed to be illegal and void, and shall not be practised, or in any wise put in execution." And as an Act of a Colonial Legislature is not an Act of Parliament, within the meaning or intent of the 6th of Geo. I. cap. 18, an Act of the Imperial Parliament being therein too plainly intended to require comment, (nor a Charter from the Crown) a Charter of Incorporation passed under the Great Seal of England and derived from the sole authority of the Sovereign, being as plainly intended by the Statute in contradistinction to an Act derived from the joint power of the Imperial Parliament. It necessarily follows, that, "Acting as a corporate body and raising and transferring stock," under the presumed authority of this Bill, (if it were passed) would be acting as a corporate body and raising and transferring stock, without legal authority either by Act of Parliament or by any Charter from the Crown to warrant such acting, &c. "And would therefore be illegal and void." Consequently, every attempt to give such authority by an Act of this Provincial Legislature, must be equally illegal and equally void, under the 6th Geo. I. cap. 18, and the 7 & 8

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Will. III. cap. 22, Section 9. And we seem to be particularly called upon to refrain from such an attempt because the 18th Section of the Statute 6th Geo. I cap. 18, has enacted, That what it prohibits, "Shall not in *any wise* be put in execution."

III. Because, if any doubts could be entertained with respect to the application of the Statute 6th Geo. I. cap. 18, to "Banks" in the colonies they are effectually removed by the 14th Geo. II. cap. 37, whose object (as stated in the preamble) is among other matters declared to be, to prevent in the colonies the establishment of "Societies, partnerships, or companies for the purpose of raising Public Stocks or Banks, and unlawfully issuing large quantities of Notes or Bills there, contrary to the true intent and meaning of the 6th of Geo. I. cap. 18." And has enacted, that the last mentioned Statute, "Shall be in force and be carried into execution in all and every His Majesty's Dominions, Colonies and Plantations in America"; And "That all and every the undertakings, matters and things, in the said recited Act mentioned or described and prohibited to be acted, done, attempted, endeavoured or proceeded upon, within the city of London, and other parts of this Kingdom, as also in Ireland, and other His Majesty's Dominions; and all other the undertakings, attempts, matters and things herein before-mentioned or described, are and shall be deemed to be illegal and void in His Majesty's Dominions, Colonies and Plantations in America, also, and shall not *there* be practised, or in *any wise* put in execution."

IV. Because the proposed clause of this Bill, which is intended to exempt the copartners of the Quebec Bank, from all responsibility for the debts of their copartnership beyond the amount of the stock which they may respectively possess, is also equally repugnant to the provisions of the 14th Geo. II. cap. 37, and of the 1st Geo. I. cap. 6. Inasmuch as if they are not treated a corporate body according to the provision of the 1st Geo. I. cap. 6, and the true intent and meaning of that Statute, they remain as before a company of private bankers, and consequently liable to the second section of 14th Geo. II. cap. 37, which, according to the general principle of law in this respect, renders every copartner of a Banking Company in British America, (not incorporated by Act of Parliament or by Charter from the Crown,) responsible for the entire amount of all the Notes or Bills issued by such company. And this (if it wants support) is confirmed by the reasoning and decision of His Majesty's Court of King's Bench of Westminster Hall, in the case of the King vs. Dodd, a case which arose upon the Statute 1st Geo. I. cap. 6, and is reported in East's Reports, Vol. 9, P. 516 to 528.

(Signed)

J. SEWELL, Speaker.

AMES BROWN, PRINTER

