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BANKS AND BANKING

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AMERICAN COMMERCIAL LAW SERIES

VOLUME VIII

BANKS AND BANKING

CONTAINING THE TEXT OF

THE NATIONAL BANK ACT

WITH

QUESTIONS, PROBLEMS AND FORMS

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WHOSE ZEAL IN THE CAUSE OF COMMERCIAL
EDUCATION HAS BEEN A CONSTANT SOURCE OF
INSPIRATION TO THE AUTHOR

PREFACE TO THIS VOLUME.

Herein are set out the general laws and underlying principles relating to the subject of "Banks and Banking." The reader is referred to the Volume on Corporations and the volume on Negotiable Paper, as companion volumes. The National Bank Act is set out in Appendix A.

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BANKS AND BANKING.

PART I.

INTRODUCTORY.

CHAPTER 1.

DEFINITIONS AND CLASSIFICATIONS.

Sec. 1. DEFINITIONS. A bank is an institution which borrows and loans money and deals in negotiable securities and keeps money on deposit. A banker is one who conducts a banking business. Most banks are now incorporated.

The function of a bank is commonly understood. Nearly everyone and certainly every business person has occasion to make use of a bank. Yet it may clarify our vision to go back to first principles and look briefly in this section at the purpose and the uses of banks. A bank is defined in Bouvier's Law Dictionary as "An institution, generally incorporated, authorized to receive deposits of money, to lend money, and to issue promissory notes—usually known by the name of banknotes—or to perform some one or more of these functions." Banks are said to be of three sorts, those which receive deposits, those which discount commercial paper, and those which issue banknotes for circulation. But these activities are usually performed by the same bank.

A banker is one who operates or conducts a banking business. Even where the bank is incorporated, as is usually the case in these days, we think of the executive officers as "bankers."

Banks of deposit often have a "savings department" or perhaps organize an entirely different corporation to carry on that business. A savings bank receives money for deposit, not subject to check, and pays interest upon the money left there for a specified period, as, for instance, the first six months or the second six months in any calendar year. A separate chapter is, however, devoted to this subject and we need not consider it here.

Sec. 2. PRIVATE BANKS. A private bank is one which is not incorporated.

We do not need to consider private banks to any large extent in this treatise, for such banks are becoming increasingly uncommon. In the earlier days, however, banking was very largely carried on by individuals, alone, or in partnership. Sometimes private banks are organized as joint stock companies, which have the form but not the legal status or substance of corporations. The force of public opinion, assisted by the law, has led depositors to seek out banks incorporated under more or less stringent laws for the protection of the depositor, and thus private banks languish. Furthermore in these days of very large banks it would be difficult if not impossible to conduct them as private banks.

Sec. 3. NATIONAL AND STATE BANKS. Banks may be organized under the federal or state laws.

Incorporated banks may be divided into national and state banks. Under the United States Consti-

tution the United States Congress has power to incorporate national banks and to pass banking laws. State banks are however, not thereby excluded. We will have occasion to discuss national banks and state banks as such as we progress in our text.

Sec. 4. UNAUTHORIZED BANKING. Where the law prescribes the conditions under which a banking business must be carried on, carrying it on without complying with these conditions is illegal and in general no corporation can carry on a banking business unless incorporated expressly for that purpose.

We have noticed that much banking was formerly done by private bankers. There were few restrictions or conditions imposed on such bankers, except as they were imposed by the general law applicable to all persons. Even yet in some states there may be no particular law applicable to private bankers. But the law of banking applies to corporations in a positive and negative way. A corporation cannot carry on a banking business unless it comes within the law. This prohibits corporations organized for other purposes to have a banking business. Thus a manufacturing corporation would have no authority to carry on a banking business.

PART II.

THE BANKING ORGANIZATION.

CHAPTER 2.

THE BANK AS A CORPORATION.

Sec. 5. IN GENERAL. The bank when incorporated, is in its organization similar to other corporations and subject to the general laws covering corporations, except in so far as its peculiar nature makes such laws inapplicable, and except, also, that many special laws apply to banks, as such.

A bank as considered in this text, is a corporation. It is not in its organization different from other corporations. It must have a charter. That charter must be secured through compliance with law. It must have a capital stock. That stock must be divided into shares and issued to shareholders. It must have directors. It must have an executive staff. It must have its by-laws and it must have its agents and servants. In this Part, we are to consider the bank as a corporation. An understanding of the general laws governing corporations enables one to understand the organization of a bank, as such. It is true many peculiar laws apply and these it shall be our purpose to consider. In this chapter we shall consider briefly the charter, the by-laws and similar matters. In following chapters we shall consider

the bank's capital stock and its stockholders. And then, we shall consider the officers and agents of a bank.

Sec. 6. THE CHARTER OF A BANK. The charter of a bank is the grant from the state organizing parties to do business in the corporate form.

The banking corporation, like every corporation, is a creature of the sovereignty. It exists by virtue of the franchise of the state or national government. Without this franchise or grant there cannot be a corporation.

It follows, therefore, that though persons may organize a bank (if the law does not forbid) by mere organization without any special state or national grant, they cannot by mere agreement organize themselves into a corporation, even though they adopt the corporate form.

Each incorporated bank has its charter. The form of the charter consists in these days in the form of a certificate made under a general law after compliance with the terms thereof. In earlier times incorporation of companies was brought about by special legislation to that end in each particular case, but now it is against the policy of the law to pass special legislation or to grant favors. We have in all of the states general banking laws under which anyone can secure a banking charter, whenever he complies with the law and comes within its provisions. So there is a general national banking law. A certificate of organization made upon compliance with these laws is called the charter.

The charter of every corporation is the measure of its powers. All of the powers which it can pos-

sibly have are to be found expressly or impliedly granted therein. The express powers are those which are set forth in writing, as the amount of its capital stock, the sort of banking business it may carry on. All of the general law relating to incorporated banks also becomes a part of the charter as much as though written in each charter. For instance, the national banking law prescribes for what purpose a bank may hold real estate. This is a part of the charter of every bank. The implied powers are the powers which every corporation has by reasonable inference from its express powers.[1] By inference a national bank has the power to advertise its business, employ clerks, purchase books, and enter into engagements as we will hereafter discuss.

Sec. 7. STEPS NECESSARY TO BE TAKEN TO SECURE CHARTER. To organize a national bank, the steps provided for in the national banking law must be followed. To secure a state charter, the law of the particular state must be carefully complied with.

As in the case of getting a charter for any corporation, the law under which the charter is sought must be complied with. If a charter is sought for a National Bank, the National Bank Act sets out what steps must be taken.

(1) *Proceedings to secure National Bank charter.* We may glance briefly at this point to see what is requisite under the law to secure a Federal Charter.[2]

1. State v. Hancock, 35 N. J. L. 537; Curtiss v. Leavitt, 15 N. Y. 9.

2. See Appendix A, *post.*

A. Procedure to Form New Bank.

a. Not less than five persons shall unite to form an association for carrying on the banking business.

b. They shall provide for a capital stock and secure subscriptions thereto, in amounts as follows:

(a) In cities of over 50,000 persons, not less than $200,00.

(b) In other cities of more than 6000 inhabitants, not less than $100,000.

(c) In cities of not over 6,000 inhabitants, and not less than 3000, not less than $50,000; provided the Secretary of the Treasury approves thereof; otherwise not less than $100,000.

(d) In cities of not over 3,000 inhabitants, not less than $25,000; provided the Secretary of the Treasury approves thereof; otherwise not less than $100,000.

c. They shall obtain the actual payment of at least one-half the capital stock thereof; (the remainder to be paid in installments of at least 10 per cent each on the whole amount of the capital at the end of each succeeding month) after authorization to commence business.

d. They shall divide the stock into shares of $100 each.

e. They shall make a Certificate of Organization which shall contain,

(a) The name (subject to the Comptroller's approval),

(b) The city, town or village, the county, and the state or territory, where its operations of discount and deposit are to be carried on.

(c) Amount of capital stock and number of shares.

(d) Names and places of residence of the shareholders and numbers of shares held by each of them.

(e) The fact that the certificate is made to comply with the National Banking Law.

f. They shall acknowledge the certificate before a Judge or Notary Public.

g. They shall forward the certificate so acknowledged to the Comptroller of the Currency who shall record and preserve the same.

h. The Comptroller of the Currency shall upon examining the Certificate and finding it in due form authorize the bank to do business as a National Bank.

B. Proceedings by State Bank to Secure Federal Charter.

The National Bank Act provides that any existing State Bank may become a National Bank by making Articles of Association and a Certificate of Organization containing the matters above recited, except that it shall declare that two-thirds of the owners of the capital stock have authorized the directors to make the Certificate; and the shares may continue to be for the same amount as before the change. The Certificate may be executed by a majority of the members. After organization the bank shall have the same powers and privileges and be

subject to the same duties, responsibilities and rules as other National Banks. The same amount of capital stock shall be required as of other National Banks.

(2) *Organization of State Banks.* The state laws under which state banks are to be organized vary in the different states. All the states have general banking laws under which banks are to be incorporated, but the provisions of these laws, in respect to the amount of capital stock required, the amount to be paid in, etc., vary quite widely.

Sec. 8. THE BY-LAWS. As a part of its organization as a corporation a bank should adopt by-laws, containing the rules for its internal government.

Just as any corporation should have by-laws, a bank should have its by-laws whereby the rules are set out as to its internal government. The bank's *charter* is its source of existence, and is granted by the state, and from that charter the corporate powers are to be discovered, and it cannot be amended except by application to and with the consent of the state. But *by-laws* are passed by the stockholders or directors of the bank; are changed at pleasure, and simply provide for the internal government of the corporation. See, generally, as to by-laws, the volume on corporations in this series.

Sec. 9. DEFECTIVE ORGANIZATION. If the organization is defective, yet still there has been a bona fide attempt to comply with the law, the concern is to be considered incorporated for purposes of doing business, but the government may require strict compliance.

See the general law of corporations on this subject. The general rule is that if there is a *bona fide*

attempt to incorporate, under a corporation law, defects in organization are strictly questions between the bank and the state or Federal government and the business done by the bank will not be upset for trivial defects in organization.

Sec. 10. STOCK AND STOCKHOLDERS IN GENERAL. The bank as a corporation has a capital stock, the amount whereof is specified in its charter, and this is divided into shares, and the holders thereof are known as stockholders or shareholders.

As we are in this chapter considering the bank as a corporation, we briefly note in this section that it has, as do all corporations for profit, a capital stock and stockholders. Part III deals with this subject at length and therefore we enter into no detail at this point.

Sec. 11. DIRECTORS, OFFICERS AND AGENTS. The bank, when incorporated, has, like other corporations, a board of directors, and a president, and other executive officers, and can only act through servants and agents.

A Bank becoming incorporated under a state or the Federal law, has a Board of Directors, elected by its stockholders, and these directors elect executive officers, who in turn appoint clerks and agents. The plan of organization is much the same as that in any corporation for profit, a body of stockholders, a board of directors elected by them and representative of them, the executive officers, and the various appointed officers, agents and servants. A bank has officers, of course, which other corporations do not have or may not have; as a cashier, receiving and paying tellers, and the like. More of these subjects is taken up later.

PART III.

STOCK AND STOCKHOLDERS.

CHAPTER 3.

AMOUNT OF CAPITAL STOCK AND SUBSCRIPTION THERETO.

Sec. 12. CAPITAL STOCK DEFINED. The capital stock of a bank is the amount of money it is authorized by its charter to receive from its subscribers wherewith to carry on its business.

A bank, like all commercial corporations, has a capital stock, an amount of money provided by its charter which it may receive from its members wherewith to carry on its business. Thus, we speak of the capital stock of a bank as $100,000, meaning thereby that this is the amount which its charter authorizes it to receive from subscribers or their assignees as its capital.

We shall be very general in our treatment of this subject here because for most purposes the general law of corporations governs. See volume 5 of this Series.

Sec. 13. STATUTORY PROVISIONS AS TO THE AMOUNT OF STOCK. The national bank act, and usually the state banking laws provide for a certain amount of capital stock.

We have already noticed the provisions of the National Bank Act in this respect, and the State Bank

Acts have similar provisions. The laws are strict in this respect for obvious reasons, and it is more desirable to have laws of this character in respect to banking corporations than to perhaps any other sort of corporation.

Sec. 14. INCREASE AND DECREASE OF CAPITAL STOCK. The banking corporation may at any time increase its capital stock by going through the prescribed statutory procedure; and may likewise decrease its stock but not below the statutory amount for which it can organize.

The National Banking law provides in what manner a bank may increase its stock. So state banks may increase their stock, or decrease it, by complying with the law provided for that contingency. Where stock is increased, the old stockholders have the right of subscription thereto in proportion to their holdings. This right they may assign to others.

Sec. 15. NATURE OF SUBSCRIPTION TO STOCK. A subscription to stock is a contract or offer to take the stock at the par or other price agreed upon. It is not only enforceable by the corporation, but by creditors thereof in proper proceeedings.

A subscription to capital stock is (when accepted) an enforceable contractual promise to take the amount of stock subscribed for at its par value or other agreed value. A subscription is that from which the capital stock of the corporation proceeds, and is not only enforceable by the bank, but by creditors thereof. See Chapter 5, *post*.

Sec. 16. STATUTORY PROVISIONS CONCERNING SUBSCRIPTIONS. Subscriptions must be of a certain amount, before the corporation can be chartered. And a multiple liability may be provided for in case of failure.

Either all the stock (as in the case of National Banks) or some high percentage thereof must be subscribed before the bank may have its charter.

The statutes provide also how the subscription must be paid, and fix the liability thereon in case of failure. In trading manufacturing and other corporations of a mercantile character, the subscriber need pay only the par value of the stock, whether failure occurs or not, but bank laws provide a higher liability in case of failure. See Chapter 5 herein.

CHAPTER 4.

TRANSFER OF STOCK.

Sec. 17. RIGHT TO TRANSFER. It is a fundamental principle in the law of corporations that a stockholder has a right to transfer his stock and cannot be deprived thereof by by-laws to which he does not assent.

A stockholder in any corporation has a right to transfer his stock. One main purpose in organizing a corporation of any sort is to provide for transfer of shares. There is no peculiarity in this respect in the law of banking corporations. The law may, however, throw safeguards around the transfer and provide for procedure insuring good faith and publicity.

The stockholder may agree not to transfer, either by his assent to the by-laws enacted to that end, or by some other form of agreement. Such provisions are usually upheld as binding, although in some cases their validity has been denied as against public policy. Such provisions may provide that the shareholder shall not sell for a certain period, or that if he desires to sell, he shall first offer his shares to other stockholders or to the bank. The purpose of such provisions is to prevent the subscribers from selling their shares to possibly irresponsible parties, and thus changing the character of the personnel of the stockholders.

Sec. 18. HOW TRANSFER ACCOMPLISHED. The transfer of stock is accomplished by assigning the certificate to the transferee and giving him or some one else authority (the evidence of which is usually endorsed on the certificate) to make the transfer upon the books. The assigned certificate is then to be surrendered to the bank, and a new one issued in its stead to the new stockholder.

There is nothing peculiar in the transfer of a bank-stock certificate. Like other stock bank stock is transferred as a usual rule by transfer of the certificate which represents the stock with a power of attorney by which the holder may secure transfer and enrollment on the books of the company. The old certificate is surrendered up and a new one issued in the name of the transferee. The stock may, however, be transferred from hand to hand without enrollment where it is indorsed in blank so that it may pass by mere delivery. In such a case, however, one is not a stockholder upon the books of the company, and, therefore, is not sure of receiving notice of meetings, dividends, etc., and has no right to vote until he has himself registered. As between the parties, enrollment upon the books is not necessary to a transfer, but such enrollment is necessary as far as the corporation is concerned for a corporation can look only to its books, and cannot go outside of the record to discover who are the real stockholders.

Sec. 19. CONTRACT BETWEEN TRANSFERROR AND TRANSFEREE. The transferror of a stock certificate warrants that the certificate is what it purports to be and that he is the owner thereof, or has the right to sell.

There are certain warranties contained in the sale of stock. The transferror of the certificate warrants that he is the owner of the stock, or at least has the right to sell it, and that the certificate is genuine. He does not warrant, however, that the stock was properly issued. In any case, however, there may be special warranties, just as in any other case of sale. If the seller represents any particular facts concerning the stock, he may be held to the same. See, generally, the subject of Sales, in this series.

CHAPTER 5.

LIABILITY UPON STOCK.

A. To Bank.

Sec. 20. SUBSCRIBERS LIABILITY TO BANK. The subscriber's obligation to the bank is to pay the amount agreed upon in the subscription contract, that once having been paid his obligation is an executed one and his liability to the bank ceases.

When one subscribes a certain amount to a corporate enterprise, he simply agrees to pay in a certain amount to the capital stock, the amount of which is fixed by the charter. Usually he subscribes for stock at the par value thereof. Subscription to stock differs from purchasing stock which has already been issued to another subscriber. In that case, the contract is with a stockholder and not with the corporation. So it differs, technically, from purchasing *treasury* stock which is stock which has been re-acquired by the bank after having once been issued. A subscription to stock is an offer or agreement to buy *unissued* stock.

The subscriber's liability is to pay the par value of the stock or whatever other sum is agreed upon. There is no further liability except as the particular statute or the express agreement may give it.

Sec. 21. TRANSFEREE'S LIABILITY TO THE BANK. The transferee's liability to the bank depends

upon his actual or constructive notice as to whether the stock is paid for when he purchases it.

Bank stock is usually paid up and a transferee is not liable to the bank; although he has liability for the benefit of creditors in case of the bank's insolvency, as we shall see later. If, however, he knows that the stock is unpaid and subject to call, then he stands in the place of his transferror.

Sec. 22. TIME OF PAYMENT FOR STOCK. This depends on the statute. By the National Banking Act and by many state laws stock, or a certain percentage at least, must be paid before the bank is authorized to do business.

The time within which payment of stock under the National Banking Act must be made has already been set out in Section 7. With reference to state banks, it all depends on the local law, but there is a much greater strictness in reference to the payment of stock of a bank than of other corporations.

Sec. 23. MANNER AND MEDIUM OF PAYMENT. Stock may be paid in money or property. Under the National Banking Act 50 per cent must be paid in and the comptroller of the currency requires 50 per cent. of each subscription.

It is a general rule of corporation law that stock may be paid either in money or money's worth.[3] Under the National Banking Act 50 per cent must be paid in before the bank is authorized to begin business, and the Comptroller of the currency construes

3. See the Law of Corporations in this Series.

this to mean that 50 per cent of each subscription must be paid.

Sec. 24. BANK'S LIEN ON UNPAID STOCK. At common law a bank has no lien on unpaid stock. Where it exists under any state law, the certificate of stock must give notice of the lien to make it valid against third persons. The National Banking Act deprives the bank of a lien.

The tendency of the law is to discourage the bank having a lien upon unpaid stock as it tends to discourage transfer; hence there was no lien at common law, and the National Banking Act denies the right to such lien.[4] If in any case a lien is asserted the provision and notice thereof must be written upon the certificate of stock; otherwise the lien is not good against third persons.

B. To Creditors of the Bank.

Sec. 25. STATUTORY PROVISIONS. The National Banking Act provides that shareholders shall be individually liable, "equally and ratably and not for one another" for the debts of the bank, to the extent of the amount of their stock, at the par value thereof, in addition to the amount invested therein. Under state laws there are similar provisions enlarging the stockholders' liability beyond the par value.

The liability to the *bank* ceases when the shareholder has paid that which he agreed to pay. But for the benefit of creditors of the bank the law imposes a liability which does not exist in the case of the

4. See Appendix A, *post*.

general mercantile corporation. It is not like a *partnership* liability because it is a limited one; and also because there is, as we shall see, no right to an accounting between shareholders for amounts thus paid, although as far as assessment of the liability is concerned, it is provided that it shall be assessed ratably; and because also there is no liability for each other, as in partnerships.

As an illustration, A and B subscribe for shares in the C. National Bank. A subscribes for 10 shares at $100 per share, and B 20 shares at $100 per share. Here A is liable for $10,000 and B is liable for $20,000 to the bank, which liability of course is discharged by the payment of that amount to the bank. If the bank becomes insolvent the comptroller of the currency can assess A up to $10,000 in addition to his investment, and B up to $20,000 in addition to his investment, provided such assessment is necessary to pay creditors, and provided all shareholders are assessed ratably. If A had not paid in his $10,000 on his subscription, the comptroller could also compel him to pay that for the benefit of creditors.

We see, then, that the bank stockholder's liability is more onerous than that of stockholders of general mercantile concerns. The state bank laws have similar provisions.

The stockholder's liability to creditors, then, is to pay, if he has not already paid, what his subscription calls for, and then in addition in case of insolvency such sum, not exceeding the par value of this shares, as shall be assessed against him for the purpose of paying the debts of the bank.

With reference to his liability to pay what his subscription calls for, a question arises where the

subscription has been paid in whole or part in *property,* whose value for that purpose is now questioned. Can the creditors, (or the comptroller or other proper officers for them) open up the valuation put upon such property by the bank and the subscriber? It is everywhere admitted that if the valuation was placed too low as the result of *bad faith,* that is, with the purpose of issuing shares for less than their par value, such valuation may in proper proceedings be set aside, and the subscriber compelled to pay the value of his shares. Most courts restrict this to cases in which the creditor for whose benefit the inquiry is made, did not know of such valuation, but others make no such limitation. Where the valuation is made in *good faith,* and yet at a higher figure than the facts warrant, there is a diversity of opinion whether the transaction can be opened up for the benefit of the creditors.

Considering now in the case of National Banks, the liability of a creditor to an assessment in addition to his invested capital, we may make the following observations.

The liability attaches when the bank becomes insolvent and may be cut off by any transfer prior to that time, except transfers made to irresponsible persons for the purpose of evading a coming insolvency.

The stockholder cannot set up by way of defense the bank's fraud in inducing him to subscribe, because the rights of the creditors have intervened, and are superior to his.

Either the real owner may be liable, or any one who by his acts has permitted himself to be held out and known as the real owner of stock. One who appears on the books to be a stockholder will be

regarded as the real owner in the absence of evidence to the effect that he is not the real owner and it would be an injustice to him to hold him as such, he not being blamable for this fact upon the books.

A pledgee, in accordance with these principles, is not liable either if he does not have himself registered upon the books at all, merely holding the certificates for his security, or if he takes out new certificates in which he describes himself as *pledgee*.[5] But if he permits the books to show him as the true owner he may be held liable.[6]

In any event, no matter what books show, one who can be shown to be the true owner, may be assessed.[7]

Sec. 26. WHEN LIABILITY CEASES. The liability for the benefit of creditors ceases when the stockholder makes a bona fide transfer while bank is still solvent, the transfer being made on the books of the company.

The exceptional liability to be assessed for the benefit of creditors is cut off by a bona fide transfer, by gift or sale, before the bank becomes insolvent, provided the transfer properly is filed for record with the officers of the company. If the transfer is made after insolvency, the transferror is still liable. So if made before insolvency, the transferror is liable if he remain the real owner notwithstanding the record, and also where he foresees insolvency and sells out to avoid his liability. But in that case, he is

5. Pauly v. State Loan & Trust Co., 165 U. S. 606.
6. Robinson v. So. National Bank, 180 U. S. 295.
7. Pauly v. State Loan & Trust Co., *supra*.

liable only for existing debts when the transfer is recorded and not those subsequently arising.[8]

The liability ceases also, when the assessment has been made and paid and the bank has liquidated.

Sec. 27. HOW LIABILITY ENFORCED. The liability is enforced by assessment in a proceeding in the courts to liquidate the affairs of the bank; in the case of National Banks, when the receiver, at the direction of the comptroller directs an assessment.

Though the statutory liability is for the benefit of creditors, it is not directly to them. They cannot directly sue the stockholders. There must be a judicial proceeding in progress for the purpose of administering the insolvent bank's affairs, and the liability must be determined and enforced by the proper procedure. In the case of National Banks the comptroller of the currency determines upon the necessity of an assessment and then the receiver enforces it.

It may be incidentally noticed here that National and State Banks are not subject to the general bankruptcy laws. A national or state bank cannot be put into bankruptcy under our national bankruptcy law, though a private banker is subject to that law. See further, Chapter 21, *post*.

8. McDonald v. Dewey, 202 U. S. 510.

CHAPTER 6.

VARIOUS RIGHTS OF STOCKHOLDERS OF BANKS.

Sec. 28. RIGHT TO HOLD MEETINGS. The stockholders of a bank have a right to convene in stockholder's meetings as their interest shall require, subject to reasonable by-law regulations or the provisions of the statute.

The statute under which the bank is organized sets out how stockholders' meetings shall be called. As in the case of any corporation, the stockholders have a right to meet for the purpose of passing upon the questions and policies which concern their welfare, and for the purpose of electing directors, making by-laws, etc.

As in the case of other corporations, meetings are stated, and special. A stated meeting is one which occurs regularly on the date provided by by-law or statute; and a special meeting is one specially called for some particular reason.

The laws which apply in this regard to corporations in general, apply to banking corporations: that the stockholders are entitled to notice, that in the case of special meetings the notice must state the object of the meeting, although the stockholder's rights in this respect may be waived by his conduct in actually attending; that the stockholder may attend in person or by proxy; that a quorum must attend in person or by proxy, that in the absence of statute, those who attend no matter how few, constitute a quorum, though

this is usually changed by statute or by-law; that where less than a quorum attend, they have a right to adjourn from time to time until a quorum is present; that each stockholder has a vote for every share of stock that he owns upon the record; that stockholders not of record cannot vote; that there is a right to close books prior to the meetings that the secretary may have a reasonable time in which to make out the list of those entitled to vote; that the meeting may choose as its chairman and its secretary any one of its members; that the secretary of the corporation usually acts as secretary of the corporate meeting; and that the records kept by the secretary become in the absence of fraud, mistake and the like, the legal evidence of what was done there.

Sec. 29. RIGHT TO PASS BY-LAWS. The stockholders may pass by-laws, unless by statute this right has been conferred on the directors.

The enactment of by-laws is regarded as a power inherent in the stockholders. The directors however may be given that power by its delegation to them by the stockholders, or by virtue of the positive provisions of the statute.

Sec. 30. RIGHT TO SEE BOOKS OF BANK. The stockholders have the right to inspect the books of the bank at reasonable times.

The stockholders of any corporation being the real owners thereof, have the right to see the books and papers of the corporation. Banking corporations are not peculiar in this respect. Upon demend by a stockholder to see the books of the bank, the bank

must allow him, if he comes at reasonable hours and not in a manner to impede the regular course of business, to inspect the books and papers. Whether this is an absolute right or whether it depends upon the stockholder showing that he has a legitimate purpose has been decided differently by the courts. The usual rule is however, that when a court is applied to for the enforcement of this right, when denied, the court will exercise a reasonable discretion. At common law undoubtedly, the stockholder had no right except on showing a proper purpose, but statutes have extended this right [9] and under some of them it has become absolute, irrespective of the stockholder's purpose. In the case of a National Bank, the common law rule prevails, or the rule of the state in which the bank is located.

The right is enforced (where denied) by mandamus proceedings, brought against the officer who has the books in charge.

Under the laws of some states and under the National Banking Act, a bank must keep for inspection a list of the stockholders, with their addresses.

Sec. 31. RIGHT TO CONTRACT WITH BANK. A stockholder may contract with a bank and acquire the same rights against it as a stranger may, except in respect to his stock subscription where the rights of creditors intervene.

A stockholder has the same right to contract with the bank as any other stranger. It is a legal entity distinct from him and he may contract with it as with any other person. He may be employed by it, buy

9. People v. Consol. Nat. Bank, 105 N. Y. App. Div. 409.

from or sell to it, acquire mortgages and other liens upon its property, and sue it in the courts. With reference to his shares, however, he has a limited right of contract as far as creditors are concerned, in the manner we have noted.

Sec. 32. TO WHAT EXTENT BY-LAWS BINDING UPON STOCKHOLDER. The by-laws are binding upon the stockholder, except as they may have been irregularly passed, or are unreasonable or opposed to public policy.

The stockholders of the bank are bound by the by-laws regularly passed by it, and which are reasonable and not for some reason against public policy, and he is taken to have notice of all the by-laws.

CHAPTER 7.

DIVIDENDS UPON STOCK.

Sec. 33. NATURE OF. A dividend is a division made among the stockholders, by the declaration of the directors, of the accumulated profits of the corporation.

A dividend by any corporation is a division of profits declared by the directors. The corporation exists for the purpose of bringing an income to the shareholders thereof. This income is distributed in the shape of dividends. The dividends have no existence except upon a resolution passed by the directors, known as a *declaration.* Until the directors have declared a dividend, the stockholders cannot force the corporation to pay them any portion of accumulated profits.

Dividends are only properly payable out of profits. They cannot be declared out of the capital.

Sec. 34. DECLARATION OF DIVIDENDS. RIGHT OF STOCKHOLDERS TO COMPEL. The dividends are declared by the directors. The stockholders may in cases of clear abuse of power apply to a court of equity asking that the directors be ordered to declare a dividend.

The directors declare the dividend and they have a large discretion in this respect. A court will not interfere with that discretion except on a very clear case. Where there is a clear abuse of discretion, and the funds are unduly tied up, the stockholders may

have relief in a court of equity. In such a case, the court does not declare a dividend. It orders the directors to declare one.

Sec. 35. WHO IS ENTITLED TO DIVIDENDS. The person who is the stockholder at the time the dividend is declared, is entitled to the dividend no matter when it is payable.

The person is entitled to dividends who is a stockholder at the time the dividend is declared irrespective of the time it is payable. After the dividend is declared the person who owns the stock when the dividend was declared may transfer it before the time set for the payment of the dividend, and yet collect the dividend when payable. This is the usual custom and the general understanding among business men, and if any other provision were made it would be an exceptional one.

Sec. 36. BANK'S LIEN ON DIVIDEND. The bank may assert a lien upon dividends where the person to whom it is payable is the debtor of the bank.

The bank has a lien upon dividends payable by which it may retain the dividends until the debts to it are paid and if sued by the creditor, it may set off the debt which he owes to it.

PART IV.

DIRECTORS OF BANKS.

CHAPTER 8.

COMPOSITION AND FUNCTIONS OF THE DIRECTORATE.

Sec. 37. IN GENERAL. The directors compose the legislative body of the bank. They are elected by the stockholders and it is their duty to look after the general interests of the bank and to determine its policies. They should be men, not only of good moral character but of high business efficiency.

The directors of a bank are its trustees. They may be said to form a sort of legislative body and are to the bank much the same as a city council is to the residents of a city. They have in charge the bank's affairs and determine its policies. They elect the executive officers. They must be diligent in looking after the affairs of the bank and in protecting the stockholders.

The directors are elected by the stockholders, merely as directors; that is, without some special authority, they have no power to represent the bank personally, but must act as a board, a quorum of whom must be present.

We shall see that directors must be men of the highest integrity and business acumen.

Sec. 38. QUALIFICATIONS. These are determined by the by-laws or statute. Under the National Banking Act there must be at least five who must be citizens, three-fourths of whom must live in the state and hold ten or more shares of stock.

It is for the statute or by-law to determine the qualifications of directors. Under the National Banking Act there must be not less than five directors and three-fourths of the directors must live in the state, and each director must hold ten or more shares of stock, or five shares where capital is $25,000 or less.

Sec. 39. DIRECTORS MUST ACT AS A BOARD. DIRECTORS' MEETINGS. The directors must act as a board at which a quorum must be present. To this end they hold general meetings on certain prescribed dates and special meetings at any time when properly called.

Just as an alderman of the city has no power to act for the city except in a council meeting so the directors of a bank have, generally speaking, no power to represent or act for the bank except at a meeting of the directors. In other words, directors must act as a board. At this board there must be a quorum present, although, generally speaking, anything that is done by less than a quorum might be afterwards ratified. A quorum, usually speaking, has no power to proceed to any business, but it may adjourn from time to time until a quorum is present.

Meetings are regular and special. The regular meetings are held annually, and also at shorter periods, and special meetings may be called at any time in case the needs require it. The by-laws should set forth with particularity how the meetings shall be called and what notice shall be given. At these meetings the President should preside, and minutes should be carefully kept.[10]

10. See generally the Law of Private Corporations in this Series.

CHAPTER 9.

THE POWERS AND DUTIES OF DIRECTORS.

Sec. 40. THE POWERS OF DIRECTORS. The powers of directors are limited by the charter and by-laws. They cannot have greater power than the bank has by its charter. Generally speaking they may take any action the bank has authority to do. They elect officers, declare dividends, make contracts, authorize the purchase and sale of property, etc.

The powers of the directors are very large. They can do practically anything which the bank can do, but cannot legally do any thing which the bank under its charter cannot do. Speaking more specifically, they pass by-laws, elect executive officers, declare dividends, employ counsel, and assistants, make various contracts for the bank, determine general policies, buy and sell property, begin suits, etc.

They have no power to do things which are inimicable to the welfare of the stockholders. They are agents and hold positions of trust, and it is a general rule of agency that the agent cannot put himself in the way of temptation, hence they cannot vote themselves salaries, enter into contracts with themselves, or in any way oppose the interest of the bank with their interest, because they would be tempted to favor themselves to the detriment of the bank. Of course, if the stockholders as a whole consent to their actions in such respects, either by prior express authority or subsequent ratification by words or con-

duct, then the acts of the officers in this respect would be valid. So, any director may contract with the bank where his own vote is not needed.

Sec. 41. THE DUTIES AND LIABILITIES OF DIRECTORS. The director must exercise a high degree of care in looking after the bank's interest, and must exercise the prudence that a reasonably prudent man would exercise under the same facts of the particular case.

There is some difference of opinion in respect to the degree of care which a director should exercise in looking after the bank's interest, but the authorities generally agree that the degree of care is a high one on account of the nature of the trust undertaken to be administered and it is also usually laid down that it is not enough that the bank directors refrain from being dishonest, nor even enough that they act in good faith, but that, also, they act with the prudence of reasonably prudent men. We must remember in applying our test, the purposes for which directors are chosen, that they may see to it that the bank is honestly conducted, and wisely managed.

First: The directors are liable to the bank or its depositors and creditors if they are parties to fraudulent or dishonest transactions. This goes without saying.

Second: Directors are liable for participating in ultra vires and illegal acts, though there may perhaps be no actual dishonest intention, as where they loan money for other then proper bank purposes.

Third: Directors are liable for not giving proper attention to the affairs of the bank. What attention should be given depends very largely upon the circumstances of each particular case. Directors, it

is plain, cannot go through all the minute details of the business and practically do over after them all the duties of the various officers. The must however, act with care, in respect to employing officers, in investigating into suspicious circumstances, in demanding and considering reports, in looking over statements, etc., and especially in conducting the general policy of the institution, which is peculiarly their duty. Some courts are inclined to hold to a stricter accountability than others, yet in all cases the particular circumstances must be taken into consideration. In one case [11] the court in the course of its decision said:

"First. The language on this topic of judges, as reported in the books, must, in all cases, be construed in the light of the facts of the particular case.

"Second. The various directions in which the care of directors of banking institutions should be exercised in order to protect against fraud and theft of employes has greatly increased in number and variety within 50 years. Experience has developed modes of theft by such employes unknown and unthought of half a century ago, and these manifestations of ingenuity on the part of the thieves has been met by new safeguards on the part of the directors; so that what years ago would have been considered due diligence cannot be so considered to-day.

"Third. So numerous have been the defalcations and dishonest abstractions of money by employes of high grade, who had by years of right living and acting earned the confidence of their employers, that it has become well-nigh a maxim with such institutions

11. Campbell v. Watson, 50 Atl. (N. J.) 120.

to, so to speak, trust nobody beyond what is necessary to the practical business of the bank, and to subject the work of each one, from the highest to the lowest, to periodical investigation.

"Fourth. That at one time and in some instances bank directors were unpaid servants, who were not expected to spend much time or to give much attention to the affairs of the institution, and on that account were dealt with leniently by the courts; but at this day such officers are not expected to work gratuitously, and are usually paid a fair compensation; and, whether paid or not, they are entitled to no indulgence on that account. Their names give credit and standing to the institution, and are a guaranty to dealers that its affairs will be conducted with reasonable prudence and care, and according to law. They are, in my opinion, bound to acquaint themselves with the extent and mode of supervision exercised by officers of well-conducted banking institutions in the neighborhood. I cannot yield to the suggestion of some of the defendants' counsel that the fact that the institution in question was a small country bank relieved its directors from adopting the same practical measures for protection against frauds and thefts as were in use by its greater neighbors in the larger towns.

"Fifth. Another observation is that the directors cannot be held liable for a mistake in an honest judgment upon matters properly mere matters of judgment, as distinguished from matters of administration. In matters of administration, where a duty to perform certain functions devolves upon them, they are justly held liable either for their nonperformance, nonfeasance, or for their lack of ordinary diligence

in their attempted performance, whereby loss is incurred. By "ordinary diligence" I mean such as is exercised by other prudent and diligent officers under like circumstances."

In this case, the directors were held liable for peculations continuing undetected over a period of years. An examination of the correspondent's accounts would have revealed the peculations, but this was trusted entirely to the cashier. The bank's by-laws requiring examination by the directors every three months were ignored. Held, that the directors were liable upon the bank's insolvency, to the receiver, for the benefit of creditors.

In another case [12] which is often referred to, it appeared that the losses occurred through the president's practice in discounting the paper of financially worthless persons who were engaged with him in business outside of the bank. The books were straight, but the bills receivable were worthless. The directors had full faith in the president's integrity, and the evidence showed that he was a man of high standing in the community and held positions of trust. The court held the directors not liable for failure to detect the improper practices.

It has been held that directors of banks will be liable for failure to use the prudence that a reasonably prudent man would exercise, notwithstanding the amount of attention they give to the bank, and notwithstanding they act in good faith. The case of Hun v. Cary,[13] is usually cited for this proposition. In that case the directors of an insolvent bank, of

12. Briggs v. Spalding, 141 U. S. 132.
13. 82 New York, 65.

which the expenses were largely in excess of the income, in order to preserve a good appearance and attract depositors, entered into a plan to put up a new bank building. They purchased a lot for $29,250, of which $10,000 was paid in cash, and put up a building costing $27,000. The court held the directors liable saying in part: "When one deposits money in a savings bank or takes stock in a corporation thus divesting himself of the immediate control of his property, he expects and has the right to expect that the trustees or directors who are chosen to take his place in the management and control of his property, will exercise ordinary care and prudence in the trusts committed to them, the same degree of care and prudence that men, prompted by self interest, generally exercise in their own affairs. When one voluntarily takes the position of trustee or director of a corporation, good faith, exact justice and public policy unite in requiring of him such a degree of care and prudence and it is a gross breach of duty—*crassa neglentia*—not to bestow them."

In considering the liability of a bank director it is to be remembered that he has undertaken an onerous and difficult trust; more onerous perhaps from its nature than similar positions in the ordinary mercantile corporation. Yet it is also to be remembered that the director can only exercise a general supervision, and is not expected to give all his time, or even a large part thereof to the bank's affairs.

PART V.

THE OFFICERS AND AGENTS OF THE BANK.

CHAPTER 10.

THE OFFICERS AND AGENTS; THEIR RIGHTS AND DUTIES.

Sec. 42. THE USUAL OFFICERS, AGENTS AND EMPLOYEES OF THE BANK. The bank, if incorporated, has the usual corporation officers, president, vice-president, secretary and treasurer, and has also a cashier, tellers, and such agents and clerks as are necessary to enable it to carry on its business.

The bank is owned by its stockholders. They elect directors as the general legislative body, and these as a board, elect the usual officers of administration. The bank also has certain officers peculiar to it as a bank, chief of which is the cashier. It has also tellers, and of course may have any number of clerks as required to carry on its respective activities.

We know that those who stand in the stead of another are divided into *agents* and *servants*. Agents have authority to bind the principal upon contracts with third persons. Servants have no such authority. The officers and employees of a bank are thus classified. The President, the Vice-President, the Cashier, the Teller all are *agents,* with more or less general powers; the clerks who keep the books, etc., have as a general rule no authority to act as agent. Of course we know that any particular person may have both the character of a servant or agent.

Sec. 43. THE RIGHTS AND DUTIES OF THE OFFICERS AND AGENTS. The officers and agents of the bank have rights and duties, as determined by the special letter of their contract, the general customs prevailing and the particular customs of each bank. Their rights and duties vary in importance with the nature of office, agency or position held.

The position or office which one holds with a bank carries with it well known rights and duties. The duties are determined by the express terms of the contract and such other terms as are implied therein from usages and customs among banking circles generally. The officers of the bank who hold offices similar to those held in other corporations have in general the same kind of duties to perform. The President must preside at director's meetings. He may be also general manager, as we shall see, and this gives him large duties to perform. The Vice President may have only a nominal position or may act as a manager or have certain duties delegated to him. The secretary acts as the secretarial officer of any corporation. The same may be said of the treasurer. We may avoid duplication by noticing under the next chapter in respect to the authority of officers, what, in a general way, their duties are.

The officers of a bank, have generally speaking, no right to contract with the bank in matters in which they act as agent, except with the full consent of all concerned. The general principles of agency whose application we noticed in connection with the subject directors, apply here, that an agent cannot place himself in a position of temptation.

CHAPTER 11.

THE AUTHORITY OF THE BANK'S OFFICERS AND AGENTS.

A. In General.

Sec. 44. GENERAL RULES OF AGENCY APPLY. In determining the authority of officers and agents of the bank, the general rules of agency are of controlling importance.

Frist we may notice, by way of introduction to this subject of authority of the agents of the bank, that the usual rules of agency apply thereto. We are simply confronting the particular situation to which we must apply general rules. Thus we will notice, that the agency may be actual or apparent, and that where in the first instance there is no actual apparent authority, there may be a ratification of the agency. We know from the subject of agency that an agent may not only bind his principal upon the actual authority which he has, but upon the apparent authority, or that authority which he seems to have; and that even where the principal is not bound for these reasons, he may become bound by ratification.

Sec. 45. HOW ACTUAL OR APPARENT AUTHORITY DETERMINED. The actual authority depends upon the express provisions of the appointment or election into which except as expressly negatived is to be read all that authority which by fair inference from custom or otherwise is to be fairly inferred as necessary or reasonable to the proper execution of the expressly con-

ferred authority. The apparent authority is that authority which the third person acting as a reasonable man under all the circumstances was justified in believing the officer or agent to have.

The power of one who acts as representative of another, in other words, as his agent to bind him, depends upon the authority which that other has either actually conferred or which he *seems* to have conferred. If A acts as agent of B, B is not bound unless either (1) B *actually* gave A authority, or (2) B so acted in respect to A in placing him in positions, clothing him with power to represent himself as B's agent, that A as a reasonable inference *seems* to have the authority to do the act in question, binding B, or (3) (which we will consider in the next section), A having no authority either actual or apparent nevertheless represents that he has such authority, and B, after that time, though not bound by A's act, by his words or conduct ratifies it.

A bank official or agent has the actual authority to do those things which the bank in electing or appointing him, expressly gave to him. Yet he has also the actual authority to do all that which in the unhampered performance of his office he finds necessary or reasonably adapted as means to carry out his purposes. This we call his *implied* authority. His *apparent* authority may or may not be co-extensive with his apparent authority. It is that authority, which whether actually existing or not, others are entitled to belive he has. Now where we hold another through the act of one who purported to act for him, we must trace the authority back to something that the alleged principal himself has said or done. We never can hold one for the acts of another unless he

has authorized or seems to have authorized the act. We cannot depend upon the assertions of the alleged agent, except as the assertions or conduct of the alleged principal have encouraged or permitted such assertions. Applying this, we hold one who is placed in a representative position to have all the authority which persons in such a position are usually given, and which in the particular case we do not know the agent in question not to have been given, or to have been shorn of; and we are entitled in any particular case to inquire what the agent has previously done along the same line seemingly with his principal's consent.[14]

What apparent authority then have the employees, appointees and elective officers of banks to bind the bank with third persons? Some of them undoubtedly have *none*. The various clerks, accountants, bookkeepers, etc., are not supposed to have power to bind the bank. It is foreign to their work. With respect to other officers or agents, different questions arise. They speak for the bank, and therefore we must assume they have authority to speak. Yet in judging of that authority we must act intelligently. If any such officer professes to have authority to do *unusual* things, as to buy real estate, we cannot take *his* word for it, but must inquire for that by-law, that resolution of the board of directors, whereby he takes his authority. And in the case of agents who do not exercise a general authority, but a restricted one, as for instance, an authority to make collections, the principal will not be bound by any extension of that authority which he has not authorized or recognized. Thus, if an agent is ap-

14. Best v. Krey, 83 Minn. 32.

pointed as a collector this in itself gives him no authority to endorse checks payable to his principal, and receive the money thereon, though in the first instance he might have collected the money.[15] "Authority to borrow money is among the most dangerous powers which a principal can confer upon an agent. Whoever lends to one claiming the right to make or endorse negotiable paper in the name of another does so in the face of all the danger signals of business. He need not lend or discount until assured beyond doubt that the principal has in fact appointed an agent who by the stroke of the pen may wipe out his present fortune and bind his future earnings. The very nature of the act is a warning, and if the lender parts with his money he does so at his own peril. So strict is the rule that it will not be presumed even from the appointment of one as general agent, unless the character of the business or the duties of the agent are of such a nature that he was bound to borrow to carry out his instructions and the duties of his office. . . ."

In the last half of this chapter we will seek to inquire a little more closely into the authority of certain of the bank's officers.

Sec. 46. RATIFICATION OF UNAUTHORIZED ACTS. By expressly assuming that which has been done by another in its behalf, or by taking the benefits thereof, or in some cases by mere failure to renounce, the bank may become liable as principal.

A bank may become liable for the acts of those who, claiming to have an authority which does not

15. Graham v. U. S. Savings Inst., 46 Mo. 186; Jackson Co. v. Com. Nat. Bk., 199 Ill. 151.

exist either really or apparently, have attempted to bind the bank to third persons who have believed in the authority.

Ratification may possibly arise from the banks conduct in (1) expressly adopting what has been done in its behalf; (2) accepting benefits; (3) remaining quiescent and not repudiating that which has been done. One may by express ratification always become bound by that which has been done in his behalf. In such a case, as in all cases of ratification, there must be a knowledge by the principal of all material facts.

Receiving or retaining benefits amounts to ratification where the act is done in behalf of the principal, provided the benefits are received, or after receipt retained, with full knowledge of the facts, and provided also that they are benefits of such a nature that they may be refused or given back. In such a case, as one has chosen to take the benefits, he must be willing to assume the burdens. Having made ratification in this way he cannot afterwards refuse to be bound even though he then offers to give up benefits received or retained. Ratification once made is irrevocable.

Sec. 47. AUTHORITY TO RECEIVE NOTICE. An officer or agent of the bank has authority to receive notice and the bank is bound thereupon, concerning any matters relevant to his agency.

It is a general principle of agency that an agent has the authority to receive notice for his principal respecting the subject matter of the agency. The principal is identified with the agent, and what the agent does, he does; what the agent knows, he knows.

If the agent is representing the bank in the transaction or line of business concerning which the notice is given, then the bank will be bound by such notice, though the agent never reported to his principal. An exception to this is, and it applies not only to banks, but all principals, that if the party giving the notice knows that the agent is acting in the matter under an interest hostile to the bank, then notice given to such agent does not bind the bank. In such a case, the third party is charged with knowledge of facts which requires him to go further in bringing home his knowledge to the bank. And *a fortiori,* one cannot charge the bank with knowledge if he is acting in connivance with the agent whom he claims to have given notice.

The notice must concern something falling within the scope of the agent's authority. To put an extreme case, notice to the bank's janitor of the dishonor of a note, would be without effect. So notice to any agent whose duties do not concern the subject matter, and clothe him with an apparent authority to receive the notice.

The notice may have been acquired prior to the commencement of the agency, provided that it was recent enough to probably be present in the agent's mind, or is actually in his mind. The agent's duty is to inform the bank that which affects its interest and the bank will be charged with such notice.

In one case [16] the court said:

"But we think, all things considered, the safer and better rule to be that the knowledge of an agent, obtained prior to his employment as agent, will be

16. **Fairfield Savings Bank v. Chase, 72 Me. 226.**

an implied or imputed notice to the principal, under certain limitations and conditions, which are these: The knowledge must be present to the mind of the agent when acting for the principal, so fully in his mind that it could not have been forgotten by him; the knowledge or notice must be of a matter so material to the transaction as to make it the agent's duty to communicate the fact to his principal; and the agent must himself have no personal interest in the matter which would lead him to conceal his knowledge from his principal, but must be at liberty to communicate it. Additional modification might be required in some cases.

"These elements appearing, it seems just to say that a previous notice to an agent is present notice to the principal. The presumption, that an agent will do what it is his right and duty to do, having no personal motive or interest to do the contrary, is so strong that the law does not allow it to be denied. There may be instances where the rule operates harshly; but, under the rule reversed, many frauds could be easily perpetrated. Of course, the knowledge must be that of a person who is executing some agency, and not acting merely in some ministerial capacity, as servant or clerk. For instance; if in the present case Brown had merely taken the acknowledgment of the deed to the bank, or had transscribed the deed as a clerk or copyist, such acts would not have imposed a duty to impart his knowledge to the bank. But if employed to obtain the title for the bank by a deed to be drawn by him for the purpose, that would place the transaction within the rule."

The President and Cashier of a bank both have a large general authority, as we shall see, and for that

reason may be charged with notice upon a very broad range of subjects. We shall notice their authority more at length hereafter.

Suppose a director *receives* notice which he does not impart to his fellow directors or to the bank. Is this notice? There has been a difference of authority. The weight of authority seems to be that this is notice to the bank.

B. In Particular of Various Officers.

Sec. 48. THE BANK PRESIDENT. The bank president by virtue of his office, has the authority to represent the bank in a general way, and to conduct its litigation and employ counsel. By custom or usage very broad powers may be conferred upon him.

A President of a bank is supposed to exercise a sort of general supervision over its affairs, and by some authorities is said to be presumed to be its manager having very broad powers. Yet it seems to be the weight of authority that while by usage, by by-law or by some sort of conferring of authority, the President may be given any sort of power, yet in the absence thereof his office is to a large extent merely honorary and he cannot bind the bank, except in a narrow compass. It seems to be admitted that by virtue of his office alone, he may handle the litigation of the bank, bringing suits, employing counsel, etc.[17]

So it has been held he may bind the bank by offering a reward for the purpose of securing the arrest

17. Citizen's Nat. Bk. v. Berry, 53 Kan. 696; Morse on Banks and Banking, 4th E., Sec. 143.

of a defaulting teller is within the President's powers, in the absence of any inhibition on such power.[18] But aside from general acts of this sort, looking to the bank's general protection, the cases usually hold that the President has no authority out of the mere color of his office, to bind the bank by disposing of its property, endorsing its negotiable paper,[19]; etc. although of course, he might in any particular case actually have such authority or seem to have it. It is, in fact, often customary for a bank president to assume, with the consent of the other directors, or to be given, very large general powers, or many particular powers, having perhaps a desk at the bank, at which he spends a large portion of his time and transacts daily important bank business. Here undoubtedly he has a considerable authority, yet even there may not usurp the duties of other officers, having particular duties.

Sec. 49. THE BANK CASHIER. The cashier of a bank is the officer who has charge of the financial dealings of the bank and his authority depends upon the particular facts in each case, the usages of the bank in question and of the community, and the particular authority in any wise conferred.

The cashier of a bank is its chief fiscal officer, having the charge, as an executive of the financial matters of the bank, carrying out the general policies of the bank and the will of its directors. He does not control the financial policies of the bank, but he executes them. He cannot determine upon the general

18. Bank v. Griffin, 168 Ill. 314.
19. U. S. Bk. v. First Nat. Bk., 79 Fed. 296.

policies of the bank, but he carries them out as determined by the directors.

The authority of the cashier, like the authority of the president, depends largely on the particular facts in the case, the usages of the bank in question, etc. Yet by virtue of his office, he necessarily has certain well known authority in every case, pertaining to the management of the routine financial matters of the bank. Thus he may draw cashier's checks on the funds of the bank, receive moneys payable to the bank, certify checks regularly drawn,[20] indorse and transfer commercial paper,[21] discount commercial paper, etc. He may borrow money for the bank, pledging its personal property in security therefor.[22] In other words, he has the implied power to take all the usual and necessary steps to carry on and manage the financial operations of the bank, so far as the usual and regular banking business is concerned. He cannot direct general financial policies, for that right is in the directors, and his implied authority by virtue of his office is strictly limited to those matters which fall within the daily routine of the banking business. But within his own sphere his implied authority is quite extensive. As one court says:[23] "The cashier of a bank is its executive financial officer. It is under his direction that its moneys are received and paid out, that its debts are collected and paid, that its securities are kept and transferred. Such powers as are habitually exercised by cashiers must be held, so far as the public are concerned, to

20. Merchant's Bank v. State Bank, 10 Wall. 604.
21. Auten v. Manistee National Bank, 67 Ark. 243.
22. Coats v. Donnell, 94 N. Y. 176.
23. Loring v. Brodie, 134 Mass. 453.

have been conferred upon Fuller by his election to the office."

He may of course have enlarged authority in any particular case, expressly given him or to be inferred from usage. In a recent case [24] the court says: "It is apparent from the evidence in this case that the directors gave but scant personal attention to the management of the bank, and that the control of its affairs was left largely to the cashier. The board of directors met infrequently, sometimes only once a month. There is no question but that the action of the cashier in making the certificates was something which he might very properly have been authorized by the board of directors to do, had the matter been brought to their attention. . . . The law is well settled that where the directors of a bank, through long usage, permit the cashier to act without their express authority, in matters in which they might lawfully authorize him to act, they cannot, after such action on his part, be heard to deny his authority, to the detriment of those who have relied upon it. . . ."

This case is one of many which might be cited to show how the facts of each case must be considered when the act falls without the routine financial operations of the bank.

Sec. 50. THE BANK TELLER. The bank teller is a clerk authorized, as the case may be, to receive or pay out deposits. In the one case he is known as a receiving teller; in the other a paying teller. He is a subordinate of the cashier.

24. National Bank v. Equitable Trust Co., 223 Pa. 328.

The teller's authority is practically confined to receiving or paying out deposits on checks presented for that purpose. He may have a larger authority as for instance, to certify checks, for in some banks it seems to be the custom for him to exercise this function in the cashier's stead and name. The teller is an employee, exercising a branch of the cashier's office. He is under the supervision of the cashier.

PART VI.

THE BANKING BUSINESS.

CHAPTER 12.

GENERAL REMARKS.

Sec. 51. WHAT BUSINESS BANK MAY DO. A bank organized under general banking acts may carry on all the sorts of banking business, established by custom as such. The banking business includes (1) The receiving deposits on checking accounts or otherwise; (2) Investing its funds; (3) Making loans and discounts; (4) Making collections; (5) Issuing negotiable paper; and doing all those things reasonably necessary in the pursuit of such businesses.

A bank's business may extend over a very large range. In carrying on that business, it becomes necessary for the bank to do many things incidental thereto. Primarily a bank is a place for the deposit of money, but in receiving money for deposit it must do many other things. Whatever it does however, must not tend to endanger the safe keeping of the funds entrusted to it. Many statutory safeguards have been thrown around the business of banking. Whatever business a bank may do, whatever powers it may exercise, must be done and exercised within the law.

The branches of the banking business are quite clearly outlined and definitely known. We will take up separately the branches of the bank's activity.

Sec. 52. PECULIAR BANKING CUSTOMS. The right of the bank to carry on business in particular ways and its authority and duty are governed by the usages which prevail.

No statute or charter provision to the contrary, usages are sometimes quite important to determine the rights, the authority and the duties of banks. No one is bound by a usage unless it is so well established and well known that he must be considered as having contracted with reference to it, or unless knowing there are usages, he does not take the trouble to inquire into them, being content to be governed by them, whatever they are. Usages may cover much or little territory, and concern the banking business in general or only one particular bank. Clearly general usages are more effective to govern one's rights and duties, than local customs are. One cannot say he does not know general banking customs for the reason that the other party is entitled to believe that he does know them and has them under consideration when he acts.

When one chooses a particular bank as his agent or depositary, he must acquaint himself with its established usages.

CHAPTER 13.

INVESTMENTS.

Sec. 53. INVESTMENTS IN REAL ESTATE. A bank has no power to deal in real estate, except for incidental purposes. It cannot invest in real estate for the mere purpose of investment. The banking laws usually set out for what purposes a bank may hold real estate, but such purposes are always of a merely incidental sort.

To buy real estate for purposes of investment, or speculation, is no part of the business of a bank. Its power to deal in real estate is very limited. It may purchase, hold and sell real estate only in an incidental way. Two general divisions of the cases where it properly holds real estate, might be made (1) cases in which it purchases and holds real estate for the purpose of providing itself with a home; and (2) cases in which in the protection of its interests it finds it necessary to take real estate. The National Bank Act provides:

"A National banking association may purchase, hold and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its immediate accommodation in the transaction of business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgment, decrees or mortgages held by the association or shall purchase to secure debts due it."

It will thus be seen that a bank cannot deal generally in real estate, but may only acquire and hold it when it needs it (as for a home) to enable it to carry on its business, and when it finds it necessary to take it in satisfaction of debts previously contracted, or at an execution sale, etc.

Sec. 54. LENDING MONEY ON REAL ESTATE. A bank has no right to loan money on real estate, though it may for debts previously contracted, take mortgages in good faith, for purposes of security in order to protect its loan. But the United States court has held that where a national bank loans money on real estate, the bank's power cannot be questioned except by the United States, and the mortgage as between the parties, may be enforced.

With the exception of one or two states a bank cannot loan money on real estate. It may indeed take mortgages as a further security for debts previously contracted, where the original loan was made in good faith. Our Supreme Court however has held, that if a national bank exceeds its power in this respect and loans money on real estate, the mortgagor cannot raise the question and the mortgage may be enforced. The United States may in such case call the bank to account for abusing its authority and exceeding its charter powers, but the parties cannot object.[25]

25. **National Bank v. Whitney, 103 U. S. 99.**

Sec. 55. INVESTMENTS IN PERSONAL PROPERTY IN GENERAL. Generally speaking a bank has no power to deal in personal property, except as it needs the same to enable it to carry on its business, or as it acquires the same for the purpose of protecting its interests.

Generally speaking a bank cannot buy and sell goods or personal property of any description, except as it may need such property, or must take it to protect its own interests. It needs its equipment and its office paraphernalia, and such things it may of course buy, but it is not a merchant and cannot buy up personal property, and cannot put its funds for purposes of investment or speculation into personal property of any sort. Thus it cannot buy and sell stock or bonds, although it may always receive such stock or bonds, or indeed any personal property when necessary in the protection of its interests, as to secure or receive payment of debts previously contracted.

The bank's power to loan money is discussed elsewhere.

CHAPTER 14.

RECEIVING FUNDS FOR DEPOSIT.

Sec. 56. POWER TO RECEIVE DEPOSITS. One of the principal purposes of a bank is to receive deposits. Every bank organized under general banking laws has this power.

We said at the beginning of this book that we may divide banks into those which receive deposits, those which discount commercial paper and those which issue notes for circulation. But we further noticed that these activities are usually performed by the same bank. The bank which does "a general banking business" under the laws of the United States, or of any state receives deposits as the very foundation of all its activities and those activities must all be pursued in a manner which will not jeopardize such deposits and all banking acts have laws to that end governing the bank's investments, etc.

Sec. 57. WHETHER BANK MAY REFUSE DEPOSITS. No statute to the contrary, a bank may receive deposits from whom it will and discontinue its relation with any depositor at any time.

We know that a common carrier of goods or passenger must receive all who come. There can be no discrimination. The same is true of innkeepers, of telegraph and telephone companies and others engaged in callings which are of public concern. But

banks may choose as depositors whom they will. There is no law requiring them to receive deposits of all who come for that purpose.

Sec. 58. THE DEPOSITOR A CREDITOR. A depositor is a creditor of the bank. The funds deposited, unless specially deposited, or unless deposited in savings banks, are funds loaned to the bank. The depositor loses his ownership of such funds and becomes a creditor.

The relation of banker and general depositor is that of debtor and creditor, not that of trustee and beneficiary. The depositor loans his money to the bank and the bank thereupon becomes the owner of such money, indebted to the depositor for the amount thereof.[26] See, however, next section, as to character of special deposits.

Sec. 59. KINDS OF DEPOSIT. Deposits are known as general, special and specific. A general deposit is a deposit made generally, to be mixed with the other funds of the bank, the depositor becoming a general creditor; a special deposit is a deposit under an agreement that the identical funds shall be returned; a specific deposit is a deposit made for some particular purpose, as of transmission.

A general deposit is the usual one. The deposit is set down to the depositor's general account, he becomes a general creditor and loses his right to the particular funds deposited. A special deposit is made for the purpose of safe keeping and return by the

26. Aetna Nat. Bk. v. Fourth National Bank, 46 N. Y. 82.

bank of the particular funds deposited. In such a case the bank becomes, not a general debtor, but a trustee. A specific deposit is one made for a particular purpose as where particular money is to be transmitted by the bank.

For a number of reasons it is important to know whether a fund is general or special or specific. Perhaps the most important is, that on the failure of the bank, the general depositor must share pro rata with other general depositors, while a special depositor can claim the very fund deposited by him.

Where money is deposited, and even where checks are deposited, which are credited as cash received, the deposit is general. Thus A has on hand $100 in currency, and $25 in the shape of a check received from B. He makes out a deposit slip for, and is credited in his bank book with a deposit of, $125. This deposit is general. A becomes a general creditor. If the bank fails A must share pro rata with other creditors. He cannot claim payment in full, unless the funds of the bank are sufficient to pay 100 per cent to all general depositors.

A bank may, however, receive deposits for special keeping, as where it receives money in a bag or box to be kept in that manner by it; or where it receives money or funds specially in trust, or where it receives a package of bonds or other securities for safe keeping and return. In such a case it must return the very thing received, must keep the same with due care, and if the bank fails, the depositor can receive the very thing deposited. On the other hand, the depositor runs the risk of its theft or loss, without the bank's negligence, and also of its depreciation. In case of the bank's failure, however, the special

fund must be capable of identification; otherwise the special depositor stands on the footing of a general depositor.

Sec. 60. CERTIFICATES OF DEPOSIT. Certificates of deposit are certificates issued by the bank reciting the receipt of a certain amount of money received by the holder, an equivalent of which is to be returned to the depositor or to the holder, upon return of the certificate properly endorsed. It is negotiable if drawn in accordance with the rules that govern commercial paper.

Banks issue certificates of deposit which when drawn to order or to bearer are negotiable if otherwise in accord with the rules governing commercial paper. They are forms of promissory note. In such a case the money represented by the deposit is not subject to check. The holder of the certificate is a general depositor of the bank, to be paid out of its general funds. Usually also a certificate stipulates that it shall draw interest at a certain rate.

Sec. 61. THE BANK'S UNDERTAKING WITH THE GENERAL DEPOSITOR. The bank's undertaking with a general depositor, that is one having a general checking account, is to pay the depositor or his order on demand; to return cancelled checks as vouchers; and to render periodic statements. It may also agree to pay him a rate of interest on his deposit or on his daily balance.

When one opens up a checking deposit with a bank, the contract of the bank with the depositor is to keep the account in accordance with general banking customs, to honor the checks of the depositor when there are funds sufficient to meet the same, in

the order in which they are received, to return cancelled checks as vouchers and to render periodic statements; perhaps, also, to pay a certain rate of interest on daily balances.

(1) *To pay the depositor or his order on demand.* The bank agrees with the depositor that it will repay him the amount of his deposit on demand and will also honor his properly drawn checks and drafts, so long as when the same are presented, there is a sufficient amount to his credit on which the bank has no valid lien.

If he draws more checks for larger amounts than he has to his credit, the bank need not honor them.

The bank's obligation being to pay the checks of the drawer, it is responsible to him in damages if it improperly refuses payment upon such checks. It has been held in a New York case,[27] that the depositor cannot recover any substantial damages, unless he shows substantial loss, but it was decided in an Illinois case that a depositor, whose check has been improperly dishonored, may recover substantial damages for the dishonor, even though the dishonor was on account of an honest mistake on the part of a bank clerk.[28]

(2) *To return cancelled checks as vouchers.* The depositor is entitled to have his cancelled checks, delivered to him as vouchers, whereby to preserve the evidence of his check payments. This is a universal banking custom. Cancelled checks are re-returned on the first day of every calendar month.

27. Clark v. Bank, 83 N. Y. Suppl. 447.
28. Schaffner v. Ehrman, 139 Ill. 109.

(3) *To render periodic statements.* The bank renders monthly statements showing the credits and debits, and the balance due the depositor.

Sec. 62. THE DEPOSITOR'S UNDERTAKING AND DUTY. The depositor undertakes that he will not overdraw his account and that he will promptly examine the cancelled checks and report errors and wrongful payments.

A depositor must not of course overdraw his accounts and such overdrafts the bank need not honor. It is also the depositor's duty to examine vouchers and statements within a reasonable time after they are returned to him, that he may report to the bank if any thing wrong appears. In Leather Manufacturer's Bank v. Morgan,[29] these facts appeared: The plaintiffs opened up a deposit and checking account with the Leather National Bank of New York City, in the name of "Wm. B. Cooper," their agent. Cooper had in his employ a trusted employee, one Berlin, who had entire management of Cooper's office. With Cooper's knowledge and at his direction, Berlin filled up all checks drawn on the account in question. Between September 11, 1880, and February 13, 1881, he filled up certain checks which were then signed by Cooper, and then being redelivered to Berlin, were altered by him, in a very skillful way, by raising the amount payable therein, and also where not payable to bearer, by making them so payable. He then received from the bank the amount of the raised checks. He also "forced the footings of the stubs" so that

29. Leather Manufacturers' Bank v. Morgan, 117 U. S. 96.

the footings corresponded with the bank's statements.

Cooper's pass-book was written up on Oct. 7, 1880, Nov. 19, 1880 and Jan. 18, 1881, and a balance struck, and the book returned on those dates with all checks which had been paid subsequent to the previous balancing, including the altered checks. Berlin destroyed on each occasion the altered checks. No device to prevent check raising was used by Cooper. Cooper did not discover the forgeries until the first or second day of March, 1881. He admitted that had he made the same examination of his check-book and pass-book as he made on that day, he would have discovered the forgeries upon such examinations. Plaintiffs brought suit against the bank for the amount held out by it on account of its payments made upon such forgeries. The court held: (1) That if a bank pays forged checks not negligently drawn, it commits the first fault and pays them at its peril; (2) That the depositor, however, is under a duty to exercise diligence and care to examine his returned statements and vouchers; (3) That this is a duty he may, in the due course of business, delegate to agents, provided he uses due care and diligence; (4) That if the forgeries are so skilfully done that such careful examination being made, they are not thereby reasonably discovered, the depositor does not thereby lose his rights against the bank; (5) That if the forgery is by the agent of the depositor, the depositor is chargeable with the fault of his agent, at least if he does not show that he exercised reasonable diligence in supervising the conduct of the agent. "In the absence of such supervision, the mere designation of an agent to discharge a duty resting primarily upon

the principal, cannot be deemed the equivalent of performance by the latter;" (6) That whether the depositor is negligent so that he is estopped to charge the bank, is a question of fact for the jury.

From this case, we find that there is a duty on the depositor to examine his account with the bank from time to time, and that while the bank is liable for paying forged checks, whenever from the failure to give due examination such forgeries are permitted to continue, the depositor is responsible for those particular forgeries so committed; that while the duty of examination may be entrusted to agents, still the depositor is bound to use due diligence in that respect and if the forgeries are by the agent himself, the principal must show that he is in no way chargeable with diligence in discovering the errors, or in suspecting their existence.

Sec. 63. THE BANK'S LIENS UPON DEPOSITS. The bank has a lien upon deposits for its overdrafts or other indebtedness.

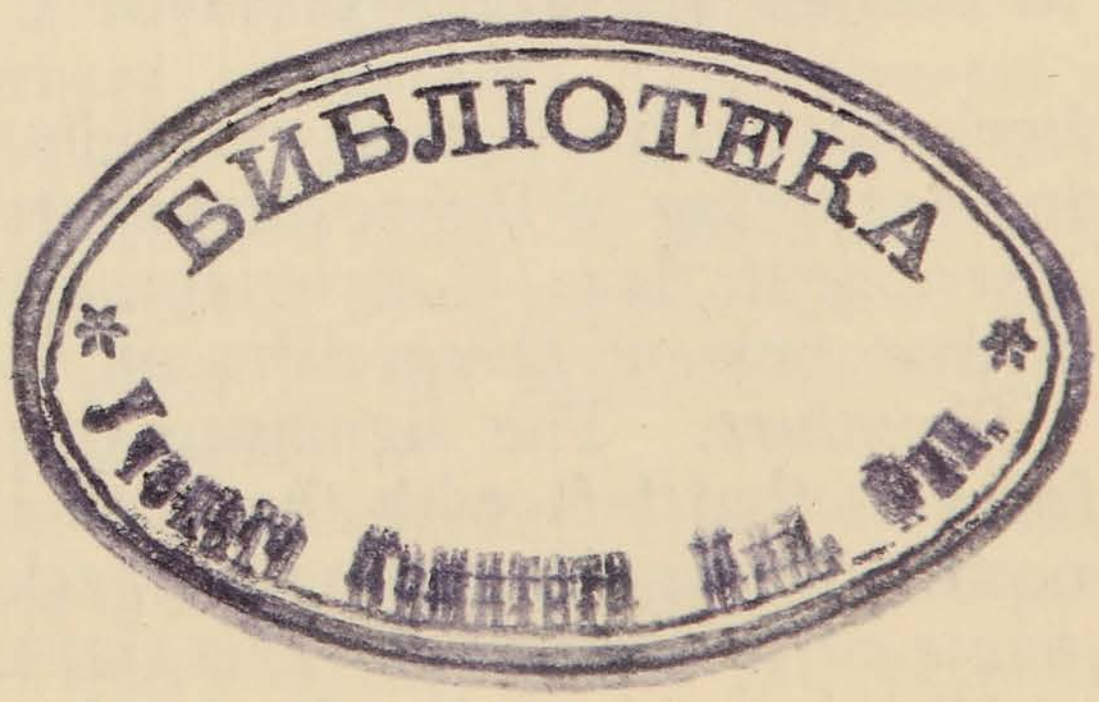
The bank has a lien upon deposits which it may enforce in case of overdrafts or where from other reasons, the depositor is indebted to it. By virtue of this lien it is discharged from liabilty for refusal to pay checks drawn upon the account which bring the deposit below the amount of the lien.

Sec. 64. APPLICATION OF DEPOSIT TO PAY DEPOSITOR'S PAPER PAYABLE AT THE BANK. It is the general rule of law that if a depositor makes paper payable at the bank, it is the bank's right, and also its duty to pay such notes upon presentment provided there are funds on deposit sufficient for that purpose.

This also is the rule adopted by the Uniform Negotiable Instruments Law.

In most of the state, but not in all, if a depositor makes a check payable at the bank this is equivalent to a direction by him to the bank to pay such note out of his deposit. A bank is therefore protected in paying such note, and also is under a duty to pay it.

By some authorities this is not the law and a bank has neither the right or duty to pay paper payable at its counter unless there is a special direction to that effect.



CHAPTER 15.

CHECKS UPON DEPOSITS.

A. In General.

Sec. 65. CHECK DEFINED. A check may be defined as "a bill of exchange, drawn on a bank, payable on demand."

A check is a sort of a draft drawn by a depositor upon his bank. It is, if properly drawn, a negotiable instrument.[30]

Sec. 66. HOW CHECK SHOULD BE MADE OUT. A check to be negotiable and made out in the usual form should be drawn for a certain amount, to the order of a certain person or to bearer, should be payable upon demand, dated and signed, and drawn upon a certain bank. It should also be made out carefully, to prevent as far as possible alterations therein.

A check should be drawn carefully in the usual form and according to the requirements of the negotiable instruments law. Let us consider the various subjects that present themselves on this point.

(1) *Signature.* The signature should be in the same form as that left with the bank in opening up the deposit. An agent signing a check, should sign in the name of his principal. His signature will not, however, be recognized by the bank except as ar-

30. Uniform Negotiable Instruments Act.

rangements to that end may have been made with the bank. Often various officers or agents have authority to sign checks, and the deposit may therefore be checked upon in various forms. A check must of course have some form of signature.

(2) *Payee.* The payee may be some particular person, or the check may be payable to bearer. It may be payable to an impersonal or a fictitious payee, as to "cash" in which case it is, according to the law of negotiable paper, payable to bearer, and passes, therefore, by mere delivery, or it may be endorsed. One may, of course, make himself the payee, but then must endorse it before negotiating or receiving the money upon it.

(3) *Words of Negotiability.* A check should be made out with words of negotiability. These are the words "to order," "to bearer," "to ———, or order," "to ———, or bearer." Customarily, however, the words "to order," are printed in the blank forms used by the bank. Unless a check has words or negotiability, it is not a negotiable instrument.

(4) *Statement of amount.* The amount should be stated definitely. It is very dangerous to issue a check with an amount either in blank, or in such a form that it may easily be changed. To be negotiable and to secure honor by the bank, the amount of the check must be certain.

(5) *Care in writing checks.* One should use great care in writing checks, using every precaution to prevent it from being altered. If the drawer is careless, so that the check is easily changed, the loss is upon such drawer, by the rule adopted in many states. Some states, however, hold that a distinction should be drawn between those cases in which the amount

is left entirely blank for the purpose of being filled up later, and those in which the amount is filled in, as intended, before issue, but the instrument is so drawn that such amount can be altered because the spaces before or after the amount are not cancelled, holding that in the latter case, the so-called negligence on the part of the drawer in making alteration possible will not charge him, if there is in fact an unauthorized filling in to increase the amount. Thus in one case the court said:[31] "Whenever a party in good faith signs a complete promissory note, however awkwardly drawn, he should, we think, be equally protected from its alteration by forgery in whatever mode it may be accomplished; and, unless, perhaps, it has been committed by some one in whom he has authorized others to place confidence, as acting for him, he has quite as good a right to rest upon the presumption that it will not be criminally altered, as any person has to take the paper on the presumption that it has not been; and the parties taking such paper must be considered as taking it upon their own risk, so far as the question of forgery is concerned, and as trusting to the character and credit of those from whom they receive it and of the intermediate holders."[32]

Another view is, however, that the instrument must be carefully drawn, otherwise the drawer will be liable for any alterations made possible by the care-

31. Holmes v. Trumper, 22 Mich. 427, 7 Am. Rep. 661.

32. Quoted in and approved by National Exchange Bank v. Lester, 194 N. Y. 461. *Accord*, with this view, Greenfield Sav. Bk. v. Stowell, 123 Mass. 196; Knoxville Nat. Bank v. Clark, 51 Ia. 264; Burrows v. Klunk, 70 Md. 451; Critten v. Chemical National Bank, 171 N. Y. 219.

less manner in which it was drawn. One court says:[33] "But the maker of the note acted with unpardonable negligence in signing the same and leaving a blank which could so easily be filled, and thus the amount of the note be increased. . . .

"If the note has been altered, the maker has acted with too gross carelessness to be entitled to protection. The purchaser is entirely innocent. . . . The maker placed it in the power of another to do an injury and, if any loss result, he must suffer who is the cause of it."

(6) *Check protection.* It is well in order to secure against alteration to use devices rendering change difficult. Various devices are used, calculated to prevent check raising. It cannot be said as a matter of law, that it is necessary to use these, but, on the other hand, their use is very desirable, especially where many checks are written, and especially, again, if they are written by agents. One must, as we have said, use all due caution to prevent check raising. If he uses such caution he is not liable for subsequent alterations and those who recognize such check after its alteration are the losers. Now he may show that he was not careless if he may show that he adopted every precaution, and that every check made out by him or his employees must pass through a certain process. In such a case also, the bank may more readily detect a forgery and the depositor may in such a case more readily charge it

33. Yocum v. Smith, 63 Ill. 321. *Accord*: Merritt v. Boyden, 191 Ill. 136; Garrard v. Haddan, 67 Pa. 82; Scotland County National Bank v. O'Connell, 23 Mo. App. 165; Hackett v. First National Bank, 114 Ky. 193; Isnard v. Torres, 10 La. Ann. 103.

with negligence in case it fails to recognize the forgery. Also in examining returned vouchers, the drawer may the more quickly and surely discover the tamperings, so as to report them to the bank.

Sec. 67. DELIVERING THE CHECK. The check is not of legal effect without delivery. But an innocent purchaser or the drawee bank may conclusively presume delivery of a regularly made out check.

No check may be of legal effect without delivery. As long as it lays upon the desk or in the books of the drawer, undelivered, it is so much waste paper. But if a check is made out in regular form and signed by the drawer, any innocent purchaser of the check from the holder (the check being properly endorsed), may recover on such check. So the bank would be protected in paying such a check. If, however, in such a case a forgery of the signature or of the endorsement was necessary, no title and no rights against the holder would thereby be acquired.

Sec. 68. TRANSFER OF THE CHECK, HOW ACCOMPLISHED. The check is transferred by either indorsement or mere delivery. Where payable to a certain person it is transferred by indorsement. Where payable to bearer it is transferred by mere delivery or by indorsement if the parties choose. Indorsement may be either in blank or special, qualified, restricted or conditional.

A check may be payable to a certain person or his order, or payable to bearer. It is payable to bearer when so expressed, when payable to a certain person or bearer, when payable to a fictitious or impersonal payee, or when endorsed in blank in its last indorse-

ment. In case it is payable to a certain person or his order, it must be indorsed in order to transfer the title. If payable to bearer, it may pass by mere delivery, though the indorsement of the transferror may be required by the transferee, in which case the transferror becomes liable as an indorser. Indorsements are in blank when the indorser merely writes his name upon the back of the instrument. A special indorsement is an indorsement to a particular person. Any holder may convert a blank indorsement into a special indorsement by writing apt words above the signature. Indorsements, whether special or in blank, may be qualified where the indorser changes his contract by special words, as where he indorses "without recourse." Indorsements are restrictive when the indorsement is not by way of general transfer, but merely for the purpose of giving a special power as where the instrument is indorsed for collection. In such a case the further negotiation of the instrument is stopped.

B. Right of Payees and Holders of Uncertified Checks.

Sec. 69. PRESENTMENT OF CHECKS FOR PAYMENT AND NOTICE OF DISHONOR. The payee or holder of an uncertified check need not present it at any special time in order to hold the drawer thereon, but must present it with due diligence, that is, within a reasonable time in order to hold indorsers. Notice of dishonor must be given indorsers immediately in order to hold them upon the check.

One who holds a check drawn upon a bank cannot hold the drawer thereon until he has presented it for payment to the bank, but there is no special time within which this must be done, except that

the drawer will be discharged to the extent that he has been injured where the holder is guilty of unreasonable delay. General business customs require that a check be presented at once upon its receipt, or else immediately indorsed. To be secure in one's rights against a drawer and indorser the holder of a check should either present it for payment immediately; that is, within the next twenty-four hours or on the next business day, or else within that time further negotiate it. If, however, there is delay and the drawer has not been damaged thereby, he may be sued upon the check if it is dishonored upon its presentment to the bank. In case the bank dishonors the check, notice of dishonor should be sent within the next twenty-four hours to the drawer and indorsers, but this notice may be waived or excused as where for instance the drawer has no right to expect that the bank will pay the check.

Sec. 70. THE RIGHT OF THE HOLDER AGAINST THE BANK. The holder of a check has no right against the bank on which it is drawn, until such bank accepts it.

If a bank, for some reason, or without reason, refuses to pay or certify a check when presented by the holder (not referring now to unendorsed checks payable to one's self), such holder has no right against the bank. He must look to his remedies against the drawer.

It was held in Illinois, formerly, that a check on a bank was an assignment pro tanto of the maker's funds therein; but this is not now the law in that or the other states.

Sec. 71. THE RIGHT OF THE HOLDER AGAINST THE DRAWER. The holder of a check may hold the drawer thereon in case the bank does not pay it, unless by delay the drawer has been injured.

If the drawer presents the check for payment or certification and the same is refused by the bank, the payee may hold the drawer upon the check. If the payee or holder was not diligent in presenting it the drawer is discharged in so far (because of the bank's insolvency or otherwise) as the drawer is damaged by such delay. Usually a holder would not be bound to present it the same day, but during banking hours of the day following the day he received it in order to be diligent.

The mere fact that a check is not presented diligently does not discharge the maker where he is not injured thereby.

Sec. 72. RIGHT OF HOLDER AGAINST PRIOR ENDORSERS. A holder must present the check within a reasonable time after receiving it and in case of dishonor by the bank, give diligent notice of its dishonor in order to hold prior endorsers.

A holder of a check may hold all prior endorsers thereon in case of its dishonor by the bank, provided there is no understanding to the contrary among the endorsers, and provided the holder uses all due diligence not only in presenting the check for payment but giving the endorsers immediate notice of its dishonor. The Uniform Negotiable Instruments Act provdes in that respect:

"Sec. 103. Where the person giving and the person to receive notice reside in same place, notice must be given within the following times:

"1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

"2. If given at his residence, it must be given before the usual hours of rent on the day following.

"Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

"1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day by the next mail thereafter.

"2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision."

Sec. 73. STOPPING PAYMENTS ON CHECKS. Payment may be stopped on any check by the drawer by notification to the bank not to pay it. If payment is wrongfully stopped, the holder has his rights against the drawer, and against endorsers, if any, on their endorsements.

A holder has the power to stop payment on a check by direction to the bank to that effect. In such a case the payee may of course hold the drawer if the check was wrongfully stopped, or if the check has been endorsed or transferred by the payee, the endorsers may be held as in the case of any nonpayment, the proper steps being taken to charge them.

C. Certification of Checks.

Sec. 74. CERTIFICATION DEFINED. The certification of the check is its acceptance in writing by the bank, whereby it undertakes to pay it on demand when presented for payment.

A check may be presented for payment, or for acceptance, or, as we say, for certification. Certification by the bank is its act of accepting the check by writing thereon words to that effect, usually reading as follows:

"Accepted
The 16th National Bank of Chicago.
John Doe,
Teller."

Sec. 75. WHEN DRAWER PROCURES CERTIFICATION OF CHECK. When the drawer procures the certification of the check, the bank becomes primarily, and the drawer secondarily liable thereon.

If the drawer procures the certification of the check, the bank becomes liable by the terms of its acceptance. The drawer however remains secondarily liable,[34] so that if, the bank fails, or refuses to pay, the drawer may be held, provided due diligence in presenting the check, and in giving notice of dishonor has been pursued.

Sec. 76. WHERE HOLDER PROCURES CERTIFICATION OF CHECK. If the holder procures the certification of the check the drawer is discharged.

If the holder presents the check for acceptance instead of for payment, the drawer is discharged,[35] for this act on the holder's part is practically a deposit made by him in the bank, and the drawer ought not in that event be longer liable.

34. Metro. Nat. Bank v. Jones, 137 Ill. 634.
35. *Id.*

Sec. 77. CERTIFICATION OF FORGED, ALTERED OR RAISED CHECK. The bank by certification of a check admits the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument, and also the existence of the payee and his then capacity to endorse, but by the weight of authority does not admit that the check as certified has not been altered; unless it was negligent in not discovering the alteration.

When the bank certifies a check, it undertakes to pay the amount thereof to the holder, and cannot defend on the ground that the drawer had no authority to draw the instrument, or that his signature was forged, for it is bound to know his signature; assuming of course that the party seeking payment was no party to the forgery. The certification also admits the existence of the payee and his capacity to endorse. By the weight of authority, however, the bank, except in the case of its own negligence, is not estopped to defend on the ground that the amount of the check was raised after it left the drawer's hands,[36] and furthermore, that in case it pays a raised check, it can recover the excess from the party to whom it has paid it.[37]

D. Lost, Stolen, Forged and Altered Checks.

Sec. 78. RIGHTS OF PAYEE OR INDORSEE OF LOST CHECK. If a check is lost, the payee or indorsee thereof may recover thereon upon proof of the loss, properly indemnifying the party liable against a pos-

36. Continental Bank v. Bank, 107 Ill. App. 455.
37. *Id.*

sible subsequent liability to an innocent purchaser for value from the finder.

If a check is lost, an innocent purchaser for value may acquire rights thereon if it is expressly payable to bearer, or endorsed in blank or in any way drawn so as to pass by mere delivery. If a check is lost, it is better to stop payment on it immediately, yet this can in nowise prevent an innocent purchaser from the finder acquiring rights against the maker of the check and the indorsers thereon. A holder of such lost check may sue on the check and recover thereon against the maker or other parties liable to him as endorsers or acceptor, but where there is danger of liability to some one to whom the finder may have sold the check, proper indemnification may be required. A lost check, however, like any other lost instrument can be proved by oral evidence.

Sec. 79. STOLEN CHECKS PAYABLE TO BEARER. If a stolen check is payable to bearer, an innocent purchaser thereof takes a good title thereto and is not subject to the defense that it was stolen.

A check as we know is payable to bearer, when so expressed to be, or when payable to a fictitious or impersonal payee, or when endorsed in blank, if such a check regularly made out, is stolen, one who purchases it in good faith, giving value therefor, and before it is overdue, i. e., before it has been outstanding a reasonable length of time, takes a good title thereto and is not subject to the defense that it was stolen. If payment of the check has been stopped, and the bank therefore will not pay it, the drawer may be held.

Sec. 80. FORGED CHECKS. Forgery is a good defense in a suit against the supposed drawer, unless he is estopped by his negligence to set up the defense. The bank is bound to know the drawer's signature and if it recognizes a forged signature the loss is upon it, but it may recover the amount from any guilty party to whom it has paid such check, but not from an innocent purchaser for value. The drawer may be estopped by his conduct to set up the defense of forgery.

Generally speaking, no rights may arise out of a forgery, until one by his acts prevents himself from setting up the fact that the instrument was forged.

The person, whose check the instrument purports to be, can set up against the bank, or against any holder of the paper, that it was not his paper, that he never signed it and never gave any one express or implied authority to sign it. Otherwise, one would have no way to prevent skillful forgers from depriving him of his entire fortune. The law, therefore, wisely puts the risk on the persons who recognize a forged signature. The bank must not pay a forged check; nor must purchasers take it. No rights against the drawer can be acquired, no matter through how many hands the check may pass.

It is true the drawer may by his conduct estop himself to set up that the signature was a forgery. We have seen how this may come about where he draws the check in such a careless way that the amount thereof may be easily altered.[38] We have also seen how it is the drawer's duty to examine his bank statements and report forgeries, so that they may not continue.[39] But aside from estoppel, the drawer loses

38. See Sec. 66, *supra.*
39. See Sec. 62, *supra.*

nothing through a forgery. The check is simply not his check, though purporting to be signed by his name.

An indorser we know, warrants prior signatures. One who acquires a forged instrument which has been endorsed, can hold the endorsers, if the paper turns out not to be genuine. Also, we know from the law of commercial paper that if an instrument passes by delivery the immediate transferee may hold his transferror upon a warranty that the paper is genuine and what it purports to be.

If the bank pays forged paper, it may recover the payment if made to a guilty party or to one who acquired it from a guilty party without giving any value therefor; but otherwise the bank may not recover.

Sec. 81. FORGED INDORSEMENTS. If an indorsement is forged, no rights can be thereby acquired against the party whose indorsement is forged, but subsequent indorsers of the paper warrant the genuineness of such signature.

If an indorsement on a check is forged, the person whose name is indorsed, stands in the same position as a drawer whose name has been forged. Subsequent indorsers warrant the genuineness of the instrument and of all signatures thereon.

Sec. 82. RAISED AND OTHERWISE ALTERED CHECKS. If a check is altered, the drawer or prior indorsers, are discharged by the alteration, unless accomplished through their negligence in drawing or indorsing a check in such a form that it may be easily altered. If the amount of the check is raised, an innocent purchaser may hold the drawer for the original amount. Filling up blanks which one has

express or implied authority to fill, is mere completion of the check, and not alteration.

Alteration of a check, without the drawer's consent, discharges the drawer. The same may be said in respect to endorsers who indorse prior to the alteration.

Alteration consists in an unauthorized change of some material item of the check. The negotiable instruments law provides that any alteration is material which changes (1) the date; (2) the sum payable, either for principal or interest (3) the time or place of payment; (4) the number and the relations of the parties; (5) the medium or currency in which the payment is to be made; or (6) which adds a place of payment where no place of payment is specified, or any other change or addition which alters or affects the instrument in any respect.

There is no alteration where a check left partly in blank is filled up according to authority expressly or impliedly given. The negotiable instruments law in that respect provides:

"Sec. 14. Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is issued or negotiated

to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time."

If one by his careless drawing up of the instrument makes alteration easy, as where he leaves blank spaces on either side of the amount so that another word may be written in, he cannot in many states set up as against the bank or other innocent takers for value that the instrument has been altered. By his own conduct he made the alteration possible.[40] Hence, the value of "check protectors" which enable one to maintain that he used all possible caution in drawing the check.

Where a check has been altered, and the prior parties thereto are in no way estopped to set up the alteration, an innocent purchaser for value may hold the prior parties upon the check as it was in its original condition. Thus if it was originally made out for one hundred dollars, and the amount has been changed to two hundred, an innocent purchaser for value may hold the maker to pay one hundred dollars thereon.

40. See Sec. 66, *supra.*

CHAPTER 16.

LOANS AND DISCOUNTS.

Sec. 83. IN GENERAL OF THE BANK'S LOANING POWER. A bank has the power to loan out its funds, and this is one of its principal functions as a bank. The positive law however may restrict the power to certain amounts or to certain securities.

A bank may loan money. This is one of its chief uses. Limitations are imposed; not, however, for the purpose of discouraging its activity in this respect, but to properly safeguard depositors whose money the bank is using. It is, therefore, well settled that the bank may loan money, subject to the restrictions imposed by law.

Sec. 84. WHAT LOANS BANK MAY MAKE. The bank may loan money on any sort of security except as forbidden by law, and in any amount except as restricted by the statute. National banks cannot loan on real estate, or on their own shares, or above one-tenth to any one person, of its capital stock actually paid in.

The state banking laws regulate loans by state banks. The idea which governs banking loans is that they shall not be made for long periods, and that the securities upon which they are made shall be readily convertible. Accordingly loans are customarily made at periods of 60 to 90 days, and upon collateral which is easily convertible. The collateral usually taken

is in the shape of stocks, bonds, first mortgage notes and the like. The National Banking Law forbids National Banks to loan upon real estate. This does not forbid them from loaning on first mortgage notes, or from taking mortgaged property when necessary for protection under a loan already made.

Where the bank makes an unauthorized loan, this cannot be plead by the debtor by way of defense, but he must repay the loan, and the bank is entitled to enforce it as in the case of any other loan; it being for the government to complain if the bank misuses its powers.

Sec. 85. INTEREST WHICH BANK MAY CHARGE. The bank may charge the rate of interest which is allowed by the laws of the state. A National bank may charge the rate allowed by the laws of the state in which it is located; and in case it charges more it loses its right to all interest; or if it actually receives more than the rate allowed it is subject to suit for twice the amount of interest that has been paid.

We know that the rates of interest allowed by law differ in the different states. Where a lender charges more than the rate allowed by law, the charge is called usury. Various penalties are enforced by the various states, where usury is charged or taken. These laws apply to banks as well as to other concerns. The National Banking Law with the intent of making its loaning operations of uniform operation and consequence provides that National Banks may charge the same rate of interest that the state law in which the bank is located allows. To charge above that amount is usury. If the state law allows a charge of 7 per cent a year, the bank may charge

that. If it charges more, its charge is usurious. The penalty under the National Banking Law for charging usury, is loss of the right not only to the excess, but of *all* interest. If usury is actually paid, the borrower may recover back twice the amount of interest he has paid.

Any charge for the use of money is to be regarded as interest no matter what name is given to it. One cannot charge a "commission" for loaning his own money. The courts will look behind a subterfuge to discover the real nature of the transaction.

The law allows a bank, or any lender, to deduct the full legal rate in advance, by way of discount. Thus, if the legal rate allowed is seven per cent a year, the bank may loan $93 for one year, taking a note for $100 to include the principal and interest. Mathematically this is a fraction more than seven per cent, but by custom, it is regarded as seven per cent.

Sec. 86. DISCOUNT DEFINED. Discount is a deduction of interest or other sum in advance by a bank when it loans money or buys negotiable paper.

It is usual for banks in lending money or in purchasing negotiable paper, to deduct an amount in advance from the face value of the paper given to evidence the debt or purchase. Thus if one applies for a loan of $500 for three months at 6 per cent, he is paid $500 less the amount of interest. This discount as, we said above, may be the full legal rate. So the bank may purchase paper in the same way, making a deduction from the face of the paper, the borrower being secondarily liable as indorser, if the

maker, drawer or acceptor (as the case may be) does not pay at maturity. The bank in such a case becomes the owner of the paper.

CHAPTER 17.

COLLECTIONS.

A. In General of the Bank's Collection Business.

Sec. 87. GENERAL STATEMENT. The bank has power to act as agent in the collection of commercial paper.

A bank doing a general banking business may collect commercial paper, committed to it by the holders thereof, for that purpose. Such paper may be endorsed generally to the bank, or endorsed restrictively "for collection."

Sec. 88. THE BANK'S RELATION TO THE HOLDER OF THE PAPER. The bank is the agent of the holder of the paper committed to it for collection. If however paper is payable at a bank, but not deposited there for collection, and the party liable deposits funds with which to pay it, it is the agent of the debtor.

The bank is agent for the holder of the paper. Its rights and duties are particularly discussed in subsequent sections. It may be the agent of a debtor to pay paper if it accepts his money to pay his obligations on paper it does not hold.

Sec. 89. THE FORM OF INDORSEMENT OF PAPER DEPOSITED FOR COLLECTION. The paper may be indorsed generally or if payable to bearer, not indorsed at all, but the safest form of indorsement is

a restrictive one, as where it is indorsed "for collection." This prevents further transfer except for the purposes of the collection.

If paper is payable to bearer, the paper may be delivered to the bank either with or without the endorsement of the holder. Otherwise it must be endorsed. The endorsement may be general, special, or restrictive. A restrictive endorsement is an endorsement stopping further negotiation except for purposes of the endorsement, as where it is endorsed for collection. No further negotiation in such case may be made, and no further transfer except to accomplish the purposes of the endorsement.

B. The Bank's Authority, Duty and Liability in Making Collection.

Sec. 90. THE BANK'S AUTHORITY TO PAY PAPER PAYABLE AT BANK. If paper is payable at bank, there is a difference of opinion as to whether this, without more gives the bank the authority to pay the paper. By the Uniform Negotiable Instruments Act, adopted in most states, the bank has authority.

Suppose a note is payable by its terms at a certain bank, and the maker has funds then at its maturity, yet the maker has made no special arrangements to have the note paid. Has the bank, from these facts, authority to pay the note? There have been decisions both ways. The Uniform Negotiable Instruments Act has now settled the question in many states, by declaring that such authority exists when the paper is payable at the bank. In such a case it may and should pay such a note, the same as it should pay a check payable upon it.

Sec. 91. THE BANK'S DUTY TO USE DILIGENCE IN COLLECTION. A bank must use due diligence in collecting paper submitted to it, using its best judgment in cases of doubt, there being no specific instructions to guide it.

A bank must act diligently in collecting paper. If specific instructions have been given it must follow them. Otherwise, while it may, of course, in cases of doubt use its best judgment, it must act diligently, in good faith, and for the best interests of the owner of the paper. If on account of its delay, the maker or others liable become insolvent, the bank is liable.

Sec. 92. THE BANK'S UNDERTAKING AND DUTY IN COLLECTING THROUGH CORRESPONDENTS. Where the bank must collect at distant points through correspondents there are two rules adopted in different states, as to its liability. One is that its duty is discharged when it uses due care to select a reliable correspondent; the other is that the correspondent bank is its agent and therefore it is liable for the defaults of such correspondent bank.

Where one in New York, presents paper to a New York bank, which he knows must be collected through a correspondent in Chicago, does he make the New York Bank his agent to collect the paper, or merely his agent to use due diligence and care in selecting an agent for the owner of the paper? There are two rules: One is that the duty of the bank is discharged where the bank acts diligently and carefully in selecting a correspondent bank, and sends the paper to it. Under this rule, if the correspondent bank is negligent whereby loss occurs the owner of the paper must sue it; if such bank fails, loss is upon

the holder.[41] The other rule is that the bank remains responsible throughout, and is no more discharged by the default of the correspondent than it would be if one of its own officers or employees had been the cause of the loss. Such correspondent is deemed to be its agent.[42]

In any case, a bank is liable if it does not use proper care in the selection of a bank. A special contract may govern the matter.

C. Procedure in Making Collection.

Sec. 93. PRESENTMENT FOR PAYMENT. The paper must be presented for payment. If there are

41. Holding the initial bank simply for due care and diligence in appointing a correspondent; First National Bank v. Sprague, 34 Nebr. 318; Wilson v. Carlinville National Bank, 187 Ill. 222; Fabens v. Mercantile Bank, 23 Pick. 332; Citizens Bank of Baltimore v. Howell, 8 Md. 547; East Haddam Bank v. Scovill, 12 Conn. 303; Millikin v. Shapleigh, 36 Mo. 596; Bank of Louisville v. First National Bank, 8 Baxt. 101; Guelich v. National State Bank of Burlington, 56 Ia. 434; Hyde v. Planter's Bank, 17 La. 560; Bank v. Ober, 31 Kan. 599. Second National Bank of La. v. Merchants Nat. Bank of New Albany, 111 Ky. 930. This, it is seen is the rule applied in the greater number of states.

42. Holding the initial bank for the negligence or default of the correspondent. Allen v. Merchants Bank of New York, 22 Wend. 215; Hoover v. Wise, 91 U. S. 308; Exchange National Bank v. Third National Bank, 112 U. S. 276; Streissguth v. National German American Bank, 43 Minn. 50; Corn Exchange Bank v. Farmers National Bank, 118 N. Y. 443. Titus v. Mechanic's National Bank, 35 N. J. L. 588; Reeve's v. State Bank, 8 Ohio St. 465.

indorsers or drawers, such presentment, unless waived, must be made when the instrument is due, in order to charge such drawers or indorsers.

There must be presentment of the paper for payment. In order to hold indorsers on a note or the drawer or indorsers on a bill, this presentment must be made on the day the instrument is due, within business hours or if payable at a bank, within banking hours. In respect to presentment for payment, the Uniform Negotiable Instruments Law provides:

"Sec. 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument but if the instrument is, by its terms, payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

"Sec. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

"Sec. 72. Presentment for payment, to be sufficient, must be made:

"1. By the holder, or by some person authorized to receive payment on his behalf.

"2. At a reasonable hour on a business day.

"3. At a proper place as herein defined.

"4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

"Sec. 73. Presentment for payment is made at the proper place:

"1. Where a place of payment is specified in the instrument and it is there presented.

"2. Where no place of payment is specified and the address of the person to make the payment is given in the instrument and it is there presented.

"3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

"4. In any other case, if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

"Sec. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

"Sec. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

"Sec. 76. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with exercise of reasonable diligence, he can be found.

"Sec. 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

"Sec. 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

"Sec. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

"Sec. 80. Presentment for payment is not required to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect the instrument will be paid if presented.

"Sec. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

"Sec. 82. Presentment for payment is dispensed with:

"1. When after the exercise of reasonable diligence presentment as required by this Act can not be made.

"2. Where the drawee is a fictitious person.

"3. By waiver of presentment, express or implied.

"Sec. 83. The instrument is dishonored by non-payment when:

"1. It is duly presented for payment and payment is refused or can not be obtained; or

"2. Presentment is excused and the instrument is overdue and unpaid.

"Sec. 84. Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

"Sec. 85. Every negotiable instrument is payable at the time fixed therein without grace. When a day of maturity falls on Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12:00 o'clock noon on Saturday, when that entire day is not a holiday.

"Sec. 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

"Sec. 87. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (This section omitted in the Illinois law.)

"Sec. 88. Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective."

Sec. 94. NOTICE OF DISHONOR. Where negotiable paper has been presented to the party liable thereon, for payment, and payment refused, there must be timely notice of dishonor given in order to hold the drawer of a bill or check, or indorsers of a bill, check or note.

Payment having been refused upon presentment to the party primarily liable, the parties secondarily liable (drawer and endorsers) are to be looked to and to that end proper and prompt notice must be given them of the dishonor, that they may forthwith take all possible steps to protect themselves. Parties secondarily liable, when held, are the parties upon whom ultimate loss falls unless collection can be made by them from the party primarily liable who ought to have paid the paper in the first instance. In reference to notice of dishonor the negotiable instruments law provides:

"Sec. 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

"Sec. 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and

who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

"Sec. 91. Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

"Sec. 92. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

"Sec. 93. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

"Sec. 94. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder and the principal upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

"Sec. 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate unless the party to whom the notice is given is in fact misled thereby.

"Sec. 96. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

"Sec. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

"Sec. 98. Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be

no personal representative, notice may be sent to the last residence or last place of business of the deceased.

"Sec. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

"Sec. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

"Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of his creditors, notice may be given either to the party himself or to his trustee or assignee.

"Sec. 102. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this Act.

"Sec. 103. Where the person giving and the person to receive notice reside in same place, notice must be given within the following times:

"1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

"2. If given at his residence, it must be given before the usual hours of rest on the day following.

"3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following.

"Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

"1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day by the next mail thereafter.

"2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

"Sec. 105. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

"Sec. 106. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

"Sec. 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after dishonor.

"Sec. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

"1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or,

"2. If he lives in one place and has his place of business in another, notice may be sent to either place; or,

"3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

"But where the notice is actually received by the party within the time specified in this Act, it will be sufficient though not sent in accordance with the requirements of this section.

"Sec. 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

"Sec. 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

"Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor.

"Sec. 112. Notice of dishonor is dispensed with when after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

"Sec. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate notice must be given with reasonable diligence.

"Sec. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

"1. Where the drawer and drawee are the same person.

"2. Where the drawee is a fictitious person or a person not having capacity to contract.

"3. Where the drawer is the person to whom the instrument is presented for payment.

"4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

"5. Where the drawer has countermanded payment.

"Sec. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

"1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument.

"2. Where the indorser is the person to whom the instrument is presented for payment.

"3. Where the instrument was made or accepted for his accommodation.

"Sec. 116. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

"Sec. 117. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

"Sec. 118. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be, but protest is not required except in the case of foreign bills of exchange."

Sec. 95. PROTEST. If the paper in question is a foreign bill of exchange, that is, either drawn or payable out of the state, it must in case of non-payment be protested in order to hold drawer or indorsers.

If the paper to be collected is a foreign bill of exchange, it must not only be properly and timely presented, and notice of dishonor given, but it must be *protested* for non-payment. If presented for acceptance and dishonor for non-acceptance, it must be protested for non-acceptance.

With reference to protest the Negotiable Instruments Law provides:

"Sec. 152. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof, in case of dishonor, is unnecessary.

"Sec. 153. The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

"1. The time and place of presentment.

"2. The fact that presentment was made and the manner thereof.

"3. The cause or reason for protesting the bill.

"4. The demand made and the answer given, if any, of the fact, that the drawee or acceptor could not be found.

"Sec. 154. Protest may be made by:

"1. A notary public; or,

"2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

"Sec. 155. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

"Sec. 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person, other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary.

"Sec. 157. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

"Sec. 158. When the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

"Sec. 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

"Sec. 160. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof."

Sec. 96. WAIVER OF PRESENTMENT, NOTICE AND PROTEST. The steps necessary to charge a party secondarily liable (presentment, notice and, in cases, protest) may be waived either by words or conduct, and either before or after the time for taking such steps.

The right of the parties secondarily liable to have the various steps taken may be waived.

It may be waived by express waiver. Any words to that effect are good to that end. If the waiver is on the face of the instrument it is binding as to all who become liable on the paper. If "protest" is waived, as where the paper contains the clause "hereby waiving protest," this operates to waive all other steps, that is, due presentment, and notice of dishonor.

The Negotiable Instruments Law provides in respect to waiver, as set forth on page 114, *supra*.

D. Proceeds of Collection.

Sec. 97. THE BANK'S DUTY IN REMITTING PROCEEDS. The bank becomes the debtor of the customer, owing him the amount of money collected, less its proper charge thereon.

The bank, having collected the paper, owes the proceeds to the customer. If he is a regular depositor, the bank will credit his account with the amount due him.

Sec. 98. THE BANK'S CHARGES. The bank may charge a customary fee, in the absence of express agreement.

The bank may charge the fee for collection which is customary, no agreement having been made to the

contrary. It may make no charge, as sometimes it makes collections for the indirect advantages that it hopes will ensue.

Sec. 99. TITLE TO PROCEEDS IN POSSESSION OF FAILED BANK. If proceeds are received prior to insolvency and credited to the customer's account, the customer becomes a general creditor upon insolvency, but if proceeds are received after insolvency, they are held in trust and the customer may recover them entire.

The general rule is that if a bank collects for a depositor, it becomes his debtor. Hence, if it subsequently fails he can only prove up as a general creditor; but if it collects after it becomes insolvent, the fund is held in trust, and the customer is entitled to it all.

CHAPTER 18.

THE BANK'S NEGOTIABLE PAPER.

Sec. 100. BANK DRAFTS OR CHECKS. A bank draft or check is a check payable on demand drawn by one bank on another. If it is payable at a future time it is not a check and is a bill of exchange. In either case it is often referred to as a draft.

One means of transferring funds from one part of the country to another is by means of a bank check or draft; thus A in Chicago desires to remit funds to B in New York. He buys a bank draft at a Chicago bank drawn on a New York bank in favor of himself, and by himself indorsed, or else in favor of the payee. It is sometimes said in such a case that he buys New York exchange. In cases of this sort the drawer bank and the drawee bank have arrangements to take care of each other's exchange. These instruments are usually signed by the cashier and are sometimes referred to as cashier's checks.

Sec. 101. CERTIFICATES OF DEPOSIT. A certificate of deposit is a certificate by a bank that it has received a certain amount of money from a certain person therein named and will pay the same to his order upon the return of the certificate properly indorsed.

A certificate of deposit is a form of promissory note made by a bank agreeing to pay to the order of the person therein named a certain amount of money

usually with interest at a rate specified. It is negotiable because it complies with the requirements of the Negotiable Instruments Law with respect to the form of a promissory note. To be negotiable, however, it must have all the essentials that a promissory note must have under the Negotiable Instruments Law; thus it must be payable to order or to bearer.

Sec 102. BANK NOTES. A bank note is an instrument issued by a bank to circulate as money according to the face value thereof and is a form of promissory note and was early declared to be negotiable. It is payable to bearer. It is sometimes also called a bank bill.

It is customary for banks to issue instruments which are designed to circulate as money and they are freely taken throughout the country in the place of money and for their face value. They are payable on demand and to bearer. They are not, however, legal tender. By this we mean that one cannot be compelled to take them in the payment of his debts, and yet for practical purposes they have a sufficient standing among men to be ordinarily received without objection. They are simply promissory notes issued by the bank payable on demand and to bearer.

The right to issue bank notes and the legal standing of such a note is very largely governed by statute. In the case of State banks the statute of the State governs; in the case of National banks the provisions of the Federal Banking Act govern.

The bank is under obligation to make immediate redemption of its bank bills to the bearer thereof upon prompt presentment for that purpose. This paper must be presented in banking hours but these

hours must be reasonable. The bearer is entitled to be regarded as a holder and owner of the bill. It is no defense against him whether the note has been stolen provided he has come into its possession for value and without notice of the theft. Of course if the notes are forged there is no obligation to pay them.

Bank notes can be issued either by National banks or by State banks, but the United States has power by taxation to accomplish the prohibition of the issuance of State bank notes.

Restrictions are thrown around the issuance of bank notes. The National Banking Act provides that a United States bank must secure its issue by deposits with the United States Treasury. The United States Treasury issues to National banks bank bills in various denominations which are signed by the bank officers after receiving them. The Act also provides that these bank notes are not only redeemable at the bank of issuance, but that the United States Treasury, the bank being required to keep a certain amount of funds on hand for that purpose, will also redeem.

CHAPTER 19.

SAVINGS BANKING.

A. In General.

Sec. 103. SAVINGS BANK DEFINED. A bank which is known as a Savings Bank is one organized to receive money on deposit not subject to check and subject to a regulation that a certain amount of notice shall be given before the depositor shall be entitled to his money.

A savings bank, strictly speaking, is one in which the depositors place money for the purpose of securing interest thereon, and which the bank holds in trust with no obligation to recognize checks upon such deposits, but only to pay them out upon the presentation of the pass book. Under the laws of the various states the nature of a savings bank differs according to such laws, and they have now capital stock and stockholders. Everyone is familiar with the practices of a savings bank which do business in the various cities. Such banks receive funds on deposit agreeing to pay a certain rate of interest, usually compounded semiannually and not recognizing any checks upon such funds, which are only payable by the presentation of the pass book. Usually it is provided that the bank may require a sixty days' notice before deposits may be withdrawn, although this right on the part of the bank is not exercised unless the condition of the money market makes it necessary for the protection of the bank.

Sec. 104. POWER OF BANK TO DO SAVINGS BUSINESS. The power of a bank to conduct a savings business depends on the general law and its charter. Sometimes the stockholders of a bank will organize a savings bank which legally is a separate institution, but regarded as owned by the same interests.

The power of a bank to do a savings business is determined by the general law and its charter. The bank may have a savings department or an entirely different corporation may be organized to conduct the savings business of the bank, the stockholders of the two concerns being largely the same.

Sec. 105. INVESTMENTS AND BUSINESS DONE WITH DEPOSITS. The law may specially govern the investments which are to be made by savings banks.

The business done by a savings bank is of quite a distinct character from that done by a bank of deposit and issue. It does not receive notes for collection, make discounts and the like as a bank doing a general banking business.

B. The Depositor's Contract.

Sec. 106. THE SAVINGS PASS BOOK. The deposit in a savings bank is evidence by an entry made in a pass book. This pass book also contains the printed rules and regulations under which the deposit is received and such pass book must be presented upon the withdrawal of any funds.

The pass book of the savings bank is of a different character from that of a bank of deposit, not only is the entry of the deposit made, but also withdrawals are entered therein and a balance struck with each

deposit or with each withdrawal, so that the pass book at all times shows the exact standing of the depositor's account. It is essential that this bank book be presented in order to procure a withdrawal. It also contains the printed provisions and rules under which the deposit is received, and these are governing upon the depositor. Such rules are put into force by way of enactment of by-laws, and the depositor by accepting the pass book assents to them.

The savings bank usually fortifies itself against payments to wrong parties by the provision that the pass book must accompany a withdrawal and that any holder of the pass book will be regarded as the true owner. When such is the provision a payment to any one other than the true owner, though he may have stolen or fraudulently obtained the pass book, will protect the bank, provided, however, the bank acts in the exercise of reasonable diligence and care in making the payment, and there are no suspicious circumstances which should put it on notice.

Sec. 107. NATURE OF DEPOSIT. The deposit is in the nature of a loan to the bank and is not subject to check.

It has been said that a savings bank holds its deposits in trust rather than as a debtor, and in this sense differs from other banks, but this is certainly not the general rule under many statutes and customs and the bank becomes simply the debtor of the depositor. As it has been said before the deposit is not subject to check, but must be drawn out by a presentation of the pass book.

Sec. 108. RIGHT TO WITHDRAW DEPOSIT. The depositor can withdraw the deposit at any time upon

giving the notice required by the by-laws, unless the bank does not insist upon such notice.

The deposit is not made under a contract that it shall remain for any particular length of time. It is withdrawable at any time. The bank has the right, however, to make reasonable rules in respect to the withdrawal and may require a notice, say of sixty days, and usually the depositor assents to a limitation of this sort. It is not customary, however, for banks to insist upon this notice, but they will, upon demand, pay out all, or any part of the deposit.

CHAPTER 20.

CLEARING HOUSES.

Sec. 109. CLEARING HOUSES DEFINED. THEIR FUNCTIONS AND DUTIES. A clearing house is a central organization constituted by the various banks for the purpose of simplifying the daily statement of the banks with each other and of effecting settlements with each other.

Where there are a number of banks in any community, they must of necessity receive from their various depositors, or otherwise for collection, checks drawn upon each other. For the purpose of expediting settlements with each other, clearing houses are established. This is an essential organization organized by the various banks through which all paper upon the members thereof is payable. Each bank sends through the clearing house on the day next after it is received all the paper which it has received on other banks which are members of the clearing house or which by arrangement clear through such house. After this paper has been received from the various banks, each bank is either a creditor or debtor of the association and must settle according to the balance struck.

Sec. 110. CLEARING HOUSE RULES. A clearing house has a right to make reasonable rules to govern the rights and duties of its members or those who make arrangements with it for clearing purposes.

A clearing house of necessity must make regulations and rules and have usages and these to be effec-

tive must be binding upon the members of the clearing house. A clearing house may be incorporated and in such a case it may pass by-laws for the government of its stockholders or members. These rules, or by-laws, are governing upon the members unless they are unreasonable or against the positive law.

Sec. 111. PAYMENT OF CHECKS THROUGH CLEARING HOUSE IN CASE OF INSUFFICIENT FUNDS. If checks are paid through a clearing house this means that all the checks sent through the clearing house on any day are presented at the same time and in the absence of usage or law to the contrary if the funds are not sufficient to pay all of the checks, the bank must not honor any of them.

With reference to the right of priority where a number of checks have been drawn on a deposit which is of insufficient amount to pay all of them, the rule is that they must be paid as presented, the time of presentment governing the priority. If, however, a check upon a certain bank is not presented for payment to that bank, but is sent through the clearing house by its deposit for collection in some other bank, this situation is likely to arise—that when the bank receives from the clearing house the checks drawn upon the same deposit, the deposit will not be sufficient to pay all of the checks; in such a case what check is entitled to priority? They are all presented at once for payment and the rule appears to be that none of them are entitled to priority in such a case, even though some may antedate others, for it is the time of presentment which governs priority, and in such a case the payment of all such checks must be refused on account of insufficient funds.

PART VII.

FAILED BANKS AND DISSOLUTION OF BANKS.

CHAPTER 21.

FAILED BANKS.

Sec. 112. WHEN BANK FAILS. The bank fails when its assets are not sufficient for the purpose of paying its accruing liabilities.

The bank is said to fail when it cannot meet its payments as they fall due. It then is to be regarded as insolvent and must cease doing a banking business. Under the law it may be made a crime for it to receive deposits after it has failed provided its insolvent condition is known.

Sec. 113. APPOINTMENT OF RECEIVER. Where a bank fails it is put in the hands of a receiver under the law to wind up its affairs.

If a bank fails it must then be wound up and a receiver is appointed for this purpose under the laws of the jurisdiction under which it is organized.

Sec. 114. LAW UNDER WHICH BANK IS TO BE WOUND UP. The Federal Bankruptcy Act does not apply to banks except private banks and all incorporated banks are to be dissolved in case of failure under the provisions of the law by which they receive their charter.

The National Bankruptcy Act of 1898 expressly excludes banks from its operation which are incorporated under the laws of the United States or any State. Private banks may become bankrupt under the National Bankruptcy Act, but inasmuch as the winding up of a failed bank deserves peculiar treatment these concerns are to be dissolved under the special provisions of the Banking Law under which they are organized. Thus the State Banking Laws provide for the winding up of the banks organized under them and the National Banking Law provides for the dissolution of failed banks organized under it.

Sec. 115. RIGHTS OF GENERAL DEPOSITORS UPON FAILURE. General depositors of a bank are general creditors and share pro rata with other general creditors of the bank.

A general depositor of a bank where he has made the deposit prior to insolvency is a general creditor and shares pro rata with the other depositors and creditors. If, however, he makes the deposit after insolvency, then he has the right to recover the whole of the fund provided he can identify the fund in the hands of the bank or the receiver.

Sec. 116. RIGHTS OF SPECIAL DEPOSITORS UPON FAILURE. If a deposit is special, that is one which is to be kept separate, the bank is a trustee as to such deposit and the depositor may recover it provided he can identify it, or according to some cases provided the bank had on hand at the time of the deposit that amount of money.

A special depositor as we know is one who has made a deposit for some specific purpose, the bank

to hold the funds or whatever the deposit is to restore the same in specie to the depositor. In such a case the bank is a trustee and does not get a general title to the fund, thus where a package of bank bills is to be kept for the depositor, or where he deposits any articles of value the bank gets no title to the same and the depositor is entitled to have back his property in case of failure, provided he can identify it.

Sec. 117. RIGHTS OF OWNERS OF NOTES, PROCEEDS OF COLLECTION, ETC. In case of insolvency the owner of a note left with a bank for collection can recover the same from the bank as it was acting merely as his agent and if such paper has been collected he can recover the proceeds thereof provided they have not been credited to his general account but have been kept separate. If, however, the bank at the time of receiving the deposit credits him with the face value thereof upon his general account the bank is according to the better authorities a purchaser of the instrument and the depositor, therefore, is to be considered merely as a general creditor in case of the bank's insolvency.

A bank may receive paper which it must collect from other sources in two ways; merely for collection without crediting the depositor upon his general account or as a deposit by him against which he may draw checks immediately. If he deposits for collection, or if the bank manifests its intention to receive merely for collection, then the bank is the agent of the depositor to make collection and the title to the paper remains in the depositor as principal. It is often the case, however, that the bank receives the paper and at once credits the depositor

with the amount thereof, especially if the owner of the paper has a checking account. In this case the bank stands in the character of a purchaser, although, of course, in the event the paper proves worthless it may cancel the credit. In the one case if the bank fails the paper if still in its hands can be recovered, or if it has made the collection the proceeds can be recovered provided they can be identified. In the other case the owner of the paper is a general creditor.

Sec. 118. RIGHTS OF CREDITORS OTHER THAN DEPOSITORS. Any creditor who is not a depositor is to be treated merely as a general creditor to share pro rata in the distribution of the assets of the bank, but if he has a security or any lien good against third parties, he is protected to that extent.

Besides the general depositor the bank may have other creditors just as any person or corporation may have. These creditors may be classed as general creditors, secured creditors, or judgment or other lien creditors. A general creditor having no security must prove up ratably with the other general creditors. Secured creditors such as mortgagees and holders of collateral security are protected to the extent of their lien, which in the ordinary case would, of course, exceed the indebtedness. A judgment creditor would have a lien which the judgment would give him, and would be protected by virtue of that lien.

Sec. 119. RECEIVING DEPOSITS BY INSOLVENT BANK. An insolvent bank must not receive deposits and it is made a criminal offense for a banker to

receive deposits knowing of the insolvency of the bank.

Where the bank has become insolvent and knows its true condition it must not receive deposits and, in fact, for it to do so will subject the parties receiving the deposit or consenting to its receipt to very serious penalties of a criminal nature.

Sec. 120. LIABILITIES OF STOCKHOLDERS TO CREDITORS. The stockholders are liable to the receiver for the benefit of creditors upon their subscription if the same is unpaid and also under the laws of most states and under the National Banking Law have an additional liability of a definite extent.

According to the law of incorporated companies, any stockholder of any sort of a corporation is liable for the par value of his subscription at the suit of the representative of the creditors in the case of insolvency, provided such payment is necessary to pay the debts of the concern. Under the various banking acts the liability is more extensive and the stockholder may be made to pay an additional amount in case of failure. His liability is still a limited one but it is not limited as in the case of other corporations to the par value of the stock owned by him. Thus the National Banking Act makes any stockholder liable in case of failure of an amount equal to the par value of the shares in addition to the amount which has been agreed upon in payment of such shares. The law provides in that respect that shareholders "shall be held individually responsible equally and ratably, not one for the other, for all contracts, debts and engagements of such association, to the extent

of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares." Anyone who is actually a shareholder whether registered or not is liable under this provision, although those who are registered as stockholders will be prima facie presumed to be such. Pending insolvency a shareholder cannot transfer his shares for the purpose of evading this liability. Persons who hold as mere pledgees or trustees, and who have preserved their evidence as such upon the record are not liable, but the actual owners of such stock are liable.

This liability is enforced by an assessment made by the Comptroller of the Currency when the same is recommended to him by the receiver, and he determines the amount of the assessment necessary.

CHAPTER 22.

WINDING UP OF BANKS.

Sec. 121. WINDING UP OF FAILED BANKS. Where a bank fails it is to be wound up under the law by virtue of which it has existed. Usually a receiver is put in charge and its assets distributed according to law.

If a bank fails it is to be wound up. This proceeding as we have intimated is to take place under the laws of the state or of the United States according to the source of its charter. There can be no dissolution of any corporation except by the power which created it. Usually a receiver is appointed who takes charge of the bank and distributes its assets to the creditors enforcing its debts and claims against others for the purpose of using the proceeds thereof to pay the debts of the bank. The statutes are quite explicit in reference to the manner in which banks are to be wound up in case of failure.

Sec. 122. SURRENDER OF CHARTER. A bank may under the law surrender its charter and cease to do business.

A bank may under the law voluntarily dissolve. This is accomplished by following the provisions of the statute in that respect. A National bank may be dissolved upon the vote of the owners of two-thirds of its stock.

Sec. 123. FORFEITURE OF CHARTER. A bank may forfeit its charter by its illegal acts. In such a case the charter is not forfeited except upon a declaration of forfeiture in a suit brought for that purpose.

If a bank persists in practices contrary to law, suit may be brought to declare a forfeiture of its charter. For minor infractions of the law this serious penalty would not be imposed, but any bank may have its charter taken from it if it is guilty of serious disregard or breach of the law especially if it is a persistent offender.

APPENDIX A.

THE NATIONAL BANK ACT.

(FROM THE COMPILATION MADE UNDER THE DIRECTION OF THE COMPTROLLER OF THE CURRENCY.)

APPENDIX A.

THE NATIONAL BANK ACT.

(FROM THE COMPILATION MADE UNDER THE DIRECTION OF THE COMPTROLLER OF THE CURRENCY.)

CHAPTER I.

BUREAU OF THE COMPTROLLER OF THE CURRENCY.

1. Sec. 324. BUREAU OF THE COMPTROLLER OF THE CURRENCY.

There shall be in the Department of the Treasury a Bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds, the chief officer of which Bureau shall be called the Comptroller of the Currency, and shall perform his duties under the general direction of the Secretary of the Treasury.

2. Sec. 325. COMPTROLLER OF THE CURRENCY.

The Comptroller of the Currency shall be appointed by the President, on the recommendation of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, upon reasons to be communicated by him to the Senate; and he shall be entitled to a salary of five thousand dollars a year.

3. Sec. 326. QUALIFICATION OF COMPTROLLER OF THE CURRENCY. AMOUNT OF BOND.

Provides for oath and bond.

4. Sec. 327. DEPUTY COMPTROLLER OF THE CURRENCY.

Establishes office of Deputy Comptroller.

5. ADDITIONAL DEPUTY COMPTROLLER OF THE CURRENCY. ACT MAY 22, 1908.

Establishes office of additional deputy.

6. Sec. 328. CLERKS.
Provides for clerks.

7. Sec. 329. INTEREST IN NATIONAL BANKS PROHIBITED.

It shall not be lawful for the Comptroller or the Deputy Comptroller of the Currency, either directly or indirectly, to be interested in any association issuing national currency under the laws of the United States.

8. Sec. 330. [as amended 1875]. SEAL OF COMPTROLLER OF THE CURRENCY.
Provides for seal.

9. Sec. 331. ROOMS, VAULTS, AND FURNITURE FOR CURRENCY BUREAU.
Provides rooms, etc.

10. Sec. 332. (Refers entirely to banks other than national in the District of Columbia and is incorporated in section 714 of the Code of the District of Columbia and has been repeatedly amended. See said section 714.)

11. Sec. 333. [as amended 1875]. REPORT OF COMPTROLLER.

The Comptroller of the Currency shall make an annual report to Congress, at the commencement of its session, exbihiting—

First. A summary of the state and condition of every association from which reports have been received the preceding year, at the several dates to which such reports refer, with an abstract of the whole amount of banking capital returned by them, of the whole amount of their debts and liabilities, the amount of circulating notes outstanding, and the total amount of means and resources, specifying the amount of lawful money held by them at the times of their several returns, and such other information in relation to such associations as in his judgment may be useful.

Second. A statement of the associations whose business has been closed during the year, with the amount of their circulation redeemed and the amount outstanding.

Third. Any amendment to the laws relative to banking by which the system may be improved and the security of the holders of its notes and other creditors may be increased.

Fourth. A statement exhibiting under appropriate heads the resources and liabilities and condition of the banks, banking companies, and savings banks organized under the laws of the

several States and Territories; such information to be obtained by the Comptroller from the reports made by such banks, banking companies, and savings banks to the legislatures or officers of the different States and Territories, and, where such reports can not be obtained, the deficiency to be supplied from such other authentic sources as may be available.

Fifth. The names and compensation of the clerks employed by him, and the whole amount of the expenses of the banking department during the year.

12. COMPTROLLER TO GIVE COMPLETE LIST OF ALL EMPLOYEES OF THE OFFICE. INFORMATION ABOUT FAILED BANKS, EMPLOYEES, UNDER RECEIVERS, ETC. ACT APRIL 28, 1902.

Provided, That for the fiscal year of nineteen hundred and two and thereafter, a full and complete list of all officers, agents, clerks, and other employees of the office of the Comptroller of the Currency, including bank examiners, receivers and attorneys for receivers, and clerks employed by such examiners and receivers, or any other person connected with the work of said office in Washington or elsewhere, whose salary or compensation is paid from the Treasury of the United States or assessed against or collected from existing or failed banks under their supervision or control, shall be transmitted to the Secretary of the Interior in accordance with the provisions of an Act of Congress approved January twelfth, eighteen hundred and eighty-five, relating to the Official Register: *And provided further,* That the Comptroller of the Currency is hereby directed to include in his Annual Report to the Speaker of the House of Representatives, expenses incurred during each year, in liquidation of each failed national bank separately.

13. Sec. 73. NUMBER OF COPIES OF REPORT TO BE PRINTED. ACT OF JANUARAY 12, 1895.

* * * There shall be printed of the annual report of the Comptroller of the Currency, ten thousand copies; one thousand for the Senate, two thousand for the House, and seven thousand for distribution by the Comptroller of the Currency.

14. THREE THOUSAND ADDITIONAL COPIES AUTHORIZED TO BE PRINTED. JOINT RESOLUTION NO. 25, MARCH 4, 1907.

That section 73 of an act "Providing for the public printing and binding, and the distribution of public documents," approved

January 12, 1895, be, and the same is hereby so amended as to authorize the printing annually hereafter of ten thousand copies of the annual report of the Comptroller of the Currency, for distribution by the Comptroller of the Currency, instead of seven thousand copies as heretofore.

CHAPTER II.

ORGANIZATION AND POWERS.

15. Sec. 1. THE NATIONAL BANK ACT. ACT JUNE 20, 1874.

An act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, shall hereafter be known as "the national-bank act."

16 Sec. 5133. FORMATION OF NATIONAL BANKING ASSOCIATIONS.

Associations for carrying on the business of banking under this Title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

17. Sec. 5134. REQUISITES OF ORGANIZATION CERTIFICATE.

The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. The name assumed by such association; which name shall be subject to the approval of the Comptroller of the Currency.

Second. The place where its operations of discount and deposit are to be carried on, designating the State, Territory, or district, and the particular county and city, town, or village.

Third. The amount of capital stock and the number of shares into which the same is to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Title.

NOTE.—For authority to change names or locations see act May 1, 1886, following section 5136.

18. Sec. 5135. HOW CERTIFICATE SHALL BE ACKNOWLEDGED AND FILED.

The organization certificate shall be acknowledged before a judge of some court of record, or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office.

19. Sec. 5136. CORPORATE POWERS OF ASSOCIATION.

Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession for the period of twenty years from its organization, unless it is sooner dissolved according to the provisions of its articles of association, or by the act of its shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental

powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title.

But no association shall transact any business except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking.

NOTE.—See secs. 5168, 5169 and 5170, pages 35, 36, post, relating to issuing and publishing of certificate authorizing association to begin business.

20. Sec. 1. INCREASE OF CAPITAL STOCK. ACT MAY 1, 1886.

Relates to increase of capital stock and is inserted after section 5142, Revised Statutes.

21. Sec. 2. MAY CHANGE NAME AND LOCATION; HOW. ACT MAY 1, 1886.

Any national banking association may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

22. Sec. 3. DEBTS NOT AFFECTED BY CHANGE. ACT MAY 1, 1886.

All debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.

23. Sec. 4. NO RELEASE FROM LIABILITIES. ACT MAY 1, 1886.

Nothing in this act contained shall be so construed as in any manner to release any national banking association under its old name or at its old location from any liability, or affect any action or proceeding in law in which said association may be or become a party or interested.

24. Sec. 4. NATIONAL BANKS DEEMED CITIZENS OF STATES IN WHICH LOCATED. ACT AUGUST 13, 1888.

All national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank.

25. Sec. 1. EXTENSION OF CORPORATE EXISTENCE. ACT JULY 12, 1882.

That any national banking association organized under the acts of February twenty-fifth, eighteen hundred and sixty-three, June third, eighteen hundred and sixty-four, and February fourteenth, eighteen hundred and eighty, or under sections fifty-one hundred and thirty-three, fifty-one hundred and thirty-four, fifty-one hundred and thirty-five, fifty-one hundred and thirty-six, and fifty-one hundred and fifty-four of the Revised Statutes of the United States, may, at any time within the two years next previous to the date of the expiration of its corporate existence under present law, and with the approval of the Comptroller of the Currency, to be granted, as hereinafter provided, extend its period of succession by amending its articles of association for a term of not more than twenty years from the expiration of the period of succession named in said articles of association, and shall have succession for such extended period, unless sooner dissolved by the act of shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law, or unless hereafter modified or repealed.

NOTE.—Act of Feb. 14, 1880, relates to the converson of gold banks into currency banks, and is inserted after Revised Statutes 5186.

26. Sec. 2. CONSENT OF TWO-THIRDS NECESSARY. ACT JULY 12, 1882.

That such amendment of said articles of association shall be authorized by the consent in writing of shareholders owning not less than two-thirds of the capital stock of the association; and

the board of directors shall cause such consent to be certified under the seal of the association, by the president or cashier, to the Comptroller of the Currency, accompanied by an application made by the president or cashier for the approval of the amended articles of association by the Comptroller; and such amended articles of association shall not be valid until the Comptroller shall give to such association a certificate under his hand and seal that the association has complied with all the provisions required to be complied with, and is authorized to have succession for the extended period named in the amended articles of association.

27. Sec. 3. SPECIAL EXAMINATION OF BANK AND ISSUE OF CERTIFICATE OF APPROVAL BY COMPTROLLER. ACT JULY 12, 1882.

That upon the receipt of the application and certificate of the association provided for in the preceding section, the Comptroller of the Currency shall cause a special examination to be made, at the expense of the association, to determine its condition; and if after such examination or otherwise, it appears to him that said association is in a satisfactory condition, he shall grant his certificate of approval provided for in the preceding section, or if it appears that the condition of said association is not satisfactory, he shall withhold such certificate of approval.

28. Sec. 4. STATUS NOT CHANGED BY EXTENSION, JURISDICTION OF SUITS BY OR AGAINST NATIONAL BANKS. ACT JULY 12, 1882.

That any association so extending the period of its succession shall continue to enjoy all the rights and privileges and immunities granted and shall continue to be subject to all the duties, liabilities, and restrictions imposed by the Revised Statutes of the United States and other acts having reference to national banking associations, and it shall continue to be in all respects the identical association it was before the extension of its period of succession: *Provided, however,* That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the

United States inconsistent with this proviso be, and the same are hereby, repealed.

NOTE.—See also act of August 13, 1888, relating to citizenship of national banks and jurisdiction of the circuit and district courts, which follows sec. 5136, ante.

29. Sec. 5. DISSENTING SHAREHOLDERS MAY WITHDRAW. ACT JULY 12, 1882.

That when any national banking association has amended its articles of association as provided in this act, and the Comptroller has granted his certificate of approval, any shareholder not assenting to such amendment may give notice in writing to the directors, within thirty days from the date of the certificate of approval, of his desire to withdraw from said association, in which case he shall be entitled to receive from said banking association the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons, one to be selected by such shareholder, one by the directors, and the third by the first two; and in case the value so fixed shall not be satisfactory to any such shareholder, he may appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of said reappraisal, and otherwise the appellant shall pay said expenses; and the value so ascertained and determined shall be deemed to be a debt due, and be forthwith paid, to said shareholder, from said bank; and the shares so surrendered and appraised shall, after due notice, be sold at public sale, within thirty days after the final appraisal provided in this section: *Provided,* That in the organization of any banking association intended to replace any existing banking association, and retaining the name thereof, the holders of stock in the expiring association shall be entitled to preference in the allotment of the shares of the new association in proportion to the number of shares held by them respectively in the expiring association.

30. Sec. 6. REDEMPTION OF CIRCULATING NOTES ISSUED PRIOR TO EXTENSION. ACT JULY 12, 1882.

That the circulating notes of any association so extending the period of its succession which shall have been issued to it prior to such extension shall be redeemed at the Treasury of the United States, as provided in section three of the act of June twentieth, eighteen hundred and seventy-four, entitled "An

act fixing the amount of United States notes, providing for redistribution of national bank currency, and for other purposes," and such notes when redeemed shall be forwarded to the Comptroller of the Currency, and destroyed, as now provided by law; and at the end of three years from the date of the extension of the corporate existence of each bank the association so extended shall deposit lawful money with the Treasurer of the United States sufficient to redeem the remainder of the circulation which was outstanding at the date of its extension, as provided in sections fifty-two hundred and twenty-two, fifty-two hundred and twenty-four, and fifty-two hundred and twenty-five of the Revised Statutes; and any gain that may arise from the failure to present such circulating notes for redemption shall inure to the benefit of the United States; and from time to time, as such notes are redeemed or lawful money deposited therefor as provided herein, new circulating notes shall be issued as provided by this act, bearing such devices, to be approved by the Secretary of the Treasury, as shall make them readily distinguishable from the circulating notes heretofore issued: *Provided, however,* That each banking association which shall obtain the benefit of this act shall reimburse to the Treasury the cost of preparing the plate or plates for such new circulating notes as shall be issued to it.

31. Sec. 7. DISSOLUTION OF BANKS NOT EXTENDING PERIOD OF SUCCESSION. ACT JULY 12, 1882.

That national banking associations whose corporate existence has expired or shall hereafter expire, and which do not avail themselves of the provisions of this act, shall be required to comply with the provisions of sections fifty-two hundred and twenty-one and fifty-two hundred and twenty-two of the Revised Statutes in the same manner as if the shareholders had voted to go into liquidation, as provided in section fifty-two hundred and twenty of the Revised Statutes; and the provisions of sections fifty-two hundred and twenty-four and fifty-two hundred and twenty-five of the Revised Statutes shall also be applicable to such associations, except as modified by this act; and the franchise of such associations is hereby extended for the sole purpose of liquidating their affairs until such affairs are finally closed.

NOTE.—Other sections of act of July 12, 1882.

Sec. 8.—[Relates to bond deposits and circulating notes.] Follows Revised Statutes, section 5167.

Sec. 9.—[Relates to withdrawal of circulating notes.] Follows Revised Statutes, section 5167.

Sec. 10.—Repealed sections 5171-5176, Revised Statutes, and was superseded by act of March 14, 1900. (See section 5171, Revised Statutes.)

Sec. 11.—Authorizes the exchange of three per cent bonds for outstanding three and one-half per cent bonds.

Sec. 12.—Authorizes the issue of gold certificates upon the deposit of gold coin. Inserted after section 5207.

Sec. 13.—[Relates to false certification of checks.] Follows Revised Statutes, section 5208.

32. REEXTENSION OF CORPORATE EXISTENCE. ACT OF APRIL 12, 1902.

That the Comptroller of the Currency is hereby authorized, in the manner provided by, and under the conditions and limitations of, the act of July 12, 1882, to extend for a further period of twenty years the charter of any national banking association extended under said act which shall desire to continue its existence after the expiration of its charter.

33. Sec. 5137. POWER TO HOLD REAL PROPERTY.

A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years.

34. Sec. 5138. [as amended 1900.] REQUISITE AMOUNT OF CAPITAL.

No association shall be organized with a less capital than one hundred thousand dollars, except that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants, and except that banks with a capital of not less than twenty-five thousand dollars may, with the sanction of the Secretary of the Treasury, be organized in any place the population of which does not exceed three thousand inhabitants. No associa-

tion shall be organized in a city the population of which exceeds fifty thousand persons with a capital of less than two hundred thousand dollars.

35. Sec. 5139. SHARES OF STOCK AND TRANSFERS.

The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

36. Sec. 5140. HOW PAYMENT OF THE CAPITAL STOCK MUST BE MADE AND CERTIFIED.

At least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in installments of at least ten per centum each, on the whole amount of the capital, as frequently as one installment at the end of such succeeding month from the time it shall be authorized by the Comptroller of the Currency to commence business; and the payment of each installment shall be certified to the Comptroller, under oath, by the president or cashier of the association.

37. Sec. 5141. PROCEEDINGS IF SHAREHOLDER FAILS TO PAY INSTALLMENTS.

Whenever any shareholder, or his assignee, fails to pay any installment on the stock when the same is required by the preceding section to be paid, the directors of such association may sell the stock of such delinquent shareholder at public auction, having given three weeks' previous notice thereof in a newspaper published and of general circulation in the city or county where the association is located, or if no newspaper is published in said city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon, with the expenses of advertisement and sale; and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the cost of advertisement and sale, the

amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold it shall be canceled and deducted from the capital stock of the association. If any such cancellation and reduction shall reduce the capital of the association below the minimum of capital required by law, the capital stock shall, within thirty days from the date of such cancellation, be increased to the required amount; in default of which a receiver may be appointed, according to the provisions of section fifty-two hundred and thirty-four, to close up the business of the association.

38. Sec. 5142. NATIONAL BANKS MAY INCREASE CAPITAL STOCK.

Any association formed under this Title may, by its articles of association, provide for an increase of its capital from time to time, as may be deemed expedient, subject to the limitations of this Title. But the maximum of such increase to be provided in the articles of association shall be determined by the Comptroller of the Currency; and no increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association.

39. Sec. 1. INCREASE OF CAPITAL STOCK. ACT MAY 1, 1886.

That any national banking association may, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock, in accordance with existing laws, to any sum approved by the said Comptroller, notwithstanding the limit fixed in its original articles of association and determined by said Comptroller; and no increase of the capital stock of any national banking association either within or beyond the limit fixed in its original articles of association shall be made except in the manner herein provided.

NOTE.—Other sections of this act follow Revised Statutes 5136.

40. Sec. 5143. REDUCTION OF CAPITAL STOCK.

Any association formed under this Title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this Title to authorize the formation of associations; but no such

reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any such reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and his approval thereof obtained.

41. Sec. 5144. RIGHT OF SHAREHOLDERS TO VOTE; PROXIES AUTHORIZED.

In all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or book-keeper of such association shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote.

NOTE.—The Circuit Court of the United States, in United States v. Barry, 36 F. R., 246, held that the words "liability past due and unpaid" referred only to unpaid subscriptions for stock.

42. Sec. 5145. ELECTION OF DIRECTORS.

The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking; and afterward at meetings to be held on such day in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year, and until their successors are elected and have qualified.

43. Sec. 5146 [as amended 1905]. REQUISITE QUALIFICATION OF DIRECTORS.

Every director must, during his whole term of service, be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or District in which the association is located for at least one year immediately preceding their election and must be residents therein during their continuance in office. Every director must own in his own right at least ten shares of the capital stock of the association of which he is a director, unless the capital of the bank shall not exceed twenty-five thousand dollars, in which case he must own in his own right at least five shares of such capital stock. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

44. Sec. 5147. OATH REQUIRED FROM DIRECTORS.

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Title, and that he is the owner in good faith, and in his own right, of the number of shares of stock required by this Title, subscribed by him, or standing in his name on the books of the association, and that the same is not hypothecated, or in any way pledged, as security for any loan or debt. Such oath, subscribed by the director making it, and certified by the officer before whom it is taken, shall be immediately transmitted to the Comptroller of the Currency, and shall be filed and preserved in his office.

45. Sec. 5148. FILLING VACANCIES.

Any vacancy in the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election.

46. Sec. 5149. PROCEEDINGS WHERE NO ELECTION IS HELD ON THE PROPER DAY.

If, from any cause, an election of directors is not made at the time appointed, the association shall not for that cause be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof in all cases having been given in a newspaper published in the city, town, or county in which the association is located; and if no newspaper is published in such city, town, or county, such notice shall be published in a newspaper published nearest thereto. If the articles of association do not fix the day on which the election shall be held, or if no election is held on the day fixed, the day for the election shall be designated by the board of directors in their by-laws, or otherwise; or if the directors fail to fix the day, shareholders representing two-thirds of the shares may do so.

47. Sec. 5150. ELECTION OF PRESIDENT OF THE BOARD.

One of the directors, to be chosen by the board, shall be the president of the board.

48. Sec. 5151. INDIVIDUAL LIABILITY OF SHAREHOLDERS.

The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such

association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under State laws, having not less than five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of chapter four *a* of this Title.

NOTE.—See act of June 30, 1876, following section 5238, Revised Statutes, for enforcement of liability prescribed by this section in cases of voluntary liquidation.

49. Sec. 5152. EXECUTORS, TRUSTEES, ETC., NOT PERSONALLY LIABLE.

Persons holding stock as executors, administrators, guardians, or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust-funds would be, if living and competent to act and hold the stock in his own name.

50. Sec. 5153 [as amended 1907]. NATIONAL BANKING ASSOCIATIONS TO BE DEPOSITARIES OF PUBLIC MONEYS.

All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance

a Chapter 5 of this compilation.

of their duties as financial agents of the Government: *Provided,* That the Secretary shall, on or before the first of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided,* That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections.

NOTE.—For other provisions relating to duties and liabilities of depositaries see following sections of the Revised Statutes of the United States:

Sec. 3640. Transfer of moneys from depositaries to Treasury authorized.
Sec. 3641. Transfer of postal deposits.
Sec. 3642. Accounts of postal deposits.
Sec. 3643. Entry of each deposit, transfer, and payment.
Sec. 3644. Public moneys in Treasury and depositories subject to draft of Treasurer.
Sec. 3645. Regulations for presentment of drafts.
Sec. 3646. Duplicates for lost or stolen checks authorized.
Sec. 3647. Duplicate check when officer who issued is dead.
Sec. 3648. Advances of public moneys prohibited.
Sec. 3649. Examination of depositaries.
See also secs. 3620, 3847, 4046, 5488, and 5497, post.

51. Sec. 15. INTEREST ON PUBLIC DEPOSITS. ACT MAY 30, 1908.

That all national banking associations designated as regular depositaries of public money shall pay upon all special and additional deposits made by the Secretary of the Treasury in such depositaries, and all such associations designated as temporary depositaries of public money shall pay upon all sums of public money deposited in such associations interest at such rate as the Secretary of the Treasury may prescribe not less, however, than one per centum per annum upon the average monthly amount of such deposits: *Provided, however,* That nothing contained in this Act shall be construed to change or modify the obligation of any association or any of its officers for the safekeeping of public money: *Provided further,* That the rate of interest charged upon such deposits shall be equal and uniform throughout the United States.

52. Sec. 5154. CONVERSION OF STATE BANKS INTO NATIONAL BANKING ASSOCIATIONS.

Any bank incorporated by special law, or any banking institution organized under a general law of any State, may become a national association under this Title by the name prescribed in its organization certificate; and in such case the articles of association and the organization certificate may be executed by a majority of the directors of the bank or banking institution; and the certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate, and to change or convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and organization certificate, shall have power to execute all other papers, and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion and the directors may continue to be the directors of the association until others are elected or appointed in accordance with the provisions of this chapter; and any State bank which is a stockholder in any other bank, by authority of State laws, may continue to hold its stock, although either bank, or both, may be organized under and have accepted the provisions of this Title. When the Comptroller of the Currency has given to such association a certificate, under his hand and official seal, that the provisions of this Title have been complied with, and that it is authorized to commence the business of banking, the association shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are prescribed for other associations originally organized as national banking associations, and shall be held and regarded as such an association. But no such association shall have a less capital than the amount prescribed for associations organized under this Title.

53. Sec. 5155. STATE BANKS HAVING BRANCHES.

It shall be lawful for any bank or banking association organized under State laws, and having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at

the mother-bank and each branch, to be regulated by the amount of capital assigned to and used by each.

54. Sec. 5156. RESERVATION OF RIGHTS OF ASSOCIATIONS ORGANIZED UNDER ACT OF 1863.

Saves rights of such banks.

CHAPTER III.

OBTAINING AND ISSUING CIRCULATING NOTES.

55. Sec. 5157. WHAT ASSOCIATIONS ARE GOVERNED BY CHAPTERS TWO, THREE, AND FOUR.

The provisions of chapters two, three, and four *a* of this Title, which are expressed without restrictive words, as applying to "national banking associations," or to "associations," apply to all associations organized to carry on the business of banking under any act of Congress.

56. Sec. 5158. REGISTERED BONDS INTENDED BY THE TERM "UNITED STATES BONDS."

The term "United States bonds," as used throughout this chapter, shall be construed to mean registered bonds of the United States.

57. Sec. 5159. DEPOSIT OF BONDS REQUIRED BEFORE ISSUE OF CIRCULATING NOTES.

Every association, after having complied with the provisions of this Title preliminary to the commencement of the banking business, and before it shall be authorized to commence banking business under this Title, shall transfer and deliver to the Treasurer of the United States any United States registered bonds, bearing interest, [*to an amount not less than thirty thousand dollars and not less than one-third of the capital stock paid in.*] Such bonds shall be received by the Treasurer upon deposit and shall be by him safely kept in his office, until they shall be otherwise disposed of, in pursuance of the provisions of this Title.

58. PANAMA CANAL BONDS HAVE ALL RIGHTS AND PRIVILEGES ACCORDED TO OTHER TWO PER CENT BONDS OF THE UNITED STATES. ACT DECEMBER 21, 1905.

That the two per cent bonds of the United States authorized

a Chapters three, four, and five of this compilation.

by section eight of the act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June twenty-eight, nineteen hundred and two, shall have all the rights and privileges accorded by law to other two per cent bonds of the United States, and every national banking association having on deposit as provided by law, such bonds issued under the provisions of said section eight of said act approved June twenty-eight, nineteen hundred and two, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per cent each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said two per cent bonds; and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by section fifty-two hundred and fourteen of the Revised Statutes.

59. Sec. 5160. INCREASE OR REDUCTION OF DEPOSIT TO CORRESPOND WITH CAPITAL.

The deposit of bonds made by each association shall be increased as its capital may be paid up or increased, so that every association shall at all times have on deposit with the Treasurer registered United States bonds to the amount [*of at least one-third of its capital stock actually paid in*]. And any association that may desire to reduce its capital, or close up its business and dissolve its organization, may take up its bonds upon returning to the Comptroller its circulating notes in the proportion hereinafter required, or may take up any excess of bonds beyond [*one-third of its capital stock*], and upon which no circulating notes have been delivered.

60. Sec. 5161. EXCHANGE OF COUPON FOR REGISTERED BONDS.

To facilitate a compliance with the two preceding sections, the Secretary of the Treasury is authorized to receive from any association, and cancel, any United States coupon bonds, and to issue in lieu thereof registered bonds of like amount, bearing a like rate of interest, and having the same time to run.

61. Sec. 5162. MANNER OF MAKING TRANSFERS OF BONDS.

All transfers of United States bonds, made by any association under the provisions of this Title, shall be made to the Treasurer of the United States in trust for the association, with a memorandum written or printed on each bond, and signed by the cashier, or some other officer of the association making the

deposit. A receipt shall be given to the association, by the Comptroller of the Currency, or by a clerk appointed by him for that purpose, stating that the bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association. No assignment or transfer of any such bond by the Treasurer shall be deemed valid unless countersigned by the Comptroller of the Currency.

62. Sec. 5163. REGISTRY OF TRANSFERS.

The Comptroller of the Currency shall keep in his office a book in which he shall cause to be entered, immediately upon countersigning it, every transfer or assignment by the Treasurer, of any bonds belonging to a national banking association, presented for his signature. He shall state in such entry the name of the association from whose accounts the transfer is made, the name of the party to whom it is made, and the par value of the bonds transferred.

63. Sec. 5164. NOTICE OF TRANSFER TO BE GIVEN TO ASSOCIATION INTERESTED.

The Comptroller of the Currency shall, immediately upon countersigning and entering any transfer or assignment by the Treasurer, of any bonds belonging to a national banking association, advise by mail the association from whose accounts the transfer is made, of the kind and numerical designation of the bonds, and the amount thereof so transferred.

64. Sec. 5165. EXAMINATION OF REGISTRY AND BONDS.

The Comptroller of the Currency shall have at all times, during office hours, access to the books of the Treasurer of the United States for the purpose of ascertaining the correctness of any transfer or assignment of the bonds deposited by an association, presented to the Comptroller to countersign; and the Treasurer shall have the like access to the book mentioned in section fifty-one hundred and sixty-three during office hours, to ascertain the correctness of the entries in the same; and the Comptroller shall also at all times have access to the bonds on deposit with the Treasurer to ascertain their amount and condition.

65. Sec. 5166. ANNUAL EXAMINATION OF BONDS BY ASSOCIATION.

Every association having bonds deposited in the office of the

Treasurer of the United States shall, once or oftener in each fiscal year, examine and compare the bonds pledged by the association with the books of the Comptroller of the Currency and with the accounts of the association, and, if they are found correct, to execute to the Treasurer a certificate setting forth the different kinds and the amounts thereof, and that the same are in the possession and custody of the Treasurer at the date of the certificate. Such examination shall be made at such time or times, during the ordinary business hours, as the Treasurer and the Comptroller, respectively may select and may be made by an officer or agent of such association duly appointed in writing for that purpose; and his certificate before mentioned shall be of like force and validity as if executed by the president or cashier. A duplicate of such certificate, signed by the Treasurer, shall be retained by the association.

66. Sec. 5167. GENERAL PROVISIONS RESPECTING BONDS.

The bonds transferred to and deposited with the Treasurer of the United States, by any association, for the security of its circulating notes, shall be held exclusively for that purpose, until such notes are redeemed, except as provided in this Title. The Comptroller of the Currency shall give to any such association powers of attorney to receive and appropriate to its own use the interest on the bonds which it has so transferred to the Treasurer; but such powers shall become inoperative whenever such association fails to redeem its circulating notes. Whenever the market or cash value of any bonds thus deposited with the Treasurer is reduced below the amount of the circulation issued for the same, the Comptroller may demand and receive the amount of such depreciation in other United States bonds at cash value, or in money, from the association to be deposited with the Treasurer as long as such depreciation continues. And the Comptroller, upon the terms prescribed by the Secretary of the Treasury, may permit an exchange to be made of any of the bonds deposited with the Treasurer by any association for other bonds of the United States authorized to be received as security for circulating notes, if he is of opinion that such an exchange can be made without prejudice to the United States; and he may direct the return of any bonds to the association which transferred the same, in sums of not less than one thousand dollars, upon the surrender to him and the cancellation of a proportionate amount of such circulating notes: *Provided,* That the remaining bonds which shall have been transferred

by the association offering to surrender circulating notes are equal to the amount required for the circulating notes not surrendered by such association, and that the amount of bonds in the hands of the Treasurer is not diminished below the amount required to be kept on deposit with him, and that there has been no failure by the association to redeem its circulating notes, nor any other violation by it of the provisions of this Title, and that the market or cash value of the remaining bonds is not below the amount required for the circulation issued for the same.

67. Sec. 4. WITHDRAWAL OF CIRCULATING NOTES ON DEPOSIT OF LAWFUL MONEY AND WITHDRAWAL OF BONDS. ACT JUNE 20, 1874.

That any association organized under this act or any of the acts of which this is an amendment, desiring to withdraw its circulating notes, in whole or in part, may, upon the deposit of lawful money with the Treasurer of the United States in sums of not less than nine thousand dollars, take up the bonds which said association has on deposit with the Treasurer for the security of such circulating notes; which bonds shall be assigned to the bank in the manner specified in the nineteenth section of the national-bank act; and the outstanding notes of said association, to an amount equal to the legal-tender notes deposited, shall be redeemed at the Treasury of the United States, and destroyed as now provided by law: *Provided,* That the amount of the bonds on deposit for circulation shall not be reduced below fifty thousand dollars.

68. Sec. 8. AMOUNT OF BONDS REQUIRED TO BE ON DEPOSIT; REDUCTION OF AMOUNT OR RETIREMENT IN FULL OF CIRCULATING NOTES. ACT JULY 12, 1882.

That national banks now organized or hereafter organized, having a capital of one hundred and fifty thousand dollars, or less, shall not be required to keep on deposit or deposit with the Treasurer of the United States United States bonds in excess of one-fourth of their capital stock as security for their circulating notes; but such banks shall keep on deposit or deposit with the Treasurer of the United States the amount of bonds as herein required. And such of those banks having on deposit bonds in excess of that amount are authorized to reduce their circulation by the deposit of lawful money as provided by law; [*provided, that the amount of such circulating notes shall not in*

any case exceed ninety per centum of the par value of the bonds deposited as herein provided:] *Provided further,* That the national banks which shall hereafter make deposits of lawful money for the retirement in full of their circulation shall at the time of their deposit be assessed for the cost of transporting and redeeming their notes then outstanding, a sum equal to the average cost of the redemption of national-bank notes during the preceding year, and shall thereupon pay such assessment. And all national banks which have heretofore made or shall hereafter make deposits of lawful money for the reduction of their circulation shall be assessed and shall pay an assessment in the manner specified in section three of the act approved June 20, 1874, for the cost of transporting and redeeming their notes redeemed from such deposits subsequently to June 30, 1881.

NOTE.—The limitation of the circulation not to exceed ninety per cent of the bonds deposited is superseded by act March 14, 1900, which follows Revised Statutes 5171. Act June 20, 1874, section 3, mentioned in this section, follows Revised Statutes, section 5192.

69. Sec. 10. WITHDRAWAL OF CIRCULATING NOTES ON DEPOSIT OF LAWFUL MONEY, AND WITHDRAWAL OF BONDS. NOT MORE THAN NINE MILLIONS TO BE DEPOSITED DURING ANY CALENDAR MONTH. WITHDRAWAL OF ADDITIONAL CIRCULATION ON DEPOSIT OF LAWFUL MONEY OR NATIONAL BANK NOTES. ACT MAY 30, 1908.

That section nine of the Act approved July twelfth, eighteen hundred and eighty-two, as amended by the Act approved March fourth, nineteen hundred and seven, be further amended to read as follows:

"SEC. 9. That any national banking association desiring to withdraw its circulating notes secured by deposit of United States bonds in the manner provided in section four of the Act approved June twentieth, eighteen hundred and seventy-four, is hereby authorized for that purpose to deposit lawful money with the Treasurer of the United States and, with the consent of the Comptroller of the Currency and the approval of the Secretary of the Treasury, to withdraw a proportionate amount of bonds held as security for its circulating notes in the order of such deposits: *Provided,* That not more than nine millions of dollars of lawful money shall be so deposited during any calendar month for this purpose.

"Any national banking association desiring to withdraw any

of its circulating notes, secured by the deposit of securities other than bonds of the United States, may make such withdrawal at any time in like manner and effect by the deposit of lawful money or national bank notes with the Treasurer of the United States, and upon such deposit a proportionate share of the securities so deposited may be withdrawn: *Provided,* That the deposits under this section to retire notes secured by the deposit of securities other than bonds of the United States shall not be covered into the Treasury, as required by section six of an Act entitled 'An Act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes,' approved July fourteenth, eighteen hundred and ninety, but shall be retained in the Treasury for the purpose of redeeming the notes of the bank making such deposit."

70. Sec. 5168. COMPTROLLER TO DETERMINE IF ASSOCIATION CAN COMMENCE BUSINESS.

Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this Title, and the association transmitting the same notifies the Comptroller that at least fifty per centum of its capital stock has been duly paid in, and that such association has complied with all the provisions of this Title required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this Title required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the President or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking.

71. Sec. 5169. CERTIFICATE OF AUTHORITY TO COMMENCE BANKING TO BE ISSUED.

If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comp-

troller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this Title.

72. Sec. 5170. PUBLICATION OF CERTIFICATE.

The association shall cause the certificate issued under the preceding section to be published in some newspaper printed in the city or county where the association is located, for at least sixty days next after the issuing thereof; or, if no newspaper is published in such city or county, then in the newspaper published nearest thereto.

73. Section 5171. (This section was repealed by act of July 12, 1882, and the repealing section was superseded by act of March 14, 1900, section 12, which follows.)

74. Sec. 12. DELIVERY OF CIRCULATING NOTES. ACT OF MARCH 14, 1900.

That upon the deposit with the Treasurer of the United States, by any national banking association, of any bonds of the United States in the manner provided by existing law, such association shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited; and any national banking associations now having bonds on deposit for the security of circulating notes, and upon which an amount of circulating notes has been issued less than the par value of the bonds, shall be entitled, upon due application to the Comptroller of the Currency, to receive additional circulating notes in blank to an amount which will increase the circulating notes held by such association to the par value of the bonds deposited, such additional notes to be held and treated in the same way as circulating notes of national banking associations heretofore issued, and subject to all the provisions of law affecting such notes: *Provided,* That nothing herein contained shall be construed to modify or repeal the provisions of section fifty-one hundred and sixty-seven of the Revised Statutes of the United States, authorizing the Comptroller of the Currency to require additional deposits of bonds or of lawful money in case the market value of the bonds held

to secure the circulating notes shall fall below the par value of the circulating notes outstanding for which such bonds may be deposited as security: *And provided further,* That the circulating notes furnished to national banking associations under the provisions of this Act shall be of the denominations prescribed by law, except that no national banking association shall, after the passage of this Act, be entitled to receive from the Comptroller of the Currency, or to issue or reissue or place in circulation, more than one-third in amount of its circulating notes of the denomination of five dollars: *And provided further,* That the total amount of such notes issued to any such association may equal at any time but shall not exceed the amount at such time of its capital stock actually paid in: *And provided further,* That under regulations to be prescribed by the Secretary of the Treasury any national banking association may substitute the two per centum bonds issued under the provisions of this Act for any of the bonds deposited with the Treasurer to secure circulation or to secure deposits of public money; and so much of an Act entitled "An Act to enable national banking associations to extend their corporate existence, and for other purposes," approved July twelfth, eighteen hundred and eighty-two, as prohibits any national bank which makes any deposit of lawful money in order to withdraw its circulating notes from receiving any increase of its circulation for the period of six months from the time it made such deposit of lawful money for the purpose aforesaid, is hereby repealed, and all other Acts or parts of Acts inconsistent with the provisions of this section are hereby repealed.

75. Sec. 5172 [as amended May 30, 1908]. PRINTING DENOMINATIONS AND FORM OF THE CIRCULATING NOTES.

In order to furnish suitable notes for circulation, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved, in the best manner to guard against counterfeiting and fraudulent alterations, and shall have printed therefrom, and numbered, such quantity of circulating notes, in blank, of the denominations of five dollars, ten dollars, twenty dollars, fifty dollars, one hundred dollars, five hundred dollars, one thousand dollars, and ten thousand dollars, as may be required to supply the associations entitled to receive the same. Such notes shall state upon their face that they are secured by United States bonds or other securities, certified by the written or engraved signatures of the Treas-

urer and Register and by the imprint of the seal of the Treasury. They shall also express upon their face the promise of the association receiving the same to pay on demand, attested by the signature of the president or vice-president and cashier. The Comptroller of the Currency, acting under the direction of the Secretary of the Treasury, shall as soon as practicable cause to be prepared circulating notes in blank, registered and countersigned, as provided by law, to an amount equal to fifty per centum of the capital stock of each national banking association; such notes to be deposited in the Treasury or in the subtreasury of the United States nearest the place of business of each association, and to be held for such association, subject to the order of the Comptroller of the Currency, for their delivery as provided by law: *Provided,* That the Comptroller of the Currency may issue national-bank notes of the present form until plates can be prepared and circulating notes issued as above provided: *Provided, however*, That in no event shall bank notes of the present form be issued to any bank as additional circulation provided for by this act."

76. Sec. 5. CHARTER NUMBER TO BE PRINTED ON NOTES. ACT JUNE 20, 1874.

That the Comptroller of the Currency shall, under such rules and regulations as the Secretary of the Treasury may prescribe, cause the charter numbers of the association to be printed upon all national-bank notes which may be hereafter issued by him.

NOTE.—Other sections of this act will be found under Revised Statutes, 5192.

77. Sec. 1. DISTINCTIVE PAPER FOR PRINTING NOTES. ACT MARCH 3, 1875.

* * * That the national-bank notes shall be printed under the direction of the Secretary of the Treasury, and upon the distinctive or special paper which has been, or may hereafter be, adopted by him for printing United States notes.

78. Sec. 5173. PLATES AND DIES TO BE UNDER THE CONTROL OF THE COMPTROLLER.

The plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws respecting the procuring of such notes, and all other expenses of the Bureau of the Currency, shall be paid out of the proceeds of the taxes or duties

assessed and collected on the circulation of national banking associations under this Title.

NOTE.—See act June 20, 1874, following Revised Statutes, 5192, and act July 12, 1882, following Revised Statutes, 5136, requiring banks to pay cost of their plates.

79. Sec. 5174 [as amended 1877]. EXAMINATION OF PLATES AND DIES.

The Comptroller of the Currency shall cause to be examined, each year, the plates, dies, bed pieces, and other material from which the national-bank circulation is printed, in whole or in part, and file in his office annually a correct list of the same. Such material as shall have been used in the printing of the notes of associations which are in liquidation, or have closed business, shall be destroyed, under such regulations as shall be prescribed by the Comptroller of the Currency and approved by the Secretary of the Treasury. The expenses of any such examination or destruction shall be paid out of any appropriation made by Congress for the special examination of national banks and bank-note plates.

80. Sec. 5175. LIMIT TO ISSUE OF NOTES UNDER FIVE DOLLARS.

Not more than one-sixth part of the notes furnished to any association shall be of a less denomination than five dollars. After specie payments are resumed no association shall be furnished with notes of a less denomination than five dollars.

NOTE—Specie payments were resumed January 1, 1879. (See act of March 14, 1900, section 12, following Revised Statutes, 5171, limiting the issue of five-dollar notes.)

81. Sec. 5176. Repealed by act July 12, 1882, which in turn was superseded by act March 14, 1900. (See section 5171.)

82. Sec. 5177. (Repealed by act January 14, 1875.)

83. Sec. 3. AGGREGATE AMOUNT OF CIRCULATING NOTES NOT LIMITED. ACT JANUARY 14, 1875.

That secton 5177 of the Revised Statutes of the United States, limiting the aggregate amount of circulating notes of national banking associations, be and is hereby repealed; and each existing banking association may increase its circulating notes in accordance with existing law without respect to said aggregate limit; and new banking associations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redis-

tribution of national bank currency among the several States and Territories are hereby repealed.

84. Sec. 5178. (Superseded by act January 14, 1875.)
85. Sec. 5179. (Superseded by act January 14, 1875.)
86. Sec. 5180. (Repealed by act of January 14, 1875.)
87. Sec. 5181. (Superseded by act January 14, 1875.)

88. Sec. 5182. FOR WHAT DEMANDS NATIONAL BANK NOTES MAY BE RECEIVED.

After any association receiving circulating notes under this Title has caused its promise to pay such notes on demand to be signed by the president or vice-president and cashier thereof, in such manner as to make them obligatory promissory notes, payable on demand, at its place of business, such association may issue and circulate the same as money. And the same shall be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other dues to the United States, except duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the national currency.

89. Sec. 5183 [as amended 1875]. ISSUE OF POST NOTES, ETC., PROHIBITED.

No national banking association shall issue post notes or any other notes to circulate as money than such as are authorized by the provisions of this Title.

90. Sec. 5184. DESTROYING AND REPLACING WORN-OUT AND MUTILATED NOTES.

It shall be the duty of the Comptroller of the Currency to receive worn-out or mutilated circulating notes issued by any banking association, and also, on due proof of the destruction of any such circulating notes, to deliver in place thereof to the association other blank circulating notes to an equal amount. Such worn-out or mutilated notes, after a memorandum has been entered in the proper books, in accordance with such regulations as may be established by the Comptroller, as well as all circulating notes which shall have been paid or surrendered to be canceled, [*shall be burned to ashes*] in presence of four persons, one to be appointed by the Secretary of the Treasury, one by the Comptroller of the Currency, one by the Treasurer of the United States, and one by the association, under such regulations as the Secretary of the Treasury may prescribe. A certificate of

[*such burning,*] signed by the parties so appointed, shall be made in the books of the Comptroller, and a duplicate thereof forwarded to the association whose notes are thus canceled.

NOTE.—Act June 23, 1874, provides for maceration in place of burning.

91. MACERATION OF NATIONAL BANK NOTES. ACT JUNE 23, 1874.

* * * For the maceration of national bank notes * * *; and that all such issues hereafter destroyed may be destroyed by maceration instead of burning to ashes, as now provided by law; and that so much of sections twenty-four and forty-three of the national currency act as requires national bank notes to be burned to ashes is hereby repealed; that the pulp from such macerated issue shall be disposed of only under the direction of the Secretary of the Treasury.

92. Sec. 5185 [as amended 1875]. ORGANIZATION OF ASSOCIATIONS TO ISSUE GOLD NOTES.

Associations may be organized in the manner prescribed by this Title for the purpose of issuing notes payable in gold; and upon the deposit of any United States bonds bearing interest payable in gold with the Treasurer of the United States, in the manner prescribed for other associations, it shall be lawful for the Comptroller of the Currency to issue to the association making the deposit circulating notes of different denominations, but none of them of less than five dollars, and not exceeding in amount eighty per centum of the par value of the bonds deposited, which shall express the promise of the association to pay them, upon presentation at the office at which they are issued, in gold coin of the United States, and shall be so redeemable.

93. Sec. 5186. RESERVE REQUIREMENTS FOR GOLD BANKS.

Every association organized under the preceding section shall at all times keep on hand not less than twenty-five per centum of its outstanding circulation, in gold or silver coin of the United States; and shall receive at par in the payment of debts the gold notes of every other such association which at the time of such payment is redeeming its circulating notes in gold coin of the United States, and shall be subject to all the provisions of this Title: Provided, That, in applying the same to associations organized for issuing gold notes, the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States; and the circu-

lation of such association shall not be within the limitation of circulation mentioned in this Title.

94. CONVERSION OF NATIONAL GOLD BANKS INTO CURRENCY BANKS. ACT FEBRUARY 14, 1880.

That any national gold bank organized under the provisions of the laws of the United States, may, in the manner and subject to the provisions prescribed by section fifty-one hundred and fifty-four of the Revised Statutes of the United States, for the conversion of banks incorporated under the laws of any State, cease to be a gold bank, and become such an association as is authorized by section fifty-one hundred and thirty-three, for carrying on the business of banking, and shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are by law prescribed for such associations: *Provided,* That all certificates of organization which shall be issued under this act shall bear the date of the original organization of each bank respectively as a gold bank.

95. Sec. 5187. PENALTY FOR ISSUING CIRCULATING NOTES TO UNAUTHORIZED ASSOCIATIONS.

No officer acting under the provisions of this Title shall countersign or deliver to any association, or to any other company or person, any circulating notes contemplated by this Title, except in accordance with the true intent and meaning of its provisions. Every officer who violates this section shall be deemed guilty of a high misdemeanor, and shall be fined not more than double the amount so countersigned and delivered, and imprisoned not less than one year and not more than fifteen years.

96. Sec. 5188. PENALTY FOR IMITATING BANK CIRCULATION. USE OF SAME FOR ADVERTISING PURPOSES.

It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, handbill or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under this Title, or any act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security any business or professional card, notice, or advertisement, or any notice or advertisement of any matter or thing whatever. Every person who vio-

lates this section shall be liable to a penalty of one hundred dollars, recoverable one-half to the use of the informer.

97. Sec. 5189. PENALTY FOR MUTILATING CIRCULATION.

Every person who mutilates, cuts, defaces, disfigures, or perforates with holes, or unites or cements together, or does any other thing to any bank bill, draft, note, or other evidence of debt, issued by any national banking association, or who causes or procures the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be liable to a penalty of fifty dollars, recoverable by the association.

98-118. (ACT MAY 30, 1908, AUTHORIZING NATIONAL CURRENCY ASSOCIATIONS, THE ISSUE OF ADDITIONAL - NATIONAL-BANK CIRCULATION, AND CREATING A NATIONAL MONETARY COMMISSION.—*Omitted.*)

CHAPTER IV.

REGULATION OF THE BANKING BUSINESS.

119. Sec. 5190. PLACE OF BUSINESS.

The usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate.

NOTE.—See act May 1, 1886, following Revised Statutes 5136, in reference to change in place of business.

120. Sec. 5191. RESERVE CITIES AND RESERVE REQUIREMENTS.

Every national banking association in either of the following cities: Albany, Baltimore, Boston, Cincinnati, Chicago, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburg, St. Louis, San Francisco, and Washington shall at all times have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of the aggregate amount of [*its notes in circulation and*] its deposits; and every other association shall at all times have on hand, in lawful money of the United States, an amount equal to at least fifteen per centum of the aggregate amount [*of its notes in circulation and*] of its deposits. Whenever the lawful money of any association in any of the cities named shall be

below the amount of twenty-five per centum of its [*circulation and*] deposits, and whenever the lawful money of any other association shall be below fifteen per centum of its [*circulation and*] deposits, such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits until the required proportion, between the aggregate amount of its [*outstanding notes of circulation and*] deposits and its lawful money of the United States, has been restored. And the Comptroller of the Currency may notify any association, whose lawful money reserve shall be below the amount above required to be kept on hand, to make good such reserve; and if such association shall fail for thirty days thereafter so to make good its reserve of lawful money, the Comptroller may, with the concurrence of the Secretary of the Treasury, appoint a receiver to wind up the business of the association, as provided in section fifty-two hundred and thirty-four.

NOTE.—This section is amended by the act of June 20, 1874, section 2, which provides that no reserve need be held against circulation. Said act follows section 5192. Act of March 3, 1903, amending act of March 3, 1887, providing for additional reserve cities, follows section 5192. Provisions relating to redemption of circulating notes, acts June 20, 1874, March 3, 1875, and July 14, 1890, follow Revised Statutes, 5192. Provisions relating to redemption of old notes of banks extending their corporate existence, act July 12, 1882, follows Revised Statutes, 5136. Leavenworth, Kansas, was included as a reserve city in the original act, but was struck out March 1, 1872. Words "lawful money" construed by Attorney-General as including all that is legal tender. Opin. Atty. Gen'l 17:123.

121. Sec. 5192. WHAT MAY BE COUNTED AS RESERVE.

Three-fifths of the reserve of fifteen per centum required by the preceding section to be kept, may consist of balances due to an association, available for the redemption of its circulating notes, from associations approved by the Comptroller of the Currency, organized under the act of June three, eighteen hundred and sixty-four, or under this Title, and doing business in the cities of Albany, Baltimore, Boston, Charleston, Chicago, Cincinnati, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburg, Richmond, Saint Louis, San Francisco, and Washington. Clearing-house certificates, representing specie or lawful money specially deposited for the purpose, of any clearing-house association, shall also be deemed to be

lawful money in the possession of any association belonging to such clearing-house, holding and owning such certificate, within the preceding section.

NOTE.—Leavenworth, Kansas, was included as a reserve city in the original act, but was struck out March 1, 1872. Charleston and Richmond not being included in the list of reserve cities enumerated in section 5191, the banks of which are required to hold a reserve of twenty-fiev per centum of their net deposits, the Comptroller of the Currency has never approved any banks in said cities as reserve agents.

122. Sec. 2. LAWFUL MONEY RESERVE TO BE DETERMINED BY DEPOSITS. ACT JUNE 20, 1874.

That section thirty-one of "the national-bank act" be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever, by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on hand shall be determined by the amount of deposits in all respects, as provided for in the said section.

NOTE.—Section 31 of "the national-bank act" is incorporated in sections 5191, 5192, Revised Statutes. Section 1 of act June 20, 1874, precedes section 5133, Revised Statutes.

123. Sec. 14. NO RESERVE NEED BE HELD AGAINST DEPOSITS OF PUBLIC MONEY. ACT MAY 30, 1908.

That the provisions of section fifty-one hundred and ninety-one of the Revised Statutes, with reference to the reserves of national banking associations, shall not apply to deposits of public moneys by the United States in designated depositaries.

124. Sec. 3. PROVISIONS FOR REDEEMING CIRCULATION. FIVE PER CENT REDEMPTION FUND. ACT JUNE 20, 1874.

That every association organized, or to be organized, under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in the Treasury of the United States, in lawful money of the United States, a sum equal to five per centum of its circulation, to be held and used for the redemption of such circulation; which sum shall be counted as a part of its lawful reserve, as provided in section two of this act; and when the circulating notes of any such associations, assorted or unassorted, shall be presented for re-

demption, in sums of one thousand dollars, or any multiple thereof, to the Treasurer of the United States, the same shall be redeemed in [*United States notes*]. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally, on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of five hundred dollars, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks, worn, defaced, mutilated, or otherwise unfit for circulation, shall, when received by any assistant treasurer, or at any designated depository of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so reimbursed, the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any of such notes are worn, mutilated, defaced, or rendered otherwise unfit for use, they shall be forwarded to the Comptroller of the Currency and destroyed and replaced as now provided by law: *Provided,* That each of said associations shall reimburse to the Treasury the charges for transportation and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the Treasury the cost of engraving such plates as shall be ordered by each association respectively; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the Treasurer: *And provided further,* That so much of section thirty-two of said national-bank act requiring or permitting the redemption of its circulating notes elsewhere than at its own counter, except as provided for in this section, is hereby repealed.

NOTE.—Section 12 of act of May 30, 1908, provides that notes of national banking associations shall be redeemed in lawful money of the United States. (See said section 12, ante.)

Section 32 of national-bank act is section 5195, Revised Statutes.

Other sections of act of June 20, 1874.

Section 1 precedes Revised Statutes, 5133.
Section 2. See paragraph 122, ante.
Section 4 follows Revised Statutes, 5167.
Section 5 follows Revised Statutes, 5172.
Section 6 relates to United States notes only.

Sections 7-9 superseded by act of January 14, 1875, which follows Revised Statutes, 5177.

125. CLERICAL FORCE FOR REDEMPTION OF CIRCULATING NOTES. ACT MARCH 3, 1875.

Provides for clerical force, etc.

126. Sec. 1. ADDITIONAL RESERVE CITIES. ACT OF MARCH 3, 1903, AMENDING ACT OF MARCH 3, 1887.

That whenever three-fourths in number of the national banks located in any city of the United States having a population of twenty-five thousand people shall make application to the Comptroller of the Currency, in writing, asking that the name of the city in which such banks are located shall be added to the cities named in sections fifty-one hundred and ninety-one and fifty-one hundred and ninety-two of the Revised Statutes, the Comptroller shall have authority to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of its deposits, as provided in sections fifty-one hundred and ninety-one and fifty-one hundred and ninety-five of the Revised Statutes.

127. Sec. 6. DISPOSITION OF REDEMPTION ACCOUNT. ACT JULY 14, 1890.

That upon the passage of this act the balances standing with the Treasurer of the United States to the respective credits of national banks for deposits made to redeem the circulating notes of such banks, and all deposits thereafter received for like purpose, shall be covered into the Treasury as a miscellaneous receipt, and the Treasurer of the United States shall redeem from the general cash in the Treasury the circulating notes of said banks which may come into his possession subject to redemption; and upon the certificate of the Comptroller of the Currency that such notes have been received by him and that they have been destroyed and that no new notes will be issued in their place, reimbursement of their amount shall be made to the Treasurer, under such regulations as the Secretary of the Treasury may prescribe, from an appropriation hereby created, to be known as "national-bank notes; Redemption account," but the provisions of this act shall not apply to the deposits received under section three of the act of June twentieth, eighteen hundred and seventy-four, requiring every national bank to keep in lawful money with the Treasurer of the United States a sum equal to five per centum of its circulation, to be held and used for the

redemption of its circulating notes; and the balance remaining of the deposits so covered shall, at the close of each month, be reported on the monthly public debt statement as debt of the United States bearing no interest.

NOTE.—The other sections of this act relate to the purchase of silver bullion and issue of Treasury notes.

128. REDEMPTION OF LOST OR STOLEN NOTES, AND OF NOTES NOT PROPERLY SIGNED. ACT JULY 28, 1892.

That the provisions of the Revised Statutes of the United States, providing for the redemption of national-bank notes, shall apply to all national-bank notes that have been or may be issued to, or received by, any national bank, notwithstanding such notes may have been lost by or stolen from the bank and put in circulation without the signature or upon the forged signature of the president or vice-president and cashier.

129. Sec. 5193.

Repealed March 14, 1900.

NOTE.—This section as enacted June 8, 1872 (17 Stat. L., 337), authorized the Secretary of the Treasury to receive on deposit from national banking associations United States notes in sums of not less than ten thousand dollars and to issue certificates therefor payable on demand in denominations of not less than five thousand dollars. This was repealed by act March 14, 1900, section 6, page 97, post, which provides for issue of gold certificates payable to order in denominations of ten thousand dollars.

130. Sec. 5194.

Dependent on 5193 and superseded by its repeal.

131. Sec. 5195. PLACE FOR REDEMPTION OF CIRCULATING NOTES TO BE DESIGNATED.

Each association organized in any of the cities named in section fifty-one hundred and ninety-one shall select, subject to the approval of the Comptroller of the Currency, an association in the city of New York, [*at which it will redeem its circulating notes at par;*] and may keep one-half of its lawful money reserve in cash deposits in the city of New York. [*But the foregoing provision shall not apply to associations organized and located in the city of San Francisco for the purpose of issuing notes payable in gold. Each association not organized within the cities named shall select, subject to the approval of the Comptroller, an association in either of the cities named, at which it will redeem its circulating notes at par.*] The Comptroller shall give

public notice of the names of the associations selected [*at which redemptions are to be made by the respective associations*], and of any change that may be made of the association [*at which the notes of any association are redeemed. Whenever any association fails either to make the selection or to redeem its notes as aforesaid, the Comptroller of the Currency may upon receiving satisfactory evidence thereof appoint a receiver, in the manner provided for in section fifty-two hundred and thirty-four, to wind up its affairs.*] But this section shall not relieve any association from its liability to redeem its circulating notes at its own counter, at par, in lawful money on demand.

NOTE.—Italicized words repealed by act June 20, 1874.

132. Sec. 3. NATIONAL BANKS NOT REQUIRED OR PERMITTED TO REDEEM THEIR CIRCULATING NOTES ELSEWHERE THAN AT THEIR OWN COUNTERS. ACT JUNE 20, 1874.

* * * *And provided further,* That so much of section thirty-two (section 5195, Revised Statutes) of said national-bank act requiring or permitting the redemption of its circulating notes elsewhere than at its own counter, except as provided for in this section, is hereby repealed.

NOTE.—Section 3, act of June 20, 1874, is set forth in full after Revised Statutes, 5192.

133. Sec. 2. ADDITIONAL CENTRAL RESERVE CITIES. ACT MARCH 3, 1887.

That whenever three-fourths in number of the national banks located in any city of the United States having a population of two hundred thousand people shall make application to the Comptroller of the Currency, in writing, asking that such city may be a central reserve city, like the city of New York, in which one-half of the lawful-money reserve of the national banks located in other reserve cities may be deposited, as provided in section fifty-one hundred and ninety-five of the Revised Statutes, the Comptroller shall have authority, with the approval of the Secretary of the Treasury, to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, twenty-five per centum of its deposits, as provided in section fifty-one hundred and ninety-one of the Revised Statutes.

NOTE.—Other sections of act March 3, 1887:
Section 1, relating to additional reserve cities as

amended by act of March 3, 1903, follows Revised Statutes, section 5192.

Section 3 of this act relates to redemption of legal-tender notes.

134. Sec. 5196. NATIONAL BANKS TO TAKE NOTES OF OTHER NATIONAL BANKS AT PAR.

Every national banking association formed or existing under this Title, shall take and receive at par, for any debt or liability to it, any and all notes or bills issued by any lawfully organized national banking association. But this provision shall not apply to any association organized for the purpose of issuing notes payable in gold.

135. Sec. 5197. LIMITATION UPON RATE OF INTEREST WHICH MAY BE TAKEN.

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, and no more, except that where by the laws of any State a different rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this Title. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

136. Sec. 5198 [as amended 1875]. PENALTY FOR TAKING UNLAWFUL INTEREST. JURISDICTION OF SUITS BY OR AGAINST NATIONAL BANKS.

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representative, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same;

provided such action is commenced within two years from the time the usurious transaction occurred. That suits, actions, and proceedings against any association under this Title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

NOTE.—Additional provisions relating to jurisdiction of actions by and against national banks are contained in Act July 12, 1882, which is inserted after Revised Statutes, section 5136. See sections 629 and 736, Revised Statutes of United States, as to jurisdiction of circuit courts to enjoin Comptroller under section 5237, Revised Statutes, United States.

137. Sec. 5199. DIVIDENDS.

The directors of any association may, semiannually, declare a dividend of so much of the net profits of the association as they shall judge expedient; but each association shall, before the declaration of a dividend, carry one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall amount to twenty per centum of its capital stock.

138. Sec. 5200 [as amended 1906]. LIMITATION OF LIABILITIES WHICH MAY BE INCURRED BY ANY ONE PERSON, COMPANY, ETC.

The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such associations, actually paid in and unimpaired, and one-tenth part of its unimpaired surplus fund: *Provided, however*, That the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed.

139. Sec. 5201. ASSOCIATIONS MUST NOT LOAN ON OR PURCHASE THEIR OWN STOCK.

No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall

be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section fifty-two hundred and thirty-four.

140. Sec. 5202. RESTRICTION ON BANK'S INDEBTEDNESS.

No association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

First. Notes of circulation.

Second. Moneys deposited with or collected by the association.

Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.

141. Sec. 5203. RESTRICTION UPON USE OF CIRCULATING NOTES.

No association shall, either directly or indirectly, pledge or hypothecate any of its notes or circulation, for the purpose of procuring money to be paid in on its capital stock, or to be used in its banking operations, or otherwise; nor shall any association use its circulating notes, or any part thereof, in any manner or form, to create or increase its capital stock.

142. Sec. 5204. PROHIBITION UPON WITHDRAWAL OF CAPITAL. UNEARNED DIVIDENDS PROHIBITED.

No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association, on which interest is past due and unpaid for a period of six months, unless the same are well

secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section fifty-one hundred and forty-three.

143. Sec. 5205 [as amended 1876]. ASSESSMENT FOR FAILURE TO PAY UP CAPITAL STOCK OR FOR IMPAIRMENT OF CAPITAL.

Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders pro rata for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock, and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the Comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of section fifty-two hundred and thirty-four: *And provided,* That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

144. Sec. 5206. PROHIBITION AGAINST UNCURRENT NOTES.

No association shall at any time pay out on loans or discounts, or in purchasing drafts or bills of exchange, or in payment of deposits, or in any other mode pay or put in circulation, the notes of any bank or banking association which are not, at any such time, receivable, at par, on deposit, and in payment of debts by the association so paying out or circulating such notes; nor

shall any association knowingly pay out or put in circulation any notes issued by any bank or banking association which at the time of such paying out or putting in circulation is not redeeming its circulating notes in lawful money of the United States.

145. Sec. 5207. UNITED STATES NOTES NOT TO BE HELD AS COLLATERAL.

No association shall hereafter offer or receive United States notes or national-bank notes as security or as collateral security for any loan of money, or for a consideration agree to withhold the same from use, or offer or receive the custody or promise of custody of such notes as security, or as collateral security, or consideration for any loan of money. Any association offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined not more than one thousand dollars and a further sum equal to one-third of the money so loaned. The officer or officers of any association who shall make any such loan shall be liable for a further sum equal to one-quarter of the money loaned; and any fine or penalty incurred by a violation of this section shall be recoverable for the benefit of the party bringing such suit.

146. Sec. 12. ISSUE OF GOLD CERTIFICATES. ACT JULY 12, 1882.

That the Secretary of the Treasury is authorized and directed to receive deposits of gold coin * * * and issue certificates therefor * * *. Said certificates * * * when held by any national banking association, shall be counted as part of its lawful reserve; and no national banking association shall be a member of any clearing house in which such certificates shall not be receivable in the settlement of clearing-house balances: * * * And the provisions of section fifty-two hundred and seven of the Revised Statutes shall be applicable to the certificates herein authorized and directed to be issued.

147. Sec. 5208. PENALTY FOR FALSELY CERTIFYING CHECKS.

It shall be unlawful for any officer, clerk, or agent of any national banking association to certify any check drawn upon the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against the association; but the act

of any officer, clerk, or agent of any association, in violation of this section, shall subject such bank to the liabilities and proceedings on the part of the Comptroller as provided for in section fifty-two hundred and thirty-four.

148. Sec. 13.—PUNISHMENT FOR FALSELY CERTIFYING CHECKS. ACT JULY 12, 1882.

That any officer, clerk, or agent of any national banking association who shall willfully violate the provisions of an act entitled "An act in referencee to certifying checks by national banks," approved March third, eighteen hundred and sixty-nine, being section fifty-two hundred and eight of the Revised Statutes of the United States, or who shall resort to any device, or receive any fictitious obligation, direct or collateral, in order to evade the provisions thereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of the banking association, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof in any circuit or district court of the United States, be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, in the discretion of the court.

149. Sec. 5209. PENALTY FOR EMBEZZLEMENT, ABSTRACTION, WILLFUL MISAPPLICATION, FALSE ENTRIES, ETC.

Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the association with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten.

150. NATIONAL BANKS NOT PERMITTED TO MAKE CONTRIBUTIONS IN CONNECTION WITH ELECTION TO POLITICAL OFFICE. ACT JANUARY 26, 1907.

That it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be subject to a fine not exceeding five thousand dollars, and every officer or director of any corporation who shall consent to any contribution by the corporation in violation of the foregoing provisions shall upon conviction be punished by a fine of not exceeding one thousand and not less than two hundred and fifty dollars, or by imprisonment for a term of not more than one year, or both such fine and imprisonment in the discretion of the court.

151. Sec. 5210. LIST OF SHAREHOLDERS.

The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency.

152. Sec. 5211 [as amended 1877]. REPORTS TO COMPTROLLER OF THE CURRENCY.

Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of

business on any past day by him specified; and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition.

NOTE.—See sec. 713, Code of District of Columbia, requiring publication of reports in District of Columbia to be in two or more daily papers.

153. VERIFICATION OF REPORTS. ACT FEBRUARY 26, 1881.

That the oath or affirmation required by section fifty-two hundred and eleven of the Revised Statutes, verifying the returns made by national banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification as contemplated by said section fifty-two hundred and eleven: *Provided,* That the officer administering the oath is not an officer of the bank.

154. Sec. 5212. REPORT OF DIVIDENDS.

In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any dividend, the amount of such dividend, and the amount of net earnings in excess of such dividend. Such reports shall be attested by the oath of the president or cashier of the association.

155. Sec. 5213. PENALTY FOR FAILURE TO MAKE REPORTS.

Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be re-

tained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.

156. Sec. 5214 [as amended May 30, 1908.] TAXES PAYABLE TO THE UNITED STATES.

National banking associations having on deposit bonds of the United States, bearing interest at the rate of two per centum per annum, including the bonds issued for the construction of the Panama Canal, under the provisions of section eight of "An Act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June twenty-eighth, nineteen hundred and two, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of such bonds; and such associations having on deposit bonds of the United States bearing interest at a rate higher than two per centum per annum shall pay a tax of one-half of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of such bonds. National banking associations having circulating notes secured otherwise than by bonds of the United States shall pay for the first month a tax at the rate of five per centum per annum upon the average amount of such of their notes in circulation as are based upon the deposit of such securities, and afterwards an additional tax of one per centum per annum for each month until a tax of ten per centum per annum is reached, and thereafter such tax of ten per centum per annum, upon the average amount of such notes. Every national banking association having outstanding circulating notes secured by a deposit of other securities than United States bonds shall make monthly returns, under oath of its president or cashier, to the Treasurer of the United States, in such form as the Treasurer may prescribe, of the average monthly amount of its notes so secured in circulation; and it shall be the duty of the Comptroller of the Currency to cause such reports of notes in circulation to be verified by examination of the bank's records. The taxes received on circulating notes secured otherwise than by bonds of the United States shall be paid into the Division of Redemption of the Treasury and credited and added to the reserve

fund held for the redemption of United States and other notes.

157. Sec. 5215. HALF-YEARLY RETURN OF CIRCULATION [deposits and capital stock.]

In order to enable the Treasurer to assess the duties imposed by the preceding section, each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as the Treasurer may prescribe, of the average amount of its notes in circulation [*and of the average amount of its deposits, and of thee average amount of its capital stock, beyond the amount invested in United States bonds*] for the six months next preceding the most recent first day of January or July. Every association which fails so to make such return shall be liable to a penalty of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer, or, at his option in the manner in which penalties are to be collected of other corporations under the laws of the United States.

NOTE.—The taxes on the average amount of deposits and capital stock having been repealed by the act of March 3, 1883, and the original provision therefor struck out of section 5214 as amended by act of May 30, 1908, there is no longer any obligation to make the return of those two items.

158. Sec. 5216. PENALTY FOR FAILURE TO MAKE RETURN.

Whenever any association fails to make the half-yearly return required by the preceding section, the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency [*and upon the highest amount of its deposits and capital stock, to be ascertained in such manner as the Treasurer may deem best*].

NOTE.—See note under section 5215 stating that tax on deposits and capital stock had been repealed.

159. Sec. 5217. ENFORCING TAX ON CIRCULATION.

Whenever an association fails to pay the duties imposed by the three preceding sections, the sums due may be collected in the manner provided for the collection of United States taxes from other corporations; or the Treasurer may reserve the amount out of the interest, as it may become due, on the bonds deposited with him by such defaulting association.

160. Sec. 5218. REFUNDING EXCESS TAX.

In all cases where an association has paid or may pay in

excess of what may be or has been found due from it, on account of the duty required to be paid to the Treasurer of the United States, the association may state an account therefor, which, on being certified by the Treasurer of the United States, and found correct by the First Comptroller of the Treasury, shall be refunded in the ordinary manner by warrant on the Treasury.

161. Sec. 22. NO TAX TO BE PAID BY INSOLVENT BANKS. ACT MARCH 1, 1879.

That whenever and after any bank has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent.

162. Sec. 5219. STATE TAXATION.

Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by nonresidents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

CHAPTER V.

DISSOLUTION AND RECEIVERSHIP.

163. Sec. 5220. TWO-THIRDS VOTE REQUIRED FOR LIQUIDATION.

Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock.

NOTE.—For enforcement of shareholders' liability when

bank is in liquidation see act of June 20, 1876, following Revised Statutes, 5238.

164. Sec. 5221. NOTICE OF VOLUNTARY LIQUIDATION.

Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and publication thereof to be made for a period of two months in a newspaper published in the city of New York, and also in a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the newspaper published nearest thereto, that the association is closing up its affairs, and notifying the holders of its notes and other creditors to present the notes and other claims against the association for payment.

165. Sec. 5222. DEPOSIT OF LAWFUL MONEY TO REDEEM CIRCULATION.

Within six months from the date of the vote to go into liquidation, the association shall deposit with the Treasurer of the United States, lawful money of the United States sufficient to redeem all its outstanding circulation. The Treasurer shall execute duplicate receipts for money thus deposited, and deliver one to the association and the other to the Comptroller of the Currency, stating the amount received by him, and the purpose for which it has been received; and the money shall be paid into the Treasury of the United Statees, and placed to the credit of such association upon redemption account.

166. Sec. 5223. NO DEPOSIT REQUIRED FOR CONSOLIDATION.

An association which is in good faith winding up its business for the purpose of consolidating with another association shall not be required to deposit lawful money for its outstanding circulation; but its assets and liabilities shall be reported by the association with which it is in process of consolidation.

167. Sec. 5224 [as amended 1875.] REASSIGNMENT OF BONDS AND REDEMPTION OF BONDS OF LIQUIDATING BANKS.

Whenever a sufficient deposit of lawful money to redeem tne outstanding circulation of an association proposing to close its business has been made, the bonds deposited by the association to secure payment of its notes shall be reassigned to it, in the manner prescribed by section fifty-one hundred and sixty-two.

And thereafter the association and its shareholders shall stand discharged from all liabilities upon the circulating notes, and those notes shall be redeemed at the Treasury of the United States. And if any such bank shall fail to make the deposit and take up its bonds for thirty days after the expiration of the time specified, the Comptroller of the Currency shall have power to sell the bonds pledged for the circulation of said bank at public auction in New York City, and, after providing for the redemption and cancellation of said circulation, and the necessary expenses of the sale, to pay over any balance remaining to the bank or its legal representatives.

168. Sec. 8. DUTY OF TREASURER, ASSISTANT TREASURERS, ETC., TO RETURN NOTES OF FAILED OR LIQUIDATING BANKS TO TREASURY FOR REDEMPTION. ACT JUNE 20, 1874.

And it shall be the duty of the Treasurer, assistant treasurers, designated depositaries, and national bank depositaries of the United States to assort and return to the Treasury for redemption the notes of such national banks as have failed, or gone into voluntary liquidation for the purpose of winding up their affairs, and of such as shall hereafter so fail or go into liquidation.

169. Sec. 5225 [as amended 1877.] DESTRUCTION OF REDEEMED NOTES.

Whenever the Treasurer has redeemed any of the notes of an association which has commenced to close its affairs, under the five preceding sections, he shall cause the notes to be mutilated and charged to the redemption account of the association; and all notes so redeemed by the Treasurer shall, every three months, be certified to and [*burned*] in the manner prescribed in section fifty-one hundred and eighty-four.

170. Sec. 5226. PROTEST OF BANK CIRCULATION.

Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, the holder may cause the same to be protested, in one package by a notary public, unless the president or cashier of the association whose notes are presented for payment offers to waive demand and notice of the protest, and, in pursuance of such offer, makes, signs, and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the nonpayment thereof. The notary public, on

making such protest, or upon receiving such admission, shall forthwith forward such admission or notice of protest to the Comptroller of the Currency, retaining a copy thereof. If, however, satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than the note or package to be protested on the same day, he shall not receive pay for more than one protest.

NOTE.—Circulation redeemable only at Treasury or over own counter. Designated places of redemption have not existed since act June 20, 1874. [See said act following Revised Statutes, 5192.]

171. Sec. 5227. BONDS FORFEITED IF CIRCULATION IS DISHONORED. EXAMINATION BY SPECIAL AGENT.

On receiving notice that any national banking association has failed to redeem any of its circulating notes, as specified in the preceding section, the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, may appoint a special agent, of whose appointment immediate notice shall be given to such association, who shall immediately proceed to ascertain whether it has refused to pay its circulating notes in the lawful money of the United States, when demanded, and shall report to the Comptroller the fact so ascertained. If, from such protest, and the report so made, the Comptroller is satisfied that such association has refused to pay its circulating notes and is in default, he shall, within thirty days after he has received notice of such failure, declare the bonds deposited by such association forfeited to the United States, and they shall thereupon be so forfeited.

172. Sec. 5228. [as amended 1875]. SUSPENSION OF BUSINESS AFTER DEFAULT.

After a default on the part of an association to pay any of its circulating notes has been ascertained by the Comptroller, and notice thereof has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits.

173. Sec. 5229. NOTICE TO PRESENT CIRCULATION FOR REDEMPTION. CANCELLATION OF BONDS.

Immediately upon declaring the bonds of an association for-

feited for nonpayment of its notes, the Comptroller shall give notice, in such manner as the Secretary of the Treasury shall, by general rules or otherwise, direct, to the holders of the circulating notes of such association, to present them for payment at the Treasury of the United States; and the same shall be paid as presented in lawful money of the United States; whereupon the Comptroller may, in his discretion, cancel an amount of bonds pledged by such association equal at current market rates, not exceeding par, to the notes paid.

174. Sec. 5230. SALE OF BONDS AT AUCTION. FIRST LIEN FOR REDEEMING CIRCULATION.

Whenever the Comptroller has become satisfied, by the protest or the waiver and admission specified in section fifty-two hundred and twenty-six, or by the report provided for in section fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes, he may, instead of canceling its bonds, cause so much of them as may be necessary to redeem its outstanding notes to be sold at public auction in the city of New York, after giving thirty days' notice of such sale to the association. For any deficiency in the proceeds of all the bonds of an association, when thus sold, to reimburse to the United States the amount expended in paying the circulating notes of the association, the United States shall have a paramount lien upon all its assets; and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same.

175. Sec. 5231. BONDS MAY BE SOLD AT PRIVATE SALE.

The Comptroller may, if he deems it for the interest of the United States, sell at private sale any of the bonds of an association shown to have made default in paying its notes, and receive therefor either money or the circulating notes of the association. But no such bonds shall be sold by private sale for less than par, nor for less than the market value thereof at the time of sale; and no sales of any such bonds, either public or private, shall be complete until the transfer of the bonds shall have been made with the formalities prescribed by sections fifty-one hundred and sixty-two, fifty-one hundred and sixty-three, and fifty-one hundred and sixty-four.

176. Sec. 5232.—DISPOSAL OF REDEEMED NOTES; REGULATIONS FOR REDEMPTION RECORDS.

The Secretary of the Treasury may, from time to time, make

such regulations respecting the disposition to be made of circulating notes after presentation at the Treasury of the United States for payment, and respecting the perpetuation of the evidence of the payment thereof, as may seem to him proper.

177. Sec. 5233. REDEEMED NOTES TO BE CANCELLED.

All notes of national banking associations presented at the Treasury of the United States for payment shall, on being paid, be cancelled.

178. Sec. 5234. APPOINTMENT AND DUTIES OF RECEIVERS.

On becoming satisfied, as specified in sections fifty-two hundred and twenty-six and fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.

NOTE.—Other provisions authorizing the appointment of receivers of national banks and relating to powers and duties of receivers and agents will be found in the act of June 30, 1876, as amended August 3, 1892, and March 2, 1897, and the act of March 29, 1886. Both these acts are set forth following section 5238, Revised Statutes.

A receiver may also be appointed, under the provisions of section fifty-two hundred and thirty-four of the Revised Statutes of the United States, for the following violations of law;

Where the capital stock of a national bank has not been fully paid in and it is thus reduced below the legal minimum and remains so for thirty days. (Sec. 5141, R. S.)

For failure to make good the lawful-money reserve within thirty days after notice. (Sec. 5191, R. S.)

Where a bank purchases or acquires its own stock, to prevent loss upon a debt previously contracted in good

faith, and the same is not sold or disposed of within six months from the time of its purchase. (Sec. 5201, R. S.)

For failure to make good any impairment in its capital stock and refusing to go into liquidation within three months after receiving notice. (Sec. 5205, R. S.)

For false certification of checks by any officer, clerk, or agent. (Sec. 5208, R. S.)

179. Sec. 5235. NOTICE TO CREDITORS OF INSOLVENT BANKS TO PRESENT CLAIMS.

The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal proof thereof.

180. Sec. 5236. DIVIDENDS; DISTRIBUTION OF ASSETS OF INSOLVENT BANKS.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held.

181. Sec. 5237. WHEN BANK MAY ENJOIN FURTHER PROCEEDINGS.

Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so, it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty-seven, apply to the nearest circuit, or district, or Territorial court of the United States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of the jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the

Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal.

NOTE.—See also sections 629 and 736, Revised Statutes, page 81, post.

182. Sec. 5238. FEES AND EXPENSES.

All fees for protesting the notes issued by any national banking association shall be paid by the person procuring the protest to be made, and such association shall be liable therefor; but no part of the bonds deposited by such association shall be applied to the payment of such fees. All expenses of any preliminary or other examinations into the condition of any association shall be paid by such association. All expenses of any receivership shall be paid out of the assets of such association before distribution of the proceeds thereof.

183. Sec. 1. WHEN RECEIVER MAY BE APPOINTED. ACT JUNE 30, 1876.

That whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section fifty-two hundred and thirty-nine of the Revised Statutes of the United States, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied of the insolvency of the national banking association, he may, after due examination of its affairs, in either case, appoint a receiver who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in section fifty-two hundred and thirty-four of said statutes.

184. Sec. 2. CREDITOR'S BILL AGAINST SHAREHOLDERS. ACT JUNE 30, 1876.

That when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association, by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established.

185. Sec. 3. APPOINTMENT, QUALIFICATION, AND DUTIES OF SHAREHOLDER'S AGENT. ACT JUNE 30, 1876, AS AMENDED 1892, 1897.

That whenever any association shall have been or shall be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four and other sections of the Revised Statutes of the United States, and when, as provided in section fifty-two hundred and thirty-six thereof, the Comptroller of the Currency shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership, and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting of the shareholders of such association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of such association, or whether an agent shall be elected for that purpose, and in so determining the said shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock in value and number of shares shall be necessary to determine whether the said receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the said receiver shall be continued, the said receiver shall thereupon proceed with the execution of his trust, and shall sell, dispose of, or otherwise collect the assets of the said association, and shall possess all the powers and authority, and be subject to all the duties and liabilities originally conferred or imposed upon him by his appointment as such receiver, so far as the same remain applicable. In case the said meeting shall, by the vote of a majority of the stock in value and number of shares, determine that an agent shall be elected, the said meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in value and number shall be declared the agent for the purposes

hereinafter provided; and whenever any of the shareholders of the association shall, after the election of such agent, have executed and filed a bond to the satisfaction of the Comptroller of the Currency, conditioned for the payment and discharge in full of each and every claim that may thereafter be proved and allowed by and before a competent court, and for the faithful performance of all and singular the duties of such trust, the Comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said Comptroller and said receiver, or either of them; and for this purpose said Comptroller and said receiver are hereby severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to the said agent the said Comptroller and the said receiver shall by virtue of this act be discharged from any and all liabilities to such association and to each and all the creditors and shareholders thereof.

Upon receiving such deed, assignment, transfer, or other instrument, the person elected such agent shall hold, control, and dispose of the assets and property of such association which he may receive under the terms hereof for the benefit of the shareholders of such association, and he may, in his own name, or in the name of such association, sue and be sued and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands, and may sell, compromise, or compound the debts due to such association, with the consent and approval of the circuit or district court of the United States for the district where the business of such association was carried on, and shall at the conclusion of his trust render to such district or circuit court a full account of all his proceedings, receipts, and expenditures as such agent, which court shall, upon due notice, settle and adjust such accounts and discharge said agent and the sureties upon said bond. And in case any such agent so elected shall refuse to serve, or die, resign, or be removed, any shareholder may call a meeting of the shareholders of such association in the town, city, or village where the business of the said association was carried on, by giving notice thereof for thirty days in a newspaper published in said town, city, or village, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or

by proxy, each share of stock entitling the holder to one vote, and when such agent shall have received votes representing at least a majority of the stock in value and number of shares, and shall have executed a bond to the shareholders conditioned for the faithful performance of his duties, in the penalty fixed by the shareholders at said meeting, with two sureties, to be approved by a judge of a court of record, and file said bond in the office of the clerk of a court of record in the county where the business of said association was carried on, he shall have all the rights, powers, and duties of the agent first elected as hereinbefore provided. At any meeting held as hereinbefore provided administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians of minors and trustees of other persons may so act and sign for their ward or wards or cestui que trust. The proceeds of the assets or property of any such association which may be undistributed at the time of such meeting or may be subsequently received shall be distributed as follows:

"First. To pay the expenses of the execution of the trust to the date of such payment.

"Second. To repay any amount or amounts which have been paid in by any shareholder or shareholders of such association upon and by reason of any and all assessments made upon the stock of such association by the order of the Comptroller of the Currency in accordance with the provisions of the statutes of the United States; and

"Third. The balance ratably among such stockholders, in proportion to the number of shares held and owned by each. Such distribution shall be made from time to time as the proceeds shall be received and as shall be deemed advisable by the said Comptroller or said agent."

NOTE.—Other sections of act June 30, 1876:
Section 4 amends Revised Statutes, 5205.
Section 5 relates to counterfeit notes.
Section 6 relates to savings banks and trust companies, organized under act of Congress. See Code District of Columbia, page 112, post.

186. Sec. 1. RECEIVER MAY PURCHASE PROPERTY TO PROTECT HIS TRUST. ACT MARCH 29, 1886.

That whenever the receiver of any national bank duly appointed by the Comptroller of the Currency, and who shall have duly qualified and entered upon the discharge of his trust, shall find it in his opinion necessary, in order to fully protect and benefit his said trust, to the extent of any and all equities that

such trust may have in any property, real or personal, by reason of any bond, mortgage, assignment, or other proper legal claim attaching thereto, and which said property is to be sold under any execution, decree of foreclosure, or proper order of any court of jurisdiction, he may certify the facts in the case, together with his opinion as to the value of the property to be sold, and the value of the equity his said trust may have in the same, to the Comptroller of the Currency, together with a request for the right and authority to use and employ so much of the money of said trust as may be necessary to purchase such property at such sale.

187. Sec. 2. APPROVAL OF REQUEST. ACT MARCH 29, 1886.

That such request, if approved by the Comptroller of the Currency, shall be, together with the certificate of facts in the case, and his recommendation as to the amount of money which, in his judgment, should be so used and employed, submitted to the Secretary of the Treasury, and if the same shall likewise be approved by him, the request shall be by the Comptroller of the Currency allowed, and notice thereof, with copies of the request, certificate of facts, and indorsement of approvals, shall be filed with the Treasurer of the United States.

188. Sec. 3. PAYMENT. ACT MARCH 29, 1886.

That whenever any such request shall be allowed as hereinbefore provided, the said Comptroller of the Currency shall be, and is, empowered to draw upon and from such funds of any such trust as may be deposited with the Treasurer of the United States for the benefit of the bank in interest, to the amount as may be recommended and allowed and for the purpose for which such allowance was made: *Provided, however,* That all payments to be made for or on account of the purchase of any such property and under any such allowance shall be made by the Comptroller of the Currency direct, with the approval of the Secretary of the Treasury, for such purpose only and in such manner as he may determine and order.

189. Sec. 5239. PENALTY FOR VIOLATION OF THIS TITLE; FORFEITURE OF CHARTER; INDIVIDUAL LIABILITY OF DIRECTORS.

If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, how-

ever, be determined and adjudged by a proper circuit, district, or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation.

190. Sec. 5240 [as amended 1875]. APPOINTMENT OF EXAMINERS, COMPENSATION.

The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall, as often as shall be deemed necessary or proper, appoint a suitable person or persons to make an examination of the affairs of every banking association, who shall have power to make a thorough examination into all the affairs of the association, and, in doing so, to examine any of the officers and agents thereof on oath; and shall make a full and detailed report of the condition of the association to the Comptroller. That all persons appointed to be examiners of national banks not located in the redemption cities specified in section five thousand one hundred and ninety-two of the Revised Statutes of the United States, or in any one of the States of Oregon, California, and Nevada, or in the Territories, shall receive compensation for such examination as follows: For examining national banks having a capital less than one hundred thousand dollars, twenty dollars; those having a capital of one hundred thousand dollars and less than three hundred thousand dollars, twenty-five dollars; those having a capital of three hundred thousand dollars and less than four hundred thousand dollars, thirty-five dollars; those having a capital of four hundred thousand dollars and less than five hundred thousand dollars, forty dollars; those having a capital of five hundred thousand dollars and less than six hundred thousand dollars, fifty dollars; those having a capital of six hundred thousand dollars and over, seventy-five dollars; which amounts shall be assessed by the Comptroller of the Currency upon, and paid by, the respective association so examined, and shall be in lieu of the compensation and mileage heretofore allowed for making said examinations, and persons appointed to make examinations of national banks in the cities named in section five thousand one hundred and ninety-two of the Revised Statutes of the United States, or in any one of the States of Oregon, California, and Nevada, or in

the Territories, shall receive such compensation as may be fixed by the Secretary of the Treasury upon the recommendation of the Comptroller of the Currency; and the same shall be assessed and paid in the manner hereinbefore provided. But no person shall be appointed to examine the affairs of any banking association of which he is a director or other officer.

191. Sec. 5241. LIMITATION OF VISITORIAL POWERS. No association shall be subject to any visitorial powers other than such as are authorized by this Title, or are vested in the courts of justice.

192. Sec. 5242. TRANSFERS WHEN VOID; ILLEGAL PREFERENCE OF CREDITORS.

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court.

193. Sec. 5243. USE OF THE TITLE "NATIONAL."

All banks not organized and transacting business under the national currency laws, or under this Title, and all persons or corporations doing the business of bankers, brokers, or savings institutions, except savings banks authorized by Congress to use the word "national" as a part of their corporate name, are prohibited from using the word "national" as a portion of the name or title of such bank, corporation, firm, or partnership; and any violation of this prohibition committed after the third day of September, eighteen hundred and seventy-three, shall subject the party chargeable therewith to a penalty of fifty dollars for each day during which it is permitted or repeated.

APPENDIX B.

FORMS.

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FORMS.

(Reprinted from Volume II of this Series.)

1. Promissory Note.

$100.00 Chicago, Ill., July 1st, 1911.

August first, 1911, after date, for value received, I promise to pay to the order of William Smith, the sum of One Hundred (100) Dollars, at 1011 Blank Street, Chicago, Illinois, with interest at 6% per cent. per annum.

(sd.) WALTER W. JOHNSON.

2. Judgment Note.

Add to the above note above the place for the signature the following:

And to secure the payment of said amount I hereby authorize, irrevocably, any attorney of any Court of Record to appear for me in such Court, in term time or vacation, at any time hereafter, and confess a judgment, without process, in favor of the holder of this Note, for such amount as may appear to be unpaid thereon, together with costs and ten dollars attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that my said attorney may do by virtue hereof.

(*Note*: It is better to purchase forms of judgment notes from local stationers, as such forms embody peculiar provisions applicable to the condition of the law in the state involved. The above is a form used in Illinois. Judgment notes however, are not widely used. They are used in Illinois, Ohio, Pennsylvania, New Mexico and Wisconsin.)

3. Bill of Exchange.

Cincinnati, Ohio, June 1, 1911.

One month after date, pay to the order of William H. White, One Hundred Dollars. Value received, and charge to the account of

(sd.) WALTER W. JOHNSON.

To Oliver Smith,
Chicago, Illinois.

An acceptance of the above bill would read as follows: "Accepted, Chicago, June 3rd, 1911," and would be written across the face of the bill. Oliver Smith might also in such acceptance name the place of payment above his signature, thus, "Payable at 16th National Bank, Chicago."

This qualification is permitted; but if he should say "Payable at 16th National Bank and not elsewhere," that would be a qualified acceptance and constitute dishonor, unless the holder assented.

4. Checks.

No. 1490. Chicago, July 1st, 1911.

THE BLANK TRUST AND SAVINGS BANK.

Pay to the order of——————John Smith——————$1000

One Thousand ———————————— Dollars.

(sd.) WM. JONES.

5. Certificate of Deposit.

No. 1008. Chicago, July 1, 1911.

James A. Jones has deposited in the 16th National Bank of Chicago, Illinois, Five Hundred Dollars, payable to the order of himself upon the return of this Certificate properly endorsed. Interest 3 per cent. per annum.

Not subject to check.

WILLIAM RANDOLPH,
Cashier.

6. Forms of Indorsement.

(1) Blank indorsement.

WILLIAM JONES.

(2) Special indorsement.

Pay to the order of John Smith.

WILLIAM JONES.

or, Pay to John Smith.

WILLIAM JONES.

() Qualified indorsement.

without recourse,

WILLIAM JONES.

(4) Restrictive indorsement.

Pay to John Smith, for collection.

WILLIAM JONES.

7. Notice of Dishonor of Note Where Note Not Protested.

July 1, 1911.

You are hereby notified that a promissory note made by John Smith, dated June 1, 1911, payable one month after date to the order of William H. White, and indorsed by and William H. White, was this day presented by the undersigned for payment which was refused and the undersigned as holder looks to you as indorser for payment, damages, interest and costs.

(sd.) JOSEPH BLACK,
1820 Blank Street,
Chicago, Illinois.

To William H. White,
190 Blank Street,
Chicago, Illinois.

8. Certificate of Protest.

(Here attach original instrument or copy thereof.)

STATE OF ILLINOIS,
COOK COUNTY. } ss.

Be it Known, That on this first day of July in the year of our Lord One Thousand Nine Hundred and Eleven, I, Henry N. Green, a Notary Public, duly commissioned and sworn, and residing in the City of Chicago in said County and State, at the request of Henry W. Jones, the holder of

the above bill of exchange, went with the original bill of exchange which is above attached, to the Office of The First National Bank, where such bill is payable, during the usual business hours and demanded payment thereon, which was refused for the following assigned reason—not sufficient funds and no instructions to pay.

Whereupon I, the said Notary, at the request aforesaid, did *PROTEST*, and, by these Presents, do *Solemnly Protest*, as well against the drawer of said bill and the indorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange and all costs, charges, damages and interest already incurred by reason of the non-payment of the said bill of exchange.

And I, the said Notary, do hereby certify, that, on the same day and year above written, due notice of the foregoing Protest was put in the Post-Office at Chicago, Illinois, as follows:

Notice for Walter W. Johnson, 12 Blank Street, Cincinnati, Ohio. Notice for William H. White, Blankville, Illinois.

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, the day and year first above written.

_____

Notary Public.

Fees—Noting for Protest,..25 cents; Protest,..75 cents; Noting Protest,..25 cents; Notices,..50 Certificate and Seal,....25 cents; Postage,.. 4 cents; Vol. 1; page 272; $2.04.

(Note: If the protest is for non-acceptance this same form may be used by writing in "non-acceptance" for "non-payment.")

9. Notice of Protest of Note.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

July 1st, 1911.

A promissory note for $100.00 payable to the order of William Jones, dated July 1st, 1910, payable July 1st,

1911, signed by John Smith, indorsed by William Jones, being this day due and unpaid, and by me *PROTESTED* for non-payment, I hereby notify you that the payment thereof has been duly demanded, and that the holder looks to you for payment, damages, interest and costs.

Done at the request of Henry W. Jones, 1711 Blank Street, Chicago, Illinois.

HENRY N. GREEN,
Notary Public.

To William Jones,
1512 Blank Street,
Chicago, Illinois.

(*Note*: It is not necessary, but usual, to protest a note or inland bill, but a foreign bill must be protested.)

10. Notice of Protest of Bill.

STATE OF ILLINOIS
COOK COUNTY. } ss.

Chicago, July 1, 1911.

Take notice that a bill of exchange for $100.00, dated June 1, 1911, drawn by Walter W. Johnson, 12 Blank Street, Cincinnati, Ohio, in favor of William H. White, on Oliver Smith, Chicago, Illinois, indorsed by said William H. White, accepted by said Oliver Smith, payable at 16th National Bank, Chicago, was this day presented for payment, which was refused, and therefore was this day protested by the undersigned notary public for non-payment.

The holder therefore looks to you for payment thereof together with interest, costs, damages, etc., you being the drawer thereof.

HENRY N. GREEN,
Notary Public.

To Walter W. Johnson,
12 Blank Street,
Cincinnati, Ohio.

APPENDIX C.

QUESTIONS AND ANSWERS.

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QUESTIONS AND ANSWERS.

CHAPTER 1.

1. Define a bank, a banker.
2. What is meant by a private bank? National and state banks?
3. Can a manufacturing corporation carry on a banking business? Why?

CHAPTER 2.

4. Does a banking corporation in its organization resemble other corporations?
5. Define and state the purpose of the charter of a bank.
6. Enumerate briefly the steps necessary to be taken to form national banks.
7. Can a state bank become a national bank?
8. What are by-laws? Are they necessary?
9. Is the business of the bank affected by irregularities in its organization?

CHAPTER 3.

10. What is meant by the capital stock of a bank?
11. May capital stock be increased or decreased?
12. What is the nature of subscription to stock? What, generally speaking, is the liability thereon?

CHAPTER 4.

13. Can a stockholder be deprived of his right to transfer stock?
14. State the steps to be taken in the transfer of stock.

CHAPTER 5.

15. What liability has a subscriber to stock to the bank?

16. Upon transfer what liability towards the bank does the transferee assume?

17. May subscriptions be paid in property?

18. Does a bank have a lien on unpaid stock? What does the National Banking Act provide in this respect?

19. What does the National Banking Act provide in reference to liability for the debts of the bank?

20. How may the liability be terminated?

21. How is the liability to creditors enforced?

CHAPTER 6.

22. State the purpose of stockholders' meetings and the right to hold them.

23. State the right of a stockholder to inspect the books of the bank. How is this right enforced?

24. May a stockholder contract with the bank?

25. To what extent are the by-laws binding upon the stockholders?

CHAPTER 7.

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27. Who declares dividends?

28. Who is entitled to dividends as between transferror and transferee?

29. Does the bank have a lien upon dividends?

CHAPTER 8.

30. State the nature of a director.

31. What does the National Banking Act provide with reference to the qualifications of directors?

32. How must the directors act?

CHAPTER 9.

33. Generally speaking, state the powers of the directors?

34. Enumerate three cases in which directors are liable to the bank or its stockholders.

35. In the case beginning on page 52, for what were the directors held liable?

36. In the case cited in note 12, page 54, what were the facts and what was the decision?

37. What were the facts and what was the holding in the case of Hun v. Cary?

CHAPTER 10.

38. State the usual officers and agents of the bank.

CHAPTER 11.

39. State three ways in which one may be held on the acts of another pretending to be his agent.

40. State the difference between express authority, implied authority and apparent authority.

41. What do we mean by ratification?

42. In what three ways may ratification occur?

43. What is the rule with reference to notice to the agent amounting to notice to the principal?

44. Suppose the agent has notice prior to the beginning of his agency, will such notice be deemed notice to the principal?

45. What authority has a president of a bank to act in its behalf?

46. What is the nature of the office of the cashier? State his authority, enumerating a number of classes of acts that he is authorized to do. Might he have larger authority in one case than in another?

47. Who is the bank teller? What are his duties?

CHAPTER 12.

48. State what business a bank may lawfully do, enumerating the various classes of business.

CHAPTER 13.

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50. What does the National Banking Act provide with reference to the bank's investments in real estate?

51. May a bank lend money upon real estate?

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53. May a bank refuse deposits?

54. What relation does the depositor bear to the bank?

55. Enumerate the kinds of deposits.

56. What is a certificate of deposit?

57. What is the substance of the bank's contract with its general depositors?

58. State the facts in the case appearing in section 62. What did the court hold in this case?

59. If a depositor makes paper payable at the bank, must the bank apply the funds of the depositor in payment of such paper when presented?

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62. What did the court hold in Holmes v. Trumper set out on page 86? What did the court say as to this question in th case of Yocum v. Smith on page 87? Which do you think is the better rule?

63. What do we mean by check protection? Is it necessary. State some advantages thereof.

64. How may a check be negotiated? Must it always be indorsed? What is a restrictive indorsement?

65. What do we mean by a presentment for payment? When should this be made?

66. May the payee of a check hold the bank thereon?

67. What is the right of a holder against a drawer?

68. What does the law provide with reference to the time and manner of giving notice of dishonor?

69. May payment on a check be stopped? How?

70. State the form of certification of a check.

71. What effect does certification have to discharge the drawer?

72. If a bank certifies a raised check, is it liable to an innocent holder on the check as raised?

73. If a check is lost what are the rights of the holder?

74. If a check is forged can any rights thereon be acquired against the apparent maker in favor of an innocent purchaser for value?

75. What is the effect of altering a check, as far as the rights of the drawer are concerned? What will constitute a material alteration?

CHAPTER 16.

76. What loans may a bank make?

77. What interest may a bank charge? What constitutes usury? What does the National Bank Act provide with reference to interest and usury?

CHAPTER 17.

78. Where a bank collects through correspondents what is the rule with reference to its liability for the defaults or negligence of a correspondent bank?

79. For what purpose is presentment for payment necessary?

80. When must a presentment for payment be made?

81. How must presentment for payment be made?

82. At what place must presentment for payment be made?

83. If paper is payable at a bank when must presentment for payment be made?

84. Suppose several persons are liable on an instrument, must presentment be made to all of them?

85. When is presentment for payment dispensed with?

86. Suppose a negotiable instrument falls due on Sunday, on a Holiday, on Saturday—what are the rules with reference to presentment for payment?

87. When and for what purpose is notice of dishonor necessary?

88. How may notice of dishonor be made?

89. When must notice of dishonor be made? To whom and where must notice of dishonor be made? How may notice of dishonor be waived? In what cases is notice of dishonor not required?

90. Define protest. When is it necessary? How is it made? When is it dispensed with?

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92. What is a bank draft?

93. What is a bank note?

94. How are national bank notes regulated? How and where redeemable?

CHAPTER 19.

95. Define a savings bank.

96. What is the depositor's contract?

CHAPTER 20.

97. Define a clearing house, stating its purposes, how it is governed, and the routine of its business.

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98. When a bank fails what is the usual procedure?
99. Is a bank subject to the National Bankruptcy Law? Why?
100. What are the rights of general depositors against failed bank? Special depositors? Other creditors?
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102. How is the bank wound up?
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BANKS
AND
BANKING

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BAYS