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THE ELEMENTS OF BANKING

A GUIDE TO
THE PRINCIPLES AND PRACTICE
OF BANKING

BY
J. P. GANDY

ASSOCIATE OF THE INSTITUTE OF BANKERS



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PREFACE

IN this small volume it has been the endeavour of the writer to give to those about to commence their business careers, whether in the employment of one of the great banking institutions or in the counting-house of a commercial firm, as well as to those already possessing some experience, such useful knowledge of every-day banking as will enable them to draw, indorse, or otherwise deal with, in an intelligent manner, the bills, cheques, drafts, etc., requiring daily attention. At the same time attention has been devoted to the many and varied duties now undertaken by a banker as part of his ordinary business. The book has been kept as free as possible from technical terms, and where necessary the fullest explanations have been given.

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Elements of Banking

CHAPTER I

GROWTH OF BANKING

BEFORE considering the elements of banking, it would be as well to know something of the origin of the word "bank." It is derived from the Italian word *banco*, a bench; the Lombards using benches erected in the market-place for the exchange of money. When an exchanger or, as we may now say, a banker failed, his bench was broken by the populace, and from this custom we have our word bankrupt.

As the merchants of London grew rich, so they required a place in which to deposit their money with safety. The Mint in the Tower of London was considered safe until King Charles I in the year 1640 took possession of £200,000. After this the merchants either kept their money in their own houses or lent it to the goldsmiths. For some years the goldsmiths had been in the habit of receiving money from those who, for the time being, could not use it, and of allowing interest thereon, until the amount was required. Receipts or goldsmiths' notes, as they were called, were given as acknowledgments, and it became customary for these to pass from hand to hand, thus transferring the property represented thereon.

The goldsmiths made handsome profits by borrowing at low rates and lending at high rates of interest.

It was reported that King Charles II had to pay from 10 per cent. to as much as 30 per cent. for temporary loans on the security of exchequer tallies, grants of Parliament, etc.

The trade of "bankering," as it was termed, became so remunerative that in many instances the buying and selling of gold and silver plate, coins, etc., was almost discontinued, as in the case of Messrs. Child & Co., of Temple Bar, in 1663, and Messrs. Hoare & Co., Fleet Street, in 1675, both of which banking houses exist at the present day.

The first check to the power of the goldsmiths was the granting of the Charter to the Bank of England on July 27, 1694. King William and his Government being in need of funds to carry on the war with France readily sanctioned a means of obtaining a loan of £1,200,000. This amount, the whole of which was to be lent to the Government, was to be the capital of the Bank; no person was to subscribe more than £10,000; the Bank was to receive interest at the rate of 8 per cent. per annum, with £4,000 towards the expenses of management—in all £100,000 per annum.

The business of the Bank was carried on at Grocers' Hall, Poultry, and consisted of issuing notes and bills, receiving the taxes, dues, etc., payable to the Government, paying away moneys on behalf of the Government, managing the Government debt, lending, discounting, and taking care of valuables.

When renewing the Bank Charter in the year 1708, Parliament granted to the Governor and Company of the Bank of England the privilege of being the only banking partnership in England of more than six persons, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand or at

a less time than six months from the borrowing thereof. This exclusive privilege the Bank held until 1826, when it was enacted that banking companies having more than six partners might carry on the business of banking outside a radius of sixty-five miles from London. By this Act the Bank of England was authorised to establish branches, and did so in the same year at Manchester, Gloucester, and Swansea (the two latter are now discontinued), and at Birmingham, Liverpool, Bristol, and Leeds in 1827.¹

The Bank Act of 1833 authorised the establishment of joint stock banks in London and within sixty-five miles thereof, provided the notes only of the Bank of England were issued. The first bank established under this Act in London was the London and Westminster Bank, which commenced business on March 10, 1834, followed by the London and County Bank and the London Joint Stock Bank in 1836, and the Union Bank of London in 1839.

It was during this latter year, 1839, that the Bank of England had to make arrangements for a loan of £2,500,000 from the Bank of France, in order to raise the cash in hand from about £2,500,000 to £5,000,000, whilst the liabilities on notes and deposits were over £24,000,000.

In 1844 the Bank Charter Act was passed, and by this Act Sir Robert Peel hoped to settle the currency troubles. The principal enactments were framed as follows :—

“ That the Issue and Banking Departments shall be kept distinct and an account of each published weekly.

“ That notes may be obtained from the Issue Department by the Banking Department in exchange for gold at the rate of £3 17s. 9d. per oz. of standard gold, *i.e.* eleven-twelfths fine.

¹ There are also branches at Hull, Newcastle, and Plymouth.

“That notes to the amount of £14,000,000 may be issued against securities (this is known as the fiduciary issue), any issue beyond this to be against gold coin or gold and silver bullion, the amount of silver not to exceed one-fourth part of the amount of gold coin and bullion held in the Issue Department.”

The fiduciary issue is now £18,450,000, the Bank having taken advantage of the power granted it under the following section, to the extent of £4,450,000.

“That if any bank ceases to issue, Her Majesty in Council may authorise an increase in the amount of notes issued by the Bank of England against securities to an amount not exceeding two-thirds of the lapsed issue.

“That any banker becoming bankrupt or ceasing to issue notes shall lose his right to issue.

“That notes of the Bank of England shall be free of stamp duty.

“That no new bank be allowed to issue notes, and those already issuing be limited to their average circulation during the twelve weeks preceding April 27, 1844.

“That every issuing banker in England and Wales shall transmit to the Commissioner of Stamps and Taxes a weekly account of his notes issued.”

Further, issuing bankers, other than the Bank of England, were required to take out licences. These licences are annual, expiring on October 10, and are stamped with a £30 stamp. The licence carries with it the right of issuing notes, no licence being necessary to carry on the business of banking. A separate licence is required for each town or place where notes are issued, but, by section 22 of the Bank Act, where branches in more than four towns or places were issuing under four licences on May 6, 1844, they may continue to do so from those branches, under the said four licences,

taking out an additional licence for each new issuing branch.

This Act of 1844 still regulates the issue of notes. During a monetary crisis, it was suspended for a time by order of the Government on October 25, 1847. This order authorised the Bank of England to issue, in excess of its lawful amount, against securities instead of gold and silver coin and bullion as required by the Act. This authorised suspension was, in itself, sufficient to restore confidence, and no infringement of the Act took place. It was not so, however, during the panic of 1857, when the Bank Act was again suspended, the Issue Department handing over to the Banking Department £2,000,000 of notes in excess of the Statutory limit; of this amount only £928,000 was put into circulation, and then for a period of less than three weeks.

In the banking crisis of 1866 it was necessary again to suspend the Act, but, as in the year 1847, the knowledge that the Government had intervened was sufficient to restore confidence without any infringement thereof.

All debts must be paid in sovereigns, half sovereigns, or in Bank of England notes¹; hence on the slightest apprehension there is a rush for notes and gold wherewithal to pay debts, not only those due but those accruing due. Thus, the amount of notes and gold available is lessened, the rate of interest rises, and the public, fearing they may be unable to obtain their money at the moment it is required, increase the pressure by withdrawing their deposits from the banks. At the same time all banks, in their efforts to allay the monetary stringency, transfer as little as possible from the Bank of England; but, should the Directors of the Bank of England feel the safety of the Bank

¹ Currency Notes of 10s. and £1 were made legal tender in 1914. They are issued by the Treasury, and are payable in gold at the Bank of England.

jeopardised, the Government, as stated previously, steps in and agrees to ask Parliament to indemnify the Bank, should they break the law and issue notes against securities beyond the limit. The knowledge that the Bank of England is thus empowered is, as in 1847 and 1866, usually sufficient to restore confidence, and the public, finding the period of scarcity over, immediately pay into the banks the gold and notes they had previously been hoarding.

It may be noted that the Currency and Bank Notes Act, passed in 1914 as an emergency measure on the outbreak of war, provides the machinery by which the Bank Act of 1844 may be suspended should the need arise.

The English and Welsh Banks are of two kinds—private and joint stock banks. These are divided into banks of issue and banks of deposit, although the former are also banks of deposit. In London, the Bank of England is the only issuing bank ; the private banks having ceased to issue their own notes since about the year 1781. They, in common with the joint stock banks, issue the notes of the Bank of England.

The principal advantage of the bank note is that great value can be carried in a small space, ten £10 notes being easily placed in a small pocket-book. For safety the notes may be cut in halves and carried in separate pockets. Further, Bank of England notes can be readily exchanged for coin in most towns abroad. Another advantage of the bank note is the great saving in the wear and tear of the gold coinage.

A bank note is an unconditional promise, in print or writing issued by a banker, to pay a stated sum to bearer on demand.

BANK OF ENGLAND

~~I promise~~^a 99159 to pay the Bearer on ~~Demand~~^a 99159

the sum of FIVE POUNDS.

1915, February 8. London. 8 February, 1915.

For the Gov^r. and Comp^a. of the
Bank of England.

£FIVE.

^a99159.

J. G. NAIRNE,
Chief Cashier.

(*Example 1.*)

Bank of England notes are now issued for sums of £5, £10, £20, £50, £100, £200, £500, £1,000. Previous to 1759, notes were not issued for less than £20. At that date notes for £10 and £15 were put into circulation, and in 1795 the first £5 note was issued.

The notes issued at the branches of the Bank of England are payable in London as well as at the place of issue, but those issued in London are only payable in London at the Head Office, Threadneedle Street.

BANK OF ENGLAND.

~~I promise~~^T 1019915 to pay the Bearer on ~~Demand~~^T 1019915

the sum of FIVE POUNDS

here or in London.

1915, Decr. 19. Liverpool. 19 Decr., 1915

For the Gov^r. and Comp^a. of the
Bank of England.

£FIVE.

^T1019980

J. G. NAIRNE,
Chief Cashier.

(*Example 2.*)

Country notes, *i.e.*, the notes circulated by the country banks which have a right of issue, under the Bank Charter Act of 1844, are for amounts not exceeding

£100. Bank notes are not issued in England for less than £5,¹ but in Scotland and Ireland they are issued for £1 and upwards.

The notes of the Bank of England are legal tender in England to any amount above £5 as long as the Bank continues to pay gold on demand for its notes, but they are not legal tender in Scotland or Ireland or by the Bank of England itself. Although the notes are legal tender there is no obligation to give change.

If a bank note is lost or accidentally destroyed, the issuing bank on receiving some proof and a satisfactory indemnity will pay the amount of the note. The Bank of England, on being informed that one of its notes has been stolen, will register a stop on payment of a fee of 2s. 6d. The note being payable to bearer on demand, the Bank cannot refuse payment on presentation, but the name and the address of the person presenting it are taken, and the loser is communicated with. The Bank of England makes a practice of giving all the assistance it can in tracing lost or stolen notes.

By the Stamp Act of 1891, the term "bank note" includes: (1) "Any bill of exchange or promissory note issued by any banker, other than the Bank of England, for the payment of money, not exceeding one hundred pounds, to the bearer on demand.

(2) "Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds on demand, whether the same be so expressed or not, and in whatever form or by whomsoever such bill or note is drawn or made.

"A bank note issued duly stamped or issued

¹ Notes for £1 and 10s. were issued by the Treasury after the outbreak of the Great War in 1914.

unstamped by a banker duly licensed or otherwise authorised to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing." (In practice the Bank of England never re-issues a note; every note on being returned to the Bank is cancelled by tearing off the name of the chief cashier.)

"If any banker, not being duly licensed or otherwise authorised to issue unstamped bank notes, issues, or causes or permits to be issued, any bank note not being duly stamped, he shall incur a fine of fifty pounds.

"If any person receives or takes in payment or as a security any bank note issued unstamped, contrary to law, knowing the same to have been so issued, he shall incur a fine of twenty pounds."

A licence to issue unstamped bank notes may be obtained on giving a bond to cover the amount of the stamp duty. The composition is 3s. 6d. per £100 per half-year for English and Irish banks, and 4s. 2d. per £100 per half-year for Scotch banks, on the average amount of notes in circulation.

All the great joint stock banks in England are now banks of deposit, issuing to the depositor, in place of notes, either a deposit receipt, if the account is a deposit account, or a book of cheques if it is a current or drawing account. In the latter case, when a depositor needs a portion of the deposit, a cheque has to be written out for the amount required. Formerly, when depositing money, the depositor was given an equivalent in notes, and on requiring part had either to take a note to the bank and have the amount to be withdrawn indorsed on it, or take a number of notes equal to, or perhaps greater than, the amount required, and exchange them for gold, with which to make a purchase or pay a debt. This method has not been

employed since the latter part of the eighteenth century, as the many advantages of the cheque system of payment have become more apparent every year, the note being almost displaced as a means of making payment.

Banks of deposit receive sums of money on drawing accounts, repayable as required, and on which no interest is allowed. They also receive sums of money on deposit for definite periods, or repayable only after due notice, usually seven days, has been given, and on which a low rate of interest is allowed. One or two of the smaller banks allow interest at the rate of 2 per cent. per annum on the minimum monthly balances of drawing accounts.

As previously stated, banks are of two kinds, joint stock banks and private banks. The joint stock banks may be divided into :—

I. Those incorporated by Charter granted by Act of Parliament, as the Bank of England, the Bank of Scotland, the Bank of Ireland, and the Colonial chartered banks. Although these banks are not registered under the Companies' Acts, the liability of the shareholders is limited by their Charter usually to the amount of the shares, but in the case of the Colonial chartered banks the liability is twice the amount of the shares.

II. Joint stock banks registered under the Companies (Consolidation) Act, 1908. The shareholders in these banks, if simply banks of deposit, as the London County, Westminster and Parr's Bank, Ltd., Lloyds Bank, Ltd., etc., are only liable for the uncalled amount of their shares. But if they are banks of issue, as Beckett & Co., the Nottingham and Nottinghamshire Banking Co., Ltd., etc., there is no limit to the liability of the shareholders until every penny outstanding on the note issue is made up. That is to say, the shareholders of these banks are liable to the full extent of the notes in circulation, issued by their respective bank.

III. Joint stock banks registered under the Companies' Acts, but without limited liability; the shareholders in these being answerable for the whole of the debts. These banks are usually registered in this way for private or family reasons, as Messrs. Glyn, Mills, Currie, & Co., etc.

The shareholders or partners in a private bank must not exceed ten in number, and they are liable for the total amount of the bank's indebtedness. Examples of private banks are Messrs. Child & Co., Messrs. Hill and Sons. The number of private banks is decreasing yearly, either through the absorption by stronger banks as Messrs. Pomfret, Burra, & Co., absorbed by Lloyds Bank, Ltd., or by amalgamation with joint stock banks, as in the case of Messrs. Smith, Payne, & Smiths and the Union Bank of London, Ltd., under the title of the Union of London and Smiths Bank, Ltd. This last named bank is now amalgamated with the National Provincial Bank of England, Ltd.

CHAPTER II

OPENING THE ACCOUNT

IN however large or small a way one may enter the commercial world, whether as manufacturer, merchant, or retailer, dealing in goods of the value of thousands of pounds or of the value of a few shillings, the need of a banking account soon makes itself felt. A place of security for the daily takings, a simple method of payment for purchases, a means of cashing and clearing cheques, change for notes, silver for gold, etc., all these requirements have to be satisfied, and the business man turns to the nearest bank to supply those needs. In this case it happens to be a branch of the London

and Northern Bank, Limited. The prospective customer on examining a copy of the last half-yearly report reads: "Current accounts are opened with, and the usual banking facilities granted to, persons properly introduced." Surely, he thinks, a roll of banknotes and a bag of sovereigns are the best introduction I can give; and forthwith he takes his money and has an interview with the manager respecting the opening of a drawing or, as it is termed, a current account. The manager very politely, yet very firmly, informs him that the introduction is not only necessary but must come from some one either known personally to the bank, or about whose respectability the bank can make inquiries.

Bankers are even more careful now than they formerly were with regard to the genuineness of the replies they receive in answer to their letters of inquiry respecting the standing of, and the desirability of opening an account with, the intending customer. The case of *Turner v. London & Provincial Bank, Limited, 1903*, emphasised the necessity of the close attention required in dealing with references respecting new accounts.

Should the would-be customer give the name of some one either keeping an account at or known to the bank, the manager may accept the notes and coin, pending the receipt of the inquiry. If he does so, he will enter the customer's name, address, and occupation in the "Signature Book" and request the customer to write his name, in the way he intends to sign cheques, in the place reserved for the specimen signature. This signature is for comparison by the paying cashier should he have any reason to doubt the authenticity of the signature on any cheque or bill.

The signature on the cheque should always be compared with the specimen in the book, if there is any

doubt, and not with the signatures on cheques previously paid, as these may be forgeries, and the paying banker cannot debit (charge) his customer's account with a forgery—the law requiring the banker to know his customer's signature.

A small charge is made on unremunerative accounts, and it is usual for the manager to ascertain from the intending customer what balance he expects to keep with the bank, and whether the account will be used much. He is informed that:—

If the average balance is under £100 and the account frequently used, there will be a charge of from one guinea upwards per half-year.

If the balance is under £50 and the account used very little, a charge of half a guinea half-yearly will probably be made. As a rule, if the balance is not under £50 there is no charge made for small private accounts.

It is very desirable that this question of charges should be understood, as the manager or other senior official looks through the accounts each half-year and charges the amount he considers necessary to make the account remunerative. It is also advisable, when speaking of charges, to inform the customer that all banks make a charge for clearing Scotch and Irish cheques and notes. This charge is made by the Scotch and Irish banks to cover the cost of remitting drafts to London. The London banker does not as a rule receive any portion of the charge. This knowledge often saves the customer expense and the bank officials explanations later on. The charge made on Scotch and Irish cheques is usually threepence for every £10 or fraction thereof. Some Irish banks, however, charge their customers threepence for every £25 or fraction thereof.

Sufficient time having elapsed and the manager having ascertained from the references that the applicant

CREDIT SLIP.

Date _____

Bank Notes	
Gold . .	
Silver . .	
Copper . .	
Drafts, etc.	

It is requested that all Cheques be crossed London & Northern Bank, Limited.

THE LONDON AND
NORTHERN BANK,
LIMITED,

WESTMINSTER BRANCH.

It is particularly requested
that all Drafts may be paid in
before 3 o'clock. On Satur-
days before 11.30 a.m.

day of _____ 19__

Credit _____

Bank Notes

Gold . .

Silver . .

Copper . .

Drafts and Cheques

Short Bills, etc.

Total £ _____

NOTE.—Cheques, etc., for collection,
though credited to the account
when paid in, are not available for
drawing against until the proceeds
have been received at the Branch.

(Example 3.)

By whom lodged _____

is likely to prove a desirable customer, the customer
calls and he is given a "paying-in book" and a "cheque

book." The paying-in book contains 25, 50, or 100 paying-in slips (credit slips), with counterfoils, as example 3. These books are in two sizes, one about 8 ins. long and the other about 11 ins. long; on the former about twelve cheques can be listed down, whilst about thirty can be entered on the latter.

On the paying-in slip is a space for the date; another following the word "credit," for the name of the customer. Should he have two or more accounts, the particular one for which the credit is intended *must* be expressed. For example, a customer, John Smith, has his business account in that name; he has also a private account called his "P $\frac{a}{c}$," and an investment account called "I $\frac{a}{c}$." A credit intended for J. Smith's Investment account would be placed to the credit of J. Smith and not to the Investment account, unless the "I $\frac{a}{c}$ " follows the J. Smith, as "J. Smith, I $\frac{a}{c}$."

NOTE SLIP.

LONDON AND NORTHERN BANK, LIMITED,
WESTMINSTER BRANCH.

19		
Number.	Notes.	Amount.
	£5	
	£10	
	£20	
	£50	
	£100	
	£200	
	£500	
	£1000	
Total £		

(Example 4.)

The next item on the paying-in slip is for bank notes. These may be Bank of England or English country notes, but not Scotch or Irish. Scotch and Irish notes (Example 5) may be entered either along

Incorporated by Royal Charter

One .

1746

in defence.



No. W $\frac{304}{260x}$

No. W $\frac{304}{260x}$

EDINBURGH, 26th December, 19

THE BRITISH LINEN BANK.

Promise to pay on demand to the Bearer ONE POUND Sterling.

By order of the Court of Directors.

A. YOUNG, P. Manager.

A. SMITH, P. Acco^t.

(Scotch Note.)

(Example 5.)

with the cheques or immediately below the notes and above the cash as they are reckoned as such, being sold for cash to the brokers, who deduct 1*d.* for a single £1 note, and $\frac{1}{2}$ *d.* in the pound when more than one £1 note is tendered by a banker.

The small charge of a penny in the pound is made on these notes to customers to defray the cost of collection.

All the Bank of England notes are, at the end of the day's business, entered on a slip (Example 4), and if at a branch sent to the Head Office of the bank, which sends them to the Bank of England, either direct or through their Clearing Agents, and receives credit for them.

Payment of country notes is made to the Head Office, or its Clearing Bank, by the London agent of the issuing bank. The London agent of a country bank is the banker who acts as the representative of the country bank in London. The agent, in consideration of the country banker keeping an agreed balance on current account, or on payment of a commission on the turnover, undertakes to accept bills, pay drafts, etc., drawn on him by, and receive money on behalf of, the country bank. It saves the necessity of transferring coin to London, and, on the other hand, if cash is required the agent transmits it to the branch in need of it. The cheques which the country bank cannot conveniently collect are sent to the agent to obtain payment of, and the agent receives, in the country clearing, cheques drawn on his principals for forwarding and payment in due course. The agent also buys and sells bonds, collects coupons, pays calls, takes out powers of attorney, etc., in fact acts as the London Office of the country bank.

The next item we come to is "gold." The money should be carefully counted, the sovereigns and half-sovereigns being kept apart, and if there is sufficient to pay in they should be placed in bags of £100 each. The silver should be made up into amounts of £5 and placed in the paper bags, marked silver, which the bank supplies for that purpose; on no account should silver be placed in bags marked copper, or vice versâ. Many banks now have the bags perforated so that the cashiers and others can see the contents without opening

them. The copper should be made up into packets of 5s. each. As bankers do not reckon halfpennies, an odd one should be taken out, or another added. All bags should bear the name of the customer paying them in, so that the cashier when checking, as occasion permits, may know whom to charge with any shortage or counterfeit coin, or whom to credit should there be any surplus. There are several ways of detecting spurious coins, but bankers usually judge by the weight and milling, the counterfeits being invariably lighter and the milling less regular than that on genuine coins.

Spurious coins are more difficult to detect now than formerly, owing to the coiner using a small amount of the genuine metal (mostly silver) in the manufacture of the counterfeits. It makes them heavier, harder, and gives a better ring. They are easier to bend, and when broken the difference in the metals can be readily discerned. The design on comparison will be found to be vastly inferior. Moreover, the milling having usually to be done with a hand file affords a ready means of detection owing to its unevenness when compared with the uniform milling on the State coins.

When pre-Victorian gold coins are paid into the Bank of England, a small charge is made, under the Coinage Acts of 1889 and 1891, varying in proportion to the loss in weight through wear. Pre-Victorian sovereigns and half-sovereigns are not now legal tender. This also applies to the silver coinage issued previous to the year 1816. Silver coins issued after this date, however much they are worn, are still legal tender to the amount of forty shillings, as also are fourpenny pieces, coins rarely seen in circulation now.

What becomes of the coin paid into the bank? If the branch has more than is necessary for its requirements, the surplus is sent to the Head Office, and if

not required there it is sent to the Bank of England for the credit of the Bank's account, all clearing bankers having accounts at the Bank of England. On the other hand, if more coin is wanted than is paid in by the customers, it is drawn from the Bank of England, to the debit of the Bank's account.

The next item on the slip is "cheques and drafts." A cheque is defined in section 73 of the Bills of Exchange Act, 1882, as a bill of exchange drawn on a banker payable on demand.

CHEQUES.

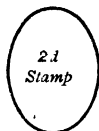
1, ABBEY ROAD,
WESTMINSTER,

No. ^A10937.
B

LONDON, 1st May, 19 .

THE LONDON & NORTHERN BANK,
LIMITED,

WESTMINSTER BRANCH.



Pay self or bearer
the sum of FIVE POUNDS_____

M, £5-

JOHN SMITH.

(Example 6.)

The word "draft" is intended to embrace all those commercial instruments which are akin to cheques, yet are not cheques, such as bankers' and foreign drafts, dividend warrants, postal and money orders, documents with receipts attached payable on demand (Example 8), and bills of exchange now due or maturing before they reach the paying banker. Bills due at a future date or payable abroad should be entered in the space at the bottom left-hand corner under the heading "Short bills."

1, ABBEY ROAD,
WESTMINSTER,
LONDON, 1st May, 19...

No O^A 9876.

THE LONDON & NORTH-EASTERN BANK,
LIMITED,
WESTMINSTER BRANCH.

Pay THE CANNON STEEL CO., LTD., or order
the sum of THIRTY-SEVEN POUNDS 10s. _____

[M] £37 10s. _____ JOHN SMITH.

2d.
Stamp.

NOT NEGOTIABLE

This cheque must be signed on the back by the person to whom it is payable.

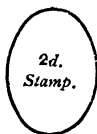
(Example 7.)

In the branches of some banks it is customary to pay in town, metropolitan, and country cheques, notes and coin on the same paying-in slip; in others, town and metropolitan cheques only are entered on the slip with the coin, etc., country cheques being entered on a different one. The reason for this is that town cheques, *i.e.*, those marked "T" in the left-hand bottom corner, are cleared by the Head Office on the day of receipt from the branch, metropolitan cheques marked "M" and cheques on London banks not in the Bankers' Clearing House, on the day after receipt; the branch receiving the unpaid cheques the following morning. But in the case of country cheques marked "C" received by the Head Office in time for clearing that day (ordinary days 12.30 p.m., Saturday 11.30 a.m.), the branch is advised of any unpaid direct from the country banks on which the cheques are drawn. The

MIDLAND RAILWAY COMPANY,
 No. 9999. DERBY, 1st May, 19
 MESSRS. GLYN, MILLS & CO.,
 LONDON.

Pay to MR. JOHN SMITH

the sum
 named below on the Receipt being pre-
 sented through a Banker duly stamped,
 signed and dated.



A. B., Secretary.

Received from the MIDLAND RAILWAY
 COMPANY the sum of THREE POUNDS 5s.

as per particulars furnished.

	£3 5s. _____	Signature _____	J.	S.	
		Date _____	2nd May	19 .	STAMP

(Example 8.)

branch forwards the cheque to the Head Office in the first place, and receives the "unpaid" (or "returns," as they are called) as a rule three days afterwards. It is not until after the third day that the banker feels justified in paying against these (country) cheques, if he does not consider his customer financially strong.

Scotch, Irish, and Manx cheques, as well as those of the Channel Islands, differ in the time taken for clearing, owing to the difference in the distance, delay of the mail boats and trains through storm, fog, etc. Scotch and Irish cheques are sent by the collecting banker to the agent in the town on which they are drawn,

who presents them for payment. If paid, the practice is for the agent to send a postcard acknowledging the receipt, and if unpaid to return the cheque direct to the banker forwarding it. Although the agent has until the day following the receipt on which to present a cheque, and to return it if it is unpaid, there is very little time lost before the cheque is presented and acknowledged, or returned unpaid.

All cheques paid in by the customer drawn on other banks are stamped across the face by the receiving banker with his name, as "County Bank, Ltd.," and if a branch, it is specified as "County Bank, Ltd., Westminster Branch," thus the paying banker can readily see to whom to return cheques received through the clearing-house if they are unpaid.

It does not necessarily follow that a cheque, the receipt of which has been acknowledged in the ordinary way, is paid, even if the cheque happens to be drawn on the agent himself, as the agent has until the day following the day of receipt in which to return it.

Cheques are returned for various reasons, but mostly for want of funds or irregularity of indorsement. On a cheque of say £5 on Parr's Bank being returned unpaid, it is entered in the "Return Book" and sent back to the customer either by hand or by post. The account having been credited with the amount of the cheque is now debited—"Parr's unpaid, £5." Should the cheque be paid in again, it is entered in the bank ledger and the pass-book of the customer as "Parr's re-credited," or R/C, an abbreviation sometimes used. In the event of an inquiry at some future time, the connection between the two entries can be readily seen.

The next and last item on the paying-in slip is the "Short Bills." These are bills not yet due, post-dated cheques, cheques and bills payable abroad, or money

orders, cheques, and bills payable in Great Britain but the amount of which is expressed in a foreign currency, in fact any documents which have to be sent forward specially for collection and are only credited when the proceeds are received. These bills, etc., are described as "Short" as distinct from discounted bills.

A discounted bill is one for which, although not due for some time, the banker gives credit at once, charging the customer the interest on the amount for the period to run. Thus, the discount on a bill for £100 due in one month at 5 per cent. is 8s. 4d. The banker credits the account £100 and debits it 8s. 4d. ; in this way the banker buys the bill for £99 11s. 8d., and acquires all the rights that his customer had. Where a bill discounted for a customer by the bank is returned unpaid, the bank debits the customer's account with the full amount of the bill and any expenses that may have been incurred.

The expenses incurred are usually for noting. Although it is quite optional to note an inland bill, that is, a bill both drawn and payable in the British Islands, bankers usually do so, especially if there is more than one indorsement on it, or if the impress of the small rubber stamp and the number by which a discounted bill can usually be distinguished are noticed. The object of noting is to prove presentation.

All foreign bills which are entered on the credit slip under the heading "Short bills, etc.," must be both noted and protested if unpaid, unless there are instructions to the contrary. The noting must take place on the due date or on the next succeeding business day, although the protest may be completed later. The charges for noting vary from 1s. 6d. to 7s. 6d., according to distance. A noting slip and form of protest will be found on page 24.

*NOTING SLIP**No Advice.*

3s. 6d.

R. SMITH & Co^y.,
Notaries Public.*(Example 9.)**PROTEST OF A BILL ON NON-ACCEPTANCE*

On the day of I, R. S., Public Notary,
etc., at the request of A. B., of did cause due
and customary presentment to be made of the original
bill of exchange, whereof a true copy is on the other side
written

at the counting house of C. D., the person upon
whom the same is drawn, and demanded accept-
ance thereof, but was informed that the said
C. D. was not within, and had left no orders for
the acceptance of the said bill.

Whereof I, the said notary, at the request aforesaid,
did, and do by these presents, protest against the drawer
of the said bill and all other parties thereto, and all
others concerned, for all costs, exchange, re-exchange,
and all costs, damages, and interest, present and to come,
for want of the acceptance of the said bill.

Thus protested in the presence of H. J. and K. L.,
witnesses.

R. S., Notary Public.

Which I attest.

*(Example 10.)*

R. S., Notary Public.

At the side of the credit is a request that all cheques be crossed London & Northern Bank, Ltd., before they are paid in, and further that cheques be paid in before 1 p.m., and on Saturdays 11.30 a.m.

The compliance with the first part of the request is very necessary to bankers, as it enables them to claim statutory protection (see the House of Lords decision in the Gordon case, page 73).

The latter part helps to lessen the pressure of work at the close of day and enables town cheques to be presented through the clearing-house on the day of receipt.

If a banker through inadvertence credits a wrong account, and advises the customer that his account has been credited with a sum of money and then finds that he (the banker) has made a mistake, he must immediately inform the customer of the error, and should a cheque be presented, it cannot be returned for want of funds if the deficit is caused by the rectification of the error; for to dishonour it may involve the bank in damages, if the customer has altered his position on the strength of the bank's representation. Also, if the cheque is paid, it may be possible to rectify the mistake afterwards.

In *Skyring v. Greenwood*, 1825, it was held that to enter a credit was a representation that the money had been received for the customer's use, and that the customer had altered his position by spending more than he otherwise would have done.

The banker is only allowed a reasonable time after receipt of a credit consisting of cash or notes before he must pay against it. In *Marzetti v. Williams*, 1830, the customer had in the morning a balance of £69 16s. 6d. At 11 a.m. he paid in £40 in notes. Just before 3 p.m. a cheque for £87 7s. 6d. was presented and returned

unpaid, marked "not sufficient," the cashier not knowing the notes had been paid in. The judgment was against the bank for damages. But in the case of *Robarts v. Tucker*, 1851, Justice Maule said: "A banker has a right to have a reasonable time before cheques are presented."

CHAPTER III

CHEQUES

AFTER opening a current account the customer is given a cheque book, and he is expected to use it when desiring to withdraw any portion of his money.

The number of cheques contained in a book varies, but they are usually in books of 25, 50 and 100. Cheque books containing 200, 300, and 500 cheques are also issued, the last three books having 2, 3, and 5 cheques on a page. These are more convenient for customers using a large number of cheques. Cheque books can be obtained with either order or bearer cheques.

The charge of twopence per cheque which is made by bankers is not to cover the expenses of printing, etc., but to cover the cost of the Government stamp. All cheques and bills of exchange payable on demand require to be stamped with a twopenny stamp. There are a few exceptions, which are noted on page 33. London bankers send the printed cheque books, as required by them, in parcels to Somerset House, Strand, or to Inland Revenue Office, Telegraph Street, E.C., to be stamped.

Bankers do not hold more stamped cheques than experience proves necessary to supply the needs of customers. These pennies mount up and become so much dead money. The average amount for three

years of three branch banks of about 500 customers each was £240 per branch for cheques kept in stock.

Each cheque has a distinguishing letter and number (*see* Example 11). If the cheques are numbered

CHEQUE

		1, ABBEY ROAD,
		WESTMINSTER,
<i>Date</i> _____	London & Northern Bank, Ltd.	LONDON, 14 <i>April</i> , 19
		No. O _A 501
<i>Name</i> _____		THE LONDON AND NORTHERN
		BANK, LIMITED,
		WESTMINSTER BRANCH.
£ _____		Pay J. SMITH, Esq., or order
		the sum of ONE HUNDRED
		POUNDS
		£100 J. BROWN & Co.
		M

(*Example 11.*)

A 51-75, then on the outside of the cover of the book will be printed A 51-75. This number also occurs in the part apportioned for the books of twenty-five cheques in the "Cheque Book Register." Against it the name of the customer is written, the date the customer had the book, and how and to whom it was delivered.

On the cover of the cheque book is printed a request that the cheque book be kept locked up, that cheques should not be signed in blank, that is that the body of the cheque be filled up before the cheque is signed, and further, that great care be taken in writing the

amount and figures in order to prevent fraudulent alterations (*Marcussen v. The Birkbeck Bank*, 1889). Customers should note that, although a cheque drawn by a customer is a mandate to the banker to pay the amount according to the tenor of the cheque, the customer is bound to exercise all reasonable care to prevent the banker being misled. If he draws a cheque in a manner which facilitates fraud, he is guilty of a breach of duty as between himself and the banker, and is responsible for any loss suffered by the banker as a natural and direct consequence of this breach of duty (*London Joint Stock Bank v. Macmillan*, 1918).

About six cheques from the end of the cheque book is an order for a new book as Example 12. This form

CHEQUE BOOK ORDER

LONDON, _ _ _ _ _ 19 _ .

To the MANAGER,

The London & Northern Bank, Ltd.,
Westminster Branch.

Please deliver to a new cheque book containing Order Cheques, debiting my account with the same.

(Signature) _ _ _ _ _ of _ _ _ _ _ (Address)

(*Example 12.*)

should be filled up, signed by the customer, and sent to the bank. The cashier receiving it, examines the signature and hands it to the clerk whose duty it is to give out the cheque books. The system prevailing in some banks of having a junior clerk near to, or at, the counter to take the orders for cheque books direct from the bearers or even to give up the books on verbal requests, is full of danger, and it is not surprising to hear of cheques and cheque books being obtained by rogues and expert forgers.

Although not legally necessary, it is desirable that only the forms supplied by the bank be used and not ordinary paper, as alterations can be more readily made on plain paper. Further, a forger has not the initial difficulty of obtaining the cheque.

Banks supply cheques, if required, which are already crossed, either crossed generally, thus,

// & Co. //

or crossed together with the additional words making them "not negotiable." thus,

// & Co
Not negotiable //

The printed crossings cannot be removed by chemicals as easily as the crossings impressed by rubber stamps.

A crossed cheque is only payable to another banker, whereas one which is not crossed, an open cheque, as it is called, is payable at the bank on which it is drawn to any specified person or to bearer.

A cheque, by section 73 of the Bills of Exchange Act, 1882, is defined as: "A bill of exchange drawn on a banker, payable on demand." A bill of exchange is defined, section 3 of the Act, as: "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 or determinable future time a sum certain in money to or to the order of a specified person or to bearer."

It must be "an unconditional order." An order

to pay a sum of money when certain goods are sold would not be a cheque or bill, as the goods might never be sold. An order to pay only on the receipt being signed (as Example 8) is conditional and therefore not a cheque. (*Bavins, Junr., and Sims v. London and South Western Bank, 1900*) No special words need be used, nor is it necessary for a cheque to be of any particular size or shape, but it is desirable that cheques be of uniform size.

The order must be "in writing." The writing must be in print, in ink, or indelible pencil, but bankers do not favour the use of the last.

"Addressed by one person to another, signed by the person giving it." The person who signs the order requesting the other to pay is called the "*drawer*," and the person to whom the order is addressed is the "*drawee*." In the case of a cheque the banker is the drawee. In the case of a bill the person to whom it is addressed, the drawee, accepts the terms of the order by writing his name across it and becomes the "*acceptor*," that is, he agrees to pay the bill at maturity.

"On demand or at a fixed or determinable future time." The wording of the bill should indicate the time when the money is to be paid—on demand, on a fixed date; or at a certain period from a given time—in order that a holder, if the bill is not paid on that date, may obtain payment from a previous indorser or the drawer, or, if necessary, sue on the bill.

"A sum certain in money." The sum of money must be a definite amount, although it may be paid with interest, or by stated instalments (Section 9, Bills of Exchange Act); in each case the amount can be readily ascertained.

"To the order of a specified person or to bearer." This specified person is termed the "*payee*"; if the bill

or cheque is payable to a specified person or order, that person must indorse it. An order cheque is transferable by indorsement and delivery, a bearer one is transferable by delivery. A bearer cheque (Example 6) is payable without indorsement, being payable to the bearer of the cheque. Should the payee lose it, and the banker pay the finder, the banker is under no liability to the payee. The banker is also protected, even if the cheque has been stolen and he pays the thief, for he has paid according to the drawer's instructions (*Charles v. Blackwell and Another*, 1887).

An indorsement on the back of a bill or cheque to bearer is not examined by either the collecting or paying banker. A cheque payable to John Smith or bearer and indorsed

Pay J. Brown or order
J. Smith

does not require the indorsement of J. Brown, and the paying banker does not even turn the cheque over to see if it is indorsed. When the last indorsement on an order bill is in blank as pay J. Smith or order, and J. Smith indorses it by writing his name only on it, the bill becomes payable to bearer, and may then pass from hand to hand without indorsement.

The terms "collecting banker" and "paying banker" have been used. The former is the banker of the customer for whom a cheque or bill is collected; he is the banker of the last holder, although not always of the last indorser. The collecting banker's name appears on the face of a cheque and on the back of a bill. It may be written or perforated, but now the practice is to use rubber stamps.

The paying banker is the banker who pays the cheque or bill; he is the banker on whom it is drawn or with whom it is domiciled.

By Section 2 of the Bills of Exchange Act, 1882 :—

“ *Bearer* ” means the person in possession of a bill or note which is payable to bearer. The person in possession of a bill or note payable to order is not in law the bearer of it, until it is duly indorsed.

“ *Holder* ” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“ *Bill* ” means bill of exchange and “ *note* ” means promissory note.

“ *Delivery* ” means transfer of possession, actual or constructive, from one person to another.

“ *Indorsement* ” means any indorsement completed by delivery.

“ *Issue* ” means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.

An order cheque or bill requires the indorsement of the payee, and words to that effect are to be found on the bottom of a cheque as, “ this cheque must be signed on the back by the person to whom it is payable ” ; or “ this cheque must be indorsed by the payee.”

“ *The payee* ” is the person to whom or to whose order the money is payable, that is, the person specified on the face of the cheque. Pay “ *J. Smith* ” or order. J. Smith is the payee and must indorse the cheque. More cheques are returned unpaid for irregularity of indorsements than for all the other reasons put together. Out of 1,000 returned cheques, over 530 are returned for want or irregularity of indorsement, an average of over 50 per cent.

It is very necessary for cheques to be correctly indorsed in the first instance, for it sometimes happens that there are sufficient funds, when first presented, but not on any future presentation, or the drawer may become bankrupt, die, or countermand payment (page 90).

Stamps. The stamp duty on a cheque for any amount is two pence.

It may be an impressed stamp, an adhesive stamp, or two penny stamps.

If a cheque is unstamped when presented for payment, the banker can stamp it and deduct the two pence from the amount to be paid, or charge it to his customer.

There are a few exemptions, viz., cheques drawn by Government departments, poor law guardians, friendly societies, and those of the registrar of a County Court. Cheques drawn by an officer of a Government department for public purposes are also exempt.

CHAPTER IV

INDORSEMENTS

THE following indorsements may be helpful to those whose duty it is to indorse or to look through indorsements.

A cheque made payable to Mr. John Smith or order should be indorsed on the back of the cheque: (a) "John Smith," or (b) "J. Smith." Either indorsement will also do for J. Smith, Esq., or Dr. J. Smith. The doctor may add "M.D." after his name if he chooses, but the prefix "Mr." or "Dr." must not be placed in front of the "J. Smith" nor the "Esq." after it.

"Messrs. Smith," must be indorsed: (a) "J. & J. Smith," (b) "J. Smith & Son," (c) "Smith & Son." The word Messrs. signifies two or more persons of the name of "Smith."

"Messrs. J. Smith" requires "J. & J. Smith."

In the previous case the cheque is to be paid to two or more persons of the name of "Smith," but it is not

necessary for the initials of either to be "J," as in the example.

"Messrs. Smith Bros." should be indorsed "Smith Bros."

"Messrs. J. Smith & Co." can be indorsed by a partner of the firm or by some person authorised to sign the firm's name, thus: (a) "J. Smith & Co."; or by some one authorised to indorse for the firm as:—

(b) Per pro. J. Smith & Co.,
G. Brown.

The latter is known as a per procuration indorsement. The powers of an agent are described more fully on page 99. Per procuration indorsements are not accepted on dividend warrants, orders of the Paymaster-General and the Postmaster-General, the Crown Agents, or other Government Offices.

Where the payee is a limited company, the person indorsing must have the power to indorse, and after his name state in what capacity he indorses, as:—

Per pro. J. Smith & Co., Ltd.,
(or for) G. Brown,
Director or Secretary.

A cheque payable to J. Smith, Ltd., requires—

Per pro. J. Smith, Ltd.,
(or for) G. Brown,
Director or Secretary.

The indorsement

"for J. Smith" G. Brown

 is not usually

accepted by bankers, but "for" is a good discharge if the person indorsing is agent of the payee. "Per pro." implies authority, whereas "for" does not.

Should the name of the payee be incorrectly spelt—"J. Smyth" instead of "J. Smith"—the cheque should be indorsed as on the face, with the proper signature following (Section 32, sub-section 4, Bills of Exchange Act)—as :—

J Smyth,
J. Smith.

A cheque payable to the "Hyde Hotel" or order, requires to be indorsed—

Per pro. The Hyde Hotel,
J. Jones,
Manager.

or, if the proprietor, A. Clark, indorses—

Per pro. The Hyde Hotel,
A. Clark,
Proprietor.

Should the cheque be made payable to the "Hyde Gas Co." or order, and the correct name of the company be The Hyde Coal, Gas & Iron Co., Ltd., the usual way to indorse is—

Per pro. The Hyde Gas Co.,
(or for)
The Hyde Coal, Gas, & Iron Co., Ltd.,
J. Brown,
Director.

A cheque payable to the London and County Insurance Co. must be indorsed, if by an agent of the Insurance Co. :—

Per pro. The London & County Insurance Co.,
(or for)

J. Smith,
Agent.

If the cheque is handed to a branch manager, then it should be indorsed :—

Per pro. The London & County Insurance Co.,
G. Gray,
Branch Manager.

A cheque payable to “ Mrs. Curzon-Smith ” should be indorsed “ R. Curzon-Smith,” as hyphen names require to be preceded by an initial.

Cheque payable to “ Mrs. John Smith ” should be indorsed :—

Mary Smith,
Wife of John Smith.
(widow)

A married woman, Mrs. Green, having received a cheque made payable to her in her maiden name, “ Miss Alice Joyce,” should indorse :—

Alice Green,
née Alice Joyce.

If the payee “ John Smith ” is unable to write, the cheque should be indorsed in this manner :—

His	Witness,
John X Smith.	J. Brown.
mark.	14, Essex Street, Oxford.

The address of the witness must always be given.

A cheque payable to the executors of the late J. Smith should be indorsed :—

For self and co-executors of the late J. Smith,
J. Brown.

Had the cheque been payable to the “ exor. of the late J. Smith,” then the indorsement could have taken the form of—

J. Brown, sole executor of J. Smith, deceased.

“ Exor.” is frequently used as a contraction of executor. One executor can indorse for all his co-executors, but not so a trustee. Trustees must all sign as :—Pay the trustees of J. Smith.

J. Brown	}	Trustees of J. Smith.
T. Jones		
E. C. Smith		

A cheque made payable to J. Brown, Esq., and indorsed J. Browne, should not be altered, but rewritten thus :—

J. Browne.
J. Brown.

It would certainly be easier to strike out the final “e,” but the paying banker would refuse payment on the ground of the alteration in the indorsement.

A cheque payable to the order of Lord Ray will be indorsed without any initial, simply “Ray.” But one payable to Lady Ray must be indorsed “Mary Ray.”

There are three sorts of indorsements: (1) blank indorsements, (2) special indorsements, (3) restrictive indorsements.

The first, a *blank indorsement*, is when no indorsee is specified (Section 34, sub-section 1, Bills of Exchange Act, 1882). The payee simply signs his name on the back of the bill or cheque. As stated previously, this makes the bill a bearer one, transferable by delivery.

The second, a *special indorsement*, is made by the payee writing the name of the person in whose favour he indorses above his own. Section 34, sub-section 4 of the Act reads: “When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special one by writing above the indorser’s signature a direction to pay the bill to or to the order of himself or some other person.” Thus, the payee J. Smith

indorses and then writes above—Pay J. Brown or order.
We now have:—

Pay J. Brown, or order,
J. Smith.

The bill or cheque is now payable to J. Brown, who can transfer it in like manner.

It frequently happens that on a bill or a cheque, especially a foreign one, the indorsements are so numerous that they cover the back. In that case a slip of paper called an “*allonge*” is attached to the bill and the indorsements are continued; the last person to indorse should indorse partly on the bill and partly on the *allonge*. The *allonge*, being part of the bill, does not require to be stamped.

The third, a *restrictive indorsement*, limits the further negotiation of the bill (Section 35 of the Act) as “pay J. Smith only”; any person who takes a bill after this restrictive indorsement cannot sue the drawer or the acceptor if it is dishonoured. Sub-section 3 says: “Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.” The indorser “(*er*)” is the holder of a bill *who indorses it*. The indorsee “(*ee*)” is the person *to whom the bill is specially indorsed*; he is also the bearer of a bill indorsed in blank.

A “Per pro.”—per procuration—indorsement must purport to be the act of the agent signing on behalf of the principal. The words “per pro.” intimate a special and limited authority, and a person taking a bill drawn, accepted, or indorsed in such a manner should ascertain the extent of the authority. An agent cannot delegate

his authority unless specially authorised to do so. A banker paying a *cheque* bearing a "per pro." indorsement is fully protected by Section 60 of the Bills of Exchange Act, provided the indorsement purports to be the act of the agent of the payee.

An indorser of a bill is liable to succeeding holders. By writing his name on the back of a bill he agrees that, should the drawee not pay the bill at maturity, he will pay the holder the sum mentioned in the bill together with any expenses for noting, etc., incurred.

The indorser can avoid the responsibility by stating in his indorsement that he will not be liable for non-acceptance or non-payment. The French expression "sans recours" or, in English, "without recourse to me," meets this requirement. In the same way, the drawer may also limit his liability. These restrictions greatly affect the transferability of a bill, for the more persons liable in the event of non-payment, the greater the security for those taking it for value.

It sometimes happens that a bill is indorsed back to a prior indorser, *e.g.*, a bill is indorsed by Smith, Brown, Jones, and Robinson, and Robinson indorses it back to Brown (as example); then Brown is precluded from suing either Jones or Robinson on the ground of "circuitry of action."

BACK OF BILL

*Pay to A. Brown or order,
J. Smith.*

*Pay J. Jones,
A. Brown.*

*Pay G. Robinson or order,
J. Jones.*

Pay *A. Brown*,
G. Robinson.

(*Example 13.*) *A. Brown.*

for if the bill is not paid at maturity and Brown sued Robinson, Robinson would sue Jones and Jones would have recourse to Brown. So, whatever Brown obtained from Robinson, Jones would get from him. This is called "*circumty of action*" (*Wilkinson & Co. v. Unwin*, 1881). Brown's remedy is against Smith, the first indorser. Any new holder subsequently coming into possession of the bill has the right of action against any party.

An indorsement to be valid must not only be the correct signature on the back of the bill, but, by the Act of 1882, it must be an indorsement completed by delivery. It is almost invariably the practice to indorse on the back of the bill, but an indorsement on the face was held to be valid in *Young v. Glover*, 1857.

It is very necessary when taking a bill to know the signature of the person indorsing, for in the event of forgery the money will be lost. In the case of a forged indorsement, a holder for value cannot obtain any title to the bill. If the acceptor pays it at maturity, the rightful owner can claim the bill back from the acceptor, who must then sue the person he paid for conversion. If he cannot find that person he loses his money. If he does get his money back, then the one from whom he obtained it, as holder, must sue the party who indorsed the bill to him; should this be the forger, then there is little chance of his seeing the consideration again. A banker also, paying a bill bearing a forged indorsement, is liable to the true owner for conversion, the payment having been made to a person incapable of giving a good discharge (*Smith v. Union Bank of London*, 1875).

This is not so in the case of a cheque. A banker paying a cheque with a forged indorsement is protected by Section 60 of the Act, unless, of course, there is some irregularity in the indorsement, which he overlooked.

If a bill is indorsed in blank and then lost or stolen, a holder for value can proceed against any of the parties to the bill.

CHAPTER V

CROSSED CHEQUES

THE customer, after opening the account, was handed a cheque book containing either order or bearer cheques; these were open (Example 6) or crossed (Example 7), as the customer preferred. We have already dealt with open cheques, both order and bearer, and have now to consider the crossed ones.

A crossed cheque is one which can only be paid by the banker on whom it is drawn to another banker. Unlike an open cheque, it cannot be paid over the counter of the bank to the payee or holder, unless he is a banker.

The practice of crossing cheques, which originated in this country, and is growing on the Continent, especially in France, is a very old one. Sir John Byles in his *Treatise of the Law of Bills of Exchange*, published in 1862, says: "It is now and has long been a common practice, not only in the City of London but throughout England, to write across the face of a cheque the name of a bank."

This usage arose through the frequent robbery of the mails. The object was to make the cheque payable only through the payee's banker. Then, if any one stole the cheque, it was of no value as it had to be presented by the banker whose name appeared on the face of the cheque. If the name of

the payee's banker was unknown to the drawer, he simply crossed the cheque with two lines inserting the words "& Co." between, thus,

// & Co. //

As the names of nearly all banking companies in those days ended in "& Co.," all the payee had to do was to write the name of his banker before the "& Co." This converted a general crossing into a special one.

All cheques sent through the post should be crossed. By doing so greater security is obtained, for thieves fearing the risk of detection, usually destroy crossed cheques.

There are two kinds of crossings—general and special. Section 78 of the Bills of Exchange Act reads: "A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing."

By Section 76, when a cheque bears across its face the words "and company," or any abbreviation thereof, between two parallel transverse lines, either with or without the words "not negotiable," as

// & Co. //
// & Co. Not negotiable. //

or two parallel transverse lines simply, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed generally:—

// //
// Not negotiable. //

Sub-section 2 of the same section states that:

“Where a cheque bears across its face an addition of the name of a banker, either with or without the words ‘not negotiable,’ that addition constitutes a crossing, and the cheque is crossed specially to that banker.” Here it is the name of the banker which is the crossing and not the parallel lines.

The provisions of this Act as to crossed cheques apply to dividend warrants, postal orders, and any order issued by a customer addressed to a banker requesting the banker to pay a fixed sum to a specified person (*Bavins, Junr., & Sims v. London & South Western Bank*, 1900).

A cheque crossed generally may be crossed specially by the holder writing the name of a banker across the face of the cheque as, (Section 77.)

By the same section a cheque may be crossed generally or specially by the drawer or holder. The holder may add the words “not negotiable.” Sub-section 5 gives a banker power to cross a cheque already crossed specially to himself to another banker for collection.

“Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself” (Section 77, sub-section 6). The banker does this by writing his own name either outside the transverse lines or in between them, it being immaterial which.

A cheque crossed specially must be paid by the paying banker according to the crossing. In the case of *Bobbett v. Pinkett* (1876), it was stated that the crossing operated as a mandate to the drawees to pay the cheque to the bankers named, and not having done so, the

customer might have declined to allow his account to be debited with the amount so paid contrary to his orders.

The words "not negotiable" mean that a holder for value cannot acquire a better title than his transferor had. The words do not affect the transferability of the cheque, for the way to limit that is to draw the cheque, "Pay to J. Smith only." The Court of Appeal held, in the case of the *National Bank v. Silke* (1891), that a cheque drawn "Pay to the order of J. F. Moriarty, Esq.," and crossed "Account of J. F. Moriarty, Esq., National Bank, Dublin," did not prohibit the transfer of the cheque. Lord Justice Lindley said he was not satisfied that a cheque payable to order or bearer could be made not negotiable in any mode except that which was expressly pointed out in Sections 76-82 of the Act, that is, by writing the words "not negotiable" across it.

The words " $\frac{a}{c}$ payee," also, do not restrict the transferability of the cheque. These words give notice to the collecting banker, and may make him liable if his customer has no title (*Bevan v. National Bank, Ltd.*, 1907). The stability of the customer and the amount of the cheques have to be considered by the collecting banker when he receives a cheque for collection, crossed in this manner, but of which the customer is not the payee, for at a future date he may have to refund the proceeds.

It will now be seen that a customer runs no risk other than that the cheque may be returned for want of funds, when he gives value to a payee of a cheque crossed generally but without the words "not negotiable." Even if the cheque is crossed "not negotiable" it will make no difference, so long as there is no defect in title. The customer cannot acquire a better

title than his transferor had, but he can have as good. If the customer gives value for a cheque from a third party, he does not run any risk, being a holder in due course, as long as there is no forgery of the drawer's name or of an indorsement, and further that the cheque is not marked not negotiable.

The difference between transferability and negotiability is that anything, say a watch, which is transferable may have been stolen, and if so, any one coming into possession of it or buying it, except in market overt, would have to return it to the true owner. The true owner, if necessary, could sue the receiver for its return. If it is negotiable, like a bank note, it confers on the person giving value for it the right to retain it even against the person from whom it was stolen.

Transferability does not give absolute ownership, for the thief cannot, when he transfers the watch, transfer the right to it.

A negotiable instrument conveys the rights of ownership as well as of actual possession, thus, any one giving value to the thief obtains an instrument which can be held against any one. A not negotiable cheque is transferable, but its negotiability is limited.

A negotiable instrument can pass by indorsement or simply by delivery, and a holder for value has a right to retain it against the true owner, even if it has been lost or stolen. The finder or the thief would have to give it up to the true owner, but if the instrument is passed on to some one else in payment of a purchase or for cash, or for any consideration, then the receiver, as a holder for *value*, can hold it against the true owner. If the instrument is a bank note, then the holder can compel the bank to pay him the amount of the note, although the loser may have given notice to the bank and stopped the payment of it.

CHAPTER VI

BILLS OF EXCHANGE

ACCORDING to Lord Chief Justice Cockburn, in *Goodwin v. Robarts*, 1875, bills of exchange are said to have been first used by the Florentines during the twelfth century. The first mention of these instruments of credit in this country is towards the close of the fourteenth century. It was about the beginning of the seventeenth century that bills were made payable to bearer, and somewhere about the same time the practice of making bills negotiable by indorsement began to be adopted by the English and foreign merchants.

The usage grew to such an extent that the issue, negotiation, and payment of these instruments were before Parliament on many occasions, and when the Bills of Exchange Act of 1882 was passed, it repealed as many as seventeen enactments.

The definition of a bill of exchange has already been given on page 29.

If the bill is, or purports to be, both drawn and payable in the British Islands upon some person resident therein, it is an *inland bill*. Any other bill is a foreign bill.

The drawer usually writes out the bill and signs it in the bottom right-hand corner (as Example 16) before sending it to the drawee for acceptance. It sometimes happens that the acceptor writes out the bill and signs it across the face, adding the words, "accepted payable at," and then follows the name of his banker or the address of his business house. He then forwards it to the person to whom he is indebted, who, on receipt, signs and retains the bill.

It may happen that the payee—J. Jones—writes out the bill as, "Three months after date pay J. Jones or

order," etc., and then sends it to the person who owes him the amount to sign as drawer, and, further, to get another party who has since become liable to the drawer to accept the bill. The bill is then returned to the payee, who either holds it until maturity or he indorses and negotiates it. The acceptor is liable to the drawer and the drawer to the payee and the payee to any subsequent indorsers.

The stamp duty on bills of exchange is as follows :—

On a bill of exchange drawn payable on demand, at sight, or on presentation, or within three days from date or sight, the duty for any amount is 2*d*.

Beyond these periods for all others as follows :—

Where the amount does not exceed £10 2*d*.

Where the amount exceeds £10 but does not exceed £25 . . 3*d*.

 " " " £25 " " £50 . 6*d*.

 " " " £50 " " £75 . 9*d*.

 " " " £75 " " £100 . 1/-

Exceeding £100, for every £100 or fractional part of £100 . 1/-

An inland bill is defined in the Stamp Act of 1891, as one which purports to be drawn in the United Kingdom, whether payable abroad or not. It must be written on paper bearing an impressed stamp of sufficient value to cover the amount for which the bill is to be drawn.

In the case of foreign bills, the bill itself is not drawn on paper with an embossed stamp, but when it arrives in this country for negotiation, acceptance, or payment it has to be stamped, an adhesive stamp being used.

Those bills payable on demand, at sight, or on presentation, or within three days of date or sight require stamping with a twopenny postage or foreign bill stamp.

The stamps in other cases must be foreign bill stamps and not postage stamps.

All promissory notes, whether payable on demand or otherwise, require *ad valorem* stamps as previous page.

If a bill is both drawn and payable out of the United Kingdom, but is negotiated in the United Kingdom, it requires a foreign bill stamp for value as follows :—

Where the amount of money for which the bill is drawn does not exceed £50	as previous page
Where the amount of money for which the bill is drawn exceeds £50 but does not exceed £100	6d.
Exceeding £100, a 6d. stamp for every £100 or fractional part of £100.	

It is always presumed, when a drawee accepts a bill, that he has received some consideration for it, or, as it is usually expressed on the bill, that value has been received. It is incumbent upon the acceptor to prove that value has not been given when difficulties arise as to the bill, or that the signature was obtained by fraud, as in the case of *Lewis v. Clay*, 1897.

Although the words "value received" are not necessary in an inland bill, they must be inserted in a foreign one.

The acceptor of a bill must have capacity to contract : "An infant," or, as he is sometimes called, a "minor," is a person under twenty-one years of age, and incurs no liability by drawing, accepting, or indorsing a bill of exchange. An infant may indorse so as to transfer a good title, but he will not be liable on the bill himself, but as the holder of a bill he can sue upon it.

A bill may be set aside on the plea of lunacy or drunkenness, but in neither case is it of any avail against a holder in due course. Either is a defence against an immediate party having notice thereof (*Gore v. Gibson*, 1845).

Occasionally a limited company or corporation cannot, by the powers conferred upon it by its Charter or Memorandum of Association, draw or accept bills. If

it does so the act is said to be *ultra vires*. Unless it is specially stated that a trading company or corporation cannot draw or accept bills, the fact that it is a trading concern gives the necessary capacity. A bill payable to the order of a corporation and indorsed by it passes the property therein, although the corporation, through want of capacity, may not be liable as an indorser.

The powers of an agent must be examined before he is allowed to act in that capacity. It should be ascertained that he has the authority to draw, accept, or indorse bills, and, if so, to what extent. He should sign in the following manner, as this shows the act to be on behalf of the principal and not merely of the agent personally :—

Per pro. J. Johnson.
G. Brown.

Bankers invariably require one of their own forms of authority signed by the customer, the principal, before acting on an agent's signature. The powers of an agent are more fully dealt with hereafter. A specimen of a banker's form of authority is to be found below.

FORM OF PER PROCURATION AUTHORITY

To the MANAGER,

The London and Northern Bank, Limited.

DEAR SIR,—

I hereby request and authorise you to honour all Cheques drawn by of on my account with the London and Northern Bank, Limited, signed by him Per pro., and to act on all indorsements of Cheques and all Bills of Exchange or Promissory Notes drawn, accepted, or indorsed by him

for me, in like manner, as fully as if the same had been actually drawn, accepted, or indorsed by me..... until you receive a notice in writing from me to the contrary.

Witness :—
of

N.B.—This does not authorise the agent to overdraw.

(*Example 14.*)

The name of a trading firm signed by one of the partners on a bill of exchange binds the partnership so long as it is in the ordinary course of business, as far as others outside the firm are concerned. Members of non-trading partnerships, such as solicitors, accountants, doctors, etc., cannot bind the partnership by giving a bill of exchange.

The signature of a firm is deemed to be the signature of all persons who are partners in the firm.

A person signing a bill in an assumed or trade name is as liable thereon as if he had signed in his true name.

"The *holder*" of a bill is the payee or indorsee in possession of it, or the bearer thereof.

"A *holder in due course*" is a holder who has taken a bill, complete and regular on the face of it, under the following circumstances :—

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured if such was the fact.

(b) That he took the bill in good faith and for value, and at the time the bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it.

The position of a holder in due course is a strong one; he has a right of action against each and every party to the bill.

A holder for value.—Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all the parties to the bill who became parties prior to such time.

A holder for value may or may not be a holder in due course. The holder of a bill who receives it from a holder for value, but does not himself give value for it, has all the rights of a holder for value against all parties to the bill except the person from whom he received it.

Where a holder of a bill has a lien upon it, he is deemed to be a holder for value to the extent of the sum for which he has a lien; that is, he has a right to hold the bill until his claim is satisfied.

A holder for value is presumed to have taken the bill for its full value and not as a security.

Bills are frequently put into circulation, without any value being given, to oblige friends. These bills are known as “accommodation bills,” “kites,” or “fictitious bills.” The persons who draw, accept, or indorse them without consideration are called “accommodation parties.”

In the case of an accommodation bill, no value passes, and no one is liable on it until value is given; then the holder can sue any of the parties, although he may have known it to be merely accommodative. A bill of this description is used as a means to obtain money and is discharged when payment is made by the party accommodated. .

Bankers refuse to discount these accommodation bills if they are aware that they are of such a nature; for, by discounting bills of exchange drawn for value received trade is encouraged, but by discounting accommodation bills rash speculation is apt to be fostered.

A bill or cheque is not invalid by reason that it is

dated on a Sunday, that it is ante-dated, *i.e.* dated previous to the day of drawing, that it is post-dated, or that it was not dated when issued.

By Section 12 of the Bills of Exchange Act a holder may fill in the date he believes to be the correct one. The acceptor should be advised of the date inserted in order that he may know when to provide for the bill.

All bills of exchange must be accepted, and, further, they must be accepted within a reasonable time. There are two kinds of acceptance—general and qualified. In the former case, the acceptor signifies that he agrees without qualification to the bill as drawn by writing his name and the place where the bill is payable transversely across its face. In the latter case, the acceptor qualifies his acceptance by words not in accordance with the tenor of the bill, as on a bill drawn for £100,

Accepted for fifty pounds only
At the Southern Banking Co.
J. Jones.

or,

Accepted payable at the
Western Branch of the
Southern Banking Co. *only*
J. Jones.

or on a bill drawn two months after date,

Accepted payable at the expiration of three months
from date
At the Southern Banking Co.
J. Jones.

The holder of a bill may refuse to take a qualified acceptance, and, failing to obtain an acceptance in accordance with the tenor of the bill, may treat it as dishonoured by non-acceptance.

If a qualified or conditional acceptance be taken without the authority of the prior parties to the bill they are relieved from liability thereon. In the case of a qualified acceptance, a banker must notify his customer and obtain his instructions, in the meantime protesting the bill and holding it without prejudice to any interests therein.

A bill payable on demand is due at once. A bill payable at sight or on presentation, or a bill in which no time for payment is expressed is payable on demand. In none of these cases is the acceptor allowed days of grace. All other bills, except those which expressly state to the contrary, are allowed days of grace, that is, *three days* are added to the term the bill has to run, and are known as days of grace. There are very few foreign countries which allow days of grace, it being generally considered that a bill should be paid at the expiration of the period stated on the bill. In some countries one day, in others two days, are allowed in which to present the bill or to protest it if unpaid.

The period a bill has to run before it becomes due is known as the "currency of the bill."

If a bill falls due (including the last day of grace) on a Sunday, Good Friday, Christmas Day, or on a day appointed by Royal proclamation as a public fast or thanksgiving day, it must be presented and paid on the preceding business day.

When a bill falls due on a Bank Holiday it is payable on the following day. If the Bank Holiday is on a Saturday, then the bills of both Saturday and Sunday are due on the Monday following.

When Christmas Day falls on a Saturday, bills due on that day or the Sunday are payable on the Friday, whilst those due on the Monday, which is treated as Boxing Day, are payable on the following day, Tuesday.

In Scotland, however, Christmas Day is a Bank Holiday, and therefore a bill maturing on that day is not payable until the succeeding business day; the same applies to Good Friday. The other Bank Holidays in Scotland are New Year's Day (or, if this falls on a Sunday, then the following Monday) and the first Monday in both May and August.

By Sections 10–14 a bill is payable at a determinable future time which is payable, (1) At a fixed period after date or sight; (2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

A bill dated January 1, 1909, payable three months after date, is due April 4, 1909.

The due date of a bill is determined in the following way: a bill drawn at three months after date or sight and dated or sighted on January 3, becomes due on the same date three calendar months hence, viz. April 3, but adding the three days of grace, the bill matures on April 6.

In calculating the due date of bills no allowance is made for what are termed "lacking days," e.g. if a bill is drawn, say, two calendar months from December 30 or 31, the bill becomes due on March 3, because there is no 30th or 31st day of February, the currency of the bill terminates on the last day of that month, viz. the 28th; (on the 29th, if leap year); with the allowance for the three days of grace the bill is therefore due on March 3.

Bills dated January 28, 29, 30 and 31, 1909, payable one month after date, are all due March 3, 1909. Had this year been a leap year, then the bill dated January 28 would have been payable on March 2, the 29th being the last day of February; the other bills mature on March 3. This extra day of February in leap year must

not be overlooked when reckoning the amount of interest on loans or discount on bills, etc.

A bill drawn payable at three months after sight and sighted November 30 is due March 3. This is obtained in the following manner :—

Three months from November 30 is February 30, but 29th and 30th being lacking days, the three months expire on February 28, that is the last day of the month, the three days of grace bringing the due date to March 3.

A bill dated on January 15, payable at thirty days' sight (sometimes written d/s), and sighted on January 18, is due on February 20, thus January 18 to 31 is thirteen days, January 31 to February 20 is twenty days, in all thirty-three days (thirty days plus three days of grace).

A bill which has been dishonoured by non-payment on the last day of grace does not, without it has been previously dishonoured by non-acceptance, give a right of action until the following day (*Kennedy v Thomas*, 1894).

If the intention is for a bill to be payable on a certain day, without days of grace, say April 15, it must be drawn thus, "On April 15, 1909, fixed, pay to my order," etc. The word "fixed," or others to the same effect, such as "without days of grace," must be used, for if drawn, "On April 15 pay to my order," then the bill is not payable until April 18.

A bill drawn at one day's sight or one day after sight carries days of grace.

After sight bills.—An after sight bill should bear the date it was left for sighting and not the date the drawer accepts it. If it bears both, the due date is reckoned from the day of sighting. These bills must be presented for sighting and acceptance within a reasonable time or prior indorsers will be discharged. If a bill is not

presented on the due date the indorsers are discharged, although the acceptor remains liable.

A person taking an overdue bill cannot acquire or give a better title than the party from whom he took it had. A bill accepted or indorsed when overdue is payable on demand as regards the acceptor or the indorser.

Occasionally bills are retired, *i.e.*, withdrawn before they are presented for payment, by order of the customer. The instructions must be signed by the customer. If the acceptance has been discounted, it must be ascertained that the requisite funds are on the account, the customer must be debited and the account "bills discounted" credited. If there is not enough on the account to allow the retirement of the bill, the customer should be informed.

If the bill be held by the banker merely as a short bill, that is, a bill for collection, it will be handed to the customer or his agent who must sign for it.

If the customer desires his banker to take up his acceptance before maturity, the banker must be informed of the amount of the bill, the due date and where it is lying, so that the banker or agent holding the bill may be able to distinguish the one to be taken up.

Inland bills are as a rule *sola* bills, that is, one only is written, whereas foreign bills are very often drawn up in duplicate or triplicate and form what is called a set. If a bill is issued in a set of three, the payment of any one discharges the whole three.

The reason that the bills are drawn in triplicate is to ensure that at least one of the set will reach its destination, because each copy being sent by different mails it is extremely unlikely that all three will be lost in the post.

Accepted first with Messrs. J. Johnson & Co. It often

happens that the drawer sends the first of exchange direct to the drawee for acceptance, with the request to give it up on presentation to him of the second or third; also an indorser very often sends the "first" over to his agent for the latter to get the bill accepted and to deliver up on presentation of the "second"

CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA.

No. _____

Exchange for £50=11=6. BANGKOK, 5th May, 19 .

On Demand Pay this FIRST of
Exchange (Second being unpaid) to the
order of JOHN SMITH FIFTY
POUNDS ELEVEN SHILLINGS AND
SIXPENCE

Sterling Value received.

For the Chartered Bank of India, Australia
and China.

----- *Agent.*

----- *Accountant.*

To

The Chartered Bank of India,
Australia and China,
Hatton Court, Threadneedle Street,
London.

90,000.

(*Example 15.*)

or "third" of exchange, if in order. The other two of the set are negotiated further, and when the bills come

to hand no time is lost in procuring the acceptance of the bills.

Only one of a set of bills need be stamped, and that is usually the one to be negotiated.

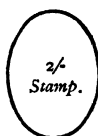
Often a foreign bill has stamped on its face the words "In need with," adding the name of a person or firm (Example 19).

BILLS OF EXCHANGE

INLAND BILL.

Due _____

£150. LONDON, 5th May, 19 .



THREE Months after date pay to
J. JONES or order the sum of ONE HUN
DRED AND FIFTY POUNDS _____
value received.

To Mr. J. SMITH,
29, Abbey Road,
Westminster, S.W. A. BROWN.

(Example 16.) As sent to J. Smith for acceptance.

Due 8th August

£150. LONDON, 5th May, 19 .



THREE Months after date pay to
J. JONES or order the sum of ONE HUN
DRED AND FIFTY POUNDS _____
value received.

To Mr. J. SMITH,
29, Abbey Road,
Westminster, S.W. A. BROWN.

As returned by J. Smith duly accepted

(Example 17.)

FOREIGN BILL.

£150. LONDON, 1st April, 19 .



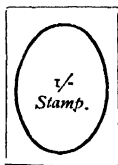
NINETY Days after sight pay this first of exchange (second being unpaid) to the order of J. BROWN & SONS the sum of ONE HUNDRED AND FIFTY POUNDS exchange as per indorsement, value received.

To A. YOUNG & Co.,
14, The Broadway,
New York.

JOHN SMITH.

(Example 18.)

£100. BERLIN, 1st May, 19 .



At EIGHT Days' sight pay this first of exchange (second of same date and tenor being unpaid) to the order of J. MARTEN the sum of ONE HUNDRED POUNDS value received.

To J. SMITH,
London.

A. HUTH & Co.

‘ In need with Messrs. J. Johnson & Co.’

(Example 19)

When these words are on the bill, the foreign banker or merchant is enabled to sell the bill to better advantage on account of the extra security. For should the acceptor refuse either acceptance or payment of the bill on its due date, the firm mentioned will, after the bill has been protested for non-acceptance or non-payment, as the case may be, intervene and take up the bill for the honour of their principal. If unpaid as

described, Messrs. J. Johnson & Co. accept the bill in this manner :—

Accepted *suprà* protest for the honour and account of
J. Marten,
J. Johnson & Co.

Payment for honour should not be made until after the bill has been presented to the drawee for payment and protested for non-payment.

If a holder of a bill refuses to receive payment *suprà* protest, he loses his right of recourse against any party who would have been discharged by such payment.

Bankers usually receipt bills they send out for collection, by stamping on the back the word “Received” and the name of the bank, thus :—

Rec^d.

London County Westminster & Parrs Bank, Ltd.

The object is to prevent further negotiation, as no one would take a bill which stated that the value of the bill had been received.

The words “exchange as per indorsement” will be seen in Example 18. The use of these words is peculiar to this country. English traders instead of drawing bills in the currency of the country where they are payable, draw them in pounds sterling, and make their drafts payable at a fixed rate of exchange to be indorsed in London. The indorsement with the rate of exchange is usually made by a London banker.

CHAPTER VII

PROMISSORY NOTES

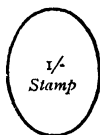
A PROMISSORY note is an unconditional promise in writing made by one person to another, signed by the

maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer (Section 83 of the Bills of Exchange Act). It is not essential for a promissory note to be in any particular form so long as it complies with the above definition (see Forms 20). The parties to a promissory note are the one who signs the note, thereby promising to pay, termed the maker, and the person to whom it is payable, called the payee.

PROMISSORY NOTES

Due 4th Aug.

£100. LONDON, 1st May, 19 .



THREE Months after date I promise to pay to A. ROBINSON & CO. or Order the sum of ONE HUNDRED POUNDS for value received.

At

The London & Northern Bank, Ltd.,
Westminster Branch.

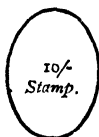
JOHN SMITH.



£200. LONDON, 1st May, 19 .

On demand I promise to pay to THE SCOTCH BANK, LTD., or order the sum of TWO HUNDRED POUNDS.

JOHN SMITH.



Due 6th June.

£1,000. LONDON, 3rd May, 19 .

ONE Month after date we jointly and severally promise to pay at The London & Northern Bank, Ltd., Westminster



Branch, to G. BROWN, Esq., the sum of
ONE THOUSAND POUNDS for value
received.

JOHN SMITH.

G. M. GREY.

(*Example 20.*)

As long ago as 1704 an Act was passed declaring a promissory note to be of the nature of a bill of exchange. Thus, a promissory note if to order is transferable by indorsement and delivery, if to bearer by delivery alone, and a holder for value can sue in his own name.

If a promissory note payable on demand duly indorsed is not presented for payment within a reasonable time, any previous indorsers are discharged. Sir M. Chalmers in his note to Section 86, sub-section 2, states that ten months may not be an unreasonable time, considering the nature of the instrument as a continuing security.

A continuing security is one which is intended to cover a loan or overdraft which is advanced from time to time instead of in one sum, *i.e.* a customer deposits securities with his banker as cover for any overdraft he may require. The securities are not deposited against any particular overdraft, but against any advances which may be made from time to time. Unless a guarantee given as cover for an overdraft is a continuing security, it will be discharged to the extent of each subsequent payment into the customer's account, although the banker has paid cheques drawn on him by the customer, keeping the latter still as much in his debt.

A document drawn payable to the order of the maker

is not a promissory note until it has been indorsed by him.

A promissory note stolen from the maker is invalid, for, like a bill of exchange, it does not bind the drawer until it is completed by delivery.

Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case presentment for payment is unnecessary in order to render the maker liable.

But presentment for payment is necessary in order to render an indorser of a note liable.

The provisions of the Act of 1882 relating to bills apply with modifications to promissory notes. The maker of a promissory note is deemed to correspond to the acceptor of a bill.

A promissory note purporting to be drawn and payable in the British Islands is an inland note. Any other note is a foreign note.

Where a foreign note is dishonoured, protest thereof is unnecessary; but for the purpose of charging a foreign maker or indorser in his own country, protest may perhaps still be necessary.

Where there are two or three makers of a promissory note, the note should be written, (a) We jointly promise to pay, etc. ; (b) We jointly and severally promise to pay, etc. In the first case the signatories are only liable collectively, in the second case the signatories are liable both separately and collectively, each signatory being liable for the whole amount of the note.

A promissory note commencing "I promise to pay," and signed by two or more persons is deemed to be their joint and several promissory note.

A promissory note is not invalid by reason that it

contains a pledge of a collateral security with an authority to dispose of it.

Bank notes are examples of promissory notes made by a banker payable on demand. A bank note may be re-issued, whereas an ordinary promissory note may not. Bank notes have been dealt with on pages 2-10.

Promissory notes other than bank notes must be made on paper already bearing an impressed stamp, as they cannot be stamped after completion.

In all cases they require *ad valorem* stamps, even if payable on demand, the amount of the stamp being the same as on bills of exchange.

CHAPTER VIII

THE PASS-BOOK

A PASS-BOOK is given to every customer who has a current account. In this book are recorded the many and varied transactions which arise between banker and customer, and the customer is expected to have his pass-book and examine the entries from time to time.

The reason for giving a customer a pass-book is that he may have a statement of his account when he requires it, and if he agrees the items and the position as represented by the book, then it should be binding on him, unless it is to the detriment of the banker. In other words, as it is the banker who writes up the pass-book, there is always the possibility of his making an error, whereas the customer is in the position of the one who checks the book, and it is very unlikely that both banker and customer will make the same mistake. If a customer on examining the paid cheques, which are placed in the pocket of the pass-book, finds one bearing a

forged signature and returns the book to the bank without drawing the banker's attention to the fact, he is precluded from going into the matter at a future date to the disadvantage of the banker. There are one or two cases where the bankers make it a rule to retain the cheques. Here the ticking of the entries is equivalent to examining the paid cheques.

The summing up of Mr. Justice Day and the finding of the jury in *Chatterton v. London and County Banking Co., Ltd.*, 1890, was much stronger than this in effect, for speaking in a case where the forgeries had not been discovered by the customer, and on the bank's contention that they should have been, he said: "The bank would be badly used if they were held to be liable; their liability having been brought about by the conduct of the plaintiff (*Chatterton*). There were twenty-five forged cheques. The plaintiff had his pass-book every week, yet he never discovered any of the alleged forged cheques which were in the pocket of his pass-book. The default was practically brought about by the plaintiff. The ticking of the items in the pass-book encouraged the banker to go on paying the cheques." It is much to be regretted by bankers that this view was not indorsed by the Court of Appeal.

The decisions in the American Courts are more in favour of the banker than are those of the English Courts. In the case of the *Leather Manufacturers' Bank v. Morgan*, 1885, the supreme Court of the United States held that the sending of the pass-book to be written up and returned with the vouchers is a request on the part of the customer to know what the bank makes the state of his account. Further, that the said return of the book and paid cheques also implies a request that the customer will examine the account and either sanction or repudiate it. But, in the English

Court of Appeal in *Chatterton v. London and County Banking Co., Ltd.*, Lord Esher said: "It was a hundred to one the pass-book was never looked at, and that you must not put a burden on people the law never placed on them; it was putting on them the burden of saying, Look through your pass-book." Lord Esher further said that the customer was not bound to look at the book, although he might send for it.

This state of things can, at all events, be partially overcome by sending, quarterly or half-yearly, a statement of the balance and a form for the customer to sign, acknowledging the correctness of the amount; as was done in the case of the *Kepitigalla Rubber Estates, Ltd., v. The National Bank of India, Ltd.* The judgment of Mr. Justice Bray in this case, reported in *The Times*, March 9, 1909, and in the April number of the *Journal of the Institute of Bankers*, will be found to be full of interest to bankers.

Should a banker credit a customer with a sum of money belonging to another, the banker is at liberty to debit the account of the customer with the amount, even if the entries have been made in the pass-book, providing the customer has not, on finding the amount to his credit, altered his position, that is, spent more than he otherwise would have done. Of course, if the error was rectified before the customer had his book, then his position could not possibly be altered for the worse, unless he had been advised by the bank that the amount had been placed to the credit of his account.

In a few banks the pass-book is headed:—

JOHN SMITH, Esquire

in account with

THE SOUTHERN BANKING COMPANY,

Dr.

Abbey Place, Westminster.

Cr.

In this case, cheques drawn by John Smith as they are paid by the bank are entered on the left hand or "debit side" of the pass-book, whilst the credits (payments in) are entered on the right hand or "credit side." Here the banker considers the account to be the account of John Smith. He therefore debits his customer with all the money or its equivalent that he pays on his behalf and credits him with all moneys paid into the account.

The reverse of this is the case in almost all banks, the pass-book being headed in the manner shown on the following page.

As this is a statement of the bank's position, given by the bank to its customer, all moneys paid into the account are placed to the debit side; the banker being debtor to his customer for the moneys he receives. All payments made by the bank on behalf of the customer are entered on the credit side of the pass-book, as the banker is credited with the money he pays away.

The debit side is always on the left-hand and the credit side on the right hand in all banking and commercial book-keeping. The difference between the pass-books of the two banks taken as examples is more apparent than real. In the first case the pass-book is the statement of John Smith's account with the bank. In it John Smith is debited with all he receives, that is, withdraws. In the second case the pass-book is a statement of the London and Northern Bank, Ltd., in account with John Smith. In this the bank debits itself with what it receives.

The former way is now dying out. It was more frequently used by the private and Colonial banks than by the joint stock banks, and as the private banks become absorbed, so their methods give place to those of the joint stock banks, as, for example, Messrs. Ashby & Co., of Staines, taken over by Barclay & Co., Ltd.

THE LONDON AND NORTHERN BANK, LTD.,

WESTMINSTER BRANCH,

in Account with

JOHN SMITH, Esq.

Cr.

Dr.

19 .	To amount brought forward	467	8	9	19 .	By amount brought forward	489	10	7
Dec. 18	Cash	24	10	0	Dec. 18	Robinson	28	16	2
" "	Bills discounted	50	0	0	" "	Discount	0	5	8
" 24	Cash	100	0	0	" "	Cheq. on Brown's Bk.	5	4	0
" 28	"	15	16	0	" "	unpd.			
" 30	"	5	4	0	" "	Int. on overdraft and commission on current $\frac{a}{c}$	1	1	0
" 31	Brown's R/C				" "	Balance	138	1	4
		662	18	9			662	18	9
1909.									
Jan. 1	To Balance	138	1	4					

Probably the first time the customer looks at the pass-book the only entry in it is the amount on the debit side with which he opened the account ; the one or two cheques the customer has given have not yet had sufficient time to be presented to and paid by the banker. It is only after the cheques have been paid that the entry is made on the credit side of the pass-book.

The entries on the debit and credit sides are occasionally added up and the balance is struck—that is, the smaller total is taken from the larger and the difference (balance) is written either in ink or in pencil by the side of the smaller total. Take the second kind of pass-book, the one generally used ; if the two sides of the book are totalled and the balance struck and carried forward periodically, the account is said to be in funds if the balance is on the debit side, the cheques drawn not having equalled the amounts paid in. On the other hand, if the drawings are heavier than the amounts paid in, and the balance is on the credit side of the book, then the account is overdrawn. Needless to say bankers do not, as a rule, allow overdrafts unless some previous arrangement has been made.

We have now seen that the amounts paid in by the customer go on the debit side, and the cheques drawn by him on the credit side of most bankers' pass-books. Any charges, interest on overdraft, or loan and commission on cheques or on current account if unremunerative, appear on the credit side, as also does a cheque returned unpaid, as shown in the example of the pass-book.

When a bill is discounted the amount of the bill in full is entered on the debit side and the discount on the credit side of the pass-book, as in the example. Should the bill be unpaid when presented at maturity and there is a sufficient balance, the account will be debited with

the amount of the bill (appearing on the credit side of the pass-book). If there is not sufficient money on the account, an account called "Past Due Bill $\frac{a}{c}$ " will be debited, thus preventing the current account being overdrawn, and the banker is enabled to proceed against the parties to the bill. It must be remembered that we are dealing with the pass-book and not the banker's "current account ledger," for, in that account, the debit of the pass-book is the credit of the ledger and vice versa. Bankers speak in terms of the ledger; the expression "Cheques credited as cash," which has been so much used in banking circles owing to the decisions in the Gordon case and the Crossed Cheques Act, 1906, refers solely to crediting the cheques as cash on receipt in the ledger and not in the pass-book.

A customer when he receives the pass-book should compare the paid cheques with the counterfoils of his cheque book, to see that they agree. Further, the customer should also ascertain that the amounts paid in, as evidenced by the counterfoils of the paying-in book, are in accord with the entries in the pass-book. The growing practice of paying-in on slips, with no record in the paying-in book, should be discouraged.

CHAPTER IX

THE COLLECTING BANKER

It has already been stated that the credit paid in by the customer can consist not only of notes and gold but also of bills, cheques, and drafts. These instruments of commerce necessitate two distinct actions, the one collection and the other payment. The banker who collects is termed the collecting banker, and the banker

who pays the paying banker. In some cases, of course, the collecting banker is also the paying banker, *e.g.*, when he collects cheques drawn on himself.

Whether the banker receives the proceeds for his customer or for himself has been the question before the courts on several occasions. The law used to be interpreted :—If he does not credit the customer with the amount of a crossed cheque until he receives payment from the banker upon whom the cheque is drawn, he receives the money for his customer, and is protected by Section 82 of the Bills of Exchange Act, 1882, from any liability for conversion.

Previously to the passing of the Crossed Cheques Act, 1906, the banker who credited his customer's account as soon as he received the cheque and before he obtained the proceeds became a "holder for value." As a holder for value the banker could not claim the protection of Section 82 of the Act, which says—"Where a banker in good faith, and without negligence, receives payment for a customer of a cheque crossed generally, or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment."

This was held to be so by the Court of Appeal in *ex parte* Richdale, 1882. When a customer pays a cheque to his bankers with the intention that the amount of it shall be at once placed to his credit, and the bankers carry the amount to his credit accordingly, they become immediately holders of the cheque for value, even though the customer's account is not overdrawn. This decision was confirmed by the Court of Appeal in the Royal Bank of Scotland *v.* Tottenham, 1894. Both Lord Esher and Lord Justice Kay, referring to this point, that is, crediting the account as cash,

stated that its effect was to make the banker a holder for value, as having been determined by the decision of the Court of Appeal in *ex parte* Richdale.

Unless it was a "not negotiable" crossed cheque, or bore a forged indorsement, the banker, having credited the cheque as cash, had all the rights of a holder in due course against prior parties; that is, he was able to sue each and every person whose name appeared on the cheque. But these rights were of no avail when forgery intervened, as already pointed out when dealing with crossed cheques on page 45, and as will be seen in the Gordon case which follows.

Now, by the Bills of Exchange (Crossed Cheques) Act, 1906, "A banker receives payment of a crossed cheque for a customer within the meaning of Section 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof." This Act was passed to overcome the difficulties raised by the decision of the House of Lords in the case of the Capital & Counties Bank, Ltd., *v.* Gordon and the London City & Midland Bank, Ltd., *v.* Gordon, 1903. The appeals were decided together, the real question being whether a banker crediting cheques as cash could claim the protection of Section 82.

In this case there was so much of importance to bankers that if the opinions expressed by the eminent law lords are quoted more fully than some may think necessary, seeing we have now the Act of 1906, it is because of the many salient points that were dealt with. A ledger clerk named Jones stole from his employer, James Gordon, a considerable number of cheques. In March, 1899, Gordon discovered that Jones had been opening letters addressed to Gordon & Munro, the name in which his employer traded, and abstracting

the contents. The value of the cheques stolen was stated to have been over £3,000, and of this amount 116 cheques representing £2,067 odd were traced to the London City & Midland Bank. These cheques were divided by the Court into eight classes.

1. Cheques payable to Gordon & Munro or order and not crossed when received by the bank.

2. One cheque payable to Gordon & Munro or bearer and not crossed when received by the bank.

3. Bankers' drafts payable to Gordon & Munro or order and not crossed when received by the bank, drawn by one of the country branches of the London City & Midland Bank on the Head Office.

4. Crossed cheques drawn on the London City & Midland Bank itself, payable to Gordon & Munro or order.

5. Crossed cheques marked "not negotiable" payable to Gordon & Munro or order.

6. Crossed cheques payable to Gordon & Munro or order.

7. Crossed cheques payable to Gordon & Munro or bearer.

8. Instruments drawn in favour of Gordon & Munro and crossed, payable only upon signature by the payees of a form of receipt at foot of the instrument.

All cheques, except those of class 4, were drawn on banks other than the London City & Midland Bank. Class 6 comprised by far the greatest number of cheques.

No question arose as to the bearer cheques (Classes 2 and 7), nor as to Class 4, cheques drawn on themselves.

Jones opened an account at the Sparkbrook branch of the London City & Midland Bank. In 1898 the account was closed, and a new one opened in the name of Jones, Blackhain & Co. The accounts were constantly overdrawn from November, 1897, although Jones had no agreement for an overdraft. Jones, after forging

the indorsements, paid the cheques into the account and voluntarily added his signature. Without waiting for the receipt of the proceeds, the bank at once placed the cheques to the credit of the account.

The facts were similar in the case of the Capital & Counties Bank, Ltd., in which thirty-two cheques were in question, amounting to £388 9s. 6d. These were drawn payable to Gordon & Munro or order and were drawn on banks other than the Capital & Counties Bank, Ltd. Jones opened an account, and, as in the case of the London City & Midland Bank, was at once credited with the amounts, and it was stated he could draw against them when he liked. The Court of Appeal held that both banks were liable. The banks appealed to the House of Lords, and Lord Macnaghten in the course of affirming the judgment of the Court of Appeal said: "It is not disputed now, as regards these cheques there can be no defence, unless protection is afforded by Section 82 of the Bills of Exchange Act of 1882. It is admitted that each bank acted in good faith and that Jones was a customer within the meaning of the section. The only question, therefore, is, did the bank receive payment of the cheque for their customer? If they did, it is obvious that they are relieved from any liability which, perhaps, might otherwise attach to some preliminary action on their part taken in view and anticipation of receiving payment. The protection conferred by Section 82 is conferred only on a banker who receives payment for a customer, that is, receives payment as a mere agent for collection. It follows that if bankers do more than act as such agents they are not within the protection of the section. It is well settled that if a banker before collection credits the customer with the face value of a cheque paid into his account, the banker becomes holder for value of the cheque."

In Lord Lindley's opinion: "If the cheque had been dishonoured, Jones would have become liable to reimburse the bank the amount advanced by it to him, when it placed the amount to his credit. It must never be forgotten that the moment a bank places money to its customer's credit the customer is entitled to draw upon it, unless something occurs to deprive him of the right. It appears to me that Section 82 would be deprived of all meaning if it were held to apply to cheques not crossed when they came to the hands of the bank seeking the protection of that section."

With regard to Class 3 (bankers' drafts) Lord Lindley says: "I agree with the Court of Appeal in thinking that the bank which is both drawer and drawee of these instruments is not entitled to treat them as bills of exchange as defined in Section 3 of the Act, although a holder may sue the bank upon them and treat them either as bills or as promissory notes by Section 5, subsection 2. An instrument on which no action can be brought by the drawer can hardly be a bill within Section 3 of the Act. Bankers are protected by Section 19 of the Stamp Act, 1853, when cashing drafts or orders on themselves and which are not bills or cheques as defined in the Act of 1882, in the same way as Section 60 protects them from cashing documents drawn on them and which are bills of exchange and cheques as defined in it."

Crossed instruments payable only upon signature by the payees of a form of receipt at the foot of the instrument and not drawn on the collecting bank, are not bills of exchange within the meaning of the Act, nor are they brought within it by Section 17 of the Revenue Act. Nor are they within Section 19 of the Stamp Act of 1853, which, as has been pointed out,

applies only to banks which are drawees. The bankers appealed except as regards Class 3.

The result of these actions was that bankers found themselves in a very awkward position, as nearly all dealt with cheques in the same manner ; that is, they credited the cheques as cash and thus lost the protection of Section 82. This condition of things remained, although three attempts were made to alter the law, until August 4, 1906, when the Bills of Exchange Act was amended.

Both the Acts of 1882 and 1906 state that the cheque must be collected for a customer—a single transaction does not make a man a customer. In the case of the *Great Western Railway Co. v. The London & County Bank*, it was held by the House of Lords that, where a man had not an account, a series of transactions did not make him a customer. A man may be a “ Deposit account customer ” or a “ Current account ” one, but in neither case would the first transaction constitute him a customer. As Justice Darling said in *Tate v. Wilts & Dorset Bank*, 1899, such a man was not a customer at the moment, but he was going to become one if that cheque was collected.

The Acts of 1882 and 1906 only apply to cheques already crossed when the banker receives them, and not to cheques crossed by the banker after receipt. Some bankers have a note on the credit slip that all cheques must be crossed before they are paid in. This is very necessary, and the receiving cashier should examine and hand any that are uncrossed back to the customer for him to cross. A banker collecting an open cheque for his customer cannot claim the protection of Section 82, although he crosses it before he presents it for payment.

The collecting banker when he collects a bill is not

protected by Statute as in the case of crossed cheques. In the event of forgery, under certain circumstances, he may have to account to the true owner for the amount of the bill.

The collecting banker must use diligence in presenting a bill or cheque for payment. If drawn on a bank in the same place, it should be presented for payment before the expiration of the day after receipt, and if unpaid it should be returned either by post that evening or by hand first thing the following morning.

Cheques on a banker in another place should be forwarded by post not later than the evening of the day after receipt, but in time to catch the last post to that place. If the cheques are posted to an agent, the agent also has until the morning of the day after receipt for presentation and return if unpaid. Presentation by a banker through the medium of the post is sufficient, but as the paying banker receives the cheque as agent for presentation to himself he can hold it until the day after receipt, and then return it if unpaid (*Bailey v. Bodenham*, 1864).

In the *Gordon* case, Lord Lindley mentions the right of bankers to debit a customer's account with a returned cheque, although it had been credited as cash (page 75).

If a banker does not properly present cheques received for collection, he is liable for damages should he dishonour his customer's cheque (*Forman v. Bank of England*, 1902).

There are various other instruments besides bills and cheques a banker receives for collection, viz.:—

Dividend Warrants and Interest Warrants.—These are used for the payment of dividends or interest (Example 21). If drawn so as to conform to the law regarding cheques they may be treated as such, and the crossed cheques section of the Bills of Exchange

Act will apply (Section 95). These warrants, as a rule, require to be signed by the payee. If there are several payees it is customary to accept the discharge of any one of them. As stated before, per procuration indorsements are not accepted on dividend warrants.

DIVIDEND WARRANT

L. Z. Div. 12.

45

00500.

1st May, 19..

Transvaal Government £3% Guaranteed Stock.

To the CASHIERS OF THE BANK OF ENGLAND.

Capital.	Half a year's Interest at £3 per cent., due 1 May, 19...	Less Property Tax at 6s. per £.	Net Dividend.
£200 0s 0d.	£3 0s. 0d.	18s.	£2 2s 0d.

Pay JOHN SMITH

or Bearer

100 BS. 900. TWO POUNDS SEVENTEEN
SHILLINGS.

Examined,

H. B. ORCHARD,

Chief Accountant.

The Person to whom this Warrant }
is payable must sign here } JOHN SMITH.

Warrants outstanding more than Six Months after date must be sent to the Bank of England for verification.

N.B.—Change of Address should be notified to the Chief Accountant immediately.

(Example 21.)

THE LONDON AND NORTHERN BANK, LIMITED,
NEWCASTLE BRANCH.

£1,000.

No.

1st May, 19 . .

On demand pay J. SMITH_____ or order
the sum of ONE THOUSAND POUNDS.

-----Value received.

A. PIERSON,

Manager.

Entered, J. GRAY

To London & Northern Bank, Limited,
Lombard Street, London, E.C.

(Example 22.)

Bankers' drafts.—A banker's draft, as Example 22 drawn by a branch on the Head Office, or on another branch of the collecting bank, payable to John Smith or order, is not a cheque within the meaning of the Bills of Exchange Act; the bank being both drawer and drawee, there is no protection for the collecting banker. But, as Lord Lindley said in the Gordon case (page 75), the banker is protected as paying banker by Section 19 of the Stamp Act, 1853.

Post Office Orders.—By the Post Office regulations, it is not necessary for post office orders to be signed when presented through a banker, provided the name of the banker presenting the order is written or stamped on it. Post office orders are "not negotiable" instruments according to the decision in the *Fine Art Society v. Union Bank, 1886*. In that case the plaintiff's

manager paid into his own account post office orders belonging to the Society. It was held that unsigned post office orders were not negotiable by delivery and that the bank was liable for conversion.

Postal Orders.—These are not negotiable instruments. They may be crossed generally or specially, and if presented for payment through a banker are paid without signature, as long as the banker's name is on them. A banker who collects a postal order which has been lost or stolen will have to refund the amount and debit his customer, if the loser has informed the Post Office of the loss.

Coupons.—The warrants which are attached to a bearer bond and which entitle the holder to the interest on that bond at a specified date are called coupons. Generally the amount of the interest and when and where payable are stated on each ; the exception being those payable only after advertisement. In this case the company or corporation, etc., issuing the coupon gives full particulars by advertisement in the *Times* and the financial papers.

Coupons should be sorted in numerical order and paid into the bank at least a week before the due date. They are then entered in the Coupon Book, listed on the forms supplied by the various companies, etc., and lodged for payment.

The company or banker, if the coupons are payable at a bank, usually gives a numbered ticket, stating the date on which the cheque in payment will be ready. The time taken before payment, usually three or four days, is to enable the company or banker paying them to see that they are in order.

A coupon due on a Sunday is not payable until the Monday.

CHAPTER X

BANKERS' CLEARING HOUSE

THE great number of cheques which is now used in facilitating the settlement of accounts in business necessitates some simple means of collection.

If a banker had to present the cheques over the counter at the respective offices of other banks, the collection would be a most arduous and costly duty.

In order to overcome these difficulties a clearing house has been established whereat the clerks from each bank which is a member meet daily to exchange, the one bank with another, the cheques drawn on them and to arrive at a settlement. By this means much transfer of notes and coin is avoided.

In the Clearing House one bank called A presents to the clerks of Banks B, C, D, E, the cheques drawn on those respective banks and which have been paid into it for collection.

Similarly Bank B presents to Banks A, C, D, and E the cheques drawn on these banks which it has received for collection.

At the end of the day each bank enters on a sheet the total value of the cheques received from and delivered to each of the others ; and should the total of the cheques received be greater than the total of the cheques delivered, the bank pays the difference into the Clearing House account at the Bank of England. Should the total of the cheques received be smaller than the total of those delivered, then by means of an order signed by the Clearing House authorities, the amount of the difference is transferred at the Bank of England from the Clearing House account to that of the bank named.

All the banks which are members of the Clearing House have accounts with the Bank of England. It

will follow that the Clearing House account at the Bank of England is only one of convenience of transfer, and on each day the amounts paid in to that account equal the amounts drawn out.

The banks which are not members of the Clearing House pay their charges either in cash or by cheque or draft on their account with a clearing banker.

Where a bank which is in the London Clearing House has more than one office, only those offices within a short distance of the Clearing House are cleared in what is called the Town Clearing, the others according to situation being cleared through the Metropolitan or Country Clearing.

Cheques on Metropolitan Branches of clearing banks and the cheques on a few West End bankers are now cleared through the Clearing House, the respective Head Offices or clearing agents receiving the cheques and settling them in account.

Also Clearing House bankers in London pay through the Country Clearing the cheques drawn on the country banks for which they act as agents; receiving the cheques through the Clearing House, forwarding them to their principals (the country banks), and after deduction of returns paying them to the forwarding banks.

The bankers who are members of the Clearing House are : Bank of England,¹ Bank of Liverpool and Martins, Coutts & Co., Glyn, Lloyds, London Provincial and South Western, London Joint Stock and Midland, London County, Westminster and Parr's, National, National Provincial and Union, Williams Deacon's, Barclay's.

¹ Drafts on the Bank of England, Threadneedle Street, must not be included in the clearing part of the remittance, because cheques on the Bank of England, Threadneedle Street, are not

There are also Clearing Houses at Birmingham, Bristol, Leeds, Leicester, Liverpool, Manchester, Newcastle, Nottingham, and Sheffield, at which cheques drawn upon the banks in the same town or within a short distance thereof, are dealt with.

CHAPTER XI

NOTICE OF DISHONOUR

IN the case of bills unpaid on presentation, the collecting banker must give notice of dishonour (see *Example 23*).

LONDON AND NORTHERN BANK, LIMITED,
WESTMINSTER BRANCH.

7 March, 1909.

We beg to inform you that a Bill for £100 drawn by J. SMITH on J. JONES & Co., due on the 6th inst., bearing your indorsement, has been duly presented for payment and returned unpaid with the answer "Refer to Acceptor."

Kindly reimburse us the amount of the bill, together with the expenses of noting, 1s. 6d.

We are, Dear Sir,

Yours faithfully,

A. BROWN,

Messrs. G. Winn & Co.

Manager.

(*Example 23.*)

By Section 49, sub-section 13, "Where a bill when dishonoured is in the hands of an agent, he may either paid through the Clearing House, but are sent direct to the Bank of England for the credit of the respective clearing bankers.

The Bank of England, however, sends the cheques which it receives drawn on other clearing bankers through the Clearing House for settlement.

himself give notice to the parties liable on the bill or he may give notice to his principal." It is the rule of the collecting banker to give notice to his principal with regard to both cheques and bills, it being as necessary to give notice of dishonour of a bill received for collection as for a bill which has been discounted. The return of the bill is equivalent to notice of dishonour. The customer is the principal and the collecting banker the agent for the customer.

It frequently happens with regard to bills and cheques that the customer's address is the only one known to the collecting banker. The unpaid bill or cheque should therefore be returned to him with a notice stating that it is unpaid and the reason thereof. The customer's account should be immediately debited, unless the account has not sufficient balance to stand it and the bank desires to retain the bill, in which case notice of dishonour will be given either in writing or by personal communication (Section 49, sub-section 5). In *Fielding v. Corry*, 1898, it was held that notice of dishonour sent through the medium of the post to the wrong branch of a bank and the mistake corrected by telegram was in order.

Notice of dishonour, if both the person giving and the person receiving it reside in the same place, must be given or sent off in time to reach the latter on the day after the dishonour of the bill.

When the parties reside in different places, the notice must be sent off not later than the day after the day of dishonour of the bill, if there is a convenient post on that day; or if there is no such post, then by the earliest one possible afterwards. If the notice miscarries in the post, the sender is deemed to have given due notice of dishonour (Section 49, sub-section 15).

If notice of dishonour is not given, the liability of the

drawer or any indorser is discharged; as is also that of any to whom it was not given in time.

In the case of a foreign bill it is necessary for the collecting banker to note and protest the bill for non-payment or non-acceptance. The legal object of this is to prove presentation. It is not legally necessary to note an inland bill.

A bill must be noted on the due date or on the next business day, and a bill so noted can be protested at any time.

The act of noting a bill is usually performed by a public notary. He records upon the face of the bill the fact that it has been duly presented for payment or for acceptance, as the case may be, and refused. A note of this is also made on a slip of paper, called a noting slip, and attached to the bill.

The protest is the formal document drawn up as a rule by the notary confirming the presentation and subsequent dishonour of the bill. It contains: The names of the parties on whose behalf and against whom the bill is protested; where it was protested; the date of the protest; a statement that payment or acceptance, as the case may be, has been demanded by the notary; the reason for the payment or acceptance being refused, or notification of the fact that no answer had been given, or that the drawer or acceptor could not be found; and the seal and signature of the notary.

If the stamp duty on the bill is 1s. or over, the stamp on the protest must be 1s.; if the duty on the bill is under 1s., then that on the protest must be for not less than the amount of the stamp duty on the bill. Postage stamps may be used on the protest.

In the event of there not being a public notary available, the protest may be made by any householder in the presence of two witnesses. The following form of

CHAPTER XII

THE PAYING BANKER

THE paying banker is the banker who pays the cheques drawn on, and the bills accepted payable with, him by his customer.

With regard to cheques, the banker is bound to honour his customer's cheques to the extent of his balance, provided the cheque is in order.

The banker is also bound to know his customer's signature. Should the signature of the drawer be forged, of course the cheque is valueless, or, as it is commonly said, it is not worth the paper it is written on, and the banker cannot charge his customer's account with the amount of the cheque, however clever the forgery may be, unless the conduct of the customer has been such as to preclude him from saying the signature is not his.

A banker is justified in refusing to honour a cheque which is post-dated, that is, one which bears a date later than the date of presentation. A banker paying a post-dated cheque incurs no penalty, but he cannot debit his customer's account until the date of the cheque. In the meantime payment of the cheque may be stopped or the customer may become bankrupt. Should a banker debit his customer's account with a post-dated cheque, and return for want of funds cheques which would otherwise have been paid, the banker is liable to his customer in damages.

Although a post-dated cheque is not a bill payable on demand, it does not require to be stamped as a bill, it having been held that it can be sued upon if it is stamped as a cheque, as, on or after the date it bears, it is correctly stamped (*Royal Bank of Scotland v Tottenham, 1894*).

A cheque dated Sunday is not invalid, but it cannot be paid until the Monday.

The paying banker is justified in refusing payment of a "stale cheque," that is, one which is out of date. Some banks will not pay cheques which have been outstanding for a longer period than six months, but most pay within twelve months after the date of the cheque. The liability of the drawer is not discharged until after the expiration of six years, unless he can prove he suffered loss by the delay of presentation, and then only to the extent of the loss. By Section 36, sub-section 3 of the Bills of Exchange Act, "A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time."

If the customer has been informed that the bank cannot pay against uncleared effects and he has paid in a number of cheques which are in course of collection, but not as yet credited to his account, then the banker is justified in returning any cheque drawn against them which may be presented for payment, marked "Effects not cleared," adding if he thinks fit, "present again on the — inst.," mentioning a date, by which time the cheques will have been cleared. By doing this the banker runs no risk of creating an overdraft should any of the cheques be returned unpaid, and further, the banker as collecting banker keeps within the protection of Section 82.

But it is evident from the judgment in the case of *Morgan v. Parr's Bank, Ltd.*, that if a banker who credits cheques paid in as cash, has been in the habit of even occasionally paying against uncleared effects, he must continue to do so and not return cheques marked "effects not cleared," whether

there is a note on the credit (as in specimen 3) or not.

To be protected, the banker must not under any circumstances pay against uncleared effects.

The banker marking and returning a cheque "effects not cleared," does not bind himself to pay the cheque when the effects are cleared, for, in the meantime, the drawer may stop payment of the cheque, or others may be presented and the balance drawn off before payment of this one is again demanded.

This does not apply to Scotch banking, as in Scotland the holder of the cheque or bill which is presented first has a lien on the balance in hand, if the cheque has been returned for want of funds.

If the amounts expressed in words and figures differ, the banker usually returns it with the answer, "Body and figures differ," but he may pay either the smaller amount or the amount in words, as the sum denoted by the words is the amount of the bill or cheque that is legally payable.

Having examined the cheque or bill and seen that the various requirements have been fulfilled, the paying cashier cancels the signature in a distinctive manner by placing his initials over the signature, making a mark through it, or in some way which denotes at once that the signature is cancelled and by whom it was done.

The method adopted by some cashiers of using a rubber stamp and stamping the initials over the drawer's signature lends itself to fraud, it being possible to take out the cancellation with chemicals.

Some bankers do not cancel the drawer's signature, as this makes it more difficult to verify in event of question, but cancel their own names.

If a cheque, when presented for payment, bears evidence of having been altered, it should be refused on the

grounds that the alteration requires the confirmation of the drawer. An alteration in a bill requires to be initialled by all the parties to the bill, although the paying banker will probably pay it at his customer's request. It is advisable to have such a request in writing as the customer may forget, and at a future time question it.

A cheque made payable originally to bearer and altered to order is paid without the alteration being initialled, but the cheque must be indorsed by the payee. On the other hand, an alteration from order to bearer must be initialled by the drawer. If, as is usual on cheques drawn by limited companies, there are two or three persons drawing the cheque, any alteration must be initialled or signed by each.

A banker must refuse to pay a cheque which is mutilated or torn in two and joined together again, as the drawer himself may have torn it, thereby intending to cancel it. The cheque is marked "mutilated" and returned.

This is not so with a bill which appears to have been cut for safety of transmission. If the bill has been mutilated in such a manner as to look like an intention to cancel it, then the acceptor should be referred to for information respecting it, and the bill marked to that effect, "Mutilated bill; will pay on acceptor's confirmation."

A bill which is drawn for a greater amount than the stamp will cover should be returned with the answer, "Insufficiently stamped."

Countermand of Payment.—A banker must not pay a stopped cheque, for by Section 75 of the Act of 1882, the duty and authority of a banker to pay a cheque drawn on him by his customer are determined by:—

1. Countermand of payment.

2. Notice of customer's death.

On receiving notice that a customer has committed an act of bankruptcy, the banker must stop paying the customer's cheques. It must be notice or knowledge of an act of bankruptcy. The remark that "I shall have to become bankrupt" is not sufficient. The death or bankruptcy of one member of a firm or partnership dissolves the partnership. The banker must not continue to pay the cheques on the firm's account if signed by the deceased or bankrupt. As a rule, the bonâ fide holder of a stopped cheque can recover from the drawer.

If a banker wrongfully dishonours a cheque, he is not liable to the holder but only to his customer. The holder can sue the drawer for the amount of the cheque and the customer can proceed against the bank for damages.

It occasionally happens that a banker accidentally cancels a cheque. In such a case the banker writes under the drawer's signature, "Cancelled in error," and signs the statement in his official capacity.

Prior to 1853, order cheques required to be stamped with the same stamp duty as bills of exchange, and a banker was required to know the signature of his customer's payee. In that year the stamp duty was reduced to a penny,¹ and because this was likely to bring order cheques largely into use, it was enacted by Section 19 of the Stamp Act of 1853, that any draft or order drawn upon a banker payable to order on demand, which shall purport to be indorsed by the person to whom it is payable, shall be a sufficient authority to the banker to pay the amount. The same protection is given to the banker by Section 60 of the Bills of Exchange Act of 1882, which says: "When a bill

¹ From 1st Sept., 1918, the duty is 2d.

payable to order on demand is drawn on a banker, and the banker, on whom it is drawn, pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority." This section is of the utmost importance to bankers for, when paying a cheque bearing a forged or unauthorised indorsement, the banker is protected if the indorsement appears to be that of the payee or indorsee. This section applies only to cheques and not to bills of exchange. In *Vagliano v. Bank of England*, 1891, it was stated that a banker is not bound to pay bills which a customer accepts payable at his bankers. But, as a matter of fact, bankers pay bills accepted with them, as long as there are sufficient funds to the customer's credit.

The customer's acceptance itself is an authority to the banker to pay the bill. In some cases an arrangement is come to between banker and customer that all bills accepted payable with the banker should be advised.

Although a banker is not legally bound to honour his customer's acceptances, as he is his cheques, it is such an established practice now to do so, that, without specially informing a customer on opening the account that he must not accept bills payable at the bank, it would be dangerous for a banker to return one unpaid for no other reason.

A banker must not under any circumstances pay a bill before the due date, unless on the authority of the acceptor.

It was stated under the chapter on collecting banker, that a banker collecting a bill has no statutory protection in the case of the forgery of an indorsement, neither

has the paying banker. Section 60 of the Act only refers to a bill payable on demand drawn on a banker, and that is the definition of a cheque, as given by Section 73. And Section 80 only protects the banker paying a crossed cheque in good faith and without negligence.

By Section 24, "Where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, *the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor against any party thereto can be acquired* through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority." Therefore, the possessor of a bill has no right to retain it if it bears a forged signature. If the bill is stolen and the thief forges the indorsement on the bill and passes it on for value, the receiver cannot retain it, or sue on it, or give a discharge for it. He has parted with his goods or money on a worthless instrument, as far as he is concerned. If the possessor manages to obtain payment of the bill, the true owner can compel the one who has paid it to give it up. Thus, if the banker has paid the bill, he has to give it up and credit the acceptor's account; the acceptor being still liable on the bill, as it has not been discharged. The banker must endeavour to recover the money from the person he paid, usually a very difficult proceeding, as, if that person has changed his position since payment, he is not liable to the paying banker.

A banker has no means of finding out if an indorsement on a bill is forged or not; so he certainly is not in any better position regarding his ability to ascertain the genuineness of an indorsement than he is in the

case of a cheque, and yet in this latter case the paying banker is protected.

Recovery of money paid.—If a banker, under the belief that a signature is genuine, but which proves to be a forgery, pays a bill he cannot recover the money if the person he paid took it in good faith and the banker has not noticed the mistake until after the position of the person has altered. But where the banker pays the forger or a person who knew the signature to be forged, he can recover if he can discover the person to whom he made payment.

CHAPTER XIII

BANKER AND CUSTOMER

THE relation existing between banker and customer is that of debtor and creditor, the position being determined by the state of the account. If the account is in funds, then the customer is the creditor; if it is overdrawn, then the position is reversed, the customer being the debtor (*Clarke v. London & County Banking Co., Ltd.*, 1897).

By Section 2 of the Bills of Exchange Act, “*banker*” includes a body of persons, whether incorporated or not, who carry on the business of banking. The modern banker, however, is one who receives cash or its equivalent in the form of cheques, notes, bills and instruments of credit from and on behalf of his customer and which he repays by honouring the cheques, bills, etc., drawn on him by that customer.

A banker is bound to honour the drafts of his customer to the extent of the customer’s balance, unless the banker knows that the customer is about to commit a

breach of trust, and that by honouring the cheque the banker would become a party to the act.

A banker is in no way a trustee for the money deposited by the customer. For, if this were so, a banker might have to account for the profits made, whilst the customer could repudiate the losses. The banker in this respect is under no obligation to the customer even to employ the money in a cautious manner.

There is no definition of the term "*customer*" in the Bills of Exchange Act, but it has been decided in the *Great Western Railway Co. v. London & County Banking Co., Ltd.*, that to constitute a person a customer there must be an account. A single transaction will not make him one, nor will a series of dealings, unless the person has either a current or a deposit account.

A person does not cease to be a customer by reason of his account being overdrawn (*Clarke v. London & County Banking Co., Ltd.*, 1897).

Having opened a current account a banker cannot close it without due notice to the customer of his intention; further, the banker must make some provision for outstanding cheques, otherwise he may become involved in an action for damages (*Buckingham v. London & Midland Bank*, 1895).

A customer for convenience may open more than one account, but the banker may combine them if it is to his advantage to do so, unless there is an agreement to keep them distinct. This also applies to accounts kept at different branches of the same bank. In the case of *Garnett v. Mackewan*, 1872, Garnett kept an account at the Leighton Buzzard branch of the London & County Bank and also one at the Buckingham branch. Being overdrawn at the latter almost to the extent of his credit balance at the former, the bank transferred the overdrawn account of the Buckingham branch to the Leighton

Buzzard branch. Before the account was transferred, and in ignorance of the bank's action, Garnett drew cheques on the Leighton Buzzard branch which were dishonoured, the bank having annexed the balance.

The customer brought an action against the bank, but failing to show an agreement to keep the accounts separate, the Court held that the bank had simply acted within its rights.

Where a customer accepts bills payable at his banker and the customer pays in money with the stated object of meeting them, such money is considered to be appropriated to the payment of the bills.

A period of six years having elapsed since the last acknowledgment or transaction on an account, the balance becomes the property of the banker and is said to be Statute barred. On the other hand, if a banker allows an overdrawn account to remain unquestioned for the same length of time, it also becomes barred by the Statute of Limitations and he cannot recover it. As a matter of fact, bankers do not insist on their legal rights under the Statute in the event of a claimant making good his claim.

Whatever may be the position of a customer's account, a banker must not disclose it except on proper occasion. Although the banker does so only to benefit the customer, it does not necessarily justify the disclosure.

If a holder presents a cheque for a larger amount than is to the customer's credit, the banker must not inform the holder the amount of the deficiency ; otherwise the holder may pay in the difference and obtain the whole of the balance. Further, in the case of the bankruptcy of the customer, such payment would be deemed to be prejudicial to the other creditors of the customer.

It is questionable whether a banker may give

information respecting the position of a customer to a Trade Protection Society, for, as far as the banker knows, to answer truthfully may be against the customer. If the customer happened to be in a better position than the banker was aware of, and, owing to the reply, the tradesman refused to deliver the goods, then the customer would no doubt endeavour to obtain damages against the bank.

The drawing a cheque or accepting a bill, when there are not sufficient funds to meet it, is an implied request for an overdraft. In the absence of any agreement it is entirely at the banker's discretion whether he allows one or not.

A banker has no legal right to charge interest on an overdraft, unless the customer has acquiesced in the charge; but there is no doubt the claim would hold as a custom of bankers.

A current account in funds is a debt owing to the customer, and as such it is divisible among his creditors. Thus, the customer's balance from the time of the act of bankruptcy belongs to the trustee. By Section 48 of the Bankruptcy Act of 1914, a banker can be compelled to pay any balance over to the trustee. A trustee is the person to whom the bankrupt's estate is entrusted on behalf of the creditors. A trustee cannot claim payments made by the banker after the act, but before notice of bankruptcy; but notice in the *Gazette* of a receiving order having been made is notice to the world. A banker is entitled to settle any claim he may have before paying over the money to the trustee.

It was held in *Bowen v. Foreign & Colonial Gas Co.*, 1874, that a banker cannot hold the balance of a current account against discounted bills not yet due. Sir John Paget says this is possibly different where the customer becomes bankrupt. If an indorser on a maturing bill

becomes bankrupt, the indorser being liable, it is a provable debt, but the holder need not value his security, except for voting purposes.

The property of a bankrupt divisible among the creditors includes all property which may be acquired by or devolve upon the bankrupt prior to his discharge. But until the trustee intervenes all transactions by a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* in respect of after acquired property are valid against the trustee (*Cohen v. Mitchell*, 1890).

Accounts with undischarged bankrupts should not be encouraged. The trustee is entitled at any moment to claim any credit balance, but until the trustee intervenes the banker is bound to honour the cheques drawn by the bankrupt (*Szik v. Lloyds Bank, Ltd.*, 1908).

Should the balance of a customer be claimed by two different parties, then the banker must interplead. This is a technical term for a banker's action when he brings both claimants before the Court and requests the Court to decide which is to have the balance.

Countermand of payment should be in writing, signed by the customer or an accredited agent. A countermand by telegram is not sufficient authority for the banker to return the cheque marked "Payment stopped." It would be better to mark the cheque, "Payment stopped by telegram. Awaiting drawer's further instructions. Kindly re-present."

One executor, trustee, or partner has power to countermand payment. The removal of the countermand also requires the customer's authority. A banker usually speaks of a cheque, payment of which has been countermanded, as a "stopped cheque"; a countermand he terms a "stop."

A banker paying a stopped cheque is liable to his customer for the amount.

A paid cheque is the property of the drawer, but the

banker has a right to retain it until the customer has agreed the account.

Paid cheques are retained by some bankers, and in such cases they would have, by order of the Court, to be produced in the event of their being required as evidence.

CHAPTER XIV

AGENTS, TRUSTEES, ETC.

AN agent is one who acts on behalf of a principal ; any act of the agent must be within the authority given to be binding on his principal. Therefore it behoves any one dealing with an agent to see that he is acting within the limits of his authority. On the other hand, it may happen that the agent being financially a stronger man than the principal, the intention is to bind the agent. Then it must be seen that the agent acts for himself personally and in no way for the principal.

As an agent, he must sign in such a way as to denote that he signs for his principal and not in his private capacity. This is accomplished by placing the prefix "Per pro.," or "for," or the words "on behalf of" before the name of the principal and signing his own name immediately afterwards, stating his designation. This form of signature indicates that the agent has but limited authority. He has no power to delegate his authority to another acting on his behalf. This kind of signature is elaborately dealt with in the case of *Morison v. London County and Westminster Bank, 1914.*

An agent is usually appointed under either a letter of authority or a power of attorney, which expresses that the authority is intended to cover certain acts or certain acts to be performed under stated conditions, or it may be a general power of attorney conveying

authority to act in every case as fully as if the principal was acting himself. A power of attorney of this description requires to be stamped with a 10s. stamp.

An agent acting under a power of attorney may sign simply his principal's name, "A. Brown," or "A. Brown, by his attorney, J. Robinson." An agent acting without a power of attorney, but under a letter of authority, may be authorised to sign his principal's name; this is more frequently done when acting on behalf of a firm, then J. Robinson signs "A. Brown & Co."

If the power of attorney does not restrict the authority of the agent, and the principal hands title deeds to the agent, verbally instructing him to procure a sum of money on them, and the agent obtains on the security of the deeds an advance in excess of the amount mentioned by the principal and misappropriates the difference, then the principal must bear the loss; the owner being precluded from disputing the title of any person lending money on the deeds (*Brocklesby v. Temperance Building Society*, 1895).

All persons having business relations with the principal should examine the power of attorney, for, where the power was granted during the absence of the principal, a charge fraudulently given by his attorney after his return was held to be invalid.

A contract of a minor is not binding on him legally, but as an agent he can bind his principal.

The authority of an agent continues until it is revoked by the principal or by his death, bankruptcy, or lunacy.

An executor is the person appointed by the deceased to execute his will; as a rule an executor cannot act before probate has been obtained, and until it has been exhibited the balance of a deceased customer's account cannot be transferred to that of the executor.

It is usual to allow executors a loan or overdraft, if required, on production of the will and an introduction from a firm of solicitors, to enable them to take out probate and exhibit it for record in the banker's books. It is doubtful whether the banker has any lien on the late customer's balance, so the amount is lent on the understanding that the executors are personally liable for the amount of the loan granted.

A banker is not liable for making a *bonâ fide* payment after production of probate, although it is afterwards revoked.

Executors have no powers to borrow money so as to bind the estate generally, but they can deposit any particular asset as security for an advance for the purpose of administering the estate, as after probate money is sometimes required until the property is realised.

On production of the probate or the letters of administration (if the customer died without leaving a will), the banker records in the current account ledger at the foot of the customer's account the fact that probate has been exhibited and the date, also the date the customer died, the names of the executors and the solicitors who extracted the will; thus:—

I hereby certify that probate of the will of the above, the late John Talbot, who died on April 5, 1909, and whose executors are A. B. and C. D., has been exhibited to me this day.

E. F.,
Manager.

Extracted by H— J—, Solicitor,
Chancery Lane, W.C.

Specimen signatures of the executors are taken as soon as the executors open an account, although probate of the will of the deceased may not as yet have been taken out.

It is not part of the banker's duty to see the document is properly stamped on production of probate.

If executors open an account it must be stated whether all are to sign or any one of them. If it is not stated, then the signature of one is a sufficient discharge, as one executor can bind the estate and act for himself and co-executor. As a matter of practice, if no instructions are given all are required to sign.

Executors are personally liable on any contracts they make whilst winding up the estate. Should one executor die, the survivor is entitled to act alone. When there is only one executor, then his executor can act unless there are other instructions in the will. If the executors intend to act they must prove the will within six months after the death of the testator, or they are liable to a penalty of £50.

An administrator takes out letters of administration and administers the estate of a person who dies without leaving a will. As a rule the Courts grant letters of administration to the next of kin, if eligible.

Much of what has been said about executors applies to the administration of an estate by the administrator. If a sole administrator dies whilst acting in that capacity, fresh letters of administration must be taken out, as the executors of a deceased administrator are not allowed to act simply because they happen to be his executors.

Trustees.—Bankers do not like opening trustee accounts as such ; they prefer opening them as ordinary joint accounts. When a banker becomes aware that he is dealing with trustees he must have the signatures of all for each and every transaction. It is not advisable

for a banker to accept the signature of one trustee even when that one is authorised by all the other trustees to act on their behalf, and the banker receives like instructions. This was recognised in *Flower v. Metropolitan Board of Works*, 1884.

If the banker makes a rule of this, it is not incumbent on him to show that all moneys are spent only for the benefit of the trust. Without the banker has knowledge of an intended misappropriation, he need not be uneasy about the account. A banker is not liable to refund trust money paid into the private account of a trustee unless he knew it to be a misapplication, or unless it is transferred from the trust account at the request and for the *benefit* of the banker.

Joint Accounts.—When opening a joint account it should be stated whether all parties are to sign or whether the signature of any one of them is to be sufficient ; also in the event of the death of one of them whether the account is to be for the benefit of the survivor or survivors.

Although legally a survivor has the right to the balance, it often saves much future trouble if such is made clear when the account is opened. The executors of a joint depositor may request the banker to withhold payment to the survivor until sanctioned by them. If so, it may be advisable to do so until authority has been received from all parties to pay away the funds. The survivor is required to supply proof of death. This is done by producing the death or burial certificate. This having been produced, he may either continue the account as it is, or draw the balance and open another account in his own name.

Although it may have been arranged on opening the account that any one of the joint depositors should

sign, this authority may be cancelled by any one of them. Also, if a sum of money is paid into a joint account, the banker is not discharged by payment to one party to the account, without the sanction of the others. Where property has to be sold, the proceeds must be handed to all parties or authority given for one of them to receive it.

Partnership Accounts.—By Section 5 of the Partnership Act, 1890, “Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership ; and the acts of every partner, who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.”

The act of any partner in the ordinary course of business binds the firm so long as it was not known that the partner was acting beyond his powers.

The banker is not bound to know the conditions of a partnership, so a person having once stated that he is a partner cannot clear himself of the firm's liabilities until written notice has been given to each creditor, the banker being included if the account is overdrawn. The creditor looks to all partners to the full extent of their means for payment of debts contracted by the firm in the ordinary course of trading.

Even if the deed of partnership forbids it, a partner of a trading firm accepting bills in the name of the partnership and in the ordinary course of business binds the firm when dealing with a person unaware of such a clause.

If a banker is instructed to honour cheques and bills on only certain signatures, he must not go beyond those instructions, and, further, he will incur no liability by refusing to do so. Section 7 of the Partnership Act reads : " Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless he is in fact specially authorised by the other partners." A partner may borrow, sell, pledge, and accept contracts in the usual course of business in the absence of an agreement to the contrary. The death of one of the partners dissolves the partnership, although the surviving partners have power to bind the firm, and continue business as far as is necessary to wind up its affairs. The bankruptcy of a partner dissolves the partnership in precisely the same manner, and the bankrupt has no power to bind the firm afterwards. When a partner retires from the partnership, if a banker desires to retain a lien on that partner's estate, he should stop all transactions on the firm's account and request the remaining partners to open a new account. On the retirement of a partner, the amount of capital to be withdrawn should be ascertained, and how and when it is to be paid. If a new partner enters the firm, the banker should obtain a declaration from the partners that they accept the liabilities of the old firm, or they are not responsible. The banker should get them individually to sign the transfer of the old account to the new firm ; there should also be an authority to charge dishonoured bills and outstanding charges to the new account.

Companies' Accounts.—Before opening the account of a limited company, the articles of association should be examined. In the articles will be found the power

of the company to borrow, draw bills of exchange, over-draw, etc. These powers should be embodied in a resolution, and, when passed by the directors, a copy signed by the chairman of the meeting, countersigned by the secretary, and, if necessary, sealed with the seal of the company, should be sent to the banker as an authority to open the account.

Should the company require an advance either by way of loan, overdraft, or discount, the banker must make sure that such an advance is within the powers of the company as authorised in the articles. If it is stated that borrowing is prohibited, then on no account must the banker advance to the company on guarantee, deposit of title deeds, or on any sort of security belonging to the company, for the act would be *ultra vires*, and the banker might have to give up his security without repayment of the advance. When an advance is required under such circumstances the banker advances to the directors personally on their own private securities.

When opening a current account in the name of a public company registered under the Companies (Consolidation) Act, 1908, the following instruments are required :—

- (a) Certificate of incorporation.
- (b) Certificate entitling the company to commence business.
- (c) Copy of Memorandum and Articles of Association, certified by the solicitor as a “true copy.”
- (d) An official copy of the resolution passed by the Board of Directors appointing the banker and authorising the directors and the secretary to sign on behalf of the company and stating the exact mode in which they are to sign, such copy of the resolution to be signed

by the chairman of the meeting and certified a "true copy" by the secretary.

(e) A list of and specimens of the signatures of the directors and the secretary.

(f) If the Directors are not appointed by the Articles of Association, the original instrument showing their appointment by the subscribers.

A banker should read through the articles and see what are the regulations relating to the drawing and indorsing of cheques and the drawing and accepting of bills. He should ascertain the number of directors required to sign; usually cheques and bills have to be signed by two directors and countersigned by the secretary.

The power to draw and accept bills appertains to trading companies and to those which have the necessary authority conferred by the Articles or Memorandum of Association. A limited company may also mortgage or charge its property, real or personal, its book debts, or even its uncalled capital, if authorised to do so by its Articles or Memorandum of Association, but most charges, as specified in the Companies' Acts, must be registered within twenty-one days from their creation. In default of registration, these charges shall be void against the liquidator and any creditor of the company. If the company omits to register an issue of debentures, it may cancel the issue and issue a fresh series.

A company sometimes borrows on what is known as a "floating charge." This is a charge upon the assets *for the time being* of a company, which leaves the company free to deal with such assets until the charge is rendered effective by being "fixed," either by the appointment of a receiver or in some other agreed manner.

CHAPTER XV

GARNISHEE ORDER

A GARNISHEE order acts as a countermand of the payment of cheques and bills to the banker. A creditor, having obtained a judgment order against his debtor, may, on discovering some one indebted to the latter, obtain a garnishee order requiring that person to pay the amount of the debt into Court. Thus, if A owes B £50 and B, after obtaining judgment against A, hears that A has a current account at a banker C, say of £100, he can ask the Court for a garnishee order instructing C to pay the amount and the expenses into Court. The judgment creditor B having obtained the order, serves it on "the garnishee," C, and the balance of the current account of A is attached.

The banker (the garnishee) informs his customer of the service of the order, debits the customer's account, and pays the money into Court.

If the banker has a lien on any portion of the balance it should be mentioned to the judge, and would most probably prevail against the order.

A garnishee order binds the whole balance on the account; and if the depositor has money on deposit and has given notice of withdrawal, that also is attached. According to the decision of the House of Lords in *Rogers v. Whiteley*, 1892, a banker receiving a garnishee order on a current account is within his rights in dishonouring every cheque presented, but in practice the banker honours cheques to within a reasonable margin of the amount claimed.

If, however, the amount claimed is more than the balance with the banker, then the garnishee order attaches the balance, the whole of which must be paid

into Court, the payment into Court acting as a valid discharge to the banker.

Some bankers open new accounts to receive the amounts paid in, whilst others permit overdrafts until the case is settled by the Court.

CHAPTER XVI

BANK POST BILLS AND DEPOSIT RECEIPTS

Bank Post Bills.—A bank post bill is a bill of exchange, issued by a licensed banker for amounts over £5, drawn and accepted by a bank payable usually seven or sixty days after sight, but a bank post bill may be drawn for any number of days after date or sight.

Bank post bills issued in Ireland take days of grace, but those issued by the Bank of England do not (see Example 25).

BANK POST BILL

LONDON,
1st May, 19

No. 9.

SEVEN Days after sight I promise to pay this my sole Bill of Exchange to _____ or Order

ONE HUNDRED POUNDS Sterling

For the Governor and Company of the
Bank of England,

X. Y.

(Example 25.)

DEPOSIT RECEIPT

Not transferable.

£

Interest £

DEPOSIT RECEIPT. No. 111.

THE LONDON & NORTHERN BANK, LTD.,
WESTMINSTER BRANCH.

LONDON _____ 19____

RECEIVED from _____ the sum of
_____ to be accounted for at our

Office here.

For the London & Northern Bank, Ltd.,

A. BROWN,

Entd. _____

Manager.

*(Example 26.)**BACK OF DEPOSIT RECEIPT*Received from THE LONDON AND NORTHERN
BANK, LTD., the sum of _____
being the sum within mentioned, with Interest thereon
to this date.

Principal £ : :

Interest £ : :

Total £ _____

Signed _____*Date* _____Twopenny
Stampto be affixed
here.*(Example 27.)**Deposit Receipts.*—A deposit receipt (Example 26) is
a receipt for money deposited with a banker, repayable
at an agreed time. There are three kinds of deposit

receipts—(a) repayable at call or on demand ; (b) on specified notice ; (c) for a fixed period.

Where the deposit is repayable at call or on notice, notice should be given, and, if required to supplement a current account balance, a request to that effect should be made ; if not, then, of course, the deposit is payable in cash to the payee, a specimen of whose signature should be taken in the Depositors' Signature Book, if not already known to the banker.

Where the deposit is repayable at a fixed time, it will be repaid at the expiration of that time, unless it is renewed by the depositor. In any case the deposit receipt must be returned to the bank either for payment or renewal. It is customary for the words " not transferable " to be found in a prominent position on the face of a deposit receipt.

If a customer, having both a current and a deposit account, has a cheque presented which would overdraw the current account, the banker usually pays it and looks to his lien on the deposit account as security for the overdraft. As a rule bankers do not accept amounts of less than £10 on deposit.

If a deposit receipt is lost, a banker cannot refuse payment of the money to the depositor, but he is entitled to be indemnified against any loss or expenses which may be incurred therewith.

A deposit receipt issued in joint names is payable, in the event of the death of one of the parties, to the survivor on the production of the death certificate or on other proof of death.

By the Stamp Act, 1891, deposit receipts are exempt from stamp duty ; but if there be a form of receipt on the back it must be stamped when signed by the depositor (see Form).

The custom of giving the depositor a pass-book,

something after the style of the Post Office Savings Bank, instead of a deposit receipt is slowly growing. This has many advantages, as it does not necessitate the making out of a new receipt on every alteration of the amount.

Donatio Mortis Causâ.—A signed deposit receipt given before the death of the payee has been held to be a good subject of a *donatio mortis causâ*, i.e. a gift conditional on the death of the donor.

CHAPTER XVII

CIRCULAR NOTES AND LETTERS OF CREDIT

Circular Notes.—A circular note is a form of letter of credit bearing the signature of the issuer requesting his agents and correspondents to cash the notes if presented to them for payment.

The names of the agents and correspondents are contained in the letter of indication, upon which the person to whom the notes are issued signs his name for the purpose of comparison with the signature he writes on the notes at the correspondent's office when cashing them. Care should be taken to keep the letter of indication and the circular notes apart for fear they should be stolen and the notes cashed by the thief.

These notes are usually for sums of £10 each, and are issued for the convenience of customers travelling abroad. They were invariably written in French, that being the official language and known to commercial men nearly all over the Continent of Europe.

If the circular notes are not all used, the banker issuing them, on the return of the notes, credits the customer's account with the amount.

No. 41.

LONDON,

Amount £100.

1st February, 19 .

Signature, JOHN SMITH.
Witness, A. B.

GENTLEMEN,—

This letter of credit will be presented to you by MR. JOHN SMITH, and we request and hereby authorise you to pay any sum or sums not exceeding in all ONE HUNDRED POUNDS.

We shall be obliged if you will indorse hereon any amounts you may pay to him, and draw on us at sight, which we hereby agree to accept.

This credit to be in force until the 1st August, 19

We remain, Gentlemen,

Your obedient Servants,

A. B., Manager.

C. D., Secretary.

Overleaf is:—

Date.	By Whom Paid.	Amount.	Say.
19 Feb. 28	Gerand & C ^{ie} .	£10	Ten pounds.

(Example 28.)

A *letter of credit* (Example 28) is a document given by a banker ordinarily to his customer, authorising his agents and correspondents abroad to pay any sum or

sums of money not exceeding in all the amount expressed in the letter. The customer signs the letter and the signature is witnessed by the banker. The letter also contains the names and addresses of the banker's agents.

On arriving at a town the customer calls on the agent, produces his letter and states the amount he requires; he is then handed a draft to fill up, the signature on which is compared with that on the letter of credit. If the agent is satisfied, he honours the draft and indorses the amount he pays on the back of the letter.

Letters of credit, unlike circular notes, are only available for a given time, as, within the next three months or within the next six months, and it behoves the agent to see that the period for which they are issued has not expired. Letters of credit and circular notes have this point of distinction, namely, that in cashing circular notes the amount that can be obtained is fixed at an even amount, whereas by means of a letter of credit any sum can be obtained up to the amount required to complete the letter.

CHAPTER XVIII

BANKER AS BAILEE OF VALUABLES

FOR many years past it has been the practice for customers to deposit with their bankers deed boxes, jewel cases, plate chests, etc., to be placed in the strong room for safe custody.

When the banker takes charge of the box to oblige his customer he becomes what is known as a gratuitous bailee.

If the banker makes a charge for looking after boxes, then he becomes a bailee for reward, and as such it is necessary for him to take every possible precaution.

A gratuitous bailee must take the same care as a careful person would, were they his own boxes. The difference between the two bailees is, that in the case of the gratuitous one, the banker is bound to use the best means at his disposal, whereas the bailee for reward must provide himself with the best means of protection known.

If the banker looks after his customer's valuables to the best of his ability, he is not responsible in the event of the goods being lost or stolen, etc., unless he has been guilty of negligence.

The banker must return the valuables when demanded by the customer. If he cannot do so, having given them up to another person, whether in mistake or on a forged order, the banker may be held liable for the wrongful conversion of the valuables. This was attempted in the case of *Langtry v. Union Bank of London*, but it was settled by the bank paying the sum of £10,000 to the plaintiff for having wrongfully delivered her jewel box to a person on a forged order.

Should a banker have any suspicions as to the genuineness of an order to deliver up valuables, he should retain the goods until he receives confirmation, or he may himself send them to the customer.

If a box is deposited in joint names, then the authority of all is required before it can be given up, unless agreed, when the box is deposited, that any one of them can authorise its delivery.

Securities for advances.—Banker's lien.—A banker's lien is the right of the banker to retain possession of any securities, etc., placed in his hands in the ordinary course of business, until a claim is satisfied. The right to retain the hypothecated documents against which an advance was made is called a *particular* lien. A *general* lien is the right to hold securities against the

customer's general indebtedness. But when securities are deposited against a particular advance they cannot be held as cover for other advances, as a particular lien excludes the general lien (*Cuthbert v. Robarts*, 1909).

This lien of the banker applies to all negotiable securities, bills of exchange received for collection, deposit receipts, etc. A banker's lien on negotiable securities includes a right to realise and to repay himself from the proceeds. Thus a banker's lien is a much stronger one than the ordinary lien, simply to retain, and which does not confer the right of sale.

A general lien also extends to notes, coupons, foreign bonds, etc., proceeds of which are to be placed to the customer's account.

Others beside bankers are recognised as being capable of possessing a lien on various securities, as brokers, carriers, solicitors, wharfingers, etc. This general lien is part of the law merchant and has been legally recognised as such.

The rule applies in all cases unless the customer can prove an agreement to the contrary, or that the special dealing was inconsistent with the existence of a lien, as in the case of a banker having discounted bills for a customer endeavouring to hold the current account balance against the bills during their currency.

It has been held that in the case of exchequer bills, handed to a banker for the purpose of being placed in a tin box belonging to the customer, there could be no lien. In the case of *Brandao v. Barnett*, a customer kept his tin boxes, of which he held the keys, with his banker. On December 1, 1836, he took out from the boxes several exchequer bills and handed them to the banker for him to receive the interest and exchange the bills for new ones. The banker did as requested. But, before the customer called for the new bills,

acceptances of his, amounting to more than his current account balance, were presented and paid. The customer became bankrupt, and it was held that the banker had not a lien on the exchequer bills still in his possession to cover the overdraft. Lord Campbell said : " I think the transaction is very much like the deposit of plate in locked chests at a banker's. A special verdict might find that it is the custom of bankers, in the course of their trade as such, to receive such deposits from the customers, but I do not think that from that finding a general lien could be claimed on the plate chests."

Where a customer who already has a loan desires to increase it and tenders further security, which is refused by the banker, the banker cannot acquire a lien on the refused security, although in his hands for the time being.

Cash credits are used more frequently in Scotland than in this country. A cash credit is another name for an overdrawn account guaranteed by two sureties.

The advantage of this system is that the customer is able to invest the whole of his capital in his business and look to the banker for the wherewithal to meet his daily requirements.

Under this system it sometimes happens that a person opens an account not by paying in money but by handing in the bond duly signed by the sureties ; if it is in order, the banker then allows the customer to overdraw as he requires within the limits stipulated in the bond. Cash credits are usually for sums between £100 and £500.

The interest is reckoned on the daily balance and charged periodically.

Bankers sometimes advance money on the security

of bills. This is entirely different to discounting, as, when the customer repays the amount advanced, the bill is returned to him. The property in the bill remains with the customer ; it does not pass to the banker as in the case of a discounted bill.

The banker having a lien on the bill can retain it until the amount is repaid or the bill paid at maturity. If the bill is for more than the amount owing to the banker, then the customer must be handed the surplus.

Bankers advance money against Documents of Title, Stock Exchange Securities, Title Deeds, Bills, Promissory Notes, Personal Guarantees, etc.

The security offered to the banker may be either personal or collateral. In the former case the security usually takes the form of a bond, guarantee, or promissory note ; whereas, in the latter case, the security is a secondary and not a direct personal security.

In the event of a customer's bankruptcy the securities, if deposited by the borrower to secure the advance, must be realised, valued, or surrendered, and after deducting the debt due to the bank, the balance must be paid over to the trustee or the Official Receiver. But if the security is not deposited by the debtor but by another person, then the banker can prove for the full amount of his advance against the estate of the debtor and hold the securities against any deficiency.

A demand in writing must be sent to the customer giving him notice of the intention before the securities are realised unless an act of bankruptcy has been committed.

Where collateral securities are received to cover an advance, the person to whom they belong must sign a memorandum of deposit, which should state on whose behalf the securities are deposited ; also that in the event of non-payment of the advance within a certain

time, from any cause whatsoever, the securities may be realised.

Should the surety communicate to the banker his desire to terminate his responsibility, then the banker will advise the customer of the communication and proceed to meet the wishes of the surety by closing the account and opening a new one, all money paid in by the customer being placed to the credit of the new account. .

When Stock Exchange securities are offered as cover for an advance, the banker must ascertain the value of the securities and whether they are readily saleable, in case he should have to realise.

Unless a transfer of shares is registered in the books of the company, the banker has no legal title to the security. If not transferred, the company should be advised that the banker holds the certificates as security, for, by so doing, he obtains a lien on them if the notice is given prior to the bankruptcy of the shareholder.

Bearer bonds are frequently taken as security. The principal, when due, being payable to bearer and the bonds being recognised in law as negotiable instruments, the banker acquires a security, the realisation of which, if necessary, entails no trouble.

Registered or inscribed stocks of English and Colonial Governments or Corporations.—If a certificate is issued to the owner then the stock is transferable by deed, in which case a transfer is executed in favour of the banker. By sending in the transfer and having it registered, the banker acquires the right of realising the security if necessary. If no certificate is issued, then the stocks are only transferable by signing an entry made in the books kept by the agent for the stock, who is usually a London banker. In this case it is necessary that the stock be transferred into the name of the

banker or his nominees. If the person in whose name the stock is registered cannot attend, then a representative must be appointed by power of attorney.

As a rule, when stockbrokers borrow from bankers to enable them to carry over from one stock exchange settlement to another, parcels of securities are deposited as cover for the advance. Should a broker require any of the securities, he is allowed to have them on depositing others of an equal value. In these cases it is unusual for transfers to be made out, but a declaration in writing agreeing to sign transfers if and when required is usually given.

Title deeds, etc.—When a banker advances on the security of title deeds, he does so in one of three ways : (1) by accepting deeds accompanied by a memorandum of deposit ; (2) by taking a legal mortgage ; (3) by receiving deeds, but without a memorandum of deposit.

Whether the advance is covered by numbers one, two, or three, the banker must obtain the deeds and retain them until the loan is repaid. Take the second case, a *legal mortgage* is a conveyance or an assignment of goods or property as security for the payment of a debt ; the security to be redeemable on such payment of the debt. A legal mortgage carries the power after certain formalities to sell the property in default of payment. It binds the mortgagor (the person who mortgages the property and receives the advance is the mortgagor ; the person, who makes the advance and takes the deeds to secure it, is termed the mortgagee) to insure the property, and in case of fire to apply the money received in its restoration.

If the advance is likely to fluctuate, then the mortgage should be declared to be a continuing security. A legal mortgage requires to be stamped at the rate of 2s. 6d. per cent.

The deposit of deeds, with or without a memorandum of deposit, constitutes an "equitable mortgage." The holder of the mortgage can compel the mortgagor to give a legal mortgage, if he desires, or the Court will grant him a power of sale. The memorandum of deposit must be stamped at the rate of 1s. per cent. within thirty days of its execution or afterwards on payment of a penalty of £10.

Additional advances may be made on the memorandum, and these also require stamping within thirty days of the subsequent advance at 1s. per cent.

The advantage of having a memorandum of deposit, as it is often termed, is that embodied in it are the conditions under which the advance is made, signed by the borrower. A memorandum which simply states the reason for which the deeds are deposited is not an agreement and need not be stamped as such.

(3) As mentioned above, the deposit of the deeds alone creates an equitable mortgage, but if there be no memorandum of deposit, there is always the risk of the borrower requiring a further advance, and on being refused turning round and saying there was an oral agreement to the effect that he was to have so much on the deposit of the deeds, when required. This illustrates the advisability of having a memorandum of deposit.

If a banker holding deeds under either a legal or an equitable mortgage receives notice of a second charge on the property, he must not let the customer have any further advance, for, although the money advanced up to the time of the second charge is fully secured, any subsequent advances by the banker would be postponed to the rights of the second mortgagee.

Tacking.—Bankers do not, as a rule, advance money on second charges, for there is always the risk of the borrower obtaining a third charge. If the holder of

the first legal mortgage acquires the third mortgage he may, if he has no notice of the second charge, add (tack, as it is termed) the first and third together and treat the two as one charge, to the detriment of the banker holding the second charge.

When the title to land has been registered at the Land Registry Office, the land certificate, if an *absolute* certificate has been issued, takes the place of the title deeds. If the property is in the counties of Middlesex and Yorkshire, then the deeds must be registered under the Yorkshire and Middlesex Registration Acts.

By the Land Transfer Act of 1897, Section 8, "The registered proprietor of any freehold or leasehold land or of a charge may, subject to any registered estates, charges, or rights, create a lien on the land, or charge by deposit of the land certificate or office copy of registered lease, and such lien shall, subject as aforesaid, be equivalent to a lien created by the deposit of title deeds."

The deposit can be protected by notice to the registrar, and the entry of such notice will operate as a caution. So long as such notice is on the register no new certificate will be issued without notice.

In all cases it is desirable that the deeds should be examined by the bank solicitor before any advance is made.

If the customer has only a life interest in the property, he must take out a life insurance policy and deposit it with the bank.

Life Policies.—Bankers occasionally advance money on the security of life policies to the extent of the surrender value, or just below the estimated value, if on an endowment policy; for, in this latter case, the amount assured is payable on a fixed future date or at death should the assured die before that date arrives.

When money is advanced on the security of a life policy it is necessary to hold the policy. A deed of assignment should be taken and forwarded to the company for registration. Some insurance companies have a special form for this purpose and will not accept any other.

Generally, the life offices, on being requested, will send the renewal notices to both the assured and the bank, and thus lessen the risk of the policy lapsing through the non-payment of the premium.

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