MONEY
BANKING AND FINANCE

BOLLES

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BY

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BOLLES. M., B., AND F.
W. P. I

TO

James G. Cannon

OF NEW YORK

WHO, NOTWITHSTANDING HIS UNWEARIED AND SUCCESSFUL ATTENTION TO BUSINESS, HAS SET A NOBLE EXAMPLE TO OTHER BANKERS BY HIS DEEP AND INTELLIGENT INTEREST IN THE EDUCATION OF BANK CLERKS

PREFACE

Excellent books on the best methods of bank book-keeping already exist, also other books on the theories and history of money and banking. In a well-organized course on banking this book should fill an intermediate place between those described; it is the pioneer of its kind.

It is designed especially for three classes of students, or readers: those who intend to devote themselves to the business of banking; those who are thus engaged; and those who are studying the history and theories of banking.

To those who have already studied the theories of money in works on political economy or in special treatises on the subject, the first chapter may not be deemed needful. Yet even to such it may serve as a brief, useful review. To those who have not had such an introduction, a presentation of the leading principles of money is needful for a deep and broad comprehension of the duties of sound, conservative banking. This remark applies with especial force to the younger men in our banking institutions who have never read any treatise on political economy or money.

The chapters on finance are added because many of our modern banks and trust companies, and especially private bankers, undertake to finance private enterprises, and to some extent even public ones. To give a complete presentation of the practice of banking, therefore, these chapters are necessary.

It should be added that while it has been the author's aim to describe the best banking practice of the day, it was quite impossible to describe all the local variations without greatly enlarging the book and gaining no corresponding advantage. To a familiar knowledge of the general principles of banking, special principles can be easily acquired whenever the occasion calls for knowing them.

With respect to the legal principles here given, the only ones that apply everywhere are those referring to national banks. Nevertheless, most of the others are of general application; in other words, they are adopted and applied by the courts of most of the states. A state court or legislature is not thereby prevented from modifying or setting aside any rule by statute or judicial decision; consequently some fluctuations, like the movements of the sea, always prevent the formation of a uniform surface.

It is a pleasure to acknowledge my indebtedness to Mr. Cheesman A. Herrick, Director of the School of Commerce, Central High School, Philadelphia, for valuable suggestions concerning the plan of the book, and to Mr. H. W. Patten, Instructor in the Department of Commerce, in the same school, for reading the manuscript.

A. S. B.

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MONEY, BANKING, AND FINANCE

I. THE NATURE AND USES OF MONEY

1. Definitions of Money. — As the business of banking relates to the keeping and use of money, it is needful to start with a clear idea of money itself. The definition that embodies the general intelligent idea is, any metal stamped by the government for monetary use, and also any representative or substitute that may be given in exchange for commodities or for paying debts.

To this a broader and more abstract definition may be given: Any metal or other thing which possesses general purchasing power. This definition may be made luminous by an illustration. A is a chairmaker and wants shoes; B is a shoemaker and wants chairs. Each exchanges his products for those of the other, and the wants of both are satisfied. If A could always exchange the things he did not need for the things he needed, with others who wanted them and could give A what he wanted in return, there would be no use for money in exchanging commodities. In most cases, however, persons can not thus exchange directly. What, then, can they do? If there is anything which all desire, it is practicable for persons to exchange what they do not need, the hatter, his hats for example, for the thing desired by all, and afterwards exchange this for the chairs he does want. Anything that all desire may serve as money; and many things have been thus used by different nations. It should be remembered that the hatter when exchanging his hats for money desired chairs quite as much as he did when he exchanged his hats directly for them; and he would never make two exchanges, first his hats for money and afterward this for chairs, if he could get them by direct exchange. Usually, he can not exchange hats for chairs directly, and so the money taken in the first exchange — the medium that he intends to use for getting chairs — is in truth a great economizer of his time, as he can readily exchange this for them. Another fact is clearly seen in this transaction, — the hats possess only a limited purchasing power; in other words, not every one wants them and is willing to give money for them; while money possesses a general purchasing power; almost every one is willing to take it in exchange for other things. Money, therefore, is a go-between to get other things. No one wants it as an end, as a permanent possession. So the millions of mankind are eagerly trying to get money, not to retain long, but to use as a means for getting the things they need to eat, wear, or keep.

2. Principal Metals used as Money, and Reasons for using them. — The principal metals used as money are gold and silver. The reasons why they have been thus used from the earliest times may be briefly stated.

a. Their Prior Use as Ornaments. Before they were ever used as money they satisfied desire; were used for personal adornment. If the question be asked, why did persons ever come to use them as ornaments? one may ask, why have persons ever used diamonds, shells, or other things for this purpose? The fact that they were thus used prior to their use as money is enough for us to know here. This, therefore, is a superadded use or function of the metals. We may also remark that this is now the most important use made of them.

b. They contain a Large Store of Value in a Small Space. The desire for them has always been so great, and they have been so scarce, compared with other metals, that persons have always been willing to give much in exchange for a small quantity; and consequently we say, in ordinary speech, they are very valuable.

c. Their Supply is sufficient. Though scarce, enough for a small quantity to possess great value, the quantity in the aggregate is ample to serve as money. Diamonds are still more valuable, but they could not well serve as money; for, besides the mechanical difficulties in preparing them for circulation, which will readily come into the mind of the reader, the quantity is insufficient for monetary uses.

d. Their Steadiness of Value. The value of these metals has been steady, compared with other things, and this is a most desirable quality for a thing to possess which is to serve as money. It is true that within a few years the value of silver has greatly declined, but previously its value had been quite as steady as that of its sister metal. Both have preserved a greater uniformity of value during many centuries than almost anything else within the domain of human use and exchange.

The importance of using as money something possessing permanent value is to prevent undue gain or loss to the receiver or possessor. Suppose that the value of gold greatly varied, what would happen? If there were a great rise in its value, then the person who received it in exchange for his wheat, labor, or other commodities would be a great gainer; in other words, would get more for his gold when exchanging it afterward for chairs, shoes, and other things desired than he would receive in exchange for his wheat directly at the time of receiving gold. On the other hand, if there were a decline in its value, he would have received fewer chairs, shoes, and the like than he would had the exchange been made at an earlier period.

The risk of gain or loss is greatest in operations that are to extend over long periods. Thus if A borrows $100,000 in gold which is not to be repaid for ten years, there is a greater risk that the gold in which payment is to be made will undergo some changes, be worth more or less at the end of ten years than at the end of five. Suppose a loan is made to a farmer which is to be repaid at the end of five years. Furthermore, at the time of making the loan wheat is worth one dollar per bushel, measured by gold, but at the time of its repayment, measured by the same standard, is worth only half as much. He must sell twice as much grain to obtain the gold required to repay his loan as the lender could have bought with his gold had he been a wheat purchaser instead of a money lender to the farmer. The borrower, therefore, has been a heavy loser, and the lender a corresponding gainer by the rise in the value of the yellow metal.

e. They can readily be refined and alloyed. Gold and silver fulfill a monetary function more adequately than any other metals or other things which have been used, because all the mechanical requirements in preparing them for this use can be most successfully met. All impurities can be readily removed and a uniform quality obtained. They can be readily tempered or hardened by the mixture of a small quantity of copper, and thus endowed with better wearing power. Their composition also admits of stamping, or of marking denominations, without much cost. If the metals were too hard, this could not be done; if they were too soft, then a double defect would attend their circulation: their names would wear off, and they might lose their identity; and they would fall below legal weight and lose their legal existence. They might, indeed, continue to circulate either through stealth or ignorance, but they would have no clear legal right to be passed and received.

3. Coining does not add to their Value.—The transformation of metals into coins does not affect their value. This truth can not be too firmly grasped. Drop a ten-dollar gold piece accidentally into the fire and the finder can take the lump to the mint, and after it has been ascertained that none has been lost, he will receive another piece therefor. In like manner if the finder should take the lump to a merchant who possessed his confidence, he would be willing to give him just as many goods for it as he would for a ten-dollar gold piece. We do not mean to say that a merchant would be thus accommodating to all his customers, but simply that, in thus accommodating one of them, he would not exercise any charity, for by sending the lump to the mint he could get the full equivalent in weight of coined metal.

The same truth might be shown with respect to silver, but as the explanation is different and less simple it will be delayed.

4. The Advantage of using Representatives of, or Substitutes for, Money.—Besides coins made of gold and silver, which every one calls money, business transactions are facilitated by issuing representatives or substitutes in the form of notes.[1] Suppose a man is to receive $5,000 for his farm. The buyer comes with his gold pieces which

[1] Some writers classify the notes issued by the government and banks as money; others go still farther and put checks in the same category. It is of the utmost importance to understand the distinctions between coin and notes; and when these are clearly understood, we need not be troubled with the

weigh about twenty pounds. The seller does not know what to do with so much gold. He has no safe, nor is one belonging to another very near. The buyer, perceiving the seller's difficulty, says to him, "I have five notes issued by the government for the amount, would you prefer these?"—"What are they?" asks the seller, "I do not know what you mean." The buyer then reads one to him. In effect, the government promises to pay the bearer, holder, or possessor, $1,000 at a specified place, the treasury, at Washington, or a subtreasury, whenever he shall present the note. The buyer further explains that if he prefers to take five of these notes, instead of the gold, he need not actually go to Washington or a subtreasury to receive payment; he can exchange them for anything he wishes to buy, for the person with whom he deals will be just as willing, perhaps more so, to receive them than coin. The farmer, having confidence in what is told him, readily takes the five notes, for these he can put in his pocketbook and carry around without the slightest difficulty. Thus the convenience in using substitutes or representatives for coin is very great, especially in large transactions.

The notes thus described therefore represent coin; are promises to pay it on demand; and it is kept in one or more places at which noteholders can obtain it by asking or demanding it and giving up their notes when it is presented. In other words, they are orders for the amount of coin specified on them.

5. When Full Amount of Coin is kept to pay Substitutes and when not. — Sometimes the full amount of coin repre-

question, what is money either concretely or abstractly? But endless confusion has arisen from adopting a definition of money and then attempting to becloud or ignore the distinctions between gold, silver, and notes, checks, and other forms of credit.

sented by the notes in circulation is kept by the issuing authority to redeem them; more often a less amount is kept. The silver certificates, as they are called, which form a large portion of the notes in circulation, represent silver coin which is kept to redeem them; and the amount is as great as the notes they represent. They are in every sense merely substitutes, representatives of, or orders for, coined silver.

On the other hand, the government issues and keeps in circulation another kind of note, popularly known as greenbacks, to the amount of about $350,000,000. To pay or redeem these it keeps only $150,000,000 of gold, because they are not presented very often for redemption, and this amount of gold proves to be quite enough. If the owners of these notes should for any reason begin to demand payment of them in large quantities, then the government would doubtless take steps at once to increase its store of gold. The experience of thirty years confirms the opinion that the $150,000,000 of gold kept to pay them is an ample reserve.

6. Economy of issuing Substitutes in Excess of Coin kept to pay them. — It will be readily seen that the use of substitutes for, or representatives of, money which are conveniently and readily redeemable or payable in excess of the amount of money kept to redeem them, dispenses, to the extent of the excess, with the use of the precious metals as money. If the government can sustain or circulate $350,000,000 of notes on a foundation of $150,000,000 of gold, there is an economy to the extent of $200,000,000 in the use of gold. In other words, if the notes did not exist, the people would need $350,000,000 of gold instead of the $150,000,000 now held as a fund to pay the notes.

7. The Issue of National Bank-note Substitutes. — Besides the notes above mentioned that are used as substitutes for money, another large quantity in circulation is issued by the national banks. These institutions are not required to keep any gold to redeem or pay their notes, but they must keep government notes for this purpose which in turn, as we shall learn, are redeemable in coin. In practice, though, a national bank always keeps some gold and will readily redeem its notes on presentation in gold at the holder's request.[1]

It may be added that every national bank which issues notes must deposit bonds corresponding in amount with the notes it proposes to issue. These bonds are the obligations of the government and must be deposited with the national treasurer; and if a bank should fail or retire from business, the government can, through its officers, sell these bonds for gold and use it to pay the notes of the bank. Thus the holders are perfectly secure, and knowing this, no one ever hesitates to take a genuine national bank note.

8. The Amount of Money needed depends partly on the Use made of Substitutes. — We have now approached the question, how much money do the people of our country need for business purposes? A partial answer is that the quantity depends on the extent to which substitutes are used. This is obvious from what has already been said. The larger the excess of substitutes that pass readily from one to another, the smaller is the quantity of real money needed for business. Perhaps the idea can be more clearly apprehended by a negative form of statement. If the paper substitutes for money were all withdrawn, — all the notes in daily circulation issued by the government and the

[1] See Chapter VII, Bank Circulation.

banks, which are now taken just as readily as money itself, because no one doubts the ability of the issuers to pay them on presentation, — it would be needful to fill their place with money, otherwise the business world would be wrecked. The quantity of real money would be so small compared with the uses or demands made of it, that the sufferings of all classes would be universal.

9. The Amount needed also depends on the Rapidity of their Circulation. — Again, less money, including its substitutes, is needed than formerly because it circulates more rapidly. If with $100 in the possession of the people in village A twice as many payments are made among them in the same space of time as $200 in village B, the $100 in village A is twice as effective, accomplishes twice as much work as the $200 among the people in the other. It is unquestionably true that money circulates with far more rapidity in the city of New York than among the sparsely settled districts of the frontier. Consequently, the people in New York transacting a similar amount of business would not require so much money as the same number of people on the frontier.

The effect, therefore, of circulating money and its substitutes more rapidly is the same as an increased supply. If money circulating in New York, equal in amount to that circulating in Arizona, does twice as much work, it is just as effective as twice the amount would be circulating at Arizona speed.

Of all the agencies that have the effect of quickening the circulation of money, banks are the most effective. A bank dislikes to keep any more money around than prudence requires. Its profits are made by lending money, not by keeping it. Of course, enough must be kept to answer all demands; but every wide-awake banker, after making due provision of this kind, desires to lend, if possible, the remainder. A bank does not keep money in its vaults as an individual keeps money in his pockets, day after day, before making any use of it. A workingman receives his month's wages, and during the month he continues to part with his money; and it may be that at the end of thirty days all is gone; but a bank usually keeps money no such length of time. If money, which a bank thinks will not be demanded at once, is deposited, the same is lent as soon as possible, to-day or to-morrow. Money in possession of a banker is restless, and like the waters of the sea is kept in constant motion. The consequence is that through the agency of these institutions less money is needed than otherwise would be to effect the exchanges of business.

10. The Amount needed also depends on the Use of Credit. — The use of credit lessens the use for money. If a merchant buys a large bill of goods on credit, of course no money is needed for the purpose of making the purchase. It may be asked, will not money be needed at a later period, when the credit expires, as much, in truth, as though no credit had been given? Is not the effect of the transaction simply to delay the payment of money, and not to lessen the use of it? Less money will be needed, as will be soon shown.

We are all familiar with the wonderful machinery for economizing the use of labor. American inventions for plowing, seeding, cultivating, reaping, threshing, and for almost every other task of the farmer have been carried to a high degree of perfection and are generally used by American farmers. Their effect in economizing the use of labor none will deny. This fact is one of the most common of daily life.

Another fact is equally true, that modern commerce has found a way of making payments that dispenses with the use of money in all except a small percentage of the entire volume of transactions. Consequently, the use of silver and gold and money of every kind is becoming less needful. The service that silver would have performed in making payments, had its coinage been continued, is insignificant compared with the use of its substitutes. What are these? How do they work?

"A Pennsylvania farmer sells a quantity of wheat to an agent for a wheat merchant in New York. The merchant sells it to an English purchaser living in Liverpool. How is the New York merchant paid? He draws an order or a bill on the Liverpool buyer to pay the amount due to the seller, to a third person, or to himself. The obligation is the same in either case. The New York merchant, however, wishing to use the amount mentioned in the bill at once, goes to a house that deals in bills of exchange and sells it, getting a check for the amount on a New York bank. What becomes of the bill? It is sent to Liverpool for collection, and at the time of its maturity is presented for payment and a check for the amount is given on an English bank. Is that check collected in money and the amount sent to this country? What is the everyday answer?

"Another merchant in New York has bought woolen goods in Bradford, England, and he must pay for them. He can do this in two ways. Either he can send gold for the amount, or he can go to a house that deals in foreign bills of exchange and buy a bill, perhaps this very one given for wheat or another, for the amount of his purchase, that is owed by some person in England, and send this to his creditor in payment of his goods. The English seller accepts the bill and his American buyer is discharged. Suppose the amount of the American buyer's purchase of goods is the same as the English buyer's purchase of wheat, what has happened? No gold has been sent to either country to pay these debts, and yet both have been paid. The American goods buyer no longer owes the English seller, nor does the English wheat buyer owe the American seller. The debt on each side has been actually paid, and yet not a dollar in money has been paid by any one: no gold or any other kind of money has gone across the sea. These facts no one can dispute.

"The transaction may be followed two steps farther. The Bradford goods seller, by accepting the bill drawn on the Liverpool wheat buyer, releases the New York buyer just as fully as though he had sent gold to him, and the Liverpool buyer, by paying the Bradford goods seller, has just as fully discharged his obligation to the New York wheat merchant or the banking house that bought the bill of him as though he had sent gold to him. And yet, we repeat, no money has been used on either side. What, then, has happened in this double transaction? The answer is very evident. An exchange of commodities has taken place; the wheat has been exchanged for the woolen goods.

"In the exchanges between the leading nations this is the mode of making them. The debts incurred on the one side and on the other are discharged by offsetting other debts against them. The debts first incurred are not carried along in a new form; they are actually paid, as truly as though money had been used. Let this fact, therefore, be remembered, that in international payments very generally no money of any kind is used, the transactions consisting really in an exchange of commodities through credit devices. When these are not of equal value the difference is sometimes paid in gold; often the indebtedness runs for a considerable period and then the tide of trade turns in the other direction and an equalization takes place; sometimes settlements occur by taking securities, bonds, stocks, and the like; sometimes purchases are made of other property.

"It may be asked, are not a couple of checks around somewhere that have not been paid? Is not money required to pay them? In tracing out their course it will be seen what a small part money plays in our transactions at home. Returning to the New York wheat merchant who has drawn a bill on the Liverpool buyer and sold it to the New York banking house dealing in bills of this nature, he gets a check for the amount on a bank in that city. Of course the merchant could go to the bank and get the amount, but usually he deposits it in the bank on which it is drawn or in another. If he deposits the check in the bank on which it is drawn, that bank credits the depositor and charges the drawer with the amount, and the transaction is ended. No money is paid; the drawer of the check has so much less to his credit, the depositor as much more. The money that may or may not be in the possession of the bank is not in the least disturbed by the transaction; a little bookkeeping has been done, nothing more.

"Suppose the check is drawn on another bank, what then? The depositor puts it in his bank for collection. Does the bank get money for it? Perhaps, but more frequently it does not. Why not? Suppose the check, deposited in the Broadway Bank, is drawn on the Arctic Bank, and is presented either directly or through the clearing house for payment. The Arctic Bank admits that the check is perfectly good, but says it has a check deposited with it for the same amount on the Broadway

Bank. The one offsets the other. It would be folly for each bank to demand money of the other; the easier and common-sense way is for each bank to exchange checks, which is done, and the debts are canceled. The amount of the check received from the Arctic Bank is chargeable to the depositor who drew it, and a similar amount is credited to the merchant who deposited the check in the Broadway Bank for collection. This in effect is the nature of these transactions. No money is used in this case any more than in the other. And yet these checks are paid by offsetting one against the other. Both of the checks represent sales; the one was given for a bill of exchange, the other, perhaps, for merchandise. The entire circle of transactions has been completed, and without using a dollar. And the check given by the Liverpool wheat buyer has run the same course.

"The fact can not be denied, that in buying and selling stocks, lands, goods, almost everything, less and less money is constantly used in the more civilized countries where banks are most numerous, and the agencies above described are most highly perfected. In many sales only a very small percentage of money is used. Offsets are daily made to the amount of many millions through the clearing house; and a small sum of money is sufficient to complete them. Nor are the debts thus brought together carried along in a new form, requiring money at some time or other to settle them. The debts are actually set off against each other, and discharged; they no longer exist in legal or in any form; they are as much out of the way as though money had been paid."[1]

11. The Kinds of Money more fully described. Gold Coins. — Having defined money and its substitutes and

[1] Bolles, *American Finance*, page 222.

shown their relation to each other, and also what quantity of money is needed to transact the myriad exchanges made by the people, we will now describe more in detail the different kinds of money and substitutes that are in use.

There are four gold coins, — the double eagle, the eagle, the half eagle, and quarter eagle. The double eagle is the largest, of the value of $20, and was authorized to be coined in 1849. The eagle is the oldest of all the gold pieces, and was authorized in 1792.

12. Gold Coins are a Legal Tender. — All of these coins are a full legal tender for the payment of debts, public and private. By this phrase is meant that individuals as well as the government are obliged to receive them from debtors in payment of their obligations. A creditor can not say to a debtor who offers to pay him in double eagles, "These are very heavy, I will not accept them; you must pay me in government notes." The debtor can rightfully reply, "You must take these or nothing, because the law says so, and that is final."

13. Silver Coins. — The silver coins are the dollar, which was authorized in 1792, but discontinued by the act of February 12, 1873, reauthorized five years later, and finally discontinued by the act of 1890. The other silver pieces still coined are the half dollar, quarter dollar, and dime. The silver dollar is a full legal tender in payment of debts, but the other silver pieces are a legal tender only to the amount of $10. The minor coins consist of the nickel five-cent piece and the bronze cent. The five-cent piece was authorized by the act of May, 1866, and is a legal tender to the amount of 25 cents. The bronze cent was authorized two years later, and is a legal tender for the same amount.

14. The Kinds of Notes. — *a. Greenbacks.* The kinds of notes issued by the government and the national banks and their legal tender properties may next be explained. The greenback or legal tender note was first authorized in 1862, and is a legal tender for all debts, public and private, except duties on imports.

b. Gold Certificates. The gold certificates which circulate, to some extent, especially among the banks, are issued for gold, deposited with the assistant treasurer of the United States. Like the silver certificates, they are receipts for gold, which is left with the government, and must be given up when demanded to certificate holders.

c. Silver Certificates. The silver certificates authorized by the law of 1878, when the coinage of the standard silver dollar was resumed, are a legal tender for customs, taxes, and all public dues, and when so received may be reissued. They are not a legal tender between individuals, but only between individuals and the government.

d. Treasury Notes. The treasury notes issued by authority of the Sherman act of 1890 are a legal tender in payment of all debts, public and private, except when otherwise expressly stated in the contract, and shall be received for customs, taxes, and all public dues, and when so received may be reissued; and such notes, when held by any national banking association, may be counted as a part of its lawful reserve.

e. National Bank Notes. The national bank notes are issued by the national bank. "Every national banking association shall take and receive at par for any debt or liability to it any and all notes or bills issued by any lawfully organized banking association." They are therefore a legal tender between the banks, but can not be forced on individuals by any national banking association.

On the other hand, every national bank must take from an individual any national bank note tendered to it in payment of a debt.

15. Alloy and Weight of Coins. — To render the gold and silver coins more durable they are hardened by adding a small quantity of copper, one tenth in weight. A gold dollar, which is the unit of value, weighs 25.8 grains, and the quantity of pure gold therein is 23.22 grains. Gold of this degree of fineness is known as standard gold.

A silver dollar weighs $412\frac{1}{2}$ grains, of which one tenth is copper. The quantity of pure silver contained in the piece is $371\frac{1}{4}$ grains. Silver nine tenths fine is therefore of standard fineness.

Silver in recent years has declined about half in value, yet silver coins are made of the same weight as before, and circulate just as readily at their former value. The reason is, the government is willing to receive and is able to redeem them as though there had been no decline in the value of silver; and so long as the government is willing and able to redeem them, individuals are safe in treating silver coins in the same manner.

16. Tolerance from Imperfection in making and Wear of Coins. — It is quite impossible to make coins of the same denomination of the same precise weight, so the law permits a very slight deviation, and a still greater one from loss by abrasion. The most important reduction is in gold coins, which is one half of one per cent after a circulation of twenty years, and at a ratable proportion for any period less than twenty years.

II. CLASSIFICATION OF BANKS

1. Definition of Banker. — A banker has been defined as "a dealer in capital, or, more properly, a dealer in money. He is an intermediate party between the borrower and the lender." This definition applies to a banker who deals with the money of others; but he often lends his own money, and when thus acting he is one of the two original parties.

A public or incorporated bank, like a banker, receives and lends money. It always has a capital of its own to lend, besides the money or deposits of individuals.

2. Classification of Banks. — Banks may be private, and public or incorporated banks. A private bank belongs to one or more individuals. When several are associated, as often happens, they are related as partners, and the law applying to partnerships applies to them. Some of the oldest and largest banking houses are private banks. Rothschild & Co. have long been known in every part of the mercantile world. Private banking is the oldest form of conducting the business of banking, and records exist of banking transactions among the Assyrians.

3. Further Classification of Public Banks. — Public or incorporated banks are divided into state and national banks. The latter exist by virtue of national laws; the former by the laws of the different states. State banks are again divided into banks of discount and deposit, savings banks, and trust companies. One more division may be noticed. State banks may exist by special acts or laws, called charters; or by general laws, whereby every bank thus organized possesses the same rights and liabilities.

Twice in our history the national government has established and conducted for a period of twenty years a bank with branches; from 1791 to 1811, and from 1816 to 1836. An attempt was made during President Tyler's administration to establish another, but he vetoed the bill, and this was the last serious attempt to found such an institution. It has been proposed on several subsequent occasions, but no bill has ever been prepared and advocated in Congress. National banks that have relations more or less close with their respective governments exist in France, Spain, Italy, Austria-Hungary, Belgium, Russia, and other European countries. Several state banks also have been founded in our own country, closely identified with the state of their origin, especially the state banks of Ohio, Illinois, and Indiana.

4. **Banks created by Special Charter.** — Many state banks exist by virtue of special charters granted by the legislature. This was the original mode of creating banking institutions. But the difficulties in obtaining them were often great. First, they were costly, as the legislature would not grant them until after hearing or inquiry, conducted like a legal trial before a committee composed of members of the legislative body, for the purpose of ascertaining whether the proposed bank would be a public benefit. Second, charters could be granted only when the legislature was in session; consequently, if individuals wished at any other time to organize a bank, they were obliged to wait until that body convened. Third, the granting of them was a prolific source of corruption. Applicants often sought to obtain questionable privileges,

which were secured by paying a heavy price. Many a conscienceless legislator knew the worth of his vote.

5. Banks created by General Law. — These evils were at length largely remedied by the enactment of general laws providing for the establishing of banking institutions. These provide a cheap, easy, and swift way of obtaining the needful authority to form a bank. The national bank act is of this nature, and every state has a general banking law. These usually provide that five or more persons may apply to the superintendent of banking, in a state where such an officer exists, and in other states to the secretary of the state, for the right to be incorporated and entitled to the rights and privileges of the laws relating to banking. The application, the name of the proposed bank, the amount of its capital, the names and residences of the shareholders, are duly considered, and if these matters are deemed satisfactory, letters patent, signed by the governor, to which the seal of the state is added, authorize the applicants to organize a bank in accordance with the laws providing for its creation and management. The laws usually provide, among other things, that the bank shall be duly advertised so that the public may know under what authority it exists, what capital it possesses, the names of its officers, and such other matters as render it worthy of confidence and support.

6. The Two Methods compared. — This process, compared with the method of obtaining a charter from the legislature, is very simple, economical, and swift. In a few days after its inception, a bank can be launched under the state regulations now existing in every state in the Union.

Nevertheless, charters for banks are still granted by some state legislatures, while perhaps in all of them banks are living under charters granted many years ago, before general laws providing for their creation were enacted.

7. Banks organized under General Laws are not Monopolies. — It may be remarked that banks organized under general laws are not monopolies, like those established in the early days; for example, the Bank of North America, or Bank of New York, or Massachusetts, with well-defined and strongly guarded exclusive privileges. As these were valuable, the owners looked with ill favor on any new association of individuals who sought to wrest their rights from them. Hence the shocking quarrels that often occurred in legislatures between those who fought to preserve their exclusive chartered privileges and others who strove to abridge or take them away, that others might have a chance to share the profits of the favored ones. By the general banking laws that now exist, individuals can organize banks without limit; the monopoly feature has entirely disappeared.

8. Banks of Discount and Deposit, Savings Banks, and Trust Companies. — Let us now describe briefly the differences between banks of discount and deposit, savings banks, and trust companies.

A bank of discount (1) possesses a capital, (2) which is owned by shareholders. (3) It receives deposits largely from business men, which are mostly payable on demand, (4) and loans money for a short time, usually four months or less, and (5) to business men for mercantile purposes. (6) It is managed by a board of directors chosen by the shareholders, (7) who hold annual meetings to elect directors and do such other business as the law requires of them.

A savings bank, properly so-called, (1) has no capital, (2) and consequently no shareholders. (3) It receives deposits, chiefly in small sums from the working classes, (4) which are payable only after notification by depositors (unless the amounts are small) that they desire their money. (5) The loans, too, are usually made for longer periods, (6) and to investors, — persons who desire it to pay for land, building a house, and the like. (7) As savings banks have no capital, they are organized by trustees, who often elect a portion of their number as directors to manage the business. (8) Lastly, when a trustee resigns or dies, the other trustees elect a successor; the depositors therefore can not elect officers or in any way exercise authority.

Trust companies combine most functions of the ordinary bank of discount with the execution of trusts. They receive deposits, and usually pay interest on them, and lend money on collateral security, and not on the mere credit of borrowers. The trusts they execute are of a varied nature, as administrators and executors of estates, guardians to minors, trustees to beneficiaries, who are established by wills and in other ways. They sometimes reorganize railroads, and act as trustees of bondholders in various railroad operations. They manage lands, rent houses, repair them, in short, act as an agent or trustee for estates, individuals, corporations in a great variety of business which can not be done at all, or done as well, by individuals. Furthermore, they are rapidly replacing individual trusteeships, because (1) they possess a capital and are not only responsible for the losses they incur, but are able to respond to them; and because (2) they usually possess much experience and act conservatively; and lastly (3) because they have fixed charges and perform their services for a more reasonable compensation.

III. THE UTILITY OF BANKS

1. A Safe Place to keep Money. — A bank is a safer place to keep money than one's store or house. This was a stronger reason perhaps centuries ago for using a bank as a depository than it is to-day. Yet it has not lost all force. One reason why stores and houses are not more often robbed is, thieves know that not much money is any longer kept in such places. Whatever else they may get, therefore, should they adventure, they know they are not likely to get much money. Nevertheless, there are those who have more faith in their own devices for defying thieves than in the devices of banks. One of these wise persons conceived the idea of putting his money in a tomato can and burying it beneath his dog's kennel. Bruno seemed to comprehend the gravity of his trust, and yet not long afterward, when the farmer went to his depository for a few bills, he made the painful discovery that the entire amount was missing. On another occasion a farmer put his money in the bottom of a barrel, filled it with ashes, and at the top built a nest which he put in the custody of a sitting hen. She proved to be no better protector than Bruno. A woman during the summer time used her disused stove for the same purpose. "Who would ever think," so she said to herself, "of looking in such a place for money?" No one ever did; but she forgot the fireman. Unluckily, he built a fire in advance of her calculation.

2. The Payment of Interest is an Incentive to save Money. — Interest is often paid by banks on deposits, which is an incentive for saving money. This applies especially to the small depositors in savings banks. Were there no such institutions, perhaps the larger portion of their deposits would not be saved. It is true that in some states, where savings banks are not numerous, building and loan societies take their place and perform an equally useful office. That savings banks have proved to be most useful places in encouraging thrift is a fact that no one will question.

3. A Useful Service is rendered to those engaged in Production, Transportation, and Exchange. — Banks perform a highly useful service in the production, transportation, and exchange of goods by lending money to those who are engaged in these ways. Money or capital is the lifeblood of business, and it is the business of banks to furnish this to all worthy individuals and concerns. The credit or ability to borrow that some mercantile houses have is worth far more to them than the capital they actually possess.

4. A Useful Service is rendered by furnishing Drafts to their Customers. — Banks render an important service in saving the transmission of money from one place to another by furnishing drafts to their customers, or by their use of checks on the banks wherein they keep their deposits. Not only is the risk of loss thus avoided, but also the expense of transmitting money by express, which is considerable, because the risk for performing the service is great. Millions of dollars in the form of drafts and checks are always passing through the mails and serving to discharge indebtedness somewhere in lieu of money.

5. Checks are a Good Record of One's Expenditures. — Checks and drafts also serve as a good record of one's expenditure. If an individual deposits all his money in a bank, his pass books and check books tell the complete story of the money he has received and his disposition of it.

6. Money becomes more Effective when collected into a Large Sum. — A bank renders the use of money more effective by drawing it together into a larger amount. Even very wealthy men do not carry around large sums of money in their pockets, and therefore could not lend much to others if they had the disposition. They keep it in banks. Moreover, many of them do not keep large sums, even on deposit, but make an investment as soon as it has attained sufficient size. These smaller deposits, however, make in the aggregate a large sum, large enough to lend to advantage to borrowers. A bank may be likened to a great reservoir which is filled by numerous little streamlets. Each of these, if pent up, would hardly supply enough power to run a coffee mill, while the united stream, issuing from the great reservoir, is powerful enough to keep the machinery of the largest factory in constant motion. As the water thus stored serves a more useful purpose, so money collected in banks serves a more useful purpose by such additional use, — a thing as impossible while the money is floating around in individual pockets as the utilizing of a little stream for a great motor purpose.

IV. HOW A BANK IS ORGANIZED

1. Modes of raising the Capital. — "Before a bank can be legally organized, there must be preliminary action to find out who will subscribe for the stock, act as trustees or directors, or do whatever may be needful to insure its future existence and operation. How, then, is this knowledge ascertained? There are three ways of finding out.

"The first mode is through the influence of one or more persons who have the confidence of others, and who expect to manage the institution if formed. The capital of many of the banks in the country has been drawn together through the influence of two or three persons who afterward became its president, cashier, or other active officer. Not infrequently it happens that some person, who has been a successful business man, solicits his friends to join him in a banking enterprise. They have confidence in his integrity and capacity, and through his solicitations are persuaded to promise him that they will take some of its stock. When he has succeeded in getting enough taken he is ready to advance a step in organizing the bank."[1]

"Another way is through the influence of a person called a promoter. This is a more modern method of raising the capital of a bank. It so happens that there are such persons who command the confidence of others and are able to persuade them to undertake business enterprises. Promoters or promoting companies have a

[1] Bolles, *Practical Banking*, 11th edition, page 21.

firm footing in the modern business world. Banks, insurance companies, railway companies, manufacturing companies, and other enterprises are started through their magical influence. Generally, they are men of much tact and often of considerable resource, but above all are master of the art of persuading men and of securing their assistance. Sometimes their assistance is solicited by those who have undertaken to form companies without them and have only partly succeeded, to complete their work.

"The remuneration to be paid to a promoter is often a large sum, conditioned on his success. It is a personal contract between him and the persons who employ him, and should they forget their promises, or for any reasons fail to respond, he has no claim on the bank or other company organized through his efforts. His assistance may have been very valuable; the institution may never have come into existence without him; yet only the individuals who employ him are liable, the corporation is not, unless it consents to assume the contract made by his employers; and even then a question might be raised. What consideration does the bank receive for assuming this promise or engagement? It is very questionable whether it could be held responsible to pay if any of the members objected to the assuming of the contract. The reason for not holding the corporation is that it has not received any benefit for which it has promised to pay.

"Another way of forming banks is through the action of several persons in a community. Suppose a village has multiplied in numbers until the more active ones believe that a bank should be organized for the advantage and benefit of all. Well knowing what a bank can do for them, the subject is mentioned from day to day, and goes the rounds like any other topic in a village community, until the interest in the proposed undertaking becomes general. When it is thus learned that a bank is desirable, a paper is prepared which it is expected persons will sign, stating the amount of capital that it is desirable to raise, and the number and amount of shares. This paper usually is very brief and may read something like the following:—

"We, the undersigned, desirous of establishing a bank in this village, of the capital of $50,000, to be composed of 500 hundred shares, of $100 each, hereby promise to take the number of shares set opposite to our names.

"The paper is circulated until the requisite amount is subscribed. Such a paper is valid among the signers as soon as the bank is organized, but until then 'the subscription,' says the court in a recent case, 'is a mere proposition or offer, which may be withdrawn, like any other unacceptable offer.'"[1]

2. A Subscriber can not Withdraw.—The question has been asked, why can not a subscriber withdraw his promise after the requisite number have subscribed, the same as before? Why should the signing or promising by the entire number have the effect of binding a subscriber? Surely he has received no consideration for signing; the act is purely voluntary. The answer is that a subscription for shares, or promise to take and pay for a specified number, is not a common law contract; if it were, then this objection would be more weighty. The validity of a subscription depends on the character or statute under which it is made. If a subscriber has complied with the statutory terms, his subscription is binding. In other words,

[1] Hudson Real Estate Co. *v.* Tower, 156 Mass. 82.

he is bound because the statute says he is; and there is no denial to an imperative.

A subscriber can not escape fulfilling his obligation on the ground that some other subscription is not legal. Each subscriber is individually liable, and if he is sued for not keeping his promise, his only defense, if he has any, is some matter relating to his own individual case, for example, that he has failed in business and gone into bankruptcy.

3. The Directors can not release him. — Nor can he be discharged from fulfilling his obligation by any act of the directors. As soon as the subscriptions for the stock are completed, an obligation has been created which is quite beyond the power of the directors afterward elected to change. Though directors may, and often do, discharge a claim that their corporation may have against a debtor, or take less than the full amount, they can not deal in this way with a subscriber or shareholder. All must pay, and if perchance any one fails before he has paid for his shares, the law prescribes what must be done in his case, and this must be strictly followed.

4. Mode of proceeding when a Subscriber fails to pay. — The national bank act provides that when a subscriber fails, or is unable to pay, although promising in perfectly good faith, the fact shall be duly advertised, and an endeavor be made to get subscribers for the amount. Of course the other subscribers are not required to increase their subscriptions. Very likely they would do so rather than fail to organize the bank. If none of them, or any other person, is able or willing to take the stock, the law provides for diminishing the amount of capital, and of organizing the bank with less than was first intended. If the reduction thus caused should be so great as to bring the remaining amount below the minimum limit required by law, a receiver must be appointed to wind up its affairs.

5. The Right of a Subscriber to transfer his Shares. — One of the incidents of all shares is their transferability; but what are the rights of a subscriber to transfer them before they are issued, before his bank is formed? All that now exists is a paper containing the promises of individuals that they will take and pay for the shares set opposite to their names. This promise, however, possesses a transferable character, but not so completely as to relieve him from his subscription. This indeed can not be done until a corporation is duly formed which assents to the change. When the corporation has come into full life, then the original subscriber is relieved, and the purchaser stands in his place.

6. Mode of forming a Savings Bank. — Such are the preliminary steps in organizing a national or state bank of discount and deposit, or trust company. The preliminary action in forming a savings bank is simpler, as no capital is required. The only requisite is for a few men to prepare their application in which they name themselves and others as trustees of the proposed institution. If the application is granted, they then proceed to complete the organization.

It may be asked, as a savings bank has no capital, what assurance have these trustees that the institution will succeed, for they intend depositing but small sums, if any, themselves? Generally, savings banks begin in a very modest way, and are conducted first at small expense; nor is this increased until the income flowing into the bank from lending deposits justifies the hiring of ampler quarters and paying for more assistance.

7. First Meeting for organizing under a Special Charter. — Having made sure of receiving the requisite amount of capital to establish their bank, when it shall be needed, the subscribers are now ready to proceed to organize.

If they have procured a special charter, a meeting of the subscribers is called to accept it and elect directors. The charter itself usually prescribes when and how the meeting shall be called. As the way is thus prepared in the organic act, the subscribers have simply to walk therein and call and conduct their meeting as this prescribes.

8. Mode of organizing under the National Law.—*a. Application to the Controller.* If the proposed bank is to be organized under the national law, some one who is interested in the affair makes a written application to the Controller of the Currency at Washington, giving the name of the proposed bank, where it is to be located, the amount of the capital, and the names of at least five persons who are to be stockholders. This application should be indorsed by the representative in Congress from the district in which the bank is to be established. It is well to accompany the application with letters from persons of prominence who will vouch for the character and responsibility of those concerned in the enterprise. In other words, the application should be so strengthened as to secure the Controller's favorable consideration.

b. The Controller's Action. The Controller then inquires into the need of a bank in the place mentioned. How far he can go in denying such an application is perhaps not clearly understood. In a place, for example, having numerous banks, to an application by persons of no especial prominence or fitness, the Controller doubtless would be slow in granting a favorable answer.

c. Articles of Association. If the application for organizing the bank receives the Controller's approval, the subscribers should next agree to articles of association. The form of these is furnished by the Controller, and they embrace the following particulars: first, the name and title of the bank; second, its place of business; third, the number of shareholders composing the board of directors, and where and when the first meeting shall be held to elect them; fourth, the time and place of holding the annual shareholders' meeting; fifth, the amount of the capital stock and its division into shares, and the rights of shareholders to subscribe for any additional amount; sixth, the mode of organizing the board of directors and their powers; seventh, the period of the bank's life; eighth, how the articles may be amended or changed.

d. Organization Certificate. Having executed the articles of association, the stockholders must next execute an organization certificate, containing the name and location of the association, the amount of capital stock and the number of shares, and the names and residences of the shareholders, which must be signed by each subscriber.

e. Election of Directors. After executing the organization certificate, if the directors are not designated in the articles of association, the shareholders should call a meeting and elect them. This may be done at any time before the association is authorized by the Controller to begin business, and afterward at an annual meeting. Three fourths of the directors must be residents of the state where the bank is located.

f. No Business can be done until Organization is completed. Until the articles of association of a national bank and also the certificate of organization are filed with the Controller, the concern is not fully organized, and can not lease an office, or do any other business except what pertains strictly to its organization. The correspondence, therefore, between a person who becomes the president of a bank as soon as it is organized and another person, can not be used to prove an agreement between them that is binding on the bank. It is true that various things are done during the process of organization, obligations of some kind are incurred, the fulfillment of which must rest on other than strictly legal grounds. Until a bank is organized it has no legal existence, and consequently it can neither make contracts nor ratify those made by any of its members.

g. Election of President and Other Officers. After the election of directors they should elect a president, vice president, cashier, and such other officers as may be required. If the bank is a national one, they must ask shareholders to pay at least fifty per cent of the capital subscribed by them before its doors can be opened to the public. Generally, the shareholders pay the entire amount in the beginning. In some cases, however, this can not be conveniently done, and the national bank law provides that the balance may be paid in ten per cent monthly installments.

h. How the Capital must be invested. Every national bank must invest from the outset a portion of its capital in United States bonds. Those having more than $150,000 must invest at least $50,000 in United States bonds, those having less than $150,000 must invest twenty-five per cent of it in that manner.

i. Controller authorizes the Bank to begin Business. When fifty per cent or more of the capital has been paid into the bank, and a portion has been invested in United States bonds as above described, and the Controller has assured himself that all the other requirements of the law have been executed, he gives to the association a certificate stating that the law has been fulfilled, and that it "is authorized to commence business." This must be published in the city or county where the bank is located for sixty days or more after it has been issued.

9. Mode of organizing State Banks. — The requirements of the states for organizing state banks greatly differ, and it would take too much space to describe all that must be done to perfect the organization of a state bank. In general, it may be said that the requirements are easier, though of late years there has been a marked improvement in the way of organizing them on a sounder basis than formerly. Doubtless the requirements of the national banking system have had the effect of toning up the states to improve their systems.

10. Adoption of By-laws. — Lastly may be mentioned the preparation and adoption of a code of by-laws for the government of the bank. These are very essential and form a kind of supplemental charter or guide. They are adopted by the shareholders, and contain among other things an article providing how they can be amended. The others relate to the mode of holding annual and special meetings, the election of president and other officers, the bonds they must give before entering upon their duties, the regulation of the transfer of stock, loans, examination of the bank, and other matters. A set of by-laws is usually prepared from a comparison of several codes that have been in operation in other banks. The Controller always furnishes a set to a national bank that is organizing.

V. SHAREHOLDERS

1. How Shareholders must pay for their Stock. — Shareholders, especially of national banks, must pay money for their stock. They can, however, give a check on another bank, for this is deemed equivalent to money. The law guards very strictly against the loose practice that once prevailed of giving notes for stock, which, after the completion of the organization, were discounted by the bank and then returned to it in payment for its stock. By this process a bank was organized without any real capital. Such banks were bogus affairs, yet thousands of them were organized prior to establishing the national banking system.

2. On Payment they receive Certificates. — On paying for their stock the shareholders receive certificates, which are titles to the bank's property, in other words, titles to the capital they have contributed. When they pay in installments, they receive receipts for the amount paid, and their certificates after paying the last installment. The par value of a share in many corporations is $100, and this sum is fixed by the national law for all national bank shares except those issued by national banks which were once state banking institutions.

3. How Certificates are prepared. — The certificates may be either engraved or printed. An engraved certificate is more costly, but it is not so easily counterfeited, and for that reason is more desirable.

4. How signed and issued. — Before they are issued they must be signed by the president and cashier. If a cashier should sign one in blank which should pass out of the bank and be filled up and circulated, the bank would be liable to a subsequent holder who should receive it innocently. The bank would be holden like the blank indorser of a note. The signature is the test of genuineness; if this is correct, the bank can not dispute the other matters it may contain.

5. Stock Book. — Every bank keeps a stock book containing blank certificates with stubs attached thereto. When a certificate is filled out to a shareholder, it is numbered and a similar number is put on the stub, also the name of the holder of the certificate, the number of shares he owns, and the date. In other words, the stub is a copy of the essential parts of the certificate.

6. Transferring Stock. — After the shares have been issued they are often transferred. Shareholders die, or sell their stock or pledge it, and banks are constantly required to issue new certificates. The cashier is the proper officer to attend to this business, and when doing so acts for the bank, and not for the shareholder requesting the transfer. In making a transfer the old certificate is surrendered, the names of the president and cashier are partly cut out, and an entry is made across its face something like this, "Stock transferred and certificate canceled," to which is added the date of the transfer and the number of the new certificate issued in place of it to the new owner. The surrendered certificate is then pasted in the stock book opposite the stub and corresponding to its number, and a new certificate is issued, to which a higher number is given than to any other. Thus, suppose fifty-seven certificates were issued to the original subscribers, and one of the subscribers, not long afterward, sells his shares; the certificate issued to the new purchaser would be numbered fifty-eight.

If he should sell only a portion of his shares, the process would be a little different. The old certificate would be surrendered and two new ones would be issued, one to the new purchaser for the number of his shares, and another to the former owner for the remainder of shares still held by him.

7. Importance of making Correct Transfers. — The proper transfer of the shares of a bank or other corporation is a matter of great importance, as will soon appear. Suppose A has sold his shares to B and given him the certificate. B takes it to the bank and asks the cashier to complete the transfer and issue to him a new certificate for the shares. The cashier neglects to do this, and A is sued by some one to whom he owes a debt, and the shares are attached as belonging to A, because the stock book contains no entry of any sale or transfer. Can B hold the shares against the attaching creditor of A? He can, for the reason that the neglect of the cashier to make the transfer can not be imputed to B. But suppose B should neglect to surrender the certificate and demand a new one; in such a case he might have difficulty in keeping A's creditors from taking the stock. The law looks with a suspicious eye on any other owner than the one disclosed by the record, and therefore it is of the highest importance that this should be correct.

8. Bank is responsible if Certificate is not Genuine. — A bank officer must assure himself that the certificate presented for surrender is genuine. It is possible for a knave to get hold of a certificate, fill up the transfer, sign the name of the owner, and present it to the cashier and request a new one. A knave in New York did this, the new certificate was issued, which he immediately sold, and received the money. The bank had the satisfaction, however, of catching him and putting him in prison.

9. Issue of Certificates to Trustees. — Certificates are sometimes issued to persons as trustees. When this is done the certificate ought to show the nature of the trust, and not simply the name of the trustee with the designation, "Trustee." Banks are sometimes careless in this matter; yet the need of specifying the trust relation ought to be evident to any bank officer. Suppose the trustee should die, what shall the bank do concerning the transfer of the stock? Another person appears who claims to be appointed in place of the deceased trustee, how can he be identified? He brings letters showing his appointment in place of John Smith, the former trustee; but John Smith may have been trustee of many things; the bank has not a scrap of evidence that he was trustee of any stock of the bank belonging to any particular person or estate. Surely the bank ought to have some evidence of the beneficiary.

10. Transfers by Trustees. — Frequently executors, administrators, and other trustees request the cashier to transfer the stock of which they have the management to donors or purchasers. Before making the transfer requested the cashier should carefully examine the trustee's authority. If he is an executor, the cashier should request him to present the will under which he is acting, or a copy; if he is an administrator, the cashier should request him to present a certificate from a proper court, showing that he has authority to act in this manner; if he is a guardian, the cashier should likewise request him to present the proper evidence of his authority. A trustee has no right to complain of this requirement; for, as the bank is liable for any error in the transfer, the cashier is entitled to the highest proof of the authority of any one who appears claiming to act in a representative manner. And even if the cashier knows an executor or other trustee, by reason of his relationship to the bank, as a depositor or director, nevertheless the evidence should be required and put on file, showing the trustee's authority to act, for the security of the bank, of the trustee himself, and of all others who may be interested in the matter.

Some banks require an administrator or executor who is appointed in another state to go to the proper court in the state where the bank is located, and qualify and bring a certificate of his authority. In other words, some banks will not receive the certificates granted by courts outside their own states. This is asking too much, for any bank is protected in accepting the certificate of a court having proper jurisdiction in another state.

Finally, it may be added, it is not an unusual practice to require such a trustee to give a bond of indemnity to secure the bank should a loss occur in consequence of any mistake made in transferring stock by his direction. This is most frequently done in the case of a foreign executor or administrator. His certificate of authority to act may be correct, but the bank assures itself against all danger by taking a bond from him of this nature.

11. Action of Bank when Certificates are lost. — Sometimes a certificate is lost, and the owner requests a new one. The official to whom he applies should be strongly assured that the certificate is lost before issuing another. When another is issued, "Duplicate," or some other mark, should be written thereon to indicate its nature, and a bond of indemnity should be taken by the bank to secure it against possible loss.

12. Reissue of Certificates to Women after Marriage. — Sometimes shareholders change their names, especially women who marry. A new certificate ought then to be made to her, as a bank at all times ought to know the names of its shareholders. If she sold her shares, how should she sign the transfer? Suppose her original name was Mary *Dick* and her married name *Brown*, the proper form of signature would be Mary Brown, formerly Mary Dick.

13. Liability of Shareholders. — Stockholders of national banks and also of many state banks and other corporations are liable in the event of the failure of a bank to a certain amount, if this be needed, to pay its debts. Suppose a national bank has a capital of $1,000,000 dollars, and $3,000,000 of deposits, and fails, having lost half of this sum by improvident lending. The shareholders can be required to make this loss to depositors good to an amount equal to their stock. In other words, they can be compelled to pay $1,000,000 more, which will be used to pay the bank's indebtedness to its depositors. When such a calamity overtakes a bank, shareholders often try to escape the assessment made on them for the purpose of discharging the bank's indebtedness. One of the ways is to transfer their stock just before the failure. Such a transfer is regarded with great suspicion, especially if it be to an irresponsible person. Again and again have such transfers been declared void as mere evasions of liability. But, we repeat, if a shareholder has sold his stock in good faith, the failure of the purchaser to have the transfer made, either through his own negligence or that of the officers of the bank, will not render the seller liable. Yet some one is liable in all cases, and that person is the owner of the stock. The question in such cases, therefore, is to find out the real owner. This question is of great importance, especially when bank stock has been pledged as security for a debt. Though a national bank can not take its own stock as security for a debt at the time of making a loan, it can take it as security for a previous one, the ultimate discharge of which may be feared; and if it is thus taken, suppose the bank whose stock is pledged should fail, would the other bank, which has taken it, be liable for an assessment? This question troubled the courts for several years, but the Supreme Court of the United States decided the question in the Pauly case in such a clear and satisfactory manner as to remove all difficulties.[1] Several principles were announced that may be briefly stated. (1) That the real owner of the shares in a national bank may be treated as a shareholder. (2) If the shares are pledged to a bank and transferred in such a way as to indicate a change of ownership, it is liable to an assessment. (3) But if the mode of transfer shows that the bank is simply the pledgee and not the real owner, it can not be assessed. (4) Lastly, if shares are transferred simply to evade liability, the original owner may be assessed. Thus, suppose the owner of shares transfers them to another and never says anything about the matter, and after the failure of the bank the transferree should make the unwelcome discovery that he was a shareholder. He has never bought or paid for them; in truth, would not have purchased them had they been offered to him. In such a case it would be unjust to hold him liable, and the law does not go so far. But if a person knows that his name is on the stock book as a holder, he can not after the failure of the bank show it ought not to have been there.

[1] 165 U. S. 606.

VI. ANNUAL MEETINGS

1. An Annual Shareholders' Meeting must be held. — During the first month of the year national banks are required to hold their annual shareholders' meeting. The state banks and trust companies also hold a similar meeting, though perhaps not in the same month. Indeed, every corporation is required to hold an annual meeting at which all of its members may participate.

2. By-laws regulate the Time and Manner of holding it. — The by-laws usually regulate the monthly date for holding the meeting and the length of the notice that must be given to shareholders. The requirements of the law and by-laws should be carefully regarded, for it is important to act legally on such occasions. "It is not only a plain dictate of reason, but a general rule of law, that no power or function intrusted to a body consisting of a number of persons can be legally exercised without notice to all the members composing such body."[1] Suppose there is a controversy among the shareholders over the election of directors, and the requirements concerning the time and place and matters relating to the meeting at which they were elected have not been properly followed. They may after all be defeated by judicial action.

The by-laws should be careful to state how the notice of the meeting is to be given to each shareholder, through the post office or personally. If no mode is provided, the notice must be served on each shareholder. This is

[1] Morawetz, *Private Corporations*, § 354.

the legal rule, though perhaps if notice had been given through the post office long enough to establish a custom or usage, that might suffice.

Again, the meetings can not be held at an unreasonable hour, or at an unusual place where all the shareholders can not without great inconvenience be present. Furthermore, after a meeting has been organized, it may be adjourned from time to time for the transaction of business without giving another notice to the shareholders, for it is a continuation of the same meeting.

3. Majority act for All. — When such meetings are properly called, it is a general rule that the majority act for the corporate body, unless the charter or other law plainly requires action by the larger number in order to bind all. "Each and every shareholder contracts that the will of the majority shall govern in all matters coming within the limits of the act of incorporation." [1]

By "majority" is meant more than one half of those who are present at the meeting. To hold a legal meeting a majority of all the shareholders need not be present or represented, or a majority of all the shares need not be voted; but those who do assemble will form a quorum for transacting business, and a majority of that quorum can bind the whole body.

4. How Shareholders must transact Business. — When the shareholders assemble, they must transact their business as their charter or other laws or customs prescribe. If, for example, business is transacted before the hour set for holding the meeting, it would be invalid, regardless of the number present, unless perhaps every shareholder was at the meeting. And if it be a special one the notice must indicate the nature of the business to be transacted.

[1] Morawetz, *Private Corporations*, § 354.

This is not needful in the case of an annual meeting, because every shareholder is supposed to know what is to be done. If, however, any extraordinary action is to be taken, like the sale or purchase of a banking house, in which the wishes of the shareholders are desired, it is proper and usual to specify this in the notice.

5. **Who act as President and Clerk.** — At these meetings the president presides and the cashier serves as a clerk.

6. **Who can vote.** — One other point remains for consideration, who can vote at a meeting? Every shareholder is entitled to one vote on each share. He can also authorize another to vote for him, and this is often done. The person thus acting is called his attorney or agent, and the document whereby he acts is known as a proxy. One of the peculiarities of the national bank law is, no officer can act as attorney for another at the annual meeting. The law aims to keep the officers apart from the shareholders as much as possible. But when a person has sold his stock, which has not been transferred on the books of the bank, who can vote thereon? The real owner is the new purchaser, yet his name is not on the company's books. It must follow the record. Accordingly it is a well-known rule of law that one who has sold his shares has a right to vote on them until the transfer has been recorded on the books of the bank. The pledgor of a stock has the same right, and for the same reason.

7. **Comparison between Bank Meetings in the United States and Canada.** — The annual meetings of banks in this country are usually very brief and tame affairs. In Canada shareholders proceed very differently. An elaborate statement is prepared by the manager setting forth the history of the business of the bank during the year, accompanied with suggestions pertaining to future opera-

tions. Many shareholders attend and often ask numerous questions, which he answers. They are given a full history of the bank's operations, and go away feeling that their bank is not a mere blind pool into which they have thrown their money. The practice of these institutions can not be too highly commended.

It is often said in defense of American methods that a successfully conducted bank must be, after all, largely a one-man affair. It is true that its business must be largely given up to a manager, but there are times and seasons when it is proper to ask him to give an account of his stewardship, however competent and worthy of confidence he may be. Too often shareholders wait until some grave misdeed has been committed before making inquiry. It is well to have confidence in one another, to give bank officers all the authority they need for the successful conduct of the bank's business; nevertheless, they should be required to report what they have done, and inquiry be made into their work on all proper occasions to the end that they may never relax their vigilance, and continue to serve with the utmost fidelity.

VII. BANK CIRCULATION

1. Superiority of Bank to Individual Credit. — One of the functions of a national bank is to issue notes for general circulation; in other words, to use its credit as money. As state banks must pay a tax of ten per cent on their note issues, the tax operates as a prohibition and was intended to be prohibitory.

A bank, when thus using its credit, within proper limits, is performing a highly useful purpose. A desires to have $10,000 more credit or capital. He says to himself: "The bank in this town is issuing its notes and everybody willingly receives them. I will do the same thing." Accordingly he has printed a thousand ten-dollar notes similar in form to bank notes, signs them, and attempts to put them into circulation. He soon regretfully learns that hardly any one is willing to receive them.

In his sorrow and chagrin he goes to a bank and inquires what he shall do. The president says to him, "Give the bank your note for $10,000, and I will give you a thousand ten-dollar notes issued by this bank in exchange." The exchange is effected, A agreeing to return them or other bank notes at the end of four months and something more to the bank for the use of its credit. These notes A can readily circulate. What is the nature of this transaction? A has exchanged his note, possessing limited credit, for the notes of the bank, which possess unlimited credit. Why is the credit of the bank so much better than his own? Because it is known to possess wealth; it has long been issuing notes and has always redeemed them whenever the holders have desired payment; its credit, therefore, has become firmly established. A may regret that his credit is not as extensive; he says to himself, "I am worth just as much as the bank; it ought to be as readily taken;" but he can not whistle down the fact, which is otherwise.

2. Amount of Notes that a Bank can issue. — Whenever such a system of issuing bank notes has been set up, the amount has been regulated by the needs of borrowers. The national bank system changed this so far as prescribing the maximum amount of notes that a bank can issue. It can issue notes only to the amount of the par value of the national bonds in which its capital may be invested. It can, however, if it pleases, invest its entire capital in this manner, and for several years after the system went into effect national banks were obliged to invest all their capital in national obligations. At the present time the profits on issuing notes are not large enough to tempt banks to invest more than the minimum amount of capital required by law.[1]

3. Security for them. — The bonds are deposited with the Treasurer of the United States, and must be registered. This is done to render them more safe from loss by robbery, as a registered bond is not negotiable like a coupon bond. The latter is like an ordinary negotiable note, and if it is stolen and transferred to another, who buys it in good faith, knowing nothing about the theft, he acquires a good title and can compel the maker to pay him. When a bond is registered, purchasers must follow the record in order to acquire a good title.

[1] See page 41, showing how much of a national bank's capital must still be invested in national bonds.

A national bank can purchase bonds and send them to the Controller of the Currency with the request that they be exchanged for registered bonds for deposit with the Treasurer, and he will perform the service. The securities of every bank are put in a box which is kept in a safe containing no other securities, and during the period of nearly forty years since the system went into operation, none of these bonds have ever been mislaid or stolen.

The bonds thus sent are assigned in trust to the Treasurer of the United States, who sends a receipt for them containing a description or identification of each bond. The mode of assigning them is described in a note printed on the back.

Interest on them matures twice a year, which the Treasurer pays by check to the order of the bank payable at any United States subtreasury, or United States depository.

4. Government prints the Notes. — Having complied with the law in depositing registered bonds as the basis of its circulation, a bank has fulfilled its part. The government buys the paper on which the notes are printed, makes the designs, and prints them and delivers them free of cost to the bank, except the express charges for sending the notes. When sent they are complete, lacking the signatures of the cashier and president.

The designs on American bank notes are very different from those on the notes issued by the Bank of England. Elaborate designs and colored inks are used here, because it is believed the notes can not be so easily counterfeited. The Bank of England designs are few and simple, but the notes are "in fact the most elaborately manufactured 'bits of paper' imaginable. The paper alone is remarkable in many ways, notably for its unique whiteness and the peculiar feel of crispness, while its combined thinness and transparency are guards against two once very popular modes of forgery, the washing out of the printing by means of turpentine, and erasure with a knife."

The wire mark, or water mark, is another precaution against counterfeiting, and is produced in the paper while in a pulpy state. The shading of the letters of this water mark further increases the difficulty of imitation. The paper is made entirely from new white linen cuttings and is so tough that a note will sustain the weight of thirty-six pounds. Again, the note is not of uniform thickness. The paper is thickest in the left-hand corner whereby it retains a keener impression of the vignette there, and is considerably thicker in the dark shadows of the center letters and beneath the figures at the ends. Counterfeit notes are invariably of uniform thickness.

Three plates are made for printing the notes of a national bank. On one plate four fives are engraved and printed; on another, three tens and a twenty; on the third, a fifty- and a hundred-dollar note.

5. Banks should not pay out Soiled Notes. — A bank should exercise care in not paying out a soiled note either of its own or belonging to any other bank. Some banks are very careless in this regard. It is more difficult to detect forgeries of notes that are worn than of clean notes in which all lines are plainly seen. But as banks must pay the express charges for returning notes for redemption, some banks keep this item of expense at a minimum by putting back into the stream of circulation notes that ought to be sent to Washington for redemption.

6. Redeeming Notes. — How are they redeemed or paid? There are two ways. First, every bank must redeem its own notes when they are presented over its counter in legal tender notes issued by the government. Usually a bank will pay specie for its notes if it is desired, but this can not be demanded by the presenter as a strict right. The second and far more general mode of redeeming them is through the treasury department at Washington.

Every bank must keep a fund consisting of United States notes equal to five per cent of its circulation with the United States Treasurer. If the circulation of a bank consisted of $50,000, this fund would be $2,500. When a bank accumulates $1,000 of soiled, torn, worn-out notes, or a multiple thereof, received from depositors and borrowers in payment of their loans, they are sent to Washington, and government notes of the same amount are received in return. The notes thus sent to the United States Treasurer are sorted for the purpose of finding out what banks issued them and, after this work is completed, they are charged up to their various issuers. In other words, the $1,000 sent by the government to the bank in exchange for these notes is taken out of the various redemption funds of the banks that issued the redeemed notes. For example, let us suppose that the $1,000 thus sent consists of one hundred ten-dollar notes issued by ten different banks, the First National in Chicago, St. Louis National, Philadelphia National, and so on. The official in charge of this business in Washington takes $100 out of the five per cent redemption funds of each of these banks and thus collects his $1,000 to send back in place of the soiled notes he received. Of course, the redemption funds of the bank become depleted by this process, and a way is provided for restoring them. When $500 has been taken from the redemption fund of any bank to redeem its notes, the bank is notified and requested to make the amount good. In a short time the fund is restored to the full amount.

Lastly, the notes thus returned are destroyed. Formerly they were burned, but this proved a somewhat hazardous process, as pieces were drawn up the chimney and picked up and put into circulation, or offered for redemption. As the result of this experience they are cut into small pieces and macerated; this method has proved effective. The bank whose notes have been destroyed can now ask the government to print and send to them a similar amount of new notes, thus completing the cycle and filling up its circulation to the original amount. The government pays the express charges on the notes returned, the sending bank pays the expense for transmitting the notes to Washington.

7. Redemption of Notes of a Failed or Retired Bank. — When a bank fails or retires from business the government redeems its circulation with government notes. The bonds held by the bank are sold and always yield enough to furnish the means for this purpose. As some of its notes are never presented, having been lost or destroyed, these represent a clear gain, which is kept by the government. The Secretary of the Treasury remarked in his annual report for 1895 that "the gain to the government on account of national bank notes lost or destroyed, and which are consequently never presented for redemption, is estimated to be two fifths of one per cent upon the total amount issued, and has according to this estimate amounted to the sum of $2,805,715." The banks claim that as the government retains the gain from the loss of their circulation, it ought, besides paying for all the expense of making the notes and printing them, to pay the express charges attending their redemption, and the issue of new ones in place of those redeemed. The government, however, is willing to pay the expense only one way.

8. Redemption of Missing and Partly Destroyed Notes. — Very often parts of notes are missing and regulations have been established for redeeming these. The need of making some regulations will appear by an inquiry or two. Suppose about half a note is presented containing the signature of the president. Shall the treasury redeem it at its full value? May not the other part containing the cashier's signature be presented? Suppose the larger part of a note is presented, torn the other way, but containing neither signature. The rule of the issuing bank is, when such a mutilated note is presented, to pay it if assured that there is no other part in existence. Sometimes the presenter is required to make an affidavit stating from whom he received the note and his reasons for believing that the remainder is lost. The government, however, can not exercise any discretion. It has a "discount glass" which it puts over the note to find out how much is destroyed. Notes that are equal to or exceed three fifths of their original proportions, and bear the name of the bank and the signature of one of its officers, are redeemed at their full face value. Notes of which less than three fifths remain, or from which both signatures are lacking, are not redeemable by the Treasurer, but only by the bank that issued them. Fragments less than three fifths which have been accepted by the issuing bank may be redeemed by the Treasurer when they are accompanied by satisfactory evidence that the other parts do not exist. Still more minute regulations exist for redeeming parts of notes at less than their face value.

9. Liability of Bank for Stolen Blank Notes that get into Circulation. — As bank notes are printed without the signatures of the president or cashier, if they are stolen when in this condition, and the signatures of these two officers are forged and they are put into circulation, the bank is, nevertheless, responsible for them. This requirement was imposed on the banks in 1892. It is quite contrary to the general rule applying to the negotiable notes of individuals, for the law regards an unsigned note that goes astray and is afterward signed by the finder as an incomplete, forged note, for which the purported maker is not responsible. The law says he never made it.

10. How the Expense for redeeming Notes is borne. — Lastly may be mentioned the mode of ascertaining and paying the bill for redeeming bank notes. Once a year the account is made up by the government and divided among all the banks in proportion to the amount the redeemed notes of a bank bears to the entire amount that have been redeemed. The principal charges are for transportation and cost for assorting, which includes the salaries of the persons employed to do the work, printing, and contingent expenses. The expense does not vary greatly from one dollar for each thousand dollars redeemed. The system, it may be added, is effective and economical, and in the main satisfactory to the government, to the banks, and to the public.

VIII. DEPOSITS AND DEPOSITORS

1. Deposits are General and Special. — One of the most important duties of a bank of discount and deposit is to receive and keep deposits. They are divided into two kinds,—general and special. General deposits always consist of money; special deposits may consist of money or other valuable things, bonds and the like. Before the days of safe-deposit companies large quantities of bonds and other valuables were kept in bank vaults, and even now in the country, where no other places equally safe exist, millions in the aggregate are confided to banks for safe keeping.

2. Liability for Special Deposits. — Many losses have occurred, principally from theft, of special deposits, and the losers have often sought to hold the depositary responsible. What rule must be applied to banks for the safe keeping of such deposits? As they usually receive no reward for this service, rendering it purely to accommodate their patrons, they are bound to exercise only reasonable care — the same care as in keeping their own securities. A depositor could not expect they would be kept in a safer place; and if a thief should get inside and happen to take the securities of the depositor instead of those belonging to the bank, it would not be responsible for the loss.

Many years ago a depositor made a special deposit of gold in a Boston bank. It was to be kept specifically for the owner and returned to him when demanded. Parker, the cashier, saw his chance, took the gold and fled. The bank was sued for the loss. The facts were clearly proved, nevertheless the bank was not held liable, although the thief was one of its officers. The court declared that the bank did not employ the cashier to steal; if it had, it would have been clearly liable. This was an act wholly outside his official sphere, and the bank was no more responsible for what he did than it would have been had the robbery been committed by an outsider.

Had the bank suspected his honesty, a very different question would have been presented. In several cases banks have been held liable for losses occurring through the negligence of their cashiers — cases in which the directors knew that they were speculating and using funds not belonging to themselves. A case like Parker's occurred not many years ago in Pennsylvania, in which the teller took some bonds belonging to a depositor. The court remarked that as the bailment was merely for safe keeping, and gratuitous, the dishonest act of the teller was in no way connected with his employment. "Under these circumstances the only ground of liability must arise in a knowledge of the bank that the teller was an unfit person to be appointed or to be retained in its employment. So long as the bank was ignorant of the dishonesty of the teller, and trusted him with its own funds, confiding in his character for integrity, it would be a harsh rule that would hold it liable for an act not in the course of business of the bank, or of the employment of the officer." [1]

The facts in almost all cases differ; the rule is well understood; but its application is not always easy. When a loss occurs a depositor is very apt to try to recover from the bank, because if he fails in his attempt, he is no worse off except the cost of his venture, and he may succeed.

[1] Scott *v.* National Bank, 72 Pa. 471; Smith *v.* First National Bank, 99 Mass. 605; First National Bank *v.* Ocean National Bank. 60 N.Y. 278.

Consequently, only in a small number of cases has the depositor ever shown that the bank was so negligent that he was justly entitled to recover the value of his loss.

Banks seek to relieve themselves as much as possible from this responsibility, and the rapid formation of safe-deposit companies is a great boon to them. These have been established for several reasons: first, to make more secure places for depositing valuables; second, to earn a profit from the business. In many cases they belong to banks and form a part of their business.

3. A Different Rule of Liability applies to Safe-deposit Companies. — They must exercise the utmost care, because they are paid for performing the service. Rarely have losses been incurred by them, and on these occasions they have been promptly adjusted.

4. Classification of General Deposits of Money. — Passing from special deposits of bonds, etc., to general deposits of money, it may be remarked that these are of two kinds, — demand, and time or special deposits. The difference between the two kinds is in the terms of keeping them. A demand deposit is payable on demand, a special deposit is payable by agreement after a fixed time, ten days, thirty, six months, or other period.

Again, the amount of special deposits of money held by a bank is only a small portion of its entire holdings. They are made by trustees and other individuals, and consist of money awaiting investment or payment to some individual. The object of making them is to obtain interest, as banks in this country rarely pay interest on demand deposits.

5. Legal Relation between a Bank and a General Depositor. — The relation between a bank and a general depositor of money is that of debtor and creditor. In other words, the bailee relation, above explained, does not exist. A bank does not expect to return the identical money, notes, or checks deposited; nor does the depositor expect to receive them. Again, should the bank lose the money deposited, by robbery, fire, or other accident, however unavoidable, it would be liable for the amount, like the borrower of money who gives his note therefor.

6. Amounts held in the Largest Banks.—As the profits of banking, especially in the large cities, are derived largely from general deposits, every bank seeks to accumulate the largest amount possible. How they have succeeded may be best shown by a few examples.

AMERICAN BANKS

City National Bank of New York	$114,268,700
First National Bank of New York	67,093,100
National Bank of Commerce	59,087,800

FOREIGN BANKS

Bank of England	$218,989,230
National Provincial Bank	205,421,780
London and County Banking Company	226,314,260
Lloyd's Bank	256,833,470

7. How a Bank can make a Profit on them.—The reader may wonder how, if all demand deposits are payable on demand, they can be converted into a great source of profit. The answer is, although they are thus payable, a bank takes the chances of such a demand and lends the larger portion of them, either on demand or for short periods of time, and receives interest thereon. And this constitutes the chief peculiarity of the banking business. Yet the risk is not so great as the above statement might lead one to believe, for the reason that depositors do never intend to draw out all their deposits unless under exceptional circumstances. On the contrary, they generally seek to preserve a very considerable and fairly uniform balance; and a depositor who should not observe this principle, — who should deposit a large sum to-day and draw out nearly all to-morrow, should deposit checks and draw against them before the money was collected, and should do these things constantly, — would be told by the president or cashier after a time that his account was not worth having. This, however, is not the course of depositors generally. They seek to maintain a regular deposit, and this is especially true of larger depositors. Thus banks come to have a large fund, a reservoir which, though as fluid as water, preserves nearly the same level. Knowing this from long experience, a bank is perfectly safe in lending a large portion.

8. Whence do Deposits flow into a Bank? — Every business man keeps an account with a bank. He needs the facilities it affords. To discharge indebtedness always by the payment of money would be an awkward way of transacting business. A merchant deposits the money paid to him, also the checks he receives, which are collected for him by the bank. Many possessors of wealth who are not engaged in business do the same thing. It is more convenient and safer to deposit their income and pay it out by check than to make any other temporary disposition of it. All corporations also have accounts with banks. Finally persons who possess smaller means are getting more and more in the way of depositing what they receive and checking it out in payment of their debts.

Sometimes a depositor has a somewhat costly account to keep because he puts into his bank a large number of small checks, each of which requires just as much bookkeeping and other attention as large deposits. Consider a newspaper with a large subscription list, in which payment is made chiefly by checks; or a life insurance company with its thousands of small checks received for the payment of premiums on policies. Are such accounts worth having? The newspaper or insurance company makes the account desirable by keeping a large balance in the bank as a mode of payment for doing the business.

The banks in the large cities, especially in New York, get a large amount of deposits from banks in the country. Almost every bank and banker in other places has an account with a bank in that city. Banks outside New York keep deposits there for two reasons: first, in order to draw against them; second, because it can not always lend its funds at home. As a New York bank can profitably lend them, it is willing to pay something, perhaps two per cent or more, for the use of them. It so happens that the banks there can lend money when banks in other places can not; for a large class of speculators live, or try to live, by speculating, who, like gamblers in all countries and ages, are willing to try their fortunes so long as they can borrow money, and the New York banks lend to them.

9. Minimum Limit of Deposit. — As the cost of doing business is large, some banks have a rule expressing their expectation that depositors will keep an average deposit of at least $500 or $1,000. Some banks have a higher limit of $5,000. The Chemical National Bank of New York has long had a $5,000 limit, and banking is a cheerful business when such a rule can be adopted and followed. Doubtless that bank has but few accounts with a balance so small as these figures.

10. There are Various Kinds of Depositors. — Almost every bank has some depositors who try to get as much as possible for the smallest returns. One of the ways of doing this is to deposit checks and draw out the proceeds before their collection. By this process a depositor actually gets capital for carrying on his business without paying interest. Bankers are always hoping, among other things, that their depositors will keep larger balances. So, although a bank may know that it has a customer who is constantly depositing checks received in his business in payment of debts due to him, and immediately drawing out the money credited to him, it will not cut him off on the discovery of the practice. The bank will watch him, perhaps tell him that he ought to wait after depositing his checks until the money they represent has been collected before drawing it out. At last, if it becomes convinced that he is playing a sharp game, it will cut him off. Many a depositor of this class is cunning and will not draw out all, but will retain enough to tempt the bank to suffer him to continue his deposit, although in truth his balance is too small or irregular to be worth much. Many depositors, therefore, who do not keep the balances expected of them are not cut off, because it is hoped that their business will grow and their accounts ultimately will prove profitable.

11. Crediting and charging back Deposits. — Banks usually credit all deposits, whether consisting of checks or money, in the depositor's book, which is taken to the bank with him when he makes a deposit, the same as money. Yet they are not in every respect the same thing, and should the bank on which they are drawn fail before they are collected, what then? First, they may be charged back to the depositor. That is a very common practice. Suppose a depositor is one of the sharpers above described, who has drawn out all, or a large part of the money represented by his checks before their collection? If they are charged back to him, the bank would lose all control over them and might find itself in the unpleasant position of a creditor to the depositor. In such a case the bank retains them, or to the extent of the depositor's indebtedness. In other language, the bank has a *lien* on them for the amount of its advances. What the bank in effect has done, is to pay money on them in advance of their collection, knowing that it has the right to retain the money collected to reimburse itself. This right it can maintain so long as the checks are under its control.

12. Reasons for and against paying Interest on Deposits. — Foreign banks pay interest on general deposits, and the practice is becoming more common to pay interest on them in this country. The reasons for and against paying interest will be briefly stated.

First, because it is right to share with a depositor the profits earned on his deposit. The bank that receives his money lends it, or a portion, receiving a profit thereon; why, then, should it not, after retaining enough to reimburse itself for all the expense of management, lending it, etc., share in the residue with the depositor who has thus furnished the bank with the means whereon a profit has been earned?

Second, because the trust companies and private banks and bankers pay interest on them, and other banks must do so in order to get and keep them. This is an unanswerable reason and goes to the heart of the matter. Depositors are drawing more and more toward the trust companies, because they are willing to share the profits which accrue from lending them, with their borrowers. Many individuals keep two accounts: one with a trust company in which they put the cream of their deposits —

those which are the least disturbed or used; and another account with a bank where they keep their skim milk or active deposits, — those which are constantly fluctuating and therefore are of less value. Depositors can be prevented from skimming off the cream from their deposits in deposit banks and putting it in the trust company churn, only by offering inducements strong enough to lead them to do otherwise. Yet if banks begin to give a depositor some compensation, others are likely to find this out, and make similar demands, and the practice of paying interest will become general. This, therefore, is the problem confronting many a bank to-day. If interest on deposits is not offered and paid, deposits will inevitably slip away and go into the trust companies; if interest is paid on any deposits, the practice will grow fast and soon spread to all depositors.

Third, depositors are paid by foreign banks and bankers, why should banks in this country refuse to pay them? Furthermore, it is certain that if they are not paid they will float away more and more to the trust companies and private bankers. For a long period banks and bankers in every part of Europe have paid interest on deposits, and they have wondered why American depositors were so slow in making similar demands of their depositories.

Fourth, the last reason for paying them is, banks demand interest on their deposits when kept in other banks, why should not their customers make the same demands of them? How illogical, it is contended, for them to demand the payment of interest on their deposits and decline to pay it over to those from whom such deposits originally came. For it should be remembered that the deposits in the New York city banks, for example, belonging to the country banks, do not in truth belong to the country banks, but to their depositors. If, therefore, interest is received by country banks on such deposits when they are lent, the reason for demanding interest by their depositors in turn may be applied with equal force by them. There is a law on the statute book of Pennsylvania permitting the banks of that state to receive interest on the deposits of a bank which are kept in another bank, but forbidding it to pay interest on deposits to the individuals to whom such deposits truly belong. This rule, therefore, works only one way; a more illogical law was never enacted.

Having stated the reasons why interest on deposits should be paid, we will state the reasons against paying it. First, banks will take greater risks in lending them in order to earn the interest they have promised to pay. This argument is regarded as possessing so much virtue that some states forbid by positive law the payment of interest on deposits. This law is supposed to be the outcome of hard, disastrous experience. It will be easily seen that if a bank agrees to incur an obligation of this nature, it is likely to be more eager to lend its funds, in order to earn the interest on them that must be paid, than it would be did no such obligation exist. And this is founded on long experience.

Second, banks will not do as much to accommodate their depositors in the way of lending them money. This reason clears up the conduct of many depositors in not demanding interest on their deposits. The relation between bank and depositor is reciprocal; it is not a one-sided arrangement. If a bank pays no interest on deposits to a customer, it expects to square the account by making large loans to him, or at the most favorable rates of interest. Customers understand this and consequently many are quite content with matters as they are. Again and again, when money has been scarce and the rates very high, banks have continued to lend to heavy depositors, who were also large borrowers, at the old rates, because they kept large balances. If a depositor should ever reverse his practice and demand interest, the highest rate he can get, his bank will also reverse its practice and exact the highest rate of interest of him at all times. The conduct of both springs from the same source, is governed by the same rules, and is as clearly justified on the one side as on the other. There is no difference between the two in motives and practice.

In Great Britain the borrowers of money are not so dependent on the banks as borrowers are in this country. They make their notes and take them to bill brokers, who in turn negotiate them with the banks. It is true that the business men in the United States are getting more and more in the way of making notes and giving them to bill brokers to sell, and of depending less and less on banks for pecuniary assistance. When they become strong enough to break away entirely from banking institutions as borrowers, and intrust themselves on the great ocean of credit, feeling sure that the bill brokers will be able to raise at all times all the money they need, then they doubtless will demand and expect to receive interest on their deposits, the same as men of business in other countries. Until that time comes it is a question of the deepest import to a depositor and borrower whether he shall demand interest or not. On the whole, he doubtless has acted wisely and has received an adequate return thus far in not demanding any return in the way of interest on his deposit.

The payment of interest on public deposits rests on a somewhat different principle. First, the use of such deposits is well known, for the laws and practice define the times when the state, city, or other municipality must pay its obligations. A bank can, therefore, lend them to the best advantage. Moreover, municipalities do not ask for many favors of banks, as they borrow usually on bonds running for considerable periods. The public should insist on proper security for their deposits, though this obvious requirement has not always been observed.

13. Certificates of Deposit. — *a. Are Special Deposits.* Public deposits are in the nature of a special deposit on which banks usually pay interest. For such deposits, when made by individuals, banks give certificates of deposit which bear interest. A certificate may run for an indefinite time, or for two, four, six months, or longer period. If the certificate be given without stating any definite period, the bank is liable for the money at any time after demand until the statute of limitations, as it is called, has barred the claim. This statute in most states covers the period of six years. In other words, when a deposit is thus made, the bank is liable for the amount, no matter how long may be the period before the owner or representative calls for it. Time does not bar his claim. But if he demands his money and it is not paid, then he must take steps within six years afterward to collect it. If he does not, he is cut off. In like manner, if his money is deposited for a fixed period, he must call for it within six years after it is due, otherwise he is cut off. In the old savings banks there are many unclaimed deposits, but these, it will be seen under the rule above explained, are not cut off by this statute because the owners have not demanded them. Sometimes a person appears who claims to be a depositor; he has, however, absented himself so long that the bank does not know him. It is not unusual in such cases to ask him to give the bank a bond of indemnity before paying his deposit in order to insure the bank against a mistake in paying him.

b. How issued to a Stranger. In effect, a certificate of deposit is a check by a bank on itself. In issuing one payable to a stranger, he should be requested to write his name on the margin, so that, when it is presented for redemption, the indorsement, if it has been transferred, can be compared with the depositor's signature, and its genuineness be assured. Again, before paying the certificate it should be compared with the original entry to be assured that the amount has not been raised.

c. Is a Certificate a Note or a Receipt? If a certificate of deposit be considered by a bank as a check on itself, it certainly is not a promissory note, but simply a receipt. "A promissory note, payable on demand," says Justice Colburn of the Supreme Court of Massachusetts, "is due as soon as it is given; an action may be brought upon it immediately without demand. . . . A certificate of deposit is not due until a demand is made, and the certificate returned or tendered. . . . Such certificates are not commonly known in the community as promissory notes." [1] Many courts hold this view; on the other hand, there are many who think otherwise. Chief Justice Ryan of the Supreme Court of Wisconsin, after quoting Justice Story's definition of a promissory note, says, "The ordinary form of a certificate of deposit of money falls precisely within the definition." [2] The states therefore are ranged on two sides, many on each. But in all of them, if proper negoti-

[1] Burnham *v.* Allen, 1 Gray 146.

[2] Klauber *v.* Biggerstaff, 47 Wis. 555.

able words are written in a certificate, it can be transferred like an ordinary note.

d. Mode of suing to recover the Amount. In many states a certificate of deposit is a continuing security, and no action can be maintained against it for the money until after a demand has been made for payment. For the same reason the statute of limitations[1] does not begin to run against it in favor of the bank until payment has been demanded. A bank which was sued by the holder of a certificate of deposit defended on the ground that as it was payable on demand and nothing had been heard of the holder for more than seven years, the certificate was presumed to be dishonored and paid. But the court thought otherwise. "The signature of the instrument and the ordinary modes of business show that a certificate of deposit, like a deposit credited in a pass book, is intended to represent moneys actually left with the bank for safe-keeping, which are to be retained until the depositor actually demands them. Such a certificate is not dishonored until presented."[2]

e. Can a Bank receive its Own Certificate as Payment of a Debt? The well-known rule is that an agent, having a money demand for collection, can rightfully receive only money in payment, unless specially authorized by his principal to receive something else. Notwithstanding this rule, if the agent is a bank of deposit, it may receive its own certificate of deposit as money, in payment of a debt sent

[1] As we shall have occasion to refer to this statute frequently, it may be explained. The law presumes in many cases that a debt which has not been collected within a given time has been paid. Thus an ordinary promissory note runs six years, and if no interest has been paid during that time and no part of the principal, the law presumes it has been discharged. The statute of limitations fixes the time for declaring as paid or discharged all kinds of obligations.

[2] National Bank *v.* Washington County National Bank, 5 Hun 607.

to it for collection, and its principal will be bound by its action. The debtor, therefore, will be discharged by paying the certificate to the bank, even though it should become bankrupt and never remit the money to the principal.

f. Return of a Certificate. When the owner of a certificate demands payment, the bank has a right to insist on its return as a voucher of payment and security. And a bank would clearly be entitled to receive a bond of indemnity from the holder of a lost certificate before paying the money. This is the only safe course, though it has been decided that a holder can demand his money as a strict right after making clear proof of the loss of his certificate without giving such a bond.

14. How an Account is opened with a Depositor. — In opening an account with a bank, the depositor is required to write his signature in a book kept for that purpose, or upon a card, for the especial use of the paying teller. As a bank is the loser of money paid on the checks of depositors unless they are genuine, it is needful for a paying teller to make himself familiar with the signatures of his bank's customers to avoid mistakes in paying them.

15. Payment of his Checks. — It may be asked, does he really know whether the checks purporting to be signed by depositors are genuine or not? In many cases he has some knowledge of their signatures. Practice makes perfect in his business as in many others. It is remarkable how much knowledge can be attained about signatures by one who is constantly studying them, and whose success to a considerable degree depends on his proficiency in this regard.

There are, however, safeguards of the highest importance. First, many checks are presented for payment by other banks through the clearing house, and there is ample time to examine the signatures to them before crediting the banks to which they belong. Second, the fact that they are presented through another bank is a great protection. For in all such cases the banks that received them have taken them from their regular depositors and not from strangers, and the strong probability is that the depositors knew from whom they were taking them. In most cases they have been received directly from their makers, who have only one chance to lead others astray. It is possible for a confidential clerk of the maker to forge his signature; cases of this kind now and then happen. When a check is transferred by the original payee to another and is deposited by the holder, there is less certainty of its genuineness, yet the strong probability is that the second payee or indorsee knows the character of the person from whom he has taken it. At all events, all parties who transfer a check must indorse it, and this is a protection both to the bank and to the depositor.

16. Accounts of Minors, Trustees, etc. — Depositors are not confined to men or corporations; they include all kinds of associations and women. A depositor who is not of age should act through a trustee or guardian; yet banks often take accounts from persons who are nearly of age, receiving their money and honoring their checks. It is the prudent course in such cases for the bank to make inquiry of the depositor concerning his age, and, on learning of his minority, to obtain his parents' or guardian's consent to his keeping an account before opening one with him. This course would be a complete protection to the institution.

17. Accounts of Women. — The practice is rapidly growing among women to keep bank accounts, and this is to be commended. Among other advantages their checks serve as receipts for the bills paid by them. Again, it is a step in the way of forming a business habit and of becoming more independent in their business affairs. Rarely are women, except those engaged in business, borrowers, but occasionally they overdraw their accounts.

18. A Bank should not receive a Deposit when it is Insolvent. — Many of the states within a few years have passed laws forbidding banks to receive deposits when they are insolvent and making the offense a crime. When a bank has thus taken a deposit the depositor can recover the check or money. Some difficult questions though have arisen when banks that were insolvent did not know of their real condition and did not expect to suspend operations. Generally, in such cases, a depositor can not recover. In one case a depositor was credited with a check that was sent to another bank for collection and collected, and the amount was credited to the first or sending bank. The bank having failed, the depositor claimed that he ought to receive the full amount of his check, in effect, a preference over the other creditors, but the court decided otherwise. In order to recover, it is not enough usually to show that the bank was insolvent at the time it received deposits, but that it knew of its condition and did not intend to continue long in business. Fraud is essential to recovery; and it must, therefore, appear that the bank took the deposit knowing or expecting it would soon fail. The act then becomes a fraud, for no depositor under these circumstances would make a deposit in such an institution.

If a deposit, consisting of checks or other instruments which are credited as cash to the depositor, is made in a bank, with the right to draw immediately therefor, and the bank fails soon afterward and before their collection, can the depositor demand his checks or the proceeds if they have been collected, or must he share like the other creditors? By thus crediting the checks as cash, the bank becomes the owner, and if it makes advances thereon it has a lien for the amount, whether the bank fails or not. In no case can the depositor reclaim his checks until he has paid his indebtedness. Can he recover his checks at all? Does the bailee relation exist between the bank and the depositor? Does not the practice, whenever it exists, of crediting checks as cash, negative completely the intention or act of forming such a relation? This is the view held by many courts. The bank becomes the real owner, and any bank that receives them is justified in thus regarding the first bank as the owner, and in making an advance thereon assured that it may hold the proceeds, of the checks to reimburse itself. On the other hand, it is just as certain that no depositor would continue to deposit checks, drafts, or any documents in a bank which he supposed to be insolvent. Its method of treating his deposit as cash would in no wise change his purpose to deposit elsewhere if he knew of its real condition.[1]

19. Deposits received from One Depositor paid by Another. — It is a daily practice for depositors to give checks that are deposited by the payees in the banks on which they are drawn, because they too keep their accounts in them. In such cases, of course, the checks are paid by charging off the amounts from the makers' accounts and crediting the payees. Occasionally, however, a bank makes the unpleasant discovery, when entering the items on its books, that a depositor's balance is insufficient to pay the checks which have been credited to another de-

[1] See page 62, and Chapter XIX, for a more extended presentation of the subject.

positor. Can they be charged back again? If the overdraft is a mistake on the part of the maker of a check, and he makes another deposit to cover the deficit, there is no loss to any one; and this usually happens when one has checked out more money than he has in the bank; occasionally he fails, and then there is trouble. He can not deposit any more money, for he has none. If the bank can not charge back the excess of the depositor who was credited with the amount, it will be the loser. The creditor says to the bank: "You knew the condition of the maker's account, or ought to have known it, before paying his check. If you had looked at the books, you would, in fact, have seen that he had not money enough. If you did not take the trouble, or if you looked and made a mistake, you ought to suffer and not I, for if you had told me there was not money enough to pay it when I presented it for payment, or credit to my account, which is the same thing, I should have taken action instantly to collect the amount of my debtor." The creditor is regarded by the courts therefore as having the better case, and the bank must look to the maker of the check, or his assignee, if the maker has failed to make the amount good, or if this can not be done, to bear the loss.

20. When an Account is overdrawn. — When a depositor has overdrawn his account, any deposit that he may afterward make, whether checks, notes, or the like, belong absolutely to the bank.[1]

21. The Bank as an Agent. — It has been already stated that the relation between a bank and general depositor is that of debtor and creditor, but this may be changed into the relation of agent and principal. Of course, when a bank is acting as agent its act is that of its principal, and

[1] See Chapter X, Section 30.

anything it may have, whether checks, money, bonds, and the like, belong to its principal. It is not an infrequent thing for a depositor to make use of a bank as an agent in collecting checks and in other matters. His object in doing so is to retain his exclusive control and ownership over the thing left with the custody of a bank. Thus suppose he wishes to retain control of a check that he has received from the maker. Instead of indorsing it in the usual manner in blank and giving it to the receiving teller, he indorses it "for collection." If he indorsed the check in blank, deposited it and was credited with the amount, the title would pass to the bank, and his control of it would be lost; consequently, if the first bank, or some other to which it had been sent by that bank for collection, failed having the check or the proceeds, he could not recover the whole amount, but only the same percentage as other creditors. To insure himself against such an event, he must indorse it "for collection," whereby he retains his ownership until the money is actually collected. A bank that receives a check thus indorsed is only an agent for the depositor, and every other bank through which it passes acts in the same capacity. In these cases, therefore, it is said, that a trust relation, and not that of debtor and creditor, exists between the depositor of the check and the bank in which it is deposited, and one peculiar effect of this relation is, the money thus collected for the principal belongs to him and can be claimed by him so long as he can clearly trace the amount as a fund separate from any other. If the money collected on a check thus indorsed is collected and mingled with other funds so that its identity is gone, then the principal must share like other creditors; if it is put in a separate place, or in any way can be identified as trust money belonging to a principal and not to the collecting bank, the fund can be recovered by the principal.[1]

22. Attachment of a Deposit by Depositor's Creditor. — Lastly, every now and then a depositor is sued and his deposit is attached to secure the claims of his creditor who has sued him. If the depositor should come in and attempt to draw out his money, it would be the duty of the bank to keep it until the legal proceedings against him were ended.[2] It would not be justified in giving to him his deposit on his representation that the claim is good for nothing, and that the court will surely decide against the claimant. The bank may have no reason to doubt his statement, yet it must keep the money subject to the order of the court.

[1] This indorsement, however, has given rise to some consequences that are displeasing to banks. Thus, S received a draft for $8, drawn by a bank in Connecticut on the National Park Bank of New York, which he raised to $1,800, indorsed in blank, and deposited in the Eldred Bank of Pennsylvania. This bank, after indorsing the draft "for collection for account of the Eldred Bank," sent it to the Seaboard Bank of New York to be collected. It was presented through the clearing house and paid, and the Seaboard Bank duly credited the amount in an account kept between itself and the Eldred Bank, and the latter bank in due time paid the amount to the depositor of the check. About a month after the Park Bank paid the check the alteration was discovered and it sued the Seaboard Bank to recover the excess of payment. The court held that as it had paid over the amount before receiving any notice of the erroneous payment by the Park Bank it was not liable. If, however, the Seaboard Bank had owned the check, a different rule would have been applied. As it was acting merely as an agent for another bank to which the money had been paid (or credited in account, which was the same thing), it could not be required to refund. This decision led the New York clearing house to adopt the rule that all members of the association should not send checks or other instruments containing a qualified or restrictive indorsement, such as "for collection," or "for account of," or words of similar import, unless all the indorsements thereon were guaranteed by the sending bank. Similar action was adopted by all the large clearing houses throughout the country. This case is reported in 114 N. Y. 28.

[2] See Chapter XIX.

IX. LOANS

1. Creation of a Surplus. — As we have seen, the resources of a bank of discount and deposit are: first, the capital, which is contributed by the shareholders; second, the surplus, which is a portion of the net earnings that are set aside to make good any losses that may occur. These are inevitable, and if a bank divided all of its profits annually or oftener, then, when losses occurred, there might be an impairment of the capital, especially if a large loss should occur just after the division of the profits. It would be awkward to ask the shareholders to make the loss good; it would not be prudent for the government to give the bank time to make up the loss from prospective profits, for these might not be earned; the government could indeed require the bank to reduce its capital to a figure corresponding with the amount left, and this is sometimes done. A much easier way for a bank is to accumulate a surplus to meet these unhappy, but inevitable, events. Unless they are so large as to sweep away all the surplus, a bank's solvency is in no way affected by them. Sometimes, however, they are so large that all the surplus and all the capital are lost, and even more.

The national banking law requires every bank to set aside one tenth of its net earnings until it has accumulated a surplus fund equal to twenty per cent of its capital. If at any time this becomes impaired, the bank must begin to build anew in the same manner as before until the amount reaches the legal height. Many banks have a surplus much larger than their entire capital. Thus the First National Bank of New York has a capital of $10,000,000 and a surplus of $12,219,900, while the Chemical National Bank of New York, with a capital of only $300,000, has accumulated a surplus of $7,240,700.[1]

Some banks invest their surplus in securities that are not appraised at their entire worth. One object of doing this is, should a large loss occur, to restore the amount of the surplus fund by marking up the value of their securities. Thus in 1900 the First National Bank of New York sustained a loss of nearly $700,000, but the sum credited to the surplus fund was not diminished, because the real value of securities composing it was fully that amount. Of course every bank is poorer to the extent of a loss sustained, but it may be no poorer, so far as public knowledge goes, if there be a secret reserve or surplus fund of which the public has no knowledge—large enough to make up its losses. This is by no means an uncommon practice with banks, to create a fund unknown to the public in order to be doubly prepared for such events, which the wisest banker can not wholly prevent.

Some banks keep their surplus fund under this name; others, under the name of undivided profits. Again, a third class of banks divide their surplus, keeping a part under one head and the remainder under the other.

The third item of resources consists of notes, and the last of deposits. Both of these items have been considered. The profits of a bank consist in lending its resources, and we will now proceed to explain how this is done.

2. Composition of a Board of Directors. — Lending is the work of the directors. It is the most important duty they have to perform. Let us begin by inquiring how a board

[1] These figures are taken from the Clearing House Statement, Oct. 25, 1902.

is composed. The National Banking Law requires that every bank shall have a board consisting of at least five directors. There is no limit to the maximum number, and many banks have a board consisting of nine to thirteen. A national bank director must own at least ten shares of stock; often he is one of the largest shareholders in the bank.

Their selection is founded on several considerations. They may be the largest shareholders, or influential citizens, able to bring a large amount of business to their bank. Sometimes a bank is organized with the intention of making particular persons, who were influential in raising the capital, directors. In not a few cases one or two persons own by far the largest amount of stock and determine the formation of the entire board. Generally a bank seeks to have a prominent representative of every leading kind of business in the place of its location on its board. If a bank is located in a city where tobacco is a prominent business, a bank will seek to have a director who is interested in tobacco. One reason for his selection is, he is supposed to have a special knowledge of the notes or other paper that may be offered for discount by men engaged in that business.

3. Motives which lead Directors to serve. — It is important for a bank to know what are the motives of those who serve on its directory. In choosing them a bank has a well-known purpose to strengthen itself, to attract customers, to have the benefit of their experience; but the directors themselves may have very different motives. They may be willing to serve simply to obtain large loans for themselves or for especial friends; in other words, with the view of helping themselves first and their bank afterward. Sometimes a man organizes a bank with the view of diverting nearly all of its resources into his own business and elects a directory who will do his bidding. Such a bank may be wisely left to the projector.

The national banking law forbids any bank from lending more than one tenth of its capital to a person on his note, "but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial paper actually owned by the person negotiating the same, shall not be considered as money borrowed." A bank therefore is clearly prohibited from lending to a man on his accommodation notes, or the accommodation notes of another made for his use, more than one tenth of its capital. But there is no limitation whatever on the amount a man may borrow on the notes of a purchaser of property. Thus A, a merchant, can borrow only one tenth of the capital of a bank as above described, however wealthy he may be; but he may present notes for any amount taken for goods bought of him, and a bank has the right to discount them either with or without his indorsement. It may be asked, can not a person easily borrow more than the ten per cent by getting others to give him their notes purporting to grow out of real business? It is easy to do this, and Potter's case is an example.[1] By collusion with a few friends he borrowed enormous sums, and yet escaped punishment. This is one of the defects in the national law that needs amending.

In many bank failures the fact has come to light that this provision of the law was ignored. Though the bank examiner professes to examine all the notes and other paper discounted by a bank, he often fails to discover this evasion of the law. In truth, it is one of the most common evasions of all.

[1] Potter *v.* United States, 155 U. S. 438.

4. Attendance at Meetings. — Next may be considered the attendance of directors at the meetings of boards. In the large cities only a few banks have boards that largely attend with regularity. Bank directors usually have large business interests of their own, consequently they have but little time to bestow on other matters. Their irregular attendance is no disappointment, for usually before accepting office they frankly state their inability to serve with any regularity. If they were required to come twice a week, in many cases they could ill afford the time and would not accept. Most of them come occasionally; besides, the president always has the ready assistance of any director with whom he especially wishes to advise, so that in a very true sense directors often render effective service while not attending meetings. There is a western director of a New York bank who is rarely present, yet he is perhaps the most valuable magnet the bank possesses, and draws far more business into it than any of his associates. He is interested in many western banks, and an expression or wish from him that they will form business relations with the bank in New York in which he is a director is respected. They wish to please him, they intend to open an account with some eastern bank, and are quite as willing to do this with his bank as with any other. He therefore makes a good account of his stewardship even though rarely meeting in formal conference his co-directors.

The same remark may be made of many non-attending directors. They do not forget their banks; they are shareholders as well as directors, and are eager to see them grow and pay good dividends. So they send customers to their banks, who in turn influence others to do likewise. Every bank seeks to have a board of live directors who will keep good balances themselves, and are able to influence others to put their deposits in the same place.

Every now and then it is discovered that a bank has gone to seed. What is the matter? Depositors have died or withdrawn and the board of directors is composed, it may be, of very worthy men who perhaps attend the meetings with great punctuality, but can not command any new business. Perhaps they are men out of business, and have no influence with other men. Unless a bank has become very large and attained a strong impetus, it is always a matter to be carefully considered how many men of this type it can afford to keep on its board. Some of them may be large shareholders and insist on representation at the board, having subscribed for their stock with this expectation and assurance. In such cases their wishes should not be lightly disregarded.

There are banks in which the attendance of directors at stated meetings is very slight, but who frequently, perhaps every day, appear and make inquiries concerning its business, examine the paper discounted, or that may have been presented awaiting action. They may tell the president what they think of A's or B's application, what they know about his business or worth, in short, the president may be as fully advised by such directors as though they were actually present at board meetings. Doubtless there are more directors of this kind than the public imagine, so that while directors' meetings are often very brief perfunctory gatherings, banks often have their guidance as constantly as though they were formally present at stated meetings.

Is the requirement legally imperative that a director should generally be present? This question arose in the first case tried by the Supreme Court of the United States determining the liability of national bank directors. It so happened that among other directors affected by this decision was Mr. Spaulding, Chairman of the Ways and Means Committee that framed the measure. He was a director of the First National Bank of Buffalo, and the president having ruined it, the directors were sued by the creditors for neglecting their duties, and thus contributing to its downfall. One of the charges of neglect was the absence of most of the directors from the meetings. One was sick and in Europe and had not attended for a long period. Mr. Spaulding himself had become an old man and infirm, and it was difficult for him to attend. Some of the directors, however, had not so good reason to justify their non-attendance.[1]

If directors were required to attend with a considerable degree of regularity, many would at once resign, for they could not come without neglecting their own business. Their banks would then be obliged to elect others, men perhaps retired from business who would have time to attend and be regular in coming, but whose assistance would not be worth much from any point of view. The most that could be said of their assistance would be that in forming a quorum each would count one.

[1] The court speaking through the chief justice and adopting the opinion of another tribunal remarked : "The duties of directors are those of control, and the neglect which would render them responsible for not exercising that control properly must depend on circumstances and in a great measure be tested by the facts of the case. If nothing has come to their knowledge to awaken suspicion of the fidelity of the president and cashier, ordinary attention to the affairs of the institution is sufficient. If they become acquainted with any fact calculated to put prudent men on their guard, a degree of care commensurate with the evil to be avoided is required, and a want of that care certainly makes them responsible." Mr. Spaulding and his associates were not therefore regarded as responsible for the conduct of the president of their bank. Briggs *v.* Spaulding, 141 U. S. 132.

Among the country banks attendance of directors is more usual. This is for the reason that the money lent by their banks is lent under their direction. In the cities, as we shall soon learn, a different practice prevails. The country banks therefore adhere more closely to the original practice, and while there are some departures they are not very common. In the larger cities, especially, the general attendance of directors is exceptional. In a few banks, and in a few only, do many convene.

5. Difference between Loans and Discounts. — In proceeding to describe how a bank lends money, it will be needful to look at the subject in several ways. Loans may be divided into discounts and purchases of paper. These are not quite the same. A discounted note is one presented by the owner who desires the money for his own use; a purchased note is one presented by a bill broker for a bank to buy. The bank may deal with both notes in the same manner, nevertheless they are distinctly two kinds of paper, and somewhat different principles apply to them. Let us first take notes offered for discount, which it may be remarked are regarded by banks with the most favor.

6. How and to whom Loans are made. — Let us also imagine they are offered to a bank in which the board does the discounting, what is the process of dealing with them?

Briefly, a borrower presents a note or copy to the cashier of a bank, or makes known his request, the amount he desires, the length of time, the names of the indorsees, or other security. Also the rate of interest is usually understood which the bank will charge if the loan is made. The cashier keeps a book in which all the offerings are entered; it is called the Offering Book. When the board meets the first thing to ascertain is, how much money the bank has to lend. If there is none, of course no applications are granted. Generally a bank has money to lend, and the next thing to do is to read the applications. This is done quickly. Sometimes the applications are not kept in this regular way, but consist of notes or other paper left by applicants for the bank to consider. Again, the offering book is not always kept by the cashier, especially of a large bank, but by some one under his direction, or by a clerk having special charge of loans.

In this way the directors at once acquire knowledge of the wishes of all the applicants, the amounts, the securities they have to give, in short, all the most essential particulars pertaining to their applications. If there is money enough to supply all, and they are deemed worthy, the process of granting loans is very short; a vote may be taken on granting all or a separate vote on each note; in either case the work is quickly done. If a director objects to a note, his vote is often sufficient to cause its rejection. It is true that in most matters the majority rule applies, and it may apply to a discount; but in many banks the unanimity rule is in vogue, not always, but generally. To lend money is a serious business; and a bank seeks to minimize the risk. Should a loan be made to which a director for a good reason objected, and the borrower afterward failed and the bank lost, it would be a reflection on the sagacity of the directors who voted for the loan. They hesitate therefore to make a loan when a director strongly objects and brings forward cogent reasons for declining the risk.

Very often there is not money enough to supply all applicants; though all are worthy, some of them must be disappointed. In such cases by what rules, if any, do directors proceed?

First, a depositor who has a large and regular balance is first preferred. He is a good customer of the bank, his account is valuable, and should be first served. The bank seeks to return his favor by rendering the greatest favor in return by giving his paper preference over all others.

Second, the notes of a smaller and less valuable depositor are generally preferred to those of an outsider. He is served on the same principle that his account is worth something, therefore the bank should seek to do more for him than for an outsider to whom it is under no obligation.

Third, security is an important matter. Between two applicants possessing unequal credit or security the bank grants the application of the stronger applicant.

Fourth, the rate of interest which an applicant is willing to pay may be the turning consideration. If one applicant is willing to pay a higher rate of interest than another, and offers a note well indorsed or otherwise secured, though it may not be quite so well secured, his application may nevertheless have the preference. If the security is ample, the bank may be willing to incur the risk for the sake of the higher interest.

Sometimes the applications of outsiders or important customers are granted at a temporary loss or detriment to a bank for the sake of future gain. A former president of the Second National Bank of New York told the writer that at one time the Erie Railroad kept a small deposit in his bank, and its principal deposit in another. The money market became depressed, rates of interest quickly rose, and many individuals and corporations suddenly found themselves in trouble to borrow money. The president mentioned knew that in a short time the Erie Railroad would be in need of a large amount of money, and he collected a supply to be ready for the unusual demand. When the president of the railroad appeared and made known his wants and inquired to what extent they could be met, he was promptly told, to his great delight, that the bank would lend him the entire sum. The consequence was that the railroad made the Second National Bank its principal depository of money, which was the end the president had sought to attain.

Another principle that sometimes comes into operation in lending by national banks is the reserve limitation. Every bank in a reserve city must keep at least one half of its reserve at home in cash, and every bank in a central reserve city must keep its entire reserve, or twenty-five per cent of its deposits, in cash. If a bank happens during any emergency to have drawn down its reserve below the legal limit, it must cut off loans until the deficiency is made good. Of course, as borrowers are constantly discharging their loans, the effect of not making new ones is, the reservoir fills up, and as soon as there is an excess loans can be resumed.

7. Authority of the President to lend. — The method of lending above described, applies to a bank in the city or the country in which the loans are made by the directors. In these days this method is too slow for many business men, and they wish to know at once whether they can be accommodated or not. They can not wait two or three days for a board to act on their applications. Consequently, the modern bank president of a city bank is clothed with the great power of lending the bank's money. Here and there a president is unwilling to assume so much responsibility, and there are daily meetings of the directors to act with him. There are not, however, many banks which thus act; in most of them the manager, who is the president, vice president, or other officer, assumes this grave responsibility. He does not in truth always lend on his own judgment; sometimes he consults with other officers, or with some of the directors, or with the board at a formal meeting. But many of them lend money without the assistance of the board. An applicant is told as soon as he applies whether the bank will lend him or not. When an applicant is told that his application will be referred to the board, this is another way of telling him it probably will not be granted. Many an applicant understands perfectly the significance of the answer, and will say, "I can not wait, I must apply somewhere else," withdraws, and the negotiation is ended.

Although a city-bank president is clothed with power to lend his bank's money, board meetings are held at least twice a week at which all of his doings are faithfully reported and ratified. Suppose, however, a loan should be reported by him to which some members of the board objected, could it be annulled? No ordinary loan could be, for the reason that the president is acting within the scope of his authority, and therefore his conduct is binding on the bank, and it must submit. This is one of the risks taken when authorizing him to lend the bank's money. He may make a most unwise loan, which the directors would gladly recall, but they are powerless.

If, however, the president should go beyond the scope of his power, the case would be different. Thus a national bank has no right to lend a man more than one tenth of its capital on his own notes. If the president should violate this plain command, the directors could refuse to ratify the loan because the borrower is supposed to know as well as the president that such an act is a violation of the law. The borrower could not plead ignorance as an excuse. In truth, the directors could not ratify such a loan without making themselves also responsible. It would be manifestly an illegal act. Their true course would be to declare the loan void, and if the money had been paid, to bring an action to recover the amount.

8. Requiring Statements from Borrowers. — Another radical departure in the mode of lending money is coming into vogue: the requiring of borrowers to make statements of their business before granting their application. The older and more common way in the United States is to lend on the strength of the names presented and the knowledge of their business, wealth, etc., possessed by the directors supplemented perhaps by other inquiries made by the president. It is true that for a long time it has been a frequent practice for a bank after making a loan to make inquiries into the borrower's condition and prospects. This has sometimes been done through a bank, lawyer, or other agent, living in the same city as the borrower. Every bank that has been many years in business has a long row of books filled with replies to letters of inquiry relating to their borrowers. In most of these cases the inquiries have been undertaken after the loans were made; perhaps the bank has heard some unfavorable report concerning a borrower which has given rise to inquiry. In other cases it is the regular practice of a bank to make careful inquiries through various sources concerning every borrower whose history is not fully known.

Are not such inquiries, though, rather late in the day? Suppose a bank finds that a borrower is unworthy of credit, what can it do? The money has been lent, it can not be demanded until the loan has expired, unless the borrower has made a false representation which was the basis of the loan. As this can rarely be shown, a bank can do nothing. It is the old story of locking the stable door after the mischief has been done. What a bank ought to do is, not to part with its money until it is fully assured of the ability and worthiness of the applicant.

From the evil consequences of making unwise loans the practice is rapidly growing of requiring borrowers to make a full statement of their affairs; and some banks go a step further and require applicants to make oath to their statement; and then if the unwelcome fact appears that they intentionally made a wrong or false statement, they can be arrested criminally, and an action can be begun at once to recover the money.

Is this requirement unreasonable? It has long been required by banks in other countries, especially by banks in England. A borrower wishes a bank to put its funds for a time completely beyond its reach; surely he ought not to expect that this will be done unless assured that the money will be forthcoming at the time promised. Ought the bank to be satisfied with his promise that he will do so? We all know what a wide and impassable gulf there often is between intention and performance. The applicant may be perfectly honest and have the best intention, but a true disclosure of his affairs would at once lead the bank to decline his application. Does it deal harshly with him in insisting on such a statement as an indispensable preliminary to lending him anything? It should be put in possession of the fullest knowledge before deciding; and it is eminently proper that an applicant should tell the lender all about his affairs before receiving assistance. Then, if he afterward fails, he has a very different feeling from what he would have had he concealed important information.

Again, a bank is a kind of partner with a borrower; it henceforth has a real interest in his business, because the return of his loan depends on his success. Surely a man who seeks the alliance or aid of another ought to make known all the details of the business to him before inviting or drawing him into partnership. Ordinary honesty requires this. Should not the same course be followed in dealing with a bank? An English banker has written some wise words on this point that are worth adding: "The solid man of business," says Mr. Rae, "who from pride or prejudice hesitates to disclose the position of his business affairs to the confidential ears of his bankers, damnifies himself in two ways: on the one hand, he lessens the full measure of credit which he might obtain from them should he ever desire to borrow; on the other, he fails to furnish them with data whereon to speak of his position, with knowledge and decision, in reply to inquiries from without. A man lays bare the secrets of his constitution with candor to his physician, lest in the absence of an exact knowledge of the case inapt remedies might be applied. For a like reason, a man should be equally frank with his banker."[1]

In the Appendix will be found the forms of statement, a short and a long one, that are used by one of the banks in New York City. Some banks are now fully convinced of the wisdom of this method of lending their resources, and that the saving thereby effected fully justifies the expense.[2]

9. Mode of buying Paper. — Let us now turn to the purchasing of paper by banking institutions. This is done when they can not lend all their money to ordinary applicants. From whom is the paper obtained? From note

[1] Country Banker, page 15.

[2] See a valuable paper in 66 American Banker, page 922, by J. B. Forgan, president of the First National Bank of Chicago, entitled, "How to Reach a Decision in Regard to the Desirability of Notes Offered for Discount."

brokers or bill brokers, who get it from merchants and others who wish to borrow money. They make a quantity of notes and give them to bill brokers to sell. It is a frequent practice for two men to act together in making and indorsing notes for each other. A makes a series of notes which are given to B and indorsed by him, and then delivered to a note broker to sell; B makes another series which are given to A, and are treated by him in the same manner.

Besides his own notes A may deliver into the hands of a note broker notes that he has taken from others in payment of merchandise. These are often regarded as of higher worth than his own, because, besides his own indorsement, they represent sales, actual property received by the makers, and from the sale of which they expect to obtain the means to discharge their obligations.

Sometimes the notes are not given to note brokers to sell, but only copies or memoranda of them. Again, note brokers may have the actual notes, but send only copies to banks for their examination and purchase. In other words, the note broker has enough knowledge of the notes to give any inquirer wishing to purchase all the information he seeks, the names of the maker, indorsers, date, and length of life and securities.

Note brokers sometimes indorse the notes they negotiate. This is not a common practice, though it was once. Of course, his indorsement is an additional security; besides, it is a kind of guaranty that he has confidence in the note.

A note broker is responsible in any event for the genuineness of the paper sold by him. There is a general principle of law of wide application that every vendor or seller of personal property warrants the title; that is, whether he says so or not, he is declared by law to be the owner. In like manner when a note broker takes a note to a bank for sale, the law implies that the note is made by the man whose name is attached thereto, and if it should prove to be a forgery, the broker would be obliged to make up the loss. Several years ago the confidential clerk of a merchant brought the notes of his employer to a broker for sale. He had been long employed and was supposed to possess the highest integrity. In an evil hour he forged the name of his employer to a large number of notes, mingled them with genuine notes, and took all to the note broker. The broker made advances on them, as he had done on other notes, and the clerk fled as soon as he obtained the money. The broker was obliged to pay the holders. It was at one time questioned whether a national bank had a right to buy paper, but the question was soon answered by the courts in favor of the exercise of this authority.

In selling notes the operation is a very simple one. A broker, or one of his agents, takes one or more packages of notes to a bank and submits them to the examination of the president. Such an official once told the writer that his method of making selections was the following: Suppose he had $100,000 to lend. He examined all the paper a broker had to sell, and drew out and laid aside from the several packages all of the most desirable notes. Suppose the aggregate amount was $200,000. Then began the work of exclusion. He continued to go over the notes selected, throwing out the least desirable until the amount corresponded with his loanable fund.

Let us, however, inquire by what principle was he guided in making his selections. One was paper of which he had knowledge from previous purchases and payments.

Suppose he sees the note of John Smith. He inquires of the broker who John Smith is and is given a highly satisfactory answer. The note is purchased, and at maturity is promptly paid. At a later period he sees another note by the same maker and, remembering his former experience, this is purchased. Thus confidence is strengthened by performance, and in buying paper the president looks sharply after familiar names who have won his good opinion by the punctual fulfillment of their promises.

If he can not find such names, or not enough, then he must take the somewhat uncomfortable step of purchasing paper made by men of whom he has perhaps little or no knowledge. We have said that the new and better method is to make careful inquiry before purchasing, obtain a statement from the maker, and thus learn much concerning his condition; but this is done by only a few banks that purchase paper. In truth, most of them are still pursuing the old way of buying paper first, largely on the statement of the note broker, the rating of the maker and indorsees in the credit books, and of making their own independent inquiries afterward.

One of the serious difficulties in purchasing paper is the ease with which the makers can cover up the quantity they offer for sale. Suppose a concern wished to borrow $250,000. It would probably make fifty notes and give them to a note broker, who would not put them all in one package and present them to a bank. Perhaps he would put in five or six, possibly ten, and as soon as these were sold he would put more notes into his packages, and in this manner would work them off without any bank knowing how many notes other banks had purchased. A few years ago a great tannery having its principal house in Boston failed for several million dollars, and hundreds of banks in the United States and Canada had its notes. They had been distributed everywhere through the agency of note brokers. The banks were amazed when they learned the truth. They knew that the concern transacted an enormous business and borrowed large sums of money, but they never imagined that its indebtedness ran into so many millions. For a time the banks thought of suing one of the credit agencies for misleading them until they learned that it had spent a very considerable sum in making a special investigation into the affairs of the concern and had been badly deceived. Had this concern raised the capital needed in the way of ordinary discounts from one or a few banks, it would have been quite impossible to extend its credit to such a length. The limited number of discount banks would have had a much better knowledge of its indebtedness, and knowing this would not have dared to lend so much.

This risk is well understood by bankers, but there is no way perhaps of guarding effectively against such an occurrence. Much might be done by banks in the way of coöperation. Suppose an applicant should make a statement to the Arctic National Bank of New York, for example, that he had $50,000 of paper outstanding, consisting of ten notes of $5,000 each, and that they were held by banks in various specified places. Suppose the Arctic Bank, without saying anything to him concerning its purpose, should write to those banks and find out whether his statement were true, or still further, suppose they were requested to inquire of other banks whether they held any paper made by this applicant. If this practice were adopted, borrowers not knowing how many banks were thus associated, or how far their relations extended, and knowing also of the danger to their credit of making wrong statements, would be less inclined to deceive those to whom applications for money were made. It is true they might borrow from sources that were never likely to be disclosed, of their brothers and sisters and other individuals; but we think our remark will be understood that it is feasible enough for banks to adopt such a practice, and the more general it became, the more completely would applicants be cut off from their old-fashioned methods of deception. Would it not be a comparatively easy thing for a bank to establish such a relation with many of its correspondents; to have lists of the paper discounted by a bank in Chicago or persons living in New York sent regularly to its corresponding bank in that city? In like manner the New York bank could send to its Chicago correspondent a list of paper held by it made by persons living in Chicago. Again, some if not all the banks in Chicago might, as occasion required, make inquiries of one another and determine to whom they would lend, and in this way greatly assist one another.

"But it will be said that competition, rivalry, distrust, would forbid banks from doing these things. To some degree this objection is true. Banks must judge for themselves which of their number they can trust, whether they are likely to be deceived or not by putting the system in operation. Nevertheless, the suggestion is worthy of consideration, and might prove helpful to banks in lessening the losses that are now so common, and so greatly diminish their profits. There are two reasons that work against the practice of making requests for statements,—the abundance of loanable capital held by the banks and by borrowers themselves. The great increase in deposits and in shareholders' capital stimulates competition among lenders to put out their resources, and to that end to make fewer inquiries of borrowers. If it had the effect of lessening the rate of interest, no harm would be done, but the consequences are calamitous when capital becomes so abundant that it is lent carelessly on insufficient security, to illegitimate speculations; in short, in other ways than in production and exchange, without making proper inquiry into the ability of borrowers to repay."[1]

One object of selling paper through note brokers is to prevent the banks from acquiring too much knowledge of the borrower's business. It is more perfectly hidden by such a disposition of his paper. The method, though, has its disadvantages to the borrower, which have been already explained.[2]

Often the broker advances a large sum on the notes left with him for sale before disposing of them. He may give seventy-five or eighty per cent of their value or even more. He has a lien on the notes for his advances, and, when he has sold them, reimburses himself and pays over the balance less his commission. This varies from one eighth of one per cent to five or six per cent or even more.

Brokers and bankers not infrequently sell bonds on commission, advancing large sums prior to their sale. In other cases they buy large quantities with the intention of reselling them at a higher price and gaining a profit by the operation.

Sometimes bills of merchandise are attached to commercial notes to show for what purpose they were given. A few years ago an English concern succeeded in getting large sums from banks in London by making false bills of merchandise and attaching them to their notes. The buyers were thus led to believe that the makers possessed a large

[1] Bolles, *Practical Banking*, 11th edition, page 106.

[2] See page 96.

amount of property for which they had given their notes which, in truth, they did not have. The scheme worked well for the note makers, and about the only satisfaction accruing to the banks that bought them was in punishing the offenders as criminals.

One remark more will complete this part of the subject. While the president of a bank often buys such paper in the same manner as he discounts notes, on his authority, he may submit the paper thus offered to the board before purchasing. This is done whenever he is unwilling to assume the sole responsibility.

10. Rediscounts. — It is not uncommon for a bank to rediscount some of its loans. This is especially true of banks in the South and far West in some seasons of the year. They have not funds enough to supply all their customers, but they lend to them, on the condition perhaps that the proceeds shall not be checked out for a week or ten days, and in the meantime the lenders send the notes thus taken to banks in New York or elsewhere with their additional indorsement to be rediscounted. These are usually obtained without difficulty, for, with the indorsement of the borrowing bank as additional security, such paper is deemed as safe as any a bank can take.

11. Different Kinds of Paper discounted and purchased. — Let us now consider the kinds of notes or obligations that are discounted or purchased by a bank, and their duration and other points relating to them. *a. Accommodation Paper.* The first kind of note that may be mentioned is given for accommodation. By this is meant a note made without reference to any particular business transaction; a pure borrowing.

b. Commercial Paper. The second kind is commercial or mercantile notes. These are given by the buyers of merchandise in payment. They are regarded as of greater worth, because in one sense they represent actual property, while accommodation notes are purely credit instruments. Commercial paper, therefore, floats better, is discounted or bought at rates more favorable to the lender. In the rating of the two kinds of paper it always bears a lower rate of interest. The reason is, the buyer has acquired actual property therefor, has exchanged his credit for goods, and through the sale of these in due time expects to receive enough money to pay his notes.

The notes taken by a bank rarely run for longer than four months. The shorter the period the more perfectly does a bank command its money. When it has once parted therewith, nothing can be done toward a recovery until the loan has expired, except in cases of fraud. Thus, suppose a bank should make a loan and a few days afterward should learn that the borrower was in a bad way, the president or other official could not go to him and demand as a right the money. If he had obtained it through fraud or fraudulent pretenses, then it could be demanded, otherwise a bank must wait, as patiently as it can, until the loan matures. It is true that the president might request the borrower to pay, or to give additional security, but neither money nor security can be rightfully demanded. If the borrower gives either money or security, he does so voluntarily and not in compliance with any legal rights on the part of the bank. Therefore, from long experience banks have learned that it is safer to lend for shorter periods.

When a borrower proves to be weak and in danger of failing a bank can do several things: (1) It can ask him to pay, which he is not likely to do, and perhaps could not do even if he desired. (2) It can ask him to give additional security in the way of indorsements or collateral securities. (3) If he has obtained the loan by false pretenses, it can proceed against him at once to collect the amount, and to this end may sue him and attach any property he may have.

c. Bills of Exchange. A third form of paper is a bill of exchange, which may be defined as an order by one person on another to pay a third a sum of money.[1] These may be drawn in two ways: payable at sight or on demand, and payable on time, thirty, sixty days, or other period.

It is a very common thing to attach to them the bill of merchandise for the payment of which the proceeds are to be used. A western agent of a New York commission house buys ten thousand bushels of wheat of A in Chicago, and draws a bill of exchange or draft on his commission house for the amount of the purchase. The wheat is stored in an elevator, and the seller gives the buyer a warehouse receipt for the amount. The agent appends the receipt to his draft and goes to a bank and offers it for sale or discount; the purchase is made, and the money is paid to the seller. The bank then sends the draft forward for payment by the drawer, expecting of course to make something from the transaction in the way of interest on the loan. If it is a draft payable at sight, the profit to the bank will be small, as the money will be collected in a few days at most; but the draft may run for thirty or sixty days or even a longer period. In such a case the draft is forwarded and *presented for acceptance.* If it

[1] A more complete definition is the following, "An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed determinable future time, a sum certain in money to order or to bearer." New York Negotiable Instruments Act.

is accepted, at the end of the period for which it is to run, it is again *accepted for payment* and paid.

Some very important principles grow out of the practice of attaching receipts to drafts that should be clearly understood. By thus attaching a receipt to the instrument the ownership of the wheat passes to the bank. Though it has never seen the wheat, yet the certificate operates to transfer the title so effectively that the bank could, if it pleased, stop the transit of the grain from Chicago to New York. Suppose the bank should learn that the drawee had failed, or was about to fail. It would not suffer the wheat to be delivered to him, for, if it did, its lien thereon for its advances would be gone. The bank would, therefore, stop the wheat before it reached New York, or at least before its delivery to the drawee; and if the draft was not then paid, would sell the wheat and apply the proceeds in payment of his obligation. It thus becomes a most desirable form of loan, because the security is so adequate. In some places, like Chicago, a very large number of such drafts are drawn daily and sent forward for acceptance and payment. They are regarded as perhaps the most desirable loans that a bank can make, for the risk is reduced to a minimum. There may be a loss accruing from the failure of the drawee if the grain or other security declines in value, and that is the most serious risk incurred in taking them.

There is, however, a risk attaching to the bills of lading accompanying them that should be mentioned. Though these are rendered negotiable by indorsement and delivery by virtue of statutes, they do not possess all the qualities of a negotiable promissory note or draft. For example, the rule, that a *bona fide* purchaser of a lost or stolen bill or note indorsed in blank or payable to bearer is not bound to look beyond the instrument, has no application to a lost or stolen bill of lading. Thus, N. & Co. sold to a St. Louis bank their draft drawn on K of Philadelphia, to which was attached a bill of lading for cotton. The duplicate bill of lading was sent to K. The St. Louis bank forwarded the draft to a Philadelphia bank for collection, which presented it to K for acceptance. In accepting it K surreptitiously substituted the duplicate bill of lading, gave the original bill to a broker, who sold the cotton which was delivered by the transportation company on its arrival to the purchaser. The St. Louis bank then sued the purchaser for the cotton or its value, and recovered the amount.[1]

There are some rather difficult questions for banks to decide when holding these instruments, about giving up the security before receiving payment for the draft. We will give the principal rules that regulate these matters.

First. The indorsee or holder of a bill of lading, warehouse certificate, or other receipt given for merchandise, attached to a draft, takes it subject to the agreement, if there be one, between the consignor and consignee of the merchandise. If, therefore, the consignor had the right to withhold the bill of lading until the draft was paid, the *bona fide* holder has the same right.

Second. When there is no special agreement, a bill of lading accompanying a draft drawn on time, which is taken on the security of the merchandise described in the bill, is to be surrendered to the drawee on his acceptance of the draft. The theory is that the bill of lading is to be surrendered and also the merchandise, which he will sell, and with the proceeds pay the draft.

If in such a case the holder should refuse to deliver the

[1] Shaw *v.* Bank, 101 U. S. 557.

bill of lading, and the drawee should refuse to accept the draft, and it should be protested, there would be no good reason for the protest, and the drawee would be discharged. The bank or holder of the draft would therefore become the absolute owner of the property described in the bill of lading, and the other parties would be released of all liability to the bank.

Third. The drawee of a time draft attached to a bill of lading is not entitled to it, or to the merchandise therein described, unless he accepts the draft, that is, agrees to pay it, or actually does pay it.

Fourth. A bank discounting a draft on the faith of the transfer by indorsement of a bill of lading attached to the draft has the same lien on the merchandise described therein as it would have if the merchandise itself had been delivered to the bank instead of the bill of lading describing it.

Such are the most important principles relating to the keeping and disposition of bills of lading and similar instruments taken by banks as security for loans. In the chapter relating to negotiable instruments other principles will also be found relating to the subject.

d. Overdrafts. Another form of loan is an overdraft. In the north the most common example of an overdraft is a check given by a depositor, usually by mistake, for more money than he happens to have in the bank. When this is done by a depositor, evidently through forgetfulness of the correct amount of his balance, the bank will generally pay the check, and notify him at once, and he is expected to call forthwith and make the amount good.

Sometimes a bank, as a mode of lending to its depositors, permits them to overdraw. Is this a wrong practice? Once it was thus regarded, and some states declared this to be a penal offense. But the act is no longer regarded in that way. Whether it is a proper thing for a bank to do depends on a depositor's condition. If he is a man of abundant means and able to pay his overdrafts, and the bank chooses to do this as a form of loan on which it is to receive interest, the loan is proper. If he is lacking in means, and there is danger of incurring loss by thus permitting him to overdraw, the act is highly reprehensible.

In the southern states of late years this has become a well-understood mode of lending money, and is just as safe as any other. A depositor forms an agreement with his bank whereby he is permitted to draw beyond the amount of his deposit until he has reached a specified sum. He leaves security for his overdraft, usually consisting of certificates of cotton or other merchandise, so that the bank is fully protected in its advances. The depositor checks out from time to time money as though he had an actual deposit until he has reached his limit. By and by he sells his cotton or other produce and reduces his indebtedness to the bank until it is all paid. Why does the depositor resort to this method of loan instead of giving one or more notes for the amount wanted? He saves some interest by borrowing in this manner, for he simply pays interest on each overdraft from the time of making it until the bank is reimbursed. This method of borrowing is therefore a closer one than the more ordinary method of discounts.

e. Call Loans. The next form of borrowing is on call or demand. By this is meant a loan that can be called or demanded as soon as it is made — the same day, the same hour, if the lender desires. Usually a bank gives the borrower notice of a day or two, perhaps a week or longer time. It always does this unless the pressure for money is great, or it fears his solvency. If this were feared, a bank would not hesitate to call a loan instantly to escape loss.

Such loans generally bear a lower rate of interest than loans on time; why, then, are they made? Because banks believe they have a more complete demand over their money. As depositors, except in a few instances, put their money into banks subject to call or check whenever they please, banks desire to have their deposits, if possible, within control should they be demanded. It is therefore regarded as an essential feature of good banking to keep at all times a large amount of deposits loaned in such a way that they can be speedily regained should depositors call for them.

There is a very important reason for making short loans in New York City, which is the center of banking in this country. Every national bank must keep a reserve in United States notes as a fund to answer the calls of depositors; and it must never be long below the legal limit. With respect to the amount of this reserve banks are divided into three classes: banks in the *central reserve* cities, in the *reserve* cities, and other banks.[1] The banks in the central reserve cities must keep a reserve of twenty-five per cent, those in the reserve cities must also keep as much, but one half of this amount may be kept with a bank or banks in a central reserve city. The country banks must keep fifteen per cent; of this amount they must keep six per cent at home, and may keep the remaining nine per cent with a bank in a reserve or central reserve city.

The national country banks and those in the reserve cities keep, for a large portion of the year, the full amount of their reserve permitted by law in the central reserve

[1] For the names of the reserve cities, see page 227.

banks. The amount of the reserve kept in them, especially in the New York national banks, is a very large sum. A few figures may be given.

By the September statement, 1902, returned to the Controller of the Currency, the aggregate deposits of the New York banks were $884,407,908. Of this sum $260,010,282 belonged to outside national banks, $64,003,846 to state banks and bankers, and $106,950,048 to trust companies and savings banks. This vast fund, aggregating $430,964,176, was essentially a reserve held by the New York banks for other banks and bankers.

The New York banks realize the importance of keeping this reserve, belonging to hundreds of banks and bankers throughout the country, in loans that can be instantly demanded.

To whom are such loans made? Principally to speculators, who use it to pay for stocks. A speculator may buy stock, pay a part of the purchase price with his own money, and borrow the remainder of a bank, turning over the stock as security. The reason why the bank will not lend him the full amount is, the stock may decline in value, and then the security would be inadequate. On most of the loans of this character there is a margin left for depreciation, and the agreement also contains a stipulation that, if the stock declines in value, its margin must be made good by depositing other stock or paying a portion of the loan; and that, if this is not done, the bank can at once, without further notice to the borrower, sell his stock and apply the proceeds to discharge his loan. This is known as a collateral stock note. By virtue of this agreement the lending bank is clothed with great power in dealing with the security. There is need of having a wide latitude of authority, as we shall soon learn.

Call loans are made in another way to brokers for the use of speculators. A speculator buys through the broker some stock and pays one tenth of the purchase money, the broker agreeing to furnish the remainder, or, to use their term, "carry" the stock for his customer. He is expected to keep the margin good, that is, if the stock declines, to pay more money or give additional security, and if he does not, or can not, the broker has the right to sell it in the same manner as the bank could if it were the lender. Brokers obtain their money largely to accommodate their customers by borrowing of banks and pledging the stock of their customers. In other words, brokers act as agents for their customers to raise loans for them, on the security of the stock which has been bought through them.

Call loans are made to some extent to other persons than to speculators. But merchants and business men generally borrow on time, for they do not wish to be put in a corner where payment can be demanded of them at any hour or day. How, then, can a broker or speculator run this risk? Suppose a loan is demanded, what can he do, for he has no money wherewith to pay? He expects, if his loan is called, to be able to do one of two things: either to sell at once the stock pledged as security, or obtain a new loan at another bank and with this money pay the first lender. A business man can not run such a risk, because his loans are not backed by collateral that is instantly convertible into money.

If a bank should call only a few loans at any given time, it would be easy for the borrowers to negotiate new loans with other banks on the same security, and pay the original lenders. Suppose many of the country banks should demand their reserves at the same time, which often happens, then it would not be so easy for borrowers to obtain new loans of other banks. The reason is apparent. They, too, are calling loans, and of course have no money to lend. Such a state of things occurs every year or two among the New York banks. When one country bank wishes its reserve, a similar condition of things often exists with many other banks which results in calling theirs. Consequently all the reserve keepers call loans at the same time; and of course cut off all applications of borrowers.

What, then, can borrowers do? They must sell the stocks or securities on which their loans are based. But, unfortunately, the offer of so many stocks for sale at the same time has a disastrous effect on their price. By the operation of the familiar law of supply and demand, prices rapidly decline. This is the explanation of some of the violent revulsions in the stock market. Prices quickly recede, margins are swept away, and banks suddenly discover that their loans are not properly secured.

Then comes a most anxious question with the banks, shall they sell the stocks thus pledged to them for loans at ruinous prices, or try to keep them until the market recovers? If they are sold and do not yield enough to pay the loans based on them, the borrowers are liable for the balance; perhaps they have failed, and the lending banks may fear that if their loans are not repaid from the sale of the stocks pledged by them as security, a loss will ensue. Rather than incur this risk of loss the banks conclude to hold the stocks until the market recovers. But banks all around are calling for their reserves; what, then, must the reserve keepers do? Money must be forthcoming from some source to respond to these demands. So they cut off all loans to their ordinary borrowers, merchants, and the like, and the money received from the discharge of loans previously made to them is sent to the country banks. Thus the mercantile class is sacrificed to obtain the money to pay the country banks, and the speculators are saved, not because they are more worthy or more highly regarded than others, but through fear that the sacrifice of them might result in a loss to the lending banks themselves. In other words, the banks become involved through this system of call loans which can not be easily liquidated or paid when demanded, and, to escape loss, they squeeze the most deserving borrowers, who, from every point of view, are entitled to the highest consideration.

Therefore it follows that call loans do not always prove to be call loans. In truth, it is more nearly correct to say that they are never call loans when the banks demand a great quantity at the same time. This policy, therefore, to a considerable degree, is delusive, and banks which lend their deposits in this manner do not have them so completely under their command as they imagine.

Some large non-banking concerns occasionally, when the rates on call loans are high, lend their bank balances in a similar manner. The aggregate amount of loanable funds in the market is not increased by this operation, for they simply lend money which would otherwise be lent by the banks wherein it is deposited. The object of lending them is apparent, to get a temporary higher rate of interest than is paid to them by the banks or trust companies. On the other hand, as these institutions in many cases pay their depositors a regular rate, whether it is earned on their money or not, it is not quite fair for the latter to take their deposits out when they can get more from other customers and put them back when the bank rate is highest. Doubtless the matter will be adjusted in due time, for banks can not afford to give, nor can depositors expect to receive, more than a fair proportion of the profit accruing from the lending of their money.

12. Securities taken for Loans. — Lastly, let us consider the securities that are offered and taken for loans. First may be noticed bonds, stocks, and other collaterals. These are often taken for time loans as well as those on demand. The notes that are given provide for the mode of selling the securities if the loans are not paid at maturity. The pledgee, the bank, is forbidden in most cases to take the stocks in payment; it must sell them in open market, and if there is a balance over, it must account for this to the borrower. It is entitled to make itself good and nothing more. It is a general principle of law that an agent or trustee can not become the purchaser in any sale of the principal's property. The temptation would be too great of taking advantage of his situation to forget or neglect his trust relation and sacrifice his principal. Banks therefore can not ordinarily become the purchasers of property pledged to them as security unless the note of the borrower specifically provides for this, or unless the property is taken by agreement. Sometimes a bank will agree with a debtor to take his property and discharge the debt; when this is done the bank becomes the absolute owner, and should the property thus taken subsequently advance in value, the bank would be the sole gainer.

When a bank incurs a heavy loss from the failure of the makers or indorsers of paper, sometimes the president will resolve henceforth to lend less money on such paper and lend more on bonds, stocks, and other collaterals, the worth of which is daily known in the market. But when the stock market suddenly goes to pieces, and values shrink enormously in an hour, then he has a poorer opinion of collaterals, and concludes that, on the whole, notes with responsible makers or indorsers are quite as safe as notes secured by ordinary stock and bond collaterals.

And this is the verdict of long experience. No security is proof against depreciation. The makers and indorsers of notes fail, bonds and stocks also decline in value. Absolute security is to be found nowhere.

A national bank is forbidden from taking its own stock as security. The reason is worth giving. Formerly state banks were often organized without any real capital. The shareholders would give their individual notes for the stock, organize the bank, issue its notes which the shareholders would receive for their notes discounted by the bank, and return them immediately in payment of their shares. By this method a bank would be organized without one dollar of real capital. It would, in truth, have its own notes and the individual notes of its shareholders; nothing more. To prevent this, national banks are forbidden to take their own stock as security. There is nothing, however, in the law to prevent a bank from taking the stock of another bank, and consequently it is possible for shareholders of different banks to exchange shares and get loans on them. This practice is in vogue in Canada, where a law prevents shareholders from pledging the stock of their own bank as security for loans obtained from them.

National banks are forbidden also from taking real estate as security for loans. The reasons are twofold. Congress sought to prevent banks from ever becoming the permanent owners of much real estate through the failure of borrowers to pay their loans and the taking of their land in payment. The other reason is, Congress, having a proper realization of the unsatisfactory nature of such security, restricted banks from taking it. The experience of state banks prior to 1863 had shown that real estate security was often fluctuating and delusive and immense losses had been incurred in lending money on this seemingly solid basis. The wisdom of this restriction has never been much questioned.

Notwithstanding the law, banks on a few occasions have made loans on real estate security. How have the courts dealt with them? The state courts declared that the banks could not collect their loans, because they had violated the law. The Supreme Court of the United States decided differently.[1] Both parties, so the court said, had violated the law, the borrower was as guilty as the lender. He ought not to be permitted to take advantage of his own wrong. He must therefore repay the money, because in justice he should do so. But the bank, so the court declared, had rendered itself liable to a revocation of all its privileges, and if the act was repeated, it would be the duty of the Controller of the Currency to proceed against the association and take away its charter. This admonition was enough, and no bank has since, openly at least, violated this provision of the law.

A national bank, however, may take a mortgage of real estate or land itself to secure a past debt. A bank discovers that a borrower is likely to fail and asks him to furnish additional security, and he gives the bank a mortgage on his real estate. This can legally be done.

It may be asked, can not the law be easily evaded by making a simple loan and then giving real estate security shortly afterward? The law doubtless has thus been evaded on more than one occasion. Still, if it should ap-

[1] National Bank *v.* Matthews, 98 U. S. 621.

pear that the transaction was simply to evade the law, the bank would subject itself to the danger of losing its charter, a risk too great to offset against the possible gain from making a loan of that kind, whatever might be the temptation in the way of a high rate of interest.

When a bank thus takes real estate for a past debt, it can hold the land not longer than five years. If it can not find a purchaser during that time, it must sell the land by auction. The law permits a bank to hold it for this period presuming that a purchaser within five years can be found; if he does not appear, it must dispose of the property publicly. A banking house therefore is the only real estate which a national bank can hold permanently.

13. Interest. — Finally something may be said concerning interest. The national banking law provides that a bank can not exceed seven per cent in a state or territory where no rate is prescribed; where a state fixes a rate, that may be followed. If the state law is violated, Congress has prescribed what may be done with the offending bank. If the offense consists of an agreement to receive more than the legal rate, which has not been paid, the bank can collect no interest whatever; if the interest has been collected, the borrower can recover twice the entire amount paid if he desires, within two years from the time of paying it. If he did not pay illegal interest on a note when it became due, and gave a new one with the illegal interest added thereto, and, when that matured, gave a third to which the illegal interest was added in the same manner, the entire interest is forfeited, and not simply the interest due on the last note of the series.

X. THE LAW RELATING TO COMMERCIAL PAPER[1]

1. What is meant by Negotiable Paper. — Besides the legal principles that have been incidentally stated relating to checks, notes, and other instruments taken by banks, it is proposed to devote a chapter to this subject. And first, a bank deals only with negotiable paper. But when a bank has made a loan on insufficient security, it will take whatever it can get to secure itself from loss, and thus it sometimes comes into possession of a note that is not negotiable.

A negotiable note is transferable by indorsement and delivery, or by delivery alone. Thus a note which is made by A payable to the order of B, he, by indorsing his name thereon and delivering to C, can order A to pay the money to C. Again, a note which is made by A payable to the bearer and given to B, he can transfer to C simply by delivery without any indorsement.

2. Four Characteristics. — A negotiable note, draft, or check possesses four characteristics. First, the person to whom it is transferred can sue thereon in his own name to collect the amount if the maker or indorsers should not pay. Second, an innocent purchaser of a note payable to bearer or indorsed in blank, which is stolen and transferred

[1] The new Negotiable Instruments law, which, in a few years, will doubtless be adopted by all the states, should be studied with this chapter. A few of the rules here stated have been modified or entirely changed by that law; but it is only an outline, and the need of knowing the general principles set forth in this chapter is as great as ever.

by the thief to the purchaser before it is due, acquires a good title thereto and can collect the amount. The true owner could not forbid the maker from paying the purchaser. A different rule applies to every other kind of property. If A's horse is stolen and bought by B in good faith from a man who claims to be the owner, nevertheless A can reclaim it, and B must be the loser. The law prescribes a different rule for negotiable property in order to remove all doubts concerning its title that might otherwise lurk in the minds of buyers. But should they have any doubt or suspicion that a note or bond offered to them for sale was stolen, they would not be innocent purchasers and the true owner could recover it from them. Third, a third person C, who has become the purchaser of a note before its maturity, is entitled to the full amount, mentioned therein. The maker can not say that he had paid a part to B who had forgotten to credit the amount. Such a defense would be good if B had not parted with the note, but whenever it is taken by C, not knowing of any defects or defenses that A had against it while it was in B's possession, he is protected by the law from any defense of the kind that A may attempt to make. Fourth, a negotiable note imports, or is presumed to have been given for, a consideration. In other words, when A's note to B has been transferred to C, A can not say to C, "I did indeed sign it and give it to B, but he never gave me any money in return. He promised to do so, but has failed to keep his promise." The law cuts off this defense; it imports or presumes that A did receive something, a consideration, and this presumption is so strong that the law will not permit A to escape paying C unless he can clearly show that he did not receive anything from B, and that C knew this at the time he took the note. These four great principles attach alone to negotiable paper to give it more currency, to render it more fluid.

3. Notes, Bills of Exchange, and Checks. — The three kinds of negotiable paper that are best known in the commercial world are promissory notes, bills of exchange, and bank checks. A promissory note may be defined as a promise or agreement to pay a specific sum at the time therein limited, or on demand, or at sight, to a person named therein, or his order, or to bearer. No precise form of words is necessary; they are sufficient if they create an absolute promise to pay money. The person who promises to pay is called the maker; and the person who is to receive the money, the payee. A note payable to bearer can be transferred by delivery; if it is payable to order, it can be transferred by indorsement, which consists in writing the name of the person to whom it is payable across the back. The person who indorses is called the indorser; and the receiver, the indorsee. In all cases the owner is called the owner, or holder.

A bill of exchange may next be defined. Perhaps Byles's definition is as exact as any other; we know of no briefer. "It is an unconditional written order from A to B, directing B to pay C a certain sum of money therein named." The person who writes or draws the bill is called the drawer; the person to whom it is directed, the drawee; and after accepting, or agreeing to pay, the acceptor. The person to whom the bill is payable is called the payee. A bill which is payable only to the person therein named, is not transferable or negotiable; but if it is payable to him, or to his order, it may be negotiated. When this is done the payee becomes the indorser, and the person who receives it the indorsee.

In their general form a promissory note and bill of exchange are quite different. To every bill there are three parties, — the drawer, drawee, and payee, — while there are only two parties to a promissory note, — the maker and payee. Again, the acceptor of a bill, or person who agrees to pay it, is the real or primary debtor; but the form of a note is so changed by transferring it to a third person that it is very similar to a bill. The indorser then resembles the drawer; the maker, the acceptor; and the indorsee, the payee.

Bills of exchange are divided into two kinds, — foreign and inland. A foreign bill is drawn in one country and payable in another; an inland bill is drawn and payable in the same country. The several states of the Union are regarded as foreign in drawing bills. If the drawer and drawee of a bill reside in Pennsylvania, and the bill is payable in New York, it is foreign; but if the drawer and payee reside in Pennsylvania and the drawee in New York, it is an inland bill. The states in which the parties live should always appear by the instrument, as the courts can not always infer their residence from the name of the city, town, or other place mentioned.

Lastly, a bank check may be defined. An eminent law writer has furnished this definition, "A check is a brief draft or order on a bank or banking house, directing it to pay a certain sum of money." It resembles a bill of exchange, and is usually drawn payable either to bearer or to the order of some person. Indeed, it is so nearly like a bill that, in some states, when it is not paid the same steps must be taken to preserve the liability of the parties as are taken with a bill of exchange.

4. No Particular Form of Words Necessary. — In writing a negotiable note no particular words need be used, but the most frequent words of negotiability are, "to order" or "to bearer." Any words, however, which convey the idea that the maker intended to make a negotiable note, will have that effect. May not an ignorant maker, when writing his note promising to pay John Smith $1,000, intend to give him a negotiable note? Perhaps so. Yet he has written a promise to pay John Smith and no other person. This note certainly is not negotiable in form. Nevertheless, if he intended to give him an ordinary negotiable note, and supposed that this form was sufficient, its true character and purpose could be established in a proper court. The reforming of instruments in order that they may fulfill the intention of the parties is the work of a court of equity, and the true intent and purpose of a promissory note can be enforced when they are clearly proved, as well as the true intent and purpose of any other instrument. There is, however, rarely any occasion for taking such action with respect to a promissory note.

The promise must be unconditional. Were conditions attached, the promise might become so badly entangled that no one could tell what it really was. The law, therefore, is imperative in this regard. The promise must be certain, without any doubt or alternative.

The promise must be to pay money. Before 1860, when state bank notes were in circulation, they often differed greatly in value; and this fact often led the makers of promissory notes to depart from the accustomed phraseology in drawing them. They would promise to pay in the notes of a particular bank, or in addition to the stated amount, "the current rate of exchange," or "in current funds" at a place mentioned, or "in current bank notes." The effect of these additions was in most states to destroy their negotiability. A note that is to be paid in goods or produce is not negotiable.

The promise to pay must be to pay a definite amount of money. A promise, therefore, which also includes the payment of the collection fees, should there be any, would not be definite in amount, and the note would not be negotiable. Such is the law in some states, but not in most of them.

The promise of time of payment must be definite. A note containing a promise to pay at the opening day of the next international fair, or the next snowstorm, would not be negotiable because the event might never happen.

Any condition to a promise which is not to go into effect until after the note matures, does not affect its negotiability. A maker therefore, who should promise that if he did not pay his note when it became due, he would pay a double rate of interest or give additional security, would not, by this additional promise, affect its negotiability. In the states which hold that the payment of collection fees do not affect the negotiability of a note, the reasoning is the same; the stipulation does not go into effect until after the maturity of the note.

5. A Negotiable Note should not be sealed. — By the modern law a corporation which should attach its corporate seal to a promissory note, would not render the obligation non-negotiable. It *might* have this effect, but would not be decisive. The question would be, what was the corporation's *intention?* If it was intended to make a non-negotiable note, the seal would have this effect; if it did not intend this, the seal would not destroy its negotiability. This is the present rule.

6. How an Agent should sign. — A note signed by a person as agent without the addition of any principal was once regarded as the signer's obligation. The addition to his name of the word, Agent, President, Treasurer, was legally considered as a mere description of himself, but the tendency of the modern decisions is to regard a note thus signed, not an individual obligation, but that of an association or company, and to permit oral proof to explain the signer's intention. "There is a growing inclination to consider an instrument as it would manifestly be understood by the average business man, or, in other words, as it was most probably understood by the party receiving and the party signing it, and to exonerate the latter from liability where, according to such construction, it appears to the court that he did not intend, and was not understood to bind himself, but to act for the corporation of which he was the authorized agent."[1]

7. To be Valid a Promissory Note must be delivered. — The maker would have a good defense to a note that was completed in form and locked up in a desk, and afterwards found and sold by a thief. This is one of the risks run by the purchasers of negotiable paper.[2] But a note once properly put into circulation and afterward stolen, the maker must pay, for its birth is legitimate. In the other case it is not a note at all. In like manner, a note made and delivered on Sunday is not valid; but though written and dated on Sunday, if it were not delivered until the next day, the maker would be bound. It becomes effective on the day of its delivery, and not on the day of its date.

8. Effect of Alterations. — A promissory note should not be altered after it is signed and delivered, however innocent may be the holder's act. Suppose the holder, on looking at the note, discovers the omission of the interest clause, and knowing that it was the intention of both par-

[1] Second National Bank *v.* Midland Steel Co., 155 Ind. 588.

[2] The law is otherwise in the states that have adopted the new Negotiable Instruments law.

ties that interest should be paid, expresses this intention in the note. The addition would be fatal. In one of the recent cases the court said, "The motive of a creditor in making an alteration may not be fraudulent, yet as the alteration changes the legal identity and effect of the instrument, the debtor may well say it is not the contract into which he entered, and he is not, therefore, bound by it."[1] This rule prevails everywhere, and yet there is a slight qualification. If the alteration is not material, it does not vitiate the note. The question, therefore, when an alteration has been made, relates to its materiality. This is a question of mixed law and fact. The principal alterations which have been deemed material are, the date, amount, place of payment, name, adding names as witnesses, addition of an interest clause, and the erasure of an original alteration. In such cases, does the holder fail to recover anything? Once it was held that when the alteration was clearly proved there could be no recovery. This rule has been somewhat qualified and may be thus stated: if the alteration is immaterial, the right to recover is not impaired. If the alteration is material and fraudulent, there can be no recovery on the note; if the alteration is material, but was made by the holder and innocently, although there can be no recovery on the note, yet the amount originally loaned can be recovered independently of the note. In other words, the law can not enforce the written contract; but as the borrower ought in justice to repay the money loaned to him, the law will compel him to do so if he refuses, just as though he had not given a note.

9. Parties. — Passing from the form of a note to the parties, it may be remarked that in order to bind those

[1] See Craighead *v.* McLoney, 99 Pa. 211.

who enter into such engagements they must be legally competent. Not every one is legally competent to make and indorse negotiable paper. A minor can not make or indorse a note that will bind him. Yet he can by indorsing it transfer the title to the next holder, who would have the same rights against prior indorsees, if there were any, as though the minor was not in any way one of the parties.

At common law a married woman can not sign promissory notes, but this right has been conferred on her in most states by statute. Her authority in them differs very considerably, and we can express the prevailing rule only in the most general way. She can give notes that will bind her and her property for all matters relating to her own interests as though she was unmarried, but her right to indorse is more restricted. If she is engaged in business and receives a note from a customer in payment for goods sold, or for her own use, and she indorses it for the purposes of having it discounted and using the money, she can be held on the indorsement; but if she indorses or guarantees the note of another for his benefit, so that he can raise money thereon, in many states, she is not liable. It may be added that almost everywhere the laws are construed very liberally in favor of married women who are engaged in business to enable them to obtain credit; also in favor of married women who have property to enable them to make contracts for its preservation, use, and sale.

10. Notes are often made and taken by Agents. — Many questions have arisen concerning their authority to make them. A clerk in a store has no authority to borrow money and give notes therefor in his firm's name. An agent who is authorized to sell for cash can not take notes in payment. But the cashier or president of a bank can make such notes and indorsements as are within the general scope of the business, because they are the general executive officers, and represent the institution. They can accept a new note in settlement of an old one, or exchange securities for the accommodation of the makers or the benefit of the bank.

An agent, however, who lacks authority may nevertheless bind his principal if his conduct is ratified or approved. Agents are constantly doing things beyond their authority and without the knowledge of their principals, believing that their action will be approved by their superiors as soon as it is known. Again, ratification may occur in various ways. One of the most common and effective is to accept the benefit flowing from the agent's act, whatever it may be. If an agent should receive a note instead of cash in payment, and the money should be collected and retained by the principal, his ratification would be as complete as though he had expressly signified to his agent his approval. There is one important limitation to this principle relating to ratification. The principal is not bound by it unless he understands all that the agent has done. If he has taken a note outside his authority, and told his principal that the maker was a man of wealth and character, when he knows that his statement is false, his principal is not bound thereby, for the law presumes that he would not have ratified his agent's act had he told the truth. On the other hand, a principal who does not intend to ratify his agent's act, must repudiate it as soon as possible after learning what he has done.

11. Notes of Drunken and Insane Persons. — Next may be considered the notes of drunken persons and persons of unsound mind. A person who gives his note and receives money from a bank or individual not knowing of his condition must nevertheless pay unless a fraud was practiced on him. This is just; there is no reason why he should not return it; for he has had the worth of it. A person who takes advantage of the drunkenness of another and obtains his signature to a note commits a fraud, and the law will not recognize the act. But when there is a good consideration for the note, the maker may afterward ratify his act and become bound thereby. A third person, however, who receives the note in good faith, paying a consideration therefor, can collect the amount should the maker decline to pay. Of course, the original payee commits a fraud in transferring it to another; but the innocent third person, so the law says, shall not suffer. It may be asked, is not the maker innocent too? Not so much so as the other; he has done what he ought not, and if another suffers from his act, he and not the third person must bear the consequences.

An accommodation maker or indorser who receives no benefit therefrom and was not himself at the time of making or indorsing, whether this was known at the time by the other parties or not, is not liable. But he is liable when his indorsement was a renewal of another given at a time when he was unquestionably sound.

12. How Notes can be transferred. — Having described the parties to a negotiable note, let us describe how it may be transferred. This can be done by indorsement, whereby the new owner comes into possession of all the rights of the other. Nay, more, for if the original payee retains possession of the note until maturity, and it is not paid, his claim is confined to the maker; but if the note has been transferred to a third person and it is not paid, he can proceed against both the maker and the other from whom he immediately took it, the indorser. And if a note were transferred half a dozen times before maturity, each indorsee would be an additional guarantor or security to whom the holder could look for payment if the maker failed to fulfill his agreement. Of course, the holder in no case can collect any more than the amount due, but every additional indorser to a note is an extension of the security for its ultimate payment.

The indorsement is made on the back of the note, though it may be made on a separate paper called an allonge. This additional paper is used when the note is covered with names, or has been mislaid and can not be had at the time the owner wishes to indorse and transfer it to another.

13. Indorsements.—There are several kinds of indorsement, but the two in most general use are known as an indorsement in blank and an indorsement in full. A blank indorsement consists simply of the name of the owner of the note or other instrument written across the back. By doing this and delivering it to another, the transferee or new owner is authorized to write over the signature an order to pay the sum mentioned therein to himself or to any one else, or, in short, to fill in any contract of indorsement in harmony with usage. An indorsement in full contains the name of the person to whom, or to whose order, the money specified in the instrument is to be paid. Thus, a note indorsed, "Pay to John Wakedog or order," and signed by the owner, is an indorsement in full. It will be seen therefore that an indorsement in blank can be converted into an indorsement in full, but the form of the latter cannot be changed.

An indorsement also may be conditional, by which the indorser directs payment to be made on the happening of a certain event. It may be absolute, whereby the indorser promises to pay without regard to the taking of the usual steps to obtain payment of the instrument. The indorsement may be qualified. For example, when he adds the words, "without recourse," he means that the holder can not look to him for payment if the maker or other prior parties fail to pay it. And finally, another kind of indorsement is known as restrictive, in which the action of the indorsee is restricted; for example, that he must pay to B for the use of C.

Indorsements are not confined to the narrow formulas already given; they may be in other words. When departures occur, questions may arise concerning their intent and effectiveness. Thus, a promissory note was indorsed, "For value received I hereby assign, transfer, and set over to B all my right, title, interest, and claim in the within note." This passed the legal title without destroying its negotiability. Nor is the negotiability of a note destroyed by affixing a seal to the indorsement, either by a corporation or an individual.

Concerning a person's authority to indorse some questions have arisen. Whenever an agent or the secretary of a company indorses a note, and the principal or company has received the benefit of the indorsement, neither the principal nor company can repudiate the agent's authority. The acceptance of the benefit of the act cuts them off from questioning the authority of the agent to indorse. Again, an agent who transacts business for another and takes notes in payment and indorses and transfers them to his principal, may recover the amount from him whenever he is compelled to pay by reason of his indorsement.

If two or more payees indorse jointly, they do not render themselves liable as partners; furthermore their liability is equal regardless of the order of their indorsement.

Sometimes a note drawn in the usual form is indorsed by a third person. Buck owes John Smith money and is willing to give his note payable in a year in payment. Smith says to him, "If you can get your brother to sign it, I will take the note in settlement of the debt." Buck's brother consents to indorse the obligation, and it is drawn in this form: —

"NEW YORK, July 1, 1901.

"One year from date, for value received, I promise to pay to the order of John Smith $1,000.

"JOHN BUCK."

This is indorsed, "Richard Buck." What kind of a liability has Richard Buck assumed?

In some states Richard Buck is regarded as a surety or guarantor; in others, as a first indorser; in others, as a joint maker. The highest legal tribunal has declared that "when a promissory note, made payable to a particular person or order, is first indorsed by a third person, such third person is held to be an original promisor, guarantor, or indorser, according to the nature of the transaction, and the understanding of the parties at the time the transaction took place." [1] And this is the rule in the new Negotiable Instruments law.

One other view may be mentioned. If the note has not been transferred, but remains with the original payee, the intention of the parties may be shown by oral proof in the event of a legal controversy. This rule, however, does not prevail everywhere. In some states public policy forbids the explanation of an indorsement by oral evidence except in cases of fraud, accident, or mistake.

14. Contract implied by Indorsement. — By indorsing a note a new party is introduced and the instrument is

[1] Rey *v.* Simpson, 22 How. 241.

endowed with new qualities. The promisor becomes immediately liable to the indorsee, and the indorser undertakes to pay if the maker does not. Though the indorsement consists only of the indorser's name, or a direction to pay to the order of a specified person, the contract of the indorsement implies: first, that the instrument itself and the signatures thereon are genuine; second, that the indorser has a good title thereto; third, that he is competent to make a contract; fourth, that the maker is competent to bind himself to pay the instrument, and on due presentation of it will pay the same at maturity; and fifth, that if, when it is duly presented, it is not paid by the maker, the indorser will, on proper notice of its non-payment, pay the same to the indorsee or other holder. An indorser's liability, therefore, is a conditional liability, and may be converted into an absolute liability, provided the maker does not pay, by taking the steps about to be described. The holder, or a notary public, or some other person authorized by the holder, must call on the maker at his residence or place of business and present the paper and demand payment, and should he fail to pay, give immediate notice to the indorser, or put the notice in the post office for transmission to him by the first mail, to the post office most convenient or nearest to his residence.

When, therefore, a note matures, and the maker fails to pay it, every indorser thereon, if properly notified of its non-payment, is liable to the holder for the amount. Suppose there are three of them; they can not say to the holder, "Sue the maker, and if you can not collect the amount of him, we will pay." It is their duty to pay the holder and sue the maker themselves. Furthermore, as the holder can look to the maker and all the indorsers for payment, so can the last or third indorsee look to the maker and the two indorsers before him for payment; in like manner the second indorser can look to the maker and the first indorser, while the first indorser can look only to the maker for payment.

15. Presentation of Checks for Payment. — In presenting checks for payment two rules must be observed: first, if the person who receives the check and the bank on which it is drawn are in the same place, the check must, in the absence of special circumstances, be presented the same day, or at latest, the day after, it is received. Second, if the person who receives the check and the bank on which it is drawn are in different places, in the absence of special circumstances the check must be forwarded for presentment, at the latest, on the day after it is received. An agent to whom it is forwarded in like manner must present it at the latest on the day after receiving it.

16. Presentation of Notes and Bills payable at a Fixed Date. — In presenting notes and bills payable at a fixed date, they must be presented to the maker or acceptor, or in his absence to his clerk or agent, at maturity. An earlier demand is worthless.

A bill of exchange, payable at sight or on demand, must be presented within a reasonable time. Payment of a note or bill payable on demand may be demanded as soon as it is signed; but the condition on which the indorser is liable is that payment shall be demanded within a reasonable time, and the earliest notice possible be given of the maker or drawee's refusal. On one occasion an eminent judge remarked, concerning a bill payable on demand or at sight, that it was impossible to fix any precise time; payment must be demanded and notice given as soon as these things can be conveniently done, taking into view all the circumstances of the holder and drawer.

A bill of exchange payable at any time is payable immediately, and to charge the drawer or indorser it must be presented for payment in a reasonable time after receiving it. A delay of eight months, for example, is too long; and when the holder of a bill payable immediately has taken it from the payee, not in the usual course of business, but long after the reasonable and proper time for presentment, he is affected with notice of all the facts known by the payee at the time of the transfer.

17. Presentation of Bills for Acceptance. — The holder of a bill of exchange may present it for acceptance and have it protested should the drawer decline to accept it. In some states presentment for acceptance is not necessary when a bill is payable at a fixed period after date. Again, in some states the courts have held that while the holder of such a bill need not present the same for acceptance, a different rule applies to an agent to whom it has been sent for collection. There is no reason for applying a different rule to an agent and requiring that he should be more diligent than his principal.

18. Presentation of Notes payable on Demand. — If a note payable on demand is indorsed, payment must be demanded within a reasonable time, otherwise the indorser is discharged. It has been held that if the demand for payment were delayed until just before the statute of limitations would become operative, it would be effective, and if the indorser were then notified of its non-payment as in other cases, his liability would become fixed. But the modern opinion is, the holder must demand payment earlier, within a reasonable time, though the courts do not attempt to define the reasonable time by a strict limit. In all the cases of this kind after demand has been made the indorser must be notified in the regular manner.

The maker of a note payable generally has the whole of the business day on which it is due to pay it; but a note payable at a bank must be paid during banking hours; and when the holder is there until the close of the day, ready to receive payment, no further demand need be made to charge the indorser. And if the maker of a note thus payable has no funds there when it matures, a demand for payment is unnecessary.

19. When Paper need not be presented for Payment. — Paper need not be presented for payment whenever this would be useless. The occasions when the law excuses the holder from doing this will now be described. When the maker has absconded, the law does require the making of further inquiry; but this rule can not be applied when the maker has merely removed from his place of residence. Whenever the drawer admits or acknowledges his liability to pay the bill he has drawn, the necessity of proving a demand of the drawee and his refusal and notice does not exist. And the proof may consist either of an express promise to pay or of other circumstances from which this may be inferred, as a part payment before or after the bill or check became due. Likewise an acknowledgment of liability and promise to pay by the indorser after a default of payment by the maker dispenses with proof of presentment and notice, and throws on the indorser the double burden of negligence in this regard and that he was ignorant of it. His liability also continues whenever he waives notice of the protest. Thus, an indorser on the day when a note became due indorsed thereon a written waiver of notice and protest for non-payment, and on the same day a demand was made at the banking house at which the note was payable, and the answer was that the maker had no money there. This was regarded as a sufficient demand. The death, bankruptcy, or imprisonment of the maker constitutes no excuse for not making a demand, because many means may remain of payment through the assistance of friends and in other ways.

20. A Demand must be proved. — A demand, unless it is excused, or due diligence in trying to make a demand, must be proved in order to recover from the indorser. In an action against the maker this is not requisite, for he is liable in any event.

21. Notice. — The notice is authentic information from the proper source that the note has not been paid, and serves a double purpose. One purpose is to notify the indorser that the holder looks to him for payment, and the other is to enable the indorser to secure himself against loss. For, as he is now absolutely liable, in truth, ought to pay at once and seek to recover the amount, if possible, from the maker, he may pay the note without delay and proceed forthwith against the maker. The notice thus given to the indorser is almost always in writing; though if it were given by the proper person, one having an interest in the note, as owner or as agent representing him, a verbal notice would suffice.

The holder need notify only his immediate indorser, or only the indorsers whom he intends to hold. A very common practice is for the holder to notify his immediate indorser, and to inclose the notices to him for the preceding indorsers, which he is expected to send to them in a similar manner. By doing this he fulfills his whole duty. He perfects his right to recover against all by properly notifying the last indorser. Another and very common practice is for the holder to give a direct notice to each indorser, and if it would ordinarily be received as soon as it would by regular transmission through all the parties, it is sufficient. In most cases, doubtless, the notice thus sent is received earlier.

Formerly it was the custom of banks to do their own protesting, through their own uncommissioned officers. The records of presentation and refusal of payment were made in a book kept for that purpose, and this was often used in courts as evidence of what was done in the way of demanding payment and notifying indorsers.

In like manner when a notary is employed, and he generally is, for the reason that he knows how to perform the business, a notice is sent by him to each indorser if he knows where to send it; but very often not all of the addresses are known. The practice is growing of indicating on the note where the notice shall be sent, and this is desirable.

A notice of an indorsement by a partnership need not be sent to each member. Even after it has been dissolved a notice to one partner is sufficient to bind the other members. Persons who own notes and bills jointly sometimes indorse them, and when they do they are not liable as partners. Consequently, a notice of the non-payment of such a bill to one will not discharge both. Each must have notice in order to be held for its payment.

In sending a notice the mail can be used in some cases, but not in all. When the person who is to be notified resides in the same city as the notifier, then the notice must be served personally, or at his house, or place of business. It can not be deposited in the post office. But a notice addressed to an indorser, deposited in the post office of the city where both the notifier and indorser reside, is now regarded as proper by furnishing proof that it was received in time. In many states the legislatures have authorized the use of the mail for this purpose.

When the persons to be notified reside in different places from the notifier, even though the distance may be very short, but in an adjoining town or other municipality, or at such a distance as would render the employment of a special messenger expensive, the mail can be used. Much legal ingenuity has been expended in defining the precise boundary between personal and transmitted notice. A statute authorizing the sending of a notice through the mail in all cases would terminate this series of small legal puzzles.

Many questions have arisen concerning the post office to which the notice must be sent. The law does not imperatively require that the notice be sent to the post office nearest to the residence of the indorser, for this can not always be known without considerable inquiry, delay, and expense. If, therefore, in the absence of precise knowledge, the notice is sent to the post office at the county seat of the county where the indorser resides, this will suffice, for if he lives at a place nearer to another post office, at which he usually receives his letters, the postmaster will doubtless forward the notice to that office. Another rule has been established that is reasonable and in most cases can be easily applied. A notice may be sent either to the post office nearest to the indorser's residence or to the one at which his mail communications are usually received.

A notice sent on Sunday is invalid, and if an indorser should receive it, he would not be bound, nor would the irregularity in the service be regarded as waived.

A holder is not responsible for the receiving of a notice by the indorser. When the notice is properly prepared, directed, and sent within a specified time, the holder has performed his whole duty in the matter. He is not an insurer for its safe and regular transmission. To this rule there is an important exception. When the mail is substituted for personal service, a practice that is growing, the holder who afterward sues the indorser, if a note is not paid, must prove that the notice was received. Can not an indorser escape by denying the receipt of the notice? This is possible. A good practice when sending a notice is to put on the outside of the envelope a direction to return the envelope if not delivered in three or five days. If the letter is not returned, the courts have held on several occasions that, considering the care exercised in conducting the public business, the fact of its non-return should be considered as satisfactory evidence that the person to whom the letter containing the notice was addressed received it.

There are occasions when notices need not be given. The first that may be mentioned is war, which stops the usual communication between the parties. Thus, the seizing of mails between Pittsburg and New Orleans during the Civil War was a valid excuse for omitting to send a notice of the dishonor of a bill. The insolvency of the maker does not dispense with the necessity of demand and notice of non-payment.

There must be due diligence in notifying, otherwise the indorser is discharged. What this is depends on circumstances which must be ascertained, when they are disputed, by the jury. Two general rules have been established for determining the time. If the person to be notified lives in the same town as the notifier, the notice must be given by the close of the next day after it is received. Therefore a delay to send notice of the non-payment of a note on Friday until the next Monday would be too long. If the parties live in different places, the notice must be sent by the next practicable mail on the morning of the day after making the demand. If the mail closes at so early an hour that it is impracticable to forward a letter, one sent by the next mail will be in time.

The time established for an indorser to notify his prior indorser is an entire day; and an agent for collection, who has indorsed a note or other instrument, must receive and give notice like any other indorser.

Sometimes a mistake is made in dating a notice. Is the indorser then relieved? The law is very strict. If the demand was made on the proper day and the indorser is notified that the demand was duly made, the indorser will be held, even though the notice was dated the day afterward. But if the date of the notice sent to the indorser without any explanation shows that the notice was sent too early, he is relieved.

22. Protest. — A few words may be said concerning the protest. The object of this is to have proof of the presentment and demand for payment, and that the parties to the instrument were duly notified. Protests generally pertain to foreign bills of exchange and must be made of them. As this is an easy and cheap method of furnishing evidence of these matters, the practice has become very general of protesting inland bills and notes that are not duly paid. Indeed, the custom to treat inland bills and notes in the same manner as foreign bills has become so universal that in common parlance the terms mean the taking of such steps as are required to charge the indorser. For the same reason the word "protest," sometimes employed in giving notice of dishonor to the indorsers of inland bills and notes, clearly implies a demand, non-payment, and consequent dishonor of a bill or note in all cases in which a protest is necessary.

A notary is sometimes disqualified from acting. A shareholder in a bank, or a director, cashier, teller, clerk, or other officer of the institution, is forbidden in some states from exercising the duties of a notary. In other states he is permitted to act either by common law or by statute.

In some states the sending of notices is not an official duty of a notary, and where it is not, the notice may be sent by the holder. If, however, a notary public is employed to make presentment, his employment includes the notifying of the indorser. And when the notice is duly certified and is not contradicted or questioned, it is presumed to be legal.

When an instrument is received by a notary to be presented and protested, the holder must put him in possession of the proper information for performing his duty. The notary must first make a demand on the party primarily liable at his place of business within business hours. He must then give notice of the presentment and non-payment to the indorsers. And if he follows the usage, no more can be expected of him. For example, he is not required to go beyond the limits of a state in making a demand unless this is the usage. Notes are often made payable at a bank, and when they are, their presentment is sufficient if they are actually there at the proper time to be delivered to any one rightfully entitled to them by paying whatever may be legally due.

A visit during business hours for the purpose of making a presentment to the maker's place of business, which is closed, is equivalent to an actual presentment and demand. But a demand by a notary in the street of an acceptor of a bill is not a sufficient demand. It should be made at his place of business.

23. Waiver of Demand and Notice. — A demand and notice of the non-payment of a negotiable note may be waived on or before the day of maturity by the indorser, either orally or in writing, by acts having the effect to mislead the holder and prevent him from treating the note as he would otherwise have done. Having waived this right, an indorser is put in the same position as though the protest had been made and a notice had been duly given to him. A drawer who promises to pay a bill, after full knowledge of the fact of an omission to make due presentment, thereby waives it and becomes bound; and his promise may be express or implied from circumstances. The words, "protest waived," are regarded everywhere as a waiver of both demand and notice. In one of the cases the court remarked that a waiver of protest before the maturity of a note is a waiver of all the steps leading to it and includes demand and notice of non-payment.

24. Transfer of Paper after Maturity. — Negotiable paper may be transferred by indorsement after maturity, but the rights of the parties are not the same as in other cases. The indorser simply conveys his right or interest in the note, and the maker can interpose any defense against such a purchaser as he could against the original payee, had he not parted with it. But if the original payee has no defense, and is liable thereon, an indorser after maturity may also be held, provided that a demand has been made on the maker within a reasonable time after his indorsement and notice of his non-payment has been given to the indorser as in other cases. The courts do not declare what a reasonable time is, for the running of notes thus indorsed after maturity; each case therefore stands by itself.

25. Negotiation of Accommodation Paper. — As we have seen, promissory notes originate in two ways: they are issued either in payment of merchandise of other property, or for the purpose of borrowing money on them. Those which have their origin in business transactions are called business or commercial paper; the other kind of note is known as accommodation paper. This is made by an agreement between the maker and payee, who is also the indorser, for the benefit of one of them.

The maker's promise or undertaking is to pay his note to any holder at maturity. He is liable, except to the payee, like the maker of any other paper. The indorser promises, in effect, that if the maker does not pay his note at maturity, he will do so as soon as he has received due notice of the maker's failure to fulfill his promise. Very frequently accommodation notes are made for the indorser's benefit, and when they are, he must pay them. On other notes, as the maker has received the proceeds, he is responsible therefor, and the indorser can recover from him whenever he has been obliged to pay them.

As accommodation paper is made for the purpose of borrowing money, it must necessarily pass into the possession of a third party. The indorsee acquires a good title, and in every respect his rights are as perfect as those of the indorsee of commercial paper. The maker, therefore, can not successfully defend against the indorsee that he is not the owner, and gave no consideration therefor, or that he knew its real character. The indorsee is no more required to prove the consideration paid by him than he is in other cases.

An accommodation note given to a party for his use, without restriction, can be pledged as security for a debt, and the maker is cut off as completely from making defenses against the person to whom it has been pledged as the maker of ordinary business paper is cut off from defending against the indorsee. Said an eminent jurist, "He who chooses to put himself in the front of a negotiable instrument for the benefit of his friend, must abide the consequence, and has no more right to complain if his friend accommodates himself by pledging it for an old debt than if he had used it in any other way." [1]

26. Liability of a Guarantor. — Sometimes the payment of a note is guaranteed by another. This is not the same thing as an indorsement. The chief characteristics of a guaranty will now be given.

First. The guaranty must be in writing. It is usually written on the back of the note, but it may be written on a separate paper. A statute that exists probably in all the states requires this obligation to be in writing. Sometimes this promise or guaranty, though in form to pay the debt of another, is in truth to pay the guarantor's own debt; and when the promise or guaranty is of the latter character, it need not be in writing. Thus, if the owner of a note transfers it to another for value with a guaranty that he will pay the same if the maker does not, the guarantor in truth merely promises to pay his own debt, as he has received value therefor at the time of parting with it and ought in justice to repay and save the purchaser from loss.

Second. Another peculiarity of a guaranty is, the holder can not proceed to collect the amount of the guarantor, should the maker decline to pay, until he has exhausted his legal remedy to collect of the principal debtor. In other words, the holder must sue the principal debtor,

[1] Justice Black, Lord *v.* Ocean Bank, 20 Pa. 386.

obtain judgment against him, and seek to take his property, if he has any, in payment, before he can ask as a legal right the guarantor to pay him. When he has taken these steps to collect of the maker and failed, then the owner can demand and, should the guarantor decline to pay, proceed against him by suit, if need be, to recover his money.

The owner, however, is excused from resorting to this long and costly procedure against the guarantor whenever he has no property, and nothing could be recovered. The law does not require a needless expense to be incurred before endowing the owner with the right to proceed against the guarantor.

Third. A guarantor need not be notified like an indorser at the maturity of a note of its non-payment if it happens to run for a definite period.

Fourth. A guarantor can not be held for a larger amount or longer time than the original debtor. When his liability ceases, so does that of the guarantor. Nor can his liability be extended in any manner without his consent.

27. Liability of a Surety. — Sometimes a note is signed by a surety, and the distinction between his liability and that of a guarantor is not easily defined. Nor can the distinction always be ascertained from the form of writing. On one occasion the owner of a judgment "guaranteed payment thereon in one year from date." He was regarded as a surety, and as the time of payment was extended without his consent, he was discharged. On another occasion, the indorsement on an order, "I hereby become security for C for the fulfillment of the within obligation," created a contract of suretyship. Again, by the following indorsement the signer was declared liable as a surety, "I hereby acknowledge to be security for the within amount of $5,000 unless satisfactorily paid by W. A." So were the signers of the following indorsements: "I will see the within note paid;" "Guarantee payment when due;" "Agree to its terms." The promise or contract of suretyship must be in writing to comply with the statute of frauds.

One of the chief differences between a guarantor and surety is, the holder or owner of a note that is not paid at maturity can proceed at once, if he wishes, against the surety himself instead of the maker, unless he is notified by the surety to proceed first against the maker. It is true that the holder usually pursues this course, but if the surety remains silent, the holder can do otherwise. We have shown how very different must be the course of the holder of a guaranteed note before he can take legal action against the guarantor to collect the amount.

The holder of a note signed by a surety, like the holder of a guaranteed note, is not required to give notice to his surety of the non-payment of the note at its maturity, nor to display any diligence in recovering from the debtor before proceeding against the surety himself. Consequently a surety is not discharged by the creditor's omission to bring an action against the maker or principal debtor. But if a surety, or one properly authorized for him, gives his creditor a positive and clear direction to sue the principal debtor at a time when the debt can be collected, which is disregarded, the surety will be released.

The note or other obligation must be due before the notice can be given. A notice, therefore, by a surety on a note not yet due that he will not remain responsible if the holder does not sue the principal debtor as soon as the debt becomes due, or that he must get other security, will not discharge the surety.

Formerly, the notice need not be in writing, though this was always regarded as better evidence, but in some states a statute has been enacted requiring a written notice.

When a creditor has been notified, he must not only begin his action against the principal immediately, or without unnecessary delay, but must prosecute it with all reasonable diligence. So long as a creditor is not notified, his silence can never affect his remedy against the surety.

If, for a consideration, more time is given to the principal debtor to pay, without the surety's consent, who is thereby prevented from proceeding against the debtor, he is discharged. A surety often escapes through the creditor's forgetfulness or disregard to obtain his acquiescence to an extension of the time of payment given to the debtor. Doubtless in most cases a surety would readily consent, but he is not asked, the extended time expires, the debtor does not pay, and the surety is released.

28. Payment of Notes made payable to a Bank. — Lastly, may be considered the more important principles relating to the payment of notes that are payable at the bank where the maker keeps his deposit. When his note matures and no other party is liable thereon, the institution may exercise its discretion in applying them in this manner. When a deposit is trust money, though deposited in an individual name, and this is known by the bank, it can not be applied to the payment of a depositor's obligation.

If his note has been indorsed or guaranteed, the bank has no discretion, and must apply the maker's deposit on his obligation, though a neglect or mistake to do so does not relieve the maker from payment. This is quite similar to the rule that requires a creditor who has the means for paying his debt to apply it in this manner. The note is in effect a draft or order on the bank in favor of the holder and discharging the indorser. This rule, however, does not apply to a bank when a note payable there is presented after its maturity. Its payment is not required for the protection of the indorser. If, therefore, no application of the depositor's money is made, the indorser is not discharged. Generally a bank declines to pay a note that is presented overdue, but no prohibitory rule against doing so has been established, except in those states where a bank is forbidden from paying the notes of its depositors without specific direction.[1]

When a depositor has made a special application or appropriation of his deposit and has notified the bank of his action, it can not charge off a note against his deposit.

Again, if a maker's deposit is insufficient for this purpose, must the bank apply what it has in part payment of his obligation? Perhaps the same rule should be applied to a note that is applied to a check, the deposit can be paid whenever the holder is willing to receive the same.

The question is hardly less important, where shall payment be made? In promissory notes the place of payment is often mentioned. If the maker of the note is at the place mentioned during business hours of the day of payment and the creditor is not present, all persons who have indorsed it are discharged, but the maker will remain liable. Thereafter the debt will be regarded as payable at the payee's residence, or wherever he may be found by the maker. The maker's liability is the same as it would be on a note payable on demand, having no place of payment specified. If no place of payment is mentioned, payment must be made at the residence or place of business of the creditor. It is not the creditor's duty to find

[1] See 1 Daniel on Negotiable Instruments, Section 326 *b*, for authorities.

his debtor and demand payment; on the other hand, the debtor must find the creditor and pay him.

29. Payment by a Bank of Forged Paper. — One other question relating to the payment of money by a bank may be answered. Suppose it pays a forged check, can it follow the money into the hands of another person who, without any knowledge of the fraud, has received it in payment of a debt? Of course the bank can recover the money of the rogue; but this is not the question. He pays the money over to another who receives it without any knowledge of the payer's manner of acquisition; can the receiver retain it after learning the truth, or can the bank compel him to refund? The bank has no claim against the innocent payee.[1]

In like manner, money, although procured by fraud or felony, can not be followed into the hands of a person who has received it innocently in payment of an existing debt. This rule is enforced for the prevention of the confusion and uncertainty which would inevitably result if a creditor who received money in payment of a debt in due course of business and without notice was subject to the risk of accounting therefor to a third person who might be able to show that the money was obtained from him by felony or fraud.[2]

30. When a Bank has a Lien on a Deposit. — A bank has a lien on the money of a depositor for all indebtedness due from him. If he borrows money on his note, for example, and does not pay the same at maturity, the bank can charge it up against his deposit. If he deposits checks and draws against them, the bank is

[1] Price *v.* Neale, 3 Burr. 1354; Weisser *v.* Denison, 10 N. Y. 68.

[2] Stephens *v.* Board of Education, 79 N. Y. 183; Hatch *v.* Fourth National Bank, 147 N. Y. 184; Holly *v.* Missionary Society, 180 U. S. 284.

clearly entitled to enough of the proceeds to reimburse itself for its advances. But difficult questions sometimes arise when a depositor puts trust money into the bank to his own credit.

First. As between the depositor and the beneficiary or person to whom the deposit belongs, there is no question. The depositor can not by depositing such a fund in his own name divert it from the true owner. The latter can recover his deposit wherever it can be traced.

Second. Suppose such a trust fund is put into a bank in the depositor's own name, and the bank permits him to draw against it, can the beneficiary on discovering what the bank has done, proceed to collect the entire amount or to have it properly entered in his name? The bank would be undoubtedly protected in reimbursing itself in such a case. All payments made or obligations incurred by a bank on the faith of a deposit whose ownership it has no reason to question, may be discharged therefrom; its lien on the deposit is good to this extent.

Third. A different rule, we think, applies to a deposit belonging in fact to another, applied by a bank in payment of a past debt. The indebtedness was not incurred on the strength or confidence of the deposit; and if the bank is obliged to refund to the true owner, it is no worse off than it would have been had the deposit not been made and applied. The deposit in truth belongs to another, why then should the true owner not be entitled to it? A bank might, indeed, make a loan on the security of a stolen bond received in good faith, and hold it even against the true owner until the loan was paid, but it certainly could not keep the bond to secure a past indebtedness.

XI. THE DIRECTORS

1. **How chosen.** — Having described the resources of a bank and how they are used, we will now proceed to describe the duties of the various officers, beginning with the directors. These have been partly set forth, and in this chapter only such matters will be included as have not already been mentioned.

At the outset it may be remarked that they are chosen by the shareholders at their annual meeting, and subsequently organize by choosing one of their number president. A director must always be a shareholder, and by the national banking law must own at least ten shares of stock. Once chosen, he remains a director until the election of his successor. If, therefore, shareholders fail to hold their annual meeting, or, if holding it, fail to elect directors, those who were chosen at their previous meeting may legally continue to direct as before. Cases have happened of directors remaining in office for several years because the shareholders could not elect successors.

In selecting new directors for the Bank of England quite young men are chosen. The reason is, the president or governor serves usually for a year, and is always succeeded by the senior director. As every director may, under this system, become governor, it is desirable to choose a new director sufficiently youthful to be at his best when reaching the governorship of the institution.

2. **Majority Rule.** — The rule of the majority prevails in boards of directors unless the by-laws or charter of the

institution, or the statutes of the state, set up a different rule. Yet there are some obvious limitations to majority rule. Directors have no right to violate a plain provision of law, for example, lend to a man more than one tenth of its capital on his accommodation note. If a board should attempt to transgress this law, unquestionably a director would have the right to invoke the action of the courts, or of the supervising authority to prevent its violation. Indeed, he could not acquiesce in such action without becoming a wrongful participant.

Again, suppose the majority of the directors should declare a dividend that had not been earned, it would be the duty of the minority to resist payment, and to that end ask a court to enjoin such action. In short, any attempt to violate a law, which the majority of a board may undertake, the minority should resist; and, if need be, seek the aid of courts or other authority to make their resistance effective.

3. Directors are not paid. — Directors rarely receive any remuneration. Some of the larger companies are forming a practice of giving every director who attends a meeting ten or twenty dollars as an inducement to attend; in some cases small salaries are paid; these are exceptional.

If unpaid, why are persons willing to serve as directors, since they assume liability by thus acting? Two reasons may be given: —

First. Many of them are large owners of the stock and are willing to act in order to have a better knowledge of its management. Furthermore, they doubtless think their service will be of some worth to the bank, and thus to themselves.

Second. Because in many cases the position will be of some worth to them from a business point of view. It is a kind of certificate of business ability, honesty and reputation. A man of doubtful character would not be knowingly chosen, unless he was powerful enough to accomplish this by his own votes, or the votes of others like himself. Such cases are exceptional. Generally directors are men of affairs, and their selection is a confirmation of their position in the community where they live.

4. How they must exercise their Authority. — They must exercise their authority solely in the interest of the bank they represent. "They have no authority, under any circumstances, to use their official positions for their private benefit."[1] It has, therefore, been decided that directors could not vote to themselves salaries, however pure might be their motives or valuable their services. In doing this they act as both parties to the procedure, and the impropriety of their conduct is manifest. Clearly the shareholders are the rightful persons to take such action. Says one of the best-known legal writers on this subject, "The directors of a corporation can not represent it in any dealings with themselves personally; nor can they bind the company to third persons by a contract in which they have a private interest at stake."[2] But a director can act as the legal adviser of his company and charge for his services; this has always been done.

5. Their Legal Duty. — The duty of a bank director can not easily be defined. The national banking law declares that a bank can "exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and

[1] Morawetz, *Private Corporations*, § 519. [2] *Ibid.*

selling exchanges, coin and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes."[1] Such are their general powers, but what must directors do in the way of executing them?

In one of the latest and best-considered cases Judge Wallace remarked that the directors of a national bank were authorized to appoint a cashier and delegate to him all the usual powers pertaining to his office, including the discounting of notes. And when they have acted in good faith and with ordinary diligence in exercising their duty of general control and supervision, they are not liable for losses sustained through his misconduct. They are not required to devote themselves to the details of the business management, nor to adopt any system of espionage over their cashier or other officers. But they must be honest and bring to the discharge of their duties ordinary competency. "They can not excuse imprudence or indifference by showing honesty of intention coupled with gross ignorance and inexperience, or coupled with an absorption of their time and attention in their private affairs. . . . They are responsible for their own acts and omissions, but not for those of co-directors in which they have not actively and passively participated."[2]

In the case calling for these remarks the bank was wrecked through the action of the cashier, who was left quite to himself in lending its funds. The court declared that it "was incumbent upon the directors, in the exercise of ordinary prudence, and as a part of their duty of general supervision, to cause examinations of its paper to be made with reasonable frequency and to keep themselves sufficiently informed about it to enable them to pass an

[1] Revised Statutes, Section 5, 136.
[2] Warner *v.* Penoyer, 91 Fed. 587.

intelligent judgment upon its value." This they neglected to do.

In another case, which has been often quoted, the court decided that to make a director liable it must be shown that he has done or omitted to do some act essentially equivalent to fraud.[1] If he should neglect some plain unequivocal duty, or if he knew that the cashier was plainly violating the law and took no steps to stop him, that would be an obviously plain violation of duty.

One more illustration may be given on this important matter. In one of the cases the directors knew that their cashier was speculating and with funds not belonging to himself, yet made no inquiry. Afterward he took some securities belonging to a depositor from the vaults of the bank and sold them. The owner sued the directors for neglecting their duties in keeping their cashier after they had learned of his venture into the whirlpool of speculation. The case reached the Supreme Court of the United States, and the directors were held liable. They knew that he was not a fit person to conduct the offices of the bank, and yet was continued in office. This the court declared was clearly negligence on their part.

The popular conception of the duties of a bank director is very different. It is enough to say that if they were required to attend meetings, look into the affairs of their banks as closely as many people suppose they ought to do, very few doubtless who are on the present boards would be willing to serve. It would be needful to make up bank boards largely with men who are not the most active and successful in business; men who perhaps have acquired or inherited wealth or have leisure; men who would bring to the bank the best intentions, who would be punctual

[1] Spering's Appeal, 71 Pa. 11.

in attendance, but whose services, after all, would possess very little worth.

6. Directors can act only as a Board. — The acts of a director, or of all individually, are personal acts, and do not bind their bank. They may think separately just as they would if they were together, but the law has made a plain rule that can not be disregarded. And if it were, it might lead to endless trouble. A corporation might be converted into a wandering, uncertain affair, without any well-defined course of action. To guard against such a perversion of its objects, the directors can act only as a board in a formal manner.

Directors may render their bank liable by causing a knowingly false statement or report to be issued concerning its financial condition with the view of deceiving its customers, if it has the intended effect. Such reports have been issued by directors on more than one occasion. A clear distinction must be made between the cases in which they know the report is incorrect and the cases in which they honestly believe the report is correct, though in fact it is not. In the one case they have committed a palpable fraud; in the other they have simply erred. But, it may be asked, why should the bank be held responsible? The shareholders are innocent, they never elected the directors to do such a wicked thing. A broad principle of law determines the bank's liability. For any act done by an agent within the general scope of his authority, his principal is liable. A director is an agent of his bank, and it is within the general scope of his authority to make reports concerning its condition. If, therefore, he knows that these are not true and others suffer thereby, his bank is liable for the consequences.

7. Specific Duties. — So far as the laws require directors to do specific things, make and sign reports, and the like, these duties can not be evaded. But it is not possible for a bank director to have a knowledge of all the transactions of his bank, especially if it be a large one ; indeed, no officer knows all, and it would be very unreasonable to expect a director to know about the multitudinous details. He must not be negligent, and above all he must not be guilty of any fraud, either by participating, or by shutting his eyes when he imagines or has some reason for suspecting that others are doing wrong. Beyond this it is difficult to define his duties and responsibilities.

With this general description of the duties of directors, let us state the more specific duties that are imposed on them.

First. They must select competent officers. In performing this duty they may fall into error, but they must exercise their best judgment in selecting them. Furthermore, whenever they discover that an officer is incompetent or unworthy of his office, it is their obvious duty to correct the blunder. Many a director dislikes to incur the ill will of others, especially of his friends and acquaintances, and has refrained from acting when his duty plainly told him that he ought.

Second. They must exercise a general supervision over all the affairs of the bank, observe the laws, and prevent, as far as within their power, their employees from violating them.

Third. Having chosen officials to conduct the business of the bank, this must be necessarily left largely to them. Even the lending of its resources, as we have seen, can be left largely to the president or other designated officer, or a finance committee.

Fourth. They must sign reports and do such other specific things as the law prescribes.

Fifth. They must declare the dividends earned by the bank, and in this, as in every other matter, they must act honestly. They must, therefore, not declare a dividend in excess of earnings. There have been many occasions in which directors of banks have declared dividends that were not earned for the purpose of advancing the price of their stock and selling out. Such action is a palpable fraud. They are not liable, however, if they have made an honest mistake in reckoning the worth of their bank's assets or profits. But when they have acted otherwise, and the dividend declared has not been earned and is not taken out of profits earned at any time, this is a gross violation of the national banking law, as well as the banking laws of the states, for it is taken out of the capital, and consequently the institution has just so much less than it purports to have. For such an act they are personally liable.

Again, directors may be compelled to declare dividends when the profits are sufficient and they are unwilling to divide them. It is true that some banks, especially in their earlier years, retain all their profits to swell their surplus fund, and occasionally a growl is heard from some shareholder. Of course, he loses nothing, for the value of his stock is correspondingly increased. If it is worth par at the beginning and the first year his bank earns a net profit of ten per cent, his stock is worth one hundred and ten, and if sold would probably bring its full value. If all the profits are retained because this is deemed to be the wiser policy, shareholders can not appeal to the courts for a division. Only in cases in which directors evidently act in bad faith in retaining them can the power of the courts be invoked to compel a division.

XII. THE PRESIDENT

1. The President as Manager. — Banks are officered somewhat differently, depending chiefly on their size and business. All of them have a president, and many, a vice president; and some of them, two or three vice presidents. All have a cashier, and many an assistant cashier, or even two or three. Then follow the paying tellers, the receiving tellers, the note teller, and after these the bookkeepers.

The president of a bank in a city is usually the real head and manager. In the country more often he is only the nominal head, the cashier acting as the real chief. In some banks the vice president is the chief manager, and in banks where there are two or three vice presidents, all of them are actively employed, and also the president. In these cases the most important functions of the bank are divided among them in a well-understood manner.

2. Salary. — The president's salary varies from nothing to $50,000 a year. This sum was recently voted to the president of the Park National Bank of New York, which is said to be the largest salary ever given to a bank president. More often the figures are between $10,000 and $15,000. The country bank president, who devotes but very little of his time to the bank, rarely receives any compensation.

3. Positive Duties. — The president must sign conveyances of real estate, the circulating notes, and the certificates issued to stockholders, besides such other duties as are specifically enjoined on him by law.

4. Duties more clearly defined than formerly. — It was formerly said that the duties of a bank president in this country were very few; perhaps the principal one was the looking after the litigation of the bank. The cashier was the important officer, and the courts by numerous decisions gradually defined his duties. Since the president has become the real head of the larger banks, the courts of late years have been asked on many occasions to declare his duties; at last they have become clearly defined.

A recent authoritative statement of the law on this subject by Judge Hawley may be given. "It is now well settled by the weight of reason and authority that, whenever in the usual course of the business of the corporation the president or other officer has been allowed to manage and control its affairs, his authority to represent and bind the corporation may be implied from the manner in which he has been permitted by the trustees or directors of the corporation to transact its business. The acting head of the corporation, whether it is the president, the vice president, cashier, or general manager, through whom and by whom the general and usual affairs of the corporation are transacted which custom or necessity has imposed upon the officers — such acts being incident to the execution of the trust imposed on him — may perform them without express authority, and in such cases it is immaterial whether such authority exists by virtue of his office, or is imposed by the course of business as conducted by the corporation."[1] This is a clear statement of the president's legal authority. When he is the active head, he has all the authority which law and custom confer on the head regardless of the name of the office. In other words, whatever the cashier can do, the president also can, except matters which are specially

[1] Cox *v.* Robinson, 48 U. S. App. 400.

declared by positive law as the peculiar duty of some other officer.

5. Usually a Trained Banker. — A bank president who thus becomes the real head is in most cases a trained banker. Usually he has served as vice president or cashier. Many an active bank president has risen from the position of bookkeeper or teller. In other cases he very likely has long served as director and therefore has a good knowledge of the business of the bank. Is he familiar with all the details? By no means, nor is it absolutely essential that he should know them. The president of a bank in New York once told the writer that he happened to be taken out of a note dealer's office and elected cashier. That was exceptional, for usually when a cashier dies, resigns, or is promoted, the paying teller is elevated to his place. In this case the bank, in the president's judgment, had not a fit employee for cashier, so a cashier was selected from the outside. During the next summer, when the paying teller went off on his two weeks' vacation, the cashier served in his place; and afterward, when the receiving teller went away, the cashier served in his place, and when one of the bookkeepers went off, the cashier took his place, besides serving as a substitute for others. This the cashier did to familiarize himself with the duties of each one, as well as to gain a somewhat better knowledge of the depositors and their business. The knowledge thus gained of the affairs of the bank and its customers was worth all it cost. Usually the modern bank president who has started at the bottom is familiar with bookkeeping and all the technique of his bank.

6. The Nominal President. — The nominal bank president generally possesses no technical knowledge of his bank, nor is there much need of it. He is often a large stockholder, and perhaps has served as director before his promotion to the presidency.

7. The President's Duty in lending the Bank's Money. — We have already described his chief and most serious duty, that of lending the bank's resources. Of course, the ability of presidents to lend money safely varies greatly. The modern or scientific method of requiring borrowers to make elaborate statements lessens greatly the weight of this duty. It is not so much a leap in the dark. Still, with all the investigation that can be made, the duty is a grave one, calling for all the foresight and sagacity possessed by the wisest, and even they at times lend money that never returns.

Besides, the business itself, as we have shown, is most peculiar. Millions of dollars are received on the implied or understood promise that it can be had at any time on demand; depositors know equally well that by far the larger portion is loaned out and that, if they all called for their deposits at once, their bank could not possibly respond. Again, they have no intention of calling for all at once, and this is well known by the president and other officers. Indeed, every depositor knows, when opening his account, that the bank expects he will keep a balance on hand. Yet there are times when he needs every dollar, nor would his bank find fault with him for drawing it out. Unforeseen emergencies arise: a bill is presented for payment sooner than was expected; the maker of some note has failed to pay on which the depositor is an indorser, and he must draw down his balance to preserve his credit. There are seasons in the year, sudden revolutions in business, in which depositors make unusual demands. It is no small duty of a president to be eagle-eyed, to look into the future, to anticipate the demands of depositors, and be always prepared to meet them. Some presidents, who are not especially intelligent, seem to possess a kind of magical ability to discern the signs of the times, to read the future; like the veteran captain, they are always studying the weather, and are always prepared for the coming storm.

8. **Types of Presidents.** — There are two types of bank presidents, — the conservative and the adventurous. The conservative president seeks to lend only on the best security; he feels deeply that he is only a trustee, an administrator of the wealth of others, and that the highest possible safety is a rule from which he must never depart. The other kind of president starts out with the familiar adage, "Nothing risked, nothing gained," and takes his risks. Who in the long run gains most for his shareholders? Numerous examples of both kinds can be easily found. No one can possibly find fault with the position of the conservative president; he is a trustee and therefore he is not justified in lending at high rates of interest on inadequate security, as he would be if the money was all his own. But shareholders sometimes are impatient and clamor for larger dividends, and when the cry becomes general, if he ventures far and loses, they can not justly complain.

9. **A Dangerous Type.** — There is a third type of president, unhappily too numerous, who ought not to be at the head of a bank for a minute, — the president who is using it as a means especially for enriching himself. Speculators have long lived and doubtless will flourish and fail for many generations more, but they ought not to live inside banking institutions. They have wrecked more banks during the last forty years than all the other men who have attempted to conduct them. Every bank president should be wholly loyal to his bank; should serve it

with singleness of purpose; should have no private business of his own conflicting therewith, or preventing him from giving it his undivided service. If his own business becomes entangled, as may happen with the most careful president, he should notify the directors; and if there is not likely to be a speedy end, he ought, either temporarily or permanently, to retire. In short, he should give the service that is expected of him, and have no entanglement which, if known to the directors, would lead them to feel that he ought no longer to conduct the business of their association.

A few years ago the president of a bank in New York became a warm advocate of bimetallism. He was a genial, tactful man, and under his management the bank, notwithstanding the presence of many strong competitors, made great progress. Yet the directors felt after a while that his incessant advocacy of the silver question was harmful to the bank and, much as they personally regretted to part with him, it was believed that the bank would gain by the severance of the relationship; accordingly this was done. Without question they were justified in thus acting.

10. In what Ways a President can advance a Bank. — Not only does the president play a great part in lending the bank's resources, and in watching the movements of depositors, but he has a large duty to perform to advance the bank's business, particularly to increase the number of depositors. This duty, especially in a large city, is constantly felt by every president. In a small place, where only one or two banks exist, this is less important; but wherever a bank feels the keen breath of competition, next to lending this is the most important of his duties. Depositors die or move away, and if no effort is made to replace them, the reservoir begins to decline. It is ominous for a bank when deposits dry up so much that outsiders notice the shrinkage. As soon as they do they begin at once to inquire into the cause. "Dry rot" is the stock answer. Instinctively a man dislikes to deposit in a decaying institution. He has a feeling that sooner or later something will happen and he may lose. Unless there is some special advantage to be gained by remaining, he is very apt to withdraw his account as quietly as he can and open another with a more flourishing bank.

What steps does the president take to increase the bank's business? One class of business, which is eagerly sought after by the banks in New York, is the accounts of new banks. They employ persons to examine daily the newspapers and find out about projected institutions. As soon as they learn of them, efforts are made to secure their accounts. In doing this, a distant director may perform a useful service. He may be able to control or advise with what bank in New York the account shall be kept, and thus be able to direct the course of the stream into his own bank.

A method of gaining business that is attracting attention is by consolidating banks. This method is steadily making progress and will make more and more with the coming years. We doubt if one half the number of existing banks in New York City will be alive fifteen years from this date. Consolidations are in order, and in these great movements the heads of the banks in many cases are the leaders. London has a smaller number of banks than New York, and within the last three years many consolidations have been effected in the United States to the obvious advantage of all concerned.

New accounts are doubtless gained by offering depositors some advantages, perhaps interest on their deposits, larger loans than they were able to get before, or lower rates of interest. Of course, all banks can play at these games, and all do play at them to some extent; and their successes are very varied.

11. Bank's Liability for the Conduct of its President. — Questions occasionally arise when a president has done wrong whether the bank is responsible for his act. The general answer to this question is, if the act was done within the general course of the bank's business, it can not escape the consequences, and clearly not when it has received a benefit which it retains. Thus the president of a bank to which an insolvent corporation was indebted took its notes for a part of the amount due, and, after indorsing them, inclosed them in a letter to a trust company, requesting it to discount them and place the proceeds to the credit of the sending bank with its correspondent bank in New York. The letter was written on the letter head of the bank and was signed "A., President." In the letter he stated that the maker of the note was solvent and owned property, and that the note was good, for the reason that his bank held warehouse receipts therefor. These statements were false, and the maker was insolvent. The trust company discounted the notes and deposited the proceeds to its correspondent's credit in the New York bank, and the first bank credited the maker with the amount on its indebtedness. In an action by the trust company against the bank, the court decided that the president was acting for the bank, and though he was not authorized by the board of directors to make the false representation, it was not relieved of liability.[1]

12. Liability of a President for violating the Law. — A

[1] See Kling *v.* Irving National Bank, 21 N. Y. App. 373.

president, as well as the other directors, may render himself liable for acts that are clearly contrary to law. In one of the recent cases a president loaned more than the law permitted and on insufficient security. He made the loan without consulting the directors, and when he told them what he had done they ratified his conduct. The court held that he did not exercise reasonable care in determining the value of the securities; in truth, they were worth about $6,000 on which he had loaned $40,000. He was, therefore, held liable. Nor could he use the action of the directors as a shield. For, as the act was clearly wrong, the directors could not ratify it and thus save him from the legal and just consequences of an open disregard of a positive law.[1]

13. Duties of a Vice President. — A word may be added concerning the vice president. It is generally said that he serves during the absence of the president; it is not quite true though that he has the same authority. It has been declared that a deed signed by a national bank vice president, and sealed with the bank's seal, is *prima facie* valid, but nothing more. That is, it is presumed to be valid, but its invalidity may be proved if this be the fact. And if the by-laws of a bank provide that he can act as president during the latter's absence only by order of the board, he can not execute a deed, when the president is away, without the board's express authority.

[1] Seventeenth Ward Bank *v.* Smith, 64 N. Y. Supp. 888.

XIII. THE CASHIER

1. The Cashier must give a Bond. — The duties and authority of a cashier have been clearly determined by practice and legal decision, and few questions now arise in the courts concerning them. First of all the cashier is required to give a bond, signed by one or more sureties, that he will perform his duties faithfully; and if he does not, he and his sureties will be liable.

Why should not the president sign such a bond? It is evident why he was not required in the beginning, because his duties were so few and unimportant; but when he becomes the real head, lending the bank's funds and directing its policy, there is no reason why he should be exempt. On the contrary, by reason of his larger duties and responsibilities, he ought to give a larger bond than any other officer.

2. Modern Practice in giving Bonds. —All of the minor officials also give bonds, the amounts varying from $25,000, which is usually given by the cashier, to $5,000, given by the bookkeepers and other officials at the other end of the line. Formerly an official had some good friend or relative possessing property who signed as surety with him; this practice, however, is fast passing, and surety companies have been organized for doing this business. Their charge is about forty cents annually on each $1,000 stated in the bond. Thus, on a $5,000 bond the annual charge would be $2.

Several good results spring from this system. Before becoming responsible, the surety company examines into the character of the applicant, and if his record is not satisfactory, it declines to assume the risk. Nor is this examination a mere perfunctory proceeding; it is done in a thorough manner. If an application is rejected, this is a loud notice to the directors to make further examination before employing him.

Many banks now pay the surety company's charge. From one point of view it is immaterial whether the bank adds more to an employé's salary for that purpose and he pays the charge, or whether the bank itself pays. At all events, this has become a very common practice.

3. Effect of Promotion on a Surety's Liability. — Not a few cases have arisen in which an official has been promoted and the bank has forgotten to have a new bond executed. After his promotion he has become a defaulter and fled; and the bank, calling on the surety to pay, has made the unpleasant discovery that the bond did not cover the wrong committed in the new office. If, while holding this, the bank should discover that he had gone astray while holding his former position, the surety, or bondsman, could be held for the wrong, but could not be held for any wrong perpetrated in the other office, whether it was higher or lower. This experience has taught banks to prepare the bond in a different form, covering all losses incurred by the clerk while serving in the place designated, or any other to which he may be appointed.

4. Tenure of Office. — The tenure of office of a cashier, like that of the president, is annual. Indeed, under the national bank act it has been decided that he can not be "irrevocably appointed for a definite time." The courts have declared that the appointment, however made, "shall be terminable at the pleasure of the appointing power."

One of the consequences of this decision was, a cashier who had been elected annually for several years, and had given a bond when entering office for the faithful performance of his duties "forever, so long as he should occupy the position," did not bind his surety for defaults committed after the first year. As his period of office could run no longer, his bond was limited to the same length of time; to be valid, therefore, his bond must be annually renewed.

5. Duties. — *a. Must keep Record of Directors' Meetings.* One of the specific duties of the cashier is to keep the record of the meetings of directors. Of this he always acts as the secretary. The certificates of stock and circulating notes of the bank are also signed by him; also checks drawn on other banks for moneys deposited in them, though, if he is absent, the president, or perhaps the assistant cashier, would sign these. Drafts and notes that need indorsement before sending them away to another bank for collection are also signed by the cashier.

b. Must conduct Bank's Correspondence. Another duty, of varying magnitude, is to conduct the bank's correspondence. Every bank receives and sends many letters pertaining to collections and other matters. In some banks the correspondence is very large and is conducted by several persons. In these banks the work is carefully systematized. For example, the work relating to collections forms a department, and all correspondence is done by those who conduct it except matters of unusual importance or difficulty. Again, banks often have overdue loans which are in litigation, or in process of adjustment, or claims against banks or individuals that have failed: all lead to correspondence and often conference. The cashier generally has charge of these matters, though sometimes the president may take them in hand. In truth, it is not easy to draw the line between much of the work of a president and that of a cashier in many banks where both are active officers. It may be said that perhaps the work most exclusively committed to the president is that of making loans, in banks where he possesses this authority. But in addition to making them, he may do as much more as he pleases. To facilitate their work they usually have desks close by each other, so that intercourse is easy.

c. Has General Oversight. It may be said that the cashier has a more general oversight into the internal workings of the bank. Questions are often arising relating to the proper indorsement of checks; the condition of depositors' accounts; changes in the security for loans; settlements at the clearing house; the receiving of new customers; the purchasing of supplies; payment of the expenses of the bank: matters like these fall more especially within the province of the cashier.

"A cashier of one of the best conducted banks in New York City has thus described the usual daily routine of his business. After examining a dozen papers to which the bank subscribes, he looks around to see that all the clerks are on hand and are preparing the exchanges for the clearing house. By a few glances he can tell whether the work is progressing satisfactorily. If a vacant place is seen, then it is presumed that a clerk is absent, and somebody must be found to supply his place. In the morning, almost all the clerks, except the bookkeepers and the heads of the departments, are engaged in preparing the exchanges. In that bank the letters are so numerous that a large force is necessary in order to get the exchanges ready in time, and a vacancy must be speedily filled if possible. Sometimes he is obliged to assist himself. If a clerk does not appear within ten minutes past nine, he is regarded late.

"The special letters are brought to the cashier, and those requiring immediate attention are answered at once; others at a more convenient time. Then letters containing remittances are brought in from the bookkeepers. Those requiring special attention are laid on one side, and the instructions they contain are entered in a special letter book for the use of the corresponding clerk. For example, if an advice concerning a payment is requested, it is the duty of the corresponding clerk to make the necessary advice. The last duty which the latter performs in the day is to examine his special letter book, for the purpose of assuring himself that all letters requiring special attention on his part have been answered.

"When the directors meet, as we have seen, the cashier meets with them. Besides, he examines loans secured by collateral, to reassure himself of the sufficiency of the security, or perhaps with a view of calling the loan, if the collateral that is securing payment be of a kind which the bank does not wish to hold longer. He also examines the balance books and directs all the detail of the bank, keeping himself informed concerning the business done. Such are the leading features of his daily business, interspersed with frequent calls and interruptions. The afternoon hours are not so pressing, and the duties are more varied.

"It is not possible for the cashier to supervise the books of a bank personally, but he should look at them frequently enough to satisfy himself of their correctness. Clerks sometimes get careless and negligent, and may carry over their work from day to day, or portions of it, if they are not watched. A supervision of this kind is needed in order to maintain the best discipline. Without it clerks too often become careless and inattentive and delay their work in various ways. A cashier should have an intimate knowledge of the theory of accounting maintained by his bank, so that when he examines any book he will be able at once to understand it. We do not suppose that every bank has such a cashier, but unquestionably it should have. Bank bookkeeping is generally quite simple, and no very high order or ability is required to master it. Banks differ from one another in many details of doing business,. but in no case are these difficult to comprehend." [1]

[1] Bolles, *Practical Banking*, 11th edition, page 139.

XIV. THE PAYING TELLER

Next in rank to the cashier, unless there is an assistant cashier, is the paying teller, who receives a larger salary than any of the other tellers. He is in the direct line of promotion, and often succeeds to the office of cashier.

1. Custody and Disbursement of Funds. — To him is committed the custody and disbursement of the funds of the bank. The funds of a large bank are divided in several ways. First is the reserve, the keeping of which by a national bank is imperative, and is often kept by state banks and trust companies. This is put by itself in a safe, with two or three keys, one of which is kept by the paying teller, one by the cashier, and a third, perhaps, by the president or vice president. The object of having more than one key and combination is twofold, — to guard against the possibility of any official gaining access to the reserve by himself, and also to guard more effectually against any robber, who, if only one official possessed the key, might, by seizing him, secure the plunder. By thus requiring united action of the three to enter the safe where the reserve is kept, the utmost care is taken against the possibility of its loss. Besides, the strain on the paying teller is thereby lessened. It is quite enough to give him the sole control of the cash which the daily requirements of the business need, and the conscientious teller would rejoice if his responsibility for keeping this could in any way be lessened.

The cash he pays out daily, or a large portion, must be in his custody; and to render his responsibility complete, no other one is permitted ordinarily to have anything to do with it. If others could go to his safe, in the event of a loss or irregularity, it might be difficult to fix the blame. The concentrating of responsibility is one of the desirable things in a bank, for mistakes and thefts will occur, and it is therefore desirable to have the duties and responsibilities of each official as clearly defined as possible, in order to know where to look, whom to charge, when an irregularity has occurred. So the paying teller needs for his own protection to be solely responsible for the cash that he must daily use. Yet there are times when others must go to his safe; for example, when he is sick and can not attend, or when the bank examiner or a director wishes to make an examination.

2. Should be Familiar with Money. — He ought to be familiar with the different kinds of money he pays out. First may be mentioned the notes issued by the government. These may be divided into treasury notes, often known as greenbacks or legal tenders, because they can be used for making all payments except to the government for duties on imports; silver certificates, which are issued for silver dollars; and silver treasury notes issued for silver purchased by the government during the years 1890–1893. Besides these kinds of paper money there are notes issued by the banks, which are a legal tender in payments to each other. In addition to the paper money are various gold and silver pieces.

3. Arrangement of Money. — To facilitate the payment of notes the money drawer is divided into sections which contain notes of different denominations. A package of fives contains $250; a package of tens, $500; a package of twenties, $1,000. There are other packages of varying amounts. A package when paid out is not recounted. For intermediate payments the packages must be opened.

4. Why there should be but One Paying Teller. — In most banks there is only one paying teller. It is desirable to have only one, if possible, to concentrate more perfectly the responsibility for the cash; but some banks transact such a large business that two or more paying tellers are indispensable.

As all payments are made by the teller, exchanges or checks sent to the clearing house must appear in his accounts. These will be fully explained in another chapter on that subject.

At the appointed hour the teller is at his place, having taken out of the safe a good supply of the different kinds of money and locked it up, and is ready for customers. His chief business is in paying checks that are drawn on his bank.

5. Forms of Checks. — Concerning the form of checks a word may be said. Human ingenuity has been taxed to the utmost to add to the variety. Of all the varying sizes, $8\frac{1}{2}$ by $3\frac{1}{2}$ inches is the most convenient. The check should be large enough to contain room for all that ought to be written and no more. Much has been written on the subject of color of ink, ornamenting, etc. It may be said that the proper color for every business paper is a plain white with black ink, or a safety paper may be used to advantage. Many banks have their checks and drafts made on colored safety paper and printed in black ink. It is asserted that the safety paper possessing a white body and a colored wave surface has never been successfully altered. In regard to ornamenting checks the following remarks taken from *Practical Banking* may be added: " It is in ornamenting that imagination runs riot. A very, very little is in good taste; the rest is quite out of place. Some insist on making their check an advertising medium, while that of others looks like a page taken from an illustrated weekly. On some checks words are actually printed over each other so that the deciphering is like solving a rebus. On some we are favored with fancy vignettes of the human face divine; on others real vignettes of human faces which are quite the reverse. Plainness and simplicity, freedom from ornamentation, and as little wording as possible are essential elements of business paper."

6. **How a Check should be filled out.** — In preparing a check the maker should exercise care in filling the blanks. The general rule of law is, a bank must pay checks as they are originally drawn, in other words, a bank is responsible if it pays on a wrong signature, or a raised amount. But there is a limitation to this rule. A depositor must be careful in filling up his check so that it shall not be easy to make alterations; if he neglects this reasonable rule, he can not hold the bank liable for his negligence. If, for example, he should write in the amount in such a way that more could be added, and worse still, if he should forget to add the figures at the bottom, so that any one else could supply them, he could hardly hold his bank for paying a larger amount on such a check than he contemplated.

7. **Every Check should be dated.** — If, however, this has been omitted, the holder may supply it. Sometimes a check is post dated; when it is, payment should not be made in advance. One reason for post dating a check is, the maker may not have adequate funds in the bank to pay on immediate presentation, but expects to have enough there at the date of payment.

8. **A Check should be signed in a Proper Manner.** — The depositor should always follow the form in the signature

book, so that the paying teller can become familiar with it, and the risk of paying a forged check thereby be diminished. As a bank is responsible for any mistake made in paying a depositor's checks, the requirement is reasonable that he should exercise due care in signing them. When a person represents a company, the proper form is to put its name and his own afterward. Thus, "Atlantic Railroad Co., by John Smith, Treas.," or "Treasurer." This form, however, is often varied by agreement with the bank. Of course, any form will suffice that is understood by the parties. In the absence of any agreement or understanding, the signing of a check by a man with the words, "Treas.," "Secy.," or other word, is regarded simply as his individual check, and the additional word as a description of the signer and not the obligation of any company with which he may be connected.

9. Drawer must have Funds. — The drawing of a check on a bank in which the drawer has no funds is a fraud, both on the person to whom it is given and on the bank. And the holder is also guilty of fraud should he present it for payment, knowing that the drawer has no funds; if, therefore, it is passed to the holder's credit and charged to the drawer, this is not payment, and the holder can not recover the amount from the bank.

10. Duty of a Bank to honor Checks. — In some states a bank on which a check is drawn is under no legal obligation to the holder to pay or to accept it, whether the maker's funds are sufficient for this purpose or not. In other states, especially in Illinois, Kentucky, and some other states, the effect of giving of a check to a person is to transfer the amount of the maker's deposit therein specified, and the checkholder can sue the bank for the same whenever payment is declined. But in the states where this rule does not prevail, the holder of a check can not recover from the bank on which it is drawn unless its payment has been accepted. A bank should not delay long either to pay, to accept, or to refuse payment. It is not right to keep a check for several days and then refuse to pay. While this is the most general rule existing between *banks and checkholders*, these institutions have well-defined duties to perform for those who properly draw checks on them. Their orders must be observed; and if a bank should decline to pay a check drawn on a sufficient fund belonging to one of its depositors, without a justifiable reason for so doing, the institution would be liable for whatever injury the depositor sustained in consequence of its neglect to execute his order or direction. For example, if a bank should decline to pay a check supposing that the maker's deposit was insufficient, when in truth it was ample, the institution would be liable for the consequence of dishonoring his order, even though its conduct was founded on the mistaken calculation of a bookkeeper.

a. When a Check is an Assignment. — The different legal effects or consequences of these two ways of regarding checks are important. Let us describe the legal effects of regarding a check as an assignment of the maker's deposit to the amount therein specified.

If a depositor has drawn two checks at different times, and his deposit is sufficient to pay only one, and both are received at the bank at the same time, the check first drawn, or having the oldest date, must be paid.

Again, if the drawer of a check is sued and his deposit is attached, the holder of his check can claim the deposit, notwithstanding the attachment. He is regarded as having a far better right to the deposit than the attaching creditor. The deposit in law became his as soon as he received the check, and the attaching creditor has no right whatever to the checkholder's deposit.

If the depositor fails, the holder of an unpaid check is entitled to payment when the deposit is sufficient. The depositor's assignee who is appointed to take charge of his estate for the benefit of his creditors can make no claim thereto.

The depositor can not revoke payment of his check for the reason that the money therein mentioned has passed from his control to the holder of the check.

b. When a Check is not an Assignment. — Wherever the other rule prevails, that a check gives the holder no control over the maker's deposit until it has been accepted by the drawee bank, these rules are reversed. It may be added that in all the states when a check is drawn for the entire amount of a deposit, the legal title is completely transferred on the delivery of the check even against the drawer; but when only a part is included in the check or order, it will not have that effect except in the states where the delivery of a check is regarded as immediately passing the deposit to the holder.

11. When a Check is Due. — A check is not considered due until payment is demanded, and in this regard differs from a bill of exchange or a note, which is payable on a particular day. Consequently, the receiving of a check a few days after its date from the payee does not, like the receiving of an overdue bill, subject the holder to the objections that might have been raised by the drawer against the payee. A delay of two or three days is not enough to put the receiver on inquiry concerning the consideration for which the check was given, nor subject him to defenses that might exist between the drawer and payee. Yet a check may be retained so long after its date without presentation as to cast discredit thereon; and when a check is presented for payment in a discredited condition, the drawee bank should not pay it, and if it does, can not charge the check to the depositor's account. Again, when an overdue check is taken, this is done on the credit of the indorser, and is subject to the equities or defenses existing between the original parties.

12. Duty of Holder. — On refusal of payment, the holder should protest the check and notify the drawer as well as the indorsers, if there are any, whom he intends to hold for payment. But when the drawer has no funds in the bank at the time of drawing the check, presentment and notice are excused.

Nevertheless, the consequences of not presenting a check within the proper time and notifying the drawer if it is not paid, are not the same as the consequences to the drawer of a bill from the holder's neglect to present it at the proper time to the acceptor for payment. If this is not done by the holder of the bill, the drawer is discharged. His liability is the same as that of an indorser. He promises to pay if the bill is properly presented to the acceptor and is not paid, and notice is given to him of the fact. But the drawer of a check is not discharged by neglect or delay to present it for payment, unless he has been injured by the holder's remissness. He is still liable, because he is the primary debtor, unless he can show that he has suffered by the delay. The law, however, presumes that in some way he has been injured and consequently the holder is obliged to prove that the drawer has not lost anything in order to recover the amount due.

13. Holder must present Check promptly. — After a check is given to the holder it must be presented within a reasonable time for payment. It is true that the holder can keep it as long as he pleases, but he does so at his own risk of the bank's failure. The general rule is, a check drawn on a bank in the city where the holder lives must be presented for payment on the day of its receipt or the next. Generally a check is deposited on the day it is received, or the day following, and is presented to the drawee bank through the clearing house the day after. This is in sufficient time.

The reason for throwing the risk of keeping it longer on the holder is evident. The maker in effect says to him when giving his check, "The bank therein named owes me, and if you present my check at once, it will be paid;" and by accepting it, the holder impliedly agrees to comply with this direction. If he does not through forgetfulness or neglect, and the bank afterward fails, the maker ought not to be the loser, for the holder would have received his money had he presented the check within the usual time. His neglect, therefore, was wholly his own, and he has no just claim against the maker for the amount.

The holder of a check drawn on a bank in another city should send it either himself by an agent, on the same day he received it or the next, to the drawee bank, or to another for presentation to the drawee bank, for payment. The ordinary course of every depositor is to deposit the check thus received in his bank, which collects the amount for him. This is one of the advantages of keeping a bank account.

14. Rules to guide Paying Tellers. — In paying checks the paying teller must think of at least three things: first, is the signature and body of the check genuine; second, is the account of the drawer good for the amount; third, is the presenter of the check entitled to the money.

15. Forged Checks. — When a depositor opens an account with a bank, it is understood, among other things, that the bank will not pay raised or forged checks. The bank must be careful in this regard, and, if mistakes are made, it will be responsible for the consequences. This obligation is a weighty one, for checks are often presented for payment with great rapidity, and the paying teller has hardly a moment to examine them. The wonder is that more mistakes are not made by paying tellers.

An illustration may be given showing the severity of this requirement. C left a post-dated check with his bookkeeper and told him that on the day it was due to draw the money and use it in paying the wages of C's employees. The bookkeeper altered the date, putting in another two days earlier, drew the money, and departed. The check was charged to C's account, who declined to be holden for the amount. The bank contended that if the bookkeeper had waited two days longer before drawing the money and had then drawn it and gone away, the depositor surely would have been the loser. He admitted this, but insisted that his case was different. The bank had paid an altered check, which it ought not to have done, and was therefore responsible for the consequences; and the court said he was right in his contention. This illustration shows clearly to what strict rules banks are held. The reason is, the drawers of checks do not see them before payment and trust entirely to their bank to discover alterations, forgeries, and the like; this is the bank's plain duty, and it must always be alert in protecting its depositors.

Not infrequently a check passes through several hands, each indorsing it before presentation for payment. Now it may happen that one of these indorsements is a forgery, if so, the bank ought not to pay it, and if it does, will get into trouble. The reason for this may not seem altogether clear, and an explanation is needful. As the signature is genuine, the maker ought and is willing to pay to the *rightful owner*, but not to the *wrongful possessor.* A presenter, however honest, who obtains a check having a forged indorsement, is not the rightful possessor; it belongs to another. The bank that pays it is therefore responsible to the true owner, while it, in turn, can recover the amount of the wrongful presenter. Nor will lapse of time between the day of payment and the discovery of the forgery prevent the bank from recovering the amount, provided it is not neglectful in proceeding after discovering the forgery.

To guard more perfectly against raising the amount, the following form of a check is proposed, which is in use in Germany: —

90	80	70	60	50	40	30	20

*No.*________ *Philadelphia,*____________________ *190*__

ARCTIC NATIONAL BANK.

*Pay to the order of*____________________________ *$*________

____ *Dollars.*

1500
1400
1300
1200
1100
1000
900
800
700
600
500
400
300
200
100
00

16. Deposit must be Sufficient. — The next inquiry relates to the sufficiency of the drawer's deposit. How can a paying teller keep watch of the accounts of all the depositors? For this purpose depositors may be divided into two classes: those who keep large balances, and others who keep small and fluctuating ones. There is no difficulty with the first class, and the paying teller soon knows them all. It must be remembered that he has previously served as receiving teller and also as bookkeeper, and when occupying these places has become familiar with the accounts of many or most of the bank's customers.

Again, the bookkeepers know the state of every man's account, and it is their duty to aid the paying teller. In many banks they give him at frequent intervals a list of the names and balances of the smaller and more irregular depositors, and through the assistance thus offered he rarely pays a check without an adequate balance to support it. Lastly, when a bank finds that a customer keeps a very small balance, which is unprofitable, that he often loses sight of the amount and overdraws, he is told that his account is no longer wanted and is cut off.

17. If the Deposit is Insufficient. — Occasionally the balance is too small to pay a check, what shall the paying teller in such a case do? If the drawer is an old and valuable customer who has evidently made a mistake, the teller will pay the check and notify the drawer, who is expected to make the amount good immediately. But if the bank does not wish to incur the risk, there are two or three courses. It may decline to pay the check for lack of funds. The bank usually is willing to pay to a presenter who is willing to take whatever balance there may be and give up his check. Sometimes a bank will pay the amount, indorse it on the check, and return it to the presenter. This practice has received judicial sanction, but the defect in this method is, the bank has no voucher for its payment. Another way is for the presenter to find out, if he can, how much is lacking to respond to the check, pay the balance, and then present his check a second time for payment. He is then sure of securing the entire deposit.

A more difficult question arises when a number of checks are presented through the clearing house. Suppose that six checks are presented at once, and there is money enough to pay two of them and part of another. One way is to return them to the respective banks to which they belong. When this is done, the bank that receives the check or checks belonging to it first, if all are equidistant from the drawee bank, has the best chance of presenting its checks directly and of receiving payment. If the checks are delivered in the order of their arrangement when received, the bank farthest off may be the first to send its check back and present it again for payment. All clearing houses should have regulations on this subject. Some of them have made a rule providing that all checks shall be paid *pro rata*. When this is done, the paying bank should demand adequate security, a bond of indemnity, if the presenters are to retain their checks.

If two checks are presented at the same time, and there is money enough to pay one, but not the other, what can or ought the paying teller to do? He can pay either of them or not as he pleases. If he pays one, the other can not legally complain; and if he pays neither, as he very likely may decide to do, his course can not be legally questioned.

18. Teller should pay the Right Person. — The presenter should be the rightful person to receive the money. English bankers laugh at our method of identification. Their system is wholly different. Their checks are crossed. This consists in writing "& Co." across the face of the check between two parallel lines, the effect of which is to restrict the presentation of the check for payment to a bank or banker. By this simple device all danger of wrongful presentation is reduced to zero, because the presenter is well known to the drawee bank.

The identification of the presenter is sometimes difficult. If he is a stranger in the city where the bank is located, he may be quite unable to find any one who can satisfy the teller of his identity. He may be troubled, therefore, to get his check paid, though having the strongest possible right to demand the money; on the other hand, this is one of the most common ways for wrongfully inclined persons to get money not belonging to them from banking institutions. An individual, for example, finds a check payable to the order of John Smith. He indorses John Smith's name and goes to the bank and demands payment. The paying teller asks for proof of identity, is deceived, and pays the money. After a while the true John Smith appears and demands the money specified in the check. The paying teller can not plead that he took proper precautions before paying the check; he must pay the true holder. If a check is indorsed payable to the bearer, or in blank, then the paying teller is safe in paying the presenter, whoever he may be, unless the teller had reason to suspect that he was not the real holder or owner. A rogue watches his chance, appears generally at the close of the banking day when the paying teller is very busy and has not time to look carefully at every check and presenter before paying. This is the time also when forged and altered checks are presented and paid.

19. The Money should be counted. — When a person receives money from a paying teller, he should at once count it. If a count is not then made, and the amount is afterward found to be short, troublesome questions arise. If the receiver can make his claim good, the bank must pay him the balance; otherwise the universal custom is that the receiver who does not at once make a count must accept the bank's count.

20. Imperfect Indorsement. — Sometimes a check is imperfectly indorsed, and the paying teller can not rightfully pay it. The presenter may be very eager to have it accepted in order to make sure of the amount. If the paying teller should say to him, "You must get the proper indorsement," perhaps there might be danger of the maker's failure before he succeeded. There is a proper way of dealing with such cases. The presenter may ask the paying teller to certify the check, for the effect of this would be to charge the amount to the drawer; in other language, the amount certified is set aside to answer the check whenever it shall be presented. The certification, however, should not be in the usual form, but somewhat like this, "Good when properly indorsed."

21. Payment when Maker is Dead. — When the maker of a check is dead, the paying teller should not pay it, though if he does so ignorantly, the bank is not responsible. The usual rule, except where it is modified by statute, is that the administrator or executor must pay, either indorsing the old check or giving a new one, for the reason that the funds in the bank belong to him in his official capacity.

22. Payment of Stale Checks. — Very often stale checks are presented for payment. A person may carry one around in his pocket several weeks or months before presentation. It is nevertheless a valid obligation and must be paid. Yet as checks are generally presented promptly for payment, the paying teller should always satisfy himself when a stale check is presented about the reason of the delay.

23. Drawer can stop Payment. — The drawer of a check can direct the drawee not to pay it; if his order was not heeded, the act of payment would be solely that of the bank. The paying teller, therefore, should constantly have before him a record of all stopped checks. The direction to stop payment should be in writing, and the check should be carefully described, so that no mistake may be made in identifying it when presentation is made for payment.

24. Payment through a Clearing House. — Where clearing houses exist, many checks are presented and paid through this agency. Their payment is a part of the duty of the paying teller. As they are brought into the bank in most places after the banking day has begun, the paying teller can not leave his work to examine them, consequently this must be done by others. There is ample time for examining them, — the signatures, the indorsements, the balances of depositors, — and thus the danger is minimized of making mistakes in paying them. Happy, indeed, would the banks be if they could pay all their checks in this manner.

This work is usually done by the assistant bookkeepers, who post the amount checked out in their ledgers and bring the total of their postings to the paying teller who compares the record with the amount brought from the clearing house, which must agree.

Where a rule exists among clearing-house banks that checks received through the institution for payment may be examined and returned by a specified time, entries of them made by the drawer of the receiving bank previously to that time, or cuts or other marks on the checks, will not prevent their return, or operate as an acceptance or payment of them.

25. Certification of Checks. — Another duty of the paying teller is to certify checks. This consists in writing across the face, "Good," "O. K.," or some other word or sign that the check will be paid on presentation, to which he adds his signature or initials. The duty of certifying is not confined to the paying teller; it may be done by the president or cashier. But no officer can certify his own check. The reason for thus limiting his authority is apparent. Yet if a cashier or other officer should do this, and the practice was long continued, his bank might be bound by his action. The highest court of New York has remarked that the authority of a cashier or other officer may be implied from the conduct or acquiescence of the corporation as represented by the board of directors. "When, during a series of years, or in numerous business transactions, he has been permitted without objection, and in his official capacity, to pursue a particular course of conduct, it may be presumed, as between the bank and those who in good faith deal with it upon the basis of his authority to represent the corporation, that he has acted in conformity with instructions received from those who have the right to control its operations." This principle has a very wide application and covers probably all cases of the exercise of authority by all officials not contrary to positive law. Nevertheless, the practice of permitting an official to certify his own check is not a good one and should not be permitted. Banks should seek to establish proper safeguards around the conduct of their officials, and the denial of such authority is one of them.

When a depositor has money enough in the bank to pay his check that is presented for certification, the paying teller does not hesitate to certify it, and when he has done so the amount is charged at once to the depositor's account. Some banks have a book in which such checks are recorded.

Here and there a bank certifies checks knowing that the depositor has nothing like the amount certified on deposit. The reader may think this is a very peculiar business, and it truly is. It is forbidden by the national bank act; is indeed a criminal offense, yet the law has been more than once disregarded, for which banks have been punished. Why, then, is overcertifying done? Because it pays. Every depositor who asks for a favor of this kind is expected to keep a large steady balance in the bank for its use — an average of at least one fifth of the amount certified, sometimes more. Some banks also demand security for certifying, which is furnished in the form of stocks or bonds. When a bank is fully protected for certifying, the practice is not in any way reprehensible; it is simply another form of lending the bank's credit. In many cases, however, no additional security is furnished, and the credit is given to a large extent in exchange for that of the depositor, and the compensation therefor is the profit reaped on the deposit kept in the bank by the person requesting the favor.

Another peculiarity of this business is, the certification is for a short period. It lasts only for the day. The depositor is expected to bring in checks given to him from the sales of stocks, etc., by a fixed time (one o'clock in New York), to make the certification good, so that when the bank closes business for the day the obligation has been discharged.

Even under favorable conditions it is a hazardous business. The stock broker who is thus favored is always running a narrow chance. If the checks presented to him are not good, he can not redeem his obligation. Several banks have failed through these operations.

Let us inquire a little further into the nature and effect of such checks. In the first place, why is the paying teller ever asked to certify? A man intends to make a purchase, and gives his check therefor. Buyer and seller are strangers, and the latter may be unwilling to part with his property merely for the check of the buyer. Suppose a seller is to part with his farm, the buyer can hardly expect that his check will be taken in exchange for the seller's deed, unless he is well known to the other as a man of wealth and reputation. To obviate all hesitation the seller may have to part with his property; it has become a common practice for the buyer to ask the paying teller to certify his check. The obligation then becomes that of the bank; it is liable for the amount, and the seller will not hesitate to make the exchange.

26. Due Bills instead of Certification. — Some banks, especially in Philadelphia, refuse to certify checks, but give due bills in place of them. A depositor wishes to have his check certified to use in making a payment as above described. He takes his check to the bank and is told that it will accept his check, charge it against his account, and give him a due bill for the amount, which is an order by the bank on itself, and is paid through the clearing house the day after its issue. Due bills are kept in a book and numbered. A similar number is given to the stub on which is made a record of the amount, the date, and person to whom the bill is issued.

This serves the same purpose. The banks claim that this is a somewhat safer practice; there is less danger of forgery and alterations. For, it may be remarked, the use of certified checks has given rise to some exceedingly grave questions which will now be considered.

27. Forged Certification. — First, suppose a certified check is offered to a banking house, for example, in payment of bonds, and the seller should send it to the certifying bank to ascertain whether or not the certification was genuine, and the messenger should be told that it was genuine, what would be the effect or purport of the answer? Undoubtedly that the name signed to it was genuine. And the person having bonds for sale would be justified in relying on that answer and in taking the check. If, therefore, it proved to be a forgery, the bank would be liable. Suppose the receiver of a check takes it to the bank to be certified, which is done in some cases. Is the bank holden for the amount? One would have no hesitation in saying yes. Suppose, however, the check had been raised before it was thus presented and is certified, is the bank holden? The courts have given the same answer. Now, returning to the former question, suppose a check is presented with the inquiry, is it "genuine" or "all right," does this question relate to anything more than the signature? Does it also cover the amount? The answer to this question is not so easy. It may mean one of three things, or two or all of them. It may mean that the certification itself is genuine, or that the maker's signature is genuine, or that the amount itself is correct, or it may mean all of these things that the signatures of both maker and certifier are genuine, and that the amount is the correct sum. If the paying teller is distinctly asked, are the maker's *signature* and *amount* all right, and he gives an affirmative answer, undoubtedly his bank would be holden. Again, he can easily find out whether the amount has been raised by comparing the amount with the record of the check he has in his possession. And it is his duty to do this. But it has been held in a noted New York case that if a check is presented and the question is asked, "is it good" or "all right," this simply relates to the signature and not to the amount. If, therefore, the alteration or raising was done after the certification, the bank is not holden for the raised amount, when it is finally presented for payment. This decision has been often criticised and has not been approved in other states. For when a check is presented in order to make this inquiry, the courts have generally said that the inquiry had reference to the amount as well as the signature.

28. Pass Books. — A depositor should present his pass book at regular intervals and have his checks entered and his account balanced. As soon as it is returned to him, he should at the earliest opportunity examine his checks for the purpose of learning whether they are all genuine or not; or, in a more general way, whether the bank has made any mistake in dealing with him.

When a depositor's book is returned to him, it may contain erroneous entries. What is the effect of them? They may be attacked. Unless they are, the legal presumption is they are correct, but nothing more. A depositor, however, as soon as he has discovered an error, should lose no time in reporting it to the bank.

Should he find on examining his checks that the signatures and amounts are correct, is that the end? It ought to be, but in some states, notably in New York, it is not. The maker of a check who examines it after it has been paid and passes it, and discovers months or even years afterward, before the statute of limitations cuts off further action, that the check is a forgery either in name or amount, can recover the money. The bank is liable in any event; it must be able to detect the falsifying of a depositor's name even if he can not do this himself.

In one of the New York cases Welsh, a commission merchant, employed a bookkeeper who had charge of his bank book. The bookkeeper presented fictitious accounts of the sale of produce to his employer and also checks for him to sign in payment. These were payable to the order of the customer and were delivered to the bookkeeper. He forged the customers' indorsement, put them in train to reach the bank, and in due time they were paid. They were charged to Welsh in his pass book and returned with other vouchers to the bookkeeper, who always examined the account. The fraud was not discovered for several months, but as soon as it was, Welsh notified the bank and sued it to recover the amount of the forged checks. The court declared that the bank must pay.[1]

This is a very harsh rule, and a much more reasonable one has been established by most of the states as well as by the federal tribunals. The United States Supreme Court has declared that a depositor has a reasonable time after his checks have been returned to examine them; this is a personal duty that can be done by no other person for him, and if he neglects to make such an examination within a reasonable time, unless he has good reason for doing so, — sickness, absence, or other equally valid reason, — it is unreasonable to visit on the bank the consequences of his neglect. This rule must commend itself to every reasonable depositor. Even though he has a confidential secretary, as in Welsh's case, this is a plain duty that under all ordinary circumstances should not be confided to any one. Furthermore, this examination should be made at the earliest opportunity after receiving his book; and after doing so, if no errors are discovered, the bank should be discharged, except for fraud that possibly may have been committed by their own officers. This is a reasonable rule.

Some banks relieve themselves from responsibility by sending a postal card to their depositors requesting them

[1] Welsh *v.* German American Bank, 73 N. Y. 424.

to make such an examination and report the result. The answer is in the nature of a receipt. This is an excellent practice and worthy of universal adoption.

29. Payment of Depositors' Notes. — Another duty of the bank is to pay the notes of depositors that reach the bank on or before the day of their maturity. The rule is not uniform; in some states the courts have distinctly declared that banks must not do this, but in most of them the rule is otherwise. A note that is unindorsed, the bank can and generally does pay; an indorsed note, it must pay in order to protect the indorsee. Of course, if the depositor forbids the bank from paying or draws out his deposit before the note is charged up to him, this is his right; but in many cases they are made payable at the bank where he keeps his deposit with the expectation that they will be presented there and paid very much like his checks, and thus all thought of them is banished from his mind.[1]

30. By-laws regulating Payments and Collections. — Lastly may be added some suggestions in the form of by-laws regulating the payments of deposits and making of collections.

1. Every check received for deposit in whatever way it may be entered in any book of the bank, will not be regarded as actual cash for which the bank will be responsible until the money has been received from the bank or banks to which it has been sent for collection, or through which it may pass before the collection is completed; and a draft or other check sent by the collecting bank or agent in return as payment, shall not be regarded as cash until actually paid, and this rule shall be binding between this bank and its depositors in all cases, except those, if any,

[1] See Chapter X, Section 28, for a more complete statement.

in which it has been negligent in selecting agents for collection.

2. This bank will not be responsible for the excess paid on any altered or raised check which has been altered or changed so skilfully that it can not be detected by the exercise of ordinary care by the paying teller.

3. The checks of depositors drawn on sufficient funds will be paid, notwithstanding the death of the depositor, or at any time within ten days after knowledge of the event has come to the bank unless otherwise directed by the executor or administrator of the estate of the deceased.

4. Checks will not be paid beyond thirty days after their date unless satisfactory reasons are given for the delay in presenting them, or authority has been directly given to the bank by the maker after making them to pay the same.

5. Deposits made by two or more trustees, executors, administrators, or other persons acting in a joint capacity, not including partnerships, can be withdrawn only on the signed order of all of them, unless a satisfactory reason is given to the bank for paying on the order of one, or a less number than all.

6. Depositors should examine their pass books, checks, and other vouchers within ten days after their pass books have been written up and returned with accompanying vouchers to them, and this bank will not hold itself responsible for any mistake made in paying on a wrongful signature if such examination is not made within the time mentioned, unless the depositor was sick, absent, or otherwise unable to perform his duty, or unless the bank was wilfully negligent or wrong in paying without adequate authority.

7. When a check is presented and the funds of the

maker are not sufficient to pay it, the bank may pay whatever amount it may have belonging to him, either taking the check and indorsing the amount thus paid on the back, or taking a receipt therefor, describing fully the check on the authority of which the amount is paid.

8. If two or more checks are presented either directly over the counter or through the clearing house at the same time for payment, and the maker's deposit is insufficient to pay the full amount of all, his deposit may be applied *pro rata* on each and indorsed or receipted for as described in the foregoing by-law.

9. All checks, notes, or other deposits credited as cash, in whatever manner they may be indorsed, may be charged back in the event of their non-collection.

10. Checks and other instruments deposited for collection may be sent to the drawee bank to be collected, if this bank shall so determine. Checks and other instruments deposited for collecting may be sent to the drawee bank to be collected when there is no other reputable bank or banker in the same place.

11. In making collections, this bank considers itself fully authorized in taking other checks in payment drawn on a reputable bank in another city than the drawee bank.

12. In collecting time drafts secured by merchandise to which the bill of lading or other title thereto is attached, the bank may surrender the same on the presentation and acceptance of the draft, unless it clearly and unequivocally states that this shall not be done, or instructions to that effect have been received from the owner.

13. Notes and other obligations made payable here will be regarded as a direction to pay them, which will be done whenever the maker's deposit is sufficient for that purpose.

XV. THE RECEIVING TELLER

1. Deposit Tickets. — Deposits consist of various kinds of money, checks, and documents representing money. The depositor is required to state the details of his deposit on a slip prepared for that purpose, which is called a deposit ticket. This is sometimes done by depositors before they come to the bank; in other cases they fill up the tickets at desks provided by the bank. A teller will not receive deposits without such a ticket.

2. Kinds and Qualities of Money. — One of the most difficult duties of a receiving teller is to determine whether all the money delivered to him is good or not.[1] Some tellers have a great knack for detecting counterfeit money; others, none at all. Though a great deal has been written on this subject to enlighten money receivers, the counterfeiter is still flourishing. Much can be learned from a careful study of the different kinds of money. Paper differs greatly in quality, and a receiving teller ought to familiarize himself with all kinds of notes. Besides, he should seek to get all the information possible concerning counterfeits, and to that end cut out and keep all newspaper items relating to spurious issues. Many tellers determine the genuineness of a note by the feel of it, the

[1] The government forbids indiscriminate collection of counterfeit money, fearing they may be scattered into circulation. Bankers are accustomed to make such collections for the purpose of familiarizing themselves with bogus money. But they are not permitted to do this without authority. For regulations of the Treasury Department, see 66 American Banker, page 33.

way it slips through his fingers; this test is acquired only after years of experience.

Another difficulty in the way of detecting forged notes is the brief time the teller often has to examine them. This is especially true at the close of the day, when a long line of depositors are waiting to make their deposits and hurry away. What time has a teller to examine the money offered? In some banks it is not even counted. In one respect this is a better practice for the bank, because the teller then has time to examine all the notes and coin left by depositors. But there are other difficulties growing out of this practice of leaving the count entirely to the teller that are objectionable, that will readily occur to the reader. There is no check on his action; he may make a mistake, and, still worse, may attempt to abstract a note or two. Consequently the practice prevails almost everywhere of an immediate count, and if this does not agree with the amount recorded on the deposit ticket, the error is at once rectified.

3. When a Depositor can draw against his Deposit. — As soon as checks and other instruments are entered to the credit of the depositor he is permitted to draw at once, if he wishes, against them as though they were cash. This is not done by every bank, and the practice should be condemned, as we have elsewhere shown. There are other consequences growing out of such entries that remain to be considered. The checks are regarded as belonging to the bank, at least it has a lien on them for the amount of its advances, if any are made. Every now and then a bank incurs a loss from thus dealing with deposits as though they were cash. A bank in the state of New York not long since received a check drawn on another bank that was sent to a third bank for collection, which collected the amount and sent a draft on a fourth bank in payment. As soon as the draft was received from the third bank the check was entered as paid in the account between the second bank and the depositor. The draft, however, was not paid, and the second bank then attempted to charge the amount back. The court said it could not do this. Having taken a draft from its agent, the third bank, in payment, and entered the check as paid, it could not afterward reverse its action. This example should prove a warning to banks to be very slow in entering checks as cash and permitting depositors to draw as though their collection had been completed.

Why, then, are such entries made? Partly to save time. It is much quicker than to prolong the real state of collections on the books. Banks, therefore, seek to close them up as soon as possible, and prefer the risk of losing something now and then, as in the case mentioned, to the work of making more entries describing the exact status of every check until it is actually paid. This risk could be greatly lessened by one of the rules suggested to be incorporated in every depositor's pass book, to the effect that every check received for deposit, in whatever way it may be entered in any book, shall not be regarded as actual cash until the money has been actually received.[1]

Such a by-law or regulation would greatly lessen the losses and snarls from the crediting and collection of checks.

4. **Examination of Signatures.**—The receiving teller should examine the signatures, indorsements, dates, and other features of checks, the same as the paying teller. Depositors who are perfectly honest may be cheated by others, and deposit fraudulent or kiting checks. The depositor should indorse his name below all others on the back of each

[1] See page 198 for a full statement of the proposed rule.

check. The receiving teller should notice especially this last indorsement, for at times, when checks are rapidly received for deposit, it is impossible to examine them carefully, hence, the greater need of looking at the indorsement of the depositor.

5. Reclamations. — Reclamations between banks occur daily. Checks are dated ahead, or dates are omitted. Indorsements are lacking, the sum in the body of the check does not correspond with the figures below, or the sum or figures may be wanting. Sometimes the signature is missing, or written so imperfectly that it can hardly be identified. The writer knew a large depositor having a very long name, who rarely had the patience to write all the letters. Besides he wrote the abbreviated form with a lead pencil. His bank always honored his checks, but required him afterward to write his full signature to them, doubtless hoping that he would take more pains in writing his name in the future. As soon as errors are discovered, of course no time should be lost in correcting them.

Merchants sometimes keep accounts in more than one bank, either to obtain larger discounts or to maintain greater secrecy about their business.

6. Indorsing by a Stamp. — In depositing checks, as we have said, depositors indorse them and, for this purpose, sometimes use a rubber stamp to hasten the work. This is a legal indorsement, though when it is disputed evidence of affixing the stamp is required to prove its legality. In the case of a written indorsement it is presumed to be legal until its genuineness is questioned by some one who has an interest in the contention.

7. Marking Counterfeits. — When notes are received that are counterfeit, the receiving teller should mark their character. The national bank act requires him to stamp or write in plain letters the words "counterfeit," "altered," or "worthless" on every fraudulent note. But if he mutilates a national bank or government note that is genuine, his bank is liable to the presenter for the amount. This is sometimes a delicate duty to perform. The teller receives such a note from a depositor and informs him that it is his duty to stamp it and return it to him. The depositor may object because the effect of stamping it is to destroy its circulation. He may ask the teller to return it to him; what ought he to do? Before him is the law written as clearly as daylight, there stands the depositor whose ill will he does not wish to incur. The difficulty may be enhanced by a teller's uncertainty concerning the real character of the note. If this be a government note, he can at once relieve himself of embarrassment by having it sent to the treasury for redemption. If redeemed, the depositor loses nothing; if it is condemned, the government, and not the receiving teller, has been the actor. We think, however, in the case of doubtful notes, they are usually returned to the depositor.

8. **Light Weight Coin.**—In receiving coin, and especially gold coin, tellers are sometimes neglectful concerning its weight. The law permits an amount for loss by natural abrasion. This amount in gold coins is one half of one per cent after a circulation of twenty years, and a proportional amount on coins of lesser age. As all coins are dated, there is no difficulty in applying the rule. When a gold coin is reduced by abrasion more than one half of one per cent, it is recoined. Coins therefore twenty years old may be one half per cent below standard weight and still be current. On the other hand, there are many coins below the limit of tolerance which have become so by honest use. A coin of light weight, unlike a counterfeit note,

can not be stamped "light weight" or in any other way to indicate its imperfect character. Indeed, there is a law rendering the mutilation of a coin an offense.

9. Instructions to Depositors.—When the receiving teller has counted the money, checks, etc., of a depositor, the amount is entered in his pass book. The following instructions have been suggested by an experienced cashier for the benefit of depositors:—

1. If you wish to open an account with a bank, provide yourself with a proper introduction. Well-managed banks do not open accounts with strangers.

2. Do not draw a check unless you have the money in the bank or in your possession to deposit. Do not test the courage or generosity of your bank by presenting or allowing to be presented your check for a larger sum than your balance.

3. Do not draw a check or send it to a person out of the city, expecting to make it good before it can possibly get back. Sometimes telegraphic advice is asked about such checks.

4. Do not exchange checks with anybody. This is soon discovered by your bank; it does your friend no good, and discredits you.

5. Do not give your check to a friend with the condition that he is not to use it until a certain time. He is sure to take an out-of-town check from a neighbor, pass it through your bank without charge, and give him your check for it. You are sure to get caught. Discount no accommodation note; in the meaning of a bank it is a note for which no value has passed from the indorser to the drawer.

6. Do not give your check to a stranger. This is an open door for fraud, and if your bank loses through you it will not feel kindly toward you.

7. When you send your check out of the city to pay bills write the name and residence of your payee, thus, "Pay to John Smith & Co. of Boston." This will put your bank on its guard if the check is presented at the counter.

8. Do not think that because you trust the bank with your money it ought to trust you by paying your overdrafts.

9. Do not suppose you can behave badly in one bank and stand well with the others.

10. Do not quarrel with your bank. If you are not treated well go somewhere else; but do not go and leave your discount line unprotected.

11. If you want an accommodation note discounted, tell the bank frankly that it is not in their definition a business note. If you take a note from a debtor with an agreement, verbal or written, that it is to be renewed in whole or in part, and if you get that note discounted and then ask to have a new one discounted to take up the old one, tell the bank about it.

12. Do not say that you will guarantee the payment of a note which you have already indorsed.

13. Give your bank credit for being intelligent generally and understanding its own business particularly.

14. Do not try to convince your bank that the paper or security which has already been declined is better than the bank supposes. This is only chaff.

10. Balancing Pass Books. — The books of depositors should be written up as often as once a month. The reason for doing this is obvious. Mistakes, alterations, and forgeries are more likely to be discovered when the transactions are freshest in the minds of the depositors than at a later period. Furthermore, this should be done, if possible, by some other person than the receiving teller, in order to test the accuracy of the receiving teller's work.

XVI. THE NOTE TELLER

1. Kinds of Notes in his Custody. — In the larger banks there is a note teller who receives the letters and money for all promissory notes liquidated at the bank. Of these there are two kinds, — notes discounted by the bank, and notes deposited by the owners for collection, and for which they are to receive credit when they are paid. The former are called bills discounted; the latter collection notes.

2. How they are entered. — In large banks at the present day the note teller does not have charge of the maturing notes until the day of their maturity, when they are handed to him by the discount clerk. The note teller enters the notes in a book kept for that purpose, and in doing so arranges them in the order of the names of the payees. He is now prepared to receive payment whenever the makers appear. The notes payable at the bank are retained by the teller in his drawer, and those payable at other places in the city are sent out by messengers for presentation.

3. Entries of Remittances. — The note teller reaches the bank in time to make the entries of remittances by the morning's mail before the bank is opened to the public. He writes his initial as his receipt for each check that he takes from every letter of the remitting bank. In the same way all letters containing cash documents are passed into his hands and the proper entries are made from them.

4. Notices to Makers of Notes. — Some banks send notices of the time when a note falls due. This custom, which was once quite general, is now falling into desuetude. When notes are paid, a certified check may be used, or money. When a note is paid, the bank stamps thereon "Paid," with the name of the bank at which this was done.

5. Making Notes Payable at a Bank. — Many incidents and irregularities happen in this department, perhaps more than in any other. Makers forget the day on which their obligations mature or the amount due. The practice is becoming common for persons to make their notes payable where they keep their bank account, which are paid by the institution and charged to their account, thus relieving the makers of all thought of them. The only thing for them is to keep a bank account ample enough to cover all contingencies. When this is done their bank will not hesitate to pay all obligations made payable there which are presented for payment and so their credit is easily preserved.[1]

6. Protest of Unpaid Notes. — When the day is over, all unpaid notes are delivered to a notary public for protest, except those having no indorser. As the object of protest is to hold the indorser, it follows that unindorsed notes need not be protested.

7. Mode of Protesting. — The protesting of a note consists in presenting it by the notary public at the place of business of the maker, or wherever it is made payable, and demanding payment. After his refusal to pay, the note is attached to a printed legal form containing the following particulars: first, a true description of the note fixing its identity; second, an assertion that it has been presented to the maker on the day of payment at the place therein mentioned and dishonored; third, that the holder looks to

[1] Concerning the payment of notes by the bank at which they are made payable, see Chapter X, Section 28.

the person notified for payment. The notary then sends a notice to all the indorsers advising them of their liability. Should he neglect to send the notice, they would be discharged. When notes thus presented by the notary are paid, he returns the money to the bank the next morning.

8. Liability of Bank for Negligence of Protesting Official. — The courts are divided on the question of a bank's liability for the manner in which a notary discharges his duty in protesting bills and notes. The more general rule is, a bank which has exercised due care in selecting a notary has fulfilled the law and is not therefore responsible for his negligence. Wherever this rule prevails the notary is not a mere agent or servant of the bank, but a public officer. Says Justice Lumpkin: "He owes duties to the public which must be the supreme law of his conduct. Consequently, when he acts in his official capacity the bank has no longer control over him, and can not direct how his duties shall be done. If he is guilty of misfeasance in the performance of an official act, the bank is not liable. . . . That the notary is also an employee and agent of the bank does not alter the case. There is still a sharp dividing line between his duties as agent and his duties as a public officer. When his public service comes into play, his private service is, for the time, suspended."[1]

[1] May *v.* Jones, 88 Ga. 308. For other points relating to protest, see Chapter X, Section 22.

XVII. THE DISCOUNT CLERK

THE duties of a discount clerk in some banks, especially smaller ones, are united with those of the note teller.

1. Discounts. — A discount is a loan in which the interest, calculated on the face value of the note, is paid in advance, being deducted from the amount due the borrower. Thus, on a hundred-dollar note, payable one year after date, the bank would receive six dollars for a loan of only ninety-four dollars, which is more than six per cent.

2. Bank Discount. — It was long ago decided that banks could deduct the legal rate of interest in advance, in the manner described, without rendering themselves liable for usury. This mode of calculating interest is sometimes called bank discount.

3. Offering Book. — The discount clerk keeps the record of the notes offered to the bank in a book known as the Offering Book, and also of the disposition made of them by the directors. When paper is immediately discounted by the president, the record is different. In all cases, however, the notes discounted are entered in a book, usually termed the Dealers' Discount Book, which is so ruled that entries can be made in the following order: first, the maker's name, then the names of the indorsers, the place of payment, due date, running days, discount, and net proceeds. After further entries in different books concerning them, crediting the amounts to the borrowers, etc., the notes are put away, those of each day in a separate package.

4. **Bills Receivable.** — The discount clerk has charge of the greater part of the bills receivable, which are kept in a compartment of the vault assigned to him, and are taken out the next morning by himself. If any of the officers wish to examine notes, they do so in his presence, or require him to show them. In this way his responsibility for them is preserved. He comes into frequent intercourse with borrowers, for they often apply to him to learn the fate of their applications.

XVIII. THE BOOKKEEPER

It is not intended in this chapter to describe fully the methods of bookkeeping, as excellent books exist on the subject in general, and also on bank bookkeeping.

1. Tendency to lessen Records. — We shall, however, describe the principal books used in a bank. It may be remarked that even in this regard some banks use far more books than others. The tendency clearly is to cut down the records of banking transactions to narrower limits. Yet every bank uses ledgers in which are recorded all of its business. First of all is the recording of the business of the bank with every depositor. The first record, as we have seen, is the deposit ticket. Many banks post directly from these tickets into ledgers. When money is drawn out, the depositor usually gives a check, though it may be paid out in discharging his note. But in either event there is a written record for the payment, which serves as the basis of the posting of the other side of the account.

2. Ledgers. — The recording of these transactions of a bank with its customers forms by far the larger part of its bookkeeping. In a small bank a single ledger may suffice for several months, perhaps; in a very large bank it is needful to use several ledgers at the same time, and the methods of dividing the record depend on the amount and character of the bank's business. A very common method is to divide the accounts alphabetically, — all names, for example, from *A* to *D* in one ledger, all from *E* to *H* in another, and so on. Some banks divide their accounts into those of individuals and of associations or corporations; other banks, having numerous out-of-town accounts, make the first general division into country and city accounts, and then subdivide each of these divisions.

3. Boston Method. — It would seem that the method in vogue fifty years ago of ledgerizing accounts was quite simple, but man is constantly seeking how to discover shorter ways of doing things. Out of this feeling has sprung a very considerable change in the methods of ledgerizing. One of the best known of these is called the Boston method, because it is the invention of a Boston cashier, and is perhaps sixty years old or more.

By this method, instead of giving each depositor a page of the ledger, the accounts of several depositors were recorded after each other on the same page in alphabetical order throwing the debit and credit column to the right and carrying the balances down in red ink in the credit column, in the same manner as under the old system. By this system the ruled cross lines made when balancing were no longer needed. The balances were copied every day into the Daily Balance Book.

To this form some bookkeeper added two balance columns — a credit balance column and a debit balance column, which were placed side by side with the credit and debit columns. Some other bookkeeper conceived the idea of doing away with the debit balance column and recording an occasional overdraft in the credit balance column in red ink. This form of ledger is still used in many banks.

Fifty years ago a still wider departure was made by Mr. Lane, a bookkeeper in a Boston bank. He prepared a form with a wider page which would accommodate three days' work on each. Some one then suggested the adding of the balance column to the form between the rulings of the several days. This was done, and the Daily Balance Book went out of existence.

Then came another change. Instead of preserving the old terms, debit, credit, and balance, the columns were given their true names, deposits, checks, balances. The next improvement was adding the checks in a detail column, and the credits for deposits and debits for checks were made direct from the deposit slips and checks respectively. Thus the Deposit Journal was discarded and the Ledger Balance Book and Journal were combined.

With experience this form was changed and three more columns were added to the opposite page, whereby six days' business could be recorded with one writing of the depositors' names. Later, another bookkeeper conceived the idea of saving more time by narrowing the next leaf on the left-hand side so that the names could be used in connection with it without rewriting them. At first only one short leaf was used; now ledgers are sometimes made with as many as twelve short leaves.

Another change has been made in the printing of the names of depositors; this is done by the larger banks, so that little remains to be done except to enter figures and state balances. But in the smaller banks the names are still written.

4. **Stock Book.** — There are several other books kept by a bank for its own more especial use. First is the stock book in which is kept a record of all the shareholders, the number of shares held by each, and the transfers.[1]

5. **Collection Register.** — Then another record is made

[1] See Chapter V.

of the collections. All the checks received are of two kinds, — those on banks in the same city, and others on banks in other places. The former are speedily settled by taking them to the clearing house and effecting a settlement there; the out-of-town checks are sent to other banks for collection; and in the larger banks many persons are employed in conducting the correspondence and recording the business, which will be explained in the next chapter. The principal record of this work is called a Collection Register, in which appears the account between a bank and every other to which checks are sent for collection.

6. **Discount Register.** — Again, in every bank is a book or series of books relating to the notes discounted. The first to be mentioned is the Discount Register, in which are entered all the particulars, date of discount, name of maker, name of indorser, date of note, time of payment, running days, number of payments made, remarks. Here may be mentioned the "Tickers" — very important books and oddly named. No one seems to know the origin of this strange name, but it is supposed that they were perhaps called tickers as the entries are ticked or taken off the Discount Register. There is one for each month of the year, and one or more pages for each day, and a record of all the notes discounted properly arranged in these books so that the bank can easily keep its eye on the maturity and collection of each note. If no other record was kept save the Discount Register, in a large bank especially, it would be difficult to keep the notes in their proper order of payment. It is of course highly essential to make prompt demand on the maker of every note when it becomes due, otherwise, among other ill consequences, the indorser will be discharged. Indeed,

for many reasons, it is needful for a bank to exercise the utmost vigilance in its collections, and the Discount Register and Ticker are the books in which the entries of these matters are made.

7. General Ledger. — There are several minor books that need not be mentioned, some of which are kept and some are not. There is one other, however, that must not be omitted, — the General Ledger. In this is entered all the items relating to the general business of the bank; in the way of example may be mentioned the capital account. That, of course, is a debit when received and as long as the bank exists. Another account is the profit and loss, in which the profit is a debit until it is paid to the shareholders. In like manner may be mentioned the surplus fund, the circulating notes, and, with many banks the largest item of all, the deposits. Besides these may be mentioned the loans, which are credited to this account when they are made, the bonds held by a national bank, as the basis of its circulation, the value of its banking house, and other items. Enough examples have been given to show the nature of the General Ledger. It is in this book that the aggregates of the bank's business appear. Lastly may be mentioned a Daily Statement Book, in which the balances of various accounts are brought together for the purpose of showing the exact condition, as far as it can be told in figures, at the close of each business day.

XIX. COLLECTIONS.

1. **Arrangements for Collections.** — Bank collections may be divided into three classes: first, checks on home banks that are paid through the clearing house, or in the smaller places by direct exchange; second, checks on out-of-town banks; third, notes, drafts, and other instruments. The collection of checks and other instruments falling within the second and third classes will now be considered. Almost every bank in the principal cities has an arrangement with a bank in every other place of much importance in the United States. These arrangements are varied, depending on distance and other conditions. In general, it may be said, that the arrangement consists of an agreement on the part of a New York bank, for example, to send all of its collections to the First National Bank, we will say, in St. Claire, Wisconsin, received for collection, which are drawn on the banks in that place and vicinity, while the First National Bank agrees to send all the checks received and drawn on banks in New York and vicinity to the New York bank for collection. Furthermore it is agreed that a statement of the account between them shall be sent once in two weeks, or once a week, or oftener, and the balance be remitted in some definite manner. If the account is between two banks in two large cities, the statement is sent oftener than in the case of an account between a bank in a large city and another in a very small place. Then there are arrangements for allowing interest on balances from the time of making collections until the trans-

mitting of the balances due. Perhaps the best idea of these arrangements can be obtained by giving the actual agreements that a very enterprising bank in Cincinnati made a few years ago with many other banks.[1] Whatever may be the arrangement, a record should be kept of it. Some banks have a book for this purpose; others keep the record on large sheets of paper.

2. Transfer of Checks. — In collecting checks, the first step is to have them properly transferred to the bank. This transfer may be absolute or only conditional. A depositor who wishes to retain control of his checks indorses them "for deposit" or "for collection." The legal effect of such an indorsement is, he can at any time before the money thereon has been collected withdraw them; if they have been collected, the money belongs to him unless its identity has become lost by admixture with other moneys. In such a case the first bank and every other through which checks go in the process of collection is the agent or subagent of the depositor; so long as the agency is preserved the principal can control his check, or the proceeds.

[1] The following offers to other banks by the Fidelity National Bank of Cincinnati, which were accepted by many of them, illustrate the nature of the arrangements which exists among banks for making collections: —

"No. 1. We will collect all items at par, and allow 2½ per cent interest on daily balances, calculated monthly. We will remit any balance you have above $2,000 in New York draft, as you direct, or ship currency at your cost for expressage.

"No. 2. Will collect at par all points west of Pennsylvania, and remit the 1st, 11th, and 21st of each month.

"No. 3. We will collect at par Ohio, Indiana, and Kentucky items, and remit balances every Monday by draft on New York. We do not charge for exchange on propositions Nos. 1, 2, and 3.

"No. 4. Will collect Cincinnati items, and remit daily at 40 cents per thousand, or 20 cents for $500 or less. National banks not in a reserve city can count all they have with us as reserve."

3. Depositor's Ownership. — But there is a line in collecting checks simply for collection beyond which the depositor's control of them ceases. So long as the process of collection is incomplete, the bank is the agent of the depositor, and he as principal can direct the bank's operations. And if a check has been sent to another bank, but before the collection has been completed the first bank fails and the money is collected afterward, the first bank still acts as an agent, and the principal is entitled to the money. On the other hand, when a collection is completed before the failure of the collecting bank, and the money is credited to the depositor, the agency or trust relation has thereby been changed into the ordinary relation of debtor and creditor, and the depositor can fare no better than other creditors.

4. Indorsing in Blank. — Very often a check is indorsed in blank, in other words is indorsed in such a way as to give the bank complete control over it. This may be done for several reasons. The depositor may wish to draw against it at once or before the collection can be completed. The bank would hardly suffer him to do this if it did not have full control of the check and the proceeds as soon as they were collected. That would be poor banking surely to permit a man to draw out money and yet retain control of his deposits. No bank would or ought to permit this, unless some peculiar reasons existed to justify its departure from the obvious rule of safety. When, therefore, the checks deposited by a customer are indorsed in blank, or payable to the order of the bank, it becomes the owner of them; and the debtor and creditor relation at once arises with respect to them, and when the money is collected, the bank is responsible therefor, like any other debtor. On the other hand, as the money belongs to the bank, it can be diverted, and while the bank would be legally liable to the depositor for the amount, if the bank failed he might not be able to recover it. Thus, suppose the First National Bank of Boston kept a collection account with St. Claire National Bank of St. Claire, Wisconsin. Suppose the Boston bank sends for collection a check thus indorsed in blank which is collected by the St. Claire bank and the amount is applied to settle a balance that may be due from the Boston bank. Suppose the Boston bank should fail, would the depositor of that check have any claim against the St. Claire bank? None whatever, if the check has been collected. The blank indorsement was notice to the latter bank that the depositor had transferred the check to the other, and it was justified in treating it as the owner. But if the check had not been thus indorsed, the depositor could instantly demand it, or the money if it had been collected and not so mingled with other money as to lose its identity.[1]

5. Indorsing for Collection. — Another important consequence of indorsing checks "for collection" is, the indorsers do not incur any responsibility. Such an indorsement is for collection and nothing more. If such a check has been raised or increased in amount before its deposit for collection and it has passed through successive collectors, similarly indorsed, the payee bank can not collect the money of them on the discovery of the alteration if they have paid it over. As these indorsements have such a limited meaning, they have become distasteful to indorsees, and their use is rapidly passing away, and indorsers are returning to the former practice which carries responsibility. In the new Negotiable Instruments law that has been enacted by several states and doubtless will soon be by all, it is declared that every person negotiating an instrument by delivery or by a qualified indorsement warrants: —

[1] See pages 131–135.

1. That the instrument is genuine and in all respects what it purports to be.

2. That he has a good title thereto.

3. That all prior parties had capacity to contract.

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

6. Entering Checks. — After a bank has received checks they are assorted for the purpose of sending them to their respective correspondents for collection. The next step is to enter them in the ledger to the debit of the accounts of the banks to which they are transmitted. They are now ready to be sent away. Those sent to each bank are accompanied with a letter briefly describing them. If any special directions are needful, these are added. A copy of this letter is kept and forms a part of the record relating to them.

7. Two Banks for collecting. — Very often checks are sent to a bank to collect which it can not collect so conveniently itself as another bank nearer to the residence or place of business of the drawer. Collecting banks then employ a second bank to complete the work. In selecting a second bank great care must be exercised, for if one should be selected not in good standing, and a loss should occur, the first bank would be liable. But if the second bank was in every way worthy of confidence, the other would escape all liability should a loss happen to the depositor through the use of such a sub-agency. This is the law in many states.

But not in all. In some of them the first bank is liable for the collection in any event. And if a sub-agent is employed, the first bank is still liable for any loss that may thereby be incurred whether it was justified in employing the sub-agent or not. In other words, good faith, diligence, will not protect the first bank. The negligence of the second bank is imputed to the first, and it must bear the loss. This rule was established by the courts in New York many years ago, and is held by a smaller number of states than the other. It is also the federal rule.

8. Collection of Notes. — Notes that are received for collection are treated in a different manner. After a careful examination they are entered in the customer's pass book. The receiving teller must always require the indorsement of the owner, so that the amount may be placed to the proper credit. Banks generally will not receive notes for collection that have been disfigured or changed, and rarely from strangers.

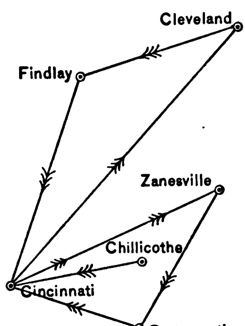
The clerk marks on each note the date of its maturity. If he should mark it one day too late and the drawer should fail to pay, the bank would be liable to the owner, because the notice of the protest to the indorsers would be too late to hold them.

After the notes have been timed on the back and end, they are recorded in the Collection Register. From this book they are copied into the Tickers.

Notes should be deposited ten days or longer before maturity, so that there may be time enough to pass them through the several books in the bank. Merchants, however, constantly receive short time drafts which can not be deposited long before the time of payment. Other circumstances often prevent their deposit until very near the time of maturity, as the pledging of them to secure loans.

Notes or drafts payable in another place are in some banks recorded in a Foreign Collection Register. In the smaller banks a single book is enough with a special column for foreign notes.

9. Collections by Outside Banks. — As banks, even in the large cities, do not have correspondent banks or bankers at every place in this country, what course do they take when receiving checks for collection drawn on banks outside their sphere of correspondents? Suppose a New York bank should receive a check on a bank in North Lewisburg, a small place not far from Cincinnati, what disposition would be made of the check? Obviously, the New York bank would send it to its Cincinnati correspondent, supposing it had an account with the Lewisburg bank. The Cincinnati bank might not have an account with it, and the check might go through several banks before reaching the drawee bank. The actual travels of such a check may be given to illustrate more perfectly what not infrequently happens. This check was drawn on a bank located at Chillicothe, and deposited in a Cincinnati bank. As the Cincinnati bank had no correspondent with a bank at Chillicothe, the check was sent to Zanesville, thence to Portsmouth, thence back to Cincinnati, thence to Cleveland, Findlay, and back to Cincinnati. The third time it was sent directly to Chillicothe.



In thus traveling around the state time is consumed, and it may be that the drawee bank has failed before the check is presented, whereas there was ample time for the Cincinnati bank, after receiving the check, to send it by mail or express and collect the money. In this case had the drawee bank failed, would the Cincinnati bank have been guilty of negligence in not making a direct presentation? This question was considered among bankers for several years before the question reached the courts. At last it was decided that a collecting bank was negligent when not making a direct presentation and responsible for the resulting loss. The question first arose in Nebraska. It was admitted that if the check in controversy had been presented through the agency of the mail or by express, as soon as received, there was ample time to collect the amount before the failure of the drawee bank.

10. Presenting Checks directly. — We have said that the collecting bank ought to have made a direct presentation. This remark needs qualifying. In a few states the courts hold that it is an improper thing for a bank to present through the mail a check to the bank on which it is drawn. It is asserted that the holder of a note would not think of sending it by mail to the maker for payment, as he might destroy the obligation and thus obliterate all evidence of his indebtedness to the holder. The analogy is incorrect, for the drawee bank would gain nothing by destroying the check. Its indebtedness would be just as great as before. Furthermore, there is no reason for supposing that a bank is not just as willing to pay the holder of checks the drawer's money as to pay the drawer himself. It is a matter of the utmost indifference to the bank. From the point of view we are now looking at this question, the bank is the mere custodian of the depositor's money, and is just as willing to pay one person as another; it simply wishes to be sure of having adequate authority to pay; having this, it cares not in the least who the demander may be.

It has been judicially declared in one of the states denying to banks existing therein the right to make a direct presentation of checks to the drawees, that if a depositor knows this is done by his bank and continues to deposit checks therein for collection, he will be regarded as acquiescing in the practice. This especially applies to a depositor who knows that the checks deposited by him are drawn on the only bank in the place to which they must be sent for collection.

11. What may be received in Payment? — Lastly, what shall a collecting bank take for the checks and notes collected? Must it always insist on receiving money, or can it safely take other checks or drafts in payment? A bank in Philadelphia sent a check deposited by a customer drawn on a bank in Mississippi for collection to the drawee for payment. It sent a draft on a New York City bank in return for the amount. Before the draft was paid, the Mississippi bank failed, and the New York bank declined to honor the draft. This is a very common practice among country banks, to send a draft drawn on a New York bank in payment of a check or other claim due to a non-resident. One of the reasons why country banks keep an account in New York is to draw against it in payment for demands of this nature that may be made on them. Now and then, however, a bank fails having an account there, and the bank holding a draft that may have been drawn by the failed bank in settlement of a check drawn on itself fails to receive the money.

In a few states the rule is, the collecting bank can receive only money unless it is instructed to do otherwise. In a far larger number of states the collecting bank which receives a draft in payment from a bank in good standing is justified by law and custom in doing so; and should the drawer fail and the draft be not paid, the collecting agent can not be held responsible. This rule, which has the sanction of long custom, ought to prevail everywhere.

XX. HOW THE RESERVE IS KEPT

1. Reserve in National Banks. — One other topic remains for consideration. National banks must keep a reserve in government notes proportioned to their deposits. For this purpose the banks are divided into three classes. Those in the central reserve cities must keep twenty-five per cent; those in the reserve cities also twenty-five per cent, but one half of this amount may be kept with a national bank in a central reserve city; and all other banks must keep fifteen per cent, nine per cent of which may be kept with a bank in a reserve or central reserve city. The central reserve cities are three, — New York, Chicago, and St. Louis. The reserve cities have multiplied until their present number is twenty-eight.[1]

2. Against what Deposits must the Reserve be held? — They have been thus classified: (1) individual deposits; (2) United States deposits consisting chiefly of the collections made by internal revenue collectors; (3) deposits of United States disbursing officers, chiefly paymasters; (4) unpaid dividends due shareholders; and lastly (5) balances due to and from banks and bankers.

3. Determining Balances. — There is one peculiarity in determining these balances. If the aggregate amount due

[1] The reserve cities are: Boston, Albany, Brooklyn, Philadelphia, Pittsburg, Baltimore, Washington, Savannah, New Orleans, Louisville, Houston, Cincinnati, Cleveland, Columbus, Indianapolis, Detroit, Milwaukee, Des Moines, St. Paul, Minneapolis, Kansas City, St. Joseph, Lincoln, Omaha, Denver, San Francisco, Los Angeles, Portland (Oregon).

to other banks, whether state or national, and bankers is greater than the amount due from them, a reserve must be held against the balance as in the case of other deposits; but if the balance due from them is equal to or greater than the amount due to them, then the item is excluded from the calculation, and the amount of reserve must be determined as though there were no balances whatever due to or from any bank or banker.

4. Offsets. — Against the deposits held by a bank various items or resources may be offset before determining the final amount against which a reserve must be held. These items are (1) exchanges that are to be paid through the clearing house; (2) checks on other banks in the same place which do not belong to the clearing house; (3) bills of other national banks, but not those of its own issue; and (4) lastly, after the reserve required is ascertained there may be a reduction of the five per cent redemption fund held by the United States Treasurer to redeem its circulation, consisting of the notes of the government.

5. Computation by a Central Reserve Bank. — Having now ascertained the different items included in the term deposits and the deductions that may be made, it is an easy process for a bank in a central reserve city to determine the amount against which it must keep a reserve of twenty-five per cent.

To illustrate more clearly the mode of computing the reserve of a bank the following example[1] is given: —

LIABILITIES

Due to national banks	$205,866
Due to state banks and bankers	25,559
	$231,425

[1] This is taken from George M. Coffin's excellent *Hand-book for National Bank Officers*, page 11.

LESS

Due from national banks	$125,335	
Due from state banks and bankers . . .	100,000	
		$225,335
Dividends unpaid		$6,090
Individual deposits		3,867
United States deposits		2,857,628
Deposits of the United States disbursing officer		705,000
Gross amount		$3,572,585

DEDUCTIONS ALLOWED

Exchanges for clearing house	$107,950	
Checks on other banks in the same place .	513	
National bank notes	17,340	
		$125,803
		$3,446,782
Twenty-five per cent of this total amount is the entire reserve required, which is . .		$861,695
Deduct 5 per cent redemption fund with the United States Treasurer		2,250
Net reserve to be held		$859,445

6. Computation by a Reserve Bank. — Some additional figuring is needful to determine the amount of reserve that must be held by a reserve bank which is not in a central reserve city, unless it keeps its entire reserve at home. Of course, any bank can do this; but generally the banks not located in the central reserve cities keep that portion of the reserve permitted by law with other banks, and when this is done then some other questions enter into the calculation.[1]

7. Reserves of State Banks and Trust Companies. — Until quite recently no duty to keep a reserve was imposed by

[1] "This class of reserve banks, it will be remembered, must keep one half of its reserve, 12½ per cent, at home; the other half may be kept in banks in

law, with few exceptions, on state banks and trust companies. In imposing this duty on the state banking institutions the law at first did not apply to trust companies as their mode of lending, so they contended, did not require them to adopt the same precaution in maintaining a reserve as banks of discount and deposit. Slowly however the states are applying the same requirements to both, — a reserve of about fifteen per cent. In New York City the trust companies have been put into line with the state banks through the action of the clearing house.

the central reserve cities. It often happens that a reserve bank has a reciprocal account with a central reserve bank instead of simply depositing a portion of its reserve with it, and there are balances due on both sides growing out of collections or other business done by each for the other. How shall these balances be treated? If the balance due from the central reserve bank on this account exceeds the balance due to it, the excess or final balance is available for the 12½ per cent reserve that may be kept there. But if the final balance is due to the central reserve bank, then the amount of such balance is to be treated as a deposit 'due to other national banks,' against which a reserve must be held as previously explained. Though the balance due from a central reserve bank to any other bank may be treated as belonging to the reserve fund that may be kept with other banks, it can never be used to make up a deficiency in that portion of its reserve, 12½ per cent, or one eighth of its deposits, which it must always keep at home. This rule is inflexible. But the excess may be used to reduce the liability on deposits having the effect to reduce the balance due to banks or bankers, even perhaps to exclude altogether that item from the calculation. To repeat, when the addition with the reserve banks added to the amount due from other banks and bankers equals or exceeds the amount due to them, the item is then dropped from the computation of the reserve; but when the addition of the excess to the amount due from other banks and bankers is less than the amount due to others, then the effect of the excess is to reduce the amount against which a reserve must be held, as previously explained. When the excess is used to reduce the amount against which a reserve must be held, the calculation becomes somewhat intricate if a bank is desirous of reducing its deposit to the smallest possible amount permitted by law." (Bolles, *Practical Banking*, 11th edition, page 207, which see for a full description of the way of making this calculation.)

XXI. THE CREATION AND UTILITY OF SAVINGS BANKS

1. How Savings Banks are created. — The chief differences between banks of deposit and discount and savings banks have been already described. Many a savings bank is created by special legislative enactment on the application of the persons designated therein as trustees; and the life of such an institution is preserved by them through the election of others to fill the vacancies of those who retire. Having no shareholders, this is the only way for such an institution to come into being and preserve itself, for in the beginning there are no depositors; and after deposits have once been made, they may be speedily withdrawn, so that under no conditions can depositors serve as a permanent basis of power. The only meetings ever held by them are on depressing occasions, like their bank's failure, when they are sometimes called together to take action for their common good.

2. Object. — These institutions are intended as places for deposit by persons having small incomes, — the working classes. To this end some states have enacted laws preventing depositors from putting or keeping in a savings bank more than a prescribed amount, in many cases $5,000. Persons of considerable means are often attracted toward these institutions by the security they afford, the regularity of their dividends, and the lower taxation to which they are often subjected. And they defeat the restriction above mentioned by depositing more than the maximum amount in the names of other persons as trustees. Though this evasion has long been practiced, action against such depositors is rarely, if ever, taken.

3. Motives of Trustees and Directors. — The trustees and directors who serve are for the most part moved by philanthropic considerations. They receive no compensation, and in many cases devote much time to their self-imposed service. Nor do they organize the bank and act as managers with the view of obtaining loans, or of reaping in any other way a personal advantage. Of course, there are exceptions; what we have said correctly applies to most of them. Their service is disinterested.

4. Savings Banks Different from Banks of Discount and Deposit. — There are two or three radical differences between a savings bank and bank of discount and deposit that ought to be repeated. One of these is in the lending of money. The work of a savings bank is primarily that of investment. Depositors put their money in them, not only for safe-keeping, but to earn interest, and this is gained, not by making brief loans to merchants, manufacturers, speculators, and the like, but to individuals who wish to use it in paying for land or for houses built thereon, and do not intend to repay perhaps for several years. So long as the security is ample and the interest is promptly paid, a savings bank suffers a loan to run, for it is the very object of the institution to make permanent investments.

5. Small Deposits on Hand. — A marked consequence of thus investing its money on long-time loans is, it does not profess to have only a very small sum on hand to answer the demands of depositors. If it were actually kept on hand, it would not be loaned, and no interest could be earned; on the other hand, if it is loaned, the bank can not have possession at the same time. A savings bank, therefore, deals with its depositors in a peculiar manner in the way of permitting them to withdraw their funds. Every bank has a graduated system of notices for the withdrawal of deposits above a small amount: the larger the amount required the longer must be the notice. It is true that a bank is not always governed thereby, ordinarily it will pay any amount desired by a depositor without exacting the notice of him; nevertheless, the system exists, and there are times, when depositors are frightened without cause and run to their bank and demand their deposits, that the wisdom of requiring notice of their withdrawal is manifest. Before the time has expired reason has regained control, and depositors never appear to demand their money.

6. Simplicity of Business. — There is another difference between a savings bank and bank of deposit and discount worth mentioning. The business of the former is much simpler because it receives for the most part only money for deposit. Consequently a savings bank has no elaborate system of correspondents or accounts with other banks. It generally keeps a deposit in one or two, perhaps three or four other banks, on which interest usually is paid. One object of this is to have a larger immediate fund that may be used to pay depositors, for the money thus kept is supposed to be at the momentary call of the savings bank. Another object is, when depositors deposit checks they are redeposited by the savings bank with one of its depositories which undertakes their collection. The savings bank has no connection with the clearing house or with banks in general. Each one is a self-centered, self-acting institution without connections with other banks of any kind, except as just explained.

7. Investment of Deposits. — Another difference relates to the investment of the deposits. As these consist of small sums, the hard earnings of the working classes, the worth of which, relatively speaking, is far greater to them than the deposits in other banks to their wealthier customers, the state seeks to guard the keeping and use of them with greater care. To this end strict regulations exist in the mode of lending them, the kind of security that must be taken; and discounts to merchants and others of ample means who would like to borrow on credit are denied.

8. Mode of Governing. — Finally a marked difference exists in the mode of governing. Many savings banks are governed directly by the trustees who possess adequate powers delegated to them by the charter or general laws, or both. Some of them, however, are governed by a smaller body of directors selected from the trustees. In banks thus organized the directors may be endowed, either by law or by-laws adopted by the trustees, with nearly the entire power of general management. In truth, where boards are thus carved out, it is with the view of relieving the trustees of nearly all duty, hence they rarely meet, in many cases not more than twice a year. Often the sole functions left to them are to fill vacancies in their own number and also in the directory. In other cases they retain the power to declare dividends and such supervision over the directors and other officers as they deem desirable for effecting the best results.

XXII. THE DEPOSITORS

1. Nationality of Depositors. — As already explained, the depositors belong chiefly to the working classes and, in the larger cities especially, many of them are foreigners. The number, too, in some of the older banks, is very large. Thus the Philadelphia Savings Fund Society, which was organized in 1819, has over two hundred thousand depositors.[1]

2. Making Deposits. — Many of them have a very imperfect idea of the mode of depositing and drawing out money. In general, it may be said that a savings bank requires a ticket or voucher for the money received, like a bank of discount and deposit. However small the amount, this invariably accompanies every deposit. The ticket in the case of the larger banks is a little fuller than the ticket already described. It contains four things: the amount of the deposit, the name of the depositor, his address, and the date. In some banks these tickets are made out by the depositors themselves; in many cases the depositors are quite unable to do this, and the tickets are prepared by the receiving teller.

3. Registry. — When a depositor appears for the first time, he is required, as in the case of an ordinary bank depositor, to enter his name in a book kept for that pur-

[1] The exact number on March 9, 1903, was 235,160. Of the 45,713 depositors who opened accounts in this bank in 1902 26,007 were Americans, 4,863 Irish, 400 Russians, 3,904 Germans, 1,904 Italians, 1,627 English, 1,425 Austrians, 319 Turks, and the remainder were from twenty other countries.

pose. It lies on a revolving desk, which in a large bank is in constant use. In this the depositor writes his name, or, if unable to do this, it is written for him and he makes his mark. At the same time some additional information is extracted from the depositor relating to his residence, age, whether married or not, whether white or colored, his father's, mother's, wife's name, his occupation, and whence he came. The information thus gathered is in due time tabulated, and valuable conclusions are drawn therefrom.

4. **Pass Book.** — The next step is to give him a pass book. This has a number outside and inside corresponding with one opposite the line on which his name is written in the signature book. This number is very important, for it is the key to all of his dealings with the bank. There may be a dozen similar names, but there are never two similar numbers. For this reason the number is written on every deposit ticket, it is written opposite the first entry in the book of the bank, it stands at the head of the ledger account. These numbers are printed wherever they can be to avoid mistakes; but, as depositors may forget the number of their book, it is necessary to find him somewhere by name. The signature clerk therefore enters his name on a card which is put in an alphabetical index of the names of all the depositors.

5. **Pass Book not Negotiable.** — A savings-bank book is not negotiable. Various attempts have been made to endow them with this quality. There is one conclusive reason at least why they never should be. As we have learned in a former chapter, one of the peculiarities of negotiable paper is, a third person to whom it is transferred in good faith for a proper consideration is completely shielded from all defenses that the maker might use against the original payee. The third person can take

such paper without the slightest fear, unless he has actual knowledge of good defenses by the payee. If the depositor of a savings-bank book could transfer his book to another, like an ordinary negotiable note, the transferee might acquire rights or advantages not possessed by the depositor. Consequently it has been decided that a depositor should not be permitted by assigning his book to confer rights not belonging to himself; "that the nature and purpose of savings banks, and the relation of depositors to each other, as well as their mutual security, all require the application of the principle that no depositor can convey to another any greater right to the funds of the bank than he has himself, and that any defense on the part of the bank which is good against the original depositor is equally good against his assignee." [1]

6. A Deposit can be assigned. — Though wings can not be given to a pass book, even by a rule providing for its transfer by a depositor to the order of another, a depositor may make a valid assignment of his entire deposit by giving an order on the bank, that will prevail against any creditor who may subsequently sue the assignor and attempt to secure the deposit in satisfaction of his claim. Such an order becomes effective from the time of its delivery. It works an assignment of the deposit, just like the giving of a check by a depositor in a bank of discount in Illinois and some other states. In like manner the delivery of a savings-bank book, though unaccompanied by a written assignment, with the intention that it shall be held as collateral security for the payment of a debt, transfers the title to the deposit so perfectly that the creditor can hold it against any one who may try to take it in satisfaction of a debt due from the depositor.

[1] McCaskill *v.* Connecticut Savings Bank, 60 Conn. 310.

7. Second Deposit. — When a depositor appears the second time to deposit money, he fills out and signs a deposit ticket with the additional insertion of the number of his book. This is taken to the receiving teller with his money, and the amount is entered therein and he goes away.

8. Special Deposits. — Savings banks rarely receive special deposits. When they do, the relation between such depositors and a bank is very different from the relation existing between it and ordinary depositors. A special depositor is regarded as a lender, and consequently, should the bank fail, he would be entitled to payment before general depositors were permitted to receive any portion of their deposits. This is the law, so the courts have said, even though a savings bank has no right or authority to receive a deposit in a special manner. As such depositors have no share or interest in the profits or earnings of the bank, they do not share in its losses so long as the assets are sufficient to pay its debts. "The general depositors can not shift upon them any share of the burden which properly rests upon themselves alone. As owners of the bank, and of which they are not creditors in a general sense or for all purposes, the general depositors, who alone are entitled to share in the bank's profits, must bear its losses, and can rightfully claim such assets only as may remain after payment of the corporate debts." [1]

9. Withdrawal of Deposits. — Having described the mode of depositing money, let us describe how it may be withdrawn, for the process is quite different from that in a bank of discount. In many banks the method is to fill out a receipt for the amount desired by the depositor in a

[1] See Cogswell *v.* Bank, 59 N. H. 43; Newark Savings Institution, 28 N. J. Eq. 552.

receipt book prepared for that purpose, containing six or more blank receipts on the same page, and kept on a revolving desk so that it can be easily handled. When the receipt is filled out and signed the bank then has an order or authority for paying the money, and it is paid over. This is the simplest method, and the one in vogue in small banks.

If a bank has a paying teller, the depositor makes out a check which is handed to the teller with the depositor's pass book, who counts out the money, enters the amount, and putting it between the leaves returns it to the depositor.

10. Identification. — Of course, the treasurer or paying teller must assure himself that he is paying to the proper person, and this is often a question of no small difficulty. To aid in identification and insure paying to the rightful persons, the rule is very rigid that the depositor's pass book must be presented, in which the amount withdrawn is entered. In the case of banks of discount and deposit, checks, as we have seen, are generally given to others to present for payment. Even in depositing money in such banks it is not essential for the depositor to present his pass book; it may be received without making such an entry.

11. Payment by Check. — Sometimes a depositor prefers to receive a check on another bank in payment instead of money, especially when he wishes to send the sum drawn away. As savings banks keep one or more accounts with a bank of discount, a depositor is sometimes accommodated.

12. Death of Depositors. — One peculiarity of the business of savings banks is, depositors die, or go away, and the bank loses sight of them. If they die, their children perhaps do not know that they have any money in the bank, and thus the deposit in one sense becomes dead. There is a law in every state providing that property escheats to the state when the individual ownership of it ceases, but the state rarely comes into possession of any. Within a few years the state of New York has passed an excellent law, providing that when a savings-bank depositor has not appeared for three years, either to make or withdraw a deposit, or have the interest entered in his book, the bank must advertise his name in the daily newspapers. The effect of this law is to diminish the number of doubtful or unknown depositors. It is true that the law causes no inconsiderable amount of work to determine whether claimants are honest or not. In many cases they do not know whether their claim is rightful or not; in other cases they try to get what they know does not belong to them; so that a bank must scrutinize very carefully all the demands of individuals who appear in response to such notices.

13. Growth of Deposits. — In 1821 several persons made a deposit of $5 at the Bank for Savings, New York City, in favor of one of their number. The account had remained unchanged, except for the interest, which was periodically added, until 1901, when the bank advertised for information concerning the heirs of the depositor's family. The card was published in the New York City newspapers, where it was seen by a person who knew the depositor. She was still living, and when the matter was told her recalled the circumstance of the deposit. Having proved her identity, the bank paid her $202.04, to which the original balance had grown. Many of the larger city savings banks have had similar cases. Within a reasonable limit every effort is made by them to close accounts that have not been disturbed for a long period. But the aggregate of the sums thus lying in a dormant condition is small compared with the amount of the active accounts. There are a few depositors who, having once made a good beginning at saving their surplus earnings, but failed to continue, let the account rest year after year, content that they do not need the money. There are a few accounts in New York savings banks which were opened by men who afterward joined the federal army in 1861, and have never appeared. There are sailors, too, lost at sea, who will never come back to claim their savings. Every now and then an account of this kind is paid over to the heirs of the original owner.

14. Calling in Pass Books. — In some states also depositors are required to present their books as often as once in three years, not only to be assured of their existence, but for the purpose of comparing the amounts with those on the books of the bank. A large defalcation in Massachusetts was the origin of this law. Less than the amounts were entered on the books of the many depositors, and through such intentionally wrong entries a large amount was taken. The law entails a great deal of work on bank officials, but no one accustomed to its operation will question its utility.

XXIII. THE LAW RELATING TO THE PAYMENT OF DEPOSITS

1. Regulations for paying Deposits. — In paying savings-bank depositors numerous questions have arisen, and the answers to the more important will now be given. Savings banks make rules or by-laws for the double purpose of informing their depositors and protecting themselves. These are printed in the pass book issued to depositors and, unless they are unreasonable, form a contract between the two parties. Says Justice Folger: "We hold that in the absence of any rules assented to by its customers, a savings bank is to be governed by the same legal principles which apply to other moneyed institutions. When it has prescribed rules, and its depositor has assented to them, they are the agreement, and each party must keep it to preserve rights against the other. The extent of the duty which the savings bank is under will, in some degree, be measured by the strictness or extent of the rules it has put on itself. Ordinarily, it is bound to the exercise of reasonable care and diligence." [1]

2. Depositors should know the By-laws. — The bank when giving a book to a depositor should call his attention to the by-laws printed in them, especially if he is not familiar with the language in which they are printed. His ignorance of the language, however, is no excuse for not learning what the by-laws are. It would be strange, indeed, if these simply bound one party to the contract —

[1] Allen *v.* Williamsburgh Savings Bank, 69 N. Y. 321.

the bank. They are equally binding on both parties. In a Pennsylvania case the Supreme Court made short work of this contention, on the part of a depositor's counsel, by declaring that if he was illiterate and could not read the rules in the bank book this "made no difference. He ought to have requested it to read the rules to him. Common prudence required this precaution."[1]

3. Effect of changing a By-law. — Sometimes a by-law is changed. When this is done after a depositor has opened his account and he is not notified of the change, he is not bound thereby. He is regarded as assenting to those by-laws only that were in force at the time of becoming a depositor, unless the subsequent by-laws were made known to him and his assent was given in a formal manner. Should he learn through a newspaper or another depositor that a by-law had been amended or adopted, in short, should he understand the change, and make no objection within a reasonable time, doubtless he would be regarded as assenting thereto. But from a permissive statute, authorizing a bank to change its mode of business, a depositor derives no binding inference that his bank has put it into operation. A positive or compulsory statute would have a different effect. A depositor would be bound by this as clearly as by any other statute.[2]

4. Withdrawing Deposits. — Savings banks provide several ways or rules for withdrawing deposits which will now be considered. One rule is that no money can be withdrawn except by the depositor and on the presenta-

[1] Burrill *v.* Dollar Savings Bank, 92 Pa. 134.

[2] More recently savings banks have adopted a by-law declaring that any by-law that may be hereafter adopted shall be as effective as existing ones. As this has received judicial sanction, it ought to be incorporated in the code of every savings bank.

tion of his book. This rule covers the larger number of cases. The depositor appears, presents his book, and makes known his wish. He either writes out a check, or one is prepared for him to sign, or he signs a receipt in a book kept for that purpose, and the money is paid to him.

This method seems simple enough; it could hardly be simpler, yet difficulties constantly arise in following it. Another person gets the book, presents himself, assures the paying teller that he is the depositor, and the money is paid to him. By and by the true depositor appears, and then the paying teller discovers the fraud. Must the bank pay the true depositor? It is hard, indeed, for him to lose the money. If the bank pays, the loss comes out of the other depositors, which is hard for them. Another by-law says that the bank is protected in paying on the presentation of the book, the object of which is to protect the bank from just such an untoward accident; and the law says that the by-law is reasonable and may be applied to all cases in which the bank has used reasonable care in seeking to pay the rightful person.

5. Withdrawing by Written Order and Pass Book. — Another rule provides that a depositor may withdraw his deposit by sending through another person a written order and his pass book. Unless a savings bank complies with this rule, the other just mentioned, that it will not be liable if it pays on the presentation of the book, the payment of a forged order accompanied with the book will afford no protection. A bank forty years ago that had paid on such an order attempted to defend against paying the true depositor, but the court said that a forged order was no order at all, while the presentation of the bank book alone had no greater effect, for the book was not negotiable and might have been stolen and presented, and in truth such was the case. The rights of depositors require more than this. "Had the book contained this further notice, that the presentation of the book shall be taken to be full authority for paying the money, the bank would have had a good defense." [1]

6. Rules not Contradictory. — One more preliminary question may be asked. Are not the rules declaring that the bank will pay only on the presentation of the depositor himself with his book, or the sending of an order with his book, inconsistent with the rule declaring itself justified or protected in paying to any one who comes with the book, or who brings an order with the book? Can the first two rules be reconciled with the other? Every savings bank knows there is danger of paying the wrong depositor; identification is often difficult; and a rogue may, in spite of all the efforts of a paying teller, succeed in fooling him. The rogue appears in company with identifiers who seem to be worthy of belief, and the paying teller is duped. Therefore to protect the bank in such cases this third by-law, variously expressed, has been adopted by savings banks everywhere, nor is it regarded as inconsistent with the other regulations mentioned relating to the payment of deposits.

7. Bank must use Proper Care. — A bank can not, however, avail itself of the protection afforded by this rule unless it has used proper care. The occasions are quite numerous on which banks have been negligent in paying deposits without proper inquiry. On one of them a person appeared with a book claiming to be the owner and drew some money, signing a receipt therefor. His signature was compared with that in the signature book, and the teller, satisfied with its genuineness, paid the money.

[1] Eaves *v.* People's Savings Bank, 27 Conn. 233.

The bank had adopted the rule that though it would "endeavor" to prevent fraud upon its depositors, yet all payments to persons producing the pass books issued by the bank should be a valid discharge. The court, without questioning the reasonableness of the rule, remarked that it did not dispense with the exercise of "ordinary care" on the part of the bank's officers in paying depositors. The paying teller was deemed not negligent, though two of the judges differed from their associates.

In a few cases the courts have gone so far as to hold that this rule may be used as a shield by a bank official even when he has been negligent. Almost universally the law frowns upon negligence; also upon all agreements absolving contractors from the consequences of their negligence. Surely no exemption ought to be granted to savings bank officers. The fund committed to their care is worthy of the most adequate protection. It would be a travesty on the government of a state, after hedging investments around with so many safeguards, to permit savings-bank officers to be neglectful in paying out the funds of their depositors. Indeed, it has been questioned whether such a rule could be adopted; whether it would be within the chartered authority of a bank to go so far.

8. Proper Authority. — A bank should be careful to pay only on adequate authority, and the fact that the presenter of a book is the depositor's husband should not incline the bank to depart more readily from its well-known rules, now observed perhaps everywhere, requiring the presentation of the book and also its owner or an order from him. In one of the cases a husband, W. C., went with his wife's book and told the teller that the money belonged to him, and that his wife, E. C., had sent him for it. The teller finally gave him a check for the amount payable to his wife's order, which, however, the drawee bank refused to pay without the wife's indorsement. So he returned to the savings bank, and, after convincing its officers that he was authorized to do business for his wife, the following indorsement was made: "Ellen Clark, as authorized by William $\overset{\text{his}}{\underset{\text{mark}}{\times}}$ Clark. Witness: John Jones." On this indorsement the national bank paid the check. She sued for her deposit, and the bank was obliged to pay on the ground of having acted negligently. It is true that the husband had the book, but once more the court declared that the by-law authorizing a bank to pay on the production of the pass book "does not permit bank officers to carefully close their eyes and pay any person presenting the pass book; but, on the contrary, they owe the depositors active diligence in order to detect fraud and forgery." [1]

9. **Payment of Joint Deposits.** — Deposits are sometimes made to the joint credit of two or more persons, and difficulties arise in paying them. When a deposit is thus made to the credit of two persons, each is regarded as owning one half of the amount. Thus on one occasion a husband deposited money belonging to himself in a savings bank to his own credit, but told the clerk that he wished to have the deposit so entered that either he or his wife could draw the money. The clerk required both to enter their names in the signature book and opposite to them he wrote the words, "To be drawn by either," and gave a pass book to the husband. After his death she sought to draw the deposit, but the court held that she was simply the agent of her husband, and could only draw money from the bank during his lifetime. The deposit

[1] Clark *v.* Saugerties Savings Bank, 62 Hun 346.

had not been given to her, and all authority to do anything with it ceased with his death.

In another case M. and her nephew O. opened an account with a bank and stated to the teller at the time of making the first deposit that either of them or both could draw the money. The account was entered to the credit of M. *or* O. Both continued to add to the deposit fund until O.'s death. Then M. notified the bank that O.'s wife had the book, and not to pay the deposit to her. O.'s wife, however, appeared with the book and letters of administration, showing full authority to administer on O.'s estate, and the bank paid to her the full amount. M. then sued to recover the deposit, and the lower court decided in her favor. The Court of Appeals, however, held differently, that O.'s representative had an interest in the deposit as well as M., but that M.'s notice of her right to the deposit was a prohibition which the bank should have respected so far as to withhold payments to the administrator of the deposits made by M. In other words, she was entitled to recover that portion of the joint deposit she had put into the bank.[1]

10. Lost Book. — A depositor not infrequently loses his book; and then he demands another. His duty to give notice of its loss is imperative, and founded on the soundest reasons. Every savings bank contains a rule of this kind, and depositors should be swift to comply with it. For, as a bank may make a mistake and pay the wrong person if the book is presented, and yet be protected unless it was negligent in so doing, it behooves a depositor to lose no time in notifying his bank in order to prevent a loss to himself.

On the other hand, a bank should exercise the utmost caution in issuing another book. Very often the depositor

[1] Mulcahey *v.* Emigrant Industrial Savings Bank, 89 N. Y. 435.

is told to go home and renew his search, which is often rewarded with the joyful discovery of the book. But when the book can not be found, then a bond of indemnity is usually required before giving another in order to protect the bank should the first one ever be found and presented. It is proper to require such a bond; a depositor can not object if he is able to procure one. It is true that this is not always possible; he may have no friend who is willing to incur the liability. And when he can not, a bank is not justified in withholding the payment of his deposit. Says Chief Justice Beasley, "A by-law declaring that those depositors in one of these banks who by inevitable accident shall have lost their deposit books, shall thereby forfeit to the company their respective claims, would seem to be so inconsistent with the general purpose for which these institutions have been called into existence that it would be, to say the least in its disfavor, of exceedingly doubtful validity."[1] Though such a rule is proper, it must be executed in a reasonable manner, as a bank has no claim to a depositor's money. This would be a harsh rule indeed, to forfeit a depositor's deposit on the loss of his book if he could not give a bond of indemnity. Yet, we repeat, the rule is highly proper and should be applied in every possible case, and banks are protected by the law in doing this.

This rule can not be applied to an administrator with the same rigor as to other persons. In one of the cases an administrator was unable to obtain the book from the family of the deceased, and the bank refused to pay the money without the usual bond, which he declined to give. The court said he was not required to give one, nor could he be compelled to resort to the expense of a legal pro-

[1] Wagner *v.* Howard Savings Institution, 52 N. J. Law 236.

ceeding to obtain possession of the book.[1] Having demanded the book and been refused, he had done enough.

There is another reason besides the protection of the bank for adopting this rule concerning the presentation of the book. A depositor may die or give away his deposit; and if a bank were governed by only the two rules first mentioned, the real owners could not get what belongs to them, or not without resorting to costly legal methods. When, therefore, if at all, can this rule be used as a defense for paying a donee or heir without resorting to legal proceedings?

11. Payment of Gift Deposits. — Two rules have been set up relating to donees. By one of these a gift by the depositor of his book and actual delivery constitutes a good gift; by the other rule something more than the gift and delivery of the book is needful to perfect the gift.

a. Two Kinds of Gifts. It may be remarked that there are two kinds of gifts: those made during life and called *inter vivos* gifts, and gifts called *donatio mortis causa*, or gifts in expectation of death. All gifts, of course, are made during life, but when a donor is prompted by the belief that his death is impending, it is a *donatio mortis causa*, and if he dies his gift becomes effective. The same elements are present in both kinds of gift. "There must be a purpose to give; this purpose must be expressed in words or signs; and it must be executed by the actual delivery of the thing given to the donee or some one for his use. In every valid gift a present title must rest in the donee, irrevocable in the ordinary case of a gift *inter vivos*, revocable only upon the recovery of the donor in gifts *mortis causa*."[2]

[1] Palmer *v.* Providence Savings Institution, 14 R. I. 68.

[2] Walsh's Appeal, 122 Pa. 187.

b. Valid Gifts. What, then, is needful to constitute a gift of a savings-bank deposit? A delivery of the pass book, with the intention to give it, followed by the donee's acceptance. This is the law in most states, but not in Pennsylvania. There, possession affords no presumption of ownership; "something more is necessary than the manual delivery of the book or paper in order to make a valid gift."[1] It would seem, therefore, that besides the delivery of the book, a writing of some kind expressing the donor's purpose must also be given to the donee. Since this is the rule in that state, the rules herein given have no application there.

Such are the rules that apply to gifts. It may not always be easy for a teller or other officer to determine whether the person bringing a pass book is the donee. When a book is brought by a non-depositor, the utmost caution ought to be exercised before paying the presenter. It is easy often for pass books to get into the possession of persons who have no right to them. When a person appears claiming to be the donee, the bank should make doubly sure that the presenter is not a thief; if the donor is alive, it ought not to be difficult in most cases for the donee to bring adequate written authority to the bank of the gift.

12. Payment to Administrator. — Most banks will not pay on the request of the donee of a depositor who is dead, but only on the order of an executor or administrator of the depositor's estate. Many of them have a rule that on a depositor's death the fund shall be paid only to his personal representative; the rule relating to the possession of the book as authority of the bank to pay ceases to have any effect. The payment, therefore, to a donee, in such a case, is improper.

[1] Walsh's Appeal, 122 Pa. 187.

But a payment to an administrator is by no means a perfect protection to a bank. If the depositor has made a gift of his deposit, and the bank questions it and administration is taken out and the administrator makes a disposition of a portion of his deposit to any other person than the donee, he has a good claim against the bank. Thus a mother delivered her book and order to her daughter, who notified the bank of her mother's act. The depositor died and an administrator on her estate drew out the money and never paid it over to her. She sued the bank and recovered the full amount of the deposit.

Although a deposit is paid to an administrator on presentation of the book, and observing all the other legal requirements on the supposition that the depositor is dead, after an absence of seven years without any knowledge of him, nevertheless the bank is not protected by any of its ordinary rules from liability to such a depositor should he appear. Such a case has arisen in Massachusetts. The bank contended that seven years' absence upon leaving one's usual home or place of business, without being heard of, authorized the court that dealt with the depositor's estate to regard him as dead. "The error," said the Supreme Court, "consists in this, that those facts are only presumptive evidence of death, and may always be controlled by other evidence showing that the fact was otherwise. When the presumption arising from the absence of seven years is overthrown by the actual presence of the supposed dead man, it leaves no ground for sustaining the jurisdiction." [1]

13. Payment to Trustees. — We now come to the payment of deposits made by trustees. They die, and the beneficiaries claim them; to whom shall the bank pay,

[1] Jochumsen *v.* Suffolk Savings Bank, 3 Allen 87.

the administrator or executor of the depositor or the beneficiary? The cases may be divided into two classes: first, those in which the deposits are put in the name of a trustee for some peculiar reason, but with no intention of creating a trust for the benefit of any one; and, second, cases in which the depositor's intention is to create a trust for the benefit of another in the true sense of the term. The first kind of trust, which is so only in form, creates no benefit, no truly trust relation. The object of making it often has been to evade the law restricting the amount that a depositor can put in a savings bank. This is easily done by putting an amount in his own name, another amount in his name as "trustee," perhaps a third amount as trustee for a person who is named, and so on. In all of these cases no real trust is created, and the claiming beneficiary has no right to anything; even though such a deposit be a violation of law, this is no ground for permitting a beneficiary to take it. The depositor may have been guilty both of a moral and legal wrong, but the rights of a claiming beneficiary are not thereby strengthened.

The following case is an example of many others. A deposited a sum in his own name, and another sum in his name as trustee for his daughter B, and kept the book. After his death she claimed the trust deposit, but failed in her contention. Furthermore, oral proof was admitted to show that the deposit was made to evade a law limiting the amount that a depositor could put in a savings bank. In another case, in which a similar deposit was made, the beneficiary did not know of the depositor's action until after his death. She tried to hold it and also to show that it was the depositor's intention to create a trust. She failed as in the other case. Therefore the rule clearly is that "a deposit in a savings bank in trust for another who is neither party nor privy to the transaction is an executory trust if the depositor retains the title and power of disposing of the property," and can not be enforced. In other words, such a trust conveys nothing to the person named as beneficiary. The bank consequently is safe in such cases in paying the deposit to the legal representatives of the depositor.

When a depositor really intends to create a trust for the benefit of the beneficiary, a different rule applies, and he or she can claim the money. An illustration may be given. A deposited money in a savings bank in the name of B, her niece, intending that it should be a gift, but retaining the pass book until her death. Shortly before her death, for the first time, she informed B of the gift. The court sustained B's claim to the deposit. In another case there was written on the depositor's book "for his daughter," "in trust for" her. These words, the court declared, clearly showed the creation of a trust for her benefit, and she took the money. There are numerous decisions of similar purport. The retention of the book by the trustee is not regarded as negativing such intention. In one of the cases the court remarked that the trustee retained possession of the book because the deposit was made in her name as trustee, and not because she had not given the beneficial interest of the deposit to the beneficiary.

On this point the decisions of the courts are conflicting. In most of these a trust is upheld when it is clear that the *depositor intended to create one*, whether the beneficiary knew of its existence or not. But in some states, especially in Massachusetts, *knowledge by the beneficiary* is an essential element to establish the trust relation. In all cases, however, proper evidence may be used to explain the trustee's intention. Difficult as the question may be for a bank to determine always what was the depositor's intention, it must make no mistake. If a trust exists, the deposit must be paid to the beneficiary; for, if it is not, there can be a recovery against the bank. On the other hand, if the contrary mistake has been made, the representatives of the depositor can recover against the bank for the wrongful payment to some one else.

Lastly, there is another principle affording to a bank some protection. If a deposit is made "in trust for B," and letters of administration are granted to an administrator on the trustee's estate, and the deposit is paid to him, the bank receiving no notice of any claim by the beneficiary, its action is justifiable. It owes no duty to the beneficiary until he forbids its payment, consequently if this is not made until the bank has acted, unless unusual circumstances surround his condition, the beneficiary has no claim thereon.

14. Appointment of a Drawer. — In some states a book is kept in which a depositor can, if he wishes, appoint a person to draw out his deposit after his death, if he has not disposed of it by will. This is done by virtue of a statute enacted for that purpose. It saves the expense and trouble of appointing an administrator, and the law is regarded with favor where it has been longest in operation.[1]

[1] Fidelity Insurance Co. *v.* Wright, 16 Pa. Week. Notes 177.

XXIV. SAVINGS BANK LOANS

1. Deposits not loaned on Personal Credit. — Having described how deposits are received and paid, let us next inquire how a savings bank loans its funds. First of all, a savings bank can lend nothing on the mere faith or promise of an applicant for money. He might be worth millions, and offer indorsers as wealthy as himself, yet a savings bank, obeying the law in most states, would have no right to lend him anything. One of the cardinal features of savings bank investments is, there must be something besides personal security.

2. Securities that may be taken. — Savings banks are permitted to purchase national, state, and municipal bonds; outside these three modes of investments they are restricted largely to real estate security. In some states they are required by law to invest at least fifty per cent of their deposits in the last-named manner. Compliance with the law is becoming more and more difficult from the lack of securities, and savings bank managers frequently ask for wider latitude from the legislatures of their respective states. In some of them they can invest in railroad bonds, but everywhere legislators hesitate to enlarge the field. They have a keen sense of the nature of savings bank deposits and the need of guarding them as safely as possible from every risk.

3. Loan Committees. — Thus much in the way of describing the general field of investment. The trustees or directors of a savings bank are generally divided into two or more committees. One of these is the finance committee, whose duty consists in determining what securities shall be purchased in accordance with the laws and best interests of their bank. Three members usually serve on this committee.

Other trustees or directors serve on a committee to examine real estate, determine its value, and decide whether applications for loans ought to be granted. Their work often consumes much time, nevertheless men are found who accept such positions and serve faithfully.

4. Lending on Real Estate. — Let us now describe the method of lending money on real estate security. A makes an application in writing for a loan, to the treasurer or secretary of a savings bank. He may do this by letter, or he may go to the bank and fill up a blank prepared for this purpose. He sets forth the amount desired, the nature and location of his land, and perhaps the length of time he needs the money. Twice a week or oftener the trustees or directors meet to consider applications. After reading them they are referred to the real estate committee, whose duty consists in examining into their truthfulness. Two or more of their number make a personal examination of the security offered. From long experience they become expert in values. If they dare not rely on their own judgment, they make inquiry of others, and especially of real estate dealers. If the bank is located in a large city, it may prove more difficult to be well informed concerning the worth of real estate in every part, and the real estate committee may be divided into sections; when this is done, to each section is assigned a particular part of the city.

Sometimes power is given to the committee to act on its own judgment. In other cases, the committee reports to the full board, which grants, or declines to grant, the loan. In truth, both modes are essentially the same, for whether the loan is made or not depends on the determination of this committee. Its action is a finality.

a. Margin for Depreciation. In granting loans, a bank always leaves a large margin of value to insure safety in the event of a decline. Experience has shown that the value of real estate, like that of every other kind of wealth, is unstable. The present writer was told by the former president of a mortgage company, who had thus served many years and sought to lend its resources in the most conservative manner, that notwithstanding all the care and intelligence he and his board had bestowed in lending on real estate security, there had been many losses. This often happens when loans are made in rapidly growing villages and cities. The prospect is most favorable; suddenly the place is struck by an unwelcome blast, and the large margin of valuation between the amount of money actually loaned and the worth of the property at the time of lending is swept away.

Savings bank trustees or directors, understanding this, seek to leave a wide margin of value for possible shrinkage. The usual rule is to lend money for about half the value of the security offered. Thus, the real estate of an applicant who desired to borrow $2,500, ought to be worth about $5,000. Sometimes a loan committee will recommend that a loan be made, but not for the entire amount desired. Many an applicant seeks to borrow as much as possible on his real estate, and puts a higher valuation thereon than the loan committee, or higher than his neighbors would value it.

b. Borrower's Note. Let us suppose, however, that a favorable report has been made on A's application for a loan on his land and house. The next steps are to take his note, examine the title to his property, prepare a deed conveying it conditionally to the bank, and transferring the policy of insurance on his house, if there is one on the premises. Each of these matters may be briefly considered.

First, is the note which the applicant must sign. In this is stated, among other things, the amount, the rate of interest, and the time of paying it, usually semiannually in advance, and the repayment of the loan.

c. Deed to secure Note. Second, is the deed given to secure the note. As a preliminary to giving the mortgage, there must be a careful examination of the title of the property to ascertain whether there are any defects or incumbrances of any kind thereon; for a bank will not take any security unless the title can pass the most rigid scrutiny. A bank will never take a second mortgage unless it holds the first. This is sometimes done when the security is ample. The work of examining the title is done by a person especially employed for that purpose, — an attorney. In some large banks this is quite all the business he can perform. There are various ways of making this examination. For small banks the attorney may make the examination himself; for the larger ones this work is often intrusted to others who bring him certificates describing the result of their examination. Thus, suppose a savings bank attorney is directed to examine into the title of a piece of land in a city. Several examinations must be made. First, an examination of all sales; second, of all mortgages thereon; third, of all attachments and levies that may have been made; fourth, he must satisfy himself that no liens exist for unpaid taxes, or assessments for improving the streets, or other state or local charges. The nature of these differs somewhat in different places. In all the large cities there are men who specialize the work of examinations: one examines transfers or sales, another mortgages, another attachments, another tax and assessment liens, and so on. It is much easier and cheaper nowadays to solicit their assistance than it is for one to do the work directly. Lastly may be mentioned the modern land title companies, whose sole business is to examine titles and make deeds; besides doing better work and at lower rates than was done before, they guarantee titles and possess a capital adequate to make good any loss growing out of mistakes in doing their work. In obtaining conveyances, therefore, savings banks sometimes avail themselves of these companies.

The nature of this deed may be briefly explained. The borrower conveys his land and house, if there is one thereon, to the bank, as a security for the money loaned. He, however, retains possession, so long as he pays the interest, or the principal, if it is required. But when he does not pay the interest at maturity, or the principal when it is demanded, then the bank can take possession after a short legal process that will soon be explained. This is known as a mortgage deed. In some states the borrower gives a bond instead of a note, and also a mortgage, and then the conveyance is known as a bond and mortgage, but this is essentially the same kind of conveyance as the other.

d. Insurance. If there is a house on the lot, the bank usually insists on a transfer of the policy of insurance in order to increase its security. Of course, it is important that the transfer should be made, or at least that notice of the mortgage be given to the insurance company; for were this not done, and the house was destroyed by fire, nothing could be collected from the company. Nor is this an unreasonable requirement, for an insurance company has a strong interest in knowing who are the owners and occupiers of the buildings it insures, for their care and preservation depend so largely on the character of their occupiers. A bank, therefore, has the policy transferred, and this is signified to the insurance company and accepted; furthermore, the bank carefully looks after every policy and the payment of the premium in order to preserve its vitality.

e. Action of Bank if Loan is not paid. Such are the various steps in lending money by a savings bank on the security of real estate. Suppose a borrower does not pay his interest, what happens? If the security is ample, the bank may suffer the interest to accumulate. There are depressions in business when borrowers can not always pay. Thousands of savings bank borrowers are workingmen, who use the money borrowed to build their houses. Hard times come on, and they are discharged, or their wages are reduced, and it is difficult for them to pay the interest on their mortgage. If they can not pay, and the bank fears the security may not be ample, then it takes the final steps to perfect its title to the land. This is done by a legal process called a foreclosure.

The bank files a petition or complaint to the proper court describing the loan, the security pledged, the failure of the borrower to pay his interest as he had promised, and asking the court to fix a day after which, if the borrower does not pay the loan and interest due, the title to the land shall pass absolutely to the bank. There is a hearing before the court, and should the facts above stated be proved (and they are rarely disputed), the court fixes a day, usually two or three months, rarely more than six, in advance, for the mortgagor or borrower to pay the bank, and further decrees that, if he does not pay at the end of the prescribed period, the absolute title of the land shall pass to the bank, and the borrower's control over it be forever cut off. Henceforth, if he does not pay within the time fixed by the court, the bank becomes the owner as absolutely as though it had bought the land and paid an agreed price therefor.

f. Sale of Land by Bank. — What does the bank do with the land? It seeks to find a customer. Perhaps none can be immediately found, and in this case the land is rented. The bank may be obliged to hold the property several years before it can find a purchaser; just as soon, however, as one comes along who is willing to pay the original loan, and the unpaid interest, etc., in short, make the bank whole, it disposes of the property. Most of the older banks own more or less real estate that has been acquired in this manner; on the other hand, after a few years, at the longest, they succeed in disposing of their undesired possessions.

XXV. OFFICERS

1. Trustees. — The officers of a savings bank are somewhat different from those in a bank of discount. Beginning with the trustees, these, as we have seen, are the projectors of the institution. They are usually the substantial men in the community where the bank is located. They number from fifteen to thirty, enough to give the bank a good standing.

Their chief work, in many cases, is that of organization. If a charter is to be obtained from the legislature, they are the actors in procuring it. If a bank is organized under a general law, in like manner they perfect the organization.

When a bank is once organized the trustees, in many cases, meet rarely, once or twice a year, and all the business is left to a board of directors chosen from their number. When the trustees thus delegate to a portion of their number all the business of the bank, about all that is often left is the filling of vacancies among their own number.

In many cases the trustees are the active governing body and do not appoint directors. When a bank is thus organized, the trustees are divided into committees; the four most important are the loan, finance, auditing, and examining committees.

The trustees adopt a series of by-laws for the government of their body. These provide how many shall form a quorum, the authority of the committees, and many other matters.

The declaring of dividends is usually done by the trustees, but unless the charter or statutes of the state require them to act, there is nothing in the nature or importance of the declaration to forbid action by the directors.

2. Auditing Committee. — As the duties of the loan and finance committees have been described, we need add only that the duties of the auditing committee are to examine and audit the vouchers for all payments, to count the cash at regular intervals, and, in short, to do everything properly pertaining to an audit. In truth, in most banks, where an auditing committee exists, the work is usually done in a perfunctory manner. We have elsewhere remarked concerning them: "They are very seldom thorough, very seldom go to the bottom of the figures which they are supposed to examine. Having ascertained that a certain amount of payment is supported by the proper vouchers, they very seldom inquire whether this is the entire amount of payment to be accounted for, which simple omission completely destroys all utility of the examination. The officer whose work they are supervising has only to withhold all questionable or improper vouchers from their examination. Such committees seldom take the time necessary for the proper performance of their duties, and seldom possess the ability. They ought, in justice to themselves and to their trust, to employ skilled assistants to point out, at least, the way in which to do their work more thoroughly."[1]

3. Examining Committee. — The duty of the examining committee, where one exists, is to ascertain the precise condition of the bank at the close of stated periods, — six months, once a year, or other period. This work is done in various ways, well or ill, depending on the conscience

[1] Bolles, *Practical Banking*, 11th edition, page 361.

and ability of the examiners. They usually submit the results of their work in writing to the trustees.

4. **Directors.** — Many banks are so organized that most of their work is committed to a board of directors consisting of seven or more of the trustees. The by-laws carefully define their duties, unless these are defined by the charter.

When the management of a bank is thus committed by the trustees to a portion of their number, they meet often enough to transact its business. In truth, they meet quite as frequently as the directors of banks of discount.

5. **President.** — The president of a savings bank may be the chief manager, or he may not be. In the large cities he is often a salaried officer and devotes all his ability to his official work. In the smaller places the president is usually a nominal officer, having light duties and still lighter remuneration.

6. **Treasurer.** — In banks where the president serves in a nominal capacity the treasurer or secretary is the chief officer, usually the first. He exercises a general direction over all the business, manages the deposits in other banks, and signs the checks for their withdrawal; collects the rents on property it may own, and receives applications from borrowers, and lays them before the trustees or directors.

Besides these duties are others relating to the hiring of clerks, fixing their salaries, directing the modes of keeping accounts, the depositing and withdrawal of deposits; in short, he is the active officer who plans the methods of doing business and directs the institution.

In a few states savings banks make temporary loans on the pledge of stocks, and whenever this is done, the treasurer is the proper officer for making them. Wherever he can thus act, there are limitations on his power;

he can not lend on more than ninety per cent of their par value, and in every case the amount must be at least ten per cent less than their market value. As such loans must be negotiated without delay, if at all, the treasurer is endowed with the requisite authority. The borrower deposits his security, and the treasurer is responsible for its genuineness.

All the documents, relating to loans, except the application and the abstract of title, are kept in a single envelope headed with the number of the loan, which is never changed. Semiannually the treasurer collects from mortgagors the interest due on their loans. He sends to each one of them, about twenty days previous to those dates, a statement of the amount of interest due, the computations for which are usually made by some other officer. This statement is so arranged as to constitute when signed and returned by the mortgagor a letter of transmission accompanying the payment to the treasurer. The bank requires the mortgagor to sign it, even when he pays in person, as evidence that the amount is correct. For a return, the treasurer gives a receipt.

7. Tellers and Bookkeepers. — The duties of paying and receiving tellers and bookkeepers are in many respects like those in banks of discount and therefore need not be more fully described.

XXVI. THE SECRETARY

1. **Bank Correspondent.** — Many of the larger banks have besides a treasurer a secretary. In these his principal duty is that of an accounting officer.

His duties may be divided into three branches: correspondent of the bank, recorder of the board of trustees, and accountant of the bank. On each of these heads a word may be added.

The letters relate to loans, deposits, borrowers, especially delinquents. In many cases special forms are printed, as a letter of transmission to an attorney with a check for a mortgage; another to a depositor with a remittance on account; a request to a depositor to present his pass book for the tracing of an error and to be written up; another to delinquent borrowers; lastly, notices to trustees of meetings.

2. **Recording Officer.** — As recording officer of the board of trustees, the secretary performs the ordinary duties of keeping the journal or minutes, and filing and preserving documents. He submits to the board at each meeting a report relating to the dealings of the bank with its depositors, giving all the statistics of the number of depositors, amount of receipts, payments, and averages.

3. **Accounting Officer.** — As accounting officer, which is his larger duty, he has no custody of any money or other property, but makes either directly or indirectly all records of the transfers of money. Thus he is an auditor of every department of the bank; he also keeps personally, or

through assistants, all the general books, but not the accounts with the depositors.

a. Daily Cash Book. The business of the bank has three different units of time, — the day, the month, and the half year, — and each of these has its historical record, its counterbalancing proofs, and its final statement of results or balance sheet. The daily transactions are brought to a focus upon the page of the daily cash book, and are also repeated in various forms in special ledgers, namely, the deposit ledger, mortgage ledger, loan ledger, stock ledger, real estate ledger, and rent ledger. For information, there is also kept in the daily cash book, below the cash entries, a daily statement of profit and loss and a daily balance sheet, so that at the close of each day the exact status of the bank, as near as can be ascertained, is recorded.

b. Interest Record. An accurate account is kept, in this book only, of the interest, to the nearest fraction of a cent, which is earned on each class of investment, and this is added to the accrued interest account daily, and also credited to the income account. Similarly, the accretion of rents and any other profits is recorded. On the other hand, the exact daily amount is apportioned for payment of salaries, of taxes, of dividend as estimated, of general expenses, and for the extinction of the premium on bonds as they approach maturity.

Each of these elements produces its effect on the profit and loss or surplus account, and equally on some branch of the resources or liabilities, actual or estimated, so that the business of the day results in a balance sheet; the cash transactions appearing above, of course, are taken into consideration.

c. Verification of Balances. The balance of each department of the cash, and also of the cash as a whole, is also verified daily. The monthly work consists in the aggregation of all the events of the month into two sets of columns, which give the general condition. These totals, when posted to the general ledger, form the basis of its trial balance. The trial balance of the general ledger is not precisely identical with the balance sheet contained in the daily cash under the last day of the month, for this reason: the general ledger, in its current or normal state, is kept on the basis of cost. No profit or loss, by depreciation or appreciation, is recognized until realized by the actual disposition of the proceeds. Hence, the trial balance of the general ledger is a balance sheet on the cost basis, while the daily balance sheet is on the basis of present market values.

There are other duties of a more technical nature, which require much space to describe fully, relating to the valuation of mortgages and investments belonging to the bank, and the ascertainment of balances due to depositors.

XXVII. BANK EXAMINATIONS AND REPORTS

1. **National Banks.** — There are several kinds of bank examinations and reports; and we may begin with the requirements of the national and state governments. The national government has the most elaborate machinery for superintending the business of the banks and requiring reports. The chief officer is known as the Controller of the Currency, who is assisted by a deputy and other officials. Besides organizing national banks, as we have explained, he superintends them while they are in operation, and takes charge of them after they fail, or determine voluntarily to retire, for the benefit of depositors, shareholders, and all other creditors.

2. **Reports required.** — He requires from them reports five times during a year, setting forth their condition. To render the report a true revelation of things, he calls for a report on a past day, and if there is a day, week, or other period when a bank is likely to be worse off than another, he orders a report to be made of that time. Thus, the New York banks have almost annually unusual demands for country bank deposits in September and October. As these are promptly sent, they are sometimes near the verge of the reserve line and occasionally are obliged to take a portion of it to answer the demands of the country banks. At this time, therefore, when they are down to low-water mark, they are always required to

make a statement of their condition. This statement is signed by the president or cashier and three directors, who also declare under oath that they believe it to be true.

3. Responsibility of Directors. — Before going further, the accuracy and extent of the knowledge of the signing directors may be considered. In almost every case they literally know nothing concerning the truthfulness of the statement signed by them. It is prepared by several of the officials of the bank, the cashier putting together the final figures from memoranda given to him by the paying teller and others, and the three directors attach their names because the law requires this to be done.

It may be remarked that this is not always a safe thing for directors to do. If they honestly believe the statement to be true, and have no reason to suspect anything therein, they can not be held liable should it prove to be a fraud; but if they know, or have reason to believe, that it is incorrect, they can not plead innocence and escape. On several occasions directors have knowingly made statements which they knew were false, whereby others, not knowing this, were led to purchase the stock of their bank and pay far more than its worth. Discovering afterward the truth, the purchasers sued the directors and made them pay the full price for their deception. Such statements, therefore, are something more than perfunctory matters, and, if not made in good faith, may bring those who make them into trouble.

4. Special Reports. — Besides these five statements, the Controller of the Currency can require as many more as he pleases. If he suspects that a bank is going wrongly, this is one of the first steps taken by him to find out its condition.

5. Deceptiveness of Reports. — That the statements thus prepared for the Controller are often false and mislead him has been again and again proved. In truth, if a bank sets out to deceive him, it succeeds in most cases — for a time. Rarely is a wrongdoer caught in the incipient stage of his rascality. Ultimately he is found out; that is the sad history of them all.

Besides these reports or statements, national banks are examined by men especially appointed for that purpose, and work under the direction of the Controller. Many of them have served for a long period, and are highly competent; and the worth of their examinations has long been a subject of discussion among bankers. Some contend that their service has been very valuable in preventing and detecting frauds; others, that it has not been worth the cost.

Whenever a large defalcation is discovered covering a long period of time, the criticism is at once raised that if prior examinations had been thorough, it would have been discovered. On the other hand, if a rogue can cover up his tracks so well as to defy detection, what is the use of examinations? Admitting that examinations ought always to be made by competent men, may not this be said of them, that, if there is a rogue in a bank who is robbing and yet escaping detection, the examiner is likely sooner or later to discover him? Is not this, in truth, the history of bank examinations? And if the examiner had not been after him, would he not have continued longer and stolen still more?

6. Value of Examinations. — Several things more may be said in favor of examinations. One is, they do have a deterring effect; the fear that detection will come keeps many a tempted man from venturing. Another thing may be said of them, if there is a wrongdoer he may be found out. There is always the possibility. No matter how large the bank may be, or slight the examination, if there is any irregularity, it may be discovered. Lastly, irregularities are found in the early stages of which the world has no knowledge; in all such cases a long credit mark may be placed to the examiner's account.

On the other hand, too often examiners are appointed who have inadequate knowledge of their work. Such are worse than useless. They drown investigation by others while not investigating themselves. In other cases examiners are swerved from the path of duty by bank officers, are bribed by means of loans to them or gifts of money. The cases that come to the public knowledge are rare; perhaps not all of them are known.

Most of the states also have bank superintendents, who are required to supervise the conduct of the banking institutions within their control. Their examinations are not so thorough or frequent as those made by the national bank examiners. In some states they are of no account whatever. Private bankers in all the states except two or three escape on the ground that the state has no constitutional authority to examine them.

7. Judicial Examinations. — The courts, too, sometimes take a hand at bank examinations. The special charters of some banks and trust companies require that the courts shall appoint one or more examiners at stated periods to make examinations of their affairs. Usually, these examinations are made with great thoroughness and are worth all they cost. In all cases the banks examined are required to pay for the work. One of the principal objections to national examinations is, examiners have not the time, even if they had the inclination, to do their work in the most thorough manner. If they did, they could not make their round annually. Examiners appointed by a court have all the time they need, and, consequently, if capable men are appointed, their work is more exhaustive.

8. Examinations by Banks. — Lastly may be mentioned examinations made by the banks themselves. In England this is a very common practice. The usual method is to call in expert accountants to make examinations, the result of which is made known to the public. This is made with a view of satisfying the managers of the soundness of their institutions. They had no doubt before; but an examination is made to fortify their assurance still more.

XXVIII. CLEARING HOUSES

1. How Banks receive Checks. — A bank clearing house is one of the most noteworthy of all modern business inventions, as an economizer of time, effort, and money. It is an institution for exchanging and settling checks.

Banks receive checks, drawn either on themselves or on other banks, in four different ways that may be briefly explained.

First, they receive from their depositors, who leave the larger number of them.

Second, a bank may receive them for a debt due itself. Thus a man, who may or may not be a depositor, borrows money of a bank and in paying gives a check for the amount.

Third, often checks are received by a bank from the maker, indorsers, or guarantors of notes left there for collection. Every bank is doing business of this kind, collecting notes for its customers or others, and receiving checks in payment.

Fourth, a bank, especially in a large city, receives checks for collection sent by its correspondents. A bank customer in Philadelphia deposits a check received in payment for a bill of goods that is drawn on a bank in Newark. Instead of sending the check to the Newark bank and demanding payment, the Philadelphia bank sends the check to its correspondent bank in New York, knowing that, as Newark is only a few miles away, it probably has an account with the Newark bank on which it is drawn, or with another in that city, through which it can more easily obtain payment than by a direct presentation through the mail or by express.

In these four ways, therefore, a bank is constantly receiving checks. It is a great reservoir into which they are always flowing.

2. Checks classified. — The checks thus received by a bank may be divided into three classes: those drawn on itself; those drawn on other banks in the city; those drawn on outside or country banks. The first class of checks are at once liquidated by crediting the amount to their depositors and making a corresponding charge to the drawers. Furthermore, when this is done, the act is final, unless some mistake has been made in the operation, and the entries can not be changed. The unwelcome discovery of an insufficient balance to pay a check will not justify a bank in withdrawing the credit. In such a case, therefore, if the bank can not recover the deficiency from the drawer, it must be the loser. Thus checks drawn on a bank that are presented directly for payment or for credit do not pass beyond itself for settlement.

3. Economy of the Clearing House. — A bank deals with the second class of checks very differently. These must be presented to the bank on which they are drawn for payment. But, instead of doing this directly, the operation is conducted through the clearing house. As every bank in a city receives checks daily drawn on almost every other, it is evident that the easier way to settle them is to exchange them and pay the balance in money, or in some other agreed manner. Thus, suppose $100,000 of checks have been deposited during the day in the First National Bank of New York, drawn on the Fourth National, Chemical, Park, Chatham, and Central banks, $20,000 on each; also, that in each of these banks there has been deposited during the day $20,000 of checks drawn on the First National Bank. Let us suppose that six persons representing the six banks should come together bringing all of these checks, amounting to $200,000. By the simple process of exchanging them, all would be liquidated without the payment of a dollar. On this idea is founded a bank clearing house. It is an expeditious method of liquidating checks, not by paying, but by exchanging them. Let us now explain how the work is done.

4. **Membership.** — A room or building is prepared where the representatives of the various banks belonging to the association meet daily to exchange checks. Not every bank can be a member, only those which are in good standing and are willing to conform to the rules of the clearing house. In most associations three fourths of the banks represented at a meeting must vote in favor of admission; furthermore, it may, by a similar vote, impose such conditions on the admission of a bank as the association may deem expedient. As the privilege is a valuable one, especially to banks established in the large cities, they are required to pay an admission fee based on the amount of their capital. This fee in New York is $1,000 for a half a million dollar bank; $2,000 for a bank with a capital twice as large; and increasing until $7,500 must be paid by a five million dollar bank.

5. **Authority over its Members.** — The rules adopted by every clearing house are designed to preserve and enforce the methods of conservative banking. Thus one of its standing committees has power for clearing house purposes to examine all books and assets of any member of the association whenever it may deem it necessary; again, in a case of extreme emergency it may suspend any member

from the privileges of the clearing house until the pleasure of the association can be ascertained. If a bank is lending too much money, is frequently below the reserve line, very likely the clearing house committee will make a request for an examination. This is a kind of notice that its methods are regarded with suspicion. If a bank should refuse to comply, it would be at once suspended or expelled. The exercise of this supervision by a clearing house over its members is most salutary.

Sometimes when a bank is "overtrading," as the banks say, loaning too much money, which is revealed in checks drawn thereon and deposited with other banks for collection, it is required to deposit security that may be used, if need be, to pay its checks. This is rarely done; it is one of the measures of discipline sometimes administered to reduce a bank to more prudent ways of doing business.

The clearing house association, therefore, is an organization composed entirely of banks within a city or limited area that are willing to conform to a code of well-defined rules. The advantages are so great that every bank desires to be a member that can come within these rules.

6. Clearing through Another Bank. — In some cases, however, of deprivation to a bank by reason of its charter, location, size, or other peculiarity, it may, with the consent of the clearing house, have its checks cleared through a member. Every bank that can clear through another is known to all the members of the clearing house; and when they prepare their checks for clearing, those drawn by non-clearing banks are presented to those which have agreed to clear for them. Thus no bank in Brooklyn or Jersey City is a member of the New York clearing house; but all of the banks in those two places have arrangements with New York banks for clearing through their assistance.

In such cases the Brooklyn bank, for example, keeps an ample deposit with the New York clearing bank to pay all of its checks that may be presented. The New York bank receives, through the clearing house, the checks of the Brooklyn bank, charges them to it, sends them over for examination and final settlement. The New York bank is paid by the profits derived from using the deposit of the Brooklyn bank; or it may be that some additional compensation is given, depending on the magnitude and difficulty of the business.

7. Organization and Expense. — The organization of a clearing house is simple. It may own a building; if so, the money therefor is subscribed by the members. Primarily the fund for sustaining a clearing house is a tax, or annual sum paid by every member. This is large enough to pay the salary of the manager, his assistant, and any other force that may be necessary, besides the rent of a room or building or any other incidental expenses growing out of the operation of the work. Sometimes the annual dues are sufficient to pay the running expenses and accumulate a fund for ultimate use in the purchase or construction of a building for the exclusive purpose of a clearing house.

The expenses are not very heavy. The salary of a manager of a clearing house in a large city, though adequate for his liberal support, bears no proportion to the salaries received by the presidents of the larger banks. And though the position is one of honor and responsibility, yet his duties are not so exacting as those of a bank president.

A clearing house has no capital. Obviously it needs none. For as its business is simply to exchange checks and pay over the balances due from the debtor to the creditor banks, when its day's work is over it has no funds on hand belonging to anybody. It is true that the New York clearing house has become a great depository for its members, but the gold stored there has no connection with the proper work of the clearing house.

Nevertheless, as the manager has the custody of the balances paid by the debtor banks until they are paid over to the creditor banks, and it is possible for him to make a wrongful disposition of them, he is required to give a bond like a cashier or other bank officer.

8. Duties of Members. — The members of the clearing house have several duties to perform, and to that end are divided into committees. There is a governing or clearing house committee, another on admissions, another on nominations, another on conferences or arbitrations. Of these, the first is the most important.

9. Meetings. — The meetings for clearing or exchanging checks in the large cities are held daily; in Philadelphia two meetings are held, one in the morning before the banks open for business, and another at 11.30, which is known as the runner's exchange.

10. Preparing Checks. — Before checks are sent to the clearing house, several things are done. First of all each member opens all the letters it has received by the morning's mail for the purpose of extracting from them the checks that ought to go through the clearing house. Then they are properly indorsed or marked to indicate their ownership. Next they are put in packages for the respective banks on which they are drawn, and these are arranged in consecutive order corresponding with the numbers of the banks at the clearing house. When these things are done, a slip is prepared, called an exchange slip, on which is entered the amount of checks against each member of the clearing house, which are to be sent for clearing. As there are ninety-five banks belonging to the New York clearing house, there may be ninety-four entries. These are footed up and form the amount of the checks or exchange to its credit in the day's exchanges.

With this slip and an assistant the settling clerk starts for the clearing house. Every bank has a desk which is known and numbered. The desks are arranged in various ways in different clearing houses; often in a circular or oval form, so that a person can readily pass from one desk to another.

11. Clearing. — Each settling clerk, after giving the statement above described to the manager of the clearing house, takes his place at the desk belonging to his bank. At a given signal the messengers, who are arranged in an order corresponding with that of the desks of their banks, start on the circuit. Messenger of bank No. 1 leaves his first package of checks drawn on bank No. 2 at its desk, and at the same time receives from the settling clerk of that bank a package of checks drawn on bank No. 1, for which the messenger gives a check or receipt. The messenger then passes to desk No. 3, and repeats the operation, and thus continues until he has completed the circuit. In like manner the other messengers follow, delivering their packages and receiving others. This operation in New York consumes only ten minutes, and in clearing houses with fewer banks still less time.

As soon as the package of checks is delivered to the settling clerk of bank No. 2, he puts down the amount in a statement that is prepared for that purpose. The amount of the second package is put down in the same manner, and soon after the delivery of the last package the amounts are entered on the slip, and he forthwith ascertains the total. As he knew before coming to the clearing house the amount of the checks he brought with him, the balance is at once struck between this amount and the amount brought by other banks against his own. This balance, if in favor of his bank, is a credit balance which it will receive during the day; if a debit balance, one which his bank must pay before a fixed time to the clearing house, and by it in turn to the creditor banks.

While these settling clerks have been busy, the manager of the clearing house has begun the preparation of his proof of the day's business. This consists of four columns, two inner and two outer. The two inner ones are respectfully Dr. and Cr.; the two outer are, the first, the amount due the clearing house, the fourth, or last, the amount due to creditor banks. A part of a clearing house proof is herewith given to make this explanation clearer.

	Due Clearing House	Banks Dr.	Banks Cr.	Due Banks
First National Bank . . .	$1,000,000	$4,000,000	$3,000,000	
Manhattan . .		2,500,000	3,000,000	$500,000
Hanover . . .	700,000	4,500,000	3,800,000	
Chemical . .		3,000,000	4,200,000	1,200,000
	$1,700,000	$14,000,000	$14,000,000	$1,700,000

As we have stated, as soon as every settling clerk comes to the clearing house he hands a statement to the manager of the amount of his checks on other banks. These totals are entered in the third or credit column, and are footed while the messengers are delivering their packages to the clerks and receiving other checks drawn against their respective banks.

As soon as they have footed the checks presented against their banks, the amounts are also footed and the balance is struck. If the amount taken to the clearing house is greater than the aggregate of all the checks taken by other banks drawn against it, such a bank is a creditor, otherwise it is a debtor bank. This footing and the balance, each settling clerk hands to the manager. The amounts thus presented against all are entered in column No. 2, and the aggregate of them, supposing there has been no error in the calculation, will balance those in column No. 3.

The balances are entered in the two outside columns. If a balance is a credit balance, or in favor of a bank, it is put in the fourth column; if the balance is a debit, it is put in the first column. If these operations are correct, the first and fourth columns will balance, for the aggregate amount due the creditor banks must be exactly the same as the aggregate amount due from the debtor banks. The final operation of settling, therefore, consists in all the debtor banks paying to the clearing house the balances they owe between the amount of checks they took to the clearing house and the aggregate amount of checks all other banks took against them, and these balances are paid to the creditor banks. This completes the clearing.

Some other explanations, however, are needful. As soon as all the packages have been delivered to the settling clerks of their respective banks, and each clerk has made his addition and ascertained whether his bank is a debtor or a creditor bank, and to what amount, the messenger returns to his bank with the checks handed to him drawn thereon for examination. As this settlement is in truth a payment of its checks, the work of examining them belongs nominally to the paying teller. In the larger banks, however, he has but little if any time that he can give to this work. There are several things to be done in a comparatively short time, because the final settlement must be made during the day. So others take the work in hand; the checks are carefully examined, the signatures, indorsements, the balances of depositors, if there is any doubt about a sufficiency to pay them, and they are charged to the drawers. Assuming that they are all right, the messenger then goes back for his final work. When his bank is a debtor, he must take the means to pay the indebtedness; when it is a creditor bank, he goes to receive the amount due.

12. Payment of Balances. — The banks have strict rules concerning the payment of these balances. They must be paid before a specified time and in specified funds. In some places banks have a deposit of gold with the clearing house against which it issues certificates, generally in amounts of $5,000. In New York the balances must be paid by the debtor banks to the clearing house between 12.30 and 1.30 o'clock either in actual coin, United States legal tender notes, or in gold certificates issued by the United States or the clearing house. At the latter hour, or on the subsequent completion of the accounts, the creditor banks receive the balances from the clearing house manager, assuming, of course, that the debtor banks have all paid their balances. Should any bank make default in the payment of its balance at the proper hour, the amount of that balance must be immediately, on requisition from the manager, furnished to the clearing house by the several banks exchanging with the defaulting bank in proportion to their respective balances against that bank resulting from the exchanges of the day. The amounts so furnished constitute claims against the delinquent bank only, for the clearing house is in no way responsible. The defaulting bank is immediately suspended from the clearing house. At several American clearing houses the regulations provide that until the settlement is completed and balances are paid the exchange shall be in trust only, that the vouchers delivered at the clearing house shall, until that time, remain the property of the bank presenting them, and that in case of default by any member in paying its balances, such vouchers shall be returned unmutilated to the banks from which they were received.

To hasten the payment of balances three different kinds of certificates are used: gold clearing house certificates, issued against gold deposited with the clearing house by the respective banks to which the certificates are given; United States gold certificates, issued by the government to the depositors of gold; United States legal tender certificates, issued by the government to the depositors of legal tender notes.

The gold clearing house certificates are numbered, registered, and countersigned by the proper officer, and indorsed when paid into the clearing house by the paying bank, and when paid out are charged to the receiving bank, so that they can always be traced by the records. Their use, however, is restricted to settlements between banks, and they never enter into general circulation.

The United States gold certificates are issued against the deposit of gold coin in denominations of $20 and upward. Large deposits of gold have been made from time to time for which these certificates have been given, chiefly for the purpose of having the gold stored. It is a convenient and inexpensive way for the banks to obtain storage of the metal. By this method the government becomes a free depository.

On several occasions the clearing houses have issued another kind of certificate that requires explanation. These have been issued to their members at times of great stringency in the money market on the deposit of discounted notes of unquestioned value. The committee of the clearing house is vested with this authority and has always acted with great prudence, never issuing certificates for more than fifty or sixty per cent of the value of the securities deposited. The certificates are signed by the clearing house committee, and are used simply by the bank receiving them to pay balances due to other clearing house banks. They have never been used continuously for more than a few months; then they have been retired by the banks for whose benefit they were issued. On their retirement their own securities have been returned. They were first issued in 1853, the last time in 1893.

XXIX. LOAN AND TRUST COMPANIES

1. **Original Design.** — The original design of loan and trust companies was to insure lives and grant annuities; the business of holding trusts was a secondary consideration. As they had money to lend, they assumed to some extent banking functions. Gradually their original purpose diminished in importance, until the newer companies do not undertake the business of insuring lives and granting annuities, while the older companies are retiring from it, leaving the field entirely to life insurance corporations.

2. **Business of a Modern Trust Company.** — The business of a modern trust company therefore combines that of a bank with the execution of a great variety of trusts. Many of the recent trust companies are nothing more than banks, possessing a capital, receiving deposits, and lending both. Why, then, do the projectors organize as a trust company? Because they have a greater latitude of authority. That possessed by the national banks is comparatively narrow, and is carefully guarded. Indeed, it was at one time questioned whether a national bank could buy paper, and a large number of decisions have been necessary to define their powers. It can not, for example, act as a broker in negotiating the sale of securities, and especially in guaranteeing them. A trust company is endowed with larger powers. It can transact more kinds of business and earn larger profits.

3. **Interests on Deposits.** — As a bank, the methods of a trust company are somewhat different from those of a

purely banking institution. In dealing with depositors the greatest difference is in paying interest to them on their deposits. This has proved a powerful magnet, for though only a few trust companies have been existing many years, they possess in the aggregate a large amount of deposits. Indeed, their popularity is growing so rapidly that discount banks doubtless will be compelled ultimately to pay as high rate of interest in order to retain their customers. If a trust company is as solvent and as well managed, in short, is as worthy of confidence, why should it not be patronized? More and more are depositors led by these considerations to intrust their money to them.

4. **Lend on Collaterals.** — In lending their funds trust companies profess to be governed by somewhat different principles from other banks. They lend only on collaterals. The purchase of paper, or the discounting of notes on the faith of their makers and indorsers, is beyond their province. One reason for thus restricting their loans is to conform to their charters, which, in many cases, forbid them from going farther. The newer trust companies, organized under general laws, in most states, possess larger liberty, and lend their money on essentially the same conditions as other banks.

5. **Reserve not required.** — Trust companies, except in a few states, are not required to keep a fixed reserve. This is an obvious advantage to a banker who believes in lending as much as possible and in running his chances with depositors who may call for their money. Many of the state banks have a similar advantage. The national banks have long complained over this untoward condition between themselves and the state banks and trust companies. At times, when business is poor and competition

is sharp, the national banks keenly feel their disadvantage. They feel this still more keenly because they know that they are in truth keeping a reserve not simply for themselves, but for their competitors. What is meant by this assertion? An explanation is needful.

When a run is made on a trust company or state bank for money, the national banks come to the rescue and supply the funds. The reader may wonder why the national banks do this. Naturally he would think that if the state banks and trust companies are so short-sighted and keep an inadequate reserve, they ought to suffer when unusual demands are made on them which they can not meet. But they understand their situation. They know that the national banks will not suffer them to perish through fear that confidence in themselves may become impaired and result in a run on one or more of their own number. No one can tell how far the confidence of a community may be disturbed by such an event. This is one of the peculiarities of the banking business; the fate of every bank is to some extent bound up with the fate of every other. A bank may dislike another and its ways of doing business; it may wish that it would disappear from the banking world in a peaceful, noiseless manner, but not as a falling, flaming star. Such a disastrous end reacts on every other bank, and no one can tell how far the reaction may go, or where it will cease.

When, therefore, a trust company or state bank is pressed in an unexpected manner for funds, the national banks come to its relief. This they have done again and again, not indeed with a pleasing grace, but as a measure of self-protection.

The president of a state bank in New York City not many years ago kept its entire resources loaned out, as he was not legally required to keep a fixed reserve. There was a run on his bank, and he applied to the clearing house for relief. The members agreed to lend his bank money and it was saved. Within a few years the same thing again happened. Again the clearing house banks advanced all the money needed to save the bank. After the second experience the clearing house committee notified its directors of their unfit president, who was taking advantage of them to make excessive loans, and to whom, should there be another run on the bank, no more aid would be furnished. With this loud and solemn notice, the directors wisely concluded to retire their president and elect another who would not be so intent on making money for his bank by lending everything, trusting to other banks for aid in the event of a sudden call from depositors for their money.

To this illustration another may be set on the opposite side. A few years ago, during a prolonged monetary stringency in New York, the president of one of the large trust companies determined not to be dependent on the national banks should there be a large call for deposits from his customers, so he borrowed several millions of gold in Europe, keeping it and paying interest thereon until the stringency passed away. Such conduct was as far-sighted as it was honorable to the banks with which he was associated.

Various attempts have been made by the state legislatures from time to time to require the state banks and trust companies to keep reserves, and by some of them the requirement has been adopted.

6. Business as Trustees. — These are the chief differences between trust companies and discount banks as banking associations. Let us now describe their work as the executors of confidences or trusts. What do we mean by the term? Places where bonds and stocks are kept? This is the slightest use of the term. We mean that they undertake to act as agents or representatives for others in doing a great variety of work. In conducting this work a trust company is strictly an agent and is governed largely by the principles of agency.

An individual dies and a court, existing for that purpose, appoints a person to administer on his estate. He may be appointed at the request of the heirs, or the creditors, or both. He qualifies by giving a bond signed by himself as principal and one or more sureties for the faithful discharge of his duties. He then takes charge of the estate, and first of all, with the assistance of others, makes an inventory of the estate. This is a description and valuation of all the property intrusted to his management. After this is done his duties in general consist in finding out what claims are due, paying them, and of dividing the remainder of the estate in the manner prescribed by law. This work is strictly that of a trust, and trust companies are authorized to execute such undertakings. What advantage, if any, do they possess over individual administrators?

a. Their Responsibility. They are responsible. It is true that an administrator gives bonds for doing this work faithfully, but every now and then he collects and squanders an estate in speculation; in short, he seeks to use the funds in his possession for his individual advantage. He has said to himself, "Here is my opportunity. I can lend this money or use it in speculations and make something for myself, and the estate will not be worse off." There is much less danger of a trust company doing this. Besides, it possesses a large capital, which is much better than the bond of any individual. It offers the highest security that has yet been devised.

b. Their Efficiency. Trust companies are often more efficient. Why should they not be? They have skilled men to attend to all the different parts of the work. They have counsel who devote themselves especially to the questions connected with the business. Thus the largest experience and efficiency are offered by the trust companies, especially the older ones, to those who choose to avail themselves of their facilities and powers. The large amount of business they have enables them to do it far more cheaply and effectively than an individual. Many of the trust companies have special arrangements with builders, plumbers, and repairers whereby their work is done at a lower rate by reason of the magnitude of the business given to them.

c. Their Economy. Their prices are reasonable. They charge a commission on the amount of an estate with carefully graded charges, so that the aggregate expense of administering an estate by a trust company is usually less than an individual charge. Too often the personal administrator thinks it is his only chance, and improves it to the utmost. It is true that the court is above him and can reduce his charges, remove him if he becomes negligent or proves to be incompetent, but too often the supervisory power of the court is disappointing. The court in many cases does not know, no one informs the judge; the administrator is emphatically performing a trust; the estate has been committed to his care and management, and he alone knows anything about its condition. A trust of this kind therefore is peculiarly liable to be abused, and especially in the compensation paid for administering it. A trust company is in the field permanently, and strives to widen its sphere by commending itself to the public generally by the honesty, efficiency, and economy of its work. Its superiority is becoming so manifest over the individual method that trust company business is rapidly increasing.

7. Executor of Estates. — A trust company acts as an executor of estates. This trust is nearly the same as that already mentioned. The chief difference is, the company is appointed by the executor himself, and the mode of administering his estate is regulated to some extent by the will under which it acts.

8. Guardian for Wards. — Another trust is that of acting as guardian for wards. A conclusive reason for appointing a trust company in many cases is its responsibility. Too often have guardians abused their trusts and wrecked the fortunes of their wards on the rocks of some speculative venture. Though laws in every state probably prescribe how the wealth of a ward shall be invested, again and again have guardians disregarded their plain duty. In the light of this experience, trust companies are called more and more to act in the capacity of guardians.

9. Special Trustee. — Another trust often performed by a trust company is that of a trustee in a narrower sense. An executor bequeaths $100,000 to John Smith, which is to be kept by a trustee who is to pay over the income annually or at other times to the beneficiary. Trust companies often serve as trustees in this capacity. Again, a company is to be reorganized, and during the process of reorganization its stocks and bonds are to be surrendered preparatory to issuing new ones. A trust company is designated as the trustee to keep the securities during this intermediate stage of reorganization. Again, a company issues notes or other obligations on the deposit of other securities as collaterals. The latter are kept for the benefit of those who are to take the new securities issued on the pledge of them.

10. Reorganizers. — Trust companies not infrequently act as reorganizers of property that is in bankruptcy or in need of restoration to soundness and renewed activity. Of late years in many railroad reorganizations trust companies have been effective participants.

11. Dealers in Securities. — Lastly, it may be mentioned that trust companies also sell securities and make advances on them, and in this respect are like finance companies. They may buy the entire issue of securities of a company or municipality, and sell them at a considerable advance, thus gaining a handsome profit, or they may sell them for a commission, like an ordinary broker.

12. Mode of Executing Trusts. — Trust companies in executing trusts do not greatly differ in modes of performance from individual executors. In other words, while a trust company is invested with peculiar powers or privileges to do business, it is not invested with any peculiar ways or methods of doing it. When it acts as an executor, administrator, or guardian, it acts like an individual who is performing a similar duty; when it is administering a trust in the narrower sense, it acts like an individual trustee, who has been intrusted with the same confidence.

XXX. THE CLOSING OF BANKS

1. Voluntary Retirement. — Banks come to an end in two ways: by voluntary retirement and by involuntary retirement or failure. Not infrequently the business of a bank dries up, its officers grow old, satisfactory successors can not be found, and it is thought best to liquidate. Such action is decidedly the wisest, for when a bank has once begun to decline, its revival is difficult unless new officers and a new board of directors take possession, bringing fresh business and endowing it with new life.

When the shareholders owning two thirds of the stock of a national bank wish to close the institution, they can unite for that purpose. Having signified their wish by a vote, the directors notify the Controller of the Currency, and the notice is duly published in a New York City newspaper, and also one published in the city or town where the association is located. When a bank goes into voluntary liquidation, the shareholders may be liable to assessments on their stock for the benefit of creditors if more money is needed to pay its debts, the same as in any other case. The principal difference is, in voluntary liquidation the creditors bring the bill or petition to enforce the liability against them; in the other case the bill is brought by order of the Controller of the Currency.

2. Involuntary Retirement. — Far more often, however, a bank fails, and then, if it be a national one, the Controller of the Currency is charged with the duty of closing its affairs. He appoints a receiver who takes possession of all the books and assets and collects all the debts due to the bank. He is in law an agent of the United States and, as the Controller appoints him, he can be removed by the same authority.[1]

a. Authority of the Receiver. The receiver has authority to sue for all claims that can not be otherwise collected, but he can not compromise any claims or sell any property the bank may have without an order of the court.

b. Process of Settlement. The settlement of the affairs of a failed bank is often a long process. There are several important things to be done. First, is the collection of all the assets or money due the bank. This has been lent out for varying periods; furthermore, when the notes mature, not all of them can be immediately, if ever, paid. The receiver is often obliged to wait before he can receive payment. In other cases the makers, or other parties thereto, dispute payment. Then they must be sued, and litigation is often long and tedious. Evidence must be collected, trials had, perhaps appeals to higher courts may be taken, and years pass before they are fully determined. Then the bank may own real estate that it has taken either before or since its failure in payment of debts, or it may own its banking house, and the receiver can not sell it at once to advantage. He looks around for customers, advertises, makes every effort to sell. Thus time goes while he is trying to dispose of the property.

c. Adjustment of Claims. Again, a bank may hold property as collateral in which other parties also claim an interest. They, as well as the bank, are eager to get as

[1] From the adoption of the national bank act in 1863 to October 31, 1902, 406 banks were placed in the hands of receivers. The amount of their capital was $67,687,420. The total amount of their liabilities was $186,731,459. Of this amount $144,272,471 has been paid, an average of 71.91 per cent. See Report of Controller of the Currency for 1902, page 23.

much as possible out of the wreck. When the Fidelity National Bank of Cincinnati failed in 1887, a very competent receiver was appointed, and there were literally hundreds of cases tried in the courts before its affairs were fully settled. The bank did a very large collection business with banks in every part of the country, and when the institution failed, claims were in every stage of collection and settlement. Of course every bank doing business with it was eager to escape without loss, or with the smallest loss possible. Every bank that had sent checks to it tried first of all to recover these. If they had been collected, then the sending banks often claimed the proceeds and disputed the receiver's right to keep them. He, on the other hand, represented all the creditors, and it was his duty to collect and retain all the money or other property he legally could for their benefit. Other suits grew out of the claims presented, and the collaterals held by banks for loans, and finally other suits relating to the amount of interest that ought to be allowed on claims.

d. Assessments. A fruitful source of litigation and delay are the suits brought against shareholders for their assessments. We have elsewhere shown that every shareholder is liable to creditors for an amount equal to the par value of his stock. Who are these? Chiefly the depositors. Suppose a bank should fail owing $10,000,000 of deposits and having $1,000,000 capital and $1,000,000 of surplus. The entire amount, $12,000,000, less the reserve, has been loaned out. Were all borrowers paid in full, there would be no occasion for making any assessment on the shareholders. But a bank in that condition would not fail. A bank fails because it has lost a considerable portion of its resources.

If a bank had lost only its surplus, it would still be solvent. A bank might lose all its surplus and a part or all of its capital, and though insolvent be able to pay all of its creditors, so that no assessment of the shareholders would be necessary. Thus, should a bank having $10,000,000 of deposits and $2,000,000 of capital and surplus lose its capital and surplus, but no more, it would be able to pay all of its creditors in full without assessing its shareholders. They would lose all they had put into the bank and also the surplus, but escape further loss. Suppose the bank, instead of losing $2,000,000 of deposits, should lose $5,000,000. Then the shareholders would be obliged to contribute another $1,000,000, which would be paid to the depositors. Even after paying this the depositors would lose forty per cent of their deposits. After contributing this sum, however, the shareholders would have paid to the full extent of their liability, and the depositors would be obliged to lose the rest unless they could collect the balance of the directors or managers personally. This is rarely done, for the reason that when banks fail through mismanagement their managers are ruined too and have no means wherewith to respond to any claim, however valid, that may be made against them.

Such assessments are most unwelcome and are often resisted. The suits are brought by the receiver by virtue of the Controller's order. All sorts of excuses are given for not paying. Not infrequently a shareholder, learning of the danger, sells his stock just before the crash, or transfers it to an irresponsible person to escape further loss. Such transfers are always overthrown as soon as their true nature is discovered. It is not always easy to dive down to the bottom of such transactions, but the rules of law that govern in them are well known; the difficulties, if there are any, relate to the proof.

Every shareholder's liability is his individual affair. If A can not pay, his inability is no excuse for B. If the bank owes shareholder C, his claim can not be set off against his assessment. Furthermore, no more can be collected than is needed to pay creditors. The Controller is careful not to demand more than is needed, but if he should make an assessment equal to twenty-five per cent of the par value of the stock, and this should prove insufficient, he could order as many as he pleased until the full one hundred per cent was paid. Generally, only one assessment is ordered. Lastly, the failure or inability of any shareholder to pay can not be added to the burden of another. Thus, if an assessment of twenty-five per cent is made, and some of the shareholders do not pay (for rarely is the amount assessed collected from all), the sum thus lacking can not be added to the deficiency due creditors, and thereby increase the burden of those who have paid. In every respect, therefore, the liability of each shareholder to assessment is an individual liability, which can not become entangled, increased, or diminished by the action of any other shareholder.

e. Claims. Having described the duty of the receiver in collecting assets, we shall next consider the receiving of claims. All claims are allowed which are "proved to the satisfaction of the Controller." Of course they must be against the bank and not the officers. Once the federal government had a priority over other creditors, but this is the law no longer. It was also claimed that if a depositor owed a note to the bank, the amount could not be deducted from his deposit and a claim be allowed for the balance, because, to permit this, was to give him a preference or priority over other creditors. It was contended that he must pay his note in full to the receiver just as though he was not a depositor, and afterward accept his dividend on his deposit. The lower federal courts gave conflicting opinions on this question. Finally it reached the Supreme Court of the United States, which decided by a bare majority that the depositor could use his deposit as an offset against his note, and if it was more than sufficient, he had a claim like that of any other creditor for the balance; if his deposit was insufficient for the purpose, he must pay the balance due.

One other question relating to claims may be considered. As soon as a bank fails, its depositors have claims that are at once due which it must pay out of its assets or proceeds after they have been collected. Suppose a depositor's note is not due at the time of the bank's failure, can he set off his deposit against it the same as though the note had matured or was overdue? The highest court says he can. The effect of the bank's insolvency is to render the depositor's obligation at once payable, and therefore he can set it off against any claim the bank may have against him except an assessment, should he happen also to be a shareholder, which has been made against him.

f. Dividends. After the claims have all been paid the next step is to declare a dividend. This is done by the Controller. Several may be made during the settlement of a bank. Usually as soon as a considerable amount has been collected, and the claims determined or so nearly that there is no danger of overpayment, a dividend is declared. Quite often if the assets of a bank are large, there may be one or two dividends declared within two or three months after the appointment of a receiver, and smaller ones afterward. The final dividend may be very small, running down to two or three per cent, or even less than one.

g. Expenses. The expenses of the receiver are taken out of the assets, and are not large compared with the expenses attending the settlement of many other failures. The chief basis of payment is a percentage based on the amount of assets or business transacted, with such additions as the circumstances of the case require.

3. State Banks. — With respect to the failure of state banks and trust companies a word will suffice. When they fail their business is settled by officers, usually called receivers, appointed by the bank superintendent, or some court possessing competent authority, whose general course of procedure is quite similar to that above described. The state laws differ most in the classification of claims as preferential, and in the liabilities of shareholders.

XXXI. PRIVATE BANKING

1. Magnitude of the Business. — Private banks are not so conspicuous as public banks because their capital is not so large and their business is more contracted. Nevertheless, in the large cities especially, there are private banking houses which possess large means and transact important business.

2. Conversion into Corporate Banks. — Private banks have formed the basis of many of the national banks. Begun as individual enterprises, they have acquired a good reputation, and at length reorganized as national banks. Such is the origin of many national banks, especially in the western and southwestern states. In these sections are the largest numbers outside the large cities. Nearly two thirds of those reporting to the Controller of the Currency are in those states. It is in that region of new and small communities where active enterprise and industry abound along with a plentiful lack of capital, that the conditions are found most favorable to establishing and maintaining them. A town too small to establish or support a national bank may yet feel the need of banking facilities, and this need becomes more and more pressing until a leading merchant, or some other man who has been in the way of buying notes or making small loans at remunerative rates, at last undertakes the business. His capital may be, and usually is, not large, his integrity is well gauged, for in a small community his manner of life is well known. It has been claimed for him that though he is not subjected to "periodical and perfunctory examinations by national and state officials," he is subjected to continuous and rigid watchfulness by self-constituted examiners, who are very apt to reach correct results, although they are not permitted to count his cash or scrutinize his bills discounted and his ledger. If he passes this investigation successfully, he will win the confidence of his townsmen, and his business will prosper.

3. Lack of Permanency. — One of the most important lacks of private banks is permanency. In European countries they have often attained a long life and splendid reputation; and there are a few in our country possessing large means and a widely extended name. Not infrequently a banking house disappears with its founder or with the death of his sons. Now and then a concern maintains its life by adding new partners, in hundreds of cases they soon blossom out into a public bank or die with the death of the projector.

4. Operation. — The business itself is conducted in essentially the same manner as in a public bank. In the smaller banks there is less formality, less bookkeeping, fewer reports, fewer balance sheets. Possessing a small capital it has less need of the elaborate machinery set up and used by a large bank.

5. Lack of Method. — Bankers sometimes go too far in discarding method. This is one of their chief defects. Private bankers often possess great energy and integrity, are adventurous and unsystematic. Many are trusted without sufficient inquiry; the larger number who fail pull down their houses by rash attempts to make a fortune in a day. With no one to investigate their business or check them in their operations, they permit their energy and confidence to run unrestrained by much serious thinking until it is too late for their belated wisdom to save them from ruin.

XXXII. BANK FINANCE

1. Nature of Bank Finance. — Many banks, and especially private bankers, engage in finance operations which are quite distinct from those described in the foregoing pages. These pertain to the raising of money for individuals, corporations, and states, as well as the organizing and reorganizing of companies.

2. Limited Operations. — These things, however, are not done by every bank. The national banks can not exceed their authority, which is confined strictly to the business of banking. They can sell national bonds, but at this line their authority stops. They can not "act as a broker or agent in the purchase of bonds and stocks." Many of the state banks are limited in the same manner.

3. Growth of Trust Companies. — Their sharply defined limitation is one of the reasons for organizing trust companies and kindred institutions possessing larger powers, which in many places supplement the work of banks. It is not an unusual thing for several men to organize both a national bank and a trust company, expecting to catch in both nets all kinds of business. Private bankers possess still larger powers, and are limited only by the general laws that govern men in conducting business.

4. Sale of Bonds. — The simplest finance operations in which banks engage is in selling bonds and other obligations for states, cities, and other corporations. A bank with a good reputation is a kind of guaranty that the obligations offered by them for sale are safe investments.

In conducting this business they act in several ways. One way is as agents or brokers, when they receive a commission on their sales. This is the safest, when no advances are made previous to sales.

5. Purchase of Bonds for Resale. — Another way is to purchase the bonds outright and offer them for sale to the general public. When this is done, their profits are the margin between the price they paid for them and the higher price at which they sold them. On several occasions the national banks have purchased large quantities of the government bonds with the expectation of selling them at a slight advance. The First National Bank of New York during 1879 bought $460,000,000 of the government and other parties. The amount was so large that had there been a very small decline in their value, the loss would have been serious. Happily, the bank sold them at an advance, and the profits realized were added to the bank's surplus, and thus was created the largest surplus fund within the shortest period in banking history.

The Rothschilds are the best-known house in conducting such operations. For many years they have made loans to the governments of Europe and of other continents, taking their bonds at an agreed price, selling them at an advance, and retaining the profit. As the bonds are not guaranteed, the only risk in buying them is to find purchasers. As soon as they are all sold, their profit is assured.

6. Risks. — Banks, however, sometimes run too great risks in purchasing bonds and other securities for sale. One of the most familiar illustrations is the purchase a few years since by the Barings of the obligations of the Buenos Ayres republic and of the railway and other corporations chartered by it. This was one of the oldest and most respectable banking houses in England; and as the people had great confidence in their wisdom and integrity, they bought many millions of the securities offered by them. After a few years the government failed to pay interest on those it had issued, the railroads and other corporations defaulted also, and the prices of all the obligations, amounting to many millions, declined heavily. The Barings were the owners still of millions of them, their house was ruined, and many purchasers suffered severely. The house was not charged with fraud in selling these securities, but simply with overconfidence in the ability of the borrowers to fulfill their obligations, and with too strong a desire on their own part to increase their gains.

7. Advances. — A third way in which banks and bankers finance loans is to act as agents or brokers in selling the securities, receiving a commission therefor, but also making advances before selling them, reimbursing themselves from the money received, and also for the interest on their advances. It often happens that a city or other corporation, sometimes a state, wishes money at once, and can not conveniently wait for its securities to be sold by the usual method. Or it may be that the time is not favorable for selling them, the money market is tight, or some other unfavorable circumstance is impending over the borrower. The banker, with whom an agreement has been made, having confidence in the borrower, makes an advance to the amount of fifty per cent or more of the proposed loan, believing that in due time he will have no difficulty in selling the bonds and thus reimbursing himself besides earning his profit. This usually is a safe enough investment for the banker unless his advances have been very large, and he is unable to reimburse himself from the sales made afterward.

8. To whom Loans are made. — Such loans are not confined to states and cities. Others are made to corporations. A factory is organized for making woolen goods. The shareholders have money enough to build it, but they desire a working capital. None of the members have any to lend. They do not wish to borrow of banks on short-time loans, because the payment of these will be too inconvenient and difficult. As we have already said, and the truth can not be too strongly enforced, a bank of discount and deposit deals primarily in mercantile loans; it has no right, save under exceptional circumstances, to invest its proceeds permanently. The reason is apparent, — its deposits, which, with all large banks, is the principal item of resources, are payable on demand. It is not good banking therefore to lock these up in permanent loans.

What the factory directors desire is a permanent loan, and they go to a banking house and arrange therefor. They agree to issue bonds for the payment of which their property is to be pledged payable in five or seven years, or other period, bearing interest payable annually or semi-annually, and these are given to the banker to sell by one of the methods above described. It is much easier for the factory to pay interest on the bonds and to provide for the payment of the principal of them at maturity, than it is to give four months' notes with all the risks of non-renewal when they mature. In issuing such bonds the bank generally advises concerning the most expedient length of time they should run, from the seller's point of view; in other words, what kind of bond the investor is most likely to take, whether for three or five years, or for a longer period. Sometimes a bond which is to run for five or ten years commands a more ready sale than one for a shorter period, and this is especially true of the bonds of a government in high credit like our own. The same thing may be said of the bonds of a city which has always promptly fulfilled its obligations and has a high sense of responsibility.

9. Determining Interest. — In like manner, too, the question of interest the bond is to bear is important. Some investors prefer to pay more for a bond, a premium, or sum above par, and receive a high rate of interest, while others prefer a low rate and the purchase of bonds at a lower figure. This is often a nice question with bankers in putting a loan on the market—a question in which long experience and a careful study of the wishes of investors enables them usually to give an almost unerring answer.

Sometimes a bond is issued below par and bears a low rate of interest, the issuer as well as the investor believing it will rise in value. This is always taken into account by all parties to these transactions. Very often a bond is issued slightly below par and the prospects of the issuing company improves, or securities become scarce, and the price forewith advances. In the way of a general statement it may be said that all good investments have been steadily appreciating for many years, because the opportunities for investing money safely, in the judgment of investors, do not keep pace with the increasing amounts available for investment. The old law of demand and supply therefore comes into operation to enhance the value of securities.

10. Mortgages. — Another way of effecting loans is by a banker to take himself a mortgage on the property and then issue bonds based on this security.[1]

11. Farm Mortgages. — Besides large loans that are financed by banks and bankers, are many small ones, possessing the same permanent character. A few companies have succeeded in doing a business of this kind, making

[1] See next Chapter, Sections 1 and 2.

permanent loans chiefly on the security of real estate, and of selling them in essentially the same manner as loans for larger amounts. The details of the business are quite different, and it requires therefore a separate description.

The companies that engage in this business especially are known as mortgage companies, although many trust companies are similarly engaged. The practice is for such companies to send agents into various parts of the West, visit the farmers, and learn from them who wish to borrow and how much. In many cases the farmers apply for loans to the companies, which lend the money desired, taking a mortgage on the farms of the lenders as a security, very much like a savings bank. The mortgage or loan is not supposed to be for the full value of the farm, but only half its value, or a little more, thus leaving a wide margin for shrinkage in its value and security to the lender. Unlike the savings bank, however, the company sells the mortgage, making its profit in the way of a commission on the money received, and paying the balance to the borrower. The lender may pay the interest directly to the purchaser of the mortgage, or to the company, as may be agreed. If it is paid to the company, the latter sends the money to the holder of the mortgage.

12. Guarantees. — Another feature is attached to some of these mortgages. In some cases the companies guarantee the payment of the principal and interest. Investors have often been deluded, for as no company has a very large capital, the guarantee fund is not adequate. Of course the greater the amount of mortgages sold and guaranteed, the less valuable is the guaranty; for the amount of capital to respond to losses diminishes comparatively as the mortgages issued increase in amount. A company possessing a million of capital, even supposing it is well invested, does not have a large guarantee fund for $10,000,000 of mortgages which it may have guaranteed and sold. Of course it is not presumed that any company, however reckless, will issue all its mortgages on an inadequate security, but experience has shown that in some cases enormous losses have occurred from reckless lending on too slight examination of the property sold and wrong estimates of its value; and in other cases wherein the companies, with the best intention to lend conservatively, have miscalculated on the worth of the security and lost heavily. The losses of the latter kind have been the most frequent in western cities of rapid growth followed by sudden and heavy reactions.

13. Reorganizing Companies. — Passing from loans to corporations and individuals, another branch of financing is in reorganizing companies that have failed and require new capital and relief from their liabilities. This is a new branch in private finance and one requiring constructive ability of the highest order. The great companies reorganized by banks and bankers of late years have been chiefly railroads, and occasionally mining and manufacturing companies. Let us explain briefly what is done. A railroad company fails to meet its obligations. Besides failing to pay its stockholders dividends on their capital, it can not pay interest on all of its bonds and other obligations. The owners demand payment and insist that, if they are not paid in accordance with the terms agreed, they will foreclose the property by legal proceedings and take it away from the stockholders. It may be that there are several classes of bondholders, and that in the process of foreclosing some classes will be cut out. To save a portion or all of the money they have invested, they seek out a banker and give him authority to reorganize the concern. To do this it is needful for all the various parties in interest to unite in the request — all the holders of mortgages and stock, common and preferred. Absolute unanimity is not required, for if it were no reorganization plan would ever be attempted, for there are always a few dissenting ones in every company composed of many persons. Application is made to some court usually for authority to proceed, otherwise dissenters would not be bound by the action of the others. This application is in the form of a petition signed by the great body of mortgagees and stockholders, or their agents, representing a majority, very often two thirds or more in value of the entire property. On this petition an order is granted on proof that a reorganization is desired, in accordance with the wishes of the reorganizers. This is the basis of action by the bank or banker called to perfect and carry through a scheme of reorganization.

14. **Receivers.** — Very often receivers are appointed by a court on the application of creditors, and they, either alone or with the assistance of bankers, devise and secure the adoption of a plan of reorganization. Money may be advanced to them by bankers for which receivers' certificates are given, which are regarded by the courts as a lien on the property prior to that of any class of mortgagees. The money thus advanced is considered necessary to preserve the property and keep the railroad in operation, and therefore forms a part of the necessary operating expenditure.

15. **Capital supplied.** — Generally the concern is sadly in need of a supply of capital. Its credit is gone and money is needed at once to pay for railroad supplies and even wages. The bank advances the capital, sometimes a large sum, to pay the most pressing obligations, to make

repairs, in short, to put the concern in a condition to conduct business effectively.

16. Recovery of Advances. — When an advance has been made by a banker, how does he recover it? The method is often quite arbitrary. As all the various parties in interest are desirous of saving as much as they can of their investment, it is assumed that they will all advance some money to save their respective interests. Of course, those who have lost all faith or are unable to advance anything may prefer to let their interest go than to put any more money into the enterprise. Usually, all parties have some hope left, and are willing to contribute something more in the hope of saving all or a part of what they have already invested.

17. Distribution of Contributions. — It is a matter of nice judgment to determine how much to ask the several classes of investors to contribute. Suppose $3,000,000 are needed to make needful improvements and to pay pressing obligations. How shall this sum be apportioned among the different classes of stockholders, common and preferred, and the several classes of mortgagees? It is quite impossible to set forth any principles on which the apportionment is made, because in every reorganization different principles are applied. Sometimes after the plan is worked out and proposed, some class of mortgagees or stockholders object to the amount apportioned to them to pay, and insist so strongly on a readjustment that it is made. But in the end a plan is adopted whereby a contribution is to be forthcoming from several parties in interest, and as soon as this is approved by the court, it becomes binding and effective.

We have assumed that the bank or banker who is thus acting as a reorganizer advances the sum required in advance of the adoption of a plan for reimbursing him, but in truth this rarely happens. He waits until the amount needed is adjusted among the several parties, and then advances the money, and afterward reimburses himself from the fund paid by the stockholders and other parties in interest. If he made an advance before the adoption of a plan, he would in most cases have greater difficulty in securing favorable action thereon. The company's need of money and his willingness to advance it on adequate security are the bases of his action. So long as these exist he dominates over all.

His profit consists of a commission or round sum that is usually fixed in advance and is taken out of the fund thus contributed.

18. Reducing Liabilities. — It may be asked what is gained by a reorganization? Suppose it be a railroad. In one sense its failure is due to an excessive capitalization; in other words, the receipts are insufficient, either because of bad management or miscalculation with respect to anticipated profits, losses from storms or other calamities, excessive competition, greater cost of construction than was first estimated, to pay interest on its bonds and other indebtedness. The object of a reorganization is to lighten in some way the burden of obligations so that the company can live and pay its debts. The mode of effecting this end greatly varies. Sometimes some of the stock is retired, or some of the bonds, and thus the capitalization is reduced. Another and very frequent way is to reduce the rate of interest on many or all of the obligations. The first time the Philadelphia and Reading Railroad was reorganized, the reorganizers accomplished a radical relief by inducing certain classes of bondholders, whenever the receipts were insufficient to pay the interest on their bonds when it fell due, to give it up; in other words, that it should not continue as an unpaid debt of the company, but be regarded as discharged. These bonds are now known as non-cumulative income bonds, and the owners get interest on them if the company is fortunate enough to earn the amount required, otherwise they receive nothing. The gain to the company is apparent, for the former fixed obligation to pay interest has been turned into a conditional one, the performance of which depends on the profits earned by the company.

19. Profits. — Some of the older and larger trust companies have undertaken reorganization schemes. They are very profitable, involve but little risk on the part of the organizers, but great wisdom and tact are required to execute them successfully. One banking house in New York especially has been a successful reorganizer of several great railroad companies. Not infrequently years are required to bring a reorganization scheme to a close; but not having been undertaken until the company was in a hopeless condition, this condition of things continues to favor the reorganizer until he brings his difficult undertaking to a successful close.

20. Trusts. — The last kind of undertakings financed by banks and bankers are industrial trust enterprises. Of these not much need be said here, for the mode of creating and financing them is familiar knowledge. Though the details of every trust differ from those of every other, the general features are the same. The property of two or more similar enterprises is bought and recapitalized at a sum greatly exceeding their former valuation. Sometimes the properties of several are bought and united, as in the case of the United States Steel Corporation. One or more of them usually have been prosperous, but it is not an uncommon thing when uniting several to add some which have not had a profitable history.

21. Division of Bonds. — The capital consists generally of three parts: first, bonds, which lie at the bottom and are a first lien on all the united property for their payment. In other words, should these not be paid, or the interest on them at maturity, the owners can foreclose the property and take it, and thereafter hold it absolutely as their own. The bonds are issued for about half the value of the property, so there is a wide margin for loss and depreciation occasioned by the ups and downs of business.

22. Preferred Stock. — The second part of the capital consists of preferred stock, on which a fixed rate of interest is to be paid. The amount issued perhaps may equal that of the bonds, and it is expected that the company will, in ordinary times, easily earn the amount thus promised to the preferred shareholders.

23. Common Stock. — The third part of the capital consists of common stock, a portion or all of which may be issued. The amount often equals that of the bonds and preferred stock combined, and is not all issued at the beginning. The residue of profits not required to pay the interest on the bonds and preferred stock belongs to the common stockholders. They take the skim milk of the enterprise, and in many cases this proves to be very thin indeed.

24. Services of Bankers. — Bankers sometimes aid in forming the trust; generally this is the work of others. But when the several factories or other properties are bought, or are offered to the projectors of the enterprise, its success from their immediate point of view consists in selling the bonds and stocks and paying the seller, and still having a large quantity left as their profit, which they may keep or sell as they may be inclined. To sell the bonds and stocks is often the work of bankers, who receive a large profit on their undertaking.

25. Amount of Capital. — The capital that is to be issued is based on the earnings of the property that is to form the subject of the trust. These are ascertained for a period usually of three years, or perhaps longer, and form the basis of the superstructure. If, for example, the net annual profits of a concern, or several that are to be united, are $75,000, it is deemed safe to issue bonds bearing six per cent interest for $500,000 preferred stock for the same amount, and bearing the same rate of interest, leaving $15,000 for the common stock; the amount which is authorized, and partly or wholly issued, may be another million. Supposing that the properties have all been bought for the money represented by the bonds and preferred stock, it follows that if the projectors can sell a considerable portion of the common stock, even at a low figure, they still realize large profits.

26. Remuneration. — It is not an uncommon thing for the sellers to agree to receive in the way of payment a very considerable part of the purchase price in bonds, or preferred stock, or both. Sometimes they even take a part of the common stock. Thus it is reported that Mr. Carnegie was content to receive all or the largest portion of the price for his great steel works in the bonds of the new company.

The payment of the principal and bonds of a trust company may be guaranteed by a bank or banker, as in the case of the Morgan Ship Combination. For doing this the banking house receives a sum in addition to their other profits for financing the enterprise.

XXXIII. RAILWAY FINANCE

1. **Mortgage Bonds.** — We have already seen how banks become interested in some of the financial operations of railway companies; they also participate in others, especially in negotiating loans for them, which are reserved for this chapter.

At the outset we will describe the various kinds of bonds issued by railway companies, beginning with mortgage bonds. These are notes or promises issued generally for the sum of $1,000, while the aggregate amount is determined by many conditions. They are payable to bearer, are negotiable, and are to be paid at a fixed date, — five, ten, twenty years, or perhaps longer, from the date of issue at a specified place. The interest is payable usually semiannually, and the bonds state what property is pledged for the payment of the principal and interest. They also state the mode of redeeming them: how a sinking fund is to be created for that purpose, or how they may be converted into other bonds or perhaps stocks. They are signed by the president and treasurer, and in many cases by the trustees to whom they are made out, who must defend the rights of the bondholders should the company fail to fulfill its promises made in the deed of mortgage of its property to trustees.

2. **Security for Bonds.** — To secure these bonds a deed of mortgage is given of the company's property to trustees, and this deed is lodged usually with some well-known trust company to render the bondholders as secure as

possible. This deed in effect is a conveyance of the company's property to the trustees as security for the bondholders, to which an important condition is attached; namely, that if the company fulfills its obligations to its bondholders, paying them interest on their money and the principal at the time and in the manner promised, then the deed shall be of no account; but if the company fails to execute its promise, then the trustees can take possession of the property described in the deed for the benefit of the bondholders, and sell the same or make such other disposition of it as the bondholders or the law may direct.

This is the most important of all bonds given by a railroad company. Often in building a railroad the shareholders advance a part of the money required, and mortgage the company's property for the remainder, which by virtue of the terms of the mortgage is a first lien thereon, consequently, if it is not paid, the bondholders, or the trustees of the mortgage for them, can take the property in payment of their debt as already described.

3. **Subsequent Mortgages.** — In many cases several mortgages are issued by a railroad on the same property, but they are not of equal worth. Each mortgage issued is subject to the one or more issued before it. The first mortgage, which is the oldest of course in time, is the first lien, and the subsequent ones are liens in the order of age. If the property should be sold to pay the mortgagors, and the sum received was equal to the amount only of the first mortgage, the holders of the second or third mortgages would receive nothing.

4. **Value of Bonds.** — The value of such bonds depends on the worth of the security on which they rest. Usually the first mortgage bonds of railroads are amply secured, especially of the older railroads, but in some instances

railroads have been built almost wholly out of money obtained from bondholders, and in many of these the security was insufficient. Even though afterward taking all the property mortgaged in payment of their mortgage, it proved inadequate.

5. **Extension Bonds.** — The next class of bonds that may be mentioned are extension bonds, which are secured on additional lines built or bought with the proceeds.

6. **Division Bonds.** — The third class are division bonds, which are secured by the property of a division, instead of the entire road.

7. **Blanket Bonds.** — Another kind of bond is sometimes issued called a blanket bond. A railroad company extends by construction, purchase, or lease its lines in various directions, and at length issues a general or consolidated bond on all of its property. This is subject to the mortgages that have been already issued so that it rarely affords much security to the holders. The object of issuing it is to obtain additional means to pay the company's indebtedness, or to pay for other extensions or improvements. When the holders or owners of the prior mortgages foreclose, this is the first mortgage to be cut off. It therefore possesses less value than any other, and usually is one of the last expedients to raise money.

To this remark some exceptions should be noted. Occasionally such a mortgage is issued for the purpose of raising the means to pay off one or more prior mortgages, perhaps all. A general mortgage, consequently, may be in effect the conversion of the prior mortgages into another form, bearing perhaps a lower rate of interest, and running for a longer period.

8. **Collateral Trust Bonds.** — Another kind is known as a collateral trust bond. This is issued on the security of

other bonds or securities owned by a company which have been issued by other companies. They are deposited with a trust company usually as a trustee or keeper, and the mortgage fully specifies the terms of the trust. It is in effect a loan on collateral owned by the borrower. The trustee has power to sell the securities by virtue of terms stated in the mortgage if the loans thus secured are not paid, and give the proceeds to those for whose benefit they were pledged. Sometimes the mortgage stipulates the minimum price at which the collaterals shall be sold; in short, the mortgage is drawn in a manner to protect as far as possible the interests of both parties. As this is a very extraordinary power to give to trustees, it should be carefully guarded. It hardly need be added that they must exercise it wisely and in good faith, and are liable for the consequences.

9. **Collateral Trust Notes.** — Of essentially the same form of security is a trust note. This always gives the trustee, whether it be a trust or other company, or a committee, authority to sell the collaterals for the benefit of the lenders, without any judicial order or action, while a collateral trust bond sometimes requires judicial authority, or authority outside of the trustee, to sell the collaterals.

10. **Objections to Collateral Trust Bonds.** — The chief objection to a collateral trust bond is that the securities too often fluctuate so much in value as to impair the lender's security. Of course, the security may possess the highest value. Occasionally one of the older and richer companies issues a bond of this kind, but rarely. When it does, the security is unexceptional. Such bonds are usually put forth by companies which have exhausted almost every other source of credit, and resort to the securities they happen to have as a last resource for obtaining money.

11. Terminal Bonds. — Another kind of bond that has acquired a secure standing is the terminal bond. This is issued to pay for obtaining new terminal facilities. In a large city the cost of the land, station, other structures, and tracks often absorbs a large sum. One of the peculiarities of a terminal bond is that the interest is regarded as a necessary expenditure like the wages of employees, rails, and other materials purchased to preserve the road and keep it in operation. Consequently the interest charge is paid before that on other kind of security, even that of a first mortgage bond. If the receipts of a railroad are ample to pay the interest on all of its obligations, then the payment of the interest on terminal bonds as a part of the working expenses is of no consequence to any class of bondholders, but if the receipts are insufficient to pay all the running expenses and fixed charges, then by charging the interest on these bonds as an item of ordinary running expense the security of the bondholders is, to a corresponding extent, impaired. If, for example, a railroad company had issued four mortgages, and the last one was for $5,000,000, and should earn just about enough to pay the interest on all, and also its running expenses, and should afterward issue $5,000,000 of terminal bonds, this step might have the effect, for a while at least, of cutting off the mortgagees of the fourth class from receiving any interest and thereby seriously impairing the value of their bonds.

Bondholders have contended that such action by a company was not legal, but the courts have generally, though not always, decided against them. The interest charge is held to be a needful running expense, and must be paid even though the mortgagees receive less in the way of interest and also suffer incidental loss by the impairment of their securities.

12. Debenture Bonds. — A debenture bond is much like a non-cumulative income bond. It is a bond resting on the general resources of the company, and the interest is payable after the fixed charges and necessary running expenses are paid. In this country they have not been often issued, because the receipt of income from them is so uncertain. They are of no higher character than common stock. The owners can receive nothing until all other fixed charges are paid. Whether they receive anything or not depends, therefore, on the character of the manager of a company. Suppose, after all the charges of every kind except interest on these bonds have been paid, a considerable sum is still left. It does not necessarily follow that it will go to debenture holders. The managers may say, "We need this money for a new bridge or to purchase rails, or for a new station or sidings," and divert it into the expenditure account instead of paying it to the debenture holders.

13. Services of Bankers. — To raise money on these various kinds of obligations, the aid of bankers is often sought. They have money of their own, and are intrusted with the money of others. They have the ears also of investors. The two classes are closely related, for it is a large and profitable part of the business of many bankers to sell bonds, stocks, and other securities, and every old banking house has a large clientage of individuals who come to them for advice concerning investments and to make purchases. It is a common practice therefore for railroad companies, when desiring a fresh supply of capital, to solicit the aid of a banking house. The terms of remuneration often consist of a commission. Sometimes a banking house will make the loan, take the bonds, and sell them on its own terms. This is an everyday thing, especially when the credit of the railroad company stands very high.

14. Direct Sales of Bonds. — It should be added that some of the larger companies, which possess the highest credit, sell their bonds directly to investors, thus dispensing with the services of a banker or middleman. And this practice is growing as the railroads become more prosperous.

15. Payment of Loans. — Lastly, how are the obligations of a railroad company paid? One of the ways is by issuing new loans, and with the proceeds paying the old ones. If a company possesses fine credit, it can generally issue a new bond at a lower rate of interest, and thus effect a considerable saving. Sometimes it will tempt the holder of bonds before their maturity to convert them into other bonds bearing a lower rate of interest, but running for a much longer period. Many an investor is tempted by the offer. He does not know what to do with his money when his bonds shall mature. The railroad company saves trouble for him by offering another loan for a longer period, which he gladly accepts, and then goes to sleep for five or ten years longer.

16. Sinking Funds. — Another way of paying obligations is to create a sinking fund which shall be adequate when the bonds mature. This is managed in various ways. Sometimes a company will buy its own bonds in advance of their maturity and put them into this fund, still regarding them as alive, and taking out of its treasury enough to pay the interest as it matures, the same as though they belonged to other persons, and using the interest thus paid on them as a fund to buy other bonds to put into the sinking fund, until by gradual purchases all its bonds are obtained by the time of their maturity.

17. Purchase of Outside Bonds. — Sometimes holders are unwilling to sell their securities except at a price which the issuing company is unwilling to pay. Then it buys other bonds to put into the sinking fund with a view of disposing of them near the time of the maturity of its own, and with the proceeds redeeming its own obligations.

18. Retiring Bonds. — To enable the issuers to get possession of their bonds without paying premium, it is a common practice to provide, at the time of issuing them, that, after a specified period, one year, three, five, or longer, the company can draw a specified number of bonds at a stated time for redemption. All the bonds are numbered from one to the end of the series; the drawings are by lot, and consequently the holder of bond number one runs the risk of having it drawn at the first drawing, or it may run until the end of the period for which the series was issued.

19. Effect of reducing Obligations. — It should be remembered that the reduction of the obligations of a company improves the worth of those remaining. If the first mortgage bonds are all paid, those that belong to the second class take their place and become a first lien on the property of the company covered by them; and this is likewise true of all succeeding classes of securities.

APPENDIX

SHORT FORM OF STATEMENT OF A FIRM ASKING CREDIT

To the FOURTH NATIONAL BANK, of the City of New York.

Firm Name...................... Business...................

Address..................................

For the purpose of procuring credit with the above bank for our negotiable paper, we furnish the following as being a fair and accurate statement of our financial condition on the...........................day of ....190...

ASSETS				LIABILITIES			
Cash..................				Bills Payable for Mdse..			
Bills Receivable, Good..				Bills Payable to Banks..			
Accounts Receivable, Good...............				Open Accounts........			
Merchandise (how valued).............				Loans or Deposits.....			
Real Estate in Name of Firm.............				Mtgs. or Liens on Real Estate..............			
Machinery and Fixtures.				Other Indebtedness and of what composed			
Other Assets and of what composed				....			
....				....			
....				....			
....				....			
....				Total Liabilities.			
				Net Worth......			
Total.............				Total.............			

State Last Date of taking Trial Balance Proof...........................

Regular Time of balancing Books....................................

Names of all General Partners......... ....
 ....
 ....

Names of Special Partners with Amounts contributed by Each and until when.. { .... / .... / ....

Memorandum..

Please sign here..............................

By..........................

FULL FORM

To the......................**Bank of**....... ....

Corporate or Firm Name.......................................

Location......................................

Business......................................

Branches, if any..................................

For the purpose of procuring credit with the above bank for our negotiable paper, we furnish the following statement of our financial condition on the ....day of......................190...

The Trial Balance of our Books is as follows: —

ASSETS			LIABILITIES		
Cash on Hand and in Bank..			Capital..............$		
Bills Receivable............			Surplus, or Profit and Loss..............$		
Accounts Receivable........			Bills Payable, for Merchandise..........$		
Merchandise in Hands of Consignees.........$			Bills Payable to own Banks.............$		
Merchandise finished, on Hand.............$ (how valued)			Bills Payable for Paper sold..............$		
Merchandise unfinished, on Hand..........$ (how valued)			Open Accounts............		
Raw Material...............			Loans or Deposits..........		
Real Estate in Name of Company or Firm............ (Cost of above, $ Present Market Value, $)			Bonded Debt. (Date of Maturity,)............		
Machinery and Fixtures (not included in Real Estate)...			Mortgages or Liens on Real Estate..................		
Office Furniture and Fixtures (not included in Real Estate)			Chattel Mortgages..........		
Other Assets (state in detail).			Other Liabilities (state in detail).		
Specify any of above Assets pledged as Collateral.			Specify any of above Liabilities secured by Collateral.		

Capital and Surplus, as shown by Trial Balance..................$
Add Interest due Company or Firm............................$
Other Assets, not included in Trial Balance (state in detail).
Deduct, Salaries due and accrued, Labor, Rent, etc. (estimated)....................................$
Interest on Bonded Debt (due and accrued)........$
" due, other than above.....................$
Bills or Accounts Receivable considered doubtful....$
Other Liabilities, not included in Trial Balance (state in detail)......................................$
Balance Net Assets over Liabilities.............................$

Contingent Liability { Accommodation Indorsements....$ / Indorsed Bills Receivable Outstanding..........................$ }

For Corporations	*For Firms*
Capital { Authorized......$ / Subscribed......$ / Paid in.........$ } (as per Trial Balance.)	Individual Worth of Respective Partners outside the Business.
Held by Co. as Treasury Stock.$	Names *in full* of all General Partners
How paid in: — Cash...................$ Other Property..........$	
Description of above Property and how valued....................	Names *in full* of Special Partners, with Amounts contributed by Each and until when.
Incorporated in what State and under what General Law or Special Act..	
Date of Charter..................	
Commenced Business..............	
Officers *Address*	
Pres............................	Connection of Each Partner in Other Business, if any.
Vice-Pres.......................	
Sec'y...........................	
Treas...........................	
Directors	
....	
....	Time Present Firm has been in Business.
....	
....	Succeeded the Firm of.........
Are Stockholders liable beyond Amount subscribed?	
....	
Rate per Cent and Amount of Dividends paid during Preceding Year.	Amount withdrawn by Partners during Preceding Year.
....	

Amount of Annual Sales..
Amount of Annual Expenses..
Amount of Accounts and Bills Receivable past due..........................
Extended or renewed, if any...
Insurance carried on Merchandise, \$..........On Real Estate, \$..........
Amount and Maturity of Largest Indebtedness during Present Year (exclusive of Bonded Indebtedness of Corporation)....................
Was Last Inventory Actual ? If so, by whom taken and Date..............
If Estimate, by whom made and date...
Regular Times of taking Inventory...
Regular Times of balancing Books..
Object for which Proceeds of our Paper is wanted..........................
(Sign Company or Firm Name)...............................
By..
Date........................

INDORSEMENT

No.........

Statement of ....

of ....

Remarks ....

Discount Committee.

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