Vol. VI] [Number 3

JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

APRIL—1899

CANADIAN CURRENCY AND EXCHANGE UNDER FRENCH RULE

V. ULTIMATE DISPOSAL OF THE PAPER MONEY*

Though attended by many anxious watchers, the French Canadian paper currency suffered a painful and lingering death. The embarrassment of the French treasury during the greater part of the Seven Years' War is a well-known fact of financial history. During the last years of the war the treasury was practically bankrupt, the treasurer being compelled to repudiate past promises and obligations from almost every quarter. The

*Chief sources:

Canadian Archives, Haldimand Collection B. XXI, XXIII, XXIV, XXVII, XXXVII.

State Papers, Q. I—V & LV.

Jenkinson's Collection of Treaties of Peace, Alliance and Commerce between Great Britain and other Powers. Vol. III.

An Act of the King's Council of State which orders the Liquidation of the Bills of Exchange and Money Bills of Canada. (June 29th, 1764).

De l'Administration des Finances de La France. Par M. Necker, 1784.

deferring of payments in Canada was simply a partial expression of the general attempt to ward off an utter collapse, and the complete suspension, in October 1759, of all payments on Canadian account, was not merely an expression of the abandonment of Canada to her fate, after the capture of Quebec.

In the last article a table was given showing the amount of the exchange drawn upon France during the closing years of French rule. From that it will be seen that the most remarkable increase in the expenditure took place in the years 1757-8-9. But, by the system of deferred payment then in force, one-fourth of the value of the exchanges drawn in any one year, was to be paid the following year, one-half the second year after, and one-fourth the third year after being drawn. When, therefore, the payment of the Canadian exchanges was wholly suspended in October 1759, the entire amount of exchange drawn that year remained unpaid, and a like fate overtook at least three-fourths of the exchanges of 1758, and at least one-fourth of those of 1757.

There remained unpaid, also, the whole of the card money, ordonnances and certificates held in Canada, and which General Murray, in his report of June 1762, estimated at twenty-two millions of livres. The whole of the unpaid Canadian paper, Murray estimated at eighty millions at the least.

The settlement or disposal of this debt was a very important detail in the peace negotiations which led up to the treaty of 1763. Had these claims remained unsettled, in proportion as distress resulted to Canada, the security of the English possession of it would have been weakened.

These claims left uncertainly hanging in the wind; it would always be open to France at any future crisis to promise to pay them, on condition that the Canadians should return to their ancient allegiance. Hence it was necessary to make some final settlement of them if possible.

Murray himself was so impressed with the necessity of getting the Canadian claims out of the way, that he proposed to the British Government the taking over, at a large discount, of all the paper still remaining in the possession of the French Canadians, except the exchanges on France, which were mainly in the hands of merchants who expected to leave the country,

or the noblesse who could go to France to look after their own interests. He proposed to give in return English paper money to the extent of 10, 15 or 20 per cent. of the face value of the French paper. Murray's general report on the country furnished to the British Government the data upon which to proceed in the negotiations with France.

Meantime the uncertainty was great. France desired, if possible, to avoid payment, both because she was losing the colony which had been the occasion of the outlay, because of her financial exhaustion, and because she was not particularly anxious to relieve her great rival of all embarrassment in her new acquisition. At the same time there were Frenchmen who held that the best policy, with a view to maintain a latent hold upon the French Canadians, was to promptly and fully meet all obligations in Canada.

While the issue remained uncertain, the English merchants generally refused to accept Canadian paper for goods. In consequence, the paper money for a time almost wholly dropped out of use as a medium of exchange. Even where contracts were made payable in paper money, the courts were instructed to suspend judgment upon them until an ultimate settlement of the matter had been reached. When, after the treaty, the prospects of payment became brighter for a time, a good deal of speculative buying of Canadian paper was indulged in.

At first Murray and the English generally endeavoured to convince the Canadians that there was no hope of the French Court ever redeeming their claims upon it; and that, therefore, they would lose nothing in transferring their allegiance to Britain. But after his position was secure, Murray adopted the opposite tack, and advised the French Canadians to hold on to their paper money, as the British Government would secure its redemption.

The French Court, when suspending the payment of the Canadian paper in 1759, had at the same time promised to redeem it as soon as the war was over, at the rate of 500,000 l. per annum. But, as this applied to the paper of all the French colonies, even if the promise had been kept, it would have required several centuries during which to complete the payment.

In Canada, in particular, Vaudreuil and Bigot, both before and after the capitulation, had given the strongest assurances in the King's name that the Canadian paper would be redeemed after the peace. These pledges and assurances were, of course, used with effect in the peace negotiations which followed.

From the first, the Canadians were naturally clamorous before the English authorities in Canada, to obtain some definite decision as to the status of their paper money, both in commerce and with reference to previous contracts. The people in Montreal went so far as to send a petition to the British Government to secure the redemption of their paper, as it was practically the only money which they had. This was fairly correct as to the Montreal district, which had not the same opportunities for hoarding coin as those nearer Quebec. At the same time, it is true that the noblesse, the merchants and the government contractors were the chief holders of the paper money.

During the later days of French rule, there being no longer any coin in circulation, any increase in the savings of the peasantry had to be made in paper money. But the general distress and the arbitrary measures resorted to for securing supplies, prevented the possibility of much saving during the last three years. What was held by the country people was mainly in the shape of card money and ordonnances. The bills of exchange were chiefly in the hands of the French traders and noblesse, who, as Murray said, were likely to return to France, some of them to remain there, others to look after their interests.

The Treaty of Paris, by which Canada was ceded to Britain, was concluded on the 10th of February, 1763. The treaty itself did not include any article dealing with the outstanding claims on the French Government. But in a special declaration appended to the treaty the matter is thus dealt with:

"The King of Great Britain having desired that the payment of the letters of exchange and bills, which had been delivered to the Canadians for the necessaries furnished to the French troops, should be secured, his most Christian Majesty, entirely disposed to render to every one that justice which is legally due to them, has declared, and does declare, that the said bills, and letters of exchange, shall be punctually paid, agreeably to a liquidation made in a convenient time, according to

the distance of the places, and to what shall be possible, taking care, however, that the bills and letters of exchange which the French subjects may have at the time of this declaration, be not confounded with the bills and letters of exchange which are in the possession of the new subjects of the King of Great Britain."

This somewhat Delphic deliverance, instead of leading to a definite settlement of the French debt in Canada, was but the beginning of a long and fruitless diplomatic contest in which the French as usual got the better of their British competitors. Once the crisis was over and the treaty signed, the French Court knew that the English were not likely to go to war over a vague appendix to the treaty, dealing with the Canadian debt.

With a cheerful ignorance of French methods, the English traders and others interested in Canada understood the latter part of the declaration to mean that the paper money held in Canada was to be much more favourably treated than that held in France.

Acting on this supposition, efforts were at once made in the districts of Quebec, Three Rivers and Montreal, to get a record of the paper money held in those sections, as it was expected that considerable paper money and exchanges held in France would be returned to Canada in order to take advantage of the more favourable treatment secured for the Canadian holders. This, however, was soon found to be a baseless apprehension.

The next alarm was sounded by Lord Halifax, in the end of 1763. In a despatch to Murray he says he has been informed that some persons employed by the French Government have been insinuating to the people of Quebec that the Canadian bills will never be paid. Under cover of this they were understood to be purchasing from them considerable quantities at a very low price. He asks Murray to make immediate inquiry as to the truth of this report. But this, too, proved to be a groundless alarm. The French Court was very far from having either the funds or the inclination to purchase at any price its past Canadian promises to pay.

For the comfort of the Canadians Halifax reports that the English ambassador at Paris and himself are exercising them-

selves to obtain from the French Court a complete fulfilment of the stipulations appended to the Treaty of Paris. Accordingly, Murray, in February, 1764, issued a proclamation embodying this statement, and advising the Canadians to have patience and hold on to their paper, or at least not dispose of it at a low price, otherwise the French might make this a pretext to avoid payment.

Immediately after the treaty was signed, many of the British merchants trading to Canada, believing that a profit might be made on Canadian paper, authorized their representatives in Canada to sell their goods for Canadian bills, and, if necessary, to purchase them with cash, provided they were to be had at a considerable discount. It appears from a letter of Murray's in February, 1764, that they seldom offered more than 15 per cent. Notwithstanding Murray's advice to hold on to their paper, the French Canadians, well acquainted from past experience with the value of those fair promises in which the French Court was ever ready to deal most lavishly, were not disposed to take the warning very seriously. Their pessimism was amply justified, for those who obtained even 15 per cent. for their paper had occasion to congratulate themselves on their wisdom in selling.

At the same time, by purchasing considerable quantities of Canadian paper, the interests of the English merchants were enlisted in behalf of securing from the French Court a fulfilment of its engagements.

The first move of the French Court, after the ratification of the peace, was the issue of an arret on the 15th of May, 1763, directing that all Canadian bills and letters of exchange should be registered, in an appointed office, before the first of January following. The effect of this was to practically shut out most of the paper held in Canada. The British merchants interested in the matter, though duly registering what they had obtained before that time, yet urged Halifax, the Secretary of State, to press the French Court for an extension of the period of registry. After making much of the concession, the French Court yielded, and a second arret of 5th January was issued, graciously extending the time to the first of April following, but absolutely declaring that all bills not then registered should be without value.

No one knew better than the French Court that this hardly extorted concession was a mere mockery. There being no regular communication with Canada during the winter months, no further Canadian claims were likely to be registered until some time after navigation opened, and before that the new date would have expired.

In a despatch from Halifax to Murray in December 1763, there are given the requirements of the French Court as to the form of the returns of paper to be made from each of the districts of Quebec, Three Rivers, and Montreal. These exact a complete statement, from both English and French holders of the Canadian paper, giving particulars as to the nominal value, date of issue of each bill, the means by which it was obtained, and, in the case of those disposed of, by whom they were sold, to whom, and at what price.

The Canadian authorities at once bestirred themselves to secure the registration of the outstanding paper, according to the forms prescribed by the French Government. But not before August 20th 1764 was Murray able to send what he believed to be a correct account of the bills held in Canada. His summary of the returns is as follows:

Govt of Quebec—	Exchanges livres s. d.	Ordonnances livres s. d.	Cards livres s. d.	Certificat livres s. d.
(*a*) In Canada....	683,413 18 3	4,614,167 16 0	318,569 17 6	122,785 18 10
(*b*) In Europe ...	766,359 9 0	702,325 5 0	33,259 0 0	.....
Montreal.....	667,650 6 6	6,548,869 10 0	220,479 15 0	543,298 16 10
Three Rivers....	78,743 5 0	1,297,579 15 0	70,755 16 6	114,252 2 5

In addition to the methods adopted for shutting out the greater part of the Canadian and English claims, the French Court had devised other measures which would as far as possible render those duly registered of little value. This scheme was embodied in an arret of the King's Council of State of 29th June 1764, the chief features of which are here summarized:

The King first expresses his willingness to liquidate the debts contracted in Canada, and which exist in the shape of both money bills and bills of exchange. But he points out that, having investigated the administration of affairs in Canada, he finds the most positive proof of excessive expenditure and extensive frauds connected with his service in that country. As a consequence of its excessive issue the paper

became greatly discredited. The depreciation of the paper is said to have begun in 1754, and in 1758 it had fallen to one-half its nominal value, while in 1759 it was reduced to one-fourth, and in 1760 to one-fifth of its value, as measured by its purchasing power. On these grounds it is claimed that the funds employed in the payment of the Canadian bills up to the time of the suspension of payment in 1759, should have covered the whole cost of the King's operations. In other words, the King has really obtained nothing for the outstanding paper.

Nevertheless, owing to the delay in cashing the bills, and owing to the fact that many merchants obtained them in *bona fide* business in return for goods before the suspension of payments was announced, the King is prepared to deal generously with them. He is also anxious that the officers and others who have served in the war, should not be losers through these bills. Hence, the King in Council ordains as follows:

Article I. The bills of exchange drawn in 1758 and preceding years, which have been declared and checked according to the Acts of 24th December, 1762, 15th May, 1763, and 5th January, 1764, and which may have been obtained in business before 15th October, 1759, shall be paid in full.

II. Such other bills conforming to the above regulations, as were drawn in 1760, and were stamped, "For the subsistence of the armies," shall likewise be paid in full.

III. All other bills drawn in 1758, 1759 or 1760, shall be paid at one-half their face value.

IV. The card money and the ordonnances shall be paid on the basis of one-fourth their value.

V. All those claims of whatever kind which have not been registered according to the Acts of 1762, 1763, 1764, shall be henceforth null and void.

VI and VII. These provide special arrangements for the civil and military officers and the soldiers who served in Canada, and who may be holders of paper received for their services, coming under article III or IV. Each one, however, must make special application, with the particulars of his case.

The remaining articles provide for an elaborate red tape process, whereby the various claims already registered shall be

classified and reduced to a basis of payment. Immediate payment was to be made in funds bearing interest at 4 per cent., until ultimate payment should be convenient.

An Act of July 2nd 1764 regulates the form and distribution of the funds to be issued in payment of the claims. The important points are:

Article I. The funds or debentures to be made payable to bearer, and to bear interest at the rate of 4 per cent., beginning from the first of January next. To the debentures shall be attached coupons for the interest, which shall be due from year to year. The first coupon, for instance, shall be for the amount of interest due on the last day of December 1765, and so on, for the succeeding years.

II. The debentures shall be issued for definite and fixed sums, viz.: 50, 60, 80, 100, 300, 500, 1,000, 2,000, 5,000 and 10,000 livres. All odd sums which come between these shall be paid in cash at the time of issuing the debentures.

III and IV. These appoint the persons who are to sign and issue the debentures and make payments of interest.

V. This provides for the payment of the debentures themselves. The King reserves to himself to determine what funds shall be provided annually for that purpose. Payments shall be made by the lottery system, in the month of January of each year. Numbered tickets representing all the separate claims shall be put into a lottery wheel and drawn out until the amount to be paid for that year is made up.

VI. The claims drawn shall be paid promptly by the general treasurers of the colonies, and the interest coupons remaining unpaid shall be returned.

VII and VIII. These refer to the methods of keeping accounts.

Then follow the form of the debentures to be issued for the principal, and the form of the coupons for interest to be paid in January of each year from 1766 to 1771.

Now, several features of this settlement require to be carefully noted. First of all, we observe that the bills of exchange issued for the Canada paper in 1757 and 1758, and which were obtained in the ordinary course of business before the suspension of their payment in October 1759, are to be paid in full.

But almost the whole of these were held in France, being sent there in return for goods sent to Canada. The other bills to be paid in full were the comparatively small amount issued in 1760 and stamped, " For the subsistence of the armies." These, too, were held mainly by the officers and commercial element, which returned to France after the capitulation of Montreal.

The remaining bills were to be paid at one-half their face value, and these were held partly in Canada and partly in France. Those in France were taken there mainly in the pockets of the civil and military officers and the troops who had received them for their pay. But to these persons a special claim was to be allowed in the case of such paper, as also in the case of their cards and ordonnances, while no corresponding claim was permitted to the holders in Canada.

The cards and ordonnances were to be allowed to all others only one-fourth of their face value, and, as may be observed from the table already given, they made up the greater part of the paper remaining in Canada. Yet if anything should have been paid in full it was the card money which was issued before the depreciation period began. The same table shows what a small proportion of the Canadian holdings had been sent to Europe.

From all these facts it is clearly to be observed that the French Court, while professing to treat all holders alike, and thus to have fulfilled the pledge given to the English, had nevertheless with its usual dexterity, to call it by no harsher name, succeeded in shutting off almost all claims but those of its own subjects.

Murray had issued a proclamation to the French Canadians dated February 8th 1764, declaring that the King had renewed his efforts, through his ministers, to have the French Government fulfil its promise to redeem the paper money, as given in the treaty of peace. He asks the people to have patience, and rely on the efforts of the King in their behalf.

Nevertheless, when the nature of the French Act of 29th June 1764 became known in Canada, the people were once more greatly distressed as to the fate of their paper money.

In November the French Canadians sent, through Murray, an address to the King, asking for the protection of their

interests, and pointing out that their paper money was obtained in return for necessaries supplied to the troops, the prices for which were arbitrarily fixed by the Intendant. If the Intendant had not deceived them with false promises, their paper would have been converted into letters of exchange in 1759. In proof of this there is appended a copy of the letter of Vaudreuil and Bigot, issued after the virtual loss of the colony. It is dated Montreal, June 1760, and assures the people that the bills of exchange of 1757 and 1758 will be paid three months after the peace, those of 1759 eighteen months after the peace, and the cards and ordonnances as soon as circumstances will permit.

Halifax, writing to Murray on Dec. 8th 1764, acknowledges the receipt of the detailed register of the paper money. As this showed a larger amount than the first estimate sent, and as the claims were made upon France on the basis of the first estimate, it may be difficult to get the additional sum admitted. The ambassador, however, will be instructed to do his best in the matter.

The British Government naturally took exception to the act of June 1764, for the liquidation of the Canadian paper, and the Court of France as naturally sought to justify its action. The reasons given by France in justification of the very great reductions in the value of certain parts of the paper were: (1) The discredit into which the paper had fallen. (2) The high price of necessaries in 1759. (3) That the letters of exchange given before 1759 were paid in part. (4) The ordonnances and cards were only such as were issued after the last delivery of letters of exchange. (5) The retailers and merchants purchased the ordonnances at 80 or 90 per cent. discount. In reply to these the British Government made the following answers: (1) The Court of France, being itself the author and cause of the discredit, has no title to be benefited by it. (2) In 1759 the prices for the King were fixed by the Intendant at a lower rate than that at which necessaries were sold in the colony. (3) No reasons are given why the letters anterior to 1759, are not entitled to complete payment. (4) Ordonnances and cards of an old date were the circulating medium of the country. (5) The Court of France is responsible for the full

value, whatever they may have been purchased for. And they might have added, had they fully understood the situation, that a considerable portion of the cards at least, represented the savings of the people, and were not issued, as asserted, after the last delivery of exchanges.

The negotiations continued through 1765. In the meantime many of the English merchants in the course of their trade, and from speculating in Canada bills, had become personally interested in the payment of them. These persons sent a petition to parliament, in which they rehearsed the chief points in the history of the question up to that time. They complained of the unfair terms of the settlement made by the French Court. The 4 per cent. funds in which the payment was to be made then stood at 24 per cent. below par, so that the letters of exchange were, they claimed, to be paid on a basis of 38 per cent., and the cards and ordonnances at 19 per cent. of their face value. A further arret had since been issued making a reduction of 10 per cent. on the interest due to all holders of French funds. They state that though the paper in the possession of British subjects amounts to considerably over £1,000,000, yet only about £50,000 worth had been registered. They also complained that the various arrets dealing with this subject had been issued without any warning, and left those affected without any appeal. They therefore prayed the Government to come to their rescue.

A committee of the English holders of Canadian paper had obtained from those in Canada a power of attorney to act for them in urging the matter upon the British Government, in order to secure payment according to treaty.

In December 1765, this committee prepared a memorial on the subject of the paper money, for the guidance of the Hon. Henry Seymour, one of the Secretaries of State. In this, however, English, as distinguished from Canadian interests, receive special consideration. They proposed that the time for the registration of claims in France be extended to December 25th, 1766, the persons registering to prove, on oath, that their property is British, and that it has been so since the signing of the peace with France. The basis of redemption should be 50 per cent. on all bills of exchange and such certificates as are entitled to

the same payment, and 25 per cent. on all ordonnances, cards and remaining certificates. These sums to be paid in the established, secured and transferable funds, bearing interest at 4 per cent. Also, that the Court of France shall pay into the hands of the committee a further sum of 1,500,000 livres, as a bonus on the ordonnances, cards and certificates at their rate. Also a further sum of 1,000,000 livres as an indemnification for the discount at which the funds given in liquidation may sell. All paper not conforming to these requirements to be completely excluded from all claim to payment.

By this time the financial condition of France was such that the Court did not seem to think it mattered much what was promised. Hence, after a becoming amount of diplomatic discussion, a convention was at length drawn up and signed on the 29th of March, 1766, for the final disposal of the Canada paper belonging to the subjects of Great Britain.

The convention followed closely the lines laid down in the memorial just referred to. Bills of exchange and some certificates were to be redeemed at 50 per cent., and cards, ordonnances and the other certificates at 25 per cent. Payment was to be made in "rent-contracts," or debentures bearing interest from 1st January, 1765, at 4½ per cent., and to be conformable to the arrets of 29th June and 2nd July 1764, and 29th and 31st December 1765. The first two of these arrets have already been referred to. That of 29th December 1765 was issued in consequence of the decline in the rent-contracts already issued, and also in consequence of the English protests. It provides in the first article that the interest shall be raised from 4 to 4½ per cent. Article II declares that no Canadian paper shall be registered after March 1st 1766. But article III makes an exception in favour of British holders, for whom the time of registration is extended to October 1st 1766. The arret of 31st December 1765 is based on the report of the comptroller-general of the finances and provides that the interest on the rent-contracts shall be paid from the Arrears Fund, the principal to be paid by lottery, agreeably to what has been provided for the different debts of the state and by the edict of December 1764.

The greater part of the convention itself refers to the forms of oath and declaration to be made guaranteeing the money to

be British property. These declarations require the giving of a complete history of the paper money from the actual holders back through all the intermediate possessors to the original receivers, under pretext of preventing paper sent from France to Canada from coming in as British property. By the 13th article the Court of France grants to the British proprietors generally an indemnification, or premium, of 3,000,000 livres, 500,000 l. to be paid in specie, and the remainder in rent-contracts of the same nature as the others, the interest on which shall run from January 1st 1766. This is to be a final settlement of all claims.

Conway, who negotiated the matter on the British side, immediately sent to Murray a copy of this convention with instructions to have all the paper money in Canada sent over before the 1st of October, and asking him to take precautions that no paper sent back from France might be included, for the larger the amount sent the smaller would be the share of each from the 3,000,000 l. bonus.

There being some anxiety to know how the 2,500,000 l. in funds and 500,000 l. in specie were to be distributed, the English committee made an explanation. By the most careful estimate there appeared to be outstanding, bills of exchange and certificates to the extent of 4,000,000 l., and ordonnances and cards to the extent of 12,000,000 l. These being reduced according to the convention, would make a net total of 5,000,000 l. The distribution of the 3,000,000 l. of bonus on this amount would give 2,100,000 l. in rent-contracts and 420,000 l. in specie to the ordonnances and cards, and 400,000 in rent-contracts and 80,000 l. in specie to the bills of exchange and part of the certificates.

The settlement effected by this convention appears only to have multiplied the troubles of the British Government. Many special claims, alleged hardships and difficulties arising from the elaborate red tape process through which the claims had to pass, poured in upon the Colonial Department.

Although the English holdings were all registered in time, some of the French Canadian claims, having a shorter time for their preparation, and having to be sent across the Atlantic, arrived somewhat late, and there were others whose history

could not be fully traced. Further diplomatic efforts had to be made to get these included. The French Court made much less difficulty than might reasonably have been expected, which was not a little ominous. In consequence of this amiability of the French, everything that the British Government had the courage to ask was granted by the end of 1767.

On the British side some difficulty arose over the proposed distribution of the bonus. The French Canadians, rightly or wrongly, got the idea that the holders in Britain were getting the better of them in the division. They were assured, however, that their fears were groundless.

When everything was satisfactorily settled the French officials issued the promised funds, but before the operation was finished they had fallen on the London market to 74. In January 1770 the interest on them was reduced to 2½ per cent., and the next month the payment by lottery was suspended for four years, which meant for ever. Within the year following the stock had become worthless. As regarded its funded debt the French treasury was practically bankrupt. Soon war with England was resumed, and the French Canadian paper money had vanished into the Limbo of the past.

ADAM SHORTT

QUEEN'S UNIVERSITY, Kingston

GILBART LECTURES, 1898*

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

WE pass now to the case of the order cheque, note, or bill with an impersonal payee, taking the example suggested "Pay wages or order." Is this a bill at all? I say no. There is no exact case deciding this point. Even if there were and it was before the Bills of Exchange Act, it would not help us very much. There is the dictum I have mentioned to you, in which the Court asked whether a bill payable to the pump at Aldgate or order, might not be recovered on as a bill payable in effect to bearer; but as I said, that question was put 100 years ago, and though I gather that that particular Court, as then advised, meant to imply that it could be so treated, one must not rely on an unanswered question from the Bench. Pilate's question, "What is truth?" affords no definition of that rare but estimable quality. And there is authority, at least as strong, the other way. Lord Chief Baron Eyre in that case of *Gibson v. Minet* to which I have referred, after laying down that a document in the form Mr. Justice Kennedy held to be a promissory note payable to bearer, was waste paper, proceeds as follows: "Will it mend the matter if I say, 'I promise to "pay £500,' or I direct another, 'to pay £500 to the pump at "Aldgate'? I use that vulgar expression because it has been "used and because it forcibly expresses the idea I wish to con-"vey, what is a fictitious payee but the pump at Aldgate. If I "add, 'or order,' what difference does it make? If I add, 'or "bearer,' there is a very sensible difference. There may be a "bearer, but in the nature of things there can be no order. "The bill therefore cannot be transmitted by order; the fictitious "payee can no more order than the pump at Aldgate can order. "Such a bill then is a mere nullity in its original conception

*Published in the JOURNAL by permission of the lecturer.

"and must ever remain a mere nullity." Now as regards fictitious payees who are other than obviously inanimate beings, the analogy, at any rate now, does not hold good, and was not accepted even in that case; but so far as inanimate things are concerned the L. C. Baron's dictum may be set against the inference derived from the question in the other case. In Vagliano's case in the Court of Appeal, Bowen, L.J., mentions the query of the Court as to the Aldgate pump, but gives no opinion on the point; so we are, as I say, without definite authority on the point.

Now see how the matter stands under the Bills of Exchange Act, which is really the only governing power. We have read the definition of a bill in section 3. It necessitates a requisition to pay a sum certain in money to, or to the order of, a specified *person* or to bearer. Note the word *person*. Section 7: "When "a bill is not payable to bearer, the payee must be named or "otherwise indicated therein with reasonable certainty." Here we do not actually find the word person, but there is nothing to expand the limits or lessen the requirements of section 3. Section 7 goes on, "A bill may be made payable to two or more "payees jointly, or it may be made payable in the alternative to "one of two, or some of several payees. A bill may also be "made payable to the holder of an office for the time being." Here again nothing very definite about person, but nothing at all modifying section 3. Then we come to sub-section 3 of section 7, which is to my mind the crucial one. "Where the "payee is a fictitious or non-existent *person*, the bill may be "treated as payable to bearer."

Now this section has been discussed till we are all weary of it. I regard it as one of the stop-gap sections to which I have referred, where the word bill must have a broader meaning assigned to it by reason of the context. Its effect is this, that an instrument coming within its terms, though not in reality a bill at all, may be treated as a bill payable to bearer, or that a bill payable to order which comes within its terms may be treated as payable to bearer.

But does a cheque "pay wages or order" come within its terms? If it were otherwise not a bill, because wages is not a real payee, does this section cure the defect? Surely not, wages

is not a person at all, wages cannot be a fictitious or non-existent person. In the case of the bill payable to ship Fortune or bearer, one of the judges expressly said ship Fortune was not a person. In Vagliano's case, Lord Selborne specially dwelt on this wording, "a fictitious or non-existent *person*," as meaning something quite different from such a phrase as "when the payee is fictitious or non-existing," though Lord Herschell does not seem to have attached so much weight to the distinction. But we scarcely want authority. "Person" is defined by the Bills of Exchange Act as including a body of persons, whether incorporated or not, that is a partnership, company, corporation, or other associated body of human beings, and the extension of the ordinary use of the word person to such bodies, shows that in other respects the strict interpretation of the word must be adhered to. As the law says, "the inclusion of one thing is the exclusion of others." And of course the effect is the same if the section be looked on in the other light I have indicated. Take it for sake of argument that it is a good cheque as having a payee, a payee described with reasonable certainty. But it is to order and incomplete without endorsement. Wages cannot endorse. Does the section apply and make it payable to bearer without endorsement? No, because the payee is not a person, is not a fictitious or non-existent *person*, but only a thing. So that, to my mind, is the state of affairs. The cheque is not a bill at all, and even if it were, it is not payable to bearer, but to order; it cannot be endorsed, therefore no one can deal with it as endorsee, and it cannot be treated as payable to bearer, because the payee is not a fictitious or non-existent person, but a thing.

It is clearly not negotiable or transferable at all. If it be given to A and passed on by him to B, then whether endorsed by A in his own name or in the name of wages, or whether it be merely transferred by delivery on the footing of its being payable to bearer, it gives B no rights against the drawer. It is not within the definition of a negotiable instrument, and it bears evidence of its own defects and incompleteness on its face.

Even between immediate parties, such as the drawer and the person to whom it is handed, it gives no rights so far as I can see.

To be available between the parties as we have seen, a bill must possess all the attributes of a bill, except that by the use of express words the intention that it shall be transferable is negatived. But this document stops short of the preliminary requirements, and so there is no question of any restraining words being needed.

Now what is a banker to do to whom a cheque drawn by his customer "pay wages or order" is presented for payment? Let us first look on the question from a purely legal point of view. If we ignore considerations of policy and were to stand on strict legal rights, I think the only thing to be done is not to pay it, marking it "*cheque irregular*," or "cheque not in order," or whatever form you choose to adopt to express your reason for declining payment most calculated to safeguard your customer's credit for solvency if not for sense. And, to my mind, it makes no difference whether it purports to be endorsed or not, and in what form it so purports to be endorsed if at all.

For in any and every case, if you deal with such a document, you are outside all ordinary legal and statutory protection.

It is not payable to bearer, therefore you are not justified in paying it to bearer.

If it purports to be endorsed, your position is no better; section 60 does not protect you. In the first place, it is not a bill, so that the section has no hold on it. Even if by extraneous circumstances as between you and your customer, the latter was estopped from denying it was a bill, still it must be paid in good faith and in the ordinary course of business. A cheque like this might be paid in good faith, I doubt whether the payment of such a document would from the legal standpoint be in the ordinary course of business; then the protection is only this, that it is not incumbent on the banker to show that the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be. So here again we get the necessity of a personal payee, capable of endorsing, and an ostensible personal endorsement, neither of which exists in the case proposed. So you get no protection by treating it as an order cheque, presumably properly endorsed.

Even that section 19 of the Stamp Act, 1853, which was

left unrepealed in order to give the banker protection analogous to that afforded by section 60, but in cases not strictly within this latter section, has nothing to say to these anomalous documents. That section 19 says "any draft or order drawn upon "a banker for a sum of money payable on demand which shall, "when presented for payment, purport to be endorsed *by the* "*person* to whom the same shall be drawn payable," etc. That is enough to put us out of court; there is no person in this case, therefore the section does not cover the risk. So I think you would be acting within your legal rights if you dishonour such a cheque, whether endorsed or not. The customer might say you ought to have paid the cheque, inasmuch as it clearly indicated his intention that it should be payable to bearer; that endorsement was obviously impossible, and you ought so to have treated it. But I do not think that would prevail. It is clearly deducible from Vagliano's case that bankers may be liable if they misinterpret the legal effect of their customers' documents and act on such misinterpretation. It is no part of your business to divine the intention of your customer when expressed or rather concealed in a form alike unrecognized by the law and the custom of reasonable business men. As I have often told you, no banker is, in my opinion, responsible to his customer for dishonouring his cheques unless, in addition to the customer having sufficient and available funds in the banker's hands to meet them, the cheques themselves are in proper form and in order on the face of them. That certainly cannot be affirmed of such documents as these, whether endorsed or not. The only case in which, so far as I can see, the customer would have a legal ground of complaint, would be if, for a considerable period, his cheques drawn in such form had been honoured by the banker, so as to establish an implied contract or course of dealing, amounting to an undertaking on the part of the banker to waive the irregularity and treat these documents as valid and proper cheques.

But now turn to the practical side. I understand that cheques in this form come in in hundreds at some banks, particularly on Saturdays, presumably for wages. Also, I can well understand that these cheques having been, for years, treated, as it were, by common consent as valid, it would be an unpleas-

ant surprise to a customer to be told that such cheques would no longer be honoured. Also that the bogey competition has a good deal to say to any question of a bank's standing on the letter of its strict legal rights, when there are other banks who would willingly take a good customer even if he brought a slight risk with him.

If I were ten years younger, as I was when I first had the honour of giving these lectures, I suppose I should advise you to dishonour this sort of cheque. But if I have taught you any banking law in that period, you have taught me a great deal of practical banking, and I recognize the impossibility of a banker raising technicalities of this sort against a good customer. So I suppose you must go on paying these cheques, as indeed I suppose you must go on paying any sort of fancy cheque an eccentric customer chooses to draw, within certain limits. These things must be classed among the risks of banking, although it is aggravating to have those risks increased by the fads or the laziness of a customer.

One consolation, I do not think a customer who disputed a payment made on a cheque of this sort would merit or meet with much sympathy from a court or a jury. If ever there was a case in which the law of estoppel, which is somewhat elastic, ought to be stretched to its utmost capacity, it is in a case of this sort. Then you would have in your favour the doctrine that where an agent acts honestly on one reasonable construction of an ambiguous authority from his principal, that principal cannot afterwards insist on the other construction to that agent's prejudice. If such cheques had habitually been debited and the pass book returned without comment, you would have evidence of a course of business or implied contract, and as a last resort you might fall back on the custom of bankers which, I fancy you would tell me, sanctioned and recognized such cheques, though I should doubt whether that would stand in the face of the Act. If a customer were to sue his banker for paying one of these cheques to bearer, I should be strongly inclined to back the banker to win somehow. For whatever may be the strict law on the point, there seems a good deal of force in the answer that might be made to the customer, "you must have intended "the cheque to be payable to somebody, you made it payable

" to wages or order; wages could not possibly endorse, and so, " treating you as an intelligent being, we regarded it as payable " to bearer and so paid it."

At the same time, if amendments are ever made in the Bills of Exchange Act [and some such seem impending, especially with reference to the question of bills drawn on London accepted payable abroad, with which we dealt here last year], it might well be considered whether section 7, sub-section 3, should not be altered so as to include these cases, as for instance by changing the words " where the payee is a fictitious or non-existing " person " into " where the payee is fictitious, non-existing or " obviously incapable of endorsing, the bill may be treated as " payable to bearer," or words to that effect.

—

And now let me call your attention to one or two other abnormal forms of cheque or bill.

In *Chamberlain v. Young*, 1892, 2 Q.B., 206, the case to which I before alluded, a bill was drawn in the following form:

Five months after date pay to.....order the sum of £150 for value received.

E. M. Tower

To Mr. A. J. Young

The bill was accepted by Young, and was endorsed by Tower, the drawer, and handed by him to Chamberlain, the plaintiff, for value; the blank had never been filled in. Young, the acceptor, went bankrupt, and though his name appears as a defendant, the action was substantially one against Tower, the drawer and endorser.

And his defence was that the document was neither at common law nor under the Bills of Exchange Act a bill of exchange, and so no action could be maintained upon it. But the Court of Appeal held the contrary.

They held that the bill was a perfectly good bill of exchange, that it was not inchoate or incomplete, and on this ground, that it said " pay to order," and that that was equivalent to " pay to my order," that, therefore, it was a bill payable to drawer's order, which was a good bill.

It is rather curious that the Court apparently rested the validity of a bill payable to drawer's order on the doctrine of common law, not on the Bills of Exchange Act. Kay, L.J., says, "We asked in the course of the argument for some author-"ity that a bill payable to the order of the drawer is not a good "bill of exchange, and no such authority was produced." I should think not indeed. Section 5, sub-section 1 of the Bills of Exchange Act specifically says, "A bill may be drawn pay-"able to or to the order of the drawer." That is clear enough. And I think the other conclusion is right, too, namely, that "pay to.....order" is equivalent to "pay to my, *i.e.*, drawer's "order." It would be carrying technicality very far to object to this interpretation. Lord Esher said, "It says 'pay to order,' "and by the most common rules of construction, that must "mean 'pay to my order,'" and that certainly seems the reasonable way to look at it.

Notice that in this case the blank was never filled up. I suppose the holder thought the bill was good enough without, or he may have had in his mind a view I am going presently to put before you with regard to the filling up of blanks.

Now it was a curious thing in this case, that for a considerable period the argument proceeded on the mistaken basis that the form of the bill in question was "pay to.....or order," until Lord Justice Kay detected the mistake and pointed out that the real form was "pay to.....order," the word "or" not appearing on the bill.

In their judgment, however, the Court of Appeal incidentally discuss what would have been the position had the words really been "pay to.....or order," and the bill had been endorsed by the drawer, and sued on by the holder without the blank having been filled up. And it was with regard to this supposed state of affairs that Lord Esher and Lord Justice Bowen expressed themselves in the terms I some time ago quoted to you. But, of course, as soon as the real form of the bill was discovered, this point became irrelevant, and they wisely refrained from deciding it.

And the same circumstance dispensed with their deciding whether the provisions of section 55, sub-section 2 (*c*), which

preclude an endorser from contending that what he endorsed was not then a valid and subsisting bill, apply to that which is not strictly a bill in form.

So we must deal with the matter for ourselves, and consider what is the effect of a document of this nature—"Pay to .....or Order."

Now, in the first place it is not a bill, it has no payee, it is not within section 3, it does not require payment "*to or to the order of a specified person.*" And if it is not a bill, of course a cheque in the same form is not a cheque. That we get from the terms of the Bills of Exchange Act.

And this seems to have been the view adopted prior to the Bills of Exchange Act, though the only authority I can find is a criminal case, the circumstances of which were peculiar. In the case of the *King v. Randall*, in 1811, the prisoner was tried for forging and uttering a navy pay-bill, importing to be drawn by George Sidney, as master of the Royal Sovereign, and payable to.....OR order, and also for forging and uttering an endorsement upon it in the name of John James. Apparently Mr. Randall was of opinion that his handiwork did not at any rate constitute a bill payable to bearer, inasmuch as he went to the trouble of forging the endorsement of the fictitious John James. He presumably did not know of the Aldgate Pump dictum, or did not think it covered his case. Anyway, he was tried and found guilty. But objections in law were taken. One of them is interesting. It was objected that the so-called bill misrepresented the rating of the Royal Sovereign, she being really a first rate, but described in the bill as a second. This seems a somewhat technical defence to a charge of forgery, and, as derogatory to the character of Collingwood's ship at Trafalgar, was a matter I should say of aggravation rather than mitigation.

The other objection was more serious, being that the bill was payable to no one because there was no payee's name. The judge at the trial overruled the objections. What he said about the Royal Sovereign I do not know. With regard to the other objection, he held that a bill payable to blank or order was in legal operation payable to the order of the drawer, but at the same time he reprieved the prisoner (forgery being then a hang-

ing matter), thinking the instrument was incomplete for want of an endorsement by the drawer, who, as you remember, was George Sidney, the master of the ship, not John James, whose name was forged presumably as the payee, and that therefore no person of ordinary caution could be imposed upon by it. And the points were reserved for the consideration of the judges. And all the Common Law Judges, except one, sat to consider the matter, and they held the conviction bad on the ground that it was not a bill of exchange because there was no payee.

Nor is it made a bill payable to bearer by section 7, subsection 3. "Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer." To make it a bill and get within the section there must, to my mind, be a name as payee which represents, without importing extraneous knowledge, a possible payee.

And, as we said before, it must be a person, existing or real, or non-existent or fictitious, whatever sense the latter words are to be taken in. Now blank is not a person, blank is not even a fictitious or non-existent person. It is somewhat anomalous in any way to speak of a non-existent person, especially when you have to find another and distinguishable meaning for a fictitious person, but when you have exhausted the possibilities of non-existent and fictitious persons, you are still a long way off "things," whether real, fictitious or non-existent, and, I venture to think, still further off that which is not even a thing, but absolutely nothing, to wit, a blank. *Ex nihilo fit nihil*, not even a fictitious or non-existent person or payee.

Such a document, therefore, is not a bill of exchange or a cheque, and is not payable to bearer.

—

But in order to deal effectually with this subject of professing bills and cheques with impersonal or blank payees, there are still two points left to consider. First, what estoppels arise under the Act from the issuing and dealing with these anomalous documents, and in whose favour and against whom do they apply? Second, what can be done to making such instruments complete bills of exchange, and who can do it?

Now, on the first point, as to estoppels, I fully recognize the force of Lord Esher's remarks as to the incongruity or even

the immorality from a commercial point of view of a man's putting on the world a document presumably intended to be a bill of exchange, receiving value for it, and then later on turning round and saying it is not a bill of exchange by reason of some defect in form which, in the majority of cases, is of no practical importance whatever.

But however much we may reprobate such a course, I am afraid we cannot manufacture sentimental estoppels outside those which the Bills of Exchange Act has laid down. The Court of Appeal gives no foundation or encouragement for so doing, and it would be obviously wrong.

How far, then, will the Bills of Exchange Act help us in this respect?

First take the case of the drawer of a so-called bill or cheque with such a payee as wages or order.

What does the drawer engage with respect to it?

Section 55 is the section governing this, and may be interpreted as another stop-gap, as enacting that a document, not really a bill, shall be treated as a bill, if the operation of the section supplies the defect. What then?

By sub-section (6) the drawer is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

Now, I do not think that helps us: In the first place, I do not see how you would get a holder in due course. To be a holder in due course, you must take a bill complete on the face of it. Is a bill complete which says pay wages or order? I think not; it has no payee in the sense the Act uses the word. Then as "wages" could not endorse, the bill would not be complete without endorsement, which could not be got.

But suppose we got over these difficulties, what is the estoppel created? That "the drawer is precluded from denying the existence of the payee and his then capacity to endorse."

Quite so, but this does not cover the case where there is no endorsement at all, which there never could be in this case. The estoppel does not extend to precluding the drawer from denying the genuineness of the endorsement, and if the word "wages" was endorsed by someone, the holder would be put to prove the genuineness of the endorsement, which he could not do.

Then as to the case of " .....or order." It was not suggested in *Chamberlain v. Young* that this section estopped Young in his character of drawer. It could not be. Where there is no payee at all, you cannot affirm his existence or his capacity to endorse. So I think the estoppels in this section do not touch the case at all. They obviously apply to a personal payee, as shown by the word " *his*."

Now we come to the acceptor, and of course, here the question of cheques or notes does not come in ; we have only to deal with bills.

What is the position of an acceptor who accepts a bill payable to wages or order towards a holder who takes it in that condition ?

The difficulty as to a holder in due course comes in, as he is the only person who can set up estoppels against an acceptor. But even to him the only relevant estoppel is that in the case of a bill payable to the order of a *third person*; the acceptor is precluded from denying the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement. So that here and also in the case of a bill payable to " .....or order," there can be no availing estoppel against the acceptor. The words " payable to the order of a *third person*," prevent the section having an application in either of these cases, and if it had, the same difficulties as I referred to above with regard to the drawer would come in.

Now turn to the endorser, whose case is of course alike applicable to cheques, bills and notes. As you know, the endorser of a bill is precluded from denying *to a holder in due course* the genuineness and regularity in all respects of the drawer's signature and ALL PREVIOUS ENDORSEMENTS, and further is precluded from denying to his immediate or a subsequent endorsee that the bill was at the time of his endorsement *a valid and subsisting bill*, and that he then had a good title thereto.

Now it is clear that an endorser takes upon himself a good deal more responsibility in the way of estoppels than the other parties to a bill, and it was on the latter of these two clauses that the plaintiff relied in *Chamberlain v. Young*, when arguing on the basis of the bill having been drawn payable to " ..... or order " and endorsed by Young. The first part of the ques-

tion, viz., as to the endorser's being bound to the genuineness and regularity in all respects of previous endorsements, only extends to cases where the bill is in the hands of a holder in due course, and so, in addition to the difficulty with regard to the possibility of their being a *bona fide* holder of a document incomplete on the face of it, the section could only apply where someone had endorsed in the name of wages, or had endorsed as the unnamed payee, and the endorser whom it is sought to estop had endorsed after this. That is not a case likely to happen.

But as to the second point, there is more to be said. In the face of the words "is precluded from denying to his immediate "or a subsequent endorsee that the bill was at the time of his "endorsement a valid and subsisting bill," can the endorser turn round and say, "No, it was no bill at all, because there was "no payee, or no fictitious or non-existing person as payee, when "I endorsed it?"

You see there is no question here of a holder in due course, the endorser incurs this liability, whatever it may be, to his immediate or any subsequent endorsee.

Moreover, it may be material to remember that the liabilities of an endorser are not confined to a person who signs a bill in the character of payee or special endorsee. Anyone who signs a bill other than as drawer or acceptor, incurs the liabilities of an endorser.

So there would be only two arguments which such an endorser could put forward. First, that it was not a bill, and that the section did not apply. I think that would not do, because, as I say, the section is a stop-gap one, and I am disposed to think the Court of Appeal, in *Chamberlain v. Young*, would have said so if necessary. Secondly, that the words "valid and subsisting" do not cover the case of that which is not otherwise a bill, at any rate in form, that "valid and subsisting" refer to circumstances outside the bill, as for instance, he cannot say it has been paid off or released in writing, or anything of that sort. And, perhaps, the wording is not felicitous, but on the whole I think the word valid is sufficient. Assuming the application of the section as a stop-gap, I think a Court would rightly hold that the endorser was estopped and precluded from taking any objection to the form of the bill, and was liable on his endorsement.

That, I think, exhausts the list of estoppels under the Act, which as at present advised, are the only ones which in ordinary cases we are entitled to take into consideration. And after the examples I have given, you will be able to apply for yourselves the estoppel sections of the Act to any particular case which may come under your notice.

Now as to the second point. What can be done to make such instruments complete bills, and who can do it?

I daresay you have been wondering why I dealt at such length with this matter, and thinking that the difficulties, or at least many of them, might be got over easily by filling up the blanks.

But I think I can show you that remedy will hardly suffice.

In the instance of a cheque or bill payable to wages or order, I do not think that there is any filling up to be done. Section 20, after dealing with the case where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, goes on thus, "and in like "manner when a bill is wanting in any material particular the "person in possession of it has a *prima facie* authority to fill up "the omission in any way he pleases."

This, of course, is one of the stop-gap sections to which I have alluded, and therefore if the defect in the document can be cured by the operation of the section, that section applies. But does it? True, the document is wanting in a material particular, it has no personal payee; but is there any omission you can fill up in like manner as you fill up the blank, signed, stamped paper? The only place you want to fill up is already occupied by the word "wages," there is no blank, no omission to fill up. I think the case outside the section, and the section not applicable.

The case of a bill or cheque payable to "..... or order" is different. Here the so-called bill is wanting in a material particular, viz., a payee, and the defect is an omission, and there is a blank which can be filled up. And it was decided long ago that a holder could insert his own name as payee and endorse it. And if it had been endorsed by somebody previously without the blank being filled in, I think you might fill in his name as payee, and so utilize his endorsement.

But the powers given by this section are very restricted. In fact it is altogether a very puzzling section. The person in possession who may fill up the bill or the omission is not confined to the first person to whom the bill is delivered in its inchoate state. The Act does not say so, and prior authority is against the idea. The words "the person in possession of it," are equivalent to "the person in possession of it for the time being." Such a person therefore has a *prima facie* right to fill up the omission in any way he thinks fit.

But the right or authority is only a *prima facie* one, and that is emphasized by the succeeding sub-section, which says that in order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given. Now this very considerably cuts down the effect of the apparently large permission to fill it up in any way you think fit. If you are not the person to whom the signed, stamped paper or the bill wanting in a material particular has been handed in the first instance, I do not very clearly see how you are to know what is the limit of the authority, and if you were to fill it up as you thought fit, you would in all probability exceed that authority. Say a signed blank paper stamped with a stamp which would cover £5,000, is handed you for value by a person who assures you that the signer authorized him to fill in that sum, and you fill in £5,000. The signer would be perfectly free to say, "I never authorized it to be filled in for more than £1,000," and your *prima facie* authority would be rebutted and go by the board. So again, if a bill is brought to you "pay.....or order," and you fill in your own name as payee, the acceptor or drawer would be entitled to say, "Oh, no, the only authority I gave was to fill in John Smith's name as payee," and again your *prima facie* authority goes.

Practically, what I think this section comes to is, that only the person to whom the document is handed in the first instance is in a position to exercise the powers under this section. He is the only person who can possibly know with certainty the limits of the authority conveyed by the instrument, and I cannot see how anybody else can safely deal with such a document,

his knowledge of the authority being merely dependent on hearsay; unless, indeed, he goes and makes enquiries of the prior parties, which would not seem a usual course.

Moreover, remember that if you take an incomplete document, even though you are in a position to and do fill it up, you can never be a holder in due course.

The rights of a holder in due course who has taken a bill so completed after its completion are dealt with in sub-section 3 of this section 20, and are clearly contra-distinguished from the rights of the person who has taken the bill in its incomplete state and completed it himself.

And the thing is absolutely clear. One of the requisite things in a holder in due course, under section 29, is that he should have taken a bill complete and regular on the face of it, which it cannot be if it is wanting in a material particular, or is merely a piece of signed blank stamped paper. As the Court of Appeal said in *France v. Clark*, in 1884, "The person who has "signed a negotiable instrument in blank or with blank spaces "is, on account of the negotiable character of that instrument, "estopped by the law merchant from disputing any alteration "made in the document after it has left his hands by filling up "blanks (or otherwise in a way not *ex facie* fraudulent) as "against a *bona fide* holder for value without notice, but it has "been repeatedly explained that this estoppel is in favour only "of such a *bona fide* holder, and a man who, after taking it in "blank, has himself filled up the blanks in his own favour with-"out the consent or knowledge of the person to be bound, has "never been treated in English Courts as entitled to the benefit "of that doctrine. He must necessarily have had notice that the "documents required to be other than they were when he re-"ceived them, in order to pass any other or larger right or "interest as against the person whose name was subscribed "to them than the person from whom he received them might "then actually and *bona fide* be entitled to transfer or to create, "and if he makes no enquiry he must at the most take that "right (whatever it may happen to be), and nothing more. He "cannot by his own subsequent act alter the legal character or "enlarge in his own favour the legal or equitable operation of "the instrument." So that filling up omissions yourself is of no

use whatever. You may, probably would, find you had overstepped the limits of the authority, which would be fatal, and you would in addition be subject to all equities, as not being a holder in due course.

Now I fancy this section, its working and effect, have been the subject of some little misconception, and I am glad to have this opportunity of showing you what it does and does not do.

But before leaving it, it may be well to see how far, if at all, it will help you when a bill or cheque "pay.....or order" is presented to you for payment in that condition, that is without the blank being filled up. There seem to be two courses open: one, that the person presenting it should fill in the blank with his name and endorse it; the other, which would seem to be available only in the case of cheques, and which I believe is sometimes adopted with regard to them, is for you, as bankers, to fill in your own name and make it payable to yourselves, in which case I take it you also endorse it, either because bankers are slow to believe that a cheque to A or order is payable to A without endorsement, though such, of course, is the case, or with the view of making it a bearer cheque, and so payable to the person presenting it.

Now of the two plans, I think that of making the person presenting it fill in his name and endorse is the less bad. He is the person in possession of it at the time it is presented for payment, and as such has a *prima facie* authority to do it. But of course it is only a *prima facie* authority and liable to be rebutted; he cannot be a holder in due course because the document is not in order on the face of it even now, and so cannot have been when he took it; and you have notice of this by the condition of the bill or cheque when it is presented to you. The filling in and endorsing at your request can give you no larger rights than you would otherwise have had. You take the risk of your customer's authority not extending to such filling up. In effect, you are relying on that authority as sufficient to sanction the conversion of the bill or cheque into a bearer document, and you might find it did not go far enough. It is clear you cannot, by getting such filling up and endorsing done by the person who presents it for payment, obtain for yourselves the protection of section 60 of the Bills of Exchange Act, or the analogous sec-

tion of the Stamp Act, 1853. The terms of those sections are clearly confined to cases where a bill or cheque is presented for payment with the endorsement ostensibly complete and in order, and where the only question is whether the endorsement is genuine or made with the authority of the person whose endorsement it purports to be. So that I do not see that such filling up and endorsing by the person presenting affords any protection.

As to filling up a cheque so as to make it payable to yourselves, I think that course is open to the same, and indeed greater, objections. In the first place, it is a sort of admission that you know the cheque is not in order when presented. Again, I think "the person in possession thereof" mentioned in the section as empowered to fill in blanks must have possession of it while it is a living, going instrument. If you pay it as bankers on behalf of your customer, it is a dead cheque, it is only a voucher in your hands as against your customer. You are not the person in possession of it as a cheque, but only as a voucher, and such filling up can have no effect.

But there is a more serious side to the question. It forcibly strikes me that if you pay the person who presents it and then fill in your own name, you are not dealing with the cheque as bankers at all. I cannot help thinking that you are putting yourselves in the position of having purchased the draft on your own account, and so become holders of it. For by filling it up payable to yourselves or order, you are treating it as a going bill; you, as the person in possession, are acting on the *prima facie* authority of the drawer, and making it a bill or cheque payable to, or to the order of, the drawee, the form authorized by section 5 of the Act, which says a bill may be drawn payable to, or to the order of the drawee. And if that be so, you become the holder, and you can never be a holder in due course, because you have taken the instrument incomplete on the face of it, and moreover are the named payees. And in that case you run the risk not only that you may have exceeded the authority by so filling it up, a risk which is a real one in such case, because the customer can hardly have contemplated your doing so, but you would become liable to all equities affecting

the cheque in the hands of the person from whom you took it. Time fails me to pursue this point further, but I commend it for your serious consideration.

One thing you can always do with these blank or order documents. You can always tell whether they have not been filled up within reasonable time, a condition which under section 20 is as imperative as the not exceeding the authority. If one of them is presented to you with the blank not filled up at maturity, in the case of a bill or on a somewhat stale cheque, I think you would be held to have seen that the conditions had not been complied with within a reasonable time, and ought not to accept any filling in at that date without enquiry.

With regard to crossed cheques, I do not see that in the case of a wages or order cheque, or a cheque "pay.....or order," without the blank filled up, the crossed cheques sections afford any protection.

Such documents are not cheques, and the payment of them would not, from the purely legal point of view, be made in good faith and without negligence.

I merely mention this in order that you may not suppose that the crossing and payment through a banker affords any special immunity. Crossed or not, the same risk, in my opinion, as I have previously pointed out, applies.

15.

EXAMINATIONS IN BANKING SUBJECTS

THE following letter, addressed by Mr. G. W. Hodgetts, manager of the Bank of Toronto, St. Catharines, to the President and Executive Council of the Canadian Bankers' Association, was read at the annual meeting of the Association in October last:

"The thanks of our members are due to the Editing Committee of our JOURNAL for publishing in the current number Mr. D. R. Forgan's very able paper on 'Banking as a Profession.'

"After reading this paper, it occurred to me that perhaps the time has arrived in the history of our Association when a forward step ought to be taken in the direction of encouraging our younger members to make a study of certain subjects connected with their profession. No doubt much good has been accomplished by the essay competitions instituted some years ago, but these have not touched the rank and file of our associate membership. The founding of a 'Bankers' Scholarship' in connection with Toronto University, has drawn attention to the importance of acquiring such knowledge, but only a few have sought to attain it.

"Mr. Forgan rightly gives our Canadian system credit for being a much better training school for bankers than that of the United States. He also accepts the axiom that 'bankers, like poets, are born, not made,' but urges the young banker to study subjects connected with his profession.

"I am afraid many of our Associates devote too little of their spare time to reading or studying along the line of their calling. Athletic sports and social events are making increasing demands upon them, and the latest work of fiction is doubtless much more interesting reading than Maclaren on 'Banks and Banking,' or even the JOURNAL of the Canadian Bankers' Association. Sound bodies are as essential as sound minds, indeed a sound mind without a sound body is often useless, consequently hockey and such sports should be encouraged. Neither must the social side of our nature be

neglected, and bankers are pre-eminently social beings. Novel reading is a literary recreation, and affords the mind a relief after grappling with the daily round of business. All these things have their use and place, but the fact is very rapidly coming to be realized in mercantile and financial circles everywhere, that special training is as necessary for business efficiency and success as for professional proficiency and success. Such being the case, it becomes this Association to urge upon its Associates the giving of time and thought to acquiring knowledge that will render them more useful to their employers, and therefore more likely to receive promotion.

"I would beg leave to suggest to our Executive Council that they recommend a course of studies such as those prescribed by the Institute of Bankers in Scotland, referred to by Mr. Forgan, and that they consider whether it would be possible to encourage our members to pass examinations in some of these subjects, by offering diplomas or prizes to successful candidates. If all the banks support such a movement, I am sure it will be productive of much benefit, not only to the Associates but to the bankers themselves.

"In closing, I would refer to the recent opening of the London School of Economics and Political Science, as one of the signs of the times. This school proposes to offer to its students regular courses in Economic History and Theory, Statistics and their Application, and Political Science. Among the subjects to be treated in a supplementary course of lectures, open to the general public, are Chartered Companies, Foreign Banking, Principles of Local Taxation, Railway Law, and Finance. It is announced that the school will provide courses for the special training of railway and municipal officials, and the technical and commercial education required in order to prepare for the examinations of the London Chamber of Commerce and Institute of Bankers. This new departure in the field of education is not experimental, because the school is planned to meet certain needs in English life. Its establishment marks the advance in popular interest of economic and political science, and the general recognition of the fact that special training is needed in order to deal intelligently with these great subjects."

BANK ROUTINE

SUGGESTIONS FOR ECONOMIZING LABOUR

COLLECTIONS AND REMITTED ITEMS

MUCH time and stationery is unnecessarily spent in a bank in writing the names of banks and towns over and over again, in many instances the bank and town having to be written twice for the one item. A cursory glance at some of the registers will show what an amount of useless writing is done.

To remedy this, I would suggest that the banks adopt and recognize each other by their several initials, thus, let "C.B.C." stand for Canadian Bank of Commerce, "B.d'H.," Banque d'Hochelaga, and so on; "B.N.A.," "M.B.H.," "M.B.C.," are all self-explanatory and need no key, nor will duplicates in any case be found.

Next let every banking town in Canada have a designating number as hereinafter set forth, and *wherever the name of a town appears on bank stationery* let its *designating number* be *printed* or *engraved* with it, on drafts, customers' cheques, letter heads, etc. In this way a few letters and figures will replace a long bank name and its town on a register; should the item ever have to be referred to, and the town number not prove familiar, it is a small matter to look it up in the list, thus: "B.N.A. 229," stands for Bank of British North America, Montreal; "B.M. 714," Bank of Montreal, Victoria. The only time that the numbers would have to be referred to would be when the particulars of an item had to be looked up. A little thought on the matter will suggest innumerable ways in which such a system, generally adopted, would save in stationery, time and labour.

Whether the numbering of towns is considered worthy of attention or not, I would strongly suggest that the initials of

banks be considered sufficient on draft advices, letters, etc. There is no possible chance of a mistake as the initials are all dissimilar.

For a suggested provisional numbering I have taken an ordinary list of banking towns by provinces, and numbered them consecutively in alphabetical order, dividing the numbers as follows :—

Ontario	1 to 199
Quebec	200 to 299
New Brunswick and P.E.I.	300 to 399
Nova Scotia	400 to 499
Manitoba	500 to 599
N.W.T.	600 to 699
British Columbia	700 to ..

By this division the *provinces* are denoted; for example, a town in *Nova Scotia* would be represented by a number in the *400's*.

As regards towns which hereafter may become banking towns, I have a provision in mind, whereby they can be inserted in alphabetical order with the old ones, without interfering with the consecutive order of the numbers.

—

Cheque Remitted Register :

NO.	DRAWER	TOWN	DATE	BANK	TOWN	PAYEE	SENT TO	AMOUNT
	E.	13	Oct. 22	B.M.	120	Jas. Brown	120	200
	P.B.H.	413	" 22	B.T.	229	E.	229	300
	B.N.A.	15	" 22	B.N.A.	120	E.	120	200

The application of the above system to other registers, etc., is easily seen from the above.

ACKNOWLEDGMENTS

The present cumbersome and laborious method of acknowledging and checking off acknowledgments of letters, would be greatly simplified if every bank would enclose in each letter requiring acknowledgment a private postcard (unstamped), *addressed to itself*, and bearing the same date as the letter accompanying it.

A bank receiving letters with such cards enclosed would simply stamp the cards with their dater, and either stamp them and mail forthwith or hold to enclose in a prospective letter.

As regards checking of acknowledgments on the return of the card, several ways suggest themselves, but I will simply mention two :—

1. Postcards can be numbered consecutively, and as the cards are returned they can be filed in consecutive order and bundled as each hundred is completed : any number outstanding after a reasonable time, can easily be traced by checking off a few of the neighbouring cards against the letter book.

2. A memo can be taken each day of the number of cards sent out, and as each day of returned post cards is completed, they can be filed away. Missing cards can thus be easily detected.

I do not think that many cards would be found to be missing, as no one would wish to cumber up his desk with these cards any longer than necessary, and a prompt return may therefore be relied on. Loss in transit is practically unknown. All the sending bank has to do is to date the cards with a dating stamp and enclose them ; all the receiving bank has to do is to use the bank dating stamp on the cards and either stamp or enclose them.

COLLECTIONS REQUIRING PRESENTATION BY MAIL

I think that if banks are going to continue charging for presenting collections by mail, it would be a good idea to come to a general understanding to that effect and attach ten cents in stamps or a special bank scrip *when the collection is sent.*

STEWART PATTERSON

EASTERN TOWNSHIPS BANK,
GRANBY, QUE., 20th Oct., 1898

THE HALIFAX BANKERS' ASSOCIATION

THE first general meeting of The Halifax Bankers' Association was held in the Church of England Institute on 2nd March, 1899.

The following officers were elected:

President—A. Allan, Inspector, Halifax Banking Company.

Vice-President—E. C. Helsby, Manager, Peoples Bank of Halifax.

Secretary-Treas.—H. W. Jubien, Union Bank of Halifax.

The reasons which prompted the formation of the Association are fully set out in the inaugural address of the President, which is given following:

PRESIDENT'S ADDRESS

Mr. Chairman and gentlemen,—I heartily congratulate the Association on the occasion of their first meeting. The attendance of so many members and interested friends at this first meeting augurs well for the association, and strengthens the hands of those who assumed the responsibility of its formation.

Barely a month ago a feeling was expressed that such an association as has to-night been inaugurated was desirable. A meeting of Bank officers was called and well attended, two Banks being represented by almost their entire staff. At this meeting the advantages and benefits to be derived from such an association were discussed, and the opinion of those present taken as to the desirability of its being formed. The vote in its favor was very unanimous. There was not, of course, the enthusiasm one would expect to find present at a meeting of hockey players. The latter appertains to sport, glorious and healthful, of which we all approve; the former was serious and had in it much that appertains to business, yet the meeting was most hearty in approval of the movement.

It was resolved that the staff of each Bank should elect from among themselves a representative to act on a committee to formulate a scheme for carrying on the business of the association. The committee met and recommended that the association be known as "The Bank Officers' Association of Halifax;"* that the objects of the society be defined as: The association of Bank officers for their mutual benefit with a view especially to increasing their knowledge of their profession, by means of study, papers, debates and discussions on all subjects of interest to them; that the society meet fortnightly; that a room be engaged in which meetings may be held; that the inaugural meeting be held on 27th Feb.;† that Mr. Allan, the committee's chairman, make the inaugural address; that the membership fee for the present term be not more than fifty cents; and that present cashiers and managers of Banks in Halifax be elected honourary members.

Another meeting of the committee was held, when it was found that five Banks having their head offices in Halifax had given their adherence to the association. The staffs of these five Banks, excluding the head officials, number in all 75, of whom 60 applied for membership.

The present meeting followed.

Turning to the objects of this association, and the reasons why it should exist: It may appear to some of you that these are self-evident, and to others that they have been, perhaps, abundantly explained already, yet there are those to whom they are not clear, if we are to judge by the questions asked. Permit me, therefore, to go over them now.

I do not believe there is in Halifax any cashier, manager, or head of a staff, who does not fervently wish that the members of his staff generally took a more hearty, intelligent, personal interest in their work—had a more thorough appreciation of the necessity for a well-trained intellect in the highly honourable business which is to be theirs for life—a business whose success is dependent upon the honest energy of each member of the staff.

---

*Name adopted at meeting 2nd March, was Halifax Bankers' Association.

†Subsequently adjourned to 2nd March.

I am also convinced there are moments which come to each member of the different Banks' staffs—with more or less frequency according to the thoughtfulness of the man—when he wishes he had given more time at the beginning of his course to a study of the literature of Banking. He also perhaps deplored the fact that there is no association or club of Bank officers which has for its object the obtaining and diffusing of knowledge of banking subjects.

I was speaking the other day to an engineer about the intellectual requirements of his profession. He said he wished it were in his power to take again the fourth year of his college course. The thought occurred to me: This gentleman has had his fourth year, and regrets not having availed himself to the full of its advantages; but while he cannot take it over again, he can do the next best thing. The fourth year was designed to teach him to apply the knowledge gained to the purpose of gaining more knowledge—to continue studying; and if he is to so profit thereby he will keep his mind in touch with the great thinking minds of his profession, learn of them through engineering literature and conferences, and so become, according to his abilities, a thinker, a worker, and one known in his business.

And so with us. We regret the absence of opportunity of study of banking, or having neglected such opportunity as was afforded us.

This association will not offer you professors' lectures corresponding to a fourth year's course in banking. In humbler manner we hope by means of occasional lectures or papers read, debates and discussions, by the asking of questions on banking subjects, and the endeavour to find answers to them, to establish, in time, with the good will and application of the members, and the energy of the managing committee, an association of benefit to the younger Bank officers: and, we may hope, that inasmuch as they lend their assistance in this endeavour, the benefit will extend itself to senior officers also.

The managing committee very earnestly hope that all the senior officers will lend their kind assistance to the forwarding of this good work. In considering how this can be done—the delivering of addresses, the reading of papers on subjects having an interest to a banking staff, first suggest themselves.

These papers would have all the advantages of coming from gentlemen possessing the desired knowledge which arises from practice and theory combined. One may read many books of travel and thereby have a little knowledge of the countries described, but if one can find an educated and observant traveller who has visited those countries, our interest is revived, enlivened, increased, and his statement and our reading combined confirm and extend our knowledge. And so it would be with papers given by gentlemen experienced in the matters they discuss. We would feel we understood our reading better, and were more fitted to understand banking subjects, or even were more fitted to fill higher posts in the Bank when they fall to us.

The subjects which could be treated in papers to the advantage of an association of Bank officers are very numerous, and will readily suggest themselves to those disposed to write on them.

Debates and discussions will prove of interest to all members of the association. Here all can meet and participate in the evening's proceedings. Opinions can be expressed freely. There will be no lack of subject matter to proceed on; every day's experience, active brains and fertile imagination will furnish material.

The ordinary rules of debate will be followed.

In the matter of questions, where they cannot be satisfactorily answered when asked, a committee will take charge of them, and, in case of further need, the Bankers' JOURNAL has a department for answering questions, of which it urges us to avail ourselves. This association will serve a good purpose if it only leads its members to avail themselves of the kind and authoritative services of the JOURNAL.

I would like to impress upon the members how much the benefit accruing to them from this association is dependent on their own effort and ability. Given papers by any of the very capable cashiers, managers and senior officers, which Halifax undoubtedly possesses; given these efforts of varied experience, much observation and hard thinking, what is needed on the part of those to whom they are addressed? An intelligent, discerning attention. It is a pleasant thing to attend lectures.

We feel we are benefited intellectually; we get some instruction, and sometimes we are even amused. Few of us, however, get a tithe of the benefit the lecture was calculated to bestow. Who is to blame? Ourselves. A few of us take notes—some of us have a habit of mentally marking the best points, the truths the lecturer communicated so excellently. These we think out, afterward discuss them with others, and so they become part of our own stock of knowledge. But a great many make no effort to retain what is bestowed upon them. Some of us will derive more benefit from papers read than will others. This I would recommend to the reflection of all the members.

Debate and discussion are fruitful sources of information, assist apprehension, and clear away the fogs of mystery and error, when wisely and generously conducted. Let us be sure of our statements, enquiring into the facts of the case, ascertaining reasons and causes, and be more anxious to attain truth than score a point or corner an opponent.

Banking literature is very extensive, and will repay close study, though I do not deem it necessary that we should overtake all banking literature.

In ordinary general reading, a few well selected books are to an intelligent careful reader with a limited command of time much more valuable than diffusive reading. So with our studies; a few carefully selected works will best serve our purpose if they are carefully read.

The Bank Act of 1890 is that by which chartered banks in Canada live and move and have their being. I wonder how many bank officers in this room have read this document, not to say studied it. Next, there is the Bills of Exchange Act. Do we stand any better with regard to it? And yet these pieces of legislation are of the utmost importance to us as bankers. I do not say all the science of banking is contained in these two, but I do say every Bank officer in Canada ought to be conversant with them if he is to be a competent officer at all.

In connection with these are Maclaren's "Banks and Banking," and also Maclaren's "Bills of Exchange Act, 1890." These two are authoritative works by a Canadian lawyer on our

banking laws, with notes and discussions; the law relating to cheques, warehouse receipts, bills of lading, etc., decisions and practice.

I would next commend to your notice the JOURNAL of the Canadian Bankers' Association. Here we have at comparatively close intervals an authoritative presentment of banking legislation, legal decisions, legal advice by counsel of high standing, answers to questions of law and banking practice, information on matters of banking interest, banking history, valuable literary articles, and prize essays. I know of no periodical more worthy of careful perusal by Canadian Bank officers than the JOURNAL. If this association were to devote one of its fortnightly meetings to the review and discussion of the contents of the JOURNAL as it is issued, the association would have spent a profitable evening and have by no means exhausted the merits of the issue.

In talking of books, I wish to confine myself to-night to such as are Canadian as being sufficient for our purpose. But I am tempted to go further, owing to the merits of two books which possess great value for any one who will read them thoughtfully. One is an English book of which an excellent Canadian edition, annotated by Mr. Hague, has been published. I refer to Mr. Bullion's "Letters to a Country Banker." I would recommend it to all, and especially to those who may anticipate soon taking charge of a branch or agency.

The duties and obligations of a manager to his parent bank and to the public, his good points and his possible errors, his rights and his wrongs, the nature of good securities and bad ones, the misapprehensions a young banker is apt to entertain, most of the ins and outs of branch banking, are reviewed, and kindly and humourously commented upon. Wherein the English system differs from the Canadian is indicated by Mr. Hague.

The last book I will at present bring to your notice is Gilbart's "History, Principles and Practice of Banking," an English book, an old book, and the best of its kind. It is fully described by its title. It can be read with advantage by the youngest of us as well as the oldest.

In reading books such as I have mentioned, the object will be to obtain knowledge to assist us in our business. Allow me to suggest in that case that you read closely, take notes, re-read, compare, think over your reading, write down the best of your thoughts and reasonings, and by all means let us have here in our club the benefit of your study. Let no one shrink from so doing. The benefit to him will be great, as will also be the interest awakened in us in the subject he has treated.

I have drawn your attention to the study of books as a means of obtaining knowledge of banking. But knowledge comes not from books alone. It comes also from the practice of your profession. The attentive, hardworking junior, the careful teller, the intelligent, thorough accountant are students of their departments; and by observation and apprehension their powers and capacities increase. Let each officer strive to bring all the powers of his mind to understand the duties of his post, and how best to discharge them. This and the habit of observing what is the work of the other posts in the office will fit him to fill acceptably an advanced post when it is offered.

Study and practice are a fine going team; add to them a level head and a steady hand, and the goal is not so far distant.

Let me say a word to the juniors present. You are beginning your business. Begin it fair. Be careful of your handwriting, of your figures, of your spelling, of the simple arithmetical rules used in banks. These are your foundations. Be careful and lay them well. I know the school system tried to ground you in these foundations, but afterwards by hurry and scurry, multiplicity of studies, science, and irritation of nerves, destroyed these fair foundations. But it only means you will have to begin again, and in earnest if you would succeed.

There is no one in this room who does not wish for success in life. I only repeat an old well-worn truth when I say, "There is no success without labour." Says one American writer, "There is no genius in life like the genius of energy and activity." "Bankmen should be men of energy and activity," says another. "Fidelity is seven-tenths of business success." Let me add, fidelity to the institution which employs

you is simply your duty. Your bank has an undoubted right to your best services. In being faithful to your Bank you will be faithful to yourself.

You heard the other day that Mr. Joseph H. Choate had been appointed by the American Government to the exalted position of Ambassador to England. As a young man he had not the incentives to exertion of power as you and I have. He was wealthy and might have passed his life in ease; but he preferred to work. Work he did, and he attained success. He says, "I consider success to be the honestly performing a fair share of the world's work." His advice to young lawyers is "Study hard, be always honest, good-natured and persevering, and get all the practice you can."

The advice may be tendered to every young man in this room. Study hard, be always honest, courteous and obliging, persevering. Let no opportunity escape you of increasing your knowledge of your business; do all you can for your Bank.

The question has been asked, "Will this association not interfere with the Canadian Bankers' Association. We answer "No." The Canadian Bankers' Association is desirous that the chief officers of Banks in Halifax form a sub-section for the purpose of attending to the banking interests of Nova Scotia. We have nothing to do with that; nor do we conflict. Again, it has been asked: "Will not the Association interfere with the proposed examination of bank officers after the manner of Scotch banks by the Bankers' Association?" Again we answer "No." But also add that we see in this association a means of assistance and preparation for those very examinations, and if that should prove to be the case then this association will perform an important service.

In conclusion, I say again, the Halifax Bank Officers' Association exists for its members. I ask you to make use of it honestly, fairly, wisely. I do not ask you to struggle for its success; but I do ask you that you make it a stepping stone to your success. And then where will the Association stand? It will stand complete. In your success the Association has attained its great success.

A. ALLAN
President

THE GOLD STANDARD *

IT is perhaps safe to say that, from the monometallist's standpoint, the most valuable contribution to the literature of the monetary controversy is to be found in the volume recently issued under the above title. The book comprises 28 of the papers issued during the period 1895-1898 by the English Gold Standard Defence Association. The ground which it covers is comprehensively indicated by the following table of contents:

I.—General Statement of the Gold Standard Defence Association.

II.—Bimetallism Considered. By the Rt. Hon. Sir John Lubbock, Bart., M.P.

III.—The Measure of Value and the Metallic Currency. By the Rt. Hon. Lord Farrer.

IV.—Gresham's Law. By Mr. Henry Dunning Macleod.

V.—The Scientific Theory of Bimetallism. By Sir Robert Giffen, K.C.B.

VI.—The Quantitative Theory of Money and Prices. By the Right Hon. Lord Farrer.

VII.—The Old Bimetallism and the New. By Sir Robert Giffen, K.C.B.

VIII.—Is Gold Scarce? By the late Mr. Ottomar Haupt.

IX.—Bimetallism and Legal Tender. By the Rt. Hon. Lord Farrer.

X.—What is the Appreciation of Gold, and what is its Effect on the Prices of Commodities and Labour? By the late Rt. Hon. Lord Playfair, P.C., G.C.B.

XI.—England's Adoption of the Gold Standard. By the Rt. Hon. Lord Farrer.

XII.—Is it only England that "Blocks the Way?" By the Hon. George Peel.

XIII.—The House of Commons and Bimetallism. With a Speech delivered by the Rt. Hon. Sir Michael Hicks-Beach, Bart., M.P., during the bimetallic debate in the House of Commons on March 17th, 1896.

XIV.—The Probable Effects of International Bimetallism. By the Rt. Hon. G. Shaw-Lefevre.

---

* London, Paris, New York and Melbourne: Cassel & Company, Limited.

XV.—Bimetallism and the Woolen Worsted Trades. By Mr. H. H. Spencer.

XVI.—Bimetallism and Agricultural Depression. By the Rt. Hon. G. Shaw-Lefevre.

XVII.—Has the Gold Standard made the Rich Richer and the Industrious Poorer? By the Rt. Hon. Lord Farrer.

XVIII.—Bimetallism in France. By Mr. Henry Dunning Macleod.

XIX.—The Working of Bimetallism in the United States. By the late Rt. Hon. Lord Playfair, P.C., G.C.B.

XX.—Germany and the Gold Standard. By Dr. Karl Helfferich.

XXI.—Our Colonies against Bimetallism.

XXII.—Why Canada is against Bimetallism. By Mr. B. E. Walker.

XXIII.—Why Australia believes in a Single Gold Standard. By Mr. R. L. Nash.

XXIV.—The Monetary Issue in the United States. By Mr. Horace White.

XXV.—The Bimetallic Campaign in France. By M. Yves Guyot.

XXVI.—The Bimetallic Report of the Agricultural Commission—A Reply. By the Rt. Hon. G. Shaw-Lefevre.

XXVII.—The Bimetallic Negotiations and their Results.

XXVIII.—The Latest Phase of the Bimetallic Movement. With Speeches delivered by the Rt. Hon. Lord George Hamilton and the Rt. Hon. Sir Wm. Harcourt, Bart., M.P., in the House of Commons on March 29th, 1898.

From no other single publication is it possible to obtain so complete an outline of the grounds upon which the controversy has been waged by both sides; while the practical aspects of the case for monometallism are nowhere dealt with more fully. The Gold Standard Defence Association has had a vigorous existence, and the work they have accomplished for the cause of sound money will be of lasting value.

The position of bimetallism—if bimetallism can now be said to have a position—is so clearly indicated in the paper with which the labours of the Association have for the present been suspended, that we have thought it well to give space to it in the present number of the JOURNAL.

THE BIMETALLIC NEGOTIATIONS AND THEIR RESULTS*

1. For upwards of seventeen years the Bimetallic League has been engaged in an agitation for the adoption of bimetallism by this and other countries. It has hoped thereby to rehabilitate silver, by opening the mints of all countries to its free coinage at a fixed international ratio to gold, and by making it a legal tender for debts equally with gold.

It has never, however, committed itself to the support of a specific scheme; and whenever challenged on the subject, the principal supporters of the League declined to state what ratio in their opinion should be adopted between silver and gold as the basis of the proposed international arrangement—whether the old ratio of 15½ to 1, existing before 1873, or the ratio which has existed from time to time since that year in a constantly falling market for silver, and which of late has been about 34 to 1.

2. The Gold Standard Defence Association, on its part—formed for the purpose of defending our existing monetary system against these attacks—has uniformly maintained the supreme and vital importance to this country of maintaining intact its single gold standard. It has affirmed that it is impossible, by international arrangement or otherwise, to secure the maintenance of any fixed ratio between the two metals, which may be determined on at the outset of any such bimetallic arrangement; and it has shown that the past experience of this and other countries fully confirms this view. It has contended that, in order to appreciate fully the probable effects of any such bimetallic scheme, it is essentially necessary to be informed as to the ratio which it is intended to prescribe between the two metals. It is also pointed out that it was all but certain that the governments of France and the United States, owing to

*Paper No. 30, The Gold Standard Defence Association.

their enormous stocks of silver, acquired at high prices, would not propose or assent to any other ratio than that of about 15½ to 1; and that any attempt to revert to this ratio, and thus to double by one stroke the value of silver in relation to gold, and to produce unknown effects on gold in relation to other commodities, would cause convulsions in the trade of the countries which should attempt it, and consequently of our own also, of a most serious and dangerous character.

3. In the course of the past summer bimetallists of the United States, France and our own country conceived the idea of promoting their bimetallic ideas by adopting a scheme which would not in express terms interfere with the gold standard of the United Kingdom. In furtherance of these views a definite proposal was made to our government by those of France and the United States that the United States, French and Indian mints should be reopened to the free coinage of silver, and that our government, while nominally maintaining the gold standard in the United Kingdom, should give assistance to the bimetallic arrangement between these other powers by measures favouring the use of silver, and therefore increasing the demand for it. This scheme was based, as we always predicted would be the case, on the establishment on the part of France and the United States of a ratio between silver and gold of 15½ to 1.

4. The two main features of the scheme were (1) the reopening of the Indian mints to silver only, and the opening of the mints of France and the United States to the free coinage of silver—to be interchangeable with gold at the above ratio; and (2) the substitution of silver for gold in the reserve of the Bank of England to the extent of one-fifth of that reserve, and other measures favouring the use of silver. This scheme, in its main features, received the favour and support of bimetallists in this country. No sooner, however, were the details presented in a practical form, than they created widespread alarm and consternation among commercial classes, and the scheme was finally rejected by Her Majesty's government, with very general assent, as impracticable.

It has served the purpose, however, of showing how great a distinction there is between a definite scheme presented for practical adoption, and the indefinite and plausible generalities

on which the Bimetallic League and its supporters have carried on their agitation for so many years. In this view we feel it to be necessary, if only as a warning for the future, to put on record a narrative of the origin, progress, and collapse of this scheme.

5. It appears that the scheme had its inception, so far as this country is concerned, in the great debate on bimetallism in the House of Commons on March 17th, 1896. That debate was remarkable, on the one hand, for the powerful speech of the Chancellor of the Exchequer (Sir M. H. Beach), in which he repudiated in the strongest possible terms any attempt to tamper with the gold standard of this country; and, on the other hand, for a no less remarkable and emphatic statement of the First Lord of the Treasury (Mr. Arthur Balfour), in which he held out a distinct promise on the part of the government to reopen the Indian mints to the free coinage of silver, in order to facilitate the adoption of bimetallism by other countries than our own. As there was no attempt to disguise the difference of principle between these two high authorities on the subject of Bimetallism, it may be permitted to us, without importing party politics, to conclude that their speeches were the result of contending views in the Cabinet, and that in return for the concession, on the part of the bimetallic members of it, that no attempt should be made to interfere with the gold standard of this country, the monometallic members, on their part, agreed to entertain a compromise. The Chancellor of the Exchequer at the close of his speech, distinguished by its firm insistence on principle and its sound economic views, said: "If it be possible "for other nations to be joined in a bimetallic league, or in an "agreement on this matter which seemed good to themselves, I "have little doubt but that the Indian Government would be "prepared to agree with us in reopening the Indian mints to "the free coinage of silver, and that we might endeavour by "other minor means to promote the increase of silver in coin-"age to aid in an international agreement on this great question. "But we can go no further. This great capital is the monetary "centre of the world. Our trade and commerce are probably "greater than any other country has ever enjoyed. Our wealth "is enormous. It arises from investments and enterprise in

"every quarter of the globe, and the great majority of the men, "able and experienced financiers, who control the working of "this gigantic machine, are of opinion that it has been built up "on a gold standard, and that its permanence depends upon the "maintenance of our monetary system."

6. In the earlier part of his speech, however, he had thrown the gravest doubts on the possibility of any such agreement among other governments. "We cannot," he said, "alter the "gold standard of the United Kingdom; but with that reserva- "tion we are prepared to do all in our power to secure by inter- "national agreement a stable monetary par of exchange between "gold and silver. What are the prospects of any such agree- "ment? I fear they are not very brilliant. It will be remem- "bered that in the Conference of 1893 the United States "proposed a bimetallic resolution. It was opposed by Ger- "many, by the Scandinavian nations, by Switzerland and by "Austria, who declared themselves gold Monometallists. "France and the Latin Union were only prepared to accept it "if Great Britain, Germany, Austria, and Russia would join the "union; so that the resolution fell to the ground, and the vital "question of what the ratio should be in the event of such an "international agreement was never even touched."

On the subject of this vital question—the ratio—he said, with prophetic vision, "I am told that the United States would "probably desire that the old ratio of $15\frac{1}{2}$ or 16 to 1 should be "adopted. In view of the present market price of silver, it "seems to me that to fix any such ratio would be an act of "absolute dishonesty to creditors. It would simply mean that "kind of financial panic with all its possible results to the "credit of the country which has been in previous debates "frequently alluded to by some of the highest authorities."

"I have expressed, I think, very frankly my own opinions "on this important subject to the House, but it is very well "known that there are some of my colleagues who do not agree "with these opinions, and who, like my right honourable friend "the First Lord of the Treasury (Mr. Balfour), are confirmed "and pronounced bimetallists. But we all agree in this, that "we should not be justified in proposing or accepting a depar- "ture from the gold standard of the United Kingdom."

7. The First Lord of the Treasury, in closing the debate, emphasized the conclusion arrived at by the Cabinet as a whole.

"My right honourable friend," said Mr. Balfour, "had a "perfect right to speak as he has spoken. He is a believer in a "single standard, as I am a believer in a double standard. We "are absolutely agreed as to the policy to be pursued."

"It appears to me," Mr. Balfour continued, "that the "House is pledged, after the speech of the Chancellor of the "Exchequer, to do as much, or more, for the bimetallic system, "and for the rehabilitation of silver, as it is in the power of any "foreign country to do. With this resolution we go to foreign "nations and tell them that though you can hardly ask us to "make this great change in our habits, we will do for you as "much as you can do for yourselves; we will make this great "contribution to a bimetallic system. We will go back upon "the deliberately arranged method of providing a currency for "India; we will reopen the Indian mints; we will engage that "they shall be kept open, and we shall therefore provide for a "free coinage of silver within the limits of the British Empire "for a population greater in number than the populations of "Germany, France and America put together. I do not think "that will be regarded by foreign nations as a slight contribution "to a great problem. I think, on the contrary, they will feel "that in carrying out that great alteration and smaller changes, "which have been accepted by previous Administrations, and "will be accepted by this Administration, we shall be contribut-"ing our share towards that great object, which, if foreign "nations are willing, can, I believe, be carried into effect."

8. It will be observed that nothing was said by Mr. Balfour as to the ratio to be fixed between silver and gold in any such arrangement with regard to the opening of the Indian mint. It is probable, judging by the light of subsequent events, that the Indian government was not consulted before this wide declaration of policy was made on its behalf. It is certain, at all events, that it did not consent to an arrangement based on a reversion to the old ratio of $15\frac{1}{2}$ to 1.

9. It was to be expected that, in view of the statements thus made by our government in the House of Commons, the United States Government, which was pleged at the last Presi-

dential Election to promote an international arrangement for bimetallism, would respond to it by sending a mission to Europe to negotiate in this direction.

Accordingly, towards the close of 1896, Mr. Wolcott came to Europe to sound the ground, and returned to report to Mr. McKinley the result of his investigations. On the faith, apparently, of this report, Mr. Wolcott and two other Commissioners were sent by the Government of Washington in May last to Europe, with powers to negotiate.

10. The commission, thus headed by Senator Wolcott, of the great mining State of Colorado, proceeded first to France, where it won the support of M. Meline, the present Prime Minister. Towards the close of May last a banquet was held in Paris under the auspices of the French bimetallists. M. Meline on that occasion made a speech, in which he described himself as "always a faithful soldier under your flag," and talked of "groans and lamentations which are heard throughout the whole world of labour." Finally, addressing Mr. Wolcott, he declared that "our support will not be wanting," and he proved as good as his word. Fortified by the active support of the French Ambassador, the American Commissioners opened dealings with our Cabinet in July last, and on the 12th of that month a meeting took place between the envoys and a committee of the Cabinet consisting of Lord Salisbury, Mr. Balfour, Sir M. H. Beach and Lord George Hamilton, representing the various departments interested.

11. The envoys commenced the proceedings with the request "that England should agree to open English mints as its contribution to an attempt to restore bimetallism," and the ratio at which silver was to be rated to gold was $15\frac{1}{2}$ to 1. In other words, this country was actually to surrender its gold standard and accept unlimited quantities of silver at about double its market price. It is obvious that this proposal was put forward with the expectation that it would not be accepted, and that it would be withdrawn in favour of a more moderate proposal. It was promptly negatived by the Chancellor of the Exchequer, and then the First Lord of the Treasury (Mr. Balfour) asked whether "it was desired that the subject be dis-
"cussed upon the basis of something different and less than the

"opening of English mints." The bimetallic envoys thereupon produced another programme, intimating that it was presented "as a list of contributions which, among others, England might "make towards bimetallism."

12. This compromise, these "contributions," this catalogue of concessions which, "among others," we were to make, were as follows:

(1) Opening of Indian mints, and repeal of the order making the sovereign legal tender in India.

(2) Placing one-fifth of the bullion in the Issue Department of the Bank of England in silver.

(3) (*a*) Raising the legal tender limit of silver to, say, £10. (*b*) Issuing 20s. notes based on silver, which shall be legal tender. (*c*) Retirement, gradual or otherwise, of the 10s. gold pieces, and substitution of paper based on silver.

(4) Agreement to coin annually £ of silver, or (as an alternative proposal) to purchase each year £ in silver at coining value. *

(5) Opening of English mints to coinage of rupees and for coinage of British dollar, which shall be full tender in Straits Settlements and other silver standard Colonies, and tender in the United Kingdom to the limit of silver legal tender.

(6) Colonial action, and coinage of silver in Egypt.

(7) Something having the general scope of the Huskisson plan.

This proposal in its entirety was based on the adoption by France and the United States of the ratio of 15½ to 1.

13. It was stated by Mr. Wolcott that this scheme was founded on the proceedings in the English House of Commons on March 17th, 1896. He said that a complete and satisfactory preliminary understanding had been arrived at with the French Government. When asked as to the ratio, he said that the

* At a later stage of the proceedings "the Special Envoys accepted also as important and desirable the proposal (of France) that the English Government should purchase annually, say, £10,000,000 of silver."

French Government preferred the ratio of $15\frac{1}{2}$ to 1, and the United States Government were inclined to yield this point and accept it as a proper ratio.

The Chancellor of the Exchequer suggested that if the Indian mints were to be opened England might be held to be interested in the ratio, but the special envoys did not accede to this view, and called attention to the fact that by opening the Indian mints the English Government did not thereby adopt bimetallism in any form.

14. On July 15th there was another meeting of the envoys with the Committee of the Cabinet, at which the Chancellor of the Exchequer stated definitely that the English Government would not agree to open the English mints to the unlimited coinage of silver, and that whatever views he and his colleagues might separately hold on the question of bimetallism, he thought he could say they were united on this point.

In the course of this meeting the French Ambassador stated that the ratio of $15\frac{1}{2}$ to 1 had not been arbitrarily conceived. The men of great scientific worth who had recommended it to the adoption of the Legislative Power had made long and careful preliminary investigations, and they reached the conclusion that the figure $15\frac{1}{2}$ to 1 represented the average ratio of the value of the two precious metals.

It was ultimately arranged that the matter should stand over until the Indian Government had been consulted.

15. It is to be noted that coming events had already begun to cast their shadows before. In June the Royal Commission on Agriculture made its report, and the majority of the Commission, including two members of the Cabinet—Mr. Chaplin and Mr. Long—made a separate report in which they expressed the fear that the agricultural classes might consider the recommendations of the main report "barren and practically useless." They proceeded to attribute the depression of agriculture to monetary causes, the appreciation of gold, the demonetization of silver, and to the stimulus given to the export of wheat and other produce from India and other silver-standard countries by the great fall in price of silver. They concluded with this paragraph: "We do not suggest that the gold standard should be "abandoned in this country, but we think that if a conference

"of the powers was assembled, and their deliberations resulted "in an international arrangement for the reopening of the "mints abroad and in India, and the restoration of silver, "either wholly or partially, to the position which it filled prior "to 1873, it would be of the greatest benefit to the industry of "agriculture."

It is impossible to believe that two Cabinet Ministers would have persuaded their colleagues in the Commission to adopt this suggestion of opening the Indian mints, on which evidence had not been taken, if they had not the best reasons for believing that the Cabinet would adopt this course, and that there was every prospect of its being carried out.

16. Apparently the government, or at least the bimetallic members of the government, had no doubt as to the willingness of the Indian Government to accede to the proposed arrangement. The bait held out to the Indian Government of a fixed rate of exchange at a great advance over the then rate was considerable. The offer was subject to the condition that the ratio to be aimed at by France and the United States was 15½ to 1, and our government had not apparently at this time considered what would be the effect upon the commerce of India or of the rest of the world of the sudden and enormous artificial increase in the relative value of silver to gold. The Indian Secretary, Lord George Hamilton, forwarded the proposals of the envoys to the Governor-General, with a despatch dated August 5th, in which he commended them, and reminded him "that in 1892 "the policy of closing the mints was only recommended by your "Excellency's predecessor in Council on the ground that an "international arrangement, similar to that which is now con-"templated, was not then obtainable."

17. The government also commenced a negotiation with the Bank of England for the purpose of obtaining its consent to give effect, if necessary, to the second of the heads of the scheme, that for substituting silver for gold in its reserve to the extent of one-fifth. We do not know as yet the details of this negotiation. But the Governor of the Bank of England wrote a letter to the Chancellor of the Exchequer agreeing on the part of the bank to this proposal, which was authorized under the Bank Charter Act of 1844, "provided always that the French

"mint is again open for the free coinage of silver, and that the "prices at which silver is procurable and salable are satisfac- "tory."

18. Hitherto the details of the negotiation with the Wolcott mission had not transpired; but when it became known by an unofficial announcement in the *Times* of September 11th that the Bank of England had fallen in with a suggestion from America that it should hold one-fifth of its reserve in silver, there arose at once considerable alarm on the subject in the commercial world.

This was to some extent allayed for a few days by a letter in the *Times* of September 13th, from Mr. H. R. Grenfell, one of the senior members of the Bank Court, and one of the leaders of the bimetallist movement, which was generally understood to imply a denial of the whole affair. It demanded on what ground the writer of the remonstrance had presumed to make such an assertion. It proceeded, however, to justify the proposed action by reference to past proceedings; and it was later explained by Mr. Grenfell that he had not intended to deny the fact of an agreement. All doubts on the subject were set at rest on September 16th, at the half-yearly Court of the Bank of England, when the Governor read a letter to the Chancellor of the Exchequer, dated July 29th, in which, with two stipulations, he had assented to the proposal in question. This, taken in connection with Mr. Grenfell's ambiguous letter, gave rise to the suggestion that the directors of the bank generally had not been consulted on the matter, and that it was desired to rush the matter through without discussion. However that may have been, there was no hesitation in the expression of public opinion on the subject in the City of London and other centres of the commerce and industry of the country.

19. When it had come to this, that we were to tamper with the settled policy of the Bank of England, and to enter into negotiations for importing a great volume of silver into our currency, for the benefit of certain interests other than those of the British public, it was too much.

There was then heard in no uncertain tone the voice of the British press and of the British people. If this was a compromise, they would have none of it; if this was the "something

different and less" of the First Lord of the Treasury, how ruinous must be the total scheme of the greater bimetallism!

20. These considerations powerfully affected the public mind.

The committee of the London Clearing House Bankers on September 22nd resolved:—"That this meeting entirely disap-"proves of the Bank of England agreeing to exercise the option "permitted by the Act of 1844 of holding one-fifth, or any other "proportion whatever, of silver, as reserve against the circula-"tion of Bank of England notes."

21. A memorial extensively signed in the City of London, addressed the Chancellor of the Exchequer as follows:—

"SIR,

"We, the undersigned, are engaged in various Mercantile, "Banking, and Financial enterprises in the City of London, of "no slight magnitude, and we are therefore deeply interested in "all that affects the monetary position of the country, the credit "of the bank note and the solvency of Banking Institutions.

"We are aware of the visit of the Delegates from the "President of the United States to this and other countries, but "have no authoritative information as to the nature of their "proposals. From the communication of the Governor of the "Bank of England to yourself lately made public, and from "general report, we cannot but assume that negotiations of "some sort touching the metallic currency of this country are 'proceeding.

"We feel impelled by a strong sense of duty respectfully to "lay before Her Majesty's Government the following four con-"siderations, the great importance of which we trust may be "apparent:

"1. That no alterations should be introduced affecting "the circulating medium of this country, except after "full discussion in parliament and by the public at "large, so that the changes proposed may have as "ample consideration as their importance deserves.

"2. That under no circumstances whatever should the "pledges of successive governments as to the "British £ sterling and the single gold standard of "this country be set aside, either directly or in-"directly; and that no step should be taken by or "with the consent of our government which has for "its object any alteration in the value of that "standard.

"3. That this country alone of the great nations of the "world enjoys under her mint regulations a coinage "system absolutely free from embarrassments, inter- "nal or external, and we conceive that any depar- "ture therefrom in the direction of reliance upon "engagements with other countries would be a "fatal mistake.

"4. That the mints of India being closed (as to the policy "of which we express no opinion), a state of cir- "cumstances has arisen in which the greatest "caution is necessary, whatever may be the next "step which the Indian Government may be advised "to take; but we urge that no retrograde step be "taken except upon as exhaustive an enquiry as "that which led up to the present position, and then "only if Indian interests will be primarily benefited "thereby.

"We most strongly urge the foregoing considerations upon "Her Majesty's Government, speaking (as we believe we are "justified in stating) with some little knowledge of the problems "involved and of the interests at stake; and we are prepared, "if necessary, to give our reasons at length if it be your wish to "receive a deputation."

Similar remonstrances were forwarded by a large body of the most influential manufacturers, merchants, and bankers of Lancashire, and also by the heads of the Associated Stock Exchanges.

22. The Canadian bankers cabled to London an admirable survey of the situation. They gave reasons for their conviction that "silver is entirely unsuitable as a basis for the operations "of banking and commerce," and proceeded as follows:—

"Having, therefore, these convictions, the fruit of long experi- "ence and observation of the conditions of currency matters "in various countries, this association must view with much "apprehension any measure proposed to be taken by financial "authorities in the mother country which would tend even "remotely to the establishment of silver as a basis of banking "obligation. They express hearty approval of the action of the "bankers of London in protesting against the holding of the "silver by the Bank of England as part of its reserve, the "reserve held by that bank being the ultimate reserve for the "whole United Kingdom, as such holding must impair to the

"extent to which it is held the ability to maintain the gold "standard, and give encouragement to those who favour the "delusive and impracticable theories of bimetallism, and so "endanger the great fabric on which the banking of Great "Britain has rested for generations to the incalculable advant- "age of the world. They finally reiterate their conviction that "a double standard of value of obligation is delusive and im- "practicable, that of the two standards gold is incomparably "the most desirable, and that the Dominion of Canada having "all its obligations, public, private and corporate, resting on "and being so long and honourably established on this most "solid basis, any attempt to disturb the same or any measures "having a tendency in that direction should be met with strenu- "ous resistance."

23. This action brought upon the memorialists most unreasoning abuse from bimetallic authorities. Seldom has anything wilder been written than the letter of Professor Foxwell, which was read amid cheers at a bimetallic meeting at Manchester on October 12th. The Professor referred to the petition of the London bankers—which only asked that the promises of the government to maintain the gold standard of this country should be fully maintained, and that before anything should be done in the direction of reopening the Indian mints there should be as full an enquiry as that which led up to the present position —as "the noisy and irrational clamour of middlemen," actuated by their personal interests, and whose object was "to aggrandise "the creditor by increasing the real value of the money in "which his debt is expressed."

24. In the meantime it became generally known that the Indian Government had been consulted as to the wider and yet more important proposal of the Wolcott Commission that its mints should be thrown open to the coinage of silver.

Lord Farrer, in letters to the *Times*, called attention to this subject. "From the best accessible information," he said, "I "believe the Wolcott Commission to have made a proposal to "reopen the Indian mints to silver, on the understanding that "the United States and France shall open their mints to silver "at a ratio of 15½ to 1." Lord Farrer pointed out the extreme difficulties and dangers attending the proposal.

His letters were replied to by Lord Aldenham and Mr. H. R. Grenfell, the president and vice-president of the Bimetallic

League, in a letter to the *Times* of October 4th, in which they did not deny or express any doubt as to the information given by Lord Farrer. They accepted practically his statement of facts, and they said :—

"We desire to state that in our opinion the time for aca-"demical discussion has now gone by, and that the question has "become one of practical politics." They added that if the present negotiations were successful there would be no further bimetallic agitations, and they concluded :—"As we believe that "the great commercial nations are fully alive to the dangers "which would attend any failure of the negotiations, we have "every reason to hope that this compromise will be accepted."

25. It is clear that this compromise included not only the opening of the Indian mints, but also the proposal for the partial substitution of silver for gold in the reserve of the Bank of England, and other measures for promoting the use of silver in this country. It must also be taken for certain that they were aware that the ratio of $15\frac{1}{2}$ to 1 was the one proposed. Lord Farrer had based his objections largely on this ratio. Lord Aldenham and Mr. Grenfell would have made a reservation on the point if they had seen objection to this ratio. We have it also on the authority of Mr. Herbert Gibbs, another prominent member of the Bimetallic League, and son of Lord Aldenham, that bimetallists were aware that this ratio was proposed.

"We," he said in a letter to the *Times* of November 6th, "and no doubt everyone else felt certain that the ratio to be "proposed, in the first instance at all events, would have been "$15\frac{1}{2}$ or 16 to 1, because no other ratio has as yet been discussed "in the United States and France."

26. The organ of the bimetallic movement in the monthly magazines, the *National Review*, was also engaged in writing, in the months of July to October, the strongest possible articles in favour of the so-called compromise, which it assumed had been offered by Mr. Wolcott, and which it asserted would be accepted by the government. In an editorial statement in July it was said :—

"Our readers may take it from us as beyond all doubt that "Lord Salisbury's Government is willing to reopen the Indian

"mints in aid of an international settlement of the monetary "problem. They are also willing to make further substantial "contribution towards the rehabilitation of silver by extending "its use in England. By increasing the legal tender of silver, "by making silver the basis for notes, by empowering the Bank "of England to use silver as a reserve, and in other ways, such "as the famous Huskisson proposals, powerful material assist- "ance and strong moral support will be given to the object "which the United States and France have in view."

And in August it was said:—"It is now generally recog- "nized, except by the ostriches, that Great Britain's chief con- "tribution to an international settlement of the silver question "will be the reopening of the Indian mints, which all who "appreciate this question regard as a splendid subscription to "the common pool."

"Beyond the reopening of the Indian mints the present "government are prepared to propose a more extended use of "silver in Great Britain by making it the basis for notes, raising "its legal tender, and making it a part of the bank reserve."

27. It never appears to have entered into the calculations of Lord Aldenham and Mr. Grenfell, or of the editor of the *National Review*, that the Indian Government would refuse its sanction to the proposal.

But at the very time when Lord Aldenham and Mr. Grenfell wrote the letter to the *Times* which we have quoted, and when the last of the editorials appeared in the *National Review*, the scheme of the Wolcott commission had practically received its death-blow at the hands of the Indian Government.

28. The conclusive despatch in which the Indian Government condemned, root and branch, the proposal to reopen its mints upon the terms suggested was dated September 16th.

In the course of it the following cogent arguments, among many others, are specially worthy of notice:

The first result of the suggested measures, if they even temporarily succeed in their object, would be an intense disturbance of Indian trade and industry by the sudden rise in the rate of exchange, which, if the ratio adopted were 15⅓ to 1, would be a rise from about 16d. to about 23d. the rupee. Such a rise is enough to kill our export trade, for the time at least. If the public were not convinced that the arrangement would have the effect

intended, or believed that it would not be permanent, the paralysis of trade and industry would be prolonged and accompanied by acute individual suffering, none of the advantages expected would be attained, and the country would pass through a critical period which would retard its progress for years. How long the crisis would last before normal or stable conditions were restored it is not possible to conjecture. It would be long even if the mercantile and banking community saw that silver was being steadily maintained at the prescribed ratio, while any indication of unsteadiness would greatly prolong the period by giving foundation for doubt. If the doubt should happen to be justified by the results, the position would be disastrous alike to the State, to individuals, and to trade generally. The exchange value of the rupee having risen suddenly, without any intermediate steps, from 16d. to some higher figure, it would fall quite as suddenly to a point far lower than its present level, probably to 9d., or even lower. Such a fall would, apart from other disastrous results, necessitate the imposition of additional taxation to the extent of many crores.

We may here remind your Lordship that such an agreement as is proposed is an infinitely more serious question for India than for either the other two countries, for it seems clear that practically the whole risk of disaster from failure would fall on India alone. What would happen in each of the three countries if the agreement broke down and came to an end? France possesses a large stock of gold, and the United States are at present in much the same situation as France, though the stock of that metal is not so large. It may be admitted that if no precautions were taken these gold reserves might disappear under the operation of the agreement, and in that case, if the experiment ultimately failed, the two countries concerned would suffer great loss. But it is inconceivable that precautions would not be taken, at all events so soon as the danger of the depletion of the gold reserves manifested itself, and, therefore, it is probable that no particular change would take place in the monetary system of France or the United States, the only effect of the agreement being a coinage of silver which would terminate with the termination of the agreement. Thus the whole cost of the failure, if the experiment should fail, would be borne by India. Here the rupee would rise with great swiftness, it would keep steady for a time, and then, when the collapse came, it would fall headlong. What course could we then adopt to prevent the fluctuation of the exchange value of our standard of value with the fluctuations in the price of silver? We do not think that any remedy would be open to us, for if the Indian mints were reopened to silver now, it would, in our opinion, be practicably impossible for the government of India ever to close them again, and even if they were closed, it would only be after very large additions had been made to the amount of silver in circulation.

Moreover, it seems to us somewhat unfair to expect that India should, after its struggles and difficulties of the last decade, consider itself on the same plane in the discussion of these projects as France and the United States. India has, since 1893, passed through a period of serious tension and embarrassment alike to trade and to the government. We are satisfied that, great as have been the troubles which have attended this period of transition, the attainment in the end of the paramount object of stability in exchange is worth more than all the sacrifices made. We believe that our difficulties are now nearly over, and that we shall, in the near future, succeed in establishing a stable exchange at 16d. the rupee by continuing the policy initiated in 1893.

We have given very careful consideration to the question whether France and the United States are likely, with the help of India, to be able to maintain the relative value of gold and silver permanently, at the ratio they intend to adopt, and have come to the conclusion that while we admit a possibility of the arrangements proposed resulting in the permanent maintenance of the

value of gold and silver at the ratio of 15½ to 1, the probability is that they will fail to secure that result, and that it is quite impossible to hold that there is anything approaching a practical certainty of their doing so.

For these reasons alone, without taking into consideration the objections based on the particular ratio proposed, which we shall separately discuss, we have no hesitation in recommending your Lordship to refuse to give the undertaking desired by the governments of France and the United States. We are quite clearly of opinion that the interests of India demand that her mints shall not be opened as part of an arrangement to which two or three countries only are parties, and which does not include Great Britain.

We note that the proposals of the governments of France and the United States are subject to the proviso that they are satisfied that they will receive assistance from other Powers in increasing the demand for silver. We believe that a limited increase of the quantity of silver used as currency will exercise a very trifling influence, if any, in raising the gold price of silver, and that the only assistance from other Powers which can be of any real value would be the addition of other countries to the bimetallic union of France and the United States.

We believe, however, that whatever inducements are held out to us by other nations, our best policy in monetary matters is to link our system with that of Great Britain. Our commercial connections with that country are far more important than those with all the rest of the world put together, and more than a sixth part of our expenditure is incurred in that country, and measured in its currency. The advantages, which in this respect we gain by following the lead of Great Britain, are not obtained, or not fully obtained, if we become members of a monetary union in which Great Britain takes no part.

So far, the arguments we have offered, in discussing the chances of success or failure of the arrangement, have been independent of consideration of the precise ratio proposed by France and the United States. We have objected to the arrangement on grounds which apply to it whatever be the ratio adopted, but we must add that our objections are greatly strengthened by the fact that so high a ratio is proposed as 15½ to 1. It seems to us that the difficulty of making the arrangement effective will be immensely increased by the adoption of a ratio differing so widely from the present market ratio. Indeed, even if it could be maintained successfully, we should object to that ratio in the interests of India, and we recommend that your Lordship should, on behalf of India, decline to participate in or do anything to encourage the formation of a union based on that ratio.

In any case, we are of opinion that the true interests of India demand that any measures for attaining stability in the rate of exchange between gold and silver should be based upon a rate not greatly differing from 16d. the rupee, and that any measure which would raise the rupee materially higher than that level involves great dangers, for which we see no adequate compensations.

The conditions under which we have had to reply to your Lordship's despatch preclude our consulting the commercial and banking communities in this country, although the subject is one in which they are, as we have explained, most closely interested. It was only after prolonged public discussion, and after a formal examination by a committee of experts that the policy of 1893 was adopted; and if we thought it our duty to advocate a change in that policy instead of to set out the strong objections which we see to its abandonment, we would, nevertheless, strongly deprecate any steps of the kind being taken without the fullest preliminary consideration on the part of the banking and commercial bodies in this country.

To sum up, our reply to your Lordship's reference is a strong recommendation that you should decline to give the undertaking desired by France and the United States. Our unanimous and decided opinion is that it would

be most unwise to reopen the mints as part of the proposed arrangements, especially at a time when we are to all appearances approaching the attainment of stability in exchange by the operation of our own isolated and independent action.

This crushing despatch, all the more remarkable inasmuch as it proceeded from a government which, but a short time ago, was theoretically in favour of International Bimetallism, must have reached the Indian Secretary in full within a fortnight.

29. It was stated on the authority of the editor of the *National Review*, who claimed to be well posted on the subject, that the terms of this despatch were wholly unexpected by the government. "The Indian Council in London," he said,* "was, and is, favourable to the reopening of the Indian mints, "provided foreign mints are reopened. No single member of "the British Cabinet expected a hostile reply from India." "The reply from Calcutta was as unexpected as it was inept, "and was received with dismay by the British Cabinet." Mr. Wolcott also, in a speech delivered in the United States Senate on January 17th of this year, after stating that his proposals were not volunteered, but made "at the explicit request of the "English Ministry," added that the refusal of the Indian Government to reopen their mints "was as much a surprise to "the English Ministry as a disappointment to us."† However that may be, there was apparently no hesitation on the part of the Indian Secretary of State, or of the British Government, in acting upon it. On October 13th the India Office wrote to the Treasury stating that the Secretary of State for India "could "not act in opposition to the strongly expressed views of the "Government of India unless he were convinced that the "proposed scheme is intrinsically sound, and that it would "confer real and lasting advantages upon the government and "people of India. After most careful consideration, Lord "George Hamilton has arrived at the conclusion that the scheme "does not fulfil those conditions, and that the criticisms of the "Government of India upon it are in the main well founded." He expressed "concurrence in the request of the Government of "India that Her Majesty's Government will not assent to the "undertaking desired by France and the United States."

* "*The National Review*," December, 1897, p. 515.

† "*The Times*," January 18th, 1898.

30. The government upon this lost no time in coming to a conclusion wholly adverse to the scheme, and on October 19th, exactly a fortnight after Lord Aldenham's letter urging that the time for academical discussion had gone by and that the question had become one of practical politics, Lord Salisbury informed Mr. Hay, the American Ambassador, that Her Majesty's Government were unable to accept the proposals of the Wolcott commission, so far as concerned the reopening of the Indian mints. "Due consideration," he said, "has also "been given to the remaining proposals, but Her Majesty's "Government do not feel it to be necessary to discuss them at "the present moment. Her Majesty's Government are there- "fore desirous to ascertain how far the views of the American "and French Governments are modified by the decision now "arrived at, and whether they desire to proceed further with "the negotiations at the present moment."

31. This closes the correspondence, and there is no sign of any desire on the part of the American Government to reopen the question. It appears that Mr. Wolcott has returned to his country with strong feelings of resentment at having been misled. Especially galling must be the fact that he has not even been able to obtain a conference. Mr. Wolcott complained in his speech in the Senate of the "blind, unreasoning fury of the "City of London against any concessions recognizing silver."* He complained not less bitterly of the adverse influences in his own country, especially the statements of New York bankers, and, above all, the alleged assertions of the Secretary of the United States Treasury that there was no chance for international bimetallism. These last, he hoped, were fictitious; if not, the official he referred to was "seeking to undermine a mission appointed and supported by the President." He further attacked the London press for their attitude to the mission, in that "they should have been led to characterize as "impertinent proposals which had only been made at the "request of their own government." However, hope springs eternal in the human breast, and Mr. Wolcott appears to think

* "*The Times*," January 18th, 1898.

in spite of what has occurred, international bimetallism is not altogether hopeless. He has, nevertheless, resigned his position on the commission.

32. There is nothing in the recent address of Mr. McKinley (January 27th), to indicate that the American Government intend to make any further proposals on the subject. On the contrary, their action with regard to currency points rather to internal reforms, with the object of better securing the maintenance of a gold standard.

It is from the bimetallists in England that the chief cry of distress has proceeded. The Bimetallic League, indeed, has been discreetly and painfully silent, and has failed to fulfil the promise, made by its secretary in the *Times* of October 28th last, to express its opinion on the action of the government in rejecting the Wolcott proposals.

A bimetallic writer, however, in the *National Review* for December,* commenting on the failure of the negotiations, after referring to Mr. Balfour's speech of March 17th, 1896, says, "It "appears that these hopes have been utterly vain, and that we "have been resting in a fool's paradise," while the editor actually stigmatized Sir James Westland, the financial member of council, as being "guilty of this disastrous document."†

We are not concerned in disputing the fact that the bimetallists have been living for years past in a fool's paradise, but in view of the most satisfactory conclusion arrived at by the government, we are not disposed to join in charges against them of bad faith to the bimetallists in the earlier stages of the affair.

33. We await, on our part, any further proposals which bimetallists abroad or at home may propound, with the utmost confidence that they will prove to be as unsound and impracticable as those which have been almost universally condemned by public opinion and by the government. The moral which we believe will be generally drawn from the late proceedings is that we have been fully justified in the past in pressing for a declaration on the part of the bimetallists of the specific scheme which they favoured and proposed. So long as they indulged

* The *National Review*, December, 1897, p. 562.
† The *National Review*, December, 1897, p. 516.

in generalities they could find arguments specious and plausible enough to delude the unwary into the belief that bimetallism might be a cure for commercial or agricultural depression; but so soon as a definite scheme was propounded its difficulties and dangers at once became apparent, and it was admitted almost universally to be impossible. We confidently predict the same will be the result with any future scheme.

34. We have reason to be well satisfied that three important results have been achieved by the proceedings which we have thus briefly related—the first, that, so far as England is concerned, our gold standard is to be preserved intact; the second, that so far as other countries are concerned, it has been made clear that neither the United States nor France will propose or accept bimetallism on any other condition than the restoration of the old ratio existing before 1873 of 15½ to 1; the third, that the Indian Government has definitely declined to reopen the Indian mints to the free coinage of silver upon the terms proposed by France and America.

35. We think it will exercise the ingenuity of the bimetallists for a very long time to come to devise any scheme which shall be consistent with these conclusions. We hope and believe also that what has occurred will show to the British public the danger and folly of relying upon vague generalities, and the necessity for requiring a definite scheme from those who ask that the long-settled commercial and currency policy of this country be abandoned.

MISCELLANEA

THE POPULAR PREJUDICE AGAINST BANKS IN THE UNITED STATES.—"There is, however, one respect in which British example is entirely lost on the Americans. British bankers are a select and highly-esteemed class. Their services are appreciated by rich and poor, and no trace of popular prejudice against them ever shows itself. American bankers are less privileged. They have neither the status nor the popular esteem of their English brethren. Their power being much more divided and scattered is less felt. Even in the large cities they seldom rank as first-class financiers, and in the country districts they are regarded simply as money-lenders. They are supposed to make exorbitant profits out of other people's money, and to enjoy privileges which are denied to ordinary traders. The political boss is invariably at war with them, and in the West they are a standing bogey of the stump orator. Their intervention in any political movement is sure to provoke an outcry of selfish designs, and their advocacy of a cause is with a certain class of people prima facie ground for suspecting it. One of the greatest practical obstacles to currency reform in the States is the idea fostered by many politicians that it is simply a bankers' agitation.

"This anti-banking prejudice of the Americans is anomalous and paradoxical in many ways. It is totally at variance with the natural shrewdness of the people. It gives a wholly wrong impression of their commercial intelligence. Most puzzling of all, it is quite irreconcilable with the popular constitution of American banks. If they were a comparatively small number of powerful institutions, like our own banks, the prejudice against them might be conceivable. But they are far more numerous than influential, and the competition among them is

almost suicidally keen. No one can understand how far over-banking may be carried until he has seen it in the United States. The national banks alone number nearly four thousand, and State and private banks aggregate at least as many more. Bank shareholders are a large enough class to make themselves respected in Congress, but they are never heard of as such. The national banks alone have over 280,000 proprietors, of whom about 102,000 are women. The average holding is $2,250, and 60 per cent. of the shareholders own ten shares or less. No institution in the States has a more popular constituency than the national banks, in spite of their chronic unpopularity."—*W. R. Lawson, in the Bankers' Magazine (London).*

—

A correspondent in Ontario sends us the letter which we reproduce below. It is from a depositor who had migrated to Dakota, and is written on the back of the Bank's letter, enclosing a draft for $105.83, "balance of your savings bank account."

my deer captain I have (no I) wordes
tell you about the enarmous
interest I have receive from you
such a interest as this is I sulfiment
to break the departement
all apiece which is $ 5.83

THE DREAM OF LIFE.—The penniless youth fell into a deep sleep.

"Ah," he dreamed, "if only I had five thousand a year what good might I do! How happy I could be! What presents I could bestow! What delights I could bring to so many! The poor should know my humble but discerning charity; the needy should not appeal in vain. Ah, if I had but five thousand a year secured, what a life I could lead! How noble and generous I could show myself!"

The years rolled by. The penniless youth was now worth $100,000. Once more he fell into a deep sleep.

"Ah," he dreamed, "if only I could accumulate $1,000,000 how happy I should be! How I could enjoy life! What power I should possess! What influence, what authority! How men would look up to me, and admire me and seek my friendship. Truly that would be happiness, greatness, joy!"

The millionaire dozed in his easy chair.

"Ah," he dreamed, "could I but turn my millions into ten millions! Could I but add to my wealth! Could I but get a higher rate of interest! Could I but invest it to greater advantage! Could I but change my million into ten millions! Could I but do it, could I but do it, could I but do it!"

The dream went on, and to the dreamer waking came no more.—*Truth*.

ERRATUM

In preparing the forms of the January issue for the press, the name of the author of the prize essay on "Banking as a Profession," C. M. Wrenshall, was inadvertently dropped.

QUESTIONS ON POINTS OF PRACTICAL INTEREST

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

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

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

Bill drawn "at sight, with one day's grace"

QUESTION 200.—A draft is drawn from one of the States in the United States where days of grace have been abolished, on a party in Canada. It reads, "At sight with one day's grace, pay," etc. How should the due-date be calculated?

ANSWER.—The draft is payable on the day after acceptance. Section 14*a* of the Bills of Exchange Act fixes the days of grace to be allowed "where the bill itself does not otherwise provide," leaving other cases to be fixed by the terms of the bill. The fact that it is drawn from a place where there are no days of grace does not affect the matter in any way.

Cheque bearing the words "in full of account"

QUESTION 201.—A cheque payable to order contains the words "in full of account to date." If the cheque is used does this discharge the liability of the drawer to the payee of the cheque?

ANSWER.—If the payee notifies the drawer that he is not satisfied to accept the cheque in full of his claim, but only as a payment on account, the phrase quoted would not affect the

rights of the parties. If he receives the cheque without giving such notice, it would probably be held that he had settled the debt due by the drawer, for the amount of the cheque, and released him from any further claim.

Right of a bank to refuse to certify or accept cheques

QUESTION 202.—Has a bank the right to refuse to certify a cheque presented by the drawer, and payable to his own order, because it is not endorsed?

ANSWER.—We do not think that the ordinary contract between a bank and its customer obliges it to accept or certify cheques. We think that all it is bound to do is to pay the cheque on presentation if there are funds. The most that could be said would be that the bank should not refuse to certify cheques issued by its customer, when there had been a long established practice on its part of doing so, without reasonable notice. We think, however, that where a cheque is presented by the customer himself, no question of this kind could arise.

Security given by the maker of a note to an accommodation endorser and assigned by the latter to the holder of the note

QUESTION 203.—A bank has discounted for A a note endorsed by B. A assigns to B a mortgage to secure him for his endorsement, which mortgage B subsequently assigns to the bank as collateral security to the note. At its maturity A requests the bank to renew it, holding the mortgage as security and releasing B. Would the bank have a valid security in the mortgage under the circumstances, and would B have any claim on or interest in the mortgage?

ANSWER.—B would have no claim if he were released from his liability as endorser. Whether the bank's security would be good would depend on the nature of the assignments to B and the bank. If it had been assigned to B expressly to indemnify him against his liability as endorser, then the assignment would cease to have any effect as soon as this liability came to an end, and the bank could not hold the mortgage by virtue of any rights derived from this assignment. It might have a valid claim because of its agreement with A, but in order to make the matter right the latter, whose property the mortgage is, should, by proper instrument, confirm the bank's right to hold it as security.

Bill of Exchange—Requirement as to the "sum certain in money"

QUESTION 204.—Do you consider a draft drawn payable "with bank charges" negotiable?

ANSWER.—We would not consider this to be a bill of exchange. Sec. 9 (*d*) of the Bills of Exchange Act, declares the sum payable by a bill to be "a sum certain" if it is payable according to a rate of exchange to be ascertained as directed by the bill. This is the only provision in the act which could be looked to to support the proposition that a bill payable "with bank charges" is for a sum certain, and we do not think that it would come within this section.

Cheque to order of "AB, Treasurer," or "AB, Executor"

QUESTION 205.—A cheque is drawn to order of "AB, treasurer," or "AB, executor." Is the endorsement "AB" sufficient without the word "treasurer" or "executor"?

ANSWER.—Such an endorsement would be sufficient, assuming that AB who endorses is the AB described in the cheque.

Legal tender notes—Payment under Sec. 57 of the Bank Act

QUESTION 206.—Would you construe Sec. 57 of the Bank Act to mean that a bank may pay sums up to $100 in ones, twos or fours only to a party who desires such a payment? Can it compel one who demands payment in legal tender of a claim for over $100 to take payment in ones, twos and fours, or must the bank pay in large legal tender notes or gold?

ANSWER.—The creditor must accept in payment of any obligation of the bank, no matter what the amount may be, anything that is a legal tender, but the creditor has the right to say that to the extent of $100 in any payment, the bank must pay him in one, two or four dollar Dominion notes. Except in so far as the bank is controlled by the latter provision, it is in the same position as any other debtor, and may at its option pay its obligations in small or large legal tender notes, or in such coin as is a legal tender under the Currency Act.

Death of a customer—What constitutes notice

QUESTION 207.—If mention of the death of a customer appears in the daily papers, would this in itself constitute notice under Sec. 74 of the Bills of Exchange Act? If the notice had not been observed by the bank, would it be affected thereby?

ANSWER.—If the information in the newspaper were true, and it came within the knowledge of the bank, it would no doubt be notice of the customer's death, and the bank would be bound not to pay the customer's cheques presented thereafter. The bank would not be bound by any information in the newspapers which had not come under its actual notice.

Bill of Exchange; time of payment depending on arrival of goods

QUESTION 208—Would you consider the following form of draft advisable: "Sixty days after arrival of goods at destination pay to the order of———"? If so, what evidence should the bank collecting the item be expected to get in order to fix the due date?

ANSWER.—A draft in the above form would not be a bill of exchange within the meaning of the Act; it is not payable at a determinable future time, since the goods might never arrive. The bank would therefore have no rights against the drawer or endorser arising out of the law respecting bills of exchange. It would be much better that the bill should be drawn at sixty days sight, with an agreement that the collecting agents should hold it for such time as they might consider reasonable pending the arrival of the goods.

United States' revenue stamps

QUESTION 209.—Has a bank in the United States any right to require its Canadian correspondent to affix a United States revenue stamp to a draft issued upon it?

ANSWER.—We think the bank has a perfect right to lay down the conditions on which it will allow customers to draw cheques upon it. The correspondent must, if the drawee bank makes it a condition of the opening or continuance of the account, bear the cost of the stamp, and the bank may properly require it to be affixed before the drafts are presented.

Acceptance presented for payment at bank after maturity

QUESTION 210.—Is it proper for the bank to pay a customer's acceptance after maturity, assuming that it has funds at the customer's credit, that the acceptance is in order, and that it has been made payable at the bank?

ANSWER.—While such a payment might generally be safely made, we think the bank has no right to pay under such circumstances, and that it should ask the customer for instructions

before doing so. The bill being overdue his position with respect to the holder of the bill is altered, and his rights might be injured if the bank should intervene and pay.

Drawee of a bill not entitled to delay his acceptance

QUESTION 211.—It has been alleged that Sec. 42 of the Bills of Exchange Act gives the drawee the right to take two days to accept a bill, and to date the acceptance two days after presentation. What is your opinion as to this, especially as to bills drawn at or after sight?

ANSWER.—Sec. 42 gives the drawee no rights whatever, but only declares that the holder may, without risk of discharging the drawer or endorser, wait two days for an answer from the drawer. The holder is, however, entitled to an immediate answer, and may protest the bill at once if not accepted.

If a bill were refused acceptance immediately on presentation, the holder should treat it forthwith as dishonored. The drawers and endorsers would probably be released if after such refusal the holder should wait two days before giving them notice.

Bill held after maturity by collecting bank on instructions of owner

QUESTION 212.—A Winnipeg bank negotiates a draft drawn by one of its customers on a house in Kingston, and sends it to a bank at Kingston for collection. At maturity the Winnipeg bank wires the Kingston bank, "Hold free seven days if not paid." The Kingston bank has a running account with the Winnipeg bank, and if the bill were paid would simply credit the amount without advice. The Kingston bank holds the bill without protest for seven days after maturity, in accordance with telegraphic instructions, but without advising or acknowledging the telegram.

If the bill is still unpaid at the end of seven days ought it to be protested, and is the drawer entitled to the same notice of non-payment at the end of the seven days as he would have been at maturity?

ANSWER.—The bill could not be protested at the end of the seven days, the time for that being past. The duty of the Kingston bank is to return the bill to the Winnipeg bank at the expiration of the seven days, or to notify it then that the bill has not been paid. If it neglected to do this, and the Winnipeg bank was thereby misled into believing that the bill was paid, and allowed the drawer to act in the same belief, the Kingston bank would probably be bound to give the Winnipeg bank credit for the bill.

The Kingston bank is not concerned about notice to the drawer; the Winnipeg bank would for its own protection arrange that the drawer will remain liable on the bill before sending instructions to hold seven days.

Joint deposits

QUESTION 213.—We issue a deposit receipt undertaking to account to AB and CD, or either of them, for a certain sum and interest. In the event of the death of one, should we not require the consent of the representatives of the deceased before making payment to the survivor? Is not death something which AB and CD in the case mentioned did not provide for?

ANSWER.—These points have been fully discussed in previous issues of the JOURNAL, but in view of the questions asked, we might repeat what we have previously said. So far as any dealings with the deposit during the life time of both depositors are concerned, the terms of the receipt govern; the bank is bound to pay to either of the parties provided he complies with the terms of the receipt. On the death of one, then, under the law of the province of Ontario, the survivor is entitled to receive the money, and this would follow whether the receipt had been made in favor of AB and CD simply, or of AB and CD or either of them. It may be true that the money does not belong to the survivor, or that the representatives of the deceased are entitled to a share in it, but that does not affect the question. The survivor holds the actual title, and others may be the beneficial owners, but the bank deals with the holder of the title.

Stamped signatures

QUESTION 214.—The Supreme Court of Pennsylvania recently held that the fact that a bank depositor had procured a rubber stamp which made a facsimile of his signature, was insufficient ground for charging him with a cheque on which his signature was forged by a clerk who used the stamp for the purpose.

Has a bank any right to refuse payment of cheques signed with a rubber stamp, having been instructed by the customer to pay such cheques? What protection has the bank against the danger of the stamp being used by an unauthorized party?

ANSWER.—If a bank consents to continue to keep the account of a customer who instructs it to pay cheques signed with a stamped signature, it cannot refuse to pay the cheques so signed, if otherwise in order.

As regards protection against the unauthorized use of the stamp, a bank would act very unwisely if it should oblige itself to accept such stamped signatures unless it had a contract with the customer that by whomsoever affixed, it should be regarded as his signature.

This question can hardly be regarded as having any practical bearing, as it is very unlikely that any depositor would wish to have money paid out on his account on the strength of a stamped signature.

Signature of a company without the name of the signing officer

QUESTION 215.—Where a party trades under the name of a company, as for instance, "The Canadian Iron Company," is it sufficient for him to use the name of the company in his signature, without the addition of his own name?

ANSWER.—Legally such a signature is sufficient, but practically it is open to many objections.

Guarantee written on a note

QUESTION 216.—AB transfers to C, for value, a note which is payable to his own order, endorsing it as follows: "I guarantee payment of the within note. A.B." There is no other endorsement on the note.

Is this endorsement sufficient to transfer the note to C, and is AB in a position of an endorser requiring notification if the note is dishonoured, or is he a surety?

ANSWER.—The position of a party giving such an endorsement as this was fully discussed at page 96, Vol. IV.; see question 45. In our opinion notice of dishonour is not requisite to retain his liability.

We do not think that the writing on the back of the note is technically an endorsement, or that it passes the title to the note. As C, however, has acquired it for value, he is entitled to a proper transfer, and can enforce the same by virtue of Sec. 31, sub-sec. 4, of the Act.

Telegraphic request to hold funds for a cheque

QUESTION 217.—Do you consider it safe for a bank to hold funds which are at a customer's credit, on a telegraphic request from another bank which is about to cash the customer's cheque? What would be the result if another cheque should be dishonoured before the first cheque was presented? What if the cheque for which the funds were held proved to be forged, or if payment were countermanded by the drawer?

ANSWER.—This is one of the practices which as a practice is found to work very well, but in theory is quite indefensible. A bank cannot accept or pay a cheque until it is actually presented, and notwithstanding such a telegraphic request or promise, the money is still at the customer's credit, and he has a right to say what shall be done with it. The refusal of another cheque under the circumstances mentioned might therefore expose the bank to a claim by the customer for damages, and this would be the result whether the cheque telegraphed about were forged or not, or if it were subsequently countermanded.

Dishonoured draft—Right of banker to charge a portion of the amount to the drawer's "private account" where there are not sufficient funds in his business account

QUESTION 218.—A customer has two current accounts (one an ordinary business account, the other entitled "private account"). A cheque on an outside point deposited by him, has been dishonoured, protested, returned and charged back to his account, but there are not sufficient funds to pay it all. Is the bank legally justified in charging his "private account" with the balance of the item, or with as much of it as this account will permit? No promise was made that his "private account" should not be charged back if necessary (as well as the other account), with any returned dishonoured item.

ANSWER.—If the two accounts are strictly as described, that is, both accounts of the same party, representing money held in the same right—that is, not as trustee, etc., there is no question that the bank would have a right to set of against any balance in either account an overdraft in the other. This is in effect what is proposed.

Note with two or more endorsers discounted for the last endorser, with waiver of protest, etc.

QUESTION 219.—A note is discounted by a bank for a customer who endorses it, waiving protest, notice and demand of payment. There is a prior endorser on the note. The bank did not protest the note at maturity, and the first endorser was released. Is its claim against its customer good? He alleges that notwithstanding his waiver the bank should have protested the bill in order that he might not lose his recourse against the prior endorser, and that he is discharged by their neglect to do this.

ANSWER.—The customer by his waiver made himself liable to pay the note in the event of its dishonour without any conditions whatever, and this liability is not impaired in any way by the fact that the prior endorser has been discharged.

Endorsements by rubber stamp

QUESTION 220.—Could a bank's customer repudiate the following or similar endorsement, made with a rubber stamp on a cheque taken in deposit, the name as well as the instructions being stamped:

"Pay to the order of ——— Bank,
John Smith"

ANSWER.—If such an endorsement was unauthorized the customer might of course repudiate it, but we think he would be bound to return the money which had been credited to him for the item on the strength of the unauthorized endorsement.

Liability of an endorser on notes payable to bearer

QUESTION 221.—Is the liability of an endorser on a note payable to bearer the same as on a note payable to order?

ANSWER.—The liability is precisely the same.

Draft not presented by collecting agents on date of maturity

QUESTION 222.—Brown & Co., of Montreal, draw a draft on Jones, of Hamilton, through the "A" Bank. The latter send it to their agents, the "B" Bank in Hamilton, for collection, and it is accepted in the usual course. Through an oversight on the part of the "B" Bank the draft is not presented for payment until fifteen days after the due date. Five days after its maturity Jones absconds. The "A" Bank now apply to the "B" Bank for payment on behalf of their customers, Brown & Co. "B" Bank refuse, claiming that "A" Bank should have asked fate of the draft. Who is responsible?

ANSWER.—We do not think there is the slightest doubt that the collecting bank must bear the loss. If the item had been marked "no protest," the position would be otherwise. It would then fall within the reasoning in the opinion given by Mr. Lash in another case published on page 73 of the JOURNAL for October last. In the instance which is now submitted, apparently the duty of the collecting bank was to give notice of dishonour in case of non-payment. As they failed to do so, the drawers of the draft are discharged, and the bank in Montreal has a right to look to the collecting bank for protection.

Collections requiring presentation by mail

QUESTION 223.—Referring to your answer to question No. 168, will you be kind enough to give a somewhat fuller opinion in this matter, as it is one which is continually cropping up. You say, "The only question involved is whether you have failed in your duty as collecting agent, to such an extent as to bring yourself under liability to the owner of the bill." Is it established by usage in Ontario, that presentment will be made of such bills, by sending the usual notice and power of attorney through the mails, and that if a reply is not received in (say) five days they will be treated as dishonoured? Would this bring it under the provisions of section 43 (*b*) of Bills of Exchange Act? In brief, is presentment of such bills excused by usage in Ontario? If the bill itself is sent through the mails (as seems to be meant by the Act), where there is a daily mail between the places, when do the two days (sec. 42) start to run—from the date of mailing by the Bank, or the probable receipt by the drawer—that protest may be made under sec. 51, sub-sec. 8, if necessary?

ANSWER.—It seems to us that there is no practice recognized in Ontario, "authorized by agreement or usage" in the words of the statute, respecting the presentment of bills through the post office, by which, of course, is meant the sending of the actual bill itself to the drawee. It is clear that a good many difficulties might arise if a bill were so sent, and unless it was done with the express or implied sanction of the owner of the bill, the collecting bank would, we think, be taking a very unreasonable risk.

The other practice referred to and which now prevails very generally, of sending a notice containing a blank power of attorney to accept, might be regarded by the courts as an established usage governing the conditions on which a collecting bank receives unaccepted bills drawn on persons whom it can only reach by mail. We would not like, however, to express an opinion as to this. Unless the collecting bank could successfully argue that the arrangement between itself and the owner of any bill in question was within these lines, by reason of express agreement, or by implication from the course of business between them, then the collecting bank would be responsible for the results of the non-presentation of the item.

There is no question involved here of presentment being excused. If there is anything in the argument at all the collecting bank's defence is that the bill was not sent to it for presentation in the ordinary way, but on the understanding that

it would endeavour to procure acceptance by means of the notice and power of attorney, and having made that effort its duty was fully accomplished.

As regards the bearing of sec. 42 on the case of a bill sent direct by mail to the drawee, notice of dishonour must be given if the bill is not accepted within two days after the day on which it reached him. There would no doubt be a good deal of practical difficulty in keeping within the law on this point if bills were sent direct by mail; that is one of the difficulties to which we had reference in the remarks made above.

Security under section 74 of the Bank Act—Substituted grain

QUESTION 224.—In the case of an advance secured by a pledge of grain, under section 74, would the security hold good against a seizure by the sheriff under execution, if the precise grain on which the advance was made had been removed, and other grain of a like character substituted? What decisions have been given on the subject?

ANSWER.—No case dealing directly with the point has come up, but the following cases bear upon it: *Bank of Hamilton v. Noye Manufacturing Company*, 9 Ont. 631; *Re Goodfellow, Traders Bank v. Goodfellow*, 19 Ont. 299; *Llado v. Morgan* 23 U.C., C.P. 524. It is difficult to say what view the courts would take in a case of substitution under section 74, but if you are able to examine the cases quoted you will probably be able to see to what extent the courts would be likely to attach the security to the substituted grain in the case you mention.

Time within which notice of dishonour may be sent

QUESTION 225.—Referring to section 49 Bills of Exchange Act, do notices of dishonour mailed at any time on the next day following due date, meet the requirements of the law as fully as if mailed on the same day a bill is dishonoured?

ANSWER.—Yes; the notice is "valid and effectual" if mailed on the following business day, and all that is needed is a valid and effectual notice.

Stock transfers

QUESTION 226.—(1) Is it legal for a person holding shares in a bank to transfer them to his own name in trust, and vice versa?

(2) Can a firm transfer stock to one of the parties composing it and vice versa?

(3) Can an attorney transfer stock to himself?

(4) Can the same person act as attorney in making a transfer, and also as attorney for the transferee in accepting the same transfer?

(5) Can a shareholder transfer stock to any person, and accept it for the latter under power of attorney?

ANSWER —(1) The first is quite in order. The party can transfer to himself in trust simply, or to himself in trust for some named person or fund.

The converse case, of transferring trust shares to himself, might be legal, but the bank might be responsible to the *cestui que trust* if the transfer were wrongfully made. We think, notwithstanding the protection given by the Act as to trusts, banks cannot altogether avoid responsibility when they permit trustees to convert assets which are clearly trust property to their own use.

(2) If all the members of the firm join, a transfer to one of the partners is quite in order, but there is the same objection to one partner transferring partnership shares to himself, as there is to a trustee transferring to himself personally.

There is no objection to the converse procedure. One partner holding stock can certainly transfer it to his firm.

(3) This is no doubt legal, but it is open to the same difficulties as are involved in the transfer of trust stock to the trustee personally. The practice should not be permitted unless the power of attorney expressly authorizes it by the use of such a phrase as "to transfer to himself or any other person." Brokers in Toronto generally have some such phrase in their forms.

(4) There is no objection to this.

(5) This also seems to us quite proper.

The only point we think that needs to be carefully remembered in dealing with these matters is that an agent, attorney, trustee or other person standing in a fiduciary capacity, has no right to use this power for his own benefit without the express sanction of the parties concerned, and that if a bank lends itself to any act contrary to this principle, those who suffer may be able to fix responsibility upon it.

Cheque drawn by a firm to the order of one of the partners, cashed by another bank and lost in the mails—Failure to notify endorser of dishonor

QUESTION 227.—1. A post-dated cheque drawn by a firm on an American bank in favour of one of the two partners in the firm, was cashed by a Canadian bank for the payee, who endorsed it, and it was lost in the mail. The Canadian bank applied to the

other partner, who was winding up the partnership business, for a duplicate, and also notified the endorser of the loss, receiving the latter's assurance that a duplicate would be issued. This has not been done, although two months have elapsed. Has the bank any recourse against the endorser as such, or against him as one of the drawers? The other partner is now insolvent.

2. Would proof that there were no funds for the cheque affect the endorser's liability?

ANSWER.—1. The payee, as endorser, is probably discharged from liability by want of notice of dishonour, although his promise to procure a duplicate might be held to excuse the notice. It is not excused by the loss of the cheque.

He is, we think, liable as one of the drawers. The delay in presentment would not discharge the drawers unless they suffered actual damage through the delay.

The Canadian bank should present a copy of the cheque for payment and give the drawers notice of dishonour; they can then proceed in the ordinary way.

2. It would not follow that the cheque would be refused because there were no funds at credit. If it could be affirmatively established that the endorser knew there were no funds, and no arrangement for an overdraft, notice to him of dishonour would probably be unnecessary.

—

Power of Attorney given on behalf of a firm by one of the partners

Referring to the answer to question 177 on page 70 of the October, 1898, number of the JOURNAL, an esteemed subscriber has called our attention to the fact that as worded the answer might be construed to mean that whatever a partner might himself do on behalf of the firm, an attorney appointed by him might also do—from which meaning he very properly dissents. Our answer was intended to mean that the acts of an attorney appointed by one partner would be binding on the firm with respect to such matters as, under the scope of the partnership, one partner would have the right to do through an attorney, either by express authority in the articles of partnership, or by necessary implication from the nature of the transaction itself; but the acts of an attorney appointed by one partner would not otherwise bind the firm if the other partners objected. In order that the bank might not have to take any risks as to the scope of the partnership we added to the answer the advice to require all to sign.

Legal

LEGAL DECISIONS AFFECTING BANKERS

PRIVY COUNCIL

Union Bank of Australia v. Murray-Aynsley and Another*

Where a customer of a bank receives trust moneys for investment and opens a separate account into which such moneys are paid, and it is not shown that the bank had notice of the trust, the bank is at liberty to treat such moneys as belonging to the customer and to appropriate them against his overdrawn account.

Appeal from a decision dated October 30th, 1896, of the Supreme Court of New Zealand, which affirmed a decree of Denniston, J., made August 11th, 1896. The facts are stated in their Lordships' judgment, which was delivered by Lord Watson, as follows:—

The respondents, who are the plaintiffs in this action, are trustees under an ante-nuptial settlement executed by Mr. and Mrs. Harris in August, 1866. Mr. Murray-Aynsley was one of the two original trustees, and on the death of his co-trustee, the respondent, Mr. Archer, was appointed to the office on May 3rd, 1887. At that date, both these gentlemen were partners of a firm of agents and general merchants who carried on business at Christchurch and elsewhere in the colony of New Zealand, under the name of Miles & Co. Mr. Murray-Aynsley retired from the firm in 1892; and on February 20th, 1893, its business was transferred to a joint-stock company, incorporated under the name of "Miles & Co., Limited," and was carried on by that company until it stopped payment on January 11th, 1895. Mr. Archer was a member of the company, and was also one of its directors.

The firm of Miles & Co., and their successors, Miles & Co., Lim., were customers of the appellant bank. For their convenience the bank kept two accounts, No. 1, which was the general account, and No. 2, which was known as the stock account of the concern. In September, 1891, at the request of the late Mr. Banks, then the managing partner of Miles & Co.,

Law Journal Reports.

a third account, known as No. 3, was opened for the firm, and was continued down to the stoppage of the company which succeeded them. The question involved in this appeal depends upon the object with which the account No. 3 was opened, and its true character, as between the company and the appellant bank.

During the existence of Miles & Co. the respondents had invested £1,800 of the trust funds under their administration, through the agency of the firm, upon two loans, one of £1,600 to the Loyal Volunteer Lodge of Oddfellows, at Sydenham, in the colony of New Zealand, and another of £200 to a person of the name of Kemp. The Lodge of Oddfellows repaid their loan by two instalments, of £200 on October 26th, and of £1,400 on December 6th, in the year 1894; and on November 27th, 1894, his loan of £200 was repaid by Kemp. All these sums were received on behalf of the respondents by Miles & Co., Lim., who paid them, as they were received, into the appellant bank, to the credit of account No. 3; and they stood at the credit of that account when the company failed.

Their Lordships do not find in the record any satisfactory evidence of the terms upon which these trust moneys were allowed by the appellants to pass into the hands of Miles & Co., Lim., and to remain so long in a bank account of which that company had the control, and upon which it received interest from the bank at the rate of 7 per cent. In the course of the argument upon this appeal it was stated by the appellants', and it was not disputed by the respondents' counsel, that, so long as the moneys remained in that account, Miles & Co., Lim., by the directions and with the authority of the appellants, regularly paid to Mr. Harris 5 per cent. upon their amount, the company retaining, for its own purposes, the difference of 2 per cent. The respondent Murray-Aynsley, who was examined as a witness on his own side, was naturally somewhat reticent as to these points, which might involve his personal responsibility. Speaking of his firm of Miles & Co., he says, "There might be large sums of money waiting investment on which we were paying interest. Long time might elapse before getting investment. I think we gave 5 per cent." Again, he says, "As long as we paid interest direct, the loan was to us, and we treated it as firm's money." With regard to the trust moneys, received by Miles & Co., Lim., in the end of the year 1894, he states, "I knew that these accounts were in the No. 3 before I signed the discharge to the insurance company." These statements appear to their Lordships to come to no more than this—that whilst the witness knew that the trust moneys were in the hands of the company as agents, and, in a certain sense,

under their control, he believed that they were sufficiently earmarked as trust funds to ensure their safety, by their having been paid into account No. 3.

The present action was brought against the appellant bank by the respondents, in July, 1895, claiming decree for payment of £1,800 out of the moneys standing to the credit of Miles & Co., Lim., with interest at the rate of 6 per cent. per annum from February 4th, 1895, when the company went into liquidation. The case was tried on July 16th, 1896, without a jury, before Mr. Justice Denniston, who, on August 11th, 1896, gave judgment sustaining the respondents' claim with costs. An appeal, at the instance of the present appellant, against that judgment, was dismissed by the majority of the Court of Appeal, consisting of Mr. Justice Williams, Mr. Justice Conolly, and Mr. Justice Edwards, Chief Justice Prendergast dissenting.

At the time when Miles & Co., Lim., went into liquidation, the company owed a large balance to the appellant bank, who claim the right to retain and apply all sums standing in their books at the credit of the company towards extinction of that balance. No objection is taken to their so dealing with the accounts No. 1 and No. 2. But the respondents aver and maintain that the account No. 3 was, at the time when the sums for which they sue were paid into it, and thereafter continued to be, "to the knowledge of the defendant bank, and by arrangement between the said Miles & Co., Lim., and the defendant bank, a trust account of the said Miles & Co., Lim." There is not on the face of the account No. 3 anything to show that, in so far as concerned the relative position of the bank and its customers, it stood on any different footing from the other accounts kept by the company, or to indicate that it was opened or kept open for the purpose of receiving trust funds which were in the hands of the company. It was therefore incumbent upon the respondents to prove that the moneys for which they now sue were, in the knowledge of the bank, trust funds; and the only question arising in this appeal is, whether the respondents have discharged themselves of that onus. Although there is a considerable amount of evidence, very little of it has any bearing upon the real point at issue; and that little is, in their Lordships' opinion, decidedly adverse to the respondents' contention. Notwithstanding the preponderance of judicial opinion in favour of the respondents in the Courts below, their Lordships have found it impossible to differ from the conclusions of the learned Chief Justice, the dissentient member of the Court.

It appears that, in consequence of the death of Mr. Banks, who was an active partner of Miles & Co., and who, in 1891, made the arrangement with the bank for opening the account

No. 3, the respondents have been deprived of any advantage which they might have obtained from his testimony. It is proved by Bolton, a clerk who was in the employment of Miles & Co., Lim., that on the company succeeding to the business of the firm, the account No. 3 was simply transferred to them, along with Nos. 1 and 2. There is also evidence to the effect that moneys received for investment were generally paid into account No. 3; but that circumstance is not in the least calculated to suggest that No. 3 was a trust account, in the sense for which the respondents contend. It might for many reasons be convenient, for the firm or the company, to have these moneys kept in a separate account, and not mixed up with their other transactions; but there is not a tittle of evidence to show that these moneys received for investment belonged to trustees, or that they were held by the firm or company in trust, and not simply as agents for the real owners, their principals.

Apart from the evidence bearing upon the opening of the account, and the terms of the arrangement which is said to have been then made between the bank and the firm of Miles & Co., there is nothing to prove, or even to suggest, that any notice was subsequently conveyed to the bank of the trust character of the funds which the respondents are claiming in this action. The only witness who speaks to the arrangement of 1891 is Samuel Hallamore, the manager of the bank, who was called by the respondents. He says, in his evidence-in-chief, "Mr. Banks saw me about opening No. 3 account. He said he wished to open a separate account. That he had received a large amount of money which was to be invested or remitted to London; and he asked me if I had any objection to open a separate account, and treat it in the same way as No. 2 in regard to the general overdrawn account. I understood him to mean with regard to interest. I told him he was at liberty to open as many accounts as suited his convenience. He did not say whom these moneys belonged to, said nothing about a trust account. I had no idea whom they belonged to."

Their Lordships do not think it necessary to make any observation upon these statements, beyond this, that, if believed, they directly disprove the allegation that No. 3 was in any sense a trust account. If not believed, the respondents are in this dilemma, that they have no proof whatever relating to the allegations upon which their claim is founded. It is right to say that Mr. Justice Denniston, who tried the case, gave "credit to Mr. Hallamore for perfect honesty in his evidence." But the learned Judge, instead of accepting his evidence, and construing it according to the plain meaning of his words, adopts what appears to their Lordships to be the

dangerous course of first assuming that his statement must very imperfectly represent his conversation with Mr. Banks, and then building upon that assumption a series of speculations and conjectures, arising not out of but outside the evidence, resulting in the conclusion of fact that "the manager must have known, or have had strong reasons to believe, that the moneys referred to were not the moneys of the firm." The same species of fallacy pervades the reasoning of the learned Judges of the majority of the Appeal Court, who do not appear to their Lordships sufficiently to appreciate the broad legal distinction between the relation of an agent, habitually entrusted with the disposal of their money by his principals, to his own bankers, and his relation to the principals themselves.

Their Lordships will humbly advise her Majesty to reverse the judgment appealed from, and to dismiss the action, with costs to the appellant bank in both Courts below. The respondents must pay to the appellants their costs of this appeal.

Queen's Bench Division, England

South Wales and Cannock Chase Coal Company, Limited v. Underwood and Son and Another*

The defendant firm filled in the body of a bill of exchange, attached their name as acceptors, and forwarded it to one of their agents to be signed by him as drawer and used in payment of goods to be purchased for the firm.
The agent endorsed the bill but omitted to sign it as drawer, and gave it to the plaintiffs in settlement of a private debt.
Held, that as the bill was not complete and regular on its face when they acquired it, the plaintiffs could not recover.

This case raised a point of some interest with regard to a bill of exchange. The action was brought to recover £50, the amount of a dishonoured bill. The plaintiffs were the *bona fide* holders for value of the bill in question. The defendants were Messrs. Underwood and Son, who were hay merchants, and the acceptors of the bill, and one F. Alder, who was added as a defendant, but who was not represented by counsel. It appeared that Messrs. Underwood and Son had dealings with F. Alder, who was a man in a small way of business, and who from time to time obtained hay for them. In order to enable Alder to pay for the hay they occasionally sent him bills. The bill the subject of this action was sent to Alder to pay for certain hay he

**Times Law Reports.*

had bought, but which he could not send until he had paid for it. The body of this bill was filled in by Messrs. Underwood and Son, who attached their signatures as acceptors; the place for the drawer's signature to be inserted was left blank, and beneath was written "drawn to the order of F. Alder." The bill was then sent to Alder, who, however, omitted to sign his name as drawer. He wrote his name on the back of the bill, and instead of paying for the purchased hay with it, he gave it to the plaintiffs in settlement of a debt due to them from his father for coal supplied. The plaintiffs presented the bill for payment when it became due, but it was dishonoured because it had not the signature of the drawer on the face of the bill. It was returned to Alder to sign, but when the bill again came into the plaintiffs' hands it was overdue. The plaintiffs now sought to recover the amount from the acceptors.

Mr. Justice Channell, in giving judgment, held that the plaintiffs were not entitled to recover on the bill. Bearing in mind that the words in the section of the Act were "complete and regular" he could not hold that this bill of exchange was complete. This document had got no one in the position of the person who makes the request to the acceptor to pay the amount named in it. F. Alder was required to put his name on the face of this bill to make it complete. Alder himself could not sue on the bill, and the plaintiffs could have no better title than he had. His Lordship added that the plaintiffs, no doubt, had taken the bill *bona fide*, and there was nothing to put them on inquiry with regard to it.

Queen's Bench Division, England

Altree v. Altree (Staffordshire Financial Co., claimants)

The omission of the address of the grantee from a bill of sale given by way of security for the payment of money renders the bill void under section 9 of the Bills of Sale Act, 1882, as not being made in accordance with the form in the schedule to that Act, even where the grantee is a limited company, the name of which alone is ordinarily sufficient for purposes of identification.

Appeal from a decision of the County Judge of Staffordshire, sitting at Lichfield.

The Staffordshire Financial Co., a limited company, were the claimants in an interpleader issue, in which goods taken in execution were claimed by them under a bill of sale, of which

they were the grantees, and the question for determination was whether the bill, being a bill given by way of security for the payment of money, was void under section 9 of the Bills of Sale Act, 1882, as not being made in accordance with the form in the schedule to the Act.

The material part of the bill of sale in question was as follows: "This indenture, made the 12th day of March, 1898, between John Altree, of Triangle Farm, Chase Town, in the parish of Hammerwich, in the county of Stafford, farmer, hereinafter called "the borrower," of the one part, and the Staffordshire Financial Company, Limited, hereinafter called "the lenders of the other part, witnesseth," &c.

DAY, J.—I am of opinion that the decision of the County Court Judge upon the objection taken before him to his bill was correct and ought to be upheld. Section 9 of the Act of 1882 provides that "a bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule" to the Act. Accordingly, the County Court Judge, having turned to the form in the schedule, where he found the grantee described in these words: "C D of , of the other part," has held that the bill is not in accordance with the form, and therefore void, because the blank space after the grantees' names has not been filled up, and no address or description of them is given. I entirely agree with that decision, and the appeal must be dismissed.

LAWRENCE, J.—I am of the same opinion.

Appeal dismissed.

SUPREME COURT OF CANADA

Mulcahy (Plaintiffs), Appellants, and Archibald (Defendant), Respondent*

A transfer of property to a creditor for valuable consideration, even with intent to prevent its being seized under execution at the suit of another creditor, and to delay the latter in his remedies or defeat them altogether, is not void under 13 Eliz. c. 5, if the transfer is made to secure an existing debt and the transferee does not, either directly or indirectly, make himself an instrument for the purpose of subsequently benefiting the transferor.

Appeal from a decision of the Supreme Court of Nova Scotia, reversing the judgment at the trial in favour of the plaintiffs.

---

* *Supreme Court Reports.*

This is an action brought by Addra Jane Mulcahy, a married woman, and Patrick J. Mulcahy, her husband, against the defendant, Donald Archibald, high sheriff of the county of Halifax, to recover 550 barrels of frozen herring, in bulk, which were seized by the said defendant on board the schooner "Ocean Belle," which said vessel was owned by the said Addra Jane Mulcahy, and for damages for detaining the same, and for refusing to deliver up the same to the said plaintiffs on demand.

The defendant levied upon the said 550 barrels of frozen herring, on the 2nd day of March, 1896, under an execution issued on a judgment recovered by Narcisse Blais, as plaintiff, against Michael B. Wrayton, as defendent, on the 19th day of December, A.D. 1896; and the defendant claims that at the date of the said levy the said herring were the property of the said Wrayton.

The schooner "Ocean Belle" was owned by the female plaintiff, Wrayton being master of the vessel and managing it on his own account with the assistance of advances from the said plaintiff.

In November, 1895, the schooner arrived at Halifax with a cargo consigned by Wrayton to a firm of Billman, Chisholm & Co. About one-third of this cargo had been bought from the said Blais, who took in payment Wrayton's draft on Billman, Chisholm & Co. for $925.50. The cargo was sold to Eisenhaur & Co. for $2,804.19, and a dispute arising between Wrayton and Billman, Chisholm & Co., the latter demanded from Eisenhaur the proceeds of the sale in settlement of a previous account for $2,357.57 against Wrayton, and the draft in favour of Blais was dishonoured. Billman, Chisholm & Co.'s claim was settled in full, and the remainder of the proceeds of the cargo, some $416, paid over to Wrayton, who disbursed the bulk of it in seamen's wages. At the time of this settlement it was agreed between the plaintiff and Capt. Wrayton that she was to take over, on account of what Wrayton owed her, the trading stores remaining on board the two schooners, and also the trading stores then in possession of Billman, Chisholm & Co., referred to in this agreement, and thereupon she fitted out the schooner "Ocean Belle" by her agents, Thomas Forhan & Co., for a trading

voyage to Newfoundland in December, 1895, for which purchases to the amount of $610.23 were made and paid for by her. She subsequently employed Wrayton as master for said voyage on wages at the rate of $50 per month.

Wrayton proceeded on the said voyage, and purchased with these goods 550 barrels of frozen herring in bulk, for which a bill of lading was made to the said plaintiff or her assigns, dated at Burin, Newfoundland, February 19th, 1896, and forwarded by mail to her at Halifax.

In the meantime the said bill of exchange in favour of the said Blais, dated October 19th, 1895, having been protested by reason of the refusal of Billman, Chisholm & Co. to accept it, Blais recovered judgment on December 19th, 1895, against Wrayton, in the Supreme Court, for the amount due thereon and costs of that suit, which was not defended.

On the arrival of the schooner "Ocean Belle" at Halifax, on March 2nd, 1896, the said herring were seized by the defendant under execution issued on the said judgment, and the same day the plaintiff commenced this action.

This action was tried without a jury before Mr. Justice Meagher, who on January 2nd, 1897, delivered judgment, in favour of the plaintiff, and decided that "the sole question is whether the goods levied upon were the property of Wrayton or of the plaintiff," and that the said goods were the property of the plaintiff, inasmuch as "the voyages (*i.e.*, the December voyages) were undertaken by Wrayton as plaintiff's agent," and that "he (Wrayton) ceased to act as principal, and undertook to hold the goods (*i.e.*, the goods on board the 'Ocean Belle,' prior to the commencement of the voyage) as her agent," that is, as agent of the female plaintiff.

On appeal to the Supreme Court of Nova Scotia, judgment was delivered by Graham, J., and Townshend, J., reversing the judgment of the trial judge, on the ground that the transfer from Wrayton to the female plaintiff of the goods on board the schooner "Ocean Belle" in November, 1895, was void under the statute of 13 Elizabeth, c. 5; and that therefore the herring purchased in Newfoundland in February, 1895, with the proceeds of those goods and of the other goods purchased by the

female plaintiff and placed on board the schooner "Ocean Belle" at the commencement of the December voyage, were the property of Wrayton, and not the property of female plaintiff.

From this judgment the plaintiff asserts this appeal.

The judgment of the Court was delivered by

SEDGEWICK, J.:—On the 19th of December, 1895, one Narcisse Blais obtained judgment in the Supreme Court of Nova Scotia against one Michael B. Wrayton, a brother of the present appellant, and under an execution issued upon that judgment the defendant as such sheriff levied upon 550 barrels of frozen herring which were then on board the schooner "Ocean Belle," the property of the appellant, whereupon she, claiming the herring, brought this action to recover the goods so levied upon, the question to be determined being whether they at the time of the levy were the property of Wrayton or the property of the present appellant. The learned trial judge, Mr. Justice Meagher, gave judgment in favour of the plaintiff, holding that there was a real transaction between Wrayton and his sister, and that no matter what the motive of Wrayton himself was in reference to one or more of certain other creditors the transfer to his sister having been in security for or in payment of a *bona fide* antecedent debt, the transaction was not within the statute 13 Eliz. c. 5. Upon appeal to the Supreme Court of Nova Scotia the judgment of the trial judge was reversed, and it was held that the transaction in question was void as a fraud by Wrayton against his creditors.

We are of opinion that the judgment of Mr. Justice Meagher should be restored. There is little question as to the salient features of this case. At the time of the transaction impeached Wrayton owed the plaintiff upwards of $4,000. The goods which were transferred to her by Wrayton, from the proceeds of which the goods levied upon were bought, were transferred to her on account of this indebtedness. No doubt it was the intention on the part of Wrayton to prevent this seizure under the judgment which he expected Blais would very soon recover against him and for the very purpose of securing his sister at the expense of Blais, and with intent either to delay him in his remedies or to defeat them altogether. The statute of Elizabeth, while making void transfers the object of which is to defeat or delay creditors, does not make void but expressly protects them in the interest of transferees who have given valuable consideration therefor, and it has been decided over and over again that knowledge on the part of such a transferee of the motive or design of the transferor is not conclusive of bad faith or will not preclude him from obtaining the benefit

of his security. So long as there is an existing debt, and the transfer to him is made for the purpose of securing that debt, and he does not, either directly or indirectly, make himself an instrument for the purpose of subsequently benefiting the transferor, he is protected, and the transaction cannot be held void.

And that proposition was a mere re-affirmance of such previous decisions as *Holbird v. Anderson et al.; Pickstock v. Lyster; Wood v. Dixie.* Reference was made in Mr. Justice Townshend's opinion in the Court of Appeal to the case of *Thompson v. Webster;* but I am unable to see the applicability of that case to the present one. The transaction impeached in that case was held to be valid, but it seems to me clear that the learned Vice-Chancellor Kindersley, in the observations which he made, to which reference is had, was referring, not to transfers for valuable consideration but to voluntary debts. On the whole, we are of opinion that the appeal should be allowed, the usual rule as to costs prevailing.

COURT OF APPEAL, ONTARIO

Hannum v. McRae et al.

The local manager of a branch in the province of Ontario of a chartered bank, when served with a subpœna *duces tecum* to attend as a witness before the Court, or a Master upon a reference in an action, is bound, whether the bank is a party or not, to produce the bank books specified in the subpœna which are in his custody or control, containing any entry relevant to the matters in question in the action, and to give evidence as to such entries; and inconvenience to the bank is no ground for refusing to produce the books, which *prima facie* are to be deemed in his custody and control and their production within the scope of his authority.

Evidence as to a customer's account is not privileged at common law, and sec. 46 of the Bank Act is no more than a prohibition against a bank voluntarily permitting any examination of customers' accounts save by a director.

An appeal by Montague A. Anderson, manager of the Ottawa branch of the Union Bank of Canada, from an order of ROSE, J., requiring the appellant to attend at his own expense before the local Master at Ottawa to be examined as a witness, and to produce the books, papers, etc., of the bank, as he might be directed by the Master.

The appellant had previously appeared before the Master in answer to the plaintiff's subpœna, but on being sworn, objected to produce the books and papers of the bank or to give evidence as to their contents, for the following reasons: 1st. That many of the books sought to be produced were in

constant daily use. 2nd. That the appellant was the servant of the bank, and it did not come within the scope of his authority to produce or remove the bank's books or papers, which were the property of his employers, and not his property, and were in the custody of the bank under direction of the board of directors. 3rd. That the bank was precluded by law from exhibiting to any one or permitting any one to inspect the account of any person dealing with the bank. 4th. That in an action such as this, for the reasons above given, he was unable to produce the bank's books or papers called for by the plaintiff.

This appeal was heard by BURTON, C.J.O., OSLER, MACLENNAN, and MOSS, JJ.A., on the 16th May, 1898. Judgment was delivered on the 4th October, 1898.

OSLER, J.A.—This to my mind is a surprisingly bold appeal, though not bolder than the stand taken by the appellant in the witness box in refusing to obey his subpœna. He appears to be the manager of the Ottawa branch of the Union Bank of Canada, and he was regularly subpœnaed by subpœna *duces tecum* to appear as a witness at what is to be regarded as the trial of the cause, viz., upon the reference directed by the decree in the action, and to testify touching his knowledge in the matters in question therein, and to produce at the time and place specified all deeds, books of account, etc., relating to such matters, and especially any and all such documents and entries which in any way related to the dealings and transactions of the defendants Hector McRae and J. W. McRae, as executors of John Nicholson, deceased, with the Union Bank of Canada, or to the dealing and transactions with said bank of the firms of McRae & Co., P. McCrae & Co., and McRae Bros. & Co., of which firms the said John Nicholson, deceased, is alleged to have been a member. The *specialiter* clause of the subpœna entirely meets the objection that the language of the subpœna in other respects is too broad and general in its terms. This objection was not taken by the appellant when he appeared in answer to the subpœna, and there is really no pretence for saying that he did not know what was wanted, or was in any way embarrassed except by his own ideas of his position and of the obligation of the subpœna.

It has been gravely argued that the books of a bank are protected from production under a subpœna *duces tecum* for the purpose of being used as evidence at a trial, and that the manager, or whoever may appear to be the proper person to call as a witness to produce them and give evidence, where material, respecting their contents, is not bound to obey the subpœna,

on the ground of inconvenience to the business of the bank, and that he is the servant of the bank, and that it does not come within the scope of his authority to produce the books. These are certainly no reasons for his refusal to testify to material facts within his knowledge; and, as to his authority to produce the books, it is sufficient to say that the books, etc., were those of the branch of the bank of which he was manager and were in his immediate custody and control.

That inconvenience to the bank is no ground for refusing production, it can hardly be necessary to cite authority. That was the principal reason why the Bankers' Books Evidence Act was passed in England, as is pointed out in the 5th ed. of Grant on Banking, 1897, p. 287: "This Act was passed to remove the inconvenience caused to bankers by having to produce their books in legal proceedings, and to facilitate the proof of the matters and transactions therein recorded." No such Act is in force in this country, and bankers are in no different position in regard to giving evidence from any other subjects of the Queen. Even in England, as Coleridge, C.J. says, in *Emmott v. Star Newspaper Co.* (1892), cited in Grant on Banking, *supra*, they remain bound at common law to attend and produce their books under subpœna, except in so far as the inconvenience may be modified by the statute.

The appellant also relied upon sec. 46 of The Bank Act, 53 Vict. ch. 31, which enacts that the books, correspondence, and funds of the bank shall at all times be subject to the inspection of the directors, but no shareholder who is not a director shall be allowed to inspect the account of any person dealing with the bank. This section, in my opinion, has nothing to do with the production of bankers' books, or with giving evidence respecting their contents when that becomes necessary in legal proceedings; it was passed *alio intuitu* with the object of preventing a shareholder as a member of the banking corporation from asserting a right to inspect and examine at his pleasure the accounts of persons dealing with the bank. I had occasion in *The East Northumberland Election Case, Ex p. Dwight and Macklam* (1887), to consider a similar objection which was raised under the Telegraph Companies' Act, 45 Vict. ch. 93, sec. 18 (D.). The judgment of the Court was delivered by the Chancellor, and the objection was repelled. I remain of the opinion there expressed.

It was next contended by the appellant that the evidence sought to be obtained from him was not material—an objection reasonable enough had it been well founded. So far, however, as the examination was carried on, or as can be inferred from the questions, I am of opinion that the evidence was material both as regards what was sought to be ascertained by the

appellant's examination as to matters within his own knowledge and from entries in the books of the bank, all of this relating, as it directly did, to the estate and interest of Nicholson, the subject of the reference in the action.

The case *Pollock v. Garle* (1898), to which we have been referred since the argument, arises under the Bankers' Evidence Act, and has no bearing on the case before us.

My learned brother Rose would seem, from some expressions in his judgment, to have leant to the opinion that the objection on the ground of inconvenience to the bank was a tenable one, though he has given no substantial effect to it, except perhaps in disposing of the costs of the motion.

From what I have said it will be seen that I am unable to adopt this view. No doubt the respondents will, as they showed their willingness to do, meet the bank's convenience in any reasonable way, but the measure of their right is to have the witness attend and produce the books in Court in the usual manner, and the form of the order under appeal does not otherwise direct.

I think the appeal should be dismissed with costs, and the judgment affirmed, except as to the costs of the motion, which should be paid by the appellant.

MACLENNAN, J.A.—I am of opinion that this appeal fails.

With regard to the production of books and papers under subpœna, a bank is in the same position as any private person. There has been no legislation in this country such as the Acts of 1876 and 1878 in England; and a bank has no privilege against production which does not belong to a private person. Every person who is duly served with a subpœna to produce books and papers must obey, if what is required be in his possession or power. If they are not in his possession or power, he must attend, and if required show that such is the reason for his disobedience. To refuse without sufficient reason is a contempt of Court. In the present case the appellant was the manager of a branch of the bank, having the custody and possession for the bank of the books and papers which the subpœna called for, and, therefore, the proper person to produce them. He refused to obey the subpœna, and in doing so he was clearly wrong.

A different question arises when the books and papers are brought into Court. It is whether the witness is bound to disclose their contents. That question depends on their relevancy to the judicial inquiry, and on the right of the party seeking it to have the disclosure. If irrelevant, that in general is an answer to the demand. But the contents may be relevant, and yet the party may not have any right in law to their disclosure. An instance of that is the title deeds of the witness, or of his

cestui que trust, or of his client, the contents of which are in general privileged from production. All this is well settled law, and the question remains whether the entries in the bank books and the contents of the other papers, the production of which was called for by the subpœna, were relevant to the inquiry before the Master, and whether, if they were, they were for any reason privileged from disclosure.

Now, it is quite evident that those transactions were exceedingly pertinent and relevant to the inquiry before the Master, and there is no ground on which the appellant could be excused from disclosing all that he knew respecting them. It was at one time thought to be doubtful whether a witness could be compelled to answer where by so doing he would subject himself to a civil action for pecuniary loss, or would charge himself with a debt; but in *Lord Melville's Case* (1806), cited in Taylor on Evidence, the contrary was decided by a majority of the Judges, including the Lord Chancellor Eldon. I think that a sufficient authority for us, in the absence of any decision to the contrary, although the doubt was removed by statute in England immediately after the decision referred to. See also *Grainger v. Latham* (1870).

What has been said thus far relates to the transactions themselves with the bank and the disclosure thereof by oral evidence. The entries in the books of the bank are merely the record of those transactions, made by the clerks. Of themselves they would not be evidence against anyone but the bank, and in cases in which the bank was not a party could only be referred to in connection with oral evidence. But when a witness is asked of a particular act or transaction which it is his duty to disclose, there can be no ground on which, if not objected to by any party to the proceeding, he can refuse to produce any entry or memorandum in his possession made by him or by his direction of or in relation to that same fact or transaction. The entries are made to aid the memory, and when the transactions are numerous, reference to the record is absolutely necessary to secure fullness and accuracy in the testimony.

I am, therefore, of opinion that it was the appellant's duty to produce the books and papers mentioned in the subpœna, to answer all questions relating to the transactions with the bank, both of the testator in his lifetime and of his executors, including transactions with the firms named in the subpœna in which the testator was a partner, and, if required, to refer to the entries of those transactions in the books of the bank.

The appeal should therefore be dismissed.

Moss, J.A.— . . . I think the appellant was not justified in taking the position he did in refusing to produce the books and to give evidence as to their contents.

It is to be borne in mind that no party to the action was raising objection to the testimony sought to be adduced, nor to the means by which it was being obtained. And, having regard to the issues in the action, the items of the executors' account before referred to, and the evidence previously given, there could be no question as to the relevancy of the testimony.

The appellant was only a witness, and as such was not justified in absolutely refusing production of the books and documents, and declaring his intention of not bringing or producing them. His attitude strikes one as that of a person who had already determined his course, and was resolved to adhere to it, no matter what the ruling of the Court might be. As a witness he should have adopted the course taken by the witness in *Lloyd v. Freshfields* (1826), and submitted his position to the tribunal before which he was summoned, and sought a ruling as to what he should properly do under the circumstances.

His first and second objections rested in large measure upon facts, and he should not have treated them as concluded by his bald statement.

It is very clear that the first was not a valid justification for his absolute refusal to produce the books and documents. It involved only a question of convenience, and, on the face of it, did not apply to the whole of the books. Further examination and inquiry would, no doubt, have resulted in a proposition to obviate any inconvenience arising from some of the books being in use, such as was speedily arrived at upon the suggestion of Rose, J., when the motion came before him.

But that this was not the real reason for declaring his intention not to produce the books, appears from the statement in the judgment of Rose, J., that upon the opportunity being afforded the appellant, while the motion was pending, to attend after bank hours, he declined to attend for the purpose of giving his evidence or producing the books at any time or place. It is obvious that the substantial reason was unwillingness to disclose the contents of the bank's books.

I apprehend that it is not open to serious question that unless exempted by legislation, a banker is not excused from producing his books or testifying as to his customer's balance, when relevant to the issue before the Court.

In England the hardship and inconvenience caused to bankers by having to produce their books in legal proceedings led in 1876 to the enactment of a statute, for which, in 1879, was substituted "The Bankers' Books Evidence Act, 1879."

The position of a banker before and after the passing of these Acts is explained by Lord Coleridge, C.J., in *Emmott v. Star Newspaper Co.* (1892). He says (p. 78):

"What was the duty of a banker in regard to the supplying of evidence at the time when this Act was passed? It was the same as that of any other person. He was obliged to attend under a subpœna with his books if their contents were receivable in evidence. But this was said to be a grievance in the case of bankers, and to cause to that class a peculiar and practical hardship in disturbing their business and displacing their business books, filled as they were with the details of other people's affairs quite external to the matters in dispute. The Act, or rather the original Act of 1876, which the Act of 1879 repeals, and for which it is substituted, was passed to give a sensible and reasonable relief for this particular class of persons, but not to alter the whole of the rules of evidence so as to place bankers in a different position in regard to giving evidence from any other subjects of the Queen. Bankers are not to be so differently treated, nor was any such change intended. They remain bound at common law to attend and to produce their books under subpœna, except in so far as the inconvenience may be modified by the statute." And again: "If the banker will not attend or supply the copies required at the trial, he must be subpœnaed to produce the books at the trial as before the Act. If he will not take the course pointed out by the Act, or attend under the subpœna, he will find himself in a bad way at the trial."

. . . We have no similar legislation, and, as regards production of their books, bankers in this Province stand before the law in the same position as they occupied in England before the Act of 1876.

The corporation of the Union Bank could not refuse to comply with a subpœna for production of its books. Can the appellant as its manager at Ottawa decline production of the books of that branch for the reasons assigned in the second objection taken before the Master?

Rose, J., observes that the objection does not point out that the appellant has been directed not to produce books, *i.e.*, that there was either a specific or a general rule of the directorate that he would violate if he did produce the books. And, as already mentioned, the validity of the objection depended upon facts. His statement should have gone further than the argumentative proposition of mixed law and fact involved in the averment that it did not come within the scope of his authority to produce or remove the books or papers which were the property of his employers.

. . . I apprehend that the appellant is *primâ facie* the person having custody of the books and documents for the bank, and therefore the proper person to comply with a subpœna *duces tecum* addressed to the bank. He would, without

doubt, be a proper person to make the affidavit on production of documents for the bank in an action to which it was a party in respect of transactions occurring at the Ottawa branch: see Con. Rule 468 and Form 20.

Primâ facie the custody and control of the books and documents of the branch would appear to fall within the scope of his duty, and it was incumbent upon him to make it clear that he was expressly forbidden to produce them.

Further, I am content to adopt the statement of the learned Chancellor and my brother Osler in *Re Dwight and Macklam* (1887), 15 O.R. at p. 162, that "if a subpœna *duces tecum* is served upon an officer who has the absolute control . . . and the ability to produce . . . he must do so."

The third objection amounts to the proposition that, even for the purposes of justice, the books and the accounts in them must remain sealed and protected from all investigation.

This, I venture to say, has never been the law, and sec. 46 of the Bank Act falls far short of affording any such protection. The evidence as to a customer's account is not privileged at common law, and the section does not appear to amount to more than a prohibition against the bank voluntarily permitting any examination of customers' accounts save by a director.

. . . However much the appellant might justify non-production by showing a prohibition of the directors, no such prohibition could protect him from speaking, when sworn as a witness, to facts within his knowledge.

. . . I think that in taking the position of refusing to produce the books and documents and declining to give any evidence of their contents, the appellant exceeded his rights, and a motion against him was proper under the circumstances.

The order . . . should be affirmed with costs.

BURTON, C.J.O.—I am not sorry that this appeal has been brought, as the judgment now pronounced will have a tendency to remove many of the misconceptions which exist in reference to the right of bankers to refuse production of the books of the bank in a proper case, or to give evidence as to their contents when relevant to the issue before the Court. I think it is unfortunate, though not perhaps to be wondered at after the positive refusal of the witness to give any evidence, that more specific questions had not been put to the witness and his refusal to answer noted; but the witness assumed a very disrespectful attitude, and he cannot be surprised if he is made to pay the expenses rendered necessary by his ill-advised course.

I cannot usefully add to the remarks of my learned brothers Osler and Moss, in which I fully concur.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Six months ending December—	1897-8		1898-9	
Free	$25,619		$31,581	
Dutiable	34,350		43,524	
	$59,969		$75,105	
Bullion and Coin	2,732	$62,701	3,856	$78,961
Month of January—				
Free	$ 3,722		$ 4,101	
Dutiable	6,088		6,341	
	$9,810		10,442	
Bullion and Coin	77	$ 9,887	42	10,484
Total for four months		$72,588		$89,445

EXPORTS

Six months ending December—				
Products of the mine	$ 7,524		$ 7,053	
" Fisheries	7,003		6,227	
" Forest	19,320		19,112	
Animals and their produce	31,067		31,121	
Agricultural produce	19,544		14,059	
Manufactures	5,248		5,429	
Miscellaneous	72		111	
	$89,779		$83,113	
Bullion and Coin	987	$90,766	2,240	$85,353
Month of January—				
Products of the mine	$ 1,621		$ 1,240	
" Fisheries	523		560	
" Forest	440		500	
Animals and their produce	2,527		2,528	
Agricultural produce	3,533		1,646	
Manufactures	856		826	
Miscellaneous	13		6	
	$ 9,513		$ 7,306	
Bullion and Coin	849	$10,362	76	$ 7,382
Total for four months		$101,128		$92,735

SUMMARY (in dollars)

Total imports for seven months, other than bullion and coin	$69,779,000	$85,548,000
Total exports for seven months, other than bullion and coin	99,292,000	90,419,000
Excess of exports	$29,513,000	$ 4,871,000
Net imports of bullion and coin	972,000	1,583,000

STATEMENT OF BANKS acting under Dominion Government charter for the months of December, 1898, January and February, 1899, and comparison with February, 1898:

LIABILITIES

	31st Dec., 1898	31st Jan., 1899	28th Feb., 1899	28th Feb., 1898
Capital authorized	$76,508,684	$ 76,508,684	$ 76,508,684	$ 74,258,684
Capital paid up	63,241,533	63,284,163	63,322,585	62,294,922
Reserve Fund	27,955,807	28,017,043	28,051,254	27,580,999
Notes in circulation	$ 40,258,381	$ 36,916,579	37,525,337	$ 35,823,923
Dominion and Provincial Government deposits	5,493,804	5,054,185	5,448,147	6,819,130
Public deposits on demand	90,747,210	86,877,562	88,387,578	78,939,572
Public deposits after notice	157,824,875	160,373,684	161,832,288	140,799,375
Bank loans or deposits from other banks secured	.....	.....	.....	.....
Bank loans or deposits from other banks unsecured	2,888,319	3,543,176	3,232,031	2,821,895
Due other banks in Canada in daily exchanges	127,447	99,379	149,019	185,007
Due other banks in foreign countries	605,804	1,223,354	588,609	509,585
Due other banks in Great Britain	2,217,758	1,720,688	3,245,428	2,067,557
Other liabilities	609,401	580,624	381,118	731,345
Total liabilities	300,773,075	296,389,296	300,789,638	$268,697,468

ASSETS

Specie	$8,966,421	$ 9,697,868	$ 9,261,732	$ 8,619,198
Dominion notes	17,099,822	17 573,958	16,269,761	14,873,224
Deposits to secure note circulation	1,999,523	1,999,523	1,995,523	1,883,067
Notes and cheques of other banks	10,829,354	10,156,176	10,748,189	9,775,768
Loans to other banks secured	.....	3,491	.....	.....
Deposits made with other banks	4,035,991	3,837,181	3,612,869	3,918,650
Due from other banks in Canada in daily exchanges	201,345	217,150	223,068	319,781
Due from other banks in foreign countries	23,253,094	23,178,858	21,909,685	20,793,570
Due from other banks in Great Britain	12,169,589	12,610,221	12,782,998	12,109,646
Dominion Government debentures or stock	5,064,673	5,049,115	5,049,617	4,800,686
Public municipal and railway securities	34,429,677	32,843,002	31,989,562	32,819,699
Call loans on bonds and stocks	26,532,040	26,318,554	28,815,971	21,497,983
Current loans and discounts	229,900,030	229,192,419	234,008,496	211,659,749
Loans to Dominion and Provincial Governments	2,795,434	2,012,320	2,295,050	1,264,404
Overdue debts	2,463,410	2,518,944	2,371,322	3,232,918
Real estate	1,888,583	1,721,335	1,873,740	2,153,466
Mortgages on real estate sold	573,912	721,212	544,383	581,283
Bank premises	5,907,990	5,923,824	5,999,233	5,751,886
Other assets	2,359,236	2,064,633	1,998,032	1,520,786
Total assets	390,470,328	387,140,155	391,749,425	$357,575,974
Loans to directors or their firms	7,602,665	7,140,264	6,939,812	$7,581,920
Average amount of specie held during the month	8,959,490	9,164,571	9,162,908	8,618,517
Average Dominion notes held during the month	17,178,156	17,135,470	16,890,878	15,592,966
Greatest amount of notes in circulation during month	43,214,303	39,948,173	38,188,602	36,099,032

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

(000 omitted)

	MONTREAL		TORONTO		HALIFAX		HAMILTON	
	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9
	$	$	$	$	$	$	$	$
March ...	40,654	62,043	26,673	39,012	5,215	5,285	2,799	3,021
April	45,092	50,003	28,236	33,035	5,077	4,472	2,900	2,858
May	46,600	56,475	29,059	34,374	5,270	4,798	2,655	2,932
June	54,616	59,471	29,842	36,960	4,792	4,997	2,544	3,001
July.....	52,831	60,423	33,892	35,727	6,308	5,851	2,638	3,117
August ..	49,240	55,578	29,640	32,390	5,554	5,551	2,442	2,655
September	55,080	61,856	32,466	33,932	5,164	4,919	2,971	2,773
October ..	59,340	66,354	35,736	38,349	5,817	5,408	2,970	3,103
November	59,166	67,240	34,211	39.125	5,580	5,154	2,878	3,147
December	56,509	69,143	35,986	43,508	5,386	5,838	3,094	3,334
January ..	60,334	64,850	37,836	42,388	5,009	5,913	3,028	3,274
February .	62,332	62,432	33,414	40,818	4,446	4,583	2,663	2,807
	641,794	735,874	386,989	449,618	63,818	62,769	33,582	36,022

	WINNIPEG		ST. JOHN		VANCOUVER	VICTORIA
	1897-8	1898-9	1897-8	1898-9	1898-9	1898-9
	$	$	$	$	$	$
March ...	4,289	5,968	2,144	2,148		
April	4,161	6,240	2,314	2,254		
May	5,014	8,683	2,430	2,513		
June	5,531	7,397	2,566	2,592		
July.....	5,616	6,316	3,116	2,927		
August ..	6,298	6,180	2,874	2,059		
September	8,035	6,414	2,620	2,508		
October ..	13,291	9,347	2,498	2,498	2,518	*
November	13,550	11,553	2,660	2,660	2,838	2,689
December	9,784	10,708	2,738	2,746	3,058	2,848
January ..	6,347	7,683	2,417	2,470	2,441	2,700
February .	5,517	6,209	2,022	2,212	2,099	2,663
	87,433	82,698	30,399	29,587	12,954	10,900

*Figures for October not furnished.