JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION.

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To the Members and Associates:—

At a meeting of the Council, held at Montreal on the 14th February, in accordance with the recommendation passed at the meeting of the Association in December, a Committee was appointed to take charge of the JOURNAL, who, on the 1st March, issued the following circular to the Members and Associates:

In accordance with the resolution passed at a meeting of the Canadian Bankers' Association held in Montreal on the 6th December last, the Council have placed the editing of the JOURNAL in the hands of the following Committee:

Committee at Toronto:—Messrs. J. H. Plummer (Chairman), J. Henderson, and E. Hay.

Corresponding Members:—Messrs. George Burn, Ottawa; E. Stanger, Montreal; John Knight, Halifax.

The Committee named have pleasure in taking charge of the JOURNAL from this date, and have now in hand the preparation of the March number, which they hope to issue before the end of the month.

In accepting this responsibility they do so expecting all the Members and Associates to give their support and assistance towards making the JOURNAL worthy of the Banks and Bankers of Canada.

They will be glad to receive contributions or communications on any subject directly or indirectly bearing on Banking, or that might properly find a place in its pages. They will be especially pleased to receive enquiries and suggestions respecting points of Banking law or practice, and if of general interest, to reply to or comment on the same in the JOURNAL.

The Committee will also gladly receive any suggestions respecting the scope of its articles, the subjects which it might take up, the historical and statistical information for which it might provide a permanent record in its columns, etc. They would like to receive for the latter purpose copies of any suitable documents of an historical character which any of the Associates may have access to. In their opinion the JOURNAL may be made of great permanent value by gathering together and recording in its pages all the facts connected with the past history of banking in Canada, which have now to be sought through scattered records, many of which are not generally accessible.

The Committee hope to be able in the early future to pay for accepted articles of important character, if the funds at their disposal will permit of this, and as one of the means to this end they ask the assistance of the Associates in the matter of obtaining advertisements suited to the character of the JOURNAL. They believe the receipts from that source might be of great value in providing for the extension and improvement of the JOURNAL. The Committee will arrange for the publishers or other business agents to canvass for the advertisements; they merely ask from the Associates suggestions as to the quarters where they are likely to be obtained, and such influence as they can properly exert.

All communications respecting the JOURNAL should be addressed to the Chairman of the Editing Committee, in care of the Canadian Bank of Commerce, Toronto.

The Editing Committee desire to refer to the above circular which on their appointment they issued to the Associates, as indicating the general lines on which they propose to carry on the JOURNAL. To this there is, however, something to add.

It would be manifestly impossible for the "Corresponding Members" of the Committee to pass judgment on all the articles and other matter that are to find a place in our pages. The Central Committee must therefore accept responsibility for all that goes into the JOURNAL.

They feel, however, that they should not allow their own private opinions to intrude themselves into their work as a Committee, and that they should not consider what views are held by a writer, if his article is worthy of admission. They will do their best to keep out errors of fact and of law, but in matters of opinion they think the pages of the JOURNAL should be open to all who can so write as to interest and edify its readers.

It follows from this that while the JOURNAL is the official organ of the Canadian Bankers' Association, and is controlled by the Council for the time being, neither the Association nor the Council should be regarded as responsible for the opinions expressed.

In inviting the Associates to address questions and communications to them, the Committee are strongly of opinion that this part of the work might become one of the most interesting features of the JOURNAL, and they urge on its readers, the younger as well as those who are older, to make full use of its columns. Nice questions of law or practice that arise in actual business are always more interesting, and their elucidation more helpful, than the study of abstract theories.

The Committee, in addition, invite discussion and criticism of any matter appearing in the JOURNAL. So far as space permits, they will afford every opportunity for the discussion of all questions that are of interest to those for whom the JOURNAL is intended.

J. H. PLUMMER, *Chairman.*
J. HENDERSON,
E. HAY.

EDITORIAL NOTES.

WE are pleased to be able to give our readers a monograph on an interesting experiment in banking in Canada from the pen of Mr. R. M. Breckenridge. We understand that it is part of a general study, in which the author has for some time been engaged, of the history of the legislation respecting banking in Canada and its development, the results of which will appear early in the coming autumn.

WE make no apology for the somewhat enlarged space devoted to legal matter this quarter. There have been a number of cases of great importance to bankers in which judgments have been delivered, and the readers of the JOURNAL will no doubt be glad to have full reports.

FREE BANKING IN CANADA.

I.

In the session of 1850 of the Legislative Assembly of Canada, the Honorable William Hamilton Merritt introduced a Bill "to establish freedom of banking in this Province, and for other purposes relative to Banks and Banking."

The group of large chartered banks which had hitherto carried on the banking business of the Province seemed to the general public to be insufficiently equipped with capital. Whether just or not, complaints of a lack of banking facilities were frequent, and there was a widespread demand, as often happens in comparatively undeveloped countries, for an increase of bank capital, for the extension of banking facilities, and particularly for the incorporation of small banks in the lesser towns where local opportunities for accommodation were much desired.

Important safeguards in the then existing banking system were the large capital stock of the banks, the small number doing business, the broad fields from which they drew their business, and the prudent and cautious manner in which that business was as a whole conducted. It was thought that in maintaining the system it would be very difficult for the Legislature to refuse to incorporate small banks for the small towns. But to allow such institutions the important privileges of the chartered banks, especially that of circulating notes which would be only a general charge against assets, seemed too great a risk. If small banks were to be established it was necessary to devise some other plan for issuing a sound currency. There was no bank of such predominant position that to it alone, as to the Bank of England, the function of issue could be entrusted, after the complete failure of Lord Sydenham's proposals of 1841 (largely, to be sure, through the influence of the chartered banks); there was no probability of establishing a Government Bank of Issue, and there was on the part of the Government itself such pressing financial need that any step towards relief would be welcome.

The Free Banking Laws of the State of New York had

been in force since 1838. The commercial relations between the Upper Province and New York had long been close and important. When the economic conditions of the two countries were compared, New York, no doubt, appeared to marked advantage. New York's legislation, therefore, was not unlikely to be regarded by Canadians as recommended by the success and prosperity of the land in which it was in force. Nor was its influence necessarily the weaker because the judgment as to results was not entirely logical. So in spite of the early record of the system, in spite of the failure of twenty-nine banks in the first five years of the law's operation, and the fact that the special deposits of securities realized but 74 per cent. on the defaulted notes, Mr. Merritt's Bill was modelled after the Free Banking Laws of New York. Its objects are sufficiently described as (*a*) to provide for the establishment of small banks, (*b*) properly to secure their circulation, (*c*) to relieve, in part at least, the financial difficulties of the Government by widening the market for its securities, and at the same time so stimulating the demand as to raise their value.

II.

The measure as passed (13 and 14 Vic., cap. 21) first repealed the old laws of Lower Canada (Ord. L. C. 2 Vic. (3), cap. 57), "to regulate private banking and the circulation of the notes of private bankers," and of Upper Canada (7 Wm. IV., cap. 13), "to protect the public against injury from private banks." Henceforth it became lawful only for chartered banks or other corporations or persons authorized under the new Act to issue circulating notes, which were to be of the value of 5 shillings or over. Notes under 5 shillings were prohibited. So also circulation by unauthorized persons was forbidden on penalty of fines of £100.

The significant provision of the Act is the extension of the privilege of note issue "to other persons or corporations thereunto authorized as provided for herein." Individuals or general partners might establish banks, or joint stock companies might be formed to carry on the business, but in any case the bank was to have an office in but one place, and in but one city, town or village. Of the companies was required a minimum capital stock of

£25,000, divided into shares of £10 or more.* Articles of agreement in notarial form, showing the name, place of business, capital stock, number of shares, names and residences of the shareholders and the time when the company should begin and end, were the legal basis for organization. After the articles were duly filed in stipulated courts of record, the companies became incorporated, and the liabilities of the shareholders limited to double the amount of their subscribed stock. The total liabilities of a Joint Stock Bank were not allowed to exceed three times its capital stock. Every institution working under the Act was required to keep *bonâ fide* an office of discount and deposit, at all times to keep exposed in its place of business a list of its partners or shareholders, and to make detailed semi-annual returns to the Inspector General, as well as to submit to official inspection at the discretion of the Government.

In order to issue notes the banks thus formed were each obliged to deposit with the Receiver-General Provincial securities for not less than £25,000 currency ($100,000) par value in pledge for the redemption of their notes. Interest on the securities was to be paid to the depositor as it accrued, and against the bonds the Receiver-General was authorized to deliver to the bank an equal amount of registered notes, printed from plates furnished by the bank upon paper selected by the Receiver-General. When signed by the proper officer these notes were to become notes of the bank. In every case they were to be payable in specie on demand at the bank's place of business. They were to be marked "Secured by Provincial securities deposited with the Receiver-General," and were to be receivable for all duties and sums due to the Provincial Government, so long as the issuing bank redeemed its notes. These registered notes were exempt from the rate of 1 per cent. per annum levied upon the average monthly circulation of the chartered banks. The third or fiscal object of the Act is especially plain in that clause

* NOTE.—The denominations of pounds, shillings and pence used in this article are those of the so-called "Halifax Currency," the usual money of account in the British North American Colonies down to the latter half of the fifties, when the change was made to dollars, cents and mills. A pound currency was worth approximately $4 U. S. coin, and a pound stg. was valued at £1 4s. 4d. Halifax currency.

which permits the chartered banks to surrender their right of circulation against assets, and to secure from the Receiver-General registered notes in return for deposits of securities. Any of the corporations within the purview of the Act might deposit additional securities from time to time, and withdraw sums of not less than £5,000, provided that like amounts of the notes were returned to the Receiver-General and the required deposit of £25,000 maintained.

If, in case of suspension of specie payment and protest of the notes, the paper was not paid with interest at 6 per cent. within ten days after the requisition issued by the Inspector-General of the Province upon receipt of the protested notes, that officer was commanded to close the institution and wind up its affairs, should it have no valid excuse to offer for the default. The process of liquidation was to be completed by a Receiver appointed by the Receiver-General. His duty was *first* to pay off the notes from the proceeds of the securities on deposit. The remaining proceeds were then to be applied with the other assets to settlement of the remaining debts of the bank. But if insufficient funds were realized from the sale of the securities, the general assets of the bank were to be applied to the payment of the notes before they were used for the other claims. This is the first appearance in Canadian legislation of that principle of making bank notes a preferred claim, which, 30 years later, was embodied in the Bank Act of the Dominion.

III.

The Act to establish Freedom of Banking could hardly be called perfect. Time proved it ill-calculated to promote the ends of the Legislature which passed it. The amendments passed in the following years show that certain of its defects were recognized. From the very first it suffered severe criticism on the part of the English Lords of the Treasury. The most serious defect of the Act, in their opinion, was the lack of guarantee for the immediate convertibility of the notes on demand. Against the fancied completeness of Government obligations as "security," they cite the fall of Exchequer bills to 35 shillings discount in 1847. Anxious as always that the financial and monetary systems of the colonies should be sound, they warn the

Canadian Government against the reverses following too great an extension of the facilities which may be afforded by the use of paper money. The measure might cause Canadian securities to rise temporarily, but they would also be exposed to the risk of depreciation should it become necessary to throw them into the market in order to provide for the payment of bank notes. In the opinion of the Lords of the Treasury, the great protection against over issue was the constant maintenance of a proportionate reserve of specie against the outstanding circulation, with Government supervision and frequent publication of bank statements. They recommended the requirement of a specie reserve of one-third of the notes issued and of monthly statements.

The following year, accordingly, an amendment was passed requiring monthly statements from the free banks. It is plain that half yearly returns provided a basis for intelligent criticism to neither the Government nor the public. The period of one year in which to retire their circulation and begin operations under the new plan accorded by the Act of 1850 to banks or companies whose authority to issue notes had been withdrawn by the Act, was increased to five years, provided that in each year of the next four they should retire one-fourth of the average circulation during 1850, of notes not secured by a deposit of bonds. The requirement of a specie reserve of one-third was not adopted.

In the same session, the Assembly passed another Act with a view "to encourage the chartered banks to adopt as far as conveniently practicable, the principles of the General Banking Act in regard to the securing of the redemption of their bank notes." The real purpose, of course, was a further sale of bonds. The means were (*a*) a remission during the next three years of one-half the tax on circulation to those banks willing forthwith to restrict their circulation to the highest amount shown in the last statement, and at the end of three years to three-fourths of the average for 1849 and 1850; (*b*) at the end of the three years, entire exemption from the tax to banks with note circulation thus restricted; (*c*) permission to such banks to issue in excess of the restricted circulation further notes to the amount they should hold of gold or silver coin or bullion or debentures of any kind issued by the Receiver-General, the value of such securities to be reckoned at par; (*d*) exemption of these banks from the re-

quirement to deposit the debentures and to secure registered notes. But if failures occurred the proceeds of bonds thus held by the banks were to be applied exclusively to the redemption of outstanding notes.

The Act 16 Vic., cap. clxii. (session of 1853) was an attempt further "to encourage the issue by the Chartered Banks of notes secured" in this manner. They were permitted to issue notes in excess of the limit laid down by their charters, *i. e.*, the amount of their paid up capital stock, to the amount of the sums held by them in specie or debentures receivable in deposit by the Receiver-General, although the deposit of the securities was not required. The 1 per cent. tax upon circulation, also, was to be calculated only upon the sum by which the average during any period of the outstanding notes of a bank should exceed the average of the securities and specie which the bank had on hand.

These measures, though the original Act was copied from the New York law, seem strongly to reflect the influence upon Canadian legislators of Sir Robert Peel's Bank Act of 1844, and the Statutes of 1845, which dealt with Scotch and Irish banks. The plan of restricting that part of the circulation "unprotected" by special security, the extension to the banks of the privilege of indefinitely increasing circulation beyond that limit, provided equivalent values in specie or debentures were held, and the repeated efforts to provide as much as possible of the fiduciary currency with bond security, might not perhaps be conclusive evidence of this influence. The regulations might have been adopted after independent consideration, or to reach other ultimate ends than those sought by Lord Overstone, Sir Robert Peel and their followers. In Canada, too, the financial purpose, though the laws failed to afford the anticipated help, was highly influential.

But the influence of an effort to follow English example is strongly supported by the authority of Sir Francis Hincks in the Assembly at that time. Ten years before he had supported against his own party the proposals of Lord Sydenham for improving the Canadian currency by means similar to those suggested by Lord Overstone. As late as 1870 his views on the question were unchanged. The inference is confirmed by the

fact that in 1851 the Colonial Office itself advised the Canadians to adopt, as far as possible, the principles of Peel's Bank Act in their regulation of banking and currency. The authority of the officials in Downing Street and the usual promptness with which the colony carried out their recommendations, leave no doubt of the marked and even decisive effect of this factor in the "freedom of banking" legislation of 1852 to 1856. Following is the significant excerpt from the letter of C. E. Trevelyan for the Lords of the Treasury, enclosed in the despatch of Earl Grey, H. M. Principal Secretary of State for the Colonies, dated 24th June, 1851: "Although the establishment of "a bank in connection with the Government appears to have "been impracticable or inexpedient, it does not follow that some "modification of the scheme adopted in the United Kingdom "with respect to the circulation, the leading feature of which is "a limitation to the amount of notes issued on the credit of "securities, and the maintenance of a deposit of securities equal "to all issues exceeding that amount, might not still be attain-"able in Canada."

The possible dangers or faults of the original Act, pointed out for the Lords of the Treasury in the same letter, and noted by us on page 158, were not, on the whole, the source of much trouble in the working of the system. To discuss the other defects in the scheme, or what might be termed the errors in principle, would be to raise the questions of bond-based or specially secured bank circulation *versus* circulation as a general charge against assets, and of the system of many small local banks *versus* that of fewer large banks with branches. But for Canada, at least, these and the minor controversies they involve have been decided. What really prevented a thorough trial of so-called "Free Banking," and a complete experience of its results, whether for good or evil, was the inferior opportunity which it offered for banking profits. Very few banks began operations under the law; the system of chartered banks remained predominant and characteristic. The fate of the free banks will show how unequal was the struggle with these competitors. Nor is the reason far to seek.

The bonds receivable on deposit as note security bore interest at 6 per cent. Since they could be bought at less than

par, they netted as an investment a somewhat higher rate. The minimum deposit for a bank beginning business was £25,000 currency, or $100,000. The small banks, however, which it was expected to establish under this Act, would seldom need a capital greater than £25,000, and, even if they needed it, a greater sum would be hard to get in the localities whence the demand for such institutions came. But before a bank could begin business this hardly-gained capital was to be removed from the locality and locked up in debentures. In return for these, the free bank was to receive an equivalent amount in registered circulating notes. A chartered bank, on the other hand, acquired by the privilege of circulation a power of loaning to the community, in addition to its capital stock, the amount of its authorized note issue. To meet the needs of its district the free bank in our example was to derive from capital and circulation combined a fund of only £25,000, *i. e.*, the amount of its note issue, or rather so much of it as could be kept in circulation, a proportion which rarely reached 90 per cent., and in some cases did not exceed 50 per cent. In brief, £25,000 of the capital of the district was to be taken bodily away and replaced by notes, of which only a part were available for loaning purposes. If carried out, the scheme to provide banking facilities for poor communities was destined actually to diminish the loanable funds in the districts for whose benefit it was devised.

Intimately connected with this fault, is the fatal defect of the Act—the slight inducement to investment afforded by its provisions. With its capital locked up in debentures there remained to the free bank, besides its deposits, which need not be considered here, the £25,000 of registered notes for accommodation of the local public. Of these, we have seen that only 50 to 90 per cent. constituted the actual loaning fund which could be turned over several times a year in banking operations, and from which could be derived the additional and incidental profits that banks, in spite of usury laws and other hindrances, will contrive to secure whenever the markets permit. From an equal sum invested in one of the chartered banks could be gained the banking profit on the capital itself, and the circulation issued upon the credit of that capital.

The advantage, in favor of the chartered bank, apart from the important consideration of its control of much larger means—none of its capital being locked up in debentures—was approximately the difference between the banking profit on the amount of its capital and the interest on an equal amount invested in Government securities. In other words the chartered bank would get the greater return from both circulation and capital; the free bank from circulation alone, its capital being invested, by law, at a lower rate of interest.

This higher gain to be had from employing their funds in their own business, also caused the chartered banks, as a rule, to reject the encouragement offered by the Legislature so to invest those funds in debentures as to make them practically a permanent loan to the Government. And in a country where the best bank profits were moderate, other investors were slow and unwilling to engage in a form of banking in which the chances for gain were still more restricted.

IV.

In November, 1854, there came before the Legislature the question of the renewal of bank charters, and the increase of their capital stock. In this connection Sir Francis Hincks admitted that the public had not shown any great disposition to take advantage of the free banking law. He said further:

"First. He thought that the public wanted a large increase of banking capital.

"Second. There was not money in Canada to furnish that capital.

"Third. The country must get this capital from foreigners, and the people of Canada would have to consult foreigners as to the manner in which it should be done.

"Fourth. The country knew that no English capitalist was disposed to furnish money to Canada through the agency of private banks. But English capitalists would recognize the large chartered banks, because these banks had been known for many years as a safe means of investing capital. * * Capitalists had confidence in them, but they would not have confidence in private banks established under a new banking system. If the people wanted to increase their banking capital they must do so through the existing banks."

To the Bank of British North America, however, the new law had permitted a valuable privilege, denied it by its Royal Charter, but enjoyed by the other banks under their Colonial Charters, usually to the extent of one-fifth of their entire note issue. This was the right to issue notes of denominations under $4. December 31st, 1854, the British Bank held £162,125 of bonds, and had outstanding against them £153,750 of one and two dollar notes. Until the banks surrendered their small note circulation in 1870 it appears to have continued its issues under this Act. Three other banks were doing business at the close of 1854 under the Act. Their statements are as follows:

	Molsons' Bank, Montreal.	Niagara Dist. Bank, St. Catharines.	Zimmerman Bank, Clifton.	Total.
Capital in Provincial Debentures deposited with the Receiver-General..	£50,000	£50,000	£25,000	£281,125
Amount of registered notes outstanding and delivered to the banks by the Inspector-General..	50,000	49,999	24,500	278,249
Circulation	37,861	46,169	22,000	
Liabilities, including circulation	85,446	67,615	29,321	
Assets	136,840	101,642	49,931	

The next year operations reach the highest figure in the whole history of the Act, though only four banks appear in the statement.

	Bank of B. N. America.	Molsons' Bank.	Niagara Dist. Bank.	Zimmerman Bank.	Total.
Capital in Provincial Debentures deposited with the Receiver-General ..	£170,708	£50,000	£50,000	£40,000	£310,708
Registered notes outstanding	169,750	49,794	49,999	40,000	309,549
Circulation		24,332	69,050*	40,000	
Liabilities		24,332	77,761	48,817	
Assets		79,100	133,285	54,585	

In 1855 the Legislature granted charters to the Molsons' Bank, the Zimmerman Bank and the Bank of the Niagara

* Also issues under charter.

District, and required as one of the conditions of the extended privileges, the increase of the capital stock of each to £250,000, of which, in each instance, at least £100,000 was to be subscribed before the bank began its new corporate existence.

After 1855 there was a steady falling off in the amount of securities deposited, notes outstanding against them, and notes in circulation. In the statement of 1856 the Provincial Bank and the Bank of the County of Elgin first appear, the former with a deposit of securities for $120,000 and notes for the same amount, the latter with securities for $100,000 and notes for $79,950. The newly chartered banks appear to have been retiring their secured notes. The total bond deposits are $1,114,633.33 (£278,658) and notes outstanding $1,080,684 (£270,171). In 1857 the figures have fallen to $770,319.33 and $769,730. In 1858 they are $730,503.33, and $729,531, and the Molsons' and the Zimmerman Banks disappear from the list. In 1859 the bond deposits are $730,503.33, and notes outstanding, $699,531; in 1860, $562,603.33, and $495,631, of which the British Bank stands for $440,933.33 and $373,964, about $100,000 less than in the statements for 1857 to 1859.

V.

The failure of the system had received the attention of the Legislative Assembly at least three years before. On March 6th, 1857, the Hon. Wm. Cayley introduced a Bill to discontinue the incorporation of joint stock banks and the issue of registered notes. The merchants and moneyed men of the Province were generally in favor of the older chartered system, he said, and even in 1855, the Assembly had decided to perpetuate it. Its decided superiority had been shown by the action of the three banks which had retired their registered notes and continued their business under charters. Wm. Hamilton Merritt was still in the Assembly, and in reaffirming his responsibility for the first Free Banking Act, he declared with a lofty disdain of the facts, that it was the "best system adopted in any country from the beginning of the world to the present time." "The sole cause of its being inoperative in Canada," he contended, "was that it had not been honestly carried out." Mr. Cayley's

Bill did not come up for the third reading, for what reason the debates give no evidence.

In 1859, the then Minister of Finance, the Honorable A. T. Galt, in moving for a select committee on banking and currency, referred to the tendency of the free banks to secure charters, and to the unimportant and limited character of the operations then carried on under the Act. Of the "Resolutions for a Bank of Issue or Treasury Department," which the Minister in 1860 based upon the investigations of this committee, the third provided for the repeal of the free banking law, with the permission to banks working under it to come under the general Act for all banks outlined in the other resolutions. But in these, as a whole, were proposed such revolutionary changes in the currency and banking system of the country that action upon them was indefinitely postponed.

By December 1861, the Niagara District Bank had nearly withdrawn its Provincial securities, and the Provincial and County of Elgin Banks had only $2,000 and $20,440 of bonds, respectively, on deposit. At the end of 1862, the British Bank held securities for $436,933.33; its registered notes amounted to $336,964, of which $130,505 were in circulation. But the Provincial Bank had deposits and circulation of only $9,729, and the Bank of the County of Elgin had disappeared both from the Government statement and the world of business. To all intents and purposes, free banking in Canada had run its course.

Six banks in all had taken advantage of the Act. To one of these, the Bank of British North America, the privileges acquired under the Act were doubtless of considerable value. It was enabled to issue notes of denominations originally forbidden by its Royal Charter, without much other inconvenience than a change in one of its accounts. For even before 1850, it had been the custom of the British Bank to hold among its more liquid assets a much larger amount of Provincial debentures than even its small-note circulation amounted to in after years. Two of the companies working solely under the free banking laws wearily struggled for three years (1856 to 1858) against the competition and prestige of the chartered banks, and then began

to retire their issues and wind up their business. The three banks earliest started under the Act soon applied for charters and secured them.

Of these the Zimmerman Bank had the shortest life. Founded in 1854 by a person of means, it was to an unusual degree the creature of one man. It seems, however, to have been well and honorably managed by the capitalist whose name it bore. In 1858 the charter of 1855 was amended by changing the name of the institution to the "Bank of Clifton," and extending the time for the subscription and payment in full of its capital stock. But in spite of these favors and of the extraordinary privilege "that the bank notes and bills in circulation shall be of whatsoever value the Directors shall think fit to issue the same, but none shall be under the value of 5 shillings ($1)," the bank was soon wound up after the death of Mr. Zimmerman. In 1863 its charter was repealed.

The Bank of the Niagara District, with its head office in St. Catharines, Canada West, found difficulty from the first in securing the capital required by its charter. The Act of 1855 required subscription and payment in full of the million dollars in five years. In 1857 an indulgent Legislature extended the term to 1861; in 1861 to 1866; in 1863 the capital stock requirement was reduced to $400,000, and the time for paying it up extended to 1865. The bank had a fairly successful career until it suffered large losses through the failures of Jay Cooke & Co., and others, in 1873. Hardly able longer to carry on an independent business, it was amalgamated early in 1875 with the Imperial Bank of Canada. The shares of the Niagara District Bank were exchanged for those of the Imperial, according to the relative value of the two stocks, and thereafter the former bank disappeared as a separate institution.

Out of the five originally "free banks," but one, the Molsons' Bank of Montreal, has survived, and is now an institution of standing and importance.

ROELIFF MORTON BRECKENRIDGE.

School of Political Science, Columbia College, Feb. 21st, 1894.

THE CARD MONEY OF CANADA.

(Reprinted from the Transactions of the Literary and Historical Society, Quebec, 1874-75.)

"The currency of the world includes many kinds of money. Gold, silver, copper, iron, in coins or by weight, stamped leather, stamped paper, wooden tallies, shells of various kinds, furs, pieces of silk, strips of cotton cloth, of a fixed size and quality, are and have been all in use amongst mankind as forms of currency, as convenient and negotiable forms or representatives of property. Many of these kinds of money are simultaneously in use in the same country. Gold, silver, copper, stamped paper coexist in different forms of money in the currency of Europe and America; gold, silver, copper and shells in India; silver, copper and pieces of silk in China; copper, cotton strips, shells and the silver dollar in various parts of Africa. Sparta had a currency of iron, Carthage of stamped leather. There is ample variety out of which money is made; metals, shells, cloth, leather, paper." This is the statement of a recent writer on the subject of currency. With such an array, one may well enquire what is money?

Paper money may be said to be of two kinds, viz.:—Paper money, and money represented by paper. The former consists of notes upon which government confer the property of money, and which are not necessarily redeemable in specie; while the latter may consist of notes issued by the state or by corporations, and which are redeemable in specie. The former is a mere creation by political power; the last grows out of engagements or commercial operations. The one, being declared legal tender, must be taken in satisfaction of a debt; the other, unless constituted legal tender by the state, may be taken or refused at the option of a creditor. The present legal tender note of the United States corresponds to the first; the bank note of Canada to the last.

It would be a mistake to suppose that representative, emblematic, or paper money is an invention of modern times. The equivalent was used, in negotiable forms or representatives of property, as stamped leather, iron, tin, and stamped paper, in

Carthage and Sparta, Rome, China and India, anterior to the Christian Era. The ancients were just as well aware of the unsoundness of an inconvertible currency as we are. They required a currency of intrinsic value, such as gold, silver, or copper money. The pieces of silk, strips of cotton cloth of fixed size and quality, were money of intrinsic value. The shells were also real money; the wampapeay and the couris were coveted for their variety, beauty and polish, and were valued just as we value precious stones: they had in themselves exchangeable power and intrinsic value, as gold and silver have; but the stamped leather, wooden tallies, bits of iron and tin had none, and constituted an unsound currency, having only the properties of money conferred upon them by political power.

The Chinese had a paper money made from the inside portion of the bark of the Mulberry tree. The bark was pounded in a mortar, moistened, spread out into sheets, cut up into small squares, certified by a chief officer of State, and stamped in red with the Imperial seal. Those little squares or cards, signed and sealed, having an authentic character, were issued by the State as money, and circulated throughout the Empire. It was death to counterfeit them, death also to refuse them in satisfaction of a debt, or in payment of goods. Their wise men, however, understood the true theory of paper money. One of them writes: "That paper should never be made money, should be used only as a sign or representative of articles of value, such as metals or commodities, which should be forthcoming when wanted by the holder of such signs: this being the true intention of paper money; but when Government caught at the idea of making it real money, the original intention and true character of the currency were lost."

Every country had its monetary unit, which consisted generally of the principal merchandise or production of the place, estimated by weight, measure, or number. In some countries it was the silk or the cotton; in others the iron or the grain; and, frequently, the sheep and the cattle.

The monetary unit in Russia, in early times, consisted of skins or furs, which circulated as money; but in order to avoid the inconvenience of transferring such bulky articles from one to another, Government conceived the idea of cutting a small piece

off each skin, as tokens and representatives of the skins stored away till claimed by the holders of the tokens. In primitive times it was not, however, always safe to entrust property to Governments; and the Government of Russia being in need of currency, found it easy to augment the number of tokens, and circulate them far in excess of the skins they were supposed to represent. When the Mongol Tartars conquered Russia, they would have nothing to say to this curious kind of currency; but insisted upon having the skins, and threw the monetary affairs of the country into confusion.

Some numismatists confiding in a passage in Aristotle, hold that the leather money of the Carthaginians represented skins or hides; and maintain that it was, therefore, a sound and convertible currency: but there is not sufficient evidence to justify any one in arriving at that conclusion.

The Greeks not only understood the principles of currency, and the use of paper money, but carried on the business of banking at least three centuries before the Christian era, and in a manner not very different from that in which it is conducted now. They appreciated more than other nations a sound currency, preferring one of gold, silver, or copper; and never resorted to the use of paper or emblematic money, except in times of extreme peril to the State. There is, perhaps, no better definition of money than that given by Aristotle: "Money is a means of exchange or measure of value whereby one description of merchandise is exchanged for another." We have the means of ascertaining the weight, dimensions and bulk of a body, substance or object; we want also to ascertain its value. What the pound weight and the standard measure perform in respect of the former, that money does in regard to the latter: it measures its value: being "the intermediate commodity interposed between what we have to sell, and what we wish to buy; establishing the value of each by the quantity of this interposed commodity which is given or taken in exchange."

In an article on Old Colonial Currencies, by Mr. S. E. Dawson, of Montreal, we learn, "that in America, within a comparatively short period, every conceivable form of currency has been tried. The accounts of New Netherlands (now New York State), were, in 1662, kept in wampum and Beaver skins.

That currency does not appear to have been more suitable than others; for in that year complaints were made of its increasing depreciation, and the Chamber of Commerce at Amsterdam credited all the Colonial officials with twenty-five per cent. additional salary in beaver skins to cover their loss, a precedent too seldom followed in later and more progressive times."

Parkman in "The Old Régime in Canada," tells us that, "In the absence of coin, beaver skins long served as currency in Canada. In 1669, the Council declared wheat a legal tender, at four francs the minot; and five years later, all creditors were ordered to receive moose skins in payment at the market rate."

During the period of the early settlement in Canada, the coins in circulation were of the reigns of Henri IV., Lewis XIII., and XIV., with the exception of three pieces struck specially for the colony.

Leblanc in his treatise on money, page 388, alludes to these coins:

"Afin de faciliter le commerce dans le Canada, le Roy fit fabriquer pour cent mille livres de Louis de 15 sols de 5 sols, et des doubles de cuivre pur. Ces monnaies étaient de même cours, poids et loi que celles de France. Sur les Louis d'argent de 15 sols et de 5 sols, au lieu de *Sit nomen domini benedictum* il y avait *gloriam regni tui dicent*, et sur les doubles: *Doubles de L'Amerique Francaise.*

Description de la pièce de 15 sols:

LVD. XIIII. D. G. * FR. ET NAV. REX. Buste juvenile de Louis XIV. à droite, tête laurée, perruque longue et bouclée. Le buste drapé par dessus la cuirasse.

"Rlég: GLORIAM REGNI TVI DICENT, 1670. Ecu au 3 fleurs de lys surmonté de la couronne royale.

"Module 27 millimètres.

"Pièce de 5 sols semblable à la précédente.

"Module 21 millimètres."

And in reference to the other coins of the same reign, we find in "Le Dictionnaire de Numismatique, publié par M. L'abbé Migné, Paris," as follows:

"On fabriqua au commencement du règne de Louis XIV. les mêmes espèces d'or, d'argent, de billon et de cuivre, que sous le règne précédent, savoir: des louis d'or, des demis et des doub-

les louis d'or, des écus d'or et des demis; des louis d'argent de 60, de 30, de 15 et de 5 sous; des deniers et doubles deniers de cuivre purs. Toutes ces monnaies étaient de même poids, titre, loi et valeur que sous le règne précédent."

The Livre Tournois was the integer or money of account in Canada, but it was not known in Canada or even in France during that period as a coin. There was, however, once a coin called Tournois: "Petite monnaie bordée de fleurs de lis qui tirait son nom de la ville de Tours où elle était frappée. Il y avait des livres Tournois, des sols Tournois, des petits Tournois. Ce n'est plus qu'une désignation d'une somme de compte."

The Livre Parisis was also a money of account, but I have not found it alluded to in any old deeds of sale in Canada. Sales were invariably made during the period of early settlement for sums stated in Livres Tournois. The Livre Parisis, however, is thus referred to in the Dictionnaire de Numismatique:

"Parisis, en terme de compte, est l'addition de la quatrième partie de la somme au total de la somme; ainsi le Parisis de 16 sols, est quatre sols; quatre sols Parisis font 5 sols: c'est aujourd'hui une monnaie de compte qui autrefois était monnaie réelle, qui se fabriquait à Paris, en même temps que le Tournois se fabriquait à Tours. Ces Parisis étaient d'un quart plus forts que les Tournois, en sorte que la livre Parisis était de 25 sols et la livre Tournois de 20 sols." And d'Abot de Bazinghem "Traité de Monnaies," under the word Tournois, writes:

"On s'est servi en France dans les contrats des monnaies Tournois et Parisis jusque sous le règne de Louis XIV, où la monnaie Parisis a été abolie. On ne se sert plus dans les comptes que de la monnaie Tournois. Il faudra donc à partir de Louis XIV entendre le mot livre comme Livre Tournois."

"La livre Tournois était représenté par des monnaies qui n'ont jamais variées sous le rapport du titre qui était de 11 deniers argent fin (917/00) mais qui ont subi des variations fréquentes, sous le rapport de la valeur."

"Ainsi pour en citer un exemple: l'émission de Décembre, 1689: Louis d'argent à 11 deniers de fin—de $8\frac{1}{12}$ au marc, (poids 27 gr. 427) *LVD. XIIII. D. G.* * *FR. ET NAV. REX.* Tête virile à droite, perruque ample retombant en boucles sur les épaules drapées. Sous le buste: 1689.

"R*l*.—CHRS. REGN. VINC. IMP. Croix de 4 doubles L. adottés et couronnées, avec 4 fleurs de lys dans les angles; au centre la lettre monétaire. Ce Louis d'argent fut émis d'abord pour 66 sols puis pour 65, Juillet 1692.

64 Décembre 1692.
63 1 Juin 1693.
62 Aôut 1693.

d'autres fabrications eurent lieu en 1701-1705."

In the eighteenth century the écu of 6 livres went into circulation in Canada, viz., in the last years of the reign of Louis XV.

"Ces écus étaient à 11 deniers de fin, de poids de 29 gr. 49.

"Description du dernier écu par Louis XV:

"LVD. XV. D. G. FR.—ET NAV. REX. Effigée, tournée à gauche et laurée—buste drapé.

"R*l*.—SIT NOMEN DOMINI BENEDICTVM.: Ecu ovale au 3 fleurs de lys, entouré de branches de laurier.

"Divisions de l'écu: petit ecu, pièce de 24 sols, de 12 sols, de 6 sols."

As I intend to confine myself to the subject of card or paper money, I shall not refer further to the coins which constituted, to a limited extent, the currency of Canada during the French Régime. I have described a few only, which did service and circulated among the early settlers; but card money prevailed as currency in the ordinary transactions of life in the colony.

While we rise pleased from the perusal of the history of the Bank Note of Scotland, convinced of the soundness of the system under which it issues, of the good service it renders, and of its title to existence: its little counterpart, "the card," in Canada, born, prematurely, about the same time, in an infant colony of France, has to be pathologically considered, and followed through various stages of disease, till death puts an end to its existence; but not to the mischief inflicted upon those among whom it circulated, and who put faith in its virtue.

Card money was issued in Canada by the Intendant Meales in 1685. He informs the minister, "I have no money to pay the soldiers, and not knowing to what Saint to make my vows, the idea occurred to me of putting in circulation notes made of cards, each cut into four pieces; and I have issued an ordinance

commanding the inhabitants to receive them in payment. The cards were common playing cards, and each piece was stamped with the fleur-de-lis and a crown, and signed by the Governor, the Intendant, and the clerk of the Treasury at Quebec."* They were convertible into Bills of Exchange at a specified period. Other cards domiciled in France, appear to have issued afterwards, payable to bearer on demand, which circulated freely to the extent of the currency required in the colony; the rest were remitted to France or converted into Bills of Exchange. Subsequently card money, not domiciled in France, but confined to the colony, was issued. Each card bore the name and coat-of-arms of the Intendant, the nominal value of the card, and the date of issue; also the signature and seal of the Governor as security against forgery. There were cards of the denominations, 32 livres, 16 livres, 4 livres, 40 and 20 sols. This new issue did not take well at first in the colony; the old, payable in France, being preferred. It was customary for the holders of card money to exchange it in autumn with the Treasurer at Quebec, for Bills of Exchange on the Imperial Treasury; and it was taken for granted that the old issue would have a preference over the new. But the policy of the Treasurer was the very opposite of this; he demurred to the old, and readily issued Bills of Exchange for the new. The effect of this proceeding was to establish the credit and currency of the new notes, which were thenceforth taken in preference to the old issue.

During a period of nearly thirty years the card money circulated, and served as currency in the ordinary transactions of life in the colony, and was considered safe to take in satisfaction of a debt; because, if not convertible into coin in Canada at the will of the holder, it was redeemed in Bills of Exchange on the Imperial Treasury, which constituted an excellent remittance for the colonists who had to meet their engagements in France. But trying times were in store for Canada: the Imperial Treasury, drained by the extravagance and costly wars of Louis the XIV., became unequal to the heavy demands made upon it; and the drafts drawn by the Colonial Government

* Parkman's Old Régime, p 300.
Meales au Ministre, 24 Sept., 1685.

being consequently dishonored, the financial affairs of the colony were thrown into a hopeless state of confusion. The card money rapidly depreciated in value. Treasury bills, formerly so much valued, were sold in France at a heavy discount; others were returned to the colony dishonored and under protest. Appeals were made in vain to the Colonial authorities for settlement. There was none to be had—no relief anywhere.

In 1714 the amount of card money in the hands of the colonists appears to have reached the sum of two million.* The population of Canada was then about twenty thousand, of which probably six thousand were settled in Quebec, and two thousand in Montreal. Considering the condition of the colony, the amount of currency floating should not, under the circumstances, have exceeded one million. Being in excess, depreciation followed as a matter of course; and Government being pressed for settlements, compromised, from time to time, with the holders of the currency, by payment of one-half its nominal value.

Finally in 1717, a decree, after citing the settlements referred to, and deploring the inconvenience of card money, announces the intention of Government to withdraw it entirely from circulation, and to redeem it within a certain period, at a reduction of value. At the same time a new issue, current at the reduced value, was made to meet the immediate requirements of the Treasurer, redeemable on the same terms and conditions as the old.

The decree referred to provides that all card money shall be current in the colony at one-half of its nominal value, viz: A card of four livres for two (equal to one livre ten sols money of France): the total reduction being five-eighths of the original value.† Subsequently this decree was modified by another to meet the case of certain debtors, who would otherwise have had to pay twice as much as they really owed.‡ But in the main it was adhered to.

The terms of settlement, or redemption, were as follows: the Treasurer is instructed to retire the card money before the

* Parkman's Old Régime, p. 300.

† Edits and Ord., p. 370.

‡ Edits and Ord., p. 393.

ships leave in November for France; and holders will then be paid one-third of the reduced value in Bills of Exchange on France, maturing 1st March, 1718; one-third, 1st March, 1719; and the balance, 1st March, 1720. All card money presented for settlement, after the ships leave in 1718, will be redeemed at the reduced value: one-half in bills payable 1st March, 1719; the remaining half, 1st March, 1720; but all cards outstanding, after the ships shall have left in 1718, will be considered cancelled and valueless. A more mistaken policy, or a more unjust proceeding on the part of the Home Government than this, can scarcely be conceived. Government had had the experience of more than a quarter of a century to guide them in the issue of card money. A little reflection should have shown that the amount of over issue, only, required to be redeemed. The remedy was simple: if one million livres of cards had been withdrawn, the rest would have kept out, and circulated to the great convenience of the community; and no one would have suffered any loss. As to the new issue for current expenses, redeemable at three-eighths of its nominal value—not a sol was saved; for it exchanged for that only, and no more.

The missionary spirit, in which the settlement of Canada was undertaken, continued to maintain and manifest itself among the clergy and many of the laity. Bold spirits such as La Salle and de Tonty devoted their lives to discovery, and to the establishment of new colonies in the great west. The rest remained behind to trade with the Indians and with each other.

It was difficult to get the colonists to apply themselves steadily to agriculture. "In vain the Government sent out seeds for distribution. In vain the intendants lectured the farmers and lavished well meant advice. Tillage remained careless and slovenly."* The spirit of dogged industry was waning. In the pursuit of trade they hoped to attain to wealth and independence by a shorter route, and with less labor; but the false financial system followed in the mother country, as well as in the colony, doomed them to disappointment and frustrated their hopes.

Next to an impartial administration of justice, the most

* Parkman.

important object to a people is a safe and secure currency. This maxim was, however, disregarded in France, where the wildest ideas upon currency prevailed. The schemes of Law, introduced under the Regent Duke of Orleans about this time, proved a complete failure; and France, if not covered with ruin, was plunged into a state of extreme financial confusion.

In Canada the régime of card money was, for a time at any rate, at an end; but the specie in the colony was quite inadequate to supply its place, and meet the wants of the community in the ordinary business of exchange between man and man. There was much groping in the dark in relation to currency questions, and we have consequently:

A Decree reducing the value of gold coins, dated May 7, 1719.

A Decree increasing the value of gold and silver coins and reducing the price of commodities, 24th October, 1720.

A Decree suspending the operation of the above, 26th December, 1720.

A Decree concerning copper money, 30th April, 1721.

A Decree concerning specie, 4th February, 1724; March 27th, 1724; September, 1724, and 22nd September, 1724.

In January, 1726, a Decree ordering "la fabrication de nouvilles espéces d'or et d'argent."

May 26th, 1726, a decree augmenting the value of specie, currency, etc.

Trade languished, and a return to the use of paper money appeared to be the only remedy. Representations were made accordingly; and Government yielding to the wishes of the people, resumed the issue of card money, with little more light on the subject of currency, than they had in the previous century. So the "card" revived on the 2nd of March, 1729; and its restoration was announced in the following:

"*Ordonnance du Roi au sujet de la Monnaie de Carte.*

"DE PAR LE ROI.

"Sa Majesté s'étant fait rendre compte de la situation où se trouve la colonie de Canada depuis l'extinction de la monnaie de carte, et étant informée que les espèces d'or et d'argent qu'elle y a fait passer depuis dix années pour les dépenses du

pays ont repassé successivement chaque année en France, ce qui en cause l'anéantissement du commerce intérieur de la colonie, empêche l'accroissement de ses établissements, rend plus difficile aux marchands le débit en détail de leurs marchandises et denrées; et par une suite nécessaire fait tomber le commerce éxtérieur qui ne peut se soutenir que par les consommations que produit le détail; Sa Majesté s'est fait proposer les moyens les plus propres pour remédier à des inconvénients qui ne sont pas moins intéressans pour le commerce du royaume que pour ses sujets de la Nouvelle-France; dans la discussion de tous ces moyens aucun n'a paru plus convenable que celui de l'établissement d'une monnaie de carte qui sera reçu dans les magasins de Sa Majesté en payment de la poudre et autres munitions et marchandises qui y seront vendues et pour laquelle il sera délivré des lettres de change sur le trésorier-général de la marine en exercice; elle s'y est d'autant plus volontiers déterminée qu'elle n'a fait en cela que répondre aux désirs des négocians du Canada, lesquels ont l'année dernière présenté à cet effet une requête au gouverneur et lieutenant-général et au commissaire-ordonnateur en la Nouvelle-France, et aussi aux demandes des habitans en général qui ont fait les mêmes représentations, et que cette monnaie sera d'une grande utilité au commerce intérieur et extérieur par la facilité qu'il y aura dans les achats et dans les ventes qui se feront dans la colonie dont elle augmentera les établissements, et Sa Majesté voulant expliquer sur ce ses intentions, elle a ordonné et ordonne ce qui suit:

"ARTICLE I.—Il sera fabriqué pour la somme de quatre cent mille livres de monnaies de carte de vingt-quatre livres, de douze livres, de six livres, de trois livres, d'une livre dix sols; de quinze sols et de sept sols six deniers, lesquelles cartes seront empreintes des armes de Sa Majesté, et écrites et signées par le contrôleur de la marine à Québec.

"II. Les cartes de vingt-quatre livres, de douze livres, de six livres et de trois livres seront aussi signées par le gouverneur, lieutenant-général, et par l'intendant ou commissaire-ordonnateur.

"III. Celles d'une livre dix sols, de quinze et de sept sols

six deniers, seront seulement paraphées par le gouverneur, lieutenant-général et l'intendant ou commissaire-ordonnateur.

"IV. La fabrication des dites quatre cent mille livres de monnaie de carte pourra être faite en plusieurs fois différentes, et il sera dressé pour chaque fabrication quatre procès-verbaux dont un sera remis au gouverneur, lieutenant-général, un autre à l'intendant ou commissaire ordonnateur, le troisième sera déposé et enrégistré au bureau du contrôle, et le quatrième envoyé au secrétaire d'état ayant le département de la marine.

"V. Défend Sa Majesté au dit gouverneur, lieutenant-général, intendant ou commissaire-ordonnateur et au contrôleur d'en écrire, signer et parapher pour une somme plus forte que celle de quatre cent mille livres, et à toutes personnes de la contrefaire, à peine d'être poursuivies comme faux monnoyeurs et punies comme tels.

"VI. Veut Sa Majesté que la monnaie de carte faite en exécution de la présente ordonnance ait cours dans la colonie pour la valeur écrite sur icelle et qu'elle soit reçue par les gardes-magasins établis dans la colonie en payement de la poudre, munitions et marchandises qui seront vendues des magasins de Sa Majesté, par le trésorier pour le payement des lettres de change qu'il tirera sur les trésoriers-généraux de la marine, chacun dans l'année de son exercice, et dans tous les payemens généralement quelconques qui se feront dans la colonie de quelqu'espèce et de quelque nature qu'ils puissent être.

"Mande et ordonne Sa Majesté au sieur marquis de Beauharnois, gouverneur et lieutenant-général de la Nouvelle-France, et au sieur Hocquart, commissiare-ordonnateur, faisant les fonctions d'intendant au dit pays, de tenir la main à l'exécution de la présente ordonnance, laquelle sera régistrée au contrôle de la marine à Québec.

"Fait à Marly, le deuxième mars, mil sept cent vingt-neuf.

"Signé: LOUIS.

"Et plus bas,

"Signé; PHELYPEAUX.

"Et scellée du petit sceau."

I have copied the ordinance *verbatim*, because an attentive perusal will give a far better idea of the then state of commer-

cial and financial affairs in the colony, than I could possibly hope to convey by any remarks of my own. In the absence of specie, some such measure as the foregoing seemed necessary. The people could not return to a currency of beaver and moose skins, because they were wanted for exportation; and the wheat, which was legal tender at 4 francs per minot, was required to maintain human life in the colony. Considerable exchangeable power was, however, conferred upon the cards: —first, by the limitation of their issue; and then by the provisions in the measure for their convertibility into goods, and also into Bills of Exchange on the Imperial Treasury. The colonists were temporarily released from a dead lock, caused by the paucity, or absence of currency, so indispensable to a trading community.

The new issue of card money did not vary much in appearance from the cards called in, and settled for by compromise. Several specimens are in the possession of my friend Mr. Cyrille Tessier, Notary, a proficient numismatist, of Quebec. They are square pieces of card, having the corners clipped off, about half the size of a common playing card, and of the same thickness. The fractional card money is of the same material, but smaller in size. The accompanying illustrations, copied from originals in the possession of Mr. Tessier, will show better than any description could do, the character of this card money. As shown on plate I, the large card money bears at the top the arms of France and Navarre, stamped between the signature of the clerk of the Treasury *Varin*, and the year of issue 1742, followed by the statement of its value: *Pour la somme de douze livres*. After which follows the signature of the Governor *Beauharnois*, and that of the Intendant *Hocquart*.

The small card money has the same impress of the arms of France and Navarre, with the attesting signature "*Varin*," and year of issue, which in the example here produced is 1752. The initial at foot "*B*" is that of the Intendant *Bigot*.

Four hundred thousand livres (or francs), issued under authority of the Ordinance of 2nd March, was a small amount for a population of thirty or forty thousand. All things considered, four times four hundred thousand would have floated on that population; and this amount might have issued without

any violation of the principles of currency; but four hundred thousand livres was not enough for the ordinary purposes of exchange, and, consequently, a second issue was authorized on the 12th May, 1733, viz.:

"*Autre Ordonnance du Roi au sujet de la Monnoie de Carte, du 12e. mai, mil sept cent trente-trois.*

"DE PAR LE ROI,

"Sa Majesté ayant, par son ordonnance du deux du mois de mars, mil sept cent vingt-neuf, et pour les raisons y contenues, ordonné qu'il seroit fabriqué en Canada pour la somme de quatre cent mille livres de monnoie de carte de vingt-quatre livres, de douze livres, de six livres, de trois livres, de trente sols, de quinze sols, et de sept sols six deniers, elle auroit eu la satisfaction d'apprendre que l'établissement de cette monnoie qui avoit été désiré de tous les états de la colonie y avoit en effet produit d'abord les avantages qu'on en avoit attendu; mais Sa Majesté s'étant fait rendre compte des représentations qui ont été faites l'année dernière tant par les gouverneurs et lieutenant-général et l'intendant que par les négocians du pays, sur l'état actuel de la colonie, elle auroit reconnu que la dite somme de quatre cent mille livres n'est point suffisante pour les différentes opérations du commerce intérieur et extérieur, soit par le défaut de circulation de partie de cette monnoie que gardent les gens aisés du pays sur le juste crédit qu'elle a, soit parce que la colonie devient de jour en jour susceptible d'un commerce plus considérable, elle auroit jugé nécessaire pour le bien du pays en général et pour l'avantage du commerce en particulier d'ordonner une nouvelle fabrication de monnoie de carte, et elle s'y seroit d'autant plus volontiers déterminé qu'elle répondra encore par-là aux désirs de tous les états de la colonie, à quoi voulant pourvoir, Sa Majesté a ordonné et ordonne ce qui suit:

"ARTICLE I.—Outre les quatre cent mille livres de monnoie de carte fabriquées en exécution de l'ordonnance de Sa Majesté du deux de mars, mil sept cent vingt-neuf, lesquelles continueront d'avoir cours en Canada conformément à la dite ordonnance, il sera fabriqué pour la somme de deux cent mille livres de cette monnoie en cartes de vingt-quatre livres, de douze livres, de six livres, de trois livres, de trente sols, de quinze sols et de sept

sols six deniers, lesquelles cartes seront empreintes des armes de Sa Majesté, et écrites et signées par le contrôleur de la marine à Québec."

ART. II., III., IV., and V. are a mere repetition of II., III., IV., V., and VI. of the former ordinance.

It is interesting to read the preceding preamble. Light is breaking in on the subject. We see signs of caution, and an honest intention on the part of Government to give and maintain a safe, serviceable, though not immediately convertible currency. The experiment broke down, however, as we shall see presently, owing to the unprincipled proceedings of the Intendant; and Government drifted into a system of reckless and unrestricted over-issue, resulting in dishonor and disaster to all concerned. With a sound system of currency and finance, very different from the present might have been the fate of Canada. There was no lack of military ardour and soldierly qualities on the part of the French; but the woful mismanagement of financial affairs and maladministration of the colony, had a telling effect upon the spirits of the people, and contributed probably not a little to the loss of Canada to France.

An unfortunate concession had been made by Government to their ill-paid officials. All were permitted to engage in trade—from the lowest to the highest functionary. The grossest abuses were the result. Officials appear to have been in league with leading merchants to extort exorbitant prices from Government and from the settlers to whom they sold goods.* The privilege of trading, in connection with the issue of paper money, sometimes by the same hands, opened wide the door to every kind of abuse; and the highest functionaries were accused of enriching themselves by unworthy means.

The new issues being insufficient for the wants of the community, more might have been authorized under proper restrictions, with perfect safety. But the Intendant took the matter into his own hands, and of his own mere motion put out a separate issue of paper money which he called "ordonnances," to which no limit was assigned. The "ordonnances" were simply Promissory Notes. The lowest denomination was 20

*Garneau, p. 290, vol. II., referring to official despatches on the subject.

sols, the highest 100 livres. They were printed on common paper about half the size of a sheet of ordinary note paper, as shown in the accompanying fac-simile, plate II., of a note for ninety-six livres, issued at Montreal (for Quebec) in 1759. At the top, the year, then the words "*Dépenses Générales*," the number, followed by the obligation: "*Il sera tenu compte par le Roi au mois d'Octobre prochain de la somme de quatre-vingt seize livres, valeur en la soumission du Trésorier restée au bureau de contrôle.*" Under this, the date, and signature of Intendant *Bigot.*

Both cards and ordonnances were in use as currency and circulated simultaneously in the colony. The cards were, however, preferred, being considered a privileged or prior claim on the Treasury. Before the close of navigation, each year, in the month of October, those who required Bills on France for remittance, obtained them at the local Treasury, in exchange for cards and ordonnances; but cards were settled first, because the redemption of the ordonnances was contingent upon the state of the credit of the colony. If the annual expenditure exceeded the sum authorized to be drawn for, the ordonnances, instead of being redeemed by Bills of Exchange, were exchanged for bonds, payable twelve months after date, in card money—an arrangement which was termed "faisant la réduction." In 1754 both cards and ordonnances were settled for on equal terms, viz.: by Bills of Exchange payable partly in 1754, partly in 1755, and partly in 1756. In that year 1,300,000 livres of specie arrived from France, and the people thought that Government intended to discontinue the issue of paper money. Specie was then current at the proportionate value of 6 livres silver to 8 livres paper, and Government endeavored to establish that premium on silver, as a permanent par. Increased issues of paper money were made nevertheless; and as a matter of course the experiment failed, and paper fell, in spite of the Government, to 60 and 70 per cent. discount. The paper money now afloat, chiefly ordonnances, became completely discredited. "Le papier qui nous reste," writes M. de Levis to the Minister, "est entièrement décrédité, et tous les habitans sont dans le désespoir. Ils ont tout sacrifié pour la conservation du Canada. Ils se trouvent actuellement ruinés, sans ressources."*

*Garneau, page 355, vol. II.

In 1758-9, the death blow was given to the system in Canada, by the dishonor of the Treasury bills, and the refusal of the Imperial Government to allow of any more drafts on the Treasury, until an enquiry had been made into the cause and extent of the excessive issues of paper money. Prior to the peace, but after all hope of keeping Canada had fled, the Governor Vaudreuil and Intendant Bigot issued a circular to the people, stating that they were instructed by His Majesty the King to say that circumstances compelled him to refuse payment of the Bills drawn on the Treasury; but that those drawn in 1757 and '58, now overdue, would be liquidated three months after the conclusion of peace; and that interest would be allowed from the date of maturity—that those of 1759 would be liquidated eighteen months after peace. The Governor and Intendant were further charged to assure the people of Canada that the state of the Imperial Treasury alone compelled the King to act in this manner toward those who had given such signal proofs of their fidelity and attachment. They would wait patiently, he hoped, for a settlement of their claims. Those fair promises were never fulfilled.

Mr. Garneau, quoting from Raynal, says: "Under this monetary system Canada was deprived of all real security. Coined money has intrinsic value, paper money has none. It is only a sign and depending upon the contingency of redemption. The expenses rose rapidly. From 1,700,000 livres in 1749 they rose successively from year to year to 2,100,000, 2,700,000, 4,900,000, 5,900,000, 5,300,000, 4,450,000, 6,100,000, 11,300,000, 19,250,000, 27.900,000, 26,000,000 fr.; and for the eight first months of 1760 to 13,500,000, in all exceeding 123,-000,000. Of this sum," says M. Garneau, "the state owed 80,000,000—41,000,000 of which to Canadian creditors, consisting of 34,000,000 in Ordonnances and 7,000,000 in Bills of Exchange. This large amount of state obligations held by Canadians—large for such a country—proved almost valueless to the holders. Merchants and officers of the British army," says M. Garneau, "bought up, at 'vil prix,' a portion of these claims, and resold them, through French factors or brokers, on London Exchange for cash. Through personal influences, a stipulation was secured in the treaty of 1763 for compensation

of 3,600,000 francs in settlement of a moiety of the Bills, and three-fourths of the ordonnances; but while the Canadians suffered by the reduction an immediate loss of 29,000,000 on their holding, the merchants and officers, alone, derived whatever profit was to be reaped from the indemnification."

With respect to the alleged gains by British officers, the statement is simply incredible. We can believe that:

> "Grim visaged war has smoothed his wrinkled front;
> And now, instead of mounting barbed steeds,
> To fright the souls of fearful adversaries,
> He capers nimbly in a lady's chamber,
> To the lascivious pleasing of a lute."

But M. Garneau makes large demands upon our credulity when he asks us to believe that Mars took to stock-jobbing and trafficking in repudiated paper money. He must surely have penned that passage in an exceptional mood of mind; or, perhaps, under the influence of Anglophobia.

After the capitulation of Quebec, the British authorities paid for all labor, and every commodity, in specie—chiefly in Mexican dollars. Perhaps the new subjects, as the Canadians were then called, became reconciled to a change of allegiance which, thenceforth, secured to them the full satisfaction of every just pecuniary claim.

In preparing the foregoing story of the card money of Canada, I am indebted to Sir N. F. Belleau, Knt., Mr. S. E. Dawson, of Montreal, the Prothonotary Mr. Fiset, Mr. C. Tessier and Mr. M. LeMoine, of Quebec, for pointing out to me various sources of information from which I have drawn. And to Dr. H. H. Miles, author of the "History of Canada," for enabling me to conclude this paper with a copy of an important historical document, which provides for the final settlement of all outstanding paper—whether cards, ordonnances, or bills of exchange.

29TH MARCH, 1766.

CONVENTION FOR THE LIQUIDATION OF THE CANADA PAPER MONEY BELONGING TO THE SUBJECTS OF GREAT BRITAIN, BETWEEN THE KING OF GREAT BRITAIN AND THE MOST CHRISTIAN KING.

In order to terminate the discussions, which have too long

COLONIES 1759.

Dépenses générales.

N.° 11681 6.

IL sera tenu compte par le Roi, au mois d'octobre prochain, de la somme de Quatre vingt sept Livres valeur en la soûmission du Tréso-rier, restée au bureau du contrôle.

A Québec, le Montréal 11.e X.bre 1759

subsisted in regard to the liquidation of this paper, belonging to the subjects of Great Britain, the two courts have named and appointed their respective Ministers Plenipotentiary, viz.:

His Brittanic Majesty, the Sieur Henry Seymour Conway, Lieutenant-General of his armies, and one of his principal secretaries of state, likewise authorized to the same effect by the proprietors of the said Canada paper; and His Most Christian Majesty, the Sieur Count de Guerchy, Knight of his orders, Lieutenant-General of his armies, Colonel Commandant of his regiment of foot, and his Ambassador to His Brittanic Majesty; who after having communicated their full powers and authorizations in due form, to each other, copies whereof are transcribed at the end of the present Convention, have agreed to the following articles:

ARTICLE FIRST.

His Excellency General Conway, invested with the above mentioned full powers and authorizations, accepts, for the British proprietors or holders of the Canada paper, and in their names, the reduction of the said paper, on the footing of fifty per centum for the Bills of Exchange, and such part of the certificates as are entitled to the said payments, and of seventy-five per centum for ordonnances cards and the remaining part of the certificates, and to receive for the fifty and twenty-five per centum of the reduced principal, reconnoissances or rent-contracts, which shall bear an annual interest from the 1st day of January, 1765, of four and one-half per centum, to be subjected to the Dixième from the said first day of January, 1765, in as many reconnoissances as it shall suit the holders to divide their liquidated principles into: provided that each reconnoissance shall not be for more than One Thousand Livres Tournois; which reconnoissances shall share the same fate for their reimbursement, as the other debts of the state, and shall not be subject to any reduction whatsoever; the whole comformably to the arrêts of the Council issued in France the 29th of June, 2nd July, 1764; 29th and 31st December, 1765.

ARTICLE SECOND.

In order to ascertain the British property of this paper, at

the period, and according to the meaning of the Declaration annexed to the last treaty of peace with France, each proprietor or holder shall be obliged to make a declaration thereof upon oath, in the form and terms which shall be hereafter prescribed in consequence of a further delay, which his Most Christian Majesty grants them, to the 1st of October, 1766; after the expiration of which, such of the said papers as shall not have been declared and tendered to be liquidated, shall remain excluded, null, and of no value.

ARTICLE THIRD.

These declarations on the part of the proprietors and holders of this paper shall be accompanied by an oath to be taken before the Lord Mayor of the City of London, or such other magistrate in person as shall be named for that purpose, in such place and at such times as shall be specified in the presence of the commissaries or deputies appointed as well on the part of the Court of France as on the part of the proprietors of this paper; which commissaries or deputies shall be allowed to ask through the magistrate who administers the oath, such questions of the deponent as they shall judge necessary relative to the object of the oath.

ARTICLE FOURTH.

Each declaration shall contain only what belongs to one holder, whether they are his own property, or held by him for account of others, mentioning therein his name, quality, and place of abode; and this declaration shall be made conformable to the model annexed to the present convention.

ARTICLE FIFTH.

Duplicates shall be made of these declarations, certified to be true, signed by the holders of the said papers, and previously delivered to the English and French commissaries or deputies, who shall be obliged, three days after receiving these declarations, to assist at the taking of the oath before the magistrate appointed for that purpose.

ARTICLE SIXTH.

As this paper may, since the last treaty of peace, have passed into the hands of three different classes of proprietors,

namely, the actual proprietors, the intermediate, and the original, the form of an oath suitable to each clas of proprietors shall be prescribed in the three following articles.

ARTICLE SEVENTH.

The actual proprietors, who are not original proprietors, having been intermediate purchasers, with a guarantee of the British property, shall take the following oath underneath the declaration of their paper:

"I . . . . . affirm and solemnly swear on "the Holy Evangelists, that the papers mentioned in the "foregoing declaration are the same (or part of the same) that "I purchased of B . . the . . . . with a "guarantee of their being British property; and that I hold "them on my own account (or on account of . . . .) "so help me God."

ARTICLE EIGHTH.

The intermediate proprietors, who have been purchasers and sellers, with a guarantee of their property being British, shall take, by endorsement on their declaration, an oath in the following form:

"I . . . . . affirm and solemnly swear on "the Holy Evangelists, that I did purchase of C . . "on the . . . . day of . . . . sundry "Canada papers, amounting to . . . . . and "that I did sell the same, or . . . . . of the "same, to D . . which was guaranteed to, and by "me, to be British property, so help me God."

This oath to be repeated by each intermediate purchaser, back to the person who brought them, or received them, from Canada.

ARTICLE NINTH.

The Canada proprietors, or those who represent them in London, being the actual possessors, or no longer so, shall take the following oath, with the modifications expressed, suitable to the different circumstances under which they may find themselves:

"I . . . . . affirm and solemnly swear on "the Holy Evangelists, that the papers mentioned in the "foregoing declaration:

(If the property of a Canadian) "are my own property, "having had them in my possession at the date of the last "treaty of peace (or having bought them in Canada, from "whence I brought them.)"

(If in possession of a British representative of a Canadian subject) "are my own property, having bought them (or re- "ceived them) from Canadian subjects."

(If not in his possession) "were my own property, "having bought them (or received them) from Canadian "subjects; and that I sold the same (or part of the same) "to . . . the . . . ."

(If these papers came from France or elsewhere, being the property of Canadian or British subjects) "were sent to me "from France, or elsewhere, on account of . . as "British property."

(If sold) "and that I sold the same (or part of the same) "to . . . . . the . . . ."

(Foreigners, who shall have sent them to England, shall take the same oath as the intermediate proprietors, as expressed in Article eighth, preceding.)

(Foreigners who shall have received them from Canada or Great Britain.)

"I . . . . . affirm and solemnly swear on "the Holy Evangelists, that at the date of the last treaty of "peace, I held in trust, or that since that date I have received "from . . . . . in Canada (or in Great Britain, "sundry Canada papers, amounting to . . . . . "on the proper account of . . . . . "an actual British Canadian Subject; and that I have sold "(delivered) (or sent) the same (or part of the same) to ". . . . . as British property."

On these different oaths being judicially and legally made, the respective commissaries shall be obliged to grant to the holders of the papers that shall have come from France (or

elsewhere) a certificate of their being British property, as well as to the holders, who shall have received them directly from Canada.

(If the papers have been brought from Canada, on account of any other than the person who sent them) "have been sent "to me directly by . . . of . . . in "Canada, who purchased them from British Canadian Sub- "jects, upon commission for account of . . . . "of . . . . ."

(Lastly, if the papers are for account of Canadians and transmitted by them.) "That I received from . . . "of . . . in Canada and for his account."

(All indifferently are to add.)

"I further swear that the said papers were neither "purchased, nor have been negotiated in France, as French "property, nor acquired directly or indirectly from natives of "France, who were the proprietors of them at the date of the "last treaty of peace, and that no part of these papers were "carried from Europe to Canada, in order to give French "property the sanction of British property, which I affirm and "solemnly swear, so help me God."

ARTICLE TENTH.

Nevertheless in case the actual proprietors or holders produce Borderaux in good form, registered heretofore in Canada in consequence of the orders of the English Governors or declared in France as British property, and not liquidated within the time (for those declared in France) that the Registers for the Declaration were opened for the French, it shall be sufficient that the proprietors or holders, so circumstanced, take the following oath :—

"I . . . affirm and solemnly swear on the "Holy Evangelists, that the papers, mentioned in my "foregoing declaration have been registered in Canada (or "in France) conformably to the annexed Borderaux, which I "certify to be true, so help me God."

ARTICLE ELEVENTH.

After the administration of the oaths, there shall, within

the space of three days, be delivered to each actual proprietor or holder a certificate of its being British property, by the magistrate who administers the oaths; which certificate shall be revised and signed by the respective commissaries or deputies and shall contain an account of each sort of paper which shall have been therein proved British property; in order that, by means of this voucher, the possessor may present his paper to the office of the Commission at Paris, there to be examined, revised, liquidated and converted into reconnoissances or rent-contracts, according to the reduction fixed and agreed upon: Everything shall meet with all possible despatch, and the holders of this paper shall be at no expense whatsoever.

ARTICLE TWELFTH.

In case any unforeseen accident shall have deprived any actual proprietor of this paper of an intermediate proof between him and the first proprietor who received it from Canada, so as that the proofs which precede and follow that which ought to join them, and which is missing, seem to have report, and belong to each other; in that case only the respective commissaries or deputies shall be empowered to admit the paper it relates to, as British property, if they think proper, notwithstanding the deficiency which shall have broken the link of the proof: and if the respective commissaries or deputies should chance to differ in opinion, the decision of the object in question shall be referred to his Brittanic Majesty's Secretary of State, and the Ambassador of His Most Christian Majesty.

ARTICLE THIRTEENTH.

In virtue of the foregoing arrangement, the Court of France grants to the British proprietors of this paper an indemnification or *premium* of three millions of Livres Tournois, payable in the following manner, viz.:—The sum of five hundred thousand Livres Tournois, which shall be paid in specie to his Brittanic Majesty's Ambassador at Paris, in the course of the month of April next, and the sum of two millions five hundred thousand Livres Tournois in reconnoissances or rent-contracts, of the same nature of those which shall be given for the fifty and twenty-five

per centum on the certificates of the Bills of Exchange, Cards, Ordonnances, &c.; but the interest of which shall only run from the 1st of January, 1766. Which sum of two millions and a half of Livres Tournois shall be delivered to the aforesaid Ambassador immediately after the ratification and exchange of the present convention in reconnoissances of one thousand Livres Tournois each, on the express condition that all the Canada paper belonging to British subjects, not liquidated, shall share the same fate, for its reimbursement, as French paper, and shall come in course of payment with the debts of the state, the reconnoissances or rent-contracts whereof shall be paid as the other debts, without being subjected to any reduction whatsoever; and on the further condition that all the English proprietors of the said paper shall give up every particular indemnification from any cause or pretext whatsoever.

ARTICLE FOURTEENTH.

The solemn ratifications of the present convention shall be exchanged in good and due form, in this city of London, between the two courts, within the space of one month, or sooner, if it be possible to be reckoned from the day of signing the present convention. In witness whereof, we, the underwritten Ministers Plenipotentiary of the said two courts, have signed, in their names, and by virtue of our full powers, the present convention, and caused it to be sealed with our arms.

Done at London, this twenty-ninth day of March, 1766.

L.S. H. S. CONWAY. L.S. GUERCHY.

Canada Paper.

Declaration made in consequence of the *arret* of Council of the 24th December, 1762.

"I, the underwritten . . . . . do declare, "that I have in my possession the Canada papers "here undermentioned, which belong to me, or belong to "" . . . . . "

BILLS OF EXCHANGE.

Exercises.	Stamp of the Bills of Exchange.	Dates.	Numbers.	Names of the Drawers.	Upon whom Drawn.	To the Order of.....	When Due.	Sums.	Total per Exercises.

Total of the Bills of Exchange,

BILLETS DE MONNOYE OR ORDONNANCES.

No. Receipt of the Treasurer of Canada for *Billets de Monnoye.*

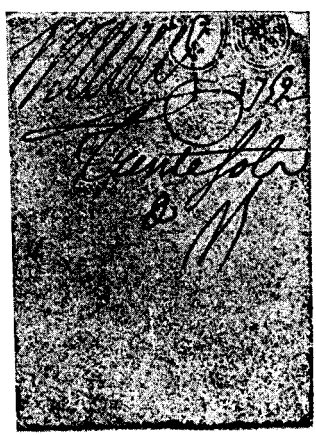
Billets de Monnoye of.....	1000	
of.....	96	
of.....	50	
of.....	48	
of.....	24	
of.....	12	
of.....	6	
of.....	3	
of.....	1	10 s.
of.....	1	

Total of the Billets de Monnoye and Ordonnances included .....

Receipts of the Treasurer of Canada.....

JAMES STEVENSON.

Quebec.



A NEW INSOLVENT ACT.

Most of the readers of the JOURNAL are aware that the Dominion Government are likely to bring in a bill respecting insolvency during the approaching Session of Parliament. The Council of the Association have been looking after the interests of the banks in the matter, and after obtaining the views of the Bankers' Section of the Toronto Board of Trade, and of the bankers of Montreal, Halifax and elsewhere, have prepared and submitted to the Finance Department a memorandum respecting the various points which the new Act would cover.

The views of the Halifax bankers were set forth in an able memorandum submitted to the Council, the concluding portion of which is a very forcible and practical statement of their views on the general question of insolvency, and with their permission we print this portion for the benefit of the readers of the JOURNAL. The opinions expressed are not wholly shared by the members of the Association, and some of their suggestions are we fear impossible of adoption. An Insolvent Act is of all legislation the most difficult to get through Parliament, without concessions to all sorts of conflicting interests, and an ideally perfect law respecting insolvency will only come when the social body is itself perfect; and then we shall probably not need it. The paper is, however, most interesting and instructive, and contains among other things a strong re-statement of the arguments against compositions:

"Walter Bagehot has said that 'the business of banking ought to be simple; if it is hard it is wrong.' The same thing may be said of every other business and of all the arts. When we find ourselves continually struggling with difficulties in any business, we either have failed to get true insight into the matter, or we are being forced to pursue it by wrong methods. It is our opinion that this consideration has a very direct bearing on our insolvency legislation, and on our management of insolvent estates.

"It would almost seem as if the problem, how to deal with bankrupts and bankrupt estates, were one which the Anglo-Saxon race has found insoluble. It certainly has not yet solved it. It is becoming more and more the great conspicuous blot in our

commercial life. Whatever practical ability we may have shown in other directions, our efforts here have been a total failure. England and her Colonies alike, as well as the even more practical United States, are in the same condemnation in this matter. One serious effort after another has been made at long intervals, only to end in disgust and universal clamour for repeal of the abortive law. In despair of ever getting the subject satisfactorily regulated by legislation, the people resign themselves for long periods to what we may call free trade in folly. But by and by this too becomes unendurable, and having largely forgotten the old sores and being painfully conscious of where and how the shoe now pinches, a desire for a change, any kind of change, gradually takes possession of them, and the result is a fresh agitation such as we are now witnessing, for another experiment in bankruptcy legislation. But have we really learned anything since the last attempt? Have we been studying the problem? If so, who has thrown any fresh light on it?

"If ordinary business were attempted to be carried on as bankrupt estates are usually administered, under insolvent acts, there would soon be universal bankruptcy. Why is it not possible to deal with bankrupt estates as a competent and conscientious business man would deal with any other estate for which he was acting as trustee? Why should it be any more difficult to wind up an insolvent estate than to wind up the estate of a deceased person?

"It is true that in many cases an insolvent tries to mislead, confuse, and cheat his creditors, but when he has been once divested of his estate, his power to do his creditors further injury is practically stopped; and when he is not dishonest, he may be of considerable assistance in the liquidation of the estate.

"Let it once be recognized that an insolvent is commercially a dead man, and that his estate should be wound up as if he were also physically dead, and we shall find the way wonderfully cleared of difficulties. It then becomes clear that all that is wanted is a capable, trustworthy business man to act as executor or liquidator—to sell off the property, collect the debts, and divide the proceeds among the creditors precisely as would be done in administering the estate of a deceased person.

"In most places of any importance, there are men well known to the public, and to the Court, admittedly good trustees, who could be appointed by the Court as interim liquidators, and such men should be selected as would probably be confirmed as liquidators by the creditors at their first meeting. Whenever there is a Trust Company available, it should be appointed interim assignee or liquidator, and there cou'd then be no objection to the continuation of such a company as liquidator by the Creditors. It seems to us that in this way we should soon have admirable machinery for handling estates of all kinds. A Trust Company's honesty and disinterestedness could not be questioned by any one, and its officers would soon acquire an experience and skill in handling estates which could not be looked for from the ordinary liquidator.

"After such a liquidator was appointed, and inspectors to represent the creditors in conference with him, from time to time, regarding the business of the estate, the estate could be wound up without any further reference to the Court, or the legal fraternity, unless litigation from some cause or other became unavoidable. In that event it should be open to the liquidator to invoke the assistance of the Court and get summary judgment on a hearing of the facts.

"When the estate was wound up the liquidator would present his accounts to the Court, and get his discharge just as an executor in the Probate Court would do.

"The inspectors should be appointed merely to advise with the liquidator, to avoid his having to call a meeting of the creditors every time he wished advice respecting minor matters. To appoint inspectors to 'superintend and direct' a liquidator, would simply destroy all feeling of responsibility on the part of the latter—a thing not to be thought of. He should feel that almost everything depended upon him, that every one was looking to him, and that his reputation depended upon his success. While he should keep himself in touch with the creditors through the inspectors, he should not feel bound to follow their advice, unless he was at the same time following his own judgment, and in any matter where he thought it his duty either in the interests of all the creditors, or in that of the public, he shou'd have the

right to appeal to the Court against any resolution of the creditors of which he could not approve.

"We should make no provision whatever for Deeds of Composition, but the discharge of the debtor should not be opposed on any ground but that of dishonesty, or because he did not keep proper books and records of his business.

"All insolvent estates should, without exception, be wound up, and they should not be sold *en bloc*, the great object being to establish the principle that no bankrupt shall be allowed directly or indirectly to make money, or other benefit, out of his failure. Nothing but good could follow from the establishment of this principle, and until it is established, nothing but evil will follow our insolvent Acts. We contend that this involves no injustice to the bankrupt. He has no vested right to his business. Any rights he had now belong to his creditors, until they are paid in full. Moreover, in 19 cases out of 20, and probably in a larger proportion, the failure proves that the bankrupt was not able from some cause or other, which need not be discussed, to fill the position he occupied. That being the case, even if his creditors were willing and anxious to compromise with him, and put him back into business, the law ought to interpose on behalf of the common good, for in the end the loss and waste of failures fall on the shoulders of the people. It is just so much abstracted from the aggregate wealth of the community by the incompetency of the bankrupt.

"To permit compromises and so reinstate bankrupts in the business for which they had just proved their unfitness, is to deliberately invert the law of natural selection, and start a crusade against nature. The inevitable result would assuredly follow, and follow fast. Bankruptcies would increase and multiply, for what incompetent or moneyless trader would continue his hopeless struggle against competent and rich men, if he could in one stroke end his misery, not only without losing his position in the community, but also with the certainty that that position would be made stronger than before.

"The conditions of business nowadays are rendering it more and more difficult for small industries of any kind to compete against large ones, while the large ones are growing ever larger. The tendency, therefore, and it is a very strong one, is towards

the extinction of all small enterprises. This cause of itself will produce an ever-increasing crop of bankruptcies, but the movement is inevitable and it can hardly be doubted that it is in the right direction.

"Every small or incompetent trader swamped by the competition of the big, well managed corporation, need give himself very little concern about it, however, if he can persuade his creditors that the best thing they can do is to compromise with him and let him go on again. And if he lacked arguments to induce them to this course, he would find enough in the proposed bill, if it ever became a law, for he could easily show them that the alternative would be the eating up of the estate through delay and expense.

"By the winding up of every insolvent estate under such an Act as the one proposed to us, the dividend to the creditors might in many cases be smaller than a compromise would give them, but we contend that with such machinery as we have suggested the liquidation of estates would be much more effective than it has ever been under previous Insolvent Acts, and that in any case the direct loss to the creditors, if any, would be as nothing compared to the indirect gain, alike to creditors generally and to the community at large, which would come from the general knowledge by all traders that failure meant their stepping down and out.

"Then as to the bankrupts themselves, if they had been guilty of no fraud, or of wilful negligence amounting to fraud, they would get their discharge without difficulty and without any reference to the dividend their estates might pay. They would then be in no worse position to earn a living than the thousands of competent, ambitious young men who never had the chance to go into business for themselves, and who certainly have at least as much right to such a chance as those who have had it, and have proved their unfitness for it.

"The key to successful insolvency legislation, in our opinion, is the forbidding of compromises. All the rest is comparatively plain sailing. To put it shortly, the forbidding of c mpromises, full authority to responsible and in the end virtually professional liquidators, and having as little as possible to do with the lawyers and the courts."

CORRESPONDENCE.

The next Annual Meeting of the Association.

Dear Sirs,—Will you permit me to use the pages of our Journal for the purpose of directing the attention of Members and Associates of the Canadian Bankers' Association to Halifax as the place of their next yearly reunion.

Many of those present at last summer's meeting of the Association (in Toronto) may recall the objection lodged by our then president to Halifax on account of its distance from Montreal, Toronto and Canadian civilization generally. The writer, being the only delegate from the Maritime Provinces, was allowed to explain that the capital city of Nova Scotia was not the spot indicated in the sentence "go to Halifax;" that, even in midsummer, Halifax is not a hot place, and that citizens of the Nova Scotian capital can sleep under a blanket in July, and upon awaking from slumber they always enquire about the temperature of the Atlantic Ocean before taking their matutinal dip into its waters. Having thus enlightened those who might otherwise have continued to harbor hazy notions of the whereabouts of Halifax, my Halifax, I took advantage of having the floor to assert my willingness to wager a quintal of codfish that Halifax was the most pleasant summer city in British North America. To this last bold statement I am bound to stick with the tenacity of a periwinkle to the rocks at Point Pleasant. It is not more true that the cliffs of Britain are made up of shells and the skeletons of extinct molluscs than that Nova Scotia represents the richest and most picturesque slice or corner of the Dominion of Canada.

It is rich in coal, iron and gold. It is prolific in fish, lumber, pretty women and the best wooden ships in the world. It is picturesque to such a degree that an American poet has been content to accept its beauties on mere traditional rumor

thereof, and has given to the reading world of America an ever increasing desire to visit the home of Longfellow's "Evangeline," the country of the banished Acadians.

I made a feeble and a possibly forgotten effort to talk about Halifax to members of the Canadian Bankers' Association at its meeting in Toronto last year. At the annual dinner of the Association (at which, you will allow me, parenthetically, to remark, the bottle, for toast drinking purposes, did not circulate with the freedom of a Canadian chartered bank note), I made a painful effort to weave into an extempore reply to the toast of the Associate Members a passage from my fortunately unpublished essay on Nova Scotia. But the insane desire to tell a story and drink to the toast spoiled my best periods, and I had to content myself with a reference to Nova Scotia as a country of broad farm lands, great woods and beautiful hills, a land pleasing and picturesque to the artist's eye, a province where a reasonable degree of prosperity prevailed, combined with contented happiness.

But my only idea in thus writing to you is to give to those of our Members who are dreaming of coming to Halifax to attend the next meeting of the Association a skeleton programme of what Haligonians have to offer them. Your Halifax brethren can, *in July*, treat you to deep-sea fishing, yachting, bathing and boating, and other delightful forms of genuine recreation and relief from the cares and anxieties of the bankers' lot. During your stay, we will make you our guests at the best conducted and prettiest regatta held in the known world, given under the management of Halifax bankers, assisted by the British North American Squadron. We can show them a city almost as rich in historic interest as old Quebec, and the British fleet at anchor in one of the finest of harbors, fringed with forts garrisoned by British troops. We will point with pride to our public gardens, and ask you to show us their equal in Montreal or the Queen City of the West. All these things, and more, await those who intend to test Nova Scotian hospitality in July next. And when you leave us, it will be with a respect and admiration for the capital of Nova Scotia only overshadowed by surprise that Canadians everywhere are

not more alive to the importance and whereabouts of Halifax —which surprise, it is fondly to be hoped, will be followed by a determination to make our city, as it ought to be, the true winter port of Canada.

Trusting, my dear sirs, that you will be able, from this hasty letter, to extract something in the shape of a promissory note of hearty welcome to any members of the Canadian Bankers' Association who intend to "go to Halifax" in 1894,

I remain

Yours faithfully,

JOHN KNIGHT.

ERRATUM FOR DECEMBER NUMBER.

Page 91.—Third line from the foot should have read "is *the cause of* the fall of prices."

Recent Legal Decisions.

Privy Council.

Tennant vs. Union Bank of Canada.

Powers of the Dominion Parliament.

Since the last number of the Journal was issued the judgment of the Judicial Committee of the Privy Council has been received. At the first hearing all the points arising in the case were argued with the exception of the Appellant's plea against the validity of the Dominion Act. The Committee having come to the conclusion that the warehouse receipts were valid if the Act were *intra vires* of the Dominion Legislature, asked that that point should be argued. The second hearing took place before a very strong Board, and judgment was subsequently delivered by Lord Watson, upholding the validity of the warehouse receipt clauses of the Bank Act.

The clauses which were under discussion are now no longer in force, but the validity of the clauses of the present Bank Act respecting Assignments of Goods (Sec. 74 and others), would seem to be fully affirmed.

The judgment as to this point reads as follows:

"The question turns upon the construction of two clauses in the British North America Act, 1867. Section 91 gives the Parliament of Canada power to make laws in relation to all matters not coming within the classes of subjects by the Act exclusively assigned to the Legislatures of the Provinces, and also exclusive legislative authority in relation to certain enumerated subjects, the fifteenth of which is 'Banking, Incorporation of Banks and the Issue of Paper Money.' Section 92 assigns to each Provincial Legislature the exclusive right to make laws in relation to the classes of subjects therein enumerated; and the fourteenth of the enumerated classes is 'Property and Civil rights in the Province.'

"Statutory regulations with respect to the form and legal effect, in Ontario, of warehouse receipts, and other negotiable documents, which pass the property of goods without delivery, unquestionably relate to property and civil rights in that Pro-

vince; and the objection taken by the Appellant to the provisions of the Bank Act would be unanswerable, if it could be shown that by the Act of 1867, the Parliament of Canada is absolutely debarred from trenching to any extent upon the matters assigned to the Provincial Legislature by Section 92. But Section 91 expressly declares that 'notwithstanding anything in this Act,' the exclusive legislative authority of the Parliament of Canada shall extend to all matters coming within the enumerated classes: which plainly indicates that the legislation of that Parliament, so long as it strictly relates to these matters, is to be of paramount authority. To refuse effect to the declaration would render nugatory some of the legislative powers specially assigned to the Canadian Parliament. For example, among the enumerated classes of subjects in Section 91, are 'patents of invention and discovery,' and 'copyrights.' It would be practically impossible for the Dominion Parliament to legislate upon either of these subjects, without affecting the property and civil rights of individuals in the Provinces.

"This is not the first occasion on which the legislative limits laid down in Sections 91 and 92 have been considered by this Board. In *Cushing* v. *Dupuy* (5 Ap. Ca. 409) their Lordships had before them the very same question of statutory construction which has been raised in this Appeal. An Act relating to bankruptcy, passed by the Parliament of Canada, was objected to as being *ultra vires*, in so far as it interfered with property and civil rights in the Province; but, inasmuch as 'bankruptcy and insolvency' form one of the classes of matters enumerated in Section 91, their Lordships upheld the validity of the Statute. In delivering the judgment of the Board, Sir Montague Smith pointed out that it would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates, without interfering with and modifying some of the ordinary rights of property.

"The law being so far settled by precedent, it only remains for consideration whether warehouse receipts, taken in security by a bank, in the course of the business of banking, are matters coming within the class of subjects described in Section 91 (15), as 'banking, incorporation of banks, and the issue of paper money.' If they are, the provisions made by the Bank Act

with respect to such receipts are *intra vires*. Upon that point, their Lordships do not entertain any doubt. The legislative authority conferred by these words is not confined to the mere constitution of corporate bodies with the privilege of carrying on the business of bankers. It extends to the issue of paper currency, which necessarily means the creation of a species of personal property carrying with it rights and privileges which the law of the Province does not, and cannot, attach to it. It also comprehends 'banking,' an expression which is wide enough to embrace every transaction coming within the legitimate business of a banker.

"The Appellant's Counsel hardly ventured to dispute that the lending of money on the security of goods, or of documents representing the property of goods, was a proper banking transaction. Their chief contention was that, whilst the Legislature of Canada had power to deprive its own creature, the Bank, of privileges enjoyed by other lenders under the provincial law, it had no power to confer upon the Bank any privilege as a lender, which the provincial law does not recognize. It might enact that a security, valid in the case of another lender, should be invalid in the hands of the Bank; but could not enact that a security should be available to the Bank, which would not have been effectual in the hands of another lender. It was said in support of the argument that the first of these things did, and the second did not, constitute an interference with property and civil rights in the Province. It is not easy to follow the distinction thus suggested. There must be two parties to a transaction of loan; and, if a security, valid according to Provincial law, was made invalid in the hands of the lender by a Dominion statute, the civil rights of the borrower would be affected, because he could not avail himself of his property in his dealings with a bank.

"But the argument, even if well founded, can afford no test of the legislative powers of the Parliament of Canada. These depend upon Section 91, and the power to legislate conferred by that clause may be fully exercised, although with the effect of modifying civil rights in the Province. And it appears to their Lordships that the plenary authority given to the Parlia-

ment of Canada by Section 91 (15), to legislate in relation to banking transactions, is sufficient to sustain the provisions of the Bank Act which the Appellant impugns.

"On these grounds, their Lordships have come to the conclusion that the judgments appealed from ought to be affirmed, and they will humbly advise Her Majesty to that effect. The Appellant must bear the costs of this appeal."

PRIVY COUNCIL.

The Attorney-General of Ontario vs. The Attorney-General for the Dominion of Canada, from the Court of Appeal for Ontario.

Powers of the Provincial Legislature in respect to Assignments for the benefit of Creditors.

(*Delivered by the Lord Chancellor, 24th February*, 1894.)

This appeal is presented by the Attorney-General of Ontario against a decision of the Court of Appeal of that province.

The decision complained of was an answer given to a question referred to that Court by the Lieutenant-Governor of the province in pursuance of an Order in Council.

The question was as follows:—

"Had the Legislature of Ontario jurisdiction to enact the "9th Section of the Revised Statutes of Ontario, chapter 124, "and entitled 'An Act respecting Assignments and Preferences "'by Insolvent Persons?'"

The majority of the Court answered this question in the negative; but one of the Judges who formed the majority only concurred with his brethren because he thought the case was governed by a previous decision of the same Court; had he considered the matter *res integra* he would have decided the other way. The Court was thus equally divided in opinion.

It is not contested that the enactment, the validity of which is in question, is within the legislative powers conferred on the Provincial Legislature by section 92 of the British North America Act, 1867, which enables that legislature to make laws in relation to property and civil rights in the province, unless it is withdrawn from their legislative competency by the

provisions of the 91st section of that Act, which confers upon the Dominion Parliament the exclusive power of legislation with reference to bankruptcy and insolvency.

The point to be determined, therefore, is the meaning of those words in section 91 of the British North America Act, 1867, and whether they render the enactment impeached *ultra vires* of the Provincial Legislature. That enactment is section 9 of the Revised Statutes of Ontario of 1887, c. 124, entitled "An Act respecting Assignments and Preferences by Insolvent Persons." The section is as follows :—

"An assignment for the general benefit of creditors under "this Act shall take precedence of all judgments and of all "executions not completely executed by payment, subject to "the lien, if any, of an execution creditor for his costs, where "there is but one execution in the sheriff's hands, or to the "lien, if any, of the creditor for his costs, who has the first "execution in the sheriff's hands."

In order to understand the effect of this enactment it is necessary to have recourse to other sections of the Act to see what is meant by the words "an assignment for the general "benefit of creditors under this Act."

The first section enacts that if any person in insolvent circumstances, or knowing himself to be on the eve of insolvency, voluntarily confesses judgment, or gives warrant of attorney to confess judgment, with intent to defeat or delay his creditors, or to give any creditor a preference over his other creditors, every such confession or warrant of attorney shall be void as against the creditors of the party giving it.

The second section avoids as against the other creditors any gift or assignment of goods or other property made by a person at a time when he is in insolvent circumstances, or knows that he is on the eve of insolvency, with intent to defeat, delay, or prejudice his creditors or give any of them a preference.

Then follows section three, which is important :—

Its first sub-section provides that nothing in the preceding section shall apply to an assignment made to the sheriff of a county in which the debtor resides or carries on business, or to any assignee resident within the province, with the consent of

his creditors as thereinafter provided, for the purpose of paying, rateably and proportionately, and without preference or priority, all the creditors of the debtor their just debts.

The second sub-section enacts that every assignment for the general benefit of creditors which is not void under section two, but is not made to the sheriff nor to any other person with the prescribed consent of the creditors, shall be void as against a subsequent assignment which is in conformity with the Act, and shall be subject in other respects to the provisions of the Act, until and unless a subsequent assignment is executed in accordance therewith.

The fifth sub-section states the nature of the consent of the creditors which is requisite for assignment in the first instance to some person other than the sheriff.

These are the only sections to which it is necessary to refer in order to explain the meaning of section nine.

Before discussing the effect of the enactments to which attention has been called, it will be convenient to glance at the course of legislation in relation to this and cognate matters both in the Province and in the Dominion. The enactments of the first and second sections of the Act of 1887 are to be found in substance in sections 18 and 19 of the Act of the Province of Canada passed in 1858 for the better prevention of fraud. There is a proviso to the latter section which excepts from its operation any assignment made for the purpose of paying all the creditors of the debtor rateably without preference. These provisions were repeated in the Revised Statutes of Ontario, 1877, c. 118. A slight amendment was made by the Act of 1884, and it was as thus amended that they were re-enacted in 1887. At the time when the Statute of 1858 was passed there was no bankruptcy law in force in the Province of Canada. In the year 1864 an Act respecting insolvency was enacted. It applied in Lower Canada to traders only; in Upper Canada to all persons whether traders or non-traders. It provided that a debtor should be deemed insolvent and his estate should become subject to compulsory liquidation if he committed certain acts similar to those which had for a long period been made acts of bankruptcy in this country. Among these Acts were the assignment or the procuring of his property to be seized in execution with

intent to defeat or delay his creditors, and also a general assignment of his property for the benefit of his creditors otherwise than in manner provided by the Statute. A person who was unable to meet his engagements might avoid compulsory liquidation by making an assignment of his estate in the manner provided by that Act; but unless he made such an assignment within the time limited the liquidation became compulsory.

This Act was in operation at the time when the British North America Act came into force.

In 1869 the Dominion Parliament passed an Insolvency Act which proceeded on much the same lines as the Provincial Act of 1864, but applied to traders only. This Act was repealed by a new Insolvency Act of 1875, which, after being twice amended, was, together with the amending Acts, repealed in 1880.

In 1887, the same year in which the Act under consideration was passed, the Provincial Legislature abolished priority amongst creditors by an execution in the High Court and County Courts, and provided for the distribution of any moneys levied on an execution rateably amongst all execution creditors, and all other creditors who within a month delivered to the sheriff writs and certificates obtained in the manner provided for by that Act.

Their Lordships proceed now to consider the nature of the enactment said to be *ultra vires*. It postpones judgments and executions not completely executed by payment to an assignment for the benefit of creditors under the Act. Now there can be no doubt that the effect to be given to judgments and executions and the manner and extent to which they may be made available for the recovery of debts, are *prima facie* within the legislative powers of the Provincial Parliament. Executions are a part of the machinery by which debts are recovered, and are subject to regulation by that parliament. A creditor has no inherent right to have his debt satisfied by means of a levy by the sheriff, or to any priority in respect to such levy. The execution is a mere creature of the law which may determine and regulate the rights to which it gives rise. The Act of 1887 which abolished priority as amongst execution creditors provided

a simple means by which every creditor might obtain a share in the distribution of moneys levied under an execution by any particular creditor. The other Act of the same year, containing the section which is impeached, goes a step further and gives to all creditors under an assignment for their general benefit a right to a rateable share of the assets of the debtor, including those which have been seized in execution.

But it is argued that inasmuch as this assignment contemplates the insolvency of the debtor, and would only be made if he were insolvent, such a provision purports to deal with insolvency, and therefore it is a matter exclusively within the jurisdiction of the Dominion Parliament. Now it is to be observed that an assignment for the general benefit of creditors has long been known to the jurisprudence of this country and also of Canada, and has its force and effect at common law quite independently of any system of bankruptcy or insolvency, or any legislation relating thereto. So far from being regarded as an essential part of the bankruptcy law, such an assignment was made an act of bankruptcy on which an adjudication might be founded, and by the law of the Province of Canada which prevailed at the time when the Dominion Act was passed, it was one of the grounds for an adjudication of insolvency.

It is to be observed that the word "bankruptcy" was apparently not used in Canadian legislation, but the insolvency law of the Province of Canada was precisely analogous to what was known in England as the bankruptcy law.

Moreover the operation of an assignment for the benefit of creditors was precisely the same, whether the assignor was or was not in fact insolvent. It was open to any debtor who might deem his solvency doubtful, and who desired in that case that his creditors should be equitably dealt with, to make an assignment for their benefit. The validity of the assignment and its effect would in no way depend on the insolvency of the assignor, and their Lordships think it clear that the ninth section would equally apply whether the assignor was or was not insolvent. Stress was laid on the fact that the enactment relates only to an assignment under the Act containing the section, and that the Act prescribes that the sheriff of the county is to be

the assignee unless a majority of the creditors consent to some other assignee being named. This does not appear to their Lordships to be material. If the enactment would have been *intra vires*, supposing section nine had applied to all assignments without these restrictions, it seems difficult to contend that it became *ultra vires* by reason of them. Moreover, it is to be observed that by sub-section (2) of Section 3, assignments for the benefit of creditors not made to the sheriff or to other persons with the prescribed consent, although they are rendered void as against assignments so made, are nevertheless, unless and until so avoided, to be "subject in other respects to the provisions" of the Act.

At the time when the British North America Act was passed bankruptcy and insolvency legislation existed, and was based on very similar provisions both in Great Britain and the Province of Canada. Attention has already been drawn to the Canadian Act.

The English Act then in force was that of 1861. That Act applied to traders and non-traders alike. Prior to that date the operation of the Bankruptcy Acts had been confined to traders. The statutes relating to insolvent debtors, other than traders, had been designed to provide for their release from custody on their making an assignment of the whole of their estate for the benefit of their creditors.

It is not necessary to refer in detail to the provisions of the Act of 1861. It is enough to say that it provided for a legal adjudication in bankruptcy with the consequence that the bankrupt was divested of all his property and its distribution amongst his creditors was provided for.

It is not necessary in their Lordships' opinion, nor would it be expedient to attempt to define what is covered by the words "Bankruptcy" and "Insolvency" in Section 91 of the British North America Act. But it will be seen that it is a feature common to all the systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in the case of an insolvent person his assets shall be rateably distributed amongst his creditors whether he is

willing that they shall be so distributed or not. Although provision may be made for a voluntary assignment as an alternative, it is only as an alternative. In reply to a question put by their Lordships the learned Counsel for the Respondent were unable to point to any scheme of bankruptcy or insolvency legislation which did not involve some power of compulsion by process of law to secure to the creditors the distribution amongst them of the insolvent debtor's estate.

In their Lordships' opinion these considerations must be borne in mind when interpreting the words "Bankruptcy" and "Insolvency" in the British North America Act. It appears to their Lordships that such provisions as are found in the enactment in question, relating as they do to assignments purely voluntary, do not infringe on the exclusive legislative power conferred upon the Dominion Parliament. They would observe that a system of bankruptcy legislation may frequently require various ancillary provisions for the purpose of preventing the scheme of the Act from being defeated. It may be necessary for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the Provincial Legislature. Their Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the Provincial Legislature would doubtless be then precluded from interfering with the legislation inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that such subjects as might properly be treated as ancillary to such a law, and therefore within the powers of the Dominion Parliament, are excluded from the legislative authority of the Provincial Legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence.

Their Lordships will therefore humbly advise Her Majesty that the decision of the Court of Appeal ought to be reversed, and that the question ought to be answered in the affirmative. The parties will bear their own costs of this appeal.

PRIVY COUNCIL.

Commercial Bank of Tasmania v. Jones and Another.

On Appeal from the Supreme Court of Tasmania.

Where there is an absolute release of the principal debtor, the remedy against the surety is gone and cannot be reserved.

B. guaranteed to the appellants certain advances to be made to W., and one of the terms of the guarantee was that the appellants might take security from or release W., and might enter into any arrangement with W. or with any other person, but that B.'s liability was not to be discharged thereby. After the advance had been made M. was accepted by the appellants as full debtor in place of W.

Held, in an action by the appellants against the executors of B. to recover the sum so guaranteed, that there was a complete novation of the debt which absolutely released W., and consequently B.'s estate was under no liability.

The facts are given in their lordships' judgment, which was delivered by Lord MORRIS.

This case comes on appeal from an order of the Supreme Court of Tasmania made on the 22nd of August, 1891. The appellants sued the respondents, as executors of James Bonney, deceased, to recover a sum of £600 under a guarantee dated the 15th of September, 1884, from James Bonney to the appellants, whereby, in consideration of advances to be made from time to time by the appellants to George Andrews Wakeham, James Bonney guaranteed to the appellants the payment on demand of all such advances not exceeding the sum of £500 *(sic)*, together with bank interest, and it was thereby provided that the said guarantee was to be a continuing and existing one for the amount from time to time due to the appellants from George Andrews Wakeham, directly or indirectly, irrespective of any moneys which might at any time or times be paid into the bank to the account of George Andrews Wakeham, or of any settlement of accounts, or of any advances beyond the moneys thereby secured, and that the guarantees might be determined by notice as therein stated; and that the appellants might at any time, with or without the consent of James Bonney, and notwithstanding his dissent, compound with George Andrews

Wakeham or any of the parties to any negotiable security received by the appellants from or on account of George Andrews Wakeham for the whole or any part of his or their liabilities to the appellants, or might give time for discharging the same or any parts thereof as the appellants might deem proper, and might take security from George Andrews Wakeham and release or discharge him or any of the parties to any bills or notes discounted by them, and might enter into arrangements with the said George Andrews Wakeham or with any other person or persons in relation thereto as the appellants might think expedient; and that no such composition, granting of time, taking of security, release, discharge, or arrangement should have the effect of releasing or in anywise affecting James Bonney's liability under the guarantee.

By indentures of mortgage, dated respectively the 31st of March, 1885, the 1st of February, 1887, and the 21st of August, 1888, Wakeham conveyed to the appellants certain properties by way of security for the advances to him. In the year 1889 Wakeham was indebted to the appellants to the amount of about £2,400, and being so indebted he entered into an agreement with one Alfred John Marshall for a nominal consideration to convey to Marshall the properties comprised in the said indentures of mortgage subject to the said mortgages. Wakeham and Marshall waited on Allonby, the manager of the appellant bank, who consented that Wakeham's liability to the bank should be transferred to Marshall. This arrangement so made between Wakeham and Marshall was not carried out as agreed between them, and instead thereof it was arranged between Wakeham, Marshall and Allonby that the bank should accept Marshall as its debtor in room and stead of Wakeham, and should with that view re-convey to Wakeham the properties mortgaged by him; that Wakeham should convey the properties to Marshall, and that Marshall should thereupon mortgage the same to the bank for the amount due.

Accordingly, by three several indentures, dated respectively the 6th of February, 1890, and made between the appellants of the one part and Wakeham of the other part, the appellants, in consideration of all moneys secured having been in each case paid, re-conveyed the properties comprised in the

three several indentures of mortgage of the 31st of March, 1885, the 1st of February, 1887, and the 21st of August, 1888, discharged from all principal moneys and interest secured by the same, and from all claims and demands thereunder. By three several indentures of equal date, and made between Wakeham of the one part and Marshall of the other part, Wakeham conveyed the said properties to Marshall in fee simple.

By an indenture of the same date, and made between Marshall of the one part and the appellants of the other part, Marshall conveyed the said properties to the appellants by way of mortgage to secure the payment to the appellants of the said sum of £2,400, and any further sum which might become due by Marshall to the appellants.

James Bonney died on the 12th of April, 1890, without giving any guarantee to the appellants in respect of Marshall, although he had, according to evidence of the bank manager, agreed to do so, and that his guarantee for Wakeham should continue until he did so. The appellants, after the death of Bonney, demanded from the repondents, as his executors, payment of the sum of £600 with interest, secured by the said guarantee of the 15th of September, 1884. The respondents refused payment, whereupon the appellants brought their action to recover the amount. The case came on for trial before Dodds, J., and a jury. A verdict was given for the appellants, but leave was reserved to the respondents to move to set aside the verdict. The rule came on for hearing before the Supreme Court, consisting of the Chief Justice, Adams, J., and Dodds, J., whereupon the Court set aside the verdict and ordered a verdict to be entered for the respondents.

Their lordships concur in that judgment. It may be taken as settled law that where there is an absolute release of the principal debtor, the remedy against the surety is gone because the debt is extinguished, and where such actual release is given no right can be reserved because the debt is satisfied, and no right of recourse remains when the debt is gone. Language imparting an absolute release may be construed as a covenant by the creditor not to sue the principal debtor, when that intention appears, leaving such debtor open to any claims of relief at the instance of his sureties. But a covenant not to sue the

principal debtor is a partial discharge only, and, although expressly stipulated, is ineffectual, if the discharge given is in reality absolute. In this case the acceptance of Marshall as full debtor in room and stead of Wakeham, which constituted a complete novation of the debt, necessarily operated as an absolute release of Wakeham, and it is therefore in vain to contend that such novation merely amounted to a covenant not to sue the debtor for whom the respondent was surety.

Their lordships will therefore humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the costs of the appeal.—*From the Weekly Reporter, February* 17, 1894.

PROVINCE OF QUEBEC.

JUDGMENT IN COURT OF QUEEN'S BENCH.

Simpson, Appellant; Molsons Bank, Respondent.

M. died on 12th July, 1869, and his will dated 20th April, 1860, was proved, and a copy deposited with the Molsons Bank. At the time of his death M. had 3,200 shares of stock in the bank, which were in due course transferred in the books of the bank to the names of the executors. Under the will these, with other assets, were to be held by the executors, in trust, to be divided (after a certain time) among the five sons of the testator equally, who were to have only a life interest therein. The will empowered the executors, if they saw fit, to sell any part of the estate, and in lieu thereof to apportion the proceeds of the sales.

In April, 1871, the two surviving executors, of whom one was Alexander Molson, transferred to the latter, he being one of the five legatees, 640 shares of the stock. The transfer was made as if it was an ordinary unconditional sale for money, without charging the shares with the substitution. They were the exact number of shares Alexander Molson would have been entitled to if the stock had been divided equally among the five legatees. The bank permitted the transfer, and Andrew B. Stewart, as curator of the substitution, brought action against the bank for the value of the stock and dividends.

The action was dismissed by the Superior Court on the

ground that bank stocks could not be the object of a substitution. From this judgment an appeal was taken to the Court of Queen's Bench, which confirmed the judgment of the Superior Court. The majority of the Court of Appeal based their decision upon the conclusion that the shares were not specifically substituted by the terms of the will in favor of the testator's children and grandchildren. They unanimously rejected the view, on which the judgment of the Superior Court was based, that substitution was not allowed in respect to movables under the law of the province.

Mr. Justice HALL concurred in the judgment, but on another ground, that the stipulation in the will that the property should be bequeathed by substitution was a trust imposed on the executors, the fulfilment of which the bank was not bound to see to. He quoted the clause in the Bank Act of 1871: "The bank shall not be bound to see to the execution of any trust, whether expressed, implied, or constructive, to which any share or shares of its stock shall be subject," and added, "What can be the object and effect of this clause if it is not pertinent to and controllable of the present case, I cannot understand." "The only questions which the bank were bound to investigate were the *quality* and the *powers* of the vendors. In these respects the test was complete. The vendors were two of the executors, and one of them was William Molson, whose participation in such sale was specially required by the will. Their powers were ample, for the testator had expressly stipulated that it should be competent for them to sell. The division of the shares in the exact terms of the will would have required the *pro forma* transfer by Alexander Molson and one of the other executors to Alexander Molson as legatee, but the executors should in such a case have seen to it either that the condition of the substitution appeared in the transfer, or that the money, or other property accepted by them as a consideration for the sale and transfer, was properly invested and entailed as affected by the substitution. * * * The executors had ample powers to sell the shares, but were under an obligation to protect the substitution. No one could have complained of their action had they carried out the trust imposed upon them, and caused an equivalent portion of the estate to be properly substituted. If

the condition of substitution was omitted in this case, the bank had a right to presume that the executors had discharged their trust in this respect, by securing its recognition upon the proceeds of the said sale or other property of equivalent value."

The learned judge remarked on the onerous burden which a contrary rule would impose on all incorporated companies, and in discussing the case of *Simpson* v. *Bank of Montreal*, pointed out the distinction between that case and the present. "In that case this Court, and eventually the Privy Council, held that a sale of bank shares made by a tutor, unauthorized by a family council, was invalid." "That judgment was based upon the total lack of legal right on the part of a tutor to make such a sale." The case under consideration presents the exact contrast to that of *Simpson* and *Bank of Montreal*. In the latter the vendor had neither the quality nor the authority to sell, while in the present case the executors had all the apparent qualifications necessary for such a transaction, and only fell short of their duty in giving effect to the trust which the will had imposed on them, and from attention to which the bank was specially exempted.

The Retired Partner.

In February a judgment of great importance was delivered by the Court of Appeal (England), in the case of *Rouse* v. *Bradford Banking Co.*, in which some difficult questions arising out of the law of principal and surety were dealt with. The case itself is somewhat too long for our columns this quarter, but the points involved are well put in the remarks of the *Solicitors' Journal*, which we quote:

"The question of greatest importance which was dealt with was whether, where there are two persons who at the date of incurring a debt are both liable as principal debtors, but who afterwards, as between themselves, convert such liability into that of principal and surety, and the creditor has notice of this change, the creditor is so affected that he cannot give time to the principal without discharging the surety, unless he expressly reserves his remedies against the surety. This question of law

will be found so exhaustively treated in the judgments of the learned Lord Justices, that it is only of immediate practical importance to note that the point is one which has exercised the intellects of numerous learned judges, including certain distinguished members of the House of Lords, for many years, the conflict chiefly raging around the decision of *Oakley* v. *Pasheller* (10 Bli. N. S. 548), and what precise point in that case the House of Lords really did decide. This case was decided in the year 1836, and since that time has been commented on in numerous decisions, and disposed of, as was thought finally, by the decision of COCKBURN, C. J., and BLACKBURN, J., in *Swire* v. *Redman* (1 Q. B. D. 536).

"The whole question has now, by the case just decided, been reopened by the Court of Appeal, who (A. L. Smith, L.J., dissenting on this point) have held that the judges in *Swire* v. *Redman* put a wrong construction on the effect of the decision of the House of Lords in *Oakley* v. *Pasheller*, and that it is the law that a creditor is affected by notice that one of his principal debtors has, as between himself and his co-debtor, converted himself into a surety, and is bound to recognize that altered position, and if he grants any indulgence to the co-debtor which would discharge a surety, the other debtor is thereby discharged."

In the particular case before the Court the Plaintiff was a retired partner, and the debts of the partnership had been assumed by the continuing partners, the Plaintiff thereby becoming a surety. The firm's debt to the bank from the time of dissolution had been kept in a separate account, and not merged in the new advances. Some years after the dissolution an agreement was made between the bank and the continuing partners, giving them time for the old debt, but without specially reserving their rights against the Plaintiff, whom they knew to be, as between the parties, a surety. The Court was divided as to the result of this agreement, but the majority held the Plaintiff liable, on the ground that the deed of dissolution impliedly authorized the creditor to give time for payment.

"Subject to further elucidation in a higher Court, or by subsequent cases, it cannot be considered as settled whether a creditor of a dissolved firm is bound to recognize the position

of a retired partner as surety, when he is dealing with the continuing partners in respect of debts of the old firm. As to *Swire* v. *Redman*, it is not clear whether the effect of this variegated decision of the Court of Appeal is sufficient to overrule its authority, especially as the *ratio decidendi* of the majority of the Court turned upon the construction of the deed of dissolution. For this reason, if for no other, it is to be hoped that, in the interests of the mercantile community in general, now that the question has been reopened and the authority of *Swire* v. *Redman* shaken, the case may be finally settled by the House of Lords.

"Whatever may be the legal effect of the balance of judicial authority for or against the view of the law taken by the majority of the Court of Appeal on this point, the question remains whether it is not open to criticism on other grounds, and whether the decision of *Swire* v. *Redman* was not in accordance with the principles of justice and common sense. The view of the Court of Appeal does seem to inflict a hardship on the creditor, and to be opposed to the general principle that a transaction between two parties ought not to operate to the disadvantage of a third. It is true that a creditor, after notice of the altered position, may reserve his remedies against this principal-surety-debtor, but is not this to impose on him an additional burden and to add a term to his original contract?

"Under his original contract the partners were principal debtors, and it is settled law that, before notice of any change, he was at liberty to give time to one partner without prejudicing his right of recourse against the other. Is the effect of mere notice, then, sufficient to deprive him of this contractual right, and to impose on him the obligation of expressly reserving his remedy against the retired partner, with the alternative of inadvertently discharging him from all liability?

"Meanwhile the practical effect of the case will be that banks and other creditors will have to be careful, whenever, after a change in a firm, they grant indulgence to continuing partners in respect of old partnership debts, to expressly reserve all remedies against the retired partner."

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 31st December, 1893, with comparisons:

LIABILITIES.

	Dec., 1893.	Nov., 1893.	Dec., 1892.
Capital authorized	$ 75,458,685	$ 75,458,685	$ 75,958,685
Capital paid up	62,099,243	62,090,355	61,938,515
Reserve Fund	26,459,815	26,213,861	25,086,615
Notes in circulation	$ 34,418,936	$ 35,120,561	$ 36,194,023
Dominion and Provincial Government deposits	6,377,276	5,762,992	7,397,626
Public deposits on demand	62,594,075	62,926,785	68,694,266
Public deposits after notice	107,885,149	104,414,955	101,526,186
Bank loans or deposits from other Banks secured	.....	.....	150,000
Bank loans or deposits from other banks unsecured	2,421,394	2,947,491	2,764,171
Due other banks in Canada in daily exchanges	200,476	268,156	180,811
Due other banks in foreign countries	166,966	131,778	127,480
Due other banks in GreatBritain	4,151,804	4,419,033	4,120,996
Other liabilities	446,796	779,634	474,426
Total liabilities	$218,662,965	$216,771,481	$221,567,771

ASSETS.

Specie	$ 7,691,331	$ 7,589,418	$ 6,720,500
Dominion notes	13,287,292	13,041,516	12,381,108
Deposits to secure note circulation	1,818,571	1,818,571	1,761,259
Notes and cheques of other banks	8,323,753	7,047,402	8,746,293
Loans to other banks secured	.....	5,000	.....
Deposits made with other banks	3,630 883	3,673,219	3,616,137
Due from other banks in foreign countries	18,229,248	16,242,571	21,688,396
Due from other banks in Great Britain	3,540,220	4,827,660	1,036,344
Dominion Government debentures or stock	3,191,383	3,191,383	3,328,082
Public municipal and railway securities	15,674,536	16,439,315	14,858,269
Call loans on bonds and stocks	14,236,629	14,465,113	19,957,943

	Dec , 1893.	Nov., 1893.	Dec., 1892.
Loans to Dominion and Provincial Governments	$ 2,263,712	$ 1,730,685	$2,447,234
Current loans and discounts	200,397,498	201,996,246	198,532,160
Due from other banks in Canada in daily exchanges	173,697	118,925	140,885
Overdue debts	3,040,078	3,099,648	2,387,268
Real estate	834,480	826,043	1,007,287
Mortgages on real estate sold	636,540	649,844	798,699
Bank premises	5,132,156	5,123,699	4,661,621
Other assets	1,129,385	1,569,404	1,711,416
Total assets	$304,231.696	$303,455,870	$305,730,910
Average amount of specie held during the month	$7,511,931	$7,298,948	$6,395,160
Average Dominion notes held during the month	12,901,539	12,839,384	11,615,017
Loans to directors or their firms	8,380,891	7,729,950	7,126 495
Greatest amounts of notes in circulation during month	36,850,205	37,834,627	37,443,837

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

LIABILITIES.

	Jan., 1894.	Dec., 1893.	Jan., 1893.
Capital authorized	$ 75,458,685	$ 75,458,685	$ 75,958,685
Capital paid up	62,103,027	62,099,243	62,040,950
Reserve Fund	26,580,282	26,459,815	25,131,057
Notes in circulation	$ 35,571,375	$ 34,418,936	$ 32,831,747
Dominion and Provincial Government deposits	6,821,516	6,377,276	6,575,367
Public deposits on demand	60,152,080	62,594,075	67,459,632
Public deposits after notice	108,966,924	107,885,149	102,097,119
Bank loans or deposits from other banks secured	.....	.....	125,000
Bank loans or deposits from other banks unsecured	2,361,656	2,421,394	3,466,818
Due other banks in Canada in daily exchanges	271,184	200,476	140,975

	Jan., 1894.	Dec., 1893.	Jan., 1893.
Due other banks in foreign countries	$ 188,480	$166,966	$81,461
Due other banks in Great Britain	4,174,864	4,151,804	4,100,333
Other liabilities	296,245	446,796	322,354
Total liabilities	$213,804,414	$218,662,965	$217,200,893
ASSETS.			
Specie	$ 7,400,013	$ 7,691,331	$ 6,652,563
Dominion notes	13,918,640	13,287,292	13,043,374
Deposits to secure note circulation	1,818,571	1,818,571	1,761,259
Notes and cheques of other banks	6,520,505	8,323,753	6,941,152
Loans to other banks secured	.....	.....	125,000
Deposits made with other banks	3,082,626	3,630,883	3,982,576
Due from other banks in foreign countries	17,570,408	18,229,248	21,626,627
Due from other banks in Great Britain	3,356,703	3,540,220	1,432,549
Dominion Government debentures or stock	3,188,463	3,191,383	3,285,975
Public municipal and railway securities	17,339,570	16,674,536	14,606,860
Call loans on bonds and stocks	14,013,729	14,236,629	18,833,578
Loans to Dominion and Provincial Governments	1,974,925	2,263,712	2,447,234
Current loans and discounts	198,037,104	200,397,498	198,532,160
Due from other banks in Canada in daily exchanges	67,003	173,697	112,375
Overdue debts	3,167,026	3,040,078	2,387,268
Real estate	798,381	834,480	1,007,287
Mortgages on real estate sold	641,712	636,640	798,699
Bank premises	5,200,167	5,132,156	4,661,621
Other assets	1,461,771	1,129,385	1,711,416
Total assets	$299,557,507	$304,231,696	$305,730,910
Average amount of specie held during the month	$ 7,348,904	$ 7,511,931	$ 6,395,160
Average Dominion notes held during the month	12,496,372	12,901,539	11,615,017
Loans to directors or their firms	8,245,956	8,380,891	7,126,495
Greatest amount of notes in circulation during month	34,166,689	36,850,205	37,443,837

STATEMENT OF BANKS acting under Dominion Governme charter for the month ending 28th February, 1894, with comparisons :

LIABILITIES.

	Feb., 1894.	Jan., 1894.	Feb., 1893.
Capital authorized	$ 75,458,685	$75,458,685	$75,958,685
Capital paid up	62,105,409	62,103,027	61,943,791
Reserve Fund	26,655,024	26,580,282	25,263,960
Notes in circulation	$ 30,603,267	$ 35,571,375	$ 32,978,840
Dominion and Provincial Government deposits	6,533,882	6,821,516	6,019,539
Public deposits on demand	59,561,162	60,152,080	66,822,851
Public deposits after notice	108,570,761	108,966,924	103,140,204
Bank loans or deposits from other banks secured	.....	.....	125,000
Bank loans or deposits from other banks unsecured	2,370 423	2,361,656	3,167,869
Due other banks in Canada in daily exchanges	201,277	271,184	108,791
Due other banks in foreign countries	156,572	188,480	87 710
Due other banks in Great Britain	4,666,497	4,174,864	4,766,619
Other liabilities	276,704	296,245	397,465
Total liabilities	$212,940,625	$213,804,414	$217,614 977

ASSETS.

Specie	$ 7,521,281	$ 7,400,013	6,558,156
Dominion notes	13,951,326	13,918,640	13,233,280
Deposits to secure note circulation	1,818,571	1,818,571	1,761,259
Notes and cheques of other banks	6,385,758	6,520,505	7,203,054
Loans to other banks secured	.....	.....	125,000
Deposits made with other banks.	2,800,550	3,082,626	3,922,736
Due from other banks in foreign countries	15,469,984	17,570,408	21,397,371
Due from other banks in Great Britain	2,892,089	3,356,703	1,159,930
Dominion Government debentures or stock	3,188,463	3,188,463	3,285,975
Public municipal and railway securities	17,696,817	17,339,570	14,265,425
Call loans on bonds and stock	14,780,002	14,013,729	19,456,180

	Feb., 1894.	Jan., 1894.	Feb., 1893.
Loans to Dominion and Provincial Governments	$ 1,583,244	$ 1,974,925	$ 1,056,916
Current loans and discounts	199,523,609	198,037,104	197,709,554
Due from other banks in Canada in daily exchanges	125,103	67,003	116,302
Overdue debts	3,006,637	3,167,026	2,297,630
Real estate	818,119	798,381	1,011,715
Mortgages on real estate sold	629,959	641,712	774,375
Bank premises	5,231,824	5,200,167	4,831,276
Other assets	1,628,895	1,461,771	1,585,787
Total assets	$299,052,441	$299,557,507	$301,752,118
Average amount of specie held during the month	7,387,537	7,348,904	6,516,132
Average Dominion notes held during the month	13,667,880	12,496,372	13,095,234
Loans to directors or their firms	8,311,889	8,245,956	7,186,872
Greatest amount of notes in circulation during month	31,523,316	34,166,689	33,736,404

Continuation of MONTHLY TOTALS OF BANK CLEARINGS for 1892-93, at the cities of Montreal, Toronto, Hamilton and Halifax, as reported to the JOURNAL.

	MONTREAL.		TORONTO.		HAMILTON.		HALIFAX.			
	1892.	1893.	1892.	1893.	1892.	1893.	1892.	1893.		
	$	$	$	$	$	$	$	$		
December ..	53,334,498	45,108,976	32,157,099	25,398,315	3,716,428	3,147,810	5,289,252	4,884,773		
Previously reported ..	536,714,840	523,630,088	294,407,224	283,880,174	34,576,830	34,677,166	54,583,631	55,917,018		
	590,049,338	568,739,064	*326,564,323	*309,278,489	38,293,258	37,824,976	59,872,883	60,801,791		

MONTHLY TOTALS OF BANK CLEARINGS for two months of 1893-94, at the cities of Montreal, Toronto, Hamilton, Halifax and Winnipeg.

	MONTREAL.		TORONTO.		HAMILTON.		HALIFAX.		WINNIPEG.	
	1893.	1894.	1893.	1894.	1893.	1894.	1893.	1894.	1893	1894.
	$	$	$	$	$	$	$	$		$
January	50,498,973	42,796,705	30,226,941	27,267,606	3,292,386	3,087,576	5,044,466	4,931,374	Began operations 4th Dec.	4,318,346
February ..	46,149,389	35,478,026	23,704,495	19,209,967	2,830,935	2,671,799	4,202,569	3,981,482		3,132,537
	96,648,362	78,274,731	*53,931,436	*46,477,573	6,123,321	5,759,375	9,247,035	8,912,856		7,450,883

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

CONSTITUTION OF THE CANADIAN BANKERS' ASSOCIATION.*

AS ADOPTED 17TH DECEMBER, 1891, AND AMENDED 7TH AND 8TH JUNE, 1893.

PREAMBLE.

It being desirable that the chartered Banks of Canada, together with their officers, should be united for the purpose of mutual advantage, it was decided at a meeting held in Ottawa on February 12th, 1890, that an Association should be formed for the purpose.

ARTICLE I.

This Association shall be called the Canadian Bankers' Association, and shall consist of Members and Associates.

ARTICLE II.

The Members of this Association shall consist of the chartered Banks of Canada who have already expressed willingness to become members, and of such others as notify their desire to become members. Such Banks shall act in all matters relating to this Association by their chief executive officers.

For the purposes of this Association the chief executive officer of the bank shall be the General Manager or Cashier, or, in their absence, the officer next in authority. Where the President or Vice-President of a bank performs the duties of a General Manager or Cashier, he shall be deemed chief executive officer, and in his absence the officer next in authority shall vote.

Such officers shall be Associates, *ex-officio*.

The Associates of this Association shall consist of such bank officers as have already expressed willingness to become Associates, and of such other bank officers as shall be duly elected at a meeting of the Executive Council, or at an annual meeting.

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* The Constitution is reprinted at the request of the Secretary, as the Annual Report is out of print.

ARTICLE III.

as amended 7th June, 1893.

The subscriptions for Members shall be as follows:—

For Banks with a paid-up capital stock of under	$500,000,	$ 40
" "	$500,000 and under $2,000,000,	60
" "	$2,000,000 " $3,000,000,	150
" "	$3,000,000 and over.....	250

The subscription for Associates shall be one dollar annually. All subscriptions shall be payable on or before the first day of February in each year.

ARTICLE IV.

The objects of the Association shall be to carefully watch proposed legislation and decision of the Courts in matters relating to banking and to take action thereon; also to take such action as may be deemed advisable in protecting the interests of the Contributories to the Bank Circulation Redemption Fund, and all other matters affecting the interests of the chartered banks.

It shall also be competent for the Association to promote the efficiency of bank officers by arranging courses of lectures on commercial law and banking, by discussions on banking questions, by competitive papers and examinations. Prizes may be offered for proficiency, under the direction and control of the Executive Council.

ARTICLE V.

The voting on all subjects shall be by Associates, except the following, on which Members only shall be permitted to vote:

1. Election of officers.
2. Action relating to proposed legislation.
3. Passing of By-laws.
4. Adding to or amending Constitution.
5. All other subjects on which general action by the banks is contemplated.

Each member shall have one vote and the chairman a casting vote.

ARTICLE VI.

The officers of the Association shall have two Honorary

Presidents, a President, and four Vice-Presidents. These shall be elected at the annual meeting. All elections shall be by ballot without nomination.

A Secretary-Treasurer, who shall be an officer, or an ex-officer of a Bank, shall be appointed by the Executive Council, and remunerated in such manner as the said Council may determine; the terms of his engagement to be regulated by the Executive Council.

ARTICLE VII.

as amended 7th June, 1893.

The Executive Council shall consist of the President and Vice-Presidents of the Association, and *nine* Associates to be qualified to act as chief executive officers of Banks—these Associates to be elected by the Members at the annual election of officers. Five shall constitute a quorum.

The Honorary Presidents shall also have seats at the Council.

ARTICLE VIII.

Any Member not represented at a meeting of the Association by one of the officers named in Article II., may vote by proxy, provided such proxy is held by a Member or by an Associate who is an assistant general manager or assistant cashier of a Bank, or branch manager of a city office. Should any of the persons constituting the Executive Council be unable to attend at a meeting called, he may be represented by proxy, provided such proxy is held by a Member or by an Associate, as before specified by this and the preceding article.

ARTICLE IX.

The Association shall have power to appoint a Solicitor and to fix his remuneration, for either general or special services, and also to engage Counsel where such services may be needed.

ARTICLE X.

Sub-sections of the Association may be constituted, and may frame By-laws for their guidance, subject to the provisions of the Constitution and By-laws of the Association.

ARTICLE XI.

The first Annual Meeting of the Association shall be held at

Montreal during the month of May next, the day to be fixed by the Executive Council. All subsequent annual or other meetings of the Association shall be called by the Executive Council, to be held at a time and place to be decided by that Council. A special meeting of the Association may be called at any time by the Executive Council, or shall be called by the President or Secretary-Treasurer on the requisition of at least ten members of the Association; thirty days notice to be given of the annual or any special meeting of the Association.

ARTICLE XII.

By-laws may be framed not inconsistent with the provisions of this Constitution.

ARTICLE XIII.

Additions and amendments may be made to this Constitution at any annual meeting by a vote of not less than two-thirds of those present and entitled to vote personally or by proxy, but one month's notice shall be given thereof, addressed to each member of the Executive Council.

ARTICLE XIV.

No resolution passed by the Association or by the Executive Council shall be considered as compulsory, or as enforcing, necessarily, any action of any kind upon the Banks.