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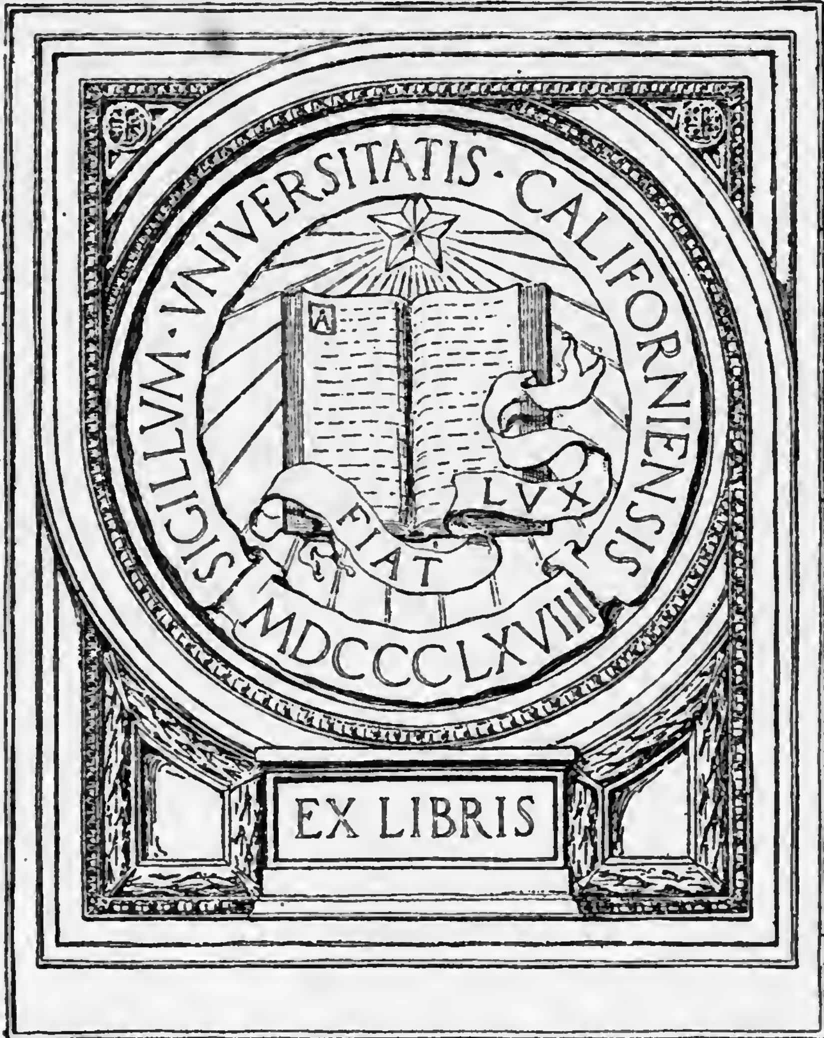

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PRATTS' DIGEST.

THE FULL TEXT OF THE

LAWS RELATING TO NATIONAL BANKS.

WITH EXPLANATORY NOTES, DIGEST OF DECISIONS OF THE COURTS ON THE SEVERAL SECTIONS, INDEX OF CASES CITED AND RULINGS OF THE COMPTROLLER OF THE CURRENCY.

ALSO

MONOGRAPHS ON THE PRINCIPAL SUBJECTS RELATING TO NATIONAL BANKING, REQUIREMENTS AND FORMS OF THE OFFICE OF COMPTROLLER OF THE CURRENCY, AND MISCELLANEOUS REGULATIONS OF THE UNITED STATES TREASURY DEPARTMENT GOVERNING BANKERS IN THE NATIONAL SYSTEM.

5-19065

Edition of 1905.

UNIV. OF CALIFORNIA

PREPARED AND PUBLISHED BY
A. S. PRATT & SONS,
NATIONAL BANK AGENTS,
WASHINGTON, D. C.

HG 2547
P8
1905

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PREFACE.

This work was first published in the early days of the National Banking System, and then merely as a Digest or Brief of the National Bank Act. Later, the application of the Act developed differences of opinion as to the meaning and effect of various provisions, and the Courts and Comptroller of the Currency were required to construe them.

For this reason the form of the Digest was changed, the Bank Act was given in full, and under each section a digest of the decisions of the Courts, and of the rulings of the Comptroller. Further additions were made to the work, consisting of suggestions on organizing a National bank, and regulations of the Comptroller's office, the U. S. Treasurer's office and office of the Secretary of the Treasury in their several relations to the National banks.

This plan of the book has been followed in numerous revisions, and the amendments to the Bank Act and additional acts passed by Congress given, also the later court decisions and the Comptroller's rulings.

Of late years it nas been evident, on account of the amendments and additional acts repealing and modifying many sections of the law, that it was necessary the work should be recast to bring together the existing statutes bearing on the same subject, and to eliminate obsolete matter. This has been done in the new edition of the work, and the court decisions have been brought down to date.

The other portion of the work also has been greatly enriched by the publishers, and their long experience as attorneys for National banks before the Treasury Department has qualified them for this

work. Important subjects, such as organization, liquidation, extension of charter and Government depositaries, have been treated in monograph form—and the requirements as to reports, reserve, tax, five per cent. fund, bond deposit, transfers, etc., are given, with explanatory notes.

The great importance of having a full and carefully prepared general index has been recognized, and special effort made to have it complete.

There is also given a Table of Cases Cited, an index of the sections of the Revised Statutes and additional Acts governing banking under the National system, and, at the head of each chapter, an index of section headings.

This edition of the Digest is presented to the public in confidence that it will be found accurate, clear and comprehensive, both in the construction of the law, and in information concerning the organization, conduct, closing or extending National banks.

The compilation of the Statutes, and the digest of the decisions of the Courts, is the work of Mr. John J. Crawford, of the New York Bar, who was, in 1886-1888, the legal counsel to the Comptroller of the Currency, and who is widely known as the draftsman of the Negotiable Instrument Law, and a recognized authority on Commercial and Banking Law.

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A Table of Cases Cited and an Index to Sections of the Revised Statutes follow this Table of Contents. At the beginning of each Chapter is given an Index of Subjects covered in the Chapter, and a General Index is given at end of the work.

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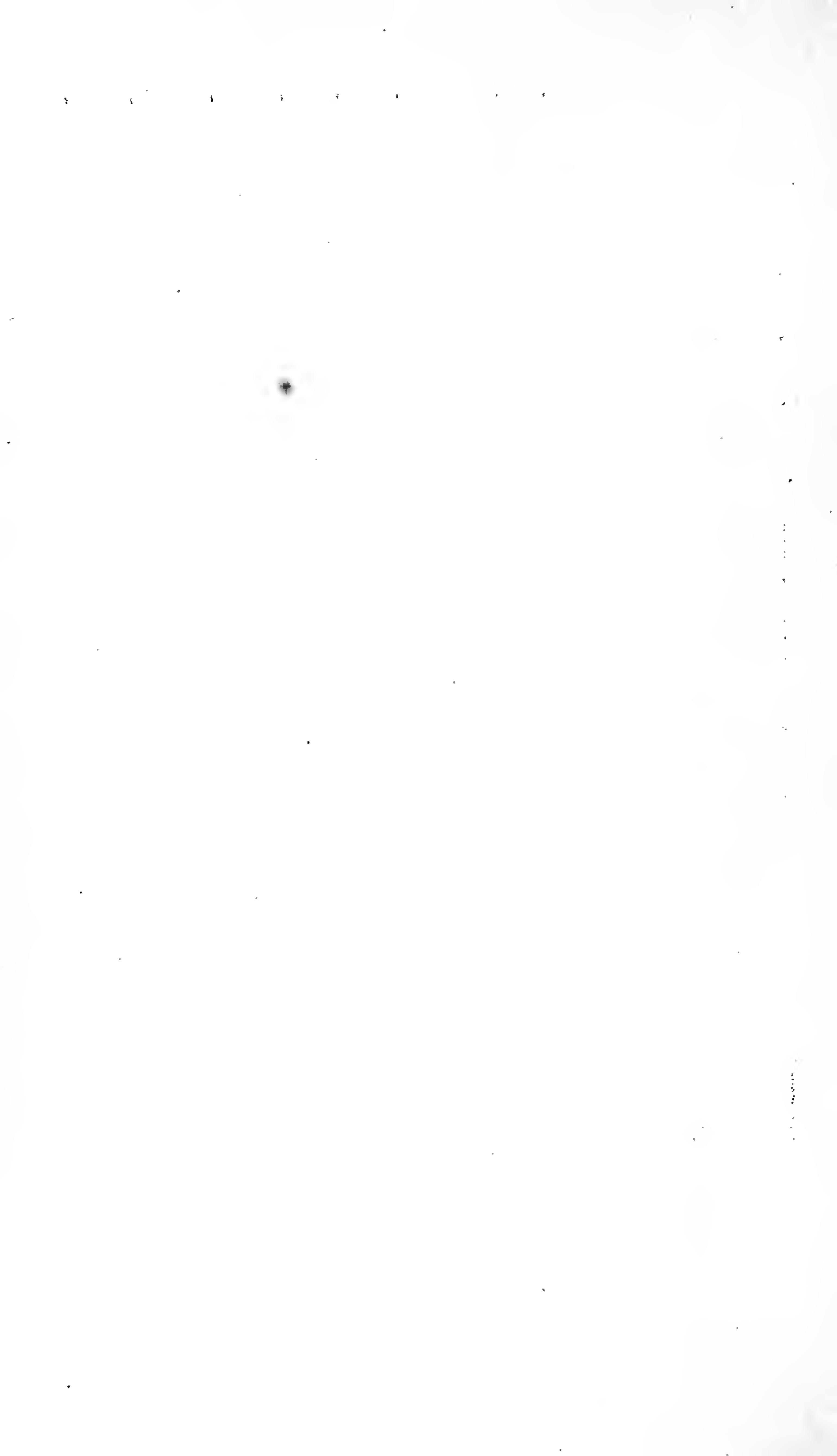

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3416	145	138	5175	74	88	5228	96	100
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UNIV. OF CALIFORNIA

PRATTS' DIGEST

PART FIRST.

THE LAWS RELATING TO NATIONAL BANKS,

WITH ANNOTATIONS.

CHAPTER I.

COMPTROLLER OF THE CURRENCY.

Section 1. Title of Act.
2. Bureau of Comptroller of the Currency.
3. Comptroller of the Currency.
4. Oath and Bond of Comptroller.
5. Deputy Comptroller; duties, etc.
6. Clerks.
7. Interest in National Banks prohibited.
8. Seal of office.
9. Offices, Vaults, etc., for Bureau.
10. Examination of Banks in District of Columbia.
11. Annual Report of Comptroller.
12. When Report to be Printed.

§ **1. Title of Act.**—The 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 third, eighteen hundred and sixty-four, shall hereafter be known as the "National Bank Act." (Act June 20, 1874, Ch. 343, Sec. 1, 18 U. S. Stat. 123.)

§ 2. **Bureau of 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. (Rev. Stat. U. S. Sec. 324.)

While the construction of the National Bank Act by the Comptroller of the Currency is persuasive, and entitled to careful consideration, yet a court, if satisfied that such construction is error, will not follow it. (Deweese *v.* Smith, 106 Fed. Rep. 438.) And where the meaning of the Act is clear, the construction placed thereon by the Comptroller cannot be considered. (Studebaker *vs.* Perrin, 184 U. S., 252.)

§ 3 **Comptroller of the Currency—Appointment—Term of Office —Salary.**—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. (Rev. Stat. U. S. Sec. 325.)

The Comptroller of the Currency is also *ex officio* Commissioner of the Freedmen's Savings Bank, and for this receives an additional $1,000 per annum.

§ 4. **Oath and Bond of Comptroller.**—The Comptroller of the Currency shall, within fifteen days from the time of notice of his appointment, take and subscribe the oath of office; and he shall give to the United States a bond in the penalty of one hundred thousand dollars, with not less than two responsible sureties, to be approved by the Secretary of the Treasury, conditioned for the faithful discharge of the duties of his office. (Rev. Stat. U. S. Sec. 326.)

The Bond of a Surety Company is now accepted.

§ **5. Deputy Comptroller: Duties, etc.**—There shall be in the Bureau of the Comptroller of the Currency a Deputy Comptroller of the Currency, to be appointed by the Secretary, who shall be entitled to a salary of two thousand five hundred dollars a year, and who shall possess the power and perform the duties attached by law to the office of Comptroller during a vacancy in the office or during the absence or inability of the Comptroller. The Deputy Comptroller shall also take the oath of office prescribed by the Constitution and laws of the United States, and shall give a like bond in the penalty of fifty thousand dollars. (Rev. Stat. U. S. Sec. 327.)

Salary increased to $3,500 by act of Congress.

The court will take judicial notice of the fact that a certain person was on a certain day the Deputy Comptroller of the Currency; and where he has signed a certificate as "Acting Comptroller" the court will assume that at the date of such certificate he was authorized to exercise the powers and discharge the duties of Comptroller. (Keyser *v.* Hitz, 133 U. S., 438.)

§ **6. Clerks.**—The Comptroller of the Currency shall employ, from time to time, the necessary clerks, to be appointed and classified by the Secretary of the Treasury, to discharge such duties as the Comptroller shall direct. (Rev. Stat. U. S. Sec. 328.)

While this section retains the appointing power in the hands of the Secretary of the Treasury, it appears to indicate that the Comptroller is to be the judge of the force necessary to perform the work of his office.

§ **7. 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. (Rev. Stat. U. S. Sec. 329.)

This section is not to be taken in its strict literal sense, but is to be construed so as to carry out the obvious intention of Congress, which was to forbid the Comptroller and the Deputy Comptroller from having any interest in the banks over which they are to exercise a supervision.

§ 8. **Seal of Office.**—The seal devised by the Comptroller of the Currency for his office, and approved by the Secretary of the Treasury, shall continue to be the seal of office of the Comptroller, and may be renewed when necessary. A description of the seal, with an impression thereof, and a certificate of approval by the Secretary of the Treasury, shall be filed in the office of the Secretary of State. (Rev. Stat. U. S. Sec. 330 as amended by Act, Feb. 18, 1875, correcting Rev. Stat.)

§ 9. **Offices, Vaults, etc., for Bureau.**—There shall be assigned from time to time, to the Comptroller of the Currency, by the Secretary of the Treasury, suitable rooms in the Treasury building for conducting the business of the Currency Bureau, containing safe and secure fire-proof vaults, in which the Comptroller shall deposit and safely keep all the plates not necessarily in the possession of engravers or printers, and other valuable things belonging to his Department; and the Comptroller shall from time to time furnish the necessary furniture, stationery, fuel, lights, and other proper conveniences for the transaction of the business of his office. (Rev. Stat. U. S. Sec. 331.)

§ 10. **Examination of Banks in District of Columbia.**—The Comptroller of the Currency, in addition to the powers conferred upon him by law for the examination of National banks, is further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any bank in the District of Columbia organized under act of Congress. The Comptroller, at his discretion, may report to Congress the results of such examination. The expense necessarily incurred in any such examination shall be paid out of any appropriation made by Congress for special bank examinations. (Rev. Stat. U. S. Sec. 332.)

§ 11. **Annual Report of Comptroller.**—The Comptroller of the Currency shall make an annual report to Congress, at the commencement of its session, exhibiting—

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, andthe whole amount of the expense of the banking department during the year. (Rev. Stat. U. S. Sec. 333.)

The reports of heads of Departments are made to the President of the United States; the only exception is that of the Secretary of the Treasury, which is made direct to Congress. The reports of heads of bureaus in any Department are made to the head of that Department, but the Comptroller of the Currency, as seen above, reports direct to Congress, and not through the President or the Secretary of the Treasury.

The first report of the Comptroller of the Currency was made for the year 1863 by the Hon. Hugh McCulloch, the first Comptroller. The earlier reports are out of print, and those of some of the later years also, but copies of such as are on hand and can be spared may be obtained on application to the Comptroller of the Currency by bankers and others who are interested in banking matters.

§ 12. **When Report to be Printed.**—When the annual report of the Comptroller of the Currency upon the National banks and banks under State and Territorial laws is completed, or while it is in progress of completion, if thereby the business may be sooner dispatched, the work of printing shall be commenced, under the superintendence of the Secretary, and the whole shall be printed and ready for delivery on or before the 1st day of December next after the close of the year to which the report relates. (Rev. Stat. U. S. Sec. 3811.)

By Act January 12, 1895, Ch. 23 (28 Stat. U. S. 616), It is provided that there shall be printed each year ten thousand copies of the Report of the Comptroller of the Currency, one thousand for the Senate, two thousand for the House, and seven thousand for distribution by the Comptroller.

CHAPTER II.

ORGANIZATION AND POWERS OF NATIONAL BANKS.

Section 13. Who May Form National Banking Association—Articles of Association.
14. Organization Certificate.
15. Acknowlegment of Organization Certificate.
16. Corporate Powers of Associations.
17. Limitations as to Real Estate and Mortgages.
18. Amount of Capital Required.
19. Par Value of Stock — Transfers — Stockholders' Rights and Liabilities.
20. When Capital Stock Must be Paid In.
21. Failure to Pay Installments on Stock—Sale of Stock—Restoring Capital so Reduced.
22. Comptroller to Determine if Association is Entitled to Commence Business.
23. Certificate of Authority to Commence Business.
24. Publication of Comptroller's Certificate.
25. Increase of Capital Stock.
26. When Increase of Capital Stock Becomes Valid.
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28. Rights of Shareholders at Elections—Proxies.
29. Directors—Election of—Term of Office.
30. Qualifications of Directors.
31. Oath Required of Directors.
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33. Proceedings where No Election is Held at Time Appointed.
34. President must be a Director.
35. Individual Liability of Shareholders.
36. Executors, Trustees, etc., not Personally Liable.
37. Depositaries of Public Moneys.
38. Conversion of State into National Banks.
39. Same Subject—State Banks having Branches.
40. Conversion of National Gold Banks.
41. Rights of Associations Organized under Act of 1863.

42. Change of Name and Location.
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45. Extension of Corporate Existence.
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49. Privileges, Liabilities, etc., of Extended Banks.
50. Withdrawal of Shareholders; Preference in Allotment.
51. Banks not Extending—Continuance of Franchise for Purpose of Liquidation.
52. Limitation of Banking Under Territorial Law.
53. National Banks in Oklahoma.
54. Branch Banks at Columbian Exposition.
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§ **13. Who May Form National Banking Associations—Articles of Association.**—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. (Rev. Stat. U. S. Sec. 5133.)

For full details how to proceed in the organization of a National Bank, with form of articles of association, etc., see page 201.

§ **14. 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 deposits 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. (Rev. Stat. U. S. Sec. 5134.)

PLACE OF LOCATION—HOW DESIGNATED—BRANCHES.—The provision of law requiring that the place where the business is to be carried on shall be stated in the organization certificate refers to the town or city, and not to the particular building or street number. (McCormick *v.* Market Nat. Bank of Chicago, 162 Ill., 100.) The Comptroller of the Currency holds that the legal residence of the bank is the particular location, that is, the street and number in the place designated in its organization certificate, or in case of removal its new location, and therefore that it can not have branches in the same city.

§ **15. Acknowledgment of Organization Certificate.**—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. (Rev. Stat. U. S. Sec. 5135.)

For form of certificate see page 215.

§ **16. Corporate Powers of Associations.**—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 (or) 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. (Rev. Stat. U. S. Sec. 5136.)

Banking Powers.—The banking powers here conferred are such as banks and bankers have customarily exercised. The enumeration of powers in the seventh subdivision is the usual formula descriptive of the banking business contained in bank charters, and is almost identical, except in the order of arrangement, with that contained in the New York banking act of 1838, which is the original model upon which most of the banking laws of the country have been framed. The powers here specified are not the incidental, but the principal powers, and to them are to be superadded all incidental powers. While the statute specifies the main things a National bank may do, it does not undertake to specify all, and it does not prohibit all not specified. For instance, the business of making collections, which forms a large branch of the banking business, is not particularly specified, but it has never been doubted that the National banks have the right and power to do this kind of

business. In general, National banks may make any contracts which legitimately appertain to the business of banking, as defined by the statute. (Pattison *v.* Syracuse National Bank, 80 N. Y., 82.) But such banks can exercise only the powers expressly enumerated in the statute, and those powers which are properly incidental to the enumerated powers. (Logan County National Bank *v.* Townsend, 139 U. S., 67, 73; Casey *v.* La Societé de Credit Mobilier de Paris, 2 Woods, 77.)

Deposits.—The authority given National banks to receive deposits also includes power to contract as to the parties to whom deposits shall be repaid. (Sykes *v.* Canton First National Bank, 2 S. D., 242.) A National bank may be a depositary for the public money of a city; and may agree to pay interest on such deposits, and give bond for their security. (Interstate National Bank *v.* Ferguson, 48 Kans., 732.)

Special Deposit.—It is also well settled that National banks may not only receive deposits made in the usual way, which are known as general deposits, but they may likewise receive special deposits. They may receive deposits of bonds and securities for safe-keeping, either for a compensation or gratuitously. (National Bank *v.* Graham, 100 U. S., 699; Pattison *v.* Syracuse National Bank, 80 N. Y., 82; First National Bank *v.* Strang, 138 Ill., 347.) This power has been sustained upon two grounds—first, that it is incidental to the business of banking; and, secondly, that it is implied in the provisions of section 5228, Revised Statutes, which authorizes an insolvent association to deliver special deposits.

But the cashier or other executive officer has no authority to bind the bank by the receipt of a special deposit for safe-keeping, without an express or implied authority from the directors. (First National Bank of Lynn *v.* Ocean National Bank, 60 N. Y., 278. See also Wiley *v.* First National Bank of Brattleboro, 47 Vt., 546.) However, where the bank habitually receives special deposits through its cashier, it will be bound by his acts in receiving the same. (Pattison *v.* Syracuse National Bank, 80 N. Y., 82, 92; Chattahoochee National Bank *v.* Schley, 58 Ga., 360.) And where a special deposit is lost through the negligence of the officers or employees of the bank, the bank will be liable to the owner of the deposit. (National Bank *v.* Graham, 100 U. S., 699.) Where a special deposit made with a bank, afterwards reorganized as a National bank, is converted, the measure of the damage is the value of the deposit at the date of the conversion. (Coffey *v.* National Bank of Missouri, 46 Mo., 140.) Where a National bank receives United States bonds of one class for the purpose of having them converted into bonds of another class, it is not a mere mandatary, but is responsible for the failure to deliver the bonds on demand. (Leach *v.* Hale, 31 Iowa, 69.) It is competent for a National bank to take steps for the recovery of its property stolen by burglars, and to agree to take like steps for the re-

covery of the property of others deposited with it for safe-keeping and stolen at the same time, and want of proper diligence, skill and care in performing such an undertaking is ground of liability to respond in damages for failure. (Wylie *v.* Northampton Bank, 119 U. S., 361.)

Deposit as Stakeholder.—A National bank may receive the deposit of a fund in controversy to abide the event of a litigation or award, or to be payable upon a contingency to some person other than the depositor. So long as the bank undertakes nothing more than to pay over the money deposited with it to the person who may, according to the conditions upon which the deposit was made, become entitled to receive it, the bank does not transcend its powers. Nor does it make any difference that the portion of the sum deposited which may become payable to a third person is, at the time of the deposit, uncertain and subject to litigation. (Bushnell *v.* Chautauqua County National Bank, 74 N. Y., 290.)

Savings Department.—A National bank may have a Savings Department, entering on pass-books the deposits and withdrawals, paying interest on deposits, etc., and operating in every way as a savings bank, excepting first, a special contract is necessary and should be entered in pass-books, providing as to withdrawal of funds, otherwise deposits are payable on demand, as other deposits of a National bank; second, loans as to amount to individuals and character of security must conform to the provisions of the National Bank Act.

A National bank proposing to operate a savings bank under a separate charter to avoid the restrictions of the National Bank Act should not establish it in the same building. In several States this is prohibited by statute, in the interests of savings banks, to protect them aganst possible manipulation of funds to relieve depleted condition of the State or National bank with which it is connected. Again on account of the sensitiveness of savings deposits, the danger of the National bank suffering in time of financial crises, is, generally increased if the two banks are evidently one and the same institution.

Safe Deposit Boxes.—The Comptroller of the Currency holds that while there is no provision of the statute authorizing National banks to invest considerable sums in the building of safe deposit vaults for the purpose of makng that a prominent feature of their business, yet the investment of a moderate amount for such purpose in cities where companies can not be properly organized for the sole purpose of conducting this line of business is not open to criticism. The Comptroller adopts the view that the matter is one largely in the discretion of the directors of the bank.

SECURITY FOR LOANS.—The words "loans on personal security" in the statute are used in contradistinction to real estate security, and the National banks are not confined, in the taking of security for discounts and loans, to the security afforded by the names of indorsers or personal sureties, but may take a pledge of bonds, choses in action, bills of lading, or other personal chattels. It has accordingly been held that they may take for this purpose a pledge of the stock of a corporation (Shoemaker *v.* National Mechanics' Bank, 2 Abb., U. S., 416; see also National bank *v.* Case, 96 U. S., 628); or a warehouse receipt for merchandise (Cleveland, Brown & Co. *v.* Shoeman, 40 Ohio St., 176); or a locomotive (Pittsburgh Locomotive and Car Works *v.* State National Bank, U. S. Circuit Court, 1875; Thompson's National Bank Cases, 315); or a chattel mortgage upon a stock of goods (Spofford *v.* First National Bank of Tama City, 37 Iowa, 181). An indorsement of a promissory note by a married woman by its terms charging her separate estate with the payment of the note, is not a mortgage in any sense; it is simply a personal security within the meaning of the National Bank Act, and is therefore a security which a National bank may take. (Third National Bank *v.* Blake, 73 N. Y., 260.) The question of loans upon real estate security is discussed under the next section.

DEALING IN STOCKS AND BONDS.—A National bank has no power to deal in stocks and bonds, or buy and sell them upon commission. Such operations are not incidental to the business of banking as defined in the statute. (Weckler *v.* First National Bank of Hagerstown, 42 Md., 581; First National Bank of Allentown *v.* Hock, 89 Pa. St., 324; First National Bank *v.* National Exchange Bank, 92 U. S., 122.) And the prohibition is implied from the failure to grant the power. (California National Bank *v.* Kennedy, 167 U. S., 362.) But there seems to be good reason for saying that a different rule applies in respect to Government Bonds. It has always been the custom of the National banks to deal more or less in these securities, and such operations have been generally encouraged by the fiscal officers of the Government. It is clear that, as financial agents of the Government, they may be employed by the Government to perform any duties in respect to its bonds; and so, perhaps, they may be employed in this way by others. It has long been the practice of bankers, both in this country and in England, to buy and sell and exchange Government securities for their customers, and as it was the policy of the Government to encourage the purchase and sale of its bonds, and facilitate transactions in them, it is not probable that Congress intended to prohibit National banks, the most numerous class of financial agents in the country, from dealing in these bonds in a manner usual among bankers and banking institutions. It has been decided by State courts of high authority that the National banks have power to receive United States bonds of one class for the purpose of having them converted into bonds of another class, and that

the exchanging of Government securities is a legitimate part of their business. (Yerkes *v.* National Bank of Port Jervis, 69 N. Y., 383; Van Lenven *v.* First National Bank, 54 N. Y., 671; Leach *v.* Hale, 31 Iowa, 69.) In the case first cited it was said: "We may take judicial notice of the fact that Government bonds are usually bought and sold through banks, and that all the transactions in reference to them with the Government are usually conducted through banks and persons doing banking business." And it has been held that a National bank has power to deal in municipal bonds, and may make a contract with a municipal corporation for the purchase of its bonds. (Newport National Bank *v.* Board of Education of Newport, Ky., 705 W. Rep., 186; 24 Ky. L. Rep., 876.) Where the president of a National bank sells bonds which are the property of the bank, under the representation that they were bought by him expressly for the purchaser, the latter, upon discovering the fact respecting the bank's ownership, may repudiate the transaction, and upon returning the bonds to the bank may reclaim the money paid for them. (Carr *v.* National Bank of Watertown, 167 N. Y., 375.)

PURCHASING COMMERCIAL PAPER.—It has been held by the highest courts of Maryland (Lazear *v.* National Union Bank of Baltimore, 53 Md., 78) and Minnesota (First National Bank of Rochester *v.* Pierson, 24 Minn., 140) that a National bank has no power to *purchase* commercial paper, or acquire any title to such paper by a *purchase*, made admittedly not in the way of discount, or by lending money on the credit of it. In the Maryland case it was said: "We are of opinion that this transaction was an out-and-out purchase by the bank, and that such purchase was without authority, and that the bank acquired no title to the note, and can not recover thereon in this suit. While we do not mean to say that a National bank may not invest its surplus *capital* in notes, we are of opinion that it has no authority to use such surplus funds, as may remain on hand from day to day, for the purpose of buying notes." The contrary has been held by the Supreme Court of Ohio (Smith *v.* Exchange National Bank of Pittsburgh, 26 Ohio St., 141), though it was said by that court that, as "in the business of banking, the purchasing and discounting of paper is only 'a mode of loaning money,'" the purchase could not be at a greater rate of discount than allowed by the usury laws. This view seems to be much preferable to that taken in the Maryland and Minnesota cases, in which the construction placed upon the law appears to be very narrow.

We have seen that a National bank has, in general, such powers as are incident to the banking business, and the purchase and sale of commercial paper is such an incident. (Yerkes *v.* National Bank of Port Jervis, 69 N. Y., 382.) And it may be said, upon good authority, that the word "*discount*," when properly interpreted, includes a *purchase* as well as a loan. In Atlantic State Bank *v.* Savery (82 N. Y., 291), the Court of Appeals of New York, in considering the question whether a bank

organized under the New York banking law of 1838 could *purchase* a note, cite, with approval from McLeod on Banking, that "it is usual to estimate the value of money by the discount or profit it yields, and to buy or purchase a debt is always in commerce termed to discount it;" and from the case of Tracey *v.* Talmage (18 Barb., 456) that "to discount includes to buy, for discounting, at most, is but another term for buying at a discount." And the same meaning has been ascribed to the term by other courts. (Niagara County Bank *v.* Baker, 15 Ohio St., 85; Pape *v.* Capital Bank of Topeka, 20 Kans., 440.)

In the Maryland case cited it was held that the bank could not maintain an action on paper which it had acquired by purchase; but, in later cases in other States, it has been held that notwithstanding the bank, in purchasing the paper, was acting in excess of its power, still its want of power in that respect could not be set up by any of the parties to the paper when sued thereon, and that it is only for the Government to complain that the bank had exceeded its authority. (Prescott National Bank *v.* Butler, 157 Mass., 548; Merchants' National Bank *v.* Hanson, 33 Minn., 40; First National Bank of Pierre *v.* Smith, 8 S. Dakota, 7.) The latter is, no doubt, the correct view, and is supported by the decisions of the United States Supreme Court in analogous cases. (National Bank *v.* Matthews, 98 U. S., 621; National Bank *v.* Whitney, 103 U. S., 99; Reynolds *v.* Crawfordsville Bank, 112 U. S., 405; Thompson *v.* St. Nicholas National Bank, 146 U. S., 240.)

And even if a National bank does not get the legal title to a promissory note bought in the market, it may maintain a suit as the holder thereof. (Prescott National Bank of Lowell *v.* Butler, *supra.*) In the Kentucky case above cited it was held that the purchase of a note from the payee with the latter's endorsement is a purchase by discounting in the usual course of business, and is not a purchase by barter and sale, as would be the case if the note were taken without endorsement, or by endorsement without recourse. So, in a late case in Missouri it was decided that the receiving of notes and carrying them through the bank books as discounted paper, and placing the face value as the proceeds thereof to the credit as cash of the party from whom they were received, constituted a discounting or negotiating of notes within the law, although the interest was not taken in advance and no money was actually paid on them at the time. (Ellerbee *v.* National Exchange Bank, 107 Mo., 445.)

Borrowing of Money.—The power to borrow money or to give notes is not expressly conferred by the act; but in proper cases a bank may become a temporary borrower of money. (Western National Bank *v.* Armstrong, 152 U. S., 346; Chemical National Bank *v.* Armstrong, 65 Fed. Rep., 573.)

But such transactions are so much outside of the general scope of the bank's business, that the officer acting for the bank therein must have

special authority. (*Id.*) The vice-president, even though he is the principal executive officer of the bank, has no implied authority to borrow large sums on time. (*Id.*) And where an officer without authority borrows money for the bank, the mere fact that the money was placed to the credit of the bank involves no ratification of his act, unless the money was so placed with the bank's consent; and the withdrawal of the money by drafts drawn by such officer in the name of the bank will not constitute a receipt of such money by the bank, unless it was, in point of fact, received and used by the bank, or for its benefit. (*Id.*)

REDISCOUNTS.—A rediscount by a National bank of its bills receivable, though it endorses the same, and becomes contingently liable for their payment, is not a borrowing of money by the bank, but has some of the characteristics of a sale. (United States National Bank *v.* First National Bank of Little Rock, 79 Fed. Rep., 296.) And such a transaction is not so far outside the scope of ordinary banking transactions as to impose upon the bank buying such paper the duty of ascertaining that the act has been specially authorized by the board of directors. (*Id.*) And when a bank has long been in the habit of rediscounting its bills receivable in large amounts, all other banks in the same locality pursuing the same practice, and the president and cashier of such bank proposes to its regular correspondent a rediscount of such bills, and there are no circumstances attending such proposition to arouse suspicion, the bank to which it is made may safely act upon it, without further inquiry, on the assumption that the act has either been specially authorized, or that the officers are acting within the purview of their powers. (*Id.*) The rule announced in Western National Bank *v.* Armstrong (152 U. S., 346) that the vice-president or cashier of a National bank has no power to borrow money on its behalf unless specially authorized by the directors, is not applicable in a case where a general and long-established usage is shown between correspondent banks, prevailing in both cities where the lending and borrowing banks were respectively situated, that loaning and borrowing money through the executive officers of the bank, no further authority be furnished or demanded; the presumption being that such usage was condoned and acquiesced in by the directors of the borrowing bank, in the absence of notice to the contrary to its correspondent. (Armstrong *v.* Chemical National Bank, 83 Fed. Rep., 556.)

And in a recent case it was held that the president of a National bank who has the actual management of its operations is authorized to procure the discount of its paper. (Hanover National Bank *v.* First National Bank of Burlingame, 109 Fed. Rep., 421.) In this case a New York bank discounted a note made by the president of a Kansas bank, and paid the proceeds to the last-mentioned bank, this form of transaction having been adopted at the request of the president of such bank, he having stated that he did not wish to report to the Comptroller of the

Currency or to publish the fact that his bank was procuring rediscounts. *Held*, That the knowledge of the New York bank of his intention to violate the National Banking Law did not affect its rights to recover the money from the Kansas bank. The subsequent fraud of its cashier will not relieve a National bank from its liability as indorser on paper transferred by him within the scope of his authority to an innocent third person. (Auten *v.* Manistee National Bank, 67 Ark., 243.)

STOCKS TAKEN AS SECURITY FOR OR IN PAYMENT OF DEBTS.—But while the National banks are impliedly prohibited from dealing in stocks, they may yet accept stock when it is transferred to them, *bona fide*, in satisfaction or payment, or by way of compromise of debts due to or from the bank, and when it is taken with a view to its subsequent sale or conversion into money so as to make good or reduce an anticipated loss. This right grows out of the implied power to adopt reasonable and appropriate measures to secure the bank's own obligations, or collect or secure debts due to it; and in this behalf the bank may do whatever natural persons would do under similar circumstances. (First National Bank of Charleston *v.* National Exchange Bank, 92 U. S., 122.) And, in such a case, if the stock is worth more than the amount of the claim, the bank may pay the difference. (*Id.*)

And where a loan has been made upon the stock of another corporation as collateral security, the bank, in enforcing its rights as pledgee, may become the owner of the collateral. (Fulton *v.* National Bank of Dennison, 26 Tex. Civ. App., 115.)

Where a National bank legally acquires title to stock in another corporation, previously held as collateral security or taken for debt, such stock should be disposed of promptly, and that action will be required by the Comptroller of the Currency in order that the liability attaching to such stock may be definitely determined, as neither the prior owner, nor the National bank so acquiring the stock, is liable to an assessment in case of impairment of capital or failure.

PURCHASE OF STOCK OF OTHER NATIONAL BANKS.—A National bank can not lawfully acquire and hold the stock of another National bank as an investment. (First National Bank of Concord *v.* Hawkins, 33 U. S. App., 747.) And where such stock has been purchased the bank may plead its want of power as a defense to an assessment upon the stock, notwithstanding it appears as the registered owner thereof, and has received and retained the dividends thereon. (*Id.*)

The Court in this case said: "We think that the reason which disqualify a National bank from investing its money in the stock of another corporation are quite as obvious when that other corporation is a National bank as in the case of other corporations. The investment by National banks of their surplus funds in other National banks, situated

perhaps in distant States as in the present case, is plainly against the meaning and policy of the statutes from which they derive their powers, and evil consequences would be certain to ensue if such a course of conduct were countenanced as lawful. Thus it is enacted in Section 5146 that "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."

"One of the evident purposes of this enactment is to confine the management of each bank to persons who live in the neighborhood, and who may for that reason be supposed to know the trustworthiness of those who are to be appointed officers of the bank, and the character and financial ability of those who may seek to borrow its money. But if the funds of a bank in New Hampshire, instead of being retained in the custody and management of its directors, are invested in the stock of a bank in Indiana, the policy of this wholesome provision of the statute would be frustrated. The property of the local stockholders, so far as thus invested, would not be managed by directors of their own selection, but by distant and unknown persons. Another evil that might result, if large and wealthy banks were permitted to buy and hold the capital stock of other banks, would be that in that way the banking capital of a community might be concentrated in one concern, and business men be deprived of the advantages that attend competition between banks. Such accumulation of capital would be in disregard of the policy of the National Banking Law, as seen in its numerous provisions regulating the amount of the capital stock, and the methods to be pursued in increasing or reducing it. The smaller banks in such a case would be in fact, though not in form, branches of the larger one."

Lending Credit—Accommodation Paper.—A National bank has no authority to lend its credit, and its accommodation paper or indorsement or guaranty will be void in the hands of any person taking the same with knowledge of the facts. (National Bank of Commerce *v.* Atkinson, 55 Fed. Rep., 465; Seligman *v.* Charlottesville National Bank, 3 Hughes, 647; Johnson *v.* Charlottesville National Bank, 3 Hughes, 657.) This, it may be remarked, is true of all corporations, and the principle is well established in corporation law.

Guaranty.—A National bank has no power to give an accommodation guaranty, and such a guaranty is not enforceable against the bank. (Bowen *v.* Needles National Bank, 94 Fed. Rep., 925.) In the case cited a National bank advised A that it would pay all checks of a third person, although such person had no funds on deposit, as was known to both A and the bank. In reliance on such promise, A cashed checks of such

person, and transmitted them to the bank for payment. The bank issued and sent to A its drafts on a correspondent for the amount of the checks, which drafts were refused payment. *Held*, That the contract was one purely of guaranty, and was *ultra vires* on the part of the bank, and the transaction gave A no right of action against it on the drafts. So, it has been held that the officers and directors of a National bank have no authority to bind the bank by a guaranty of the debts of a third person contracted for his own benefit. (Commercial National Bank *v.* Pirie, 27 C. C. A., 171; 82 Fed. Rep., 799.) So, the cashier has no authority to bind the bank by a guaranty of a mortgage bond. (Farmers' and Merchants' National Bank *v.* Smith, 40 U. S. App., 690.) And it has been held that a National bank has no power, either with or without a consideration, to agree or bind itself that a draft drawn upon one of its customers will be paid. (First National Bank of Moscow *v.* American National Bank, 173 Mo., 153.)

But while a National bank may not lend its credit for the accommodation of others, still it may guaranty the payment of commercial paper as incidental to the exercise of its power to buy and sell the same. (Thomas *v.* City National Bank of Hastings, 40 Neb., 501.) Thus, A being indebted to a National bank, and being the holder of certain negotiable notes, indorsed them generally, and delivered them to the president of the bank, who accepted them for value to C, at the same time executing in the name of the bank a written guaranty of payment. From the proceeds of the sale, A's debt to the bank was cancelled. *Held*, That the guaranteeing of the notes under such circumstances was within the powers of the bank. (*Id.*)

Assuming Obligations of Other Bank.—A National bank has power to make a contract whereby, in consideration of the transfer to it of the office furniture, lease and cash assets of another National bank, it will assume and pay the liabilities of such other bank. (Schofield *v.* State National Bank, 97 Fed. Rep., 282.)

Loans to Officers.—A National bank may make loans to its officers and directors as freely as to other persons. (Blair *v.* First National Bank of Mansfield, 10 Chicago Legal News, 84; 2 Nat. Bank Cas., 173.) But the loans must be honest, and the borrowers must not participate in making the loans to themselves. (*Id.*)

Dealing in Checks.—Dealing in checks is a part of the usual business of banking, and would be within the general powers of a bank without special mention. And there is no difference in this respect between checks payable to bearer and those payable to order. (First National Bank of Rochester *v.* Harris, 108 Mass., 514.)

Lending for Customers.—A National bank is not authorized to engage in the business of lending money for its customers; and it can not be held liable for the acts of its officers in so doing. (Grow *v.* Cockrill, 63 Ark., 418.)

Employment of Attorneys.—Under the fourth subdivision of section 5136 a National bank has full power to employ attorneys to bring or defend suits in any court of law or equity; and such employment, including the agreement for compensation, may be made by the president of such bank. Such employment by the president is a sufficient authorization and employment, and the bank will be bound thereby. The power to complain and defend is not limited to suits in which the bank may be successful; nor is the right of the attorney to recover limited by the character of the questions which may arise in the case. (National Bank of Guthrie *v.* Earl, 2 Okl., 617; see also Citizens' National Bank of Kingman *v.* Berry, 53 Kans., 696.)

Broker in Sale of Farm Mortgages.—A National bank has no power to act as a broker in selling farm mortgages for a commission. (Farmers' and Merchants' National Bank *v.* Smith, 40 U. S. App., 690.)

Selling to Acquire Lien.—There is nothing in the National Banking Law which forbids a National bank selling seed grain on credit, to acquire the lien afforded by the State statute. (First National Bank of Parker *v.* Peavey Elevator Company, 10 S. D., 167.) But even were such a transaction forbidden, only the Government could be heard to complain. (*Id.*)

Binding Bank to Pay Draft.—An officer of a National bank has no power to bind it to pay the draft of a third person on one of its customers to be drawn at a future day, when it expects to have a deposit from him sufficient to cover it, and no action lies against the bank for its refusal to pay such a draft. (Flannagan *v.* California National Bank, 56 Fed. Rep., 959.)

False Representation of Cashier.—A National bank may be held liable for damages for a false representation made by its cashier as to credit of a customer seeking credit at another bank. (Nevada Bank of San Francisco *v.* Portland National Bank, 59 Fed. Rep., 338.)

Collection by Cashier.—The cashier of a National bank has authority on behalf of the bank to make a collection from a Savings bank. (Hanson *v.* Heard, 69 N. H., 190.) The fact that receipts appear upon their face to be the personal receipts of the cashier does not preclude the depositor from showing that they were intended and understood to be receipts in his capacity as cashier of the bank. (*Id.*)

Assigning Judgment.—When a judgment belonging to a National bank is transferred without collecting it, the presumption is that the transfer is unauthorized. (Cox *v.* Robinson, 70 Fed. Rep., 760.)

Manufacturing Business.—A National bank has no power to engage in a manufacturing business. (Bletz *v.* Bank of Kentucky, 55 S. W. Rep., 697; 21 Ky. L. Rep., 1554.)

Partnership.—A National bank has no power to become a member of a partnership, and cannot be held liable as a partner. (Merchants' National Bank v. Wehrmann, 69 Ohio St., 160.)

Contract to Pay for the Procuring of Customer.—In the case of Dresser *v.* Traders' National Bank (165 Mass., 120), it was held by the Supreme Court of Massachusetts that a National bank is not authorized to make a contract to furnish fire insurance to a person in consideration of his procuring a customer for the bank; and it was doubted whether the bank can agree to pay money for such a purpose. The Court said: "Two questions are then presented: First, whether a bank can agree to pay money to a third person for the purpose of securing a customer; and, second, if it can do so, whether it can agree to furnish to such third person for such a purpose fire insurance to a specific amount. We should be slow in answering the first question in the affirmative. Such a mode of doing business is so inconsistent with sound principles of banking that it would seem that the directors would not be justified in thus spending the money of the stockholders. But it is unnecessary to decide this question, as we are of opinion that the second question must be answered in the negative. As we understand the declaration, the officers of the bank, acting in its behalf, were to go about, either personally or by an agent, seeking for persons who wished to insure their property, and when they had found them, put the matter in the hands of the plaintiff who would cause insurance to be made, and thus earn a commission. We are of opinion that this would be so far outside the legitimate purposes for which National banks are organized that the contract declared on must be deemed to be *ultra vires* of the defendant corporation."

Donation of Funds.—Where the president of a National bank signed its name to a subscription paper obligating the bank to donate $200 to certain parties on condition that they would erect a paper-mill in the city of K:—*Held,* (1) That the making of donations of its funds to aid in the building of a paper-mill was no part of the business for which the bank was incorporated; (2) that the act of the president was not within the scope of his authority, and that the bank, in the absence of an authorization or ratification by it of the president's act, was not bound by the agreement made. (Robertson *v.* Buffalo County National Bank, 40 Neb., 235.)

Clearing-House.—There is nothing in the National banking law which forbids a National bank to become a member of a clearing-house association organized merely for the purpose of facilitating settlements between the members thereof. (Philler *et al.* *v.* Patterson, 168 Pa. St., 468.)

Officers—Tenure of Office.—The officers of a National bank must be regarded as having taken and accepted their positions under the terms of the act, and to hold them by the tenure specified, to wit, the pleasure of the board of directors. Harrington *v.* First National Bank of Chittenango, 1 Thompson & Cook (N. Y.), 361.) it was intimated in the case cited that the officers could not be hired for a specified time; and it has since been held that the cashier of a National bank can not be chosen for any stated term, but holds his office at the pleasure of the board of directors. (Westervelt *v.* Mohrenstecher, 40 U. S. App., 221.) And a by-law which provides that he shall hold his office for a stated term, as, for instance, for one year, is void. (*Id.*)

Bonds of Officers.—The directors are vested with a sound discretion as to whether or not bonds shall be given by the officers of the bank. (Robinson *v.* Hill, 63 Fed. Rep., 522.) But special circumstances may exist which will require them to do so. (*Id.*) It is not necessary that the acceptance of the bond should be signified by memoranda entered upon the journal or minutes of the directors. The acceptance is to be presumed from the retention of the bond, and from the fact that the officer is permitted to enter upon or continue in the discharge of his duties. (Graves *v.* The Lebanon National Bank, 10 Bush., 23.)

A surety on the bond of a cashier of a National bank is not discharged by the fact that before the bond was given, the cashier had committed frauds upon the bank, if such frauds were unknown to the officers of the bank, although they were guilty of gross negligence in not discovering them. (Tapley *v.* Martin, 116 Mass., 275.)

Ultra Vires.—Where a National bank makes a contract which is beyond its powers, such contract is void, and not merely voidable, and it cannot be estopped from making the defense of *ultra vires* when it is sued for *non-performance* on its part. (Metropolitan Stock Exchange *v.* Lyndonville National Bank (Vt.), 57 Atl. Rep., 101.) But there are many cases where such a contract, having been *performed*, has been enforced. Thus, where bonds were sold to a National bank under a contract by which it agreed to replace the bonds to a seller at the same price, or less, it was held that, admitting the contract to be one the bank could not legally make, yet it could not hold the bonds under or by virtue of the contract, and at the same time refuse to comply with the terms of purchase. (Logan County Bank *v.* Townsend, 139 U. S., 67.) So, even if a National bank has not authority to *purchase* commercial

paper, this can not be set up as a defense by the person liable on the paper when sued by the bank thereon. (Prescott National Bank *v.* Butler, 157 Mass., 548.) So, where a National bank has made a loan upon a real estate mortgage, its want of power to take such a security is not a defense to the mortgagee in a suit by the bank to foreclose the mortgage. (National Bank *v.* Matthews, 98 U. S., 621.) So, in an action to determine an adverse claim to real estate, which had been sold under a judgment, and bid in by the judgment creditor, and the certificate of sale assigned to a National bank, it was held that the defendants could not raise the question that the bank had no authority to purchase the certificate. (Hennessey *v.* City of St. Paul, 54 Minn., 219.) And so, in an action by a National bank on railroad aid bonds, the obligor cannot set up as a defense that the purchase of the bonds by the bank was *ultra vires.* (Town Council of Lexington *v.* Union National Bank, 75 Miss., 1.) And where a borrower has deposited collateral securities with a National bank, he cannot set up as a defense that the bank had no power to take the same. (Reynolds *v.* Touzalin Imp. Co., 62 Neb., 236.)

Conversely, where a National bank has received and retained the benefit of a contract made by its officers, it can not plead that the contract was unauthorized by the directors, or beyond the power of the bank or its officers to make. (Tootle *v.* First National Bank of Port Angeles, 6 Wash., 181.) Thus, it can not interpose the defense of *ultra vires* to a contract made by it to secure the free entrance of light and air into its banking house, where it has enjoyed the benefits of the contract. (Trustees of First Presbyterian Church *v.* National State Bank, 57 N. J. Law, 27.) And an agreement to indemnify a surety upon an attachment bond is enforcible against a National bank, where the surety has paid the bond, though the bond was not given for the benefit of the bank. (Seeber *v.* Commercial National Bank of Ogden, 77 Fed. Rep., 957.)

The fact that the act of a National bank in assuming to represent another as agent is *ultra vires* will not exempt it from the rules of law which regulate the duties of an agent to his principal. It cannot plead its own violation of law to justify a breach of trust. Accordingly, when a National bank which had assumed to sell for another certain notes owned by him, but had, instead of so selling them to a third person, without his knowledge, sold them to itself, it was held that the bank had violated its duty to the owner, the same as if it had full power under the law to act as such agent; and was therefore guilty of a conversion of such notes. (Anderson *v.* First National Bank of Grand Forks, 5 N. D., 451.)

Where a National bank has itself purchased notes which the owner had authorized it to sell to a third party, it is liable for their value as for a conversion, even though it had not the power to act as the owner's agent for the sale thereof. (First National Bank of Grand Forks *v.*

Anderson, 172 U. S., 573.) So, where it uses in its business money obtained by one of its officers as a loan to it, it cannot escape liability claiming the loan was not negotiated by it, or by its directors, or that it could not itself have legally borrowed the money. (Aldrich *v.* Chemical National Bank, 176 U. S., 618.) A National bank took as security for a debt, partly pre-existent and partly created at the time, a real estate mortgage, naming an individual, an officer of the bank, as mortgagee. The transaction was usurious. *Held*, That, having given the transaction the form of one with an individual, for the purpose of evading the liabilities peculiar to National banks, the bank could not be heard to assert its true nature to evade the liabilities attached to individuals, and to claim the privileges of National banks. (Gadsen *v.* Thrush, 56 Neb., 565.) But where a National bank has purchased stock in another corporation, out of the ordinary course of its business, and not as security for a debt previously contracted, it may plead *ultra vires*, in an action against it as a stockholder of such corporation. (The California National Bank *v.* Kennedy, 167 U. S., 362, overruling Kennedy *v.* California Savings Bank, 101 Cal., 495.)

Bank as Trustee.—Acting as trustee and holding the securities upon which an issue of bonds is based is not considered as necessarily "incidental" to the powers conferred on a National bank, but more in the nature of the business of a trust company, and therefore not a proper undertaking for a National bank.

§ 17. Limitations as to Real Estate and Mortgages.—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. (Rev. Stat. U. S. Sec. 5137.)

How Purchases and Conveyances Made.—In purchasing or conveying real estate a National bank should act through its president or cashier, duly authorized by regular resolution of its board of directors.

Banking-House—Character of Improvement—Lease.—If the land which a National bank purchases or leases for the accommodation of its business is very valuable, it may exercise the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive. (Brown *v.* Schleier, 118 Fed. Rep., 981.) Where a National bank invests in real estate in excess of its powers, and the transaction has been acquiesced in for a long time, only the Government can be heard to complain, and a receiver appointed by the Comptroller of the Currency cannot do so. (*Id.*) Investment in a banking-house property should not be out of proportion to the capital and business of the bank.

A National bank may lease property for a term of years and agree with the lessor to construct such a building as it desires, provided that it acts in good faith, solely with a view of obtaining an eligible location, and not with a view of investing its funds in real property or embarking them in speculations in real estate. (Brown *v.* Schleier, *et al.*, 118 Fed. Rep., 981.) Such a lease is not invalid because made for a longer period than the corporate existence of the bank. (*Id.*) And, even though the lease be assignable only with the consent of the lessor. (Weeks *v.* International Trust Company, 125 Fed. Rep., 371.) Nor is such a lease invalid because the gross rents payable during the term will reach a sum exceeding the amount of the bank's capital stock. (Brown *v.* Schleier, *et al.*, 118 Fed. Rep., 981.) But a National bank which has not been authorized by the certificate of the Comptroller of the Currency to commence the business of banking has no power to execute a lease of a banking-house for a term of years. (McCormick *v.* Market National Bank of Chicago, 165 U. S., 538; S. C., 162 Ill., 100.) Nevertheless, persons organizing a National bank may secure an option on property desired for a banking-house with a provisional agreement for a lease to be executed when the bank is chartered.

When Real Estate Security May Be Taken.—The authority conferred by the second, third and fourth subdivisions of this section is necessary to enable the bank to collect the debts due to it, and is such authority as is conferred in nearly all grants of corporate power. But, in order that the bank may acquire any interest in real estate, or any mortgage or lien thereon, under these subdivisions, it is essential that there should have been a debt previously contracted in good faith. There is no authority granted to deal in real estate, or to take real estate or any mortgage or lien thereon, as security for contemporaneous loans. Thus, if a bank has discounted a note upon the faith of the paper itself, and the paper is not paid at maturity, or if before it matures, the maker, or the person who negotiated it, becomes embarrassed, then the bank, acting *bona fide*, would have the right to take a

mortgage or conveyance of real estate as security for, or in satisfaction of, the debt; but it would have no right to take a mortgage to secure a note discounted at the same time, or to secure paper to be discounted thereafter, or to enter into an agreement at the time of making the discount that it will take a conveyance of real estate in payment or satisfaction of the note. These principles are now settled beyond controversy. (Bank *v.* Matthews, 98 U. S., 621; Fowler *v.* Scully, 72 Pa. St., 451; Crocker *v.* Whitney, 71 N. Y., 161; Fridley *v.* Bowen, 87 Ill., 151.)

As Security for Debts Previously Contracted.—The National banks may take mortgages on real estate to secure the payment of debts previously contracted. (First N. B. of Skowhegan *v.* Maxfield, 83 Me., 576.) And the power of the National banks to secure or satisfy their debts out of real estate is ample for the purpose; and, in the *bona fide* exercise of their power in this respect, they may do whatever an individual would do under similar circumstances. If the real object of the purchase is to secure or satisfy debts, the authority of the bank to purchase is not limited to the exact amount of the debts, but it is entitled to purchase such real estate as may be necessary for the purpose. (Upton *v.* National Bank of South Reading, 120 Mass., 153.) Accordingly, it has been held that, when the inducement to the transaction is the security of an antecedent indebtedness, the bank may make an additional advance, and take a mortgage on real property to secure both the advance and the prior indebtedness. (*Id.*) So it may take a conveyance of real estate worth more than the debt, and pay the difference between the debt and the value of the property. (Libby *v.* Union National Bank, 99 Ill., 622.) And similarly, when there is a prior lien upon the property, the bank may discharge this lien and take a mortgage to cover the whole amount. (Ornn *v.* Merchants' National Bank, 16 Kans., 34), or it may purchase the prior lien and enforce it in its own behalf. (Holmes *v.* Boyd, 90 Ind., 322.) So, it may be substituted to the rights of a surety who has taken a mortgage. (Magoffin *v.* Boyle National Bank of Danville (Ky.), 695 W. Rep., 702; 24 Ky. L. Rep., 785.) And, in taking a mortgage to secure the debt upon notes already due, it is not a violation of the law for the bank to agree to renew the notes and hold the mortgage as security for the renewals. (Howard National Bank *v.* Loomis, 51 Vt., 349.) Where a bank sells real estate of which it is the owner, it may take a mortgage on the same to secure payment therefor. (New Orleans National Bank *v.* Raymond, 29 La. Ann., 355.)

Debentures—Stock of Real Estate Companies—Wife's Separate Estate.—Very difficult questions frequently arise as to whether a contemplated transaction is within the inhibition against loans on real estate. One question of frequent occurrence, especially in the West, is whether the debentures of mortgage loan companies can be taken as

collateral. This point has never been judicially determined, but the Comptrollers of the Currency have generally expressed the opinion that they are not proper securities for a National bank to receive. But it has been held by the Supreme Court of Minnesota that a National bank may make loans upon the security of the stock of a corporation whose property consists solely of real estate. (Baldwin *v.* State National Bank, 26 Minn., 43.) Where a married woman indorsed a note: "I hereby charge my separate and personal estate for the payment of the within note" it was held by the Court of Appeals of New York (Third National Bank *v.* Blake, 73 N. Y., 260) that the indorsement was to be treated as personal security, within the meaning of the National banking law, and not as a mortgage.

Mortgage Given to Indorser to Enure to Bank.—It has been held that a National bank may make an agreement that, in case a note discounted by it shall not be paid, a mortgage given by the maker to his indorser shall enure to the benefit of the bank (First National Bank *v.* Haire, 36 Iowa, 443); but this decision seems to be very questionable.

Promissory Notes Secured by Mortgage—Judgment Notes.—The Solicitor of the Treasury, in an opinion given to the Comptroller of the Currency, has held that it is not unlawful for a National bank to lend upon a promissory note, which is secured by bonds and notes which are in turn secured by real estate, nor to lend on judgment notes, which when recorded become liens on real estate; *provided* such loans are made solely on personal security given. The Comptroller's office formerly accepted this opinion, but now holds that such loans are not lawful. There has been no judicial decision on the subject.

Violation of Law Can Not Be Set Up by Borrower.—But while a National bank is forbidden to make loans upon real estate security, this point can not be raised against the bank when it seeks to foreclose a mortgage or otherwise satisfy the debt out of the property. No one but the Government can be heard to complain that the bank has exceeded its powers, and the only penalty which it incurs is a liability to a forfeiture of its franchises. (National Bank *v.* Matthews, 98 U. S., 621; First National Bank of St. Thomas, Fleth, 10 N. D., 281.) And where the bank acquires real estate, which it had no authority to take, the conveyance to it is not void, but only voidable, at the option of the Government; and its title to such property is good until assailed in a direct proceeding brought by the Government. (Reynolds *v.* Crawfordsville Bank, 112 U. S., 405.)

Policy of the Law.—The prohibition against loans on real estate is a feature of the law which has been much criticized in some quarters; and as evidence that this restriction upon the powers of the National

banks is unreasonable and unnecessary, it is urged that real estate is the best kind of security; that savings banks, trust companies, and insurance companies are authorized to make such loans; and why, therefore, should not the National banks be permitted to do the same? But, by the great majority of bankers, the restriction is deemed wise and salutary. The objection to real estate security is not to its *sufficiency*, but to the *kind*. As the obligations of the banks are largely payable on demand, it is necessary that the securities it holds should be readily convertible into money; and while a mortgage upon real estate may be good security, it can not be made immediately available, in case of an emergency. Personal securities of the kind usually taken by banks can be quickly assigned, and promptly realized upon; but the transfer of any interest in real estate is always attended with more or less delay. It has not infrequently been the case that banks have been compelled to suspend when their assets were more than sufficient to pay their debts, simply because a large portion of the assets were real estate securities, upon which it was impossible to realize at the proper time. In the case of insurance companies, trust companies, savings banks, and similar corporations there is not the same necessity for having the assets in a convertible form, but it is rather desirable that a large portion of the investments shall be of a more or less permanent character; and, therefore, real estate loans are well adapted to their purpose.

§ 18. **Amount of Capital Required.**—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 association shall be organized in a city the population of which exceeds fifty thousand persons with a capital of less than two hundred thousand dollars. (Rev. Stat. U. S. Sec. 5138, as amended by Act March 14, 1900, Ch. 41, Sec. 10.)

Determination of Population.—The Comptroller relies for information as to population generally on the Census Bureau, which, through its agents in different sections, is usually able to give the required data, but the Comptroller's findings in regard to this are not necessarily final, and, in case the applicants to organize a National bank believe the

population reported to the Comptroller not correct, they may furnish such counter evidence as they may be able to obtain. A certificate from the mayor of the place or other good evidence of actual population probably will satisfy the Comptroller. Any error of his as to population can be corrected in appropriate legal proceedings. It sometimes happens that banks have less than the minimum capital required by law for the population of the place. The explanation is that they were either organized when the places were smaller, or were organized in villages afterward absorbed by cities lying near.

AUTHORIZATION OF BANKS UNDER $100,000 CAPITAL.—When application is made to the Comptroller for a bank with less than $100,000 capital, he certifies the application, with statement as to population, etc., to the Secretary of the Treasury, who thereupon takes action and approves or not as he deems best. If parties applying are well endorsed as responsible and acting in good faith, approval will be given regardless of whether there appear to be need of additional banking facilities in the place or not.

§ 19. Par Value of Stock—Transfers—Stockholders' Rights and Liabilities.—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 mav 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. (Rev. Stat. U. S. Sec. 5139.)

IN WHAT CASES PAR VALUE LESS THAN ONE HUNDRED DOLLARS.—The exception to the division into shares of $100 each is in case of State banks converted. (See section 38.) If a converted bank desires to change the denomination of its shares, the new denomination must be $100.

STATE STATUTES.—It is not competent for State legislation to limit or interfere with the transferable quality of National bank stock, as the same is left by the statutes of the United States. (Doty *v.* First National Bank of Larimore, 3 N. D., 9.) But it has been held that a State statute prescribing the mode of transfer of stock by executors and administrators will apply to the stock of a National bank located in such State. (Hobbs *v.* Western National Bank (U. S. Ct. Ct.), 2 Nat.

Bk. Cas., 187.) And it is held that a State statute which provides that the stockholders of all private corporations shall have the right of access to and inspection and examination of the books, records and papers of the corporation at all reasonable and proper times, applies to National banks located within the State. (Winter *v.* Baldwin, 89 Ala., 483.) And National bank stock is subject to seizure and sale on execution under authority of State laws. (*In re* Braden's Estate, 165 Pa. St., 184.)

TRANSFER OF STOCK—ENTRY OF TRANSFER—LOST CERTIFICATES.—The transfer of stock in National banks is not governed by different rules from those which are ordinarily applied to the transfer of stock in other corporations. (Johnson *v.* Laflin, 103 U. S., 800.) The entry of the transaction in the books of the bank is required, not for the purpose of passing the title from seller to buyer, but for the protection of the parties, and others dealing with the bank, and to enable the bank to know who are its stockholders. (*Id.*) Accordingly, it has been held by the Supreme Court of the United States that where the shareholder delivers his certificates of stock to the purchaser, with a blank power of attorney to make the transfer on the books of the bank, and receives the purchase-money, the sale is complete and the title passes from seller to buyer. (*Id.*) And so it has been decided that where a shareholder who has sold his stock delivers the certificates with a proper power of attorney to the cashier with a request that the transfer be made upon the books, and the cashier promises so to do, the transferror has done all that is legally required of him to divest himself of the liability of a stockholder, and should the cashier fail to make the transfer on the books, the transferror can not be held as a stockholder in case the bank should afterwards become insolvent. (Hayes *v.* Shoemaker, 39 Fed. Rep., 319; Young *v.* McKay, 50 Fed. Rep., 397.) And it is further held that it is wholly unimportant in such case whether the notice of sale and request to transfer are in writing or oral. (Hayes *v.* Shoemaker, 39 Fed. Rep., 319.) When a certificate of stock is left with the officers of the bank to be transferred on the books, the transfer takes place at the time when it is so left, and not at the time of actual entry in the books, provided the party leaving it has authenticated to the officers of the bank his intention to make such transfer in the manner prescribed by the by-laws of the bank. (Young *v.* McKay, 50 Fed. Rep., 394.) The rights of a transferee of National bank stock, under an unrecorded transfer, good at common law, are superior to the rights of a subsequent attaching creditor of the transferror without notice. (Doty *v.* First National Bank of Larimore, 3 N. D., 9.)

But while the noting of the transfer on the books is not necessary for the purpose of passing the title to the stock, it is essential for other purposes. It is important to the transferee that the transfer should be properly registered, for, until this is done, the corporation is not bound

to recognize him as a stockholder, and he is not entitled to vote upon the stock, or to receive the dividends thereon, or, in fact, to have any of the privileges of a stockholder; and the transferror has an interest in having the transfer registered, because he will not be discharged from his liability as a stockholder until this is done. (Bowdell *v.* Farmers' and Merchants' National Bank, Brown's National Bank Cases, 147.)

The record made of the transfer upon the books of the bank is sufficient, as between the transferee and the bank, to work a change of ownership, and new certificates are not necessary to his becoming the ower of the stock so transferred. (Keyser *v.* Hitz, 133 U. S., 438.) Subscription to stock and payment in full and entry of his name on the books as a stockholder makes the subscriber a shareholder without taking out a certificate. (Pacific National Bank *v.* Eaton, 141 U. S., 227; Thayer *v.* Butler, 141 U. S., 234; Butler *v.* Eaton, 141 U. S., 240.)

In case of loss of a certificate of stock a bond of indemnity should be required before the issue of a duplicate certificate to avoid the possibility of the bank becoming liable for an illegal issue.

Right of Stockholders to Transfer.—A shareholder in a National bank, while it is a going concern, has the absolute right, in the absence of fraud to make a *bona fide* and actual sale and transfer of his shares at any time, to any person capable in law of purchasing and holding the same, and of assuming the transferror's liabilities in respect thereto, and this right is not subject, in such cases, to the control of the directors or other stockholders. (Johnson *v.* Laflin, 5 Dill, 65.) The directors are authorized to prescribe regulations under which the transfer of stock shall be made; but these regulations must be reasonable, and under the pretence of prescribing the manner thereof, the directors can not clog the transfer with useless restrictions. (Johnson *v.* Laflin, 103 U. S., 800.) The transfer does not require to be approved by the directors, nor can they decline to make it in a proper case. (5 Dill., 65.) But where the transfer is sought to be made to a person incapable in law of assuming the liabilities of a stockholder—as where it is made to an infant, or to a person of unsound mind—then the directors might refuse to permit the transfer to be registered, for such a transfer is a fraud upon the corporation, the stockholders and creditors. And so they might refuse where the transfer is evidently made merely for the purpose of escaping liability, as where a shareholder in an insolvent bank seeks to transfer his stock to a pauper, or man of straw, or to an insolvent or irresponsible person. Where the person intrusted by the directors with the duty of entering the transfers on the books of the bank, refuses for insufficient reason to note a transfer, the bank will be liable for the damages resulting therefrom. (Case *v.* Citizens' Bank, 100 U. S., 446.)

On December 30, 1875, A sold certain shares of bank stock to B, and assigned them by a transfer written on the back of the certificate.

By the by-laws of the bank, stock was transferable only on the books of the company. On December 14, 1878, the shares were attached by a judgment creditor of A and sold and transferred to C. Neither the bank nor the creditor had knowledge of the transfer to B. In January, 1880, B presented his certificate and transfer to the officers of the bank and demanded a transfer of the stock, which was refused, whereupon he brought suit against the bank for such refusal: *Held*, That the bank was liable in damages for the refusal to transfer the shares. (Hazard *v.* National Exchange Bank of Newport, 26 Fed. Rep., 94.)

SPECIFIC PERFORMANCE.—A court of equity will not enforce specific performance of an agreement to sell shares in a National bank to enable the purchaser to obtain control of the bank, for the reason that, (1) equity will not generally enforce specific execution of a contract relating to personal chattels, and (2) because a decree enforcing the agreement in question would be against public policy. (Foll's Appeal, 21 Alb., L. J.; 2 N. B. C., 411.)

§ **20. When Capital Stock Must be Paid In.**—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 each 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. (Rev. Stat. U. S. Sec. 5140.)

PAYMENT OF SUBSCRIPTIONS.—Probably the theory of the law is, that each subscriber shall pay half of his subscription down, and the remainder in five equal monthly installments; this is really what a subscriber to National bank stock, who is expected to know the law, agrees to do, but the Comptroller does not usually require a certificate in detail, but only that capital amounting to 50 per cent., or 10 per cent., as the case may be, has in the aggregate been paid in. It is sometimes convenient for some subscribers to pay more at once, and this enables the officers to certify the payments necessary to comply with the letter of the law, without waiting for the slower subscribers. When this plan is adopted in order to hold the other subscribers, a contract should be entered into with them. (See note to next section.)

CERTIFYING PAYMENTS.—This is the certificate required by section 5168, par. 22, *post*, that fifty per cent. of the capital stock, called the first installment has been paid. Upon the receipt of this the Comptroller may, if bonds have been deposited, authorize the bank to commence business. The date of the Comptroller's certificate of authority to commence business fixes the date of the payment of the succeeding installments. The Comptroller's office furnishes blanks upon which to certify payment of capital. (For form, see page 219.)

§ 21. **Failure to Pay Installments on Stock—Sale of Stock—Restoring Capital so Reduced.**—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 publsihed 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 cancelled 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. (Rev. Stat. U. S. Sec. 5141.)

SUBSCRIBER'S LIABILITY.—This section is entirely for the direction of bank managers, and points out the proper course to be taken in bringing in the capital of the bank. It must be remembered that from the time of his subscription a person becomes a shareholder, and that all the shareholders have entered into a contract among themselves, and are mutually responsible to each other. If only five persons start

the bank, and subscribe for all the stock, with the purpose of afterward distributing the same among a number of parties, it is well for each of the five associates to have his distributees selected and to bind them by a formal contract with himself to each take the stock he destines for them.

Legal Status of Stock.—The stock doubtless has a legal standing before a single payment is made, and the association may be legally organized and become a body corporate before a single dollar of the capital is paid in by anyone. Thus sales or transfers of stock may take place before any capital is paid in. This is in line with the decision of the United States Supreme Court in Van Allen *v.* Assessors (3 Wall., 573), which holds a share of stock to be an entity distinct from capital. The actual holder or subscriber, in whose name the stock stands on the books of the bank at the time the directors call for the payment of the first installment of 50 per cent., must pay it, and payment can doubtless be compelled by legal proceedings. The section under consideration does not refer to this first installment, but to the subsequent installments, the dates of payment of which were fixed by the preceding section. The whole tenor of section 5141 implies a previous payment of 50 per cent., which is in the nature of a forfeit, if the stock has to be sold on account of failure to meet the subsequent installments.

Limit for Paying in Capital.—A new association would, strictly, under this section, have the following time to make good its capital before a receiver could be appointed; First, the time until the installment became due; then three weeks for notice by publication; then six months from forfeiture to cancellation; and, fianlly, thirty days longer in which to bring up capital to required amount. How capital is to be made good in such case is not distinctly stated, but probably by assessment on remaining stockholders. (See section 120.)

§ 22. Comptroller to Determine if Association is Entitled to 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. (Rev. Stat. U. S. Sec. 5168.)

Certificate of Officers and Directors.—The certificate described in this section is that known in the Comptroller's office as "Certificate of Officers and Directors." The certificate contains the notification and statements mentioned in the section. (For form see page 219.)

Preliminary Examination.—The Comptroller has under this and the subsequent section the right to send an examiner to ascertain whether the incorporators have complied with requirements before granting his certificate of authority to commence business. When an incorporated State bank becomes a National bank by conversion the Comptroller has an examination made to ascertain fully the character of the assets of the bank converting before granting a charter. If the bank is organized *de novo*, the examination is not ordered until after the bank has begun business. If the bank is a reorganization of a State or private bank, the Comptroller requires a statement signed by the directors to the effect that any assets purchased from the State or private bank it succeeds will not include real estate (other than the banking premises), stocks of other corporations, loans secured by real estate, or loans in excess of 10 per cent. of the paid-in capital stock, of the National bank.

§ 23. **Certificate of Authority to Commence Business.**—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 Comptroller 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. (Rev. Stat. U. S. Sec. 5169.)

See note to preceding section.

§ **24. Publication of Comptroller's 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. (Rev. Stat. U. S. Sec. 5170.)

This refers to the certificate of authority to begin business. An insertion in a weekly newspaper or in a weekly edition of a daily newspaper during the sixty days is sufficient. The Comptroller requires the publisher's oath of publication and a copy of the paper containing the notice as evidence of publication for the time required.

§ **25. Increase of Capital Stock.**—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. (Act May 1, 1886, Ch. 73, Sec. 1; 24 U. S. Stat., p. 18.)

OBSOLETE PROVISIONS IN ARTICLES OF ASSOCIATION.—Prior to the Act of 1886, the statute provided that "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." (Rev. Stat. U. S. Sec. 5142.) Many banks, therefore, have a provision of this character in their articles of association. But this is now obsolete. It is no longer necessary to insert in the articles of association provisions for an increase of

capital stock; for shareholders owning two-thirds of the shares may increase the capital stock at any time and to any amount, subject only to the approval of the Comptroller of the Currency, and this notwithstanding that the articles of association contain a provision fixing a maximum limit.

By Whom Increase Authorized.—The increase must now be made by the shareholders, and not by the directors, and all provisions in the articles of association of banks organized prior to May 1, 1886, authorizing directors to increase the stock, have become wholly nugatory.

Procedure.—When it is desired to increase the capital stock the Comptroller should be advised of the fact and of the amount of the proposed increase, as his approval is necessary. If the condition of the bank warrants the increase, he promptly gives his approval, and sends full instructions with blanks necessary to be executed and filed in his office. The next step is to call a meeting of shareholders and secure the adoption of a suitable resolution authorizing the increase. This meeting must be duly called, and the resolution must receive the votes of shareholders representing at least two-thirds of the existing stock. Then subscriptions for the new stock may be taken. When all the new stock shall have been subscribed and paid for, the payment should be certified to the Comptroller of the Currency by the president or cashier. (Forms to be used in making the increase will be found on page 319.)

The increase becomes effective on the date of the issue of the Comptroller's certificate, and the books of the bank should not be changed nor the certificates of stock issued prior thereto.

Waiver of Formalities.—The National Bank Act confers upon the National banks the abstract power to increase their capital stock, and such power exists independently of the separate steps required to be taken by the stockholders in the exercise of the power; and hence any irregularities or informalities in the exercise of that power may be waived by the subscriber. (Latimer *v.* Bard, 76 Fed. Rep., 536.)

Increase of Capital from Surplus.—Occasionally it is found desirable where a bank has accumulated a surplus in excess of the twenty per cent. required to be maintained to convert the excess (and only the excess can be used) into capital. This may be accomplished in the following manner: Declare and pay a pro rata dividend, the proceeds to be accepted in payment for the new stock, issued as the result of the legal adoption of a resolution providing for the increase. In no other manner can surplus be capitalized. The directors have the right to make dividends from excess surplus as from other profits, but the right remains with the shareholders to dispose of the proceeds as they shall determine.

Right of Shareholders to Subscribe for New Shares.—It is a general rule of law that where the capital stock of a corporation is increased each shareholder has a right of pre-emption to the new stock in proportion to his shares in the original stock. So that any provision in the articles of association is not actually necessary. But shareholders may, of course, waive their right to take the new stock, and this is frequently done. And the waiver need not be expressed; it may be given tacitly. It may be implied from the failure of the shareholder to avail himself of his right within a reasonable time. But the safer course, and the one which the directors and officers should generally adopt, is to have the waiver given in writing. In this matter each shareholder is bound only by his own action; he can not be deprived of his right of pre-emption by any vote or assent of the other shareholders, notwithstanding they may own two-thirds, or more, of the stock.

§ 26. When Increase of Capital Stock Becomes Valid.—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. (Rev. Stat. U. S. Sec. 5142.)

Comptroller's Approval—Recovery of Money Paid Where Increase Not Made.—The stock of a National bank can not be lawfully increased before the entire amount of the new capital has been paid in and the Comptroller of the Currency has certified to the increase and to the fact of payment in the mode prescribed by Section 5142, Rev. Stat. U. S. (Cornell's Executors *v.* First National Bank of Kansas City, 32 U. S. App., 426; McFarlin *v.* National Bank of Kansas City, 68 Fed. Rep., 868; Charleston *v.* People's National Bank, 5 S. C., 103.) But perhaps a case may arise where a subscriber would be estopped from asserting, as against a creditor, that he was not a stockholder, even though the provisions of the statute had not been strictly followed. (McFarlin *v.* First National Bank of Kansas City, *supra.*) And the provision of the statute as to payment does not create a condition, express or implied, that shares subscribed and paid for in full are not valid unless the entire amount of the proposed increase is subscribed and paid for in ful. (Scott *v.* Latimer, 89 Fed. Rep., 843.) Where money paid in on subscriptions to an increase of capital is received by a bank as a trust fund to be applied to that purpose, and before the increase is approved by the Comptroller and his certificate issued, the bank fails, the money so paid may be recovered by the subscribers. (*Id.*)

Where Whole Amount of Increase is Not Taken.—The U. S. Supreme Court in case of Aspinwall *v.* Butler, 133 U. S., 565, has held that where an increase of the capital stock is authorized in a certain sum there is no implied condition that a subscription shall be void if the whole amount so authorized is not subscribed. (See also Delano *v.* Butler,, 118 U. S., 634.) Therefore, where a shareholder subscribes his additional share towards doubling the capital and pays his subscriptions, the fact that the stockholders, with the assent of the Comptroller, reduce the amount of the stock they had proposed to issue, does not permit him to repudiate his subscription and recover the money paid on it. (Pacific National Bank *v.* Eaton, 141 U. S., 227.) But if there were a large and material deficiency in the amount of capital contemplated, equity might interfere to protect subscribers. (Aspinwall *v.* Butler, 133 U. S., 595.)

In 1892 the stockholders of the C. National Bank voted to increase capital $300,000. M. subscribed for twenty-three shares of such increase and paid in his subscription. The full amount was not subscribed. The President and Cashier called a meeting of stockholders in 1895, and an increase of capital stock of $150,000 was authorized and approved by the Comptroller. M. was not present at the meeting, though one B., who held a proxy authorizing him to represent M.'s stock, was present. *Held*, That the subsequent action of the stockholders was not binding upon M., and that he could recover the amount paid in by him. (Matthews *v.* Columbia National Bank, 79 Fed. Rep., 558.)

In an action to recover money deposited with a National bank the plaintiff may show that stock issued by the bank in his name was issued to him merely as collateral security for such deposit. (Williams *v.* American National Bank of Arkansas City, 85 Fed. Rep., 376.) And it is no defense to the bank that the stock was issued without authority of law. (*Id.*)

Fixing Price of New Stock.—Generally, as a result of increase of capital, the additional shares of stock are issued and sold at par. Occasionally, however, it is preferred to increase the surplus in the same proportion as the capital; that is, to sell the new shares at the book or market value of the old stock. In such cases it is customary to incorporate in the resolution for the increase of capital a provision fixing the price, or conferring upon the Directors authority to do so. At common law, and generally under the Articles of Association, shareholders are entitled to participate in an increase of stock pro rata. But whether they are entitled to take the stock at par or whether the price may be fixed at a higher sum, is a mooted question, and has never been determined in a case where a National bank was a party. But, of course, there is no difficulty where all consent.

§ 27. **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. (Rev. Stat. U. S. Sec. 5143.)

Procedure.—In reducing capital it is best first to advise the Comptroller to be assured of his approval, which is necessary and which will be given only if he is satisfied the bank is solvent. He will instruct how to proceed and furnish forms. The next step is to call a meeting of stockholders, which should be done in the manner pointed out in note to the next section. The shareholders should then adopt a resolution authorizing a reduction of the stock. The votes in favor must represent two-thirds or more of all the stock of the bank. It is not sufficient that two-thirds of a quorum vote in favor of it. The resolution should state the intention of the stockholders clearly, but it is not required to be in any special form. If it is desired that the reduction shall take effect from a certain date, a provision to that effect should be inserted in the resolution; otherwise, the reduction will take effect from the date on which the Comptroller gives his formal approval. (For forms, see page 320.)

Usually the course is for each stockholder to relinquish and surrender up to be cancelled a pro rata portion of his stock. But if some of the stockholders are willing to surrender enough of their stock to make up the whole amount of the reduction, there is no necessity that the holdings of the other stockhoders should be reduced at all. The issue of fractional shares is sometimes unavoidable, and is permitted.

When Capital Can Not Be Reduced.—The capital stock cannot be reduced below the minimum amount of capital required by Section 5138, R. S. (See Sec. 18), nor can a bank reduce its capital below the amount required for a new bank in the same place, although the population of such place at the time such bank was organized would have permitted of an organization with a smaller capital. As to whether a National bank which did not obtain the approval of the Secretary of the Treasury to organize with a capital stock of less than $100,000, but organized with that amount or more, can reduce its capital below $100,000, there is a difference of opinion, and different Comptrollers have held variously on the subject. But, considering that

it is a fundamental rule of law, that there can be no change whatever made in the capital stock of a corporation, unless there is a clear authority found in the statute to make such a change, we would say that it would be unsafe for any bank to make such a reduction. The important question is not whether the Comptroller will approve of the reduction, but what are the liabilities of the stockholders and directors in such a case; for, if the statute does not authorize such a change in the capital stock, the approval of the Comptroller can afford them no protection, and the risks they incur are very serious.

Capital Set Free Can Not be Retained by Bank.—The capital stock set free by reduction belongs to the stockholders, in proportion to the number of shares held by each, and it must be returned to them; it can not be retained by the bank for a surplus fund, or for any other purpose. In this matter the directors have no discretion. (Seeley *v.* New York National Exchange Bank, 8 Daly, 400; affirmed, 78 N. Y., 608.) Nor can its retention by the bank be authorized by a majority of the stockholders, no matter how large. Each stockholder is entitled to his portion, and can not be deprived of it against his own consent. But frequently shareholders waive their right and agree to leave it with the bank to be used for a surplus fund or otherwise.

Reduction of Capital to Meet Impairment.—In reduction to meet impairment of capital there can be no withdrawal of assets; for, *prima facie*, any further withdrawal of assets would result in still further impairment of the capital. (McCann *v.* First National Bank of Jeffersonville, 112 Ind., 354.) In the case cited the capital of a National bank having become impaired by the non-payment of the interest on some paper among its assets, to the amount of $71,000, in order to avoid an assessment by the Comptroller, the stockholders reduced its capital stock, and carried the bills and notes to the account of suspended or "bad debts," which were not thereafter included as assets, although retained in its custody. Some years afterwards the bank realized $75,000 from collaterals pledged for the security of that paper, and a stockholder brought an action to recover his share of the amount realized, proportioned to the amount of stock surrendered: *Held*, That he could not recover.

Relation of Shareholders to Charged-off Assets.—Where the capital of a National bank has been reduced to obviate an assessment to make good an impairment, the relation of shareholders to the charged-off assets is the same as though the reduction of capital had not been made for that purpose, for the reason that a reduction under such circumstances would not be given favorable consideration by the Comptroller of the Currency, unless as a result the remaining assets, after charging off doubtful and worthless assets equivalent in face value to

the capital set free by reduction, equalled or exceeded in actual value the bank's aggregate liabilities to depositors and other creditors, and in addition the capital stock as reduced. Authority to reduce capital stock as a result of the withdrawal of instructions to levy and pay an assessment to make good an impairment is granted by the Comptroller of the Currency upon condition that no portion of the reduced capital will be paid to shareholders in cash except such sums as may be realized from assets charged off representing the amount of the reduction of stock. In this position the right of shareholders to the proceeds of the charged-off assets is recognized. Ordinarily such assets are trusted for collection and distribution to shareholders of record at date of the reduction, unless by unanimous action of shareholders authority is conferred upon the Directors to credit collections from such charged-off assets to the bank's profit account.

§ 28. **Rights of Shareholders at Elections—Proxies.**—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. (Rev. Stat. U. S. Sec. 5144.)

SHAREHOLDERS' MEETINGS.—The articles of association and by-laws of banks usually provide that meetings of shareholders shall be called by publishing notice thereof for thirty days in a newspaper, or by notifying the shareholders individually in writing. The latter is probably the method most commonly used. In the absence of any regulation on the subject, the better course would seem to be to send each shareholder written or printed notice the customary thirty days in advance to avoid any question as to the legality of the meeting. For want of due notice to the shareholders the proceedings, unless acquiesced in or ratified by all, may be set aside as invalid.

When any act to be done by the association requires the assent of the shareholders, their assent, unless unanimous, must be given at a duly convened meeting of shareholders. The assent in writing of shareholders owning the requisite amount of stock is not sufficient, and will not be binding upon any non-assenting shareholder. The action of a majority, no matter how large, can not be binding upon a minority, no matter how small, when not taken at a meeting of shareholders at which every shareholder has an opportunity to be represented, either in person or by proxy. The only exception to this rule is in the case of the amendment of the articles of association extending the period

of corporate existence, the consent of the shareholders to which the law expressly authorizes to be given in writing.

The mistake is frequently made of supposing that business requiring the action of the stockholders can be transacted at a meeting of the board of directors when the directors own a majority of the stock, or the amount of stock necessary to determine the actions of the shareholders, in respect to such business at a shareholders' meeting. But the rule of law is that every stockholder has a right to be present at the meeting, and to express his assent or dissent; and this he has, of course, no opportunity of doing when the business is considered at a meeting of the directors. A meeting of shareholders must be duly called.

Where the articles of association of a National bank provide that meetings of the stockholders may be called by the board of directors or by any three stockholders, a meeting called by the President and Cashier is not lawfully convened. (Matthews *v.* Columbia National Bank, 79 Fed. Rep., 558.)

Cumulate Voting..—The laws of some of the States authorize stockholders at corporate meetings held to elect directors to cumulate their votes; that is, if a stockholder is entitled to one vote on each share of stock held, he might concentrate his entire vote in favor of one candidate for directorship, instead of casting an equal number for all candidates. This method of voting, however, not being authorized by the National Banking Law, is held to be prohibited.

Proxies.—There is some doubt whether the word "*officer*" in the provision forbidding any "*officer*, clerk, teller, or book-keeper" to act as proxy, means only an *executive* officer, such as the president, vice-president, or cashier, or whether it applies as well to a director. There appears to have been no judicial decision on the point. The view formerly taken by the Comptrollers of the Currency was that a director is not an officer within the intendment of this provision. But the contrary view is now held. The closing paragraph of Section 5240 would seem to sustain this ruling, and this appears to better conform to the spirit of the law. The bank is under the control of the directors, and they have in many cases a great personal interest in the action of the meeting, especially where the meeting is held for the election of directors, and they are candidates for re-election. In all cases it is better, in order to avoid any question, that the proxy shall be a person not identified in any way with the management of the bank. (For form of proxy, see page 319.)

A proxy cannot bind his principal by attending at, and participating in, a meeting of stockholders not lawfully called. (Matthews *v.* Columbia National Bank, 79 Fed. Rep., 558.)

What Liability Disqualifies Shareholder to Vote.—The provision of this section which disqualifies shareholders "whose liability is past due and unpaid" applies only where the liability is for unpaid subscriptions for stock, and was not intended to disqualify shareholders otherwise indebted to the bank. (United States *ex. rel.* Cond. *v.* Barry, 36 Fed. Rep., 246.)

§ 29. Directors—Election of—Term of Office—Annual Meeting. —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. (Rev. Stat. U. S. Sec. 5145.)

Annual Meeting—Date of—Business at Annual Meetings—Representation.—The annual meeting is required to be held in January, but any date may be selected in that month, although in the form of articles of association recommended by the Comptroller the second Tuesday is named and commonly adopted.

At the regular annual meeting no business other than the election of directors can be transacted without the required notice having been given, stating that other business will be transacted; otherwise the ratification of action taken should be obtained from shareholders not present at the meeting.

No provision being made in the statute for any definite representation of stock at annual meetings, the number of shareholders present is not material to the legality of a meeting.

§ 30. Qualifications 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. Any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place. (Rev. Stat. U. S. Sec. 5146.)

See note Sec. 31, *post.*

Amendment to Sec. 5146, February 28, 1905, provides that a director of a National bank of capital not exceeding $25,000 shall own five shares of stock instead of ten as before required.

§ 31. Oath Required of 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. (Rev. Stat. U. S. Sec. 5147.)

QUALIFICATIONS OF DIRECTORS.—From the foregoing two sections it will be seen that several things are required to qualify a person for the position of director. He must be a citizen of the United States, must own in his own right not less than ten shares of the stock of the bank; in case of a newly-organized bank paying for same as assessments are made, and he must hold the stock free from pledge.

As the stock must be held in the director's own right, no person who holds stock in a merely representative capacity—as an executor, administrator, guardian, or trustee—can be a director.

The par value of shares not being stated, ten shares of a converted bank, though of lower par value, meet the requirement.

A director who owns more than ten shares of stock may sell or pledge all of his stock except ten shares, without becoming disqualified.

At least three-fourths of the directors must have resided in the State, Territory or district where the bank is located, for one year immediately preceding their election, and must be residents therein, during their continuance in office. It is therefore necessary that, in a Board of five, four must be residents. In a Board of seven, six, etc.

An unmarried woman, whether a widow or spinster, can be a director as well as a man; and so may a married woman in those States where the laws permit her to assume all the obligations of a stockholder.

OATH OF DIRECTORS.—The law as regards directors' oaths is fatally defective in that it fails to provide before what officer it may be taken. In order that an oath can have any efficacy as such, and especially in order that an indictment for perjury may be sustained thereon, it is requisite that the oath shall have been prescribed by law, and that it shall have been taken before an officer duly authorized to administer

it. The act of February 26, 1881 (see Sec. 126), which authorizes an oath to be taken before a notary public, applies only to the oath prescribed by Section 5211, Revised Statutes—the oath to the report of condition. As regards the other oaths prescribed by the National banking law, there does not appear to be any officer competent to administer them. (United States *v.* Curtis, 107 U. S., 671.) The Comptroller requires them to be taken, but they have no legal force.

Directors Can Act Only as a Board.—The election of a person as a director does not constitute him an agent of the corporation with authority to act separately and independently of his fellow-members. It is the board, duly convened and acting as a unit, that is made the representative of the bank. The assent or determination of the members of the board acting separately and individually is not the assent of the corporation. The law proceeds upon the theory that the directors shall meet and counsel with each other, and that any determination affecting the association shall be arrived at and expressed only after a consultation at a meeting of the board attended by a quorum. (National Bank *v.* Drake, 35 Kan., 564.) Frequently, it is true, a director does have authority to bind the bank when acting separately and apart from the others; but in such case he does not derive his authority from his position as director, but from the circumstance that he has been authorized by the Board, either expressly or impliedly, to act as the agent of the bank.

What Constitutes a Board.—A quorum generally consists of a majority of the whole board. A provision to this effect is usually contained in the articles of association (see form of articles on page 208), though this would be the rule in the absence of any provision whatever on the subject. In the previous editions of this Digest the opinion was expressed that it would be competent for the stockholders to provide that a less number than a majority shall constitute a quorum, and we still believe this to be correct, though the Comptroller of the Currency takes a different view. The point has not been judicially determined.

Where a majority is required to constitute a quorum, this means a majority of a full board, and not merely a majority of those who may be members at the time. Thus, should there be a vacancy in a board consisting of ten members, six would still be necessary to make a quorum, though five would be a majority of the present members. Sometimes the articles of association do not provide for any specific number of directors, but provide that the board shall consist of not less, or not more, than a certain number, or both, as for instance, "The board of directors shall consist of not less than five and not more than ten stockholders." This leaves it to the stockholders to determine at each annual election the number which shall constitute a full board for the ensuing year. If, in such a case, the stockholders do not manifest their intention

by expressly setting it forth in a resolution, it is to be gathered from their action in electing a certain number of directors, and it is to be supposed that the number so elected was intended to constitute the board for the year; and the effect is the same as if they had expressly provided for that number in the articles of association or otherwise. Vacancies occurring through the year should, therefore, be filled as in other cases.

Disqualification and Resignation.—It would seem to be the proper construction of the law that where a director becomes disqualified, this *ipso facto* vacates his place in the board, and no removal by the other directors is necessary. The provision that the directors are to hold office for one year does not require a director to serve for the whole term for which he was elected, and prohibit him from resigning during such term, but he may resign at any time during the year. (Briggs *v.* Spalding, 141 U. S., 132.) The apparent purpose of the provision, in regard to the term of office, is to make it conform to the time of the new election, and not to absolutely require every director to serve the full term. (Movius *v.* Lee, 30 Fed. Rep., 298.) The resignation of a director should be tendered to the board, and not to the shareholders. As the president is the head of the board, it may be tendered to him. (Movius *v.* Lee, 30 Fed. Rep., 298.) It is the more orderly and proper way to put the resignation in writing, but an oral resignation tendered to the president is sufficient. (Briggs *v.* Spalding, 141 U. S., 132.) Where the president is granted a leave of absence on account of ill health, it is not incumbent upon him to tender his resignation as a director, at the peril of otherwise being held liable for losses that may occur during his absence through the mismanagement of the bank. (*Id.*)

Liability of Directors.—Directors who violate any of the provisions of the law can be held personally liable for the loss resulting to the bank therefrom. Thus, where they make a loan in excess of one-tenth of the capital stock of the bank, in violation of Section 5200, Revised Statutes, they will be liable to the bank for all damages sustained by it in consequence of such loan. (See on this subject note to Section 165.)

The degree of care required of the directors is that which men of ordinary prudence would exercise under similar circumstances, and in determining this the restrictions of the banking law and the usages of business should be taken into account. The question is ultimately one of fact, to be determined under all the circumstances. (Briggs v. Spalding, 141 U. S., 132; Movius *v.* Lee, 30 Fed. Rep., 298.) They are entitled under the law to commit the banking business, as defined, to their duly authorized officers, but this does not absolve them from the duty of reasonable supervision, and they will not be permitted to be shielded from liability because of ignorance or wrong-doing, if such ignorance is the result of gross inattention. (*Id.*)

The directors of a National bank are vested with a sound discretion in the matter of requiring or not the officers of their bank to give bond. But special circumstances may exist which will render them personally liable if they fail to require such bonds. (Robinson *v.* Hall, 63 Fed. Rep., 222.) In the case cited, the directors left the management of the bank for more than three years almost wholly to its cashier, who had but little property, and of whom they required no bond; and they knowingly permitted loans to be made to individuals and firms largely in excess of the amounts allowed by law. They also failed to record mortgages given to secure large debts due the bank, even after they were aware of its insolvency, and erroneously advised an examiner who had taken charge of the bank that it was not necessary to record them: *Held,* That they were personally liable for the losses caused by such neglect and mismanagement, and the frauds and defalcations of the cashier. Directors are not liable for concealing from creditors the fact of the bank's embarrassment, unless that embarrassment is such as to imperatively demand the bank's suspension. (*Id.*) But perhaps they might be liable for withdrawing their own deposits when they have knowledge of the bank's embarrassment. (*Id.*) A National bank having suspended payment the directors issued a circular stating that the bank was entirely solvent, and invited its customers to make deposits with it, to be held as special deposits. Afterwards a receiver was appointed by the Comptroller of the Currency, and the special deposits made in pursuance of such invitation were turned over to him: *Held,* That the directors were individually liable for the amount of such deposits. (Miller *v.* Howard, 95 Tenn., 407.)

If directors who are depositors and know some time before suspension that that event is inevitable, and that the bank can pay only a percentage of its deposits, and yet check for the whole of their own balances, thereby diminishing the percentage to which the other creditors would be entitled, they defraud to this extent the creditors whose interests they were relied upon to protect, and will be held to strict accountability. (Robinson *v.* Hall, 63 Fed. Rep., 222.) (*Id.*) A National bank was organized with a capital of $60,000. The promoter of the bank took 380 shares of stock in his own name and procured the defendants to be directors as well as a person to be elected cashier by them. The directors were not acquainted with the banking business. The proposed cashier was known to the directors, at least by reputation, and was supposed by them to be competent and trustworthy and of considerable experience in the business, and they had full confidence in his integrity and ability to take charge of the bank. The cashier acted as manager of the loan and discount business of the bank, and the directors merely as advisers, when applied to. The promoter of the bank knew, and the other stockholders were presumed to know, that the directors were wholly unused to the banking business: *Held,* That the directors were not liable for the acts of the cashier in violation of the

banking law done without their participation or knowledge. (Clews *v.* Barden, 36 Fed. Rep., 617.) The cashier made loans, in excess of 10 per cent. of the capital, to a manufacturing corporation supposed by him and by the public to be entirely solvent. None of the directors knew of the loans when made, but after a loan of $3,000 in excess of the lawful limit had been made the cashier informed one of them of such a loan, and was by him advised to call it in when due; and thereafter such director's advice was asked as to a further discount to the same corporation, and he disapproved of it, and it was not made. Afterwards further loans or discounts were made to the same corporation without the knowledge or consent of any of the directors. About eight months after the bank commenced business one or more of the debtors of the bank failed, and the directors thereupon took the active management into their own hands: *Held,* That none of the directors had knowingly violated, or knowingly permitted to be violated, any of the provisions of the banking law and were not liable for such violation by the cashier. (*Id.*)

It is within the power of the board to give a director a leave of absence on account of ill health, and if frauds are committed during his absence and without his knowleldge, he will not be liable for them. (Briggs *v.* Spaulding, 141 U. S., 132.)

There have been comparatively few decisions touching the duties and liabilities of directors of National banks; but their duties and liabilities are, in general, not different from those of directors of other corporations.

§ **32. Vacancies: How Filled.**—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. (Rev. Stat. U. S. Sec. 5148.)

It seems to be the proper construction of this section, that the duty of filling any vacancy in the board is obligatory on the remaining directors, and is not merely discretionary with them. The power is conferred upon them for the benefit of the bank and its stockholders, and these have an interest in having the power exercised.

§ **33. Proceedings Where No Election Held at Time Appointed.**—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. (Rev. Stat. U. S. Sec. 5149.)

SHAREHOLDERS' CONTROL.—The presence of this section in the law shows the importance attached by the legislators to the exercise of control over the management of the bank by stockholders. Precaution is taken that the annual election shall not be neglected by the directors who might perhaps desire to hold over. If the election is from any cause omitted, the directors have the power to cause an election to be held on a subsequent day by giving notice by publication. A failure to name a day in the articles of association may be remedied by the directors in the by-laws, or otherwise. But in the event of the failure of directors to fix a day, either when no day has been fixed in the articles of association or by-laws, or when election has not been held on the day fixed, two-thirds of the stock may fix a day.

WHEN NO ELECTION HELD.—It would seem, therefore, that unless two-thirds of the stock were dissatisfied with an existing board of directors, such board, by neglecting to have elections held, might retain office for an indefinite period. The Comptroller might, perhaps, require them to renew their oaths each year, or he might construe the law to be mandatory as to annual elections; in which case the bank would have to be guided by the Comptroller's construction, unless it wished to contest the matter in the courts or have the question decided by some law officer of the Government. In the event of any difference of opinion upon a legal point between a bank and the Comptroller, the bank can request that it be referred to the Secretary of the Treasury or the Attorney-General of the United States for an opinion.

If a shareholders' meeting is held by mistake on the wrong day, another meeting must be called, giving the regular thirty-day notice, but if all shareholders waive notice and consent to date fixed, the Comptroller probably will not object.

§ **34. President Must Be a Director.**—One of the directors to be chosen by the board shall be the president of the board. (Rev. Stat. U. S. Sec. 5150.)

EX-OFFICIO POWERS.—The president of the board of directors is the presiding officer of the board, but otherwise his *ex-officio* powers are not

greater than those of any other director, except that, as the head of the board, he may bring suits in behalf of the bank, and in proceedings against the bank legal process may be served upon him when it might not be proper to serve it upon any other director. But usually he is also the chief executive officer of the bank, and has large powers delegated to him by the board.

Vested Powers.—It is important to remember, however, that his authority as chief managing agent of the bank is not inherent in his office, but is vested in him by the board of directors, either expressly or by implication, and that in his case, as well as in that of any other officer or agent, it is necessary to show that the requisite authority has been conferred by the board. The powers of the president will accordingly vary in different cases, and the powers of some presidents will be much greater than those of others. The directors have the right to remove the president at any time. (Taylor *v.* Hutton, 43 Barb., 195.) And they have this power though the bank has never legally adopted any by-laws. (*Id.*) The president has the power to employ counsel and manage the litigation of a bank, in the absence of any order of the board of directors depriving him of such power. (Citizens' National Bank of Kingman *v.* Berry, 53 Kan., 696.) And he has, by virtue of his office, authority to assign a judgment owned by the bank (Guernsey *v.* Black Diamond Coal and Mining Company, 99 Iowa, 471); or to compromise or release a debt due to the bank. (Farmers' National Bank *v.* Templeton, 40 S. W. Rep., 412.) He has no power inherent in his office to bind the bank on the execution of a note in its name; but power to do so may be conferred on him by the board of directors, either expressly by resolution to that effect, or by subsequent ratification, or by acquiescence in transactions of a similar nature of which the directors have notice. (National Bank of Commerce *v.* Atkinson, 55 Fed. Rep. 465.) But it is within the scope of the implied power of the president to indorse negotiable paper in the ordinary transaction of the bank's business, and a special authority for this purpose need not be conferred by the board of directors. (United States National Bank *v.* First National Bank of Little Rock, 79 Fed. Rep., 296.) Where the president exercises the functions of cashier and is the sole managing officer of the bank, the bank will be bound by such acts of his as belong *virtute officii* to the office of cashier. (Simons *v.* Fisher, 55 Fed. Rep., 905.) Where the president requests the cashier to make advances to a minor, verbally promising that he will see them repaid, he is liable to the bank for any loss sustained by reason of such loans, as having been guilty of a breach of trust. (Brown *v.* Farmers' and Merchants' National Bank, 88 Tex., 265.)

§ 35. Individual Liability of Shareholders.—The shareholders of every National banking association shall be held in-

dividually 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 of this Title. (Rev. Stat. U. S. Sec. 5151.)

For What Liabilities of the Bank Shareholders are Responsible. —The liability is not contractional, but exists by force of the statute. (First National Bank of Concord *v.* Hawkins, 33 U. S. App., 747.) But see Deweese *v.* Smith', 106 Fed. Rep., 438.) It is not limited in anywise by the provision in Section 5234 that the receiver may, if necessary to pay the "*debts*" of the bank, enforce the individual liability of the stockholders; but the word "*debts*" in the latter section includes all the liabilities of the bank specified in this section. (Stanton *v.* Wilkeson, 8 Benedict, 357.) But it is restricted to such contracts, debts, and engagements of the bank as have been duly contracted in the ordinary course of business. (Richmond *v.* Irons, 121 U. S., 27; Schrader *v.* Manufacturers' National Bank, 133 U. S., 67.) The liability of the stockholders, therefore, cannot be enforced to pay the claims of creditors on new contracts made after the bank has been placed in voluntary liquidation. (*Id.*) Thus, where a bank had gone into liquidation and certain creditors took in payment of their claims some of the paper of the bank, and the individual notes of the president indorsed or guaranteed in the name of the bank, it was held by the Supreme Court of the United States that the stockholders could not be subjected to an individual liability for the payment of such claims. (*Id.*)

Extent of the Liability.—The amount which each shareholder is liable to contribute bears the same proportion to the whole amount of the deficit that his own stock bears to the whole amount of the capital stock at its par value. (United States *v.* Knox, 102 U. S., 422.) If there

are insolvent shareholders, the solvent shareholders can not be required to contribute more than their proportion, in order to make good the deficiency. (*Id.*) The liability of the shareholder is for interest on the debts of the bank as well as for the principal thereof. (Richmond *v.* Irons, 121 U. S., 27.) The assessment itself bears interest from the date of the order. (Casey *v.* Galli, 94 U. S., 673.)

Deceased Stockholder.—This liability survives against the represenatives of a deceased shareholder, and adheres to his estate after his death, though he dies before the insolvency of the bank occurs. (Richmond *v.* Irons, 121 U. S., 27; Davis *v.* Weed, 44 Conn., 569; Wickham *v.* Hull, 60 Fed. Rep., 326.) And the fact that the title to the stock of a deceased shareholder vests in his administrator does not relieve the estate from the burden of an assessment. (Davis *v.* Weed, 44 Conn., *supra.*) Nor will the fact that the administration is complete, and all the assets have been distributed, defeat an action brought to recover the assessment. (*Id.*)

Married Women.—When the law of the State where the contract is made permits married women to become owners of stock, they will be subject to all the liabilities of stockholders. (Bundy *v.* Cocke, 128 U. S., 185; Keyser *v.* Hitz, 133 U. S., 438; *In Re* National Bank of St. Albans, 49 Fed. Rep., 120; Anderson *v.* Line, 14 Fed. Rep., 405.) And it has been held that where a married woman is by the State law capable of holding stock in a National bank in her own right, she is liable thereon under this section, though the law of the State does not authorize married women to bind themselves by contracts for the payment of money; for the law annexes her liability of its own force, and no capacity to act on her part is required. (Witters *v.* Sowles, 35 Fed. Rep., 640.)

The purchase of National bank stock by a married woman is not a "contract" within the terms of a statute providing that during converture no woman shall be capable of making any contract to affect her real and personal estate without the consent of her husband; and she will be liable for an assessment, although the stock was purchased without the written consent of her husband. (Robinson *v.* Turrentine, 59 Fed. Rep., 554.) In Vermont a married woman is competent to become a stockholder in a National bank, and to contract to charge her separate property with the payment of any liability which is implied from entering into that relation. (Witters *v.* Sowles, 38 Fed. Rep., 700.) And in the District of Columbia, a married woman may become a holder of stock in a National bank and assume all the liabilities of such a shareholder, although the consideration may have proceeded wholly from the husband. (Keyser *v.* Hitz, 133 U. S., 438.)

Assignment for Creditors—Defrauding Creditors.—In a suit to enforce the individual liability of a stockholder, it is not material that the person who transferred the stock to such stockholder did so for the purpose of concealing his property and defrauding his creditors; there is no connection between the liability of the stockholder and an alleged fraudulent intent on the part of the person from whom the title to the stock was acquired. (Keyser *v.* Hitz, 133 U. S., 433.) And conversely the fact that one is a stockholder and director in an insolvent National bank, and individually liable for the debts of the bank to the amount of his stock, will not operate so as to prevent him from making an otherwise lawful disposition of his property for the benefit of his creditors. (Peters *v.* Bain, 133 U. S., 670.) Where a stockholder in a National bank makes a general assignment after the bank has become insolvent, his estate in the hands of the assignee becomes liable for an assessment upon such stock. (Graham *v.* Platt, 28 Colorado, 421.)

Registered Owner Liable—What a Sufficient Transfer.—As a general rule, the Comptroller of the Currency and the Receiver, when they come to enforce the individual liability of the stockholders, are not required to look beyond the stock-books, but may hold all persons liable as stockholders who appear on the books as such. In order to relieve himself from liability every stockholder selling his stock must have the transfer properly registered; for while, as between the parties, the sale is complete and the title passes when the seller delivers to the buyer the certificates with a proper power of attorney to make the transfer, the corporation and its creditors are not affected by the transaction until it is noted on the books, or until, at least, the seller shall have done all that he reasonably can do to have it so noted. Accordingly, where a stockholder sold certain stock several months before the insolvency of the bank, but the transfer was not made on the books till the date of the bank's failure, it was held that the stockholder incurred the statutory liability. (Richmond *v.* Irons, 121 U. S., 27.) But the seller, when he has delivered the certificates with a suitable power of attorney to the proper officer of the bank, and requested him to make the transfer on the books, will not be responsible for the failure of such officer to actually make the entry if he has had no reason to suppose that this was not done as directed. (Whitney *v.* Butler, 118 U. S., 655; Earl *v.* Carson, 188 U. S., 42; Cox *v.* Elmendorf, 97 Tenn., 518.) " The position of the seller in such case is analogous to that of a grantor of a deed deposited in the proper office to be recorded. The general rule is, that the deed is considered as recorded from the time of such deposit." Therefore, where a shareholder of a National bank made a *bona-fide* sale of his stock and went with the purchaser to the bank, indorsed the certificate, and delivered it to the cashier of the bank, with directions to make the transfer on the books, it was held he had done all that is incumbent upon him to discharge his liability, and that he

was not liable upon the subsequent suspension of the bank for an assessment made by the Comptroller of the Currency, though the cashier failed to make the transfer. (Hayes *v.* Shoemaker, 39 Fed. Rep., 319.) So, where a stockholder, nearly a year before the failure, had sold his stock to a broker for an undisclosed principal, and indorsed the same, and requested the broker to inform the cashier of the transaction, and to have the stock transferred; and the broker accordingly handed the stock to the cashier, gave him the necessary information, and requested him to make the transfer, which the cashier promised to do; it was held that in requesting the cashier to make the transfer the broker acted as the seller's agent, and that the latter did all that was required of him as a prudent business man, and could not be held liable as a stockholder, though the transfer was not in fact made. (Young *v.* McKay, 50 Fed. Rep., 594.) But where the seller delivers the stock certificate and power of attorney to the buyer relying upon the promise of the latter to have the necessary transfer made, this will not be suffiient to discharge him. Thus, where T, who owned certain shares of stock in a National bank, sold them to his son, and the latter promised to have them transferred on the books to himself, but failed to do so, it was *held*, that T remained liable as a stockholder. (Schofield *v.* Twining, 127 Fed. Rep., 486.) And where the sale is made to an officer of the bank, and the certificates and power of attorney are delivered to him and not as such officer, but as vendee, the seller will continue liable until the entry is made. (Richmond *v.* Irons, 121 U. S., 27.) Of course, a person whose name is put upon the stock-books without his knowledge or consent can not be held liable as a stockholder; but it has been decided that where the person to whom the stock was transferred was a director of the bank, and was concerned in the management of its affairs, he was to be presumed to have knowledge of the fact that the stock stood in his name, and, as he had not repudiated the transfer to himself, he was liable as the holder of such stock. (Brown *v.* Finn, 142 U. S., 56.) And where one endorses a check payable to his order, which discloses upon its face that it is for dividends on stock standing in his name on the books of the bank, he is estopped to deny that he is the owner of the stock upon which the dividends are declared. (Keyser *v.* Hitz, 133 U. S., 433.) If he denies owning the stock, he should restore the dividend to the bank. (Finn *v.* Brown, 142 U. S., 56.) And if the dividend turns out to be a fraudulent one, he will not have freed himself from liability for it by giving his check for it on the bank to the alleged true owner. (*Id.*) Where certificates are issued to a subsequent purchaser in lieu of the certificates of the prior owner, such purchaser will be liable as a stockholder though the by-laws of the bank requiring the transfer to be registered were not observed. (Laing *v.* Burley, 101 Ill., 591.) Where certificates of stock are made out to the holder as the absolute owner thereof, and he so appears on the books of the bank, he will not be permitted to show in an action against him to recover an assessment on the stock that he held the same as trustee. (Lewis *v.* Levitz, 74 Fed. Rep., 381.)

In the case of an agreement made with a subscriber to the stock of a National bank to take the stock from him at a certain time, at his option, the person so agreeing to purchase the stock will be liable to the other for the amount of an assessment made by the Comptroller of the Currency upon the stock after the tender thereof in pursuance of the contract. (Gay *v.* Dare, 103 Cal., 454.) While one who voluntarily appears upon the books of a National bank as a stockholder will be precluded from showing that he is not in fact a stockholder, yet, where it is admitted that the stock is owned by another, and judgment obtained against him for the amount of the assessment upon such stock, the person in whose name it stands cannot be held liable thereon. (Yardly *v.* Wilgus, 56 Fed. Rep., 965.)

Subscribers to New Stock.—A stockholder who elects to subscribe for shares of an increase and actually pays for the same, and is registered as holding the additional shares on the books of the bank, thereby becomes a shareholder, and his failure to call for his certificate of stock makes no difference in his liability as such. (Thayer *v.* Butler, 141 U. S., 234.) But the fact that the subscriber for new shares (which were never issued) received a dividend on old shares transferred to him without his knowledge in place of new shares, does not estop him from denying his liability as a shareholder, where such dividend was received in the belief that it was paid to him by virtue of his subscription to the new stock. (Stephens *v.* Follett, 43 Fed. Rep., 842.) And one who subscribes and pays for a specific number of shares of a proposed increase of stock, which is in fact never issued, and to whom the bank officials transfer old stock instead, without his knowledge and consent, is not to be deemed a shareholder as to the stock so issued to him. (Stephens *v.* Follett, 43 Fed. Rep., 842.) But the subscribers may be estopped to dispute the legality of increase by accepting certificates for the stock, receiving dividends, and giving proxies to vote upon the stock. (Tillinghast *v.* Bailey, 86 Fed. Rep., 46; Latimer *v.* Burd, 76 Fed. Rep., 536.) And the certificate of the Comptroller of the Currency authorizing the increase of the capital stock of a National bank is conclusive upon the subscribers to such new stock when sued for an assessment laid upon the same. (*Id.*)

In McFarlin *v.* First National Bank (68 Fed. Rep., 868), the plaintiffs subscribed for certain shares in a bank to increase the capital, and, after paying installments thereon, consented that the bank be consolidated with a National bank, and that the capital of the latter be increased, and that their subscriptions should stand as subscriptions to the increased capital of the National bank and paid installments on their subscriptions. Some preliminary steps were taken by the National bank to increase its stock, but the Comptroller of the Currency refused to consent to the full increase, and before the amount of increase allowed by him was paid in, and a certificate therefor issued by him,

the National bank was placed in the hands of a receiver: *Held*, That plaintiffs never became stockholders in the National bank.

LIABILITY OF PLEDGEE.—A person who holds stock merely as collateral security is liable as the owner of the stock, if he appears upon the books of the bank as such. (National Bank *v.* Case, 99 U. S., 628; Moore *v.* Jones, 3 Woods, 53; Hale *v.* Walker, 31 Iowa, 344; Wheelock *v.* Kost, 77 Ill., 296; but see Magruder *v.* Colston, 44 Md., 349.) "For this several reasons are given. One is that he is estopped from denying his liability by voluntarily holding himself out to the public as the owner of the stock, and his denial of ownership is inconsistent with the representations he has made; another is, that by taking the legal title he has released the former owner; and a third is, that after having taken the apparent ownership and thus become entitled to receive dividends, vote at elections and enjoy all the privileges of ownership, it would be inequitable to allow him to refuse the responsibilities of a stockholder." And so long as the stock continues to stand in his name the pledgee will be liable as a stockholder, though the loan has been repaid, and the stock certificate surrendered, with an executed power of attorney to make the transfer. (Bowdell *v.* Farmers' and Merchants' National Bank, 14 *Bankers' Magazine*, 378; 2 Nat. Bk. Cases, 146.) But a pledgee, acting in good faith, and without any fraudulent intention, has the perfect right to shun such liability, and may have the control of the stock for the purposes of security without being made liable as a registered shareholder. (Anderson *v.* Philadelphia Warehouse Company, 111 U. S., 479.) In the case cited, the pledgee, the Philadelphia Warehouse Company, with the knowledge and consent of the pledgor and the officers of the bank, had had the stock transferred on the books of the bank to an irresponsible person, one of its employees, from whom it took an irrevocable power of attorney for the sale and transfer of the stock. The dividends were paid regularly to the pledgor, and the pledgee never received any dividends, and never acted as a shareholder. At the time of the transfer the bank was entirely solvent, but afterwards it failed. Upon these facts it was decided that the pledgee was not liable for an assessment made upon the shareholders of the bank. It may be said, therefore, upon the authority of this case, that where a National bank is solvent, a person taking its shares as collateral security, when acting in good faith, may avoid incurring a liability in respect to such shares by having them transferred on the books of the bank, and certificates therefor issued to some third person, from whom a power of attorney to transfer the stock can be taken. But in such case the officers of the bank should be fully advised of the character of the transaction, and the pledgee should receive no dividends on the stock or exercise any of the rights of a shareholder, and should not pretend to be, or permit himself to be held out as, anything more than a mere pledgee. In Beall *v.* Essex Savings Bank (67 Fed. Rep., 816), it was held by the United

States Circuit Court of Appeals, that where the stock is transferred as collateral security, and the fact that it is held only as such security appears upon the transfer book of the bank, the person by whom it is so held will not be liable to an assessment upon the stock in case of the failure of the bank. And, in Pauly *v.* State Loan and Trust Company (165 U. S., 606), it was held by the Supreme Court of the United States that one to whom stock of a National bank is transferred upon the books of the bank "as pledgee" is not liable as a stockholder. The Court said:

"It is true that one who does not in fact invest his moneys in such shares, but who, although receiving them simply as collateral security for debts or obligations, holds himself out on the books of the association as true owner, may be treated as the owner, and, therefore, liable to assessment, when the association becomes insolvent and goes into the hands of a receiver. But this is upon the ground that by allowing his name to appear upon the stock list as owner he represents that he is such owner; and he will not be permitted, after the bank fails, and when an assessment is made, to assume any other position as against creditors. If, as between creditors and the person assessed, the latter is not held bound by that representation, the list of shareholders required to be kept for the inspection of creditors and others would lose most of its value. But this rule can have no just application when, as in this case, the creditors were informed by that list that the party to whom certificates were issued was not in fact, and did not assume to be, the owner of the shares represented by them, but was and assumed to be only a pledgee having no general property in the thing pledged, but only a right, upon default, to sell in satisfaction of the pledgor's obligation. Upon inspecting the stock registry, or, any list of shareholders or of transfers kept by the bank, creditors will know that they cannot regard a pledgee as the actual owner."

And, of course, a pledgee who does not appear by the books of the bank or otherwise to be the owner is not liable for an assessment upon the shares on the insolvency of the bank. (Welles *v.* Larrabee *et al.*, 36 Fed. Rep., 866.) And though he buys in the stock at the sale and credits the amount of the purchase price on the indebtedness to which it is collateral, and retains the certificates, yet he will not be liable for an assessment upon the stock in case of the bank's insolvency, unless he has the stock transferred to himself upon the books of the bank. (Robinson *v.* Southern National Bank, 94 Fed. Rep., 964.) If the holder in fact holds the stock merely as collateral security, he may list the shares in his own name as pledgee, or in the name of another and irresponsible party, even though this be done for the purpose of avoiding liability. (Rankin *v.* Fidelity Insurance, etc., 189 U. S., 242.) Thus, it has been held that if a person receives shares of the stock of a National bank as collateral security for a debt due to him from the owner, with a power of attorney authorizing him to transfer the same on the

books of the bank, and he in good faith causes the shares to be transferred on such books to another, under an agreement that they are to be held as security for the debt due from the real owner to the creditor, he will not be treated as a shareholder. (Nat. Park Bank of the City of New York *v.* Harmon, 25 C. C. A., 214 Fed. Rep., 891; Higgins *v.* Fidelity Insurance, Trust and Safe Deposit Co., 108 Fed. Rep., 475.) Where there is a question of fact whether the holder held himself out as owner of the stock, it is to be submitted to the jury. Rankin *v.* Fidelity Ins., etc., Co., 189 U. S., 242.) When it is proved or admitted that the person in whose name the stock stands is a mere pledgee, then the burden is upon the Receiver attempting to enforce an assessment upon such stock against such person to show that he knowingly permitted the stock to stand in his name on the books of the bank. (Tourtelot *v.* Stoltenben, 101 Fed. Rep., 362.)

Transfer for the Purpose of Avoiding Liability.—The right of creditors of a National bank to look to the individual liability of the shareholders, to the extent indicated by the statute, for its contracts, debts and engagements, attaches when the bank becomes insolvent; and the shareholder may not, by transferring his stock, compel creditors to surrender this security as to him, and force the receiver and creditors to look to a person to whom his stock has been transferred. (Stuart *v.* Hayden, 169 U. S., 1.) The real owner of the stock cannot escape liability by having it transferred on the books into the name of another person. (Davis *v.* Stevens, 17 Blatchford, 259; National Bank *v.* Case, 99 U. S., 628; Stuart *v.* Hayden, 169 U. S., 1.) And where, for the purpose of avoiding liability, a shareholder in a bank which is in a failing condition, transfers his stock to a person unable to respond to the assessment, the transfer may be set aside as a fraud upon the creditors, and the transferror held liable as a stockholder. (Bowden *v.* Johnson, 107 U. S., 251.) And after a bank has become insolvent, and has closed its doors for business, its shareholders' liablity to creditors is so fixed that any transfer of their shares must be held fraudulent and inoperative as against the creditors of the bank. (Irons *v.* Manufacturers' National Bank, 17 Fed. Rep., 308.) Moreover, if the stockholder has reason to apprehend that the bank is in a failing condition, he cannot escape liability by transferring the stock to a person financially irresponsible. (Baker *v.* Reeves, 85 Fed. Rep., 837.) And this is so, even when he acts in good faith. (Stuart *v.* Hayden, 169 U. S., 1.) On the other hand, if the bank be solvent at the time of the transfer, that is, able to meet its existing contracts, debts and engagements, the motive with which the transfer is made is immaterial, as a transfer under such circumstances does not impair the security given to the creditors. (*Id.*) In order that the transferror may be held liable it is not necessary that he should have had actual knowledge of the insolvency of the bank; it is sufficient if he had good ground to apprehend

the failure of the bank, and made the transfer to an irresponsible person, with intent to relieve himself from individual liability. (Cox *v.* Montague, 78 Fed. Rep., 845.) But though both the bank and the purchaser were insolvent at the time of the sale, the seller will not be liable as a stockholder if he was ignorant of these facts and acted in good faith. (Earle *v.* Carson, 107 Fed. Rep., 639.) Nor is the transferror liable merely because at the time of the transfer the reserve of the bank was below the amount required by law, and such fact was known to him. (Earle *v.* Carson, 188 U. S., 42.) Nor merely because the person to whom the stock is sold is at the time insolvent, and unable to respond to an assessment, and such fact is known to him. (*Id.*) Where stock has been fraudulently transferred for the purpose of avoiding liability both the transferror and the transferee are liable for the assessment. (Baker *v.* Reeves, 85 Fed. Rep., 837.) But in an action brought by the receiver the transferee of the stock cannot by cross-bill obtain relief against the transferror for having defrauded him in the sale of the stock. (Stuart *v.* Hayden, 169 U. S., 1.) The receiver is the proper party to maintain a suit in behalf of the creditors of the bank to set aside a transfer of stock made by a stockholder for the purpose of escaping liability as such stockholder. (*Id.*)

Purchase in Name of Infant.—One who buys stock of a National bank in the name of an infant will be liable for an assessment, since the infant is incapable of binding himself as a stockholder. (Foster *v.* Chase, 75 Fed. Rep., 797.) And the ratification by the infant of such purchase after he becomes of age will not affect such liability. (Foster *v.* Wilson, 75 Fed. Rep., 797.)

Liability is for Benefit of all Creditors.—The liability of the stockholders can be enforced only in favor of all the creditors. If, therefore, a stockholder gives any security for his liability, it must be for the benefit of all the creditors alike. Where a stockholder, after the failure of a bank, gave a mortgage for the purpose of securing a single depositor, such mortgage was held void as against a judgment obtained in an action against such stockholder to enforce his individual liability. (Catch *v.* Fitch, 34 Fed. Rep., 566.)

Rescinding Purchase—Fraud of Bank.—A stockholder who has been induced by fraudulent representations to subscribe for stock in a National bank will not necessarily be precluded from repudiating such subscription by reason of the insolvency of the bank, if he has exercised due diligence in discovering the fraud, and has acted promptly after such discovery. (Newton National Bank *v.* Newbegin, 74 Fed. Rep., 135.) An intending purchaser of bank stock is entitled to rely upon a statement of its president as to the bank's condition, without inquiring further. (Merrill *v.* Florida Land & Improvement Co., 60 Fed. Rep.,

17.) The receipt by a bank of the proceeds of a fraudulent sale of stock belonging to it, and the subsequent appointment of a receiver, gives its creditors no such right in the proceeds as will prevent the purchasers from rescinding the sale and requiring restitution. (*Id.*)

ESTOPPEL.—A shareholder against whom suit is brought to recover the assessment made upon him by the Comptroller will not be permitted to deny the existence of the association, or that it was legally incorporated. (Casey *v.* Galli, 94 U. S., 673; Wheelock *v.* Kost, 77 Ill., 296.)

RULES APPLICABLE.—While the liability of stockholders in National banks is to be rigorously enforced, the courts will not treat them with exceptional severity, and apply to their transfers different rules from those which obtain in other business transactions. (Hayes *v.* Shoemaker, 39 Fed. Rep., 319.)

PROCEDURE.—The creditors of an insolvent National bank must seek their remedy through the Comptroller, in the mode prescribed by the statute; they can not proceed directly in their own names against stockholders. (Kennedy *v.* Gibson, 8 Wall, 498.) It is the duty of the Comptroller of the Currency to decide when proceedings are necessary against the stockholders of a National bank to enforce their personal liability, and to what extent such liability shall be enforced; and in an action by a receiver to enforce such liability, such prior determination of the Comptroller must be distinctly averred and proved. (Kennedy *v.* Gibson, 8 Wall, 498.) But it is not essential to aver and prove that the assessment was necessary, for the decision of the Comptroller on this point is conclusive. (Strong *v.* Southworth, 8 Ben., 331; Kennedy *v.* Gibson, 8 Wall, 498; Casey *v.* Galli, 94 U. S., 673.) Nor is it necessary to allege that the Comptroller had determined that the assessment was necessary; it is sufficient to allege that he made the assessment. (O'Connor *v.* Witherby, 111 Cal., 523.) The decision of the Comptroller is conclusive, and cannot be attached collaterally. (Deweese *v.* Smith, 106 Fed. Rep., 438; Aldrich *v.* Campbell, 97 Fed. Rep., 663.)

FORM OF ACTION.—When the full personal liability of shareholders is to be enforced the action must be at law. (Kennedy *v.* Gibson, 8 Wall, 498; Casey *v.* Galli, 94 U. S., 673.) And it may be at law, though the assessment is not for the full value of the shares; for, since the sum each shareholder must contribute is a certain exact sum, there is no necessity for invoking the aid of a court of equity. (Bailey *v.* Sawyer, 4 Dill., 463; 1 N. B. C., 356.) But the suit may be in equity. (Kennedy *v.* Gibson, 8 Wall., 498.) And where questions are involved which are common to a number of stockholders they may be joined as defendants. (Bailey *v.* Tillinghast, 99 Fed. Rep., 801.) And it is no objection to the bill that other stockholders, not within the jurisdiction of the court, are not co-defendants. (*Id.*)

When Right of Action Accrues—Statute of Limitations.—A right of action against a stockholder does not accrue until the Comptroller has determined that it is necessary to enforce the individual liability; but where there is great and unexplained delay in making such assessment the action may be barred by the statute of limitations though the action is brought shortly after the making of the assessment. (Aldrich *v.* Yates, 95 Fed. Rep., 78; Price *v.* Yates, 19 Alb. Law Journal, 295; 2 N. B. Cas., 204.) The State statutes of limitations apply to actions to enforce assessments. (Butler *v.* Poole, 44 Fed. Rep., 586; Thompson *v.* German Insurance Company, 76 Fed. Rep., 892.) The statute begins to run as soon as the assessment is made. (McDonald *v.* Thompson, 184 U. S., 71; Thompson *v.* German Insurance Company, *supra;* Deweese *v.* Smith, 106 Fed. Rep., 438.)

Set-off.—A stockholder of an insolvent National bank, who happens also to be one of its creditors, can not cancel or diminish the assessment to which the provisions of Sec. 5151, Rev. St., make him liable by offsetting his individual claim against it. (Hobart, Receiver, etc., *v.* Gould, 8 Fed. Rep., 57.) In an action by the receiver of an insolvent National bank to recover of a stockholder an assessment on his shares, the defendant alleged as a counter-claim that the Comptroller of the Currency had directed the bank to restore the value of certain securities held by it which had been reported as worthless by an examiner; that certain of the stockholders, including defendant, had raised a fund which was placed in the hands of trustees to apply so much as might be from time to time required by the Comptroller to retire such securities; that the fund was deposited with the bank with full notice of the purpose to which it was to be applied; that a portion had been used to retire the securities designated, and that when the bank failed the balance of the fund came into the hands of the receiver, and was now claimed by him as a part of the ordinary assets of the bank; that a certain portion of this balance belonged to defendant, which amount he asked to set off against the plaintiff's demand: *Held*, That a general demurrer based on the ground that no set-off or counterclaim was available in such an action would be overruled, as the claim could be set off if it was of such a nature that the holder would be entitled to receive the full amount before distribution by the receiver to general creditors. (Welles *v.* Stout, 38 Fed. Rep., 807.) In another case the defendant, for the purpose of helping a bank, of which complainant was a stockholder, in a financial crisis, loaned it certain securities belonging to complainant, and when complainant was informed of the fact she did not object. She was assured by the bank's officers that if the bank was saved the securities would be returned, and if it failed the avails would be credited on her assessment as a stockholder. The bank failed, and the securities were not returned: *Held*, That she was not entitled, as against other creditors, to set off the value of the securities against her assessment, but was, as to such value, on the same footing as any other

creditor. (Sowles *v.* Witters, 39 Fed. Rep., 403.) But the indebtedness on the assessment of a stockholder who is insolvent may be set off against a dividend, payable out of the assets of the bank, on a balance due him on his deposit account with the bank at the time of its failure. (King *v.* Armstrong, 50 Ohio St., 222.) And an assignment by the stockholder of his claim against the bank, before the direction of the Comptroller to enforce his liability, but after the insolvency of the bank, does not affect the right to set off his liability against the dividend due on his claim, nor does the fact that the Comptroller, at the time of the assignment, had not determined the amount necessary to be collected from the stockholders for the payment of the creditors. It is sufficient that such direction has been given, and amount so determined, when the set-off is made. (*Id.*)

Agent May Not Enforce.—An agent chosen by stockholders to take charge of the business of a National bank in liquidation can not enforce the individual liability of the stockholders, after all the debts have been paid. (Church *v.* Ayer, 80 Fed. Rep., 543; Williamson *v.* American Bank, 109 Fed. Rep., 36.)

Suit by Assignee.—Where the liability has become fixed by the assessment, the right of action thereon may be assigned by the receiver, and the suit brought in the name of the assignee. (Waldron *v.* Alling, 73 App. Div. (N. Y.), 86.)

Claim Not Entitled to Preference.—The individual liability of a stockholder in an insolvent National bank is not a preferred claim against his estate, and is not entitled to priority of payment even though the estate is insolvent. (*In Re* Beard's Estate, 7 Wyoming, 104.)

Books of the Bank as Evidence in Suit to Recover Assessment.—The books of a National bank are, among the shareholders, public records and evidence of what they show, and are admissible against a shareholder in an action brought against him by the Receiver to recover an assessment upon his stock. (Brown *v.* Ellis, 103 Fed. Rep., 834.)

Successive Assessments.—The Comptroller of the Currency has power to levy successive assessments upon the stockholders in an insolvent National bank where the aggregate of the assesments does not exceed the total liability of the stockholders, and his power is not exhausted by one assessment. (Studebaker *v.* Perry, 184 U. S., 252; Aldrich *v.* Campbell, 97 Fed. Rep., 663; Studebaker *v.* Perry, 102 Fed. Rep., 947.) And a judgment in favor of the Receiver for the recovery of an assessment does not estop him from maintaining a second action against the same shareholder for another assessment which had not been made or was not due when the first action was commenced. (Deweese *v.* Smith, 106 Fed. Rep., 438.)

Purchase Procured by Fraudulent Representations of Officers.—In an action at law by the Receiver of an insolvent National bank to enforce the individual liability of a shareholder, the latter can not set up as a defense that he was induced to purchase the stock of the bank by the fraudulent representations of its officers. Lantry *v.* Wallace, 182 U. S., 536; Scott *v.* Latimer, 89 Fed. Rep., 843.)

Where Bank Has Gone Into Liquidation.—Where the bank has gone into voluntary liquidation, the only authorized procedure for the enforcement of the individual liability of its stockholders is by a suit in equity in the nature of a creditor's suit brought on behalf of all creditors in a court for the district in which the bank is located, in which the necessity and extent of the ratable enforcement of the stockholders' liability shall be determined. (Williamson *v.* American Bank, 115 Fed. Rep., 793.) Such suit should be brought against the bank and all its stockholders, and, in case ancillary proceedings should be necessary for the collection from non-resident stockholders of their ratable proportion of the amount necessary to pay creditors, such suits should be authorized by the court of original jurisdiction, and brought by a Receiver or other person appointed by such court. (*Id.*)

§ 36. **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. (Rev. Stat. U. S. Sec. 5152.)

Application of Section.—This section is of general application and is not limited to trustees appointed such by will or by order of some court or judge. (Lucas *v.* Coe, 86 Fed. Rep., 972.) In the case cited C subscribed for stock in a National bank as trustee for H, an infant, and a certificate was issued to "C as trustee for H;" afterwards, the capital stock being reduced, this certificate was surrendered and another issued in lieu thereof to C merely "as trustee," without naming the beneficiary. The officers of the bank were advised that C held the stock as trustee precisely as in the surrendered certificate. *Held,* That C was not liable for an assessment upon the stock. (*Id.*)

An executor continues to be liable as such for an an assessment upon National bank stock left by his testator until he has transferred the personal property belonging to the estate. (Baker *v.* Beach, 85 Fed. Rep., 836.)

Evidence of Ownership.—The fact that the stock is held in a representative capacity must be noted on the stock-book of the bank; if a person appears there as absolute owner of the stock he will not be permitted to deny that he is such. (Davis *v.* Essex Baptist Society, U. S. D. C., 44 Conn., 569; Lewis *v.* Switz, 74 Fed. Rep., 1.) In the case first cited the defendants sought to show, by extrinsic evidence, that they held the stock as trustees, although the certificates and the stock-ledger did not disclose such fact. This it was held they could not do. The Court said: "Creditors have a right to know who have pledged their individual liability. If the trusteeship does not appear upon the books of the bank, they have a right to infer that the stockholder is personally liable. If a trustee wishes to disclose his trusteeship there is no difficulty in giving notice upon the books of the bank. If he does not disclose his trusteeship he is guilty of laches, for which others should not suffer. The settlement of the affairs of an insolvent bank would be rendered a matter of great labor, expense, and delay if persons who appeared upon the books of the bank as individual stockholders were permitted to relieve themselves by proving that they held the stock as executors, or guardians, or trustees. If A is permitted to prove that he holds his stock as trustee for B, and B is permitted to show that he is trustee for A, litigation would be protracted, individual stockholders would suffer, and the strength of the personal liability section would be seriously impaired."

This reasoning appears to be very sound and forcible, but the decision is in conflict with that in McMahon *v.* Macy (51 N. Y., 155), which arose under an analogous provision in New York Railroad Act. One to whom the shares are assigned in trust as security for a debt due a third person, and following whose name on the stock-book of the bank is the word "trustee," is not liable for the assessment under Section 5151, and is also within the provision of Section 5152, exempting from such liability persons holding stock as trustees. (Welles *v.* Larrabee, 36 Fed. Rep., 866.)

§ **37. Depositaries of Public Moneys.**—All National banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; but receipts derived from duties on imports in Alaska, the Hawaiian Islands, and other islands under the jurisdiction of the United States may be deposited in such depositaries subject to such regulatons; and such depositaries may also be employed as financial agents of the Gevernment; and they shall perform all such reasonable duties, as depositaries of public moneys 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 of their duties as financial agents of the Government. 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. (Rev. Stat. U. S. Sec. 5153, as amended by act March 3, 1901, Ch. 871; 32 Stat. U. S. 1448.)

All arrangements to become public depositaries must be made with the Secretary of the Treasury. The security required is within the discretion of the Secretary. The requirement usually is United States bonds, or bonds guaranteed by the United States. A deposit is allowed to the extent of the full value of the bonds, or more, according to their value, but is always kept below the value of the security. The Secretary of the Treasury could legally accept other security than United States bonds satisfactory to him and has done so. (See offer of Sept. 29, 1902, to accept State and municipal bonds accepted by savings banks under the laws of such States as had legislated on the subject.)

A National bank, though not designated as a United States depositary, which receives a deposit of United States moneys from a postmaster, thereby assumes a fiduciary relation to the Government, and is liable to the United States as a bailee of such funds. (United States *v.* National Bank of Asheville, 73 Fed. Rep., 379.)

For further information as to Government Depositaries see page 265.

§ **38. Conversion of State into National Banks.**—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 a certificate, and to change and 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 the 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. (Rev. Stat. U. S. Sec. 5154.)

AUTHORITY REQUIRED.—This section was enacted in order to induce State banks to enter the National system. The authority of two-thirds of the stock is required to empower the directors to act. It has been said by the Supreme Court of the United States that no authority from a State is necessary to convert a State bank into a National bank (Casey *v.* Galli, 94 U. S., 673), but many States have passed enabling acts, both to enable State banks to become National banks and to enable National banks to become State banks. State banks intending to convert into National banks should be guided by the State statute as to the closing of the affairs under the State charter. From the special privilege granted to converted State banks to continue to hold the stock in other banks they held when State banks, it may perhaps be inferred that the power of holding stock in other banks was not intended to be granted to all National associations.

CORPORATE RELATION TO OLD BANK.—The conversion of a State bank into a National bank does not destroy its identity or its corporate existence; it is not a closing of business, but simply a continuation of the same body. with the same officers and stockholders, the same property, assets and business of banking under a changed jurisdiction. (Metropolitan National Bank *v.* Clagett, 141 U. S., 520.) The conversion and change of name do not affect its right to sue on liabilities incurred to it under its former name. (Michigan Insurance Bank *v.* Eldred, 143

U. S., 293.) Thus, where a State bank at the time of its change to a National bank held a continuing guaranty of loans made by it to one W., upon the strength of which it had made loans and after the change further advances were made, it was held that an action was maintainable by the National bank upon the guaranty, and that the guarantor was liable for the loans made both before and after the change. (City National Bank *v.* Phelps, 97 N. Y., 44.) And conversely the National bank is liable after the conversion for all the obligations of the old institution. (Coffee *v.* National Bank of Missouri, 46 Mo., 140; Kelsey *v.* National Bank of Crawford, 69 Pa. St., 426.) For example, it will be liable to holders of its outstanding circulating notes, issued in accordance with State laws. (Metropolitan National Bank *v.* Clagett, 141 U. S., 520.) In the case last cited it was held that the provisions of the statute of New York (Laws 1859, c. 236) as to the redemption of circulating notes issued by the banks of such State, and the release of the bank if the notes should not be presented within six years, do not apply to a bank converted into a National bank. And it has been held that a State statute which continues the bank as a body corporate for certain purposes, for a term after the conversion, does not relieve the National bank from liability for the debts of the bank as a State institution. (Atlantic National Bank *v.* Harris, 118 Mass., 147.) A National bank, organized as the successor of a State bank, may take and hold the assets of the bank whose place it takes, though there was not in form a conversion from a State to a National corporation, but the organization of a new corporation. (Bank *v.* McIntyre, 40 Ohio St., 528.) And such bank will be liable to the depositors of the former bank. (Eans *v.* Exchange Bank, 79 Mo., 182.)

Assets of Converting Bank.—The Comptroller of the Currency has ruled that a bank entering the National system by conversion will be allowed to carry over to and include in its assets as a National bank only such assets as are allowed by the National Bank Act, excluding any assets prohibited by Sections 5137 and 5200, Revised Statutes, excepting that under certain circumstances and an assurance of speedy liquidation a small portion of prohibited assets is sometimes permitted to be taken over.

Charter of State Bank.—When a State bank has been converted into a National bank, it thereby surrenders its charter as a State bank, and when the period during which it may do business as a National bank has expired, its corporate existence, both as a State bank and also as a National bank, is at an end. (Hayden *v.* Bank of Syracuse, 59 Hun., 620.)

Directors, Name, etc.—All of the directors of the State bank at the time of conversion will continue to be directors of the National bank

until others are appointed or elected, though some of them may not have joined in the execution of the articles of association and organization certificate. (Lockwood *v.* The American National Bank, 9 R. I., 308.) A State law authorizing National banks which have been converted from State banks to use the name of the original corporation for the purpose of prosecuting and defending suits is not in conflict with the National banking law, and therefore proceedings based upon a judgment obtained before the conversion may be instituted by such association in its former corporate name. (Thomas *v.* Farmers' Bank of Maryland, 46 Md., 43.) When a bank has been converted, new certificates of stock are not necessary. (Keyser *v.* Hitz, 133 U. S., 138.) Savings banks organized in the District of Columbia under an act of Congress and having a capital stock paid up in whole or in part, may be converted into National banks. (Keyser *v.* Hitz, 133 U. S., 138.) For full information, instructions and forms see page 226.

§ 39. Same Subject—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. (Rev. Stat. U. S. Sec. 5155.)

The authority expressly conferred by this section appears to exclude by implication the right to establish branches in any other case; and this has been the view uniformly held by the Comptrollers of the Currency.

§ 40. Conversion of National Gold Banks.—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. (Act Feb. 14, 1880, Ch. 21; 21 Stat. U. S. 66.)

All the gold banks have either gone out of existence or have been converted into ordinary National banking associations under this Act.

§ **41. Rights of Associations Organized Under Act of 1863.**—Nothing in this Title shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June, eighteen hundred and sixty-four, in or toward the organization of any National banking association under the act of February twenty-five, eighteen hundred and sixty-three; but all associations which, on the third day of June, eighteen hundred and sixty-four, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this Title, notwithstanding all the steps prescribed by this Title for the organization of associations were not pursued, if such associations were duly organized under that act. (Rev. Stat. U. S. Sec. 5156.)

§ **42. Change of Name and Location.**—That any National banking association may change its name or the place where its operations of discount and deposits 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. (Act May 1, 1886, Ch. 73, Sec. 2; 24 Stat. U. S. 18.)

Mode of Procedure.—Prior to the passage of this law no bank could change its name or location except by special act of Congress.

The Comptroller of the Currency furnishes on application blank forms to be used in making changes of name or location. All that is required is for the shareholders representing the requisite amount of capital stock to pass a suitable resolution authorizing such change, and for the officers of the bank to forward a certified copy of such resolution to the

Comptroller of the Currency, when, if he approves of the change, he will issue his certificate to the effect that the change has been duly authorized and is approved by him. There seems to be no reason why a change of name may not be made as often as desired. And perhaps there may be more than one removal, but it would seem that the bank could not by several successive removals get to a place more than thirty miles distant from its original location.

This act is to be construed with reference to the other provisions of law governing the National banks; and, therefore, where the removal is to be made to a larger place, the capital stock must first be increased to the amount required for banks in such place. It is important for the stockholders to bear this in mind when determining the question of removal.

As in other cases where a two-thirds vote of the stockholders is required, this means a vote representing two-thirds of the whole number of shares and not merely two-thirds of those represented at the meeting. It is not necessary to forward to the Comptroller any evidence to show that the place to which the removal is to be made is not more than thirty miles distant, as the Comptroller can readily satisfy himself as to compliance with the law in this particular. There have been several cases of removal under this act, and a number of changes of name.

For form of certificate of vote of shareholders, and resolution for transfer of bonds see page 321-2.

§ **43. Same Subject—Continuance of Liabilities.**—That 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. (Act May 1, 1886, Ch. 73, Sec. 3; 24 Stat. U. S. 18.)

§ **44. Same Subject.**—That 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. (Act May 1, 1886, Ch. 73, Sec. 4; 24 Stat. U. S. 18.)

§ **45. Extension of Corporate Existence.**—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, unless hereafter modified or repealed. (Act. July 12, 1882, Ch. 290, Sec. 1; 22 U. S. Stat. 162.)

§ **46. Same Subject—Further Extension.**—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 twelfth, eighteen hundred and eighty-two, 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. (Act April 12, 1902, Ch. 503, 32 Stat. U. S., 102.)

The regulations of the Comptroller's office for re-extension of charter are the same as for original extension. (See pages 257-62. The Comptroller should be notified sixty days before expiration of old charter of intention to extend or to close out the business of the bank, in order that he may satisfy himself that the bank is solvent.

§ **47. Same Subject—How Articles of Association Amended.**—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 its 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. (Act July 12, 1882, Ch. 290, Sec. 2; 22 U. S. Stat. 162.)

For instructions and forms see page 257-62.)

§ 48. **Same Subject—Special Examination of Extended Bank—Certificate of Comptroller.**—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. (Act July 12, 1882, Ch. 290, Sec. 31; 22 U. S. Stat. 162.)

Upon receipt of the application and papers, they are examined in the Comptroller's office, and if found satisfactory the association is notified that the papers are placed on file, and that the examination will be made in due course. The examination is usually made shortly before the date of expiration of the period of succession, and as soon as the examiner's report is received, if satisfactory, the certificate approving the extension is issued a few days before the date of the expiration. This certificate of approval is required to be published by regulation of the Comptroller's office.

§ 49. **Privileges, Liabilites, etc., of Extended Banks.**—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. (Act July 12, 1882, Chap. 290, Sec. 4; 22 U. S. Stat. 162.)

A bond given to a National bank by the individual members of a corporation to secure such paper as the bank may discount for the corporation does not expire with the termination of the twenty years for which the bank was originally incorporated, and the obligors are liable for discounts made after the bank has extended the period of its existence. (The National Exchange Bank of Hartford *v.* Guy, 57 Conn., 224.)

§ 50. Withdrawal of Shareholders; Preference in Allotment.—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. (Act July 12, 1882, Ch. 290, Sec. 5; 22 U. S. Stat. 162.)

§ 51. Banks Not Extending—Continuance of Franchise for Purpose of Liquidation.—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 re-

quired 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 association is hereby extended for the sole purpose of liquidating their affairs until such affairs are finally closed. (Act July 12, 1882, Ch. 290, Sec. 7; 22 Stat. U. S. 162.)

The Comptroller sends blanks to expiring associations to enable them to give the notice to his office required by Section 5222, Revised Statutes, see page 251. Such expiring associations must, within six months from the date of expiration of the charter, deposit lawful money to retire their circulation.

§ **52. Limitation of Banking Under Territorial Law.**—That section eighteen hundred and eighty-nine, title twenty-three of the Revised Statutes of the United States be amended and read as follows:

"The legislative assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue), loan, trust and guarantee associations, and for the construction or operation of railroads, wagon-roads, irrigating ditches and the colonization and improvements of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association." (Act July 30, 1886, Ch. 818, Sec. 5; 24 Stat. U. S. 170.)

§ **53. National Banks in Oklahoma.**—That the provisions of title sixty-two of the Revised Statutes of the United States relating to National banks, and all amendments thereto, shall have the same force and effect in the Territory of Oklahoma as elsewhere in

the United States: *Provided,* That persons otherwise qualified to act as directors shall not be required to have resided in said Territory for more than three months immediately preceding their election as such. (Act May 2, 1890, Ch. 182, Sec. 17; 26 Stat. U. S. 181.)

§ 54. **Branch Banks at Columbian Exposition.**—That any National bank located in the city of Chicago and State of Illinois may be designated by the World's Columbian Exposition to conduct a banking office upon the exposition grounds, and upon such designation being approved by the Comptroller of the Currency, said bank is hereby authorized to open and conduct such office as a branch of the bank subject to the same restrictions, and having the same rights as the bank to which it belongs: *Provided,* That the branch office authorized hereby shall not be operated for a longer period than two years, beginning not earlier than July first, eighteen hundred and ninety-two, and closing not later than July first, eighteen hundred and ninety-four. (Act May 12, 1892, Ch. 71; 27 Stat. U. S. 32.)

§ 55. **Branch Banks at Louisiana Purchase Exposition.**—That any bank or trust company located in the city of St. Louis or State of Missouri may be designated by the Louisiana Purchase Exposition Company to conduct a banking office upon the exposition grounds, and if the bank so designated shall be a National bank, upon such designation being approved by the Comptroller of the Currency, said National bank is hereby authorized to open and conduct such office as a branch of the bank, subject to the same restrictions, and having the same rights as the bank to which it belongs: *Provided,* That the branch office authorized hereby, if the same shall be a branch of a National bank, shall not be operated for a period longer than two years, beginning not earlier than July first, nineteen hundred and two, and closing not later than July first, nineteen hundred and four. (Act March 3, 1901, Ch. 864, Sec. 21; 31 Stat. U. S. 1444.)

CHAPTER III.

ISSUE AND REDEMPTION OF CIRCULATING NOTES.

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§ **56. Application of Chapter.**—The provisions of Chapters two, three and four 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. (Rev. Stat. U. S. Sec. 5157.)

This section gives the same rights to all National banking associations at whatever date organized.

§ **57. United States Bonds Defined.**—The term "United States bond," as used throughout this chapter, shall be construed to mean registered bonds of the United States. (Rev. Stat. U. S. Sec. 5158.)

§ 58. **United States Bonds to be Deposited.**—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. (Rev. Stat. U. S. Sec. 5159.)

Amended as to amount of bonds to be deposited. See next section.

§ 59. **Amount of Bonds to be Deposited.**—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. (Act July 12, 1882, Ch. 290, Sec. 8; 22 Stat. U. S. 164.)

As to the amount of bonds required to be deposited by banks with a capital in excess of $150,000. See section 88.

§ 60. **Increase and Decrease of Capital and Bonds.**—The deposits 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. (Rev. Stat. U. S. Sec. 5160.)

Later laws having changed the limit of bonds (see section 59 and note) the limits prescribed in these later laws must be observed in increasing or reducing capital stock. Banks, however, may still return circulation under this section, and take up excess of bonds above legal limit on which no circulating notes have been delivered.

§ **61. Exchange of Coupon 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. (Rev. Stat. U. S. Sec. 5161.)

Coupon bonds, as well as registered bonds properly transferred, are usually sent to the office of the Comptroller of the Currency by registered mail or express, and the bond clerk in that office takes the necessary steps to convert the coupon bonds into registered, and to turn over the bonds in due course to the custody of the Treasurer of the United States in trust for the bank.

§ **62. Issue of Two Per Cent. Bonds Authorized—Deposit of as Security for Circulating Notes.**—That the Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable February first, nineteen hundred and four, and any bonds of the United States bearing interest at four per centum per annum, payable July first, nineteen hundred and seven, and any bonds of the United States bearing interest at three per centum per annum, payable August first, nineteen hundred and eight, and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as

from taxation in any form by or under State, municipal, or local authority: *Provided,* That such outstanding bonds may be received in exchange at a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum; and in consideration of the reduction of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their par value, and the payments to be made hereunder shall be held to be payments on account of the sinking fund created by section thirty-six hundred and ninety-four of the Revised Statutes: *And provided further,* That the two per centum bonds to be issued under the provisions of this Act shall be issued at not less than par, and they shall be numbered consecutively in the order of their issue, and when payment is made the last numbers issued shall be first paid, and this order shall be followed until all the bonds are paid; and whenever any of the outstanding bonds are called for payment, interest thereon shall cease three months after such call; and there is hereby appropriated out of any money in the Treasury not otherwise appropriated, to effect the exchanges of bonds provided for in this Act, a sum not exceeding one-fifteenth of one per centum of the face value of said bonds, to pay the expense of preparing and issuing the same and other expenses incident thereto. (Act March 14, 1900, Ch. 41, Sec. 11; 31 Stat. U. S. 48.)

§ **63. Transfer of Bonds to and by Treasurer.**—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. (Rev. Stat. U. S. Sec. 5162.)

DEPOSIT OF BONDS.—The bonds when sent to the Comptroller should bear the memorandum, written or printed, that they are transferred to the Treasurer in trust for the association, and be signed by the cashier. A receipt is given by the Comptroller of the Currency, and when the bonds are placed in the custody of the Treasurer, a receipt is given in duplicate by that officer—one is sent to the bank and the other to the Comptroller of the Currency.

WITHDRAWAL OF BONDS.—The Comptroller and Treasurer will not permit the withdrawal and transfer of bonds from the Treasurer except upon authority given by the board of directors to transfer the same to the designated transferee. (See form of resolution, page 323.) When bonds are to be withdrawn, the Treasurer's duplicate receipt held by the bank must be sent to the Comptroller with the directors' resolution. Care should be taken to file this receipt where it can readily be found. When it cannot be found the Treasurer requires before bonds can be withdrawn, an affidavit to that effect, and that if found it will be sent to him.

§ 64. **Registry of Bond 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 account the transfer is made, the name of the party to whom it is made, and the par value of the bonds transferred. (Rev. Stat. U. S. Sec. 5163.)

Bonds received in the Comptroller's office are first receipted for to the express company or post office, and are then entered in the books of the office. The subsequent history of each bond can thus be accurately traced.

§ 65. **Association to be Advised of Transfers.**—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. (Rev. Stat. U. S. Sec. 5164.)

Advice to the bank is required as an additional precaution against erroneous or fraudulent transfers from its account in trust.

§ **66. Comptroller and Treasurer to Have Access to Books.**—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. (Rev. Stat. U. S. Sec. 5165.)

This section prescribes further checks on mistakes or frauds.

§ **67. Annual Examination of Bonds.**—Every association having bonds deposited in the office of the Treasury 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 a 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. (Rev. Stat. U. S. Sec. 5166.)

This section throws upon the association the direct responsibility of ascertaining the safety and actual presence on deposit of the bonds held in trust for it by the Treasurer. The examination is usually made by the bank's accredited agent.

§ 68. **Bonds to be Held as Security for Circulation—Interest on—Depreciation—Exchange of 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 power 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 associations 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. (Rev. Stat. U. S. Sec. 5167.)

INTEREST ON BONDS.—For the method of obtaining the interest on these bonds see page 339. This interest may be retained in certain

cases: 1st, as mentioned in this section, for failure to redeem circulating notes; 2d, for failure to make reports (see p. 128); 3d, for failure to pay taxes (see p. 134.)

UNITED STATES BONDS ON DEPOSIT.—If worth less in the market than the circulation secured by the same, the bank can be required to make the security equal to the face value of its notes in circulation. This may be done on approval of the Comptroller by a deposit of lawful money to cover the depreciation or by a temporary deposit of additional U. S. bonds while the depreciation continues, or by substituting for the depreciated bonds other U. S. bonds of value satisfactory to the Comptroller, or by reducing the circulation of the bank.

§ 69. Delivery of Circulation to Associations—Amount of—Denominations.—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 association 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. (Act March 14, 1900, Ch. 41, Sec. 12; 31 Stat. U. S. 49.)

§ **70. Printing of Circulating Notes, Denominations, etc.**—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 one dollar, two dollars, three dollars, five dollars, ten dollars, twenty dollars, fifty dollars, one hundred dollars, five hundred dollars, one thousand dollars, as may be required to supply the associations entitled to receive the same. Such notes shall express upon their face that they are secured by United States bonds, deposited with the Treasurer of the United States, by the written or engraved signatures of the Treasurer and Register, and by the imprint of the seal of the Treasury; and shall also express upon their face the promise of the association receiving the same to pay on demand, attested

by the signatures of the president or vice-president and cashier; and shall bear such devices and such other statements, and shall be in such form, as the Secretary of the Treasury shall, by regulation, direct. (Rev. Stat. U. S. Sec. 5172.)

§ 71. **Plates and Dies—Expenses of Bureau.**—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. (Rev. Stat. U. S. Sec. 5173.)

§ 72. **Charter Number of Bank to be Printed on its Notes.**—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. (Act June 20, 1874, Ch. 343, Sec. 5; 18 Stat. U. S. 124.)

§ 73. **Annual Examination of Plates, Dies, etc.**—The Comptroller of the Currency shall cause to be examined, each year, the plates, dies, but-pieces [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. (Rev. Stat. U. S. Sec. 5174.)

§ 74. **Issue of Small Notes Limited.**—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 re-

sumed no association shall be furnished with notes of a less denomination than five dollars. (Rev. Stat. U. S. Sec. 5175.)

§ **75. Repeal of Limit of Circulation, etc.**—That section five thousand one hundred and seventy-seven of the Revised Statutes, 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 asssociations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redistribution of National bank currency among the several States and Territories are hereby repealed. (Act Jan. 14, 1875, Ch. 15, Sec. 3; 18 Stat. U. S. 296.)

§ **76. Limit of Circulation of Gold Banks Repealed.**—That so much of section five thousand one hundred and eighty-five of the Revised Statutes of the United States as limits the circulation of banking associations, organized for the purpose of issuing notes payable in gold, severally to one million dollars, be, and the same is hereby, repealed; and each of such existing banking associations may increase its circulating notes, and new banking associations may be organized, in accordance with existing law, without respect to such limitation. (Act Jan. 19, 1875, Ch. 19; 18 Stat. 302.)

There are at present no gold banks.

§ **77. Circulating Notes: for What Receivable.**—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. (Rev. Stat. U. S. Sec. 5182.)

Signing Circulating Notes.—Stamped signatures affixed by the officers themselves would be sufficient to make the notes "obligatory promissory notes," and probably printed or engraved signatures would also suffice for this purpose. But Congress probably had in view the usual manner in which promissory notes are signed; that is, by the manual signature of the maker, and intended that the notes of the banks should be signed in this way. There appears, however, to be no penalty for having printed signatures rather than written ones, as the Comptroller has in some of his reports recommended a law imposing a penalty.

See note to next section.

§ 78. Bank Liable Though Notes Not Signed or Signatures Forged.—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 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. (Act July 28, 1892, Ch. 317; 28 Stat. U. S. 322.)

National banks being required by the provisions of this act to redeem circulating notes issued to them, though lost or stolen from the bank unsigned, the matter of signatures of officers is evidently not important, and in view of this fact many banks have the signatures of their officers engraved or stamped on the notes, and they are frequently ordered sent direct from Washington to the Reserve Agent of the bank for credit, arrangement having been made with the correspondent to have signatures of officers printed on notes.

§ 79. Issue of Other Notes 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. (Rev. Stat. U. S. Sec. 5183.)

Applies to Circulating Notes.—In the revision of the United States Statutes the words "*post*-notes" were omitted, but were afterward put back by the act of February 18, 1875. This section applies only where the instruments are issued to "circulate as money," and where this is not the purpose they are not within the prohibition. (Hunt, Appellant, 141 Mass., 515; Riddle *v.* First National Bank, 27 Fed. Rep., 503.) Thus, it has been held, that this section does not forbid the issue of certificates of deposit. (See cases cited above.) Nor does it forbid the certification of checks, although the purpose of a certification, by making the

check primarily the obligation of the bank, is to give it currency so that it may pass freely from hand to hand. (See Merchants' National Bank *v.* State National Bank, 10 Wallace, 604.) The use of the term "post-notes" appears to have been the cause of some misapprehension as to the meaning of this section. Doubtless many obligations issued by National banks for money borrowed do come within the definition of a post-note, but the term is to be taken in connection with the words "to circulate as money," which limit the prohibition to post-notes issued for that purpose.

§ 80. **Destroying and Replacing 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 cancelled, 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 cancelled. (Rev. Stat. U. S. Sec. 5184.)

§ 81. **National Gold Banks.**—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

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* See Section 104, which provides for destruction by maceration.

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. But no such association shall have a circulation of more than one million of dollars. (Rev. Stat. U. S. Sec. 5185.)

There are now no gold banks in existence. The resumption of specie payments placed all National banks on a gold basis and the special gold banks at a disadvantage in the issue of circulation.

§ **82. Reserve Required of 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 circulation of such association shall not be within the limitation of circulation mentioned in this Title. (Rev. Stat. U. S. Sec. 5186.)

See previous section and remarks.

§ **83. National Bank Notes Not to Be Imitated.**—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, hand-bill, 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 violates this section shall be liable to a penalty of one hundred dollars, recoverable one-half to the use of the informer. (Rev. Stat. U. S. Sec. 5188.)

§ 84. Penalty for Mutilating Notes, etc.—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 re-issued by said association, shall be liable to a penalty of fifty dollars, recoverable by the association. (Rev. Stat. U. S. Sec. 5189.)

§ 85. Bank to Redeem Its Notes at Its Counter.—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. (Rev. Stat. U. S. Sec. 5195.)

The other provisions of the section required the selection of banks in certain cities as redemption agents. These provisions were repealed by the act of June 30, 1874. See next section.

§ 86. Redemption Fund; Redemption of Notes at United States Treasury.—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 redemption, 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, multilated, 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 otherwiwse unfit for use, they shall be forwarded to the Comptroller of the Currency and destroyed, and replaced as now provided by law.† * * * *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. (Act June 20, 1874, Ch. 343, Sec. 3; 18 Stat. U. S. 124.)

The Five Per Cent. Fund.—This section requires, in lieu of the reserve on circulation abolished by the preceding section, a deposit equal to five per cent. of its circulation by each bank, in lawful money, with the United States Treasurer for the redemption of its circulation. The deposit so made may be counted as a part of the bank's lawful money reserve.

Redemption Regulations.—When National bank notes of one or more association are presented in sums of $1000, or any multiple thereof, the Treasurer is required to redeem the same. He has no authority in law for redeeming a lot less than $1000, or any lot unless it is in even thousands. The object of this was undoubtedly to avoid a multiplicity of accounts with the outside public. The notes are charged to the respective associations issuing them until the notes so redeemed for any association amount to a few hundred dollars, when that association is notified and required to deposit lawful money equal to the amount redeemed. Theoretically, the five per cent. redemption fund is never touched. It remains intact, and this explains why it can consistently be counted as a part of the lawful money reserve of a bank. When a bank first makes its five per cent. deposit, it receives a credit on the books of the Treasury. The cash goes into the general fund and becomes indistinguishably mingled therewith.

The Treasury redeems the notes as they come in, from its own funds, and in the contemplation of law no charge is made to the five-per-cent.

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†The provision omitted in this place requires the banks to reimburse the Treasury the expense incurred. (See Sec. 100.)

account of the bank, but from time to time redemptions made are reported to the bank and then it is notified and required to reimburse the Treasury for the sum paid on its behalf. The requirement that National bank notes unfit for circulation shall be sent in by the Assistant Treasurers and designated depositaries of the United States is intended to keep the circulation up to a fair standard of newness and cleanliness. Notes redeemed at the Treasury fit for circulation are sent back to the banks; unfit notes are destroyed as provided in Section 5184, Rev. Stat. U. S.

Legal Tender and Lawful Money—What Is.—The following statement concerning the legal tender properties of money of the United States is based upon United States Revised Statutes, Sections 3585, 3586, 3587, 3588, 3589 and 3590, and the acts amendatory thereof and additional thereto: Gold coin, standard silver dollars, subsidiary silver, minor coins, United States notes and Treasury notes of 1890 have the legal tender quality as follows: Gold coin is legal tender for its nominal value when not below the limit of tolerance in weight; when below that limit it is legal tender in proportion to its weight; standard silver dollars and Treasury notes of 1890 are legal tender for all debts, public and private, except where otherwise expressly stipulated in the contract; subsidiary silver is legal tender to the extent of $10, minor coins to the extent of 25 cents, and United States notes for all debts, public and private, except duties on imports and interest on the public debt. Gold certificates, silver certificates and National bank notes are non-legal-tender money. Both kinds of certificates, however, are receivable for all public dues, and National bank notes are receivable for all public dues except duties on imports, and may be paid out for all public dues, except interest on the public debt. The term "lawful money" is understood to apply to every form of money which is endowed by law with the legal tender quality. (See Opinions of Attorneys-General, vol. 17, p. 123.)

§ 87. Redemption Fund Covered into Treasury.—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. (Act July 14, 1890, Ch. 708, Sec. 6; 26 Stat. U. S. 289.)

§ 88. **Retiring Circulation.**—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. 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. (Act June 20, 1874, Ch. 343, Sec. 4; 18 Stat. U. S. 124; Rev. Stat. U. S. 5223.)

The minimum of bonds required to be kept on deposit by National banks, with a capital of $150,000 and less, was further reduced by the Act of July 12, 1882. See Section 59.

§ 89. **Same Subject.**—That any National banking association now organized, or hereafter organized, desiring to withdraw its circulating notes, upon a deposit of lawful money with the Treasurer of the United States, as provided in section four of the Act of June twentieth, eighteen hundred and seventy-four, entitled "An Act fixing the amount of United States notes, providing for a redistribution of National bank currency, and for other purposes," or as provided in this act, is authorized to deposit lawful money and withdraw a proportionate amount of the bonds held as security for its circulating notes in the order of such deposits * * * *Provided,* That not more than three millions of dollars of lawful money shall be deposited during any calendar month for this purpose: *And provided further,* That the provisions of this section shall not apply to bonds called for redemption by the Secretary of the Treasury, nor to the withdrawal of circulating notes in consequence thereof. (Act July 12, 1882, Ch. 290, Sec. 9; 22 U. S. Stat. 164.)

The provision omitted provided that "no National bank which makes any deposit of lawful money in order to withdraw its circulating notes shall be entitled to receive any increase of its circulation for the period of six months from the time it made such deposits of lawful money for the purpose aforesaid." This was repealed by Act March 14, 1900. See Section 59.

§ 90. **Circulating Notes of Extended Banks—Lawful Money Deposit—Expense of New Plates.**—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 for 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. (Act July 12, 1882, Ch. 290, Sec. 6; 22 Stat. U. S. 162.)

§ **91. Deposit to Redeem Circulation of Liquidating Banks.**— 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 States, and placed to the credit of such association upon redemption account. (Rev. Stat. U. S. Sec. 5222.)

LIMIT OF TIME.—If not otherwise determined, the vote to liquidate takes effect immediately, and the six months run from that date; but if the vote itself is that the liquidation shall take place at a future date, then that future date is the actual date on which the vote takes effect, and the six months run therefrom.

LAWFUL MONEY.—Lawful money is United States gold coin, silver dollars or legal-tender notes.

HOW DEPOSIT MADE.—The usual method is to make the deposit either directly or through a correspondent or agent with the Treasurer of the United States at Washington, or an Assistant Treasurer. When the deposit is made with an Assistant Treasurer, he issues a certificate of deposit which is sent to Washington. When the deposit is made, and the

bank has paid to the United States Treasurer all amounts due for taxes on circulation and all amounts due for expenses of redeeming notes, its bonds on deposit will be surrendered to it.

§ 92. **Reassignment of Bonds, Redemption of Notes, etc., in Such Case.**—Whenever a sufficient deposit of lawful money to redeem the 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 representative. (Rev. Stat. U. S. Sec. 5224.)

§ 93. **Destruction of Redeemed Notes of Liquidating Bank.**—Whenever the Treasurer has redeemed any of the notes of an association which has commenced to close its affairs under the six [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. (Rev. Stat. U. S. 5225.)

§ 94. **Mode of Protesting Notes.**—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, or at its designated place of redemption, 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

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*See Section 104, which provides that such notes be destroyed by maceration.

presented for payment, or the president or cashier of the association at the place at which they are redeemable 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 non-payment 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 one note or package to be protested on the same day, he shall not receive pay for more than one protest. (Rev. Stat. U. S. Sec. 5226.)

Redemption After Lawful Money Deposit.—It is, perhaps, open to dispute whether a bank, after it has deposited lawful money to retire a portion of its circulation under the act of June 20, 1874, is obliged to redeem its notes at its own counter until the deposit of lawful money is exhausted by presentation of notes at the Treasury. In other words, it is held by some that while lawful money remains on deposit in the Treasury the bank might refuse to redeem a note presented at its own counter, and refer the presentor to the Treasury. However this may be, while Section 5226 is in force, a bank might place itself in a very disagreeable position, and perhaps injure its credit, by refusing to redeem any of its notes at its own counter, that is, so long as it continues a going bank.

§ 95. Examination by Special Agent—Forfeiture of Bonds.— 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. (Rev. Stat. U. S. Sec. 5227.)

§ **96. Bank Not to Do Business After Protest of Notes.**—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. (Rev. Stat. U. S. Sec. 5228.)

§ **97. Redemption of Notes at Treasury.**—Immediately upon declaring the bonds of an association forfeited for non-payment 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. (Rev. Stat. U. S. Sec. 5229.)

§ **98. Sale of Bonds—Lien of United States Upon Assets.**—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 cancelling 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

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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. (Rev. Stat. U. S. Sec. 5230.)

§ 99. **Sale of Bonds 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. (Rev. Stat. U. S. Sec. 5231.)

§ 100. **Expense of Transporting and Assorting Notes—Cost of Plates.**—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. (Act June 20, 1874, Ch. 343, Sec. 3; 18 Stat. U. S. 124.)

§ 101. **Same Subject.**—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 twentieth, eighteen hundred and seventy-four, for the cost of transporting and redeeming their notes redeemed from such deposits subsequently to June thirtieth, eighteen hundred and eighty-one. (Act July 12, 1882, Ch. 290, Sec. 8; 22 Stat. U. S. 164.)

§ 102. **Disposition to be Made of Notes Redeemed by Treasurer.**—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. (Rev. Stat. U. S. Sec. 5232.)

Notes of Failed Banks.—This section was originally part of Section 47 of the act of June 3, 1864, and had application only to notes of banks in default, the bonds of which were forfeited, and which notes were redeemed, under a further provision of the same Section 47 (now Section 5229, Rev. Stat. U. S., at the Treasury of the United States.

Certificates of Destruction.—The disposition to be made of this particular class of notes is left to the discretion of the Secretary of the Treasury. If Section 5232 as it now stands is construed to apply solely to the notes of banks in default redeemed at the Treasury, then a certificate of destruction of all other classes of notes redeemed at the Treasury, whether of banks in liquidation or of banks retiring circulation, must be furnished to the respective associations issuing the notes, as the mode of destruction of all other classes of notes is fixed in the various sections of the law regarding the same. (See Section 5225, R. S. U. S.; Section 3 of the act of June 20, 1874; Sections 6 and 7 of the act of July 12, 1882, and Section 5184, Rev. Stat. U. S. See Sections 93, 104.)

§ 103. **Cancellation of Notes.**—All notes of National banking associations presented at the Treasury of the United States for payment shall, on being paid, be cancelled. (Rev. Stat. U. S. Sec. 5233.)

This provision is modified as to notes fit for circulation redeemed from the 5 per cent. redemption fund by the act of June 20, 1874, Section 3, which permits such notes to be returned to the banks for reissue.

§ 104. **Mode of Destruction.**—For the maceration of National bank notes, United States notes, and other obligations of the United States authorized to be destroyed, ten thousand dollars; 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. (Act June 23, 1874, Ch. 455, Sec. 1.)

By Act June 20, 1874, Ch. 343, Sec. 8 (18 Stat. U. S. 124) it is made 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."

CHAPTER IV.

Regulation of the Banking Business.

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§ 105. 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. (Rev. Stat. U. S. Sec. 5190.)

Place of Business.—This provision must be construed reasonably; and where a part of the legitimate business of the bank can not be transacted at the banking-house it may be done elsewhere. (Merchants' National Bank *v.* State National Bank, 10 Wallace 604.) In the important case of Merchants' National Bank *v.* State National Bank, above cited, the cashier of the defendant bank bought a quantity of gold of the plaintiff bank, and gave a certified check therefor. The transaction took place at the office of the plaintiff bank, and the check was certified there. It was objected by the defendant that the certification was not good, because not made by the cashier at the defendant's own banking-house. But it was held that there was no force in this objection. The Court said: "The provision of the act of Congress as to the place of business of the banks created under it must be construed reasonably. The business of every bank away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person, or by correspondents or other agents. In the case before us, the gold must have been bought, if at all, at the buying or the selling bank, or at some third locality."

Branch Office.—The question often arises whether a bank may have a branch office for the purpose of receiving deposits, paying checks etc., in the same or a different place. In Armstrong *v.* Second National Bank (38 Fed. Rep., 883). A National bank in Cincinnati had made an arrangement with a bank in Springfield, Ohio, by which the latter bank was to cash checks drawn on the Cincinnati bank by customers living in Springfield. This arrangement was held by the court to be void on several grounds, among others, that it is not competent for a National Bank to provide for the cashing of checks upon it at any other place than an office or banking-house located in the place specified in its organization certificate.

The word "place" and "at an office or banking house" have always been construed by the Comptroller to mean the legal domicile of the corporation, of which it can have but one, and this construction is sustained by the Solicitor of the Treasury in an opinion rendered August 10, 1899, on the question of the right of a National bank to establish and maintain an auxiliary cash room at some point distant from its banking house for the purpose of receiving deposits and paying checks. As to branch banks at the Columbian and Louisiana Purchase Expositions, see Sections 54 and 55.

§ 106. **Requirements as to Lawful Money Reserve.**—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 circultion 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 dividend 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. (Rev. Stat. U. S. Sec. 5191.)

Obsolete Provision.—The Act of June 20, 1874, relieved National banks of the necessity of keeping reserve upon circulation, but it is still required on deposits. (See next section.)

Calculating Reserve, etc.—The method of calculating reserve, and the funds available therefor, are fully treated of elsewhere in this work. (See page 294.)

§ **107. Lawful Money Reserve on Circulation Abolished.**—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. (Act June 20, 1874, Ch. 343; Sec. 2; 18 Stat. U. S., Part 3, 123.)

§ 108. **Redemption Cities and Reserve Required.**—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, St. 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. (Rev. Stat. U. S. Sec. 5192.)

By Sec. 5195 Rev. Stat. banks in the cities named above may keep one-half of their reserve in New York City.

§ 109. **Comptroller May Designate Additional Reserve Cities.**—"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." (Act March 3, 1887, Ch. 378, Sec. 1, as amended by Act March 3, 1903, Ch. 1014; 32 Stat. U. S. 1223.)

The Act of March 3, 1903, reduced the requirement from fifty thousand to twenty-five thousand. The procedure is, in brief, for each bank

* Section 106 above.

which wishes to join in the application to authorize, by resolution of its directors, some officers of the bank, generally the president or cashier, to sign the name of the bank to the petition addressed to the Comptroller of the Currency. Blank forms for the resolution of the directors and blank forms of petition are furnished by the Comptroller of the Currency. (For forms see page 322.)

§ 110. **Comptroller May Designate Central Reserve Cities.**—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. (Act March 3, 1887, Ch. 378, Sec. 2; 24 Stat. U. S. 560.)

Under this act Chicago and St. Louis have been made central reserve cities. The procedure is substantially the same as in the case of the designation of a reserve city. (For forms see page 322.)

§ 111. **Each Bank to Receive Notes of Other Banks.**—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. (Rev. Stat. U. S. Sec. 5196.)

As there are no gold banks now in existence, the last clause of this section has, at present, no importance. By Act July 12, 1882, Ch. 260, Sec. 12, it is provided that no National bank shall be a member of any clearing-house in which gold and silver certificates are not receivable in settlement of clearing-house balances, and that such certificates may be counted as a part of the bank's lawful reserve. See also Act March 14, 1900, Ch. 41, Sec. 6; 31 Stat. U. S. 48.

§ 112. Rate of Interest Limited.—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 from 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. (Rev. Stat. U. S. Sec. 5197.)

State Rate Limit.—This section allows National banks to charge the rate of interest allowed by the State to natural persons generally, and a higher rate if State banks of issue are authorized to charge a higher rate. (Tiffany *v.* National Bank, 18 Wallace, 409.) The Supreme Court of the United States has explained the meaning of this section as follows: "It was expected that they (the National banks) would come into competition with State banks, and it was intended to give them at least equal advantages in such competition. In order to accomplish this they were empowered to reserve interest at the same rates, whatever those rates might be, which were allowed to similar State institutions. This was considered indispensable to protect them against possible unfriendly State legislation. Obviously, if State statutes should allow to their banks of issue a rate of interest greater than the ordinary rate allowed to natural persons, National banking associations could not compete with them, unless allowed the same. On the other hand, if such associations were restricted to the rates allowed by the statutes of the State to banks which might be authorized by the State laws, unfriendly legislation might make their existence in the State impossible. A rate of interest might be prescribed so low that banking could not be carried on, except at a certain loss." (*Id.*)

General State Rate Governs.—But it is the rate of interest allowed to the banks of the State generally that a National bank may charge; and the fact that a few of the State banks are specially authorized to

take a higher rate does not warrant the National banks in doing the same. (Gruber *v.* First National Bank, 87 Pa. St., 468; Duncan *v.* First National Bank of Mount Pleasant, 11 *Bankers' Magazine*, 787. But see First National Bank of Mount Pleasant *v.* Tinstman, 36 Legal Intelligencer, 228.) Nor is it to be understood that whatever by the laws of the State is lawful for natural persons in acquiring title to negotiable paper is lawful for National banks. (National Bank *v.* Johnson, 104 U. S., 271.) Thus, though the State law fixes no limit to the rate which natural persons may take for the discount or purchase of business paper, this does not authorize the National banks to discount such paper at a higher than the legal rate. (Johnson *v.* National Bank of Gloversville, 74 N. Y., 329; affirmed in National Bank *v.* Johnson, 104 U. S., 271.)

Seven Per Cent. Limit.—And where the State law does not limit the rate of interest which may be charged on loans to corporations, a National bank located in that State can not charge more than seven per cent. on such loans. (*In re* Wild, 11 Blatchford, 243.) But if the statutes of the State expressly authorize parties to contract for any rate of interest National banks may do likewise, and are not, in such case, limited to seven per cent. (Daggs *v.* Phœnix Bank, 177 U. S. 549; Hinds *v.* Marmelejo, 60 Cal., 229; National Bank *v.* Bruhn, 64 Tex., 571; Rockwell *v.* Farmers' National Bank, 4 Colo. App., 562; Wolverton *v.* Exchange National Bank, 11 Wash., 94; Yakina National Bank *v.* Kinne, 6 Wash., 384; Guild *v.* First National Bank of Deadwood, 4 South Dakota, 566.) Where a State statute fixes a certain rate as the legal rate, but authorizes parties to agree in writing for a higher rate, the National banks are permitted to charge such higher rate. (Wiley *v.* Starbuck, 44 Ind., 298; Newell *v.* National Bank of Somerset, 12 Bush, 57.) A National bank in Mississippi is not allowed to retain interest in advance, but can charge interest only on the sum actually loaned. (Timberlake *v.* First National Bank, 43 Fed. Rep., 231.) A National bank located in Ohio may, since the repeal of the statute of that State, fixing the rate of interest for bank of issue, reserve and charge interest at the rate of eight per cent. (La Dow *v.* First National Bank of New London, 51 Ohio St., 234.)

Agreement as to Time of Entering Credit.—The bank and its customer have the right to agree as to the time of entering credits, and if such agreement is made in good faith to equalize the interest on different items, and not for the purpose of receiving illegal interest, it is not a violation of the law. (Timberlake *v.* First National Bank, 43 Fed. Rep. 231.) Therefore, where drafts are from time to time deposited in a bank, some of them being payable on demand and some on time, an agreement between the bank and the depositor that credits shall be given for such drafts on the day after their deposit, the depositors being charged with the full legal rate for any over-drafts, does not con-

stitute usury, when such agreement is made in good faith in order to save involved calculations. (*Id.*)

Application of Payments.—Where payments are made generally to a National bank on a promissory note which includes unlawful interest, they will be applied on the principal. (Hall *v.* First National Bank of Fairfield, 30 Neb., 94; Citizens' National Bank *v.* Forman's Assignee, 111 Ky., 206.) The fact that the payments made by the debtor have been applied by the bank on its books to interest as such does not authorize the presumption that the debtor so applied them, where he had no access to the books, and no knowledge of the application made by the bank. (Second National Bank of Richmond *v.* Fitzpatrick, 111 Ky., 228.)

Purchase of Drafts.—In a case in the United States Circuit Court of Appeals it was held that where a National bank *purchases* drafts at a rate of discount larger than the rate of interest allowed by the law of the State, this will be usury. (Danforth *v.* National State Bank, 48 Fed. Rep., 271.)

Usury Paid by Corporations.—The inhibition contained in this section is general and forbids the taking of usurious interest from an artificial, as well as from a natural, person. (Albion Bank *v.* Montgomery, 54 Neb., 681.)

Promise of Cashier to Pay Usurious Interest.—The promise of the Cashier to pay interest upon a deposit at an usurious rate will not bind the bank; but the bank would be bound to return the amount actually received by it. (Hanson *v.* Heard, 69 N. H., 190.)

Usury Paid by National Banks.—A State statute providing that corporations shall not plead usury applies to National banks. (Binghamton Trust Company *v.* Anten, 68 Ark., 299.)

§ 113. Penalty for Taking Usurious Interest.—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 representatives, 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. (Rev. Stat. U. S. Sec. 5198.)

INTENT OF THE LAW.—The Supreme Court of the United States has analyzed this section as follows: "Two categories are thus defined, and the consequences denounced. (1) Where illegal interest has been knowingly stipulated for, but *not paid,* then only the sum lent, without interest, can be recovered. (2) Where such illegal interest *has been paid,* then twice the amount so paid can be recovered in *a penal action of debt,* or suit in the nature of such action, against the offending bank, brought by the persons paying the same, or their legal representatives." (Barnet *v.* Muncie National Bank, 98 U. S., 855.)

REMEDY WHERE ACTION IS BY THE BANK.—Where the bank sues to recover the loan, it can not, if there has been usury, and the defendant pleads this defense, recover any interest at all, but only the principal of the loan. (Barnet *v.* Muncie National Bank, 98 U. S., 855.) But in such an action the defendant, if he has paid the usurious interest, can not avail himself of such payment as a set-off or counter-claim against the principal of the loan sued on; but he must bring a separate action therefor. (Barnet *v.* Muncie National Bank, 98 U. S., 855; Haseltine *v.* Central National Bank, 183 U. S., 132; Peterborough National Bank *v.* Childs, 133 N. Y., 248; National Bank of Auburn *v.* Lewis, 81 N. Y., 15; Ellis *v.* First National Bank of Olney, 11 Bradw., 275; Rockwell *v.* Farmers' National Bank, 4 Colo. App., 562; Huggin *v.* Citizens' National Bank, 6 Tex. Civ. App., 33; Norfolk National Bank *v.* Schwenk, 46 Neb., 381; Marion National Bank *v.* Thompson, 101 Ky., 277; First National Bank *v.* Hunter, 109 Tenn., 91; Cox *v.* Beck, 83 Fed. Rep., 269.) And usurious interest paid on renewing a series of notes can not, in an action by the bank on the last of them, be applied in satisfaction of the debt. (Driesbach *v.* National Bank, 104 U. S., 52; Charleston National Bank *v.* Bradford, 51 W. Va., 255.)

WHAT INTEREST FORFEITED—INTEREST AFTER MATURITY.—Where the instrument carries with it illegal interest, the whole interest is forfeited, and not merely that which the party borrowing may agree to pay. The usury destroys the interest-bearing power of the obligation, and there is no point of time from which it can bear interest. Not only does it forfeit the interest accruing before maturity, but as well that accruing after maturity (Lucas *v.* Government National Bank, 78 Pa. St., 228; Shunk *v.* First National Bank of Galion, 22 Ohio St., 508; National State Bank v. Brainard, 61 Hun., 339; First National Bank *v.* Grimes, 49 Kans., 219), though the latter rate be lawful (Shafer *v.* First National Bank, 53 Kans., 614), or the interest which otherwise would accrue by law upon non-payment after maturity. (Henderson National Bank *v.* Alves, 91 Ky., 142.) And an amount paid on the paper after the maturity thereof must be credited on the principal without regard to when the interest thereon accrued. (National State Bank *v.* Brainard, 61 Hun., 339.) By charging more than legal interest on over-drafts

the bank will lose the right to recover any interest at all. (Third National Bank of Philadelphia *v.* Miller, 90 Pa. St., 241.) Though it has been held that a National bank by contracting for usurious interest forfeits interest only to the date of bringing suit on the note, and judgment for the principal should bear interest at the legal rate from the date of filing the petition. (Second National Bank of Richmond *v.* Fitzpatrick, 111 Ky., 228.) Where a National bank has re-discounted notes at a usurious rate of interest, the fact that the bank for which the rediscount was made has charged illegal interest on those notes to its customers will not affect its right to set up the defense of usury in an action by the re-discounting bank. (*Id.*) As to whether a National bank can discount a note containing a provision to pay an attorney's fee if suit shall be brought to enforce payment, see Merchants' National Bank *v.* Sevier (14 Fed. Rep., 662.)

Renewals.—If the note is renewed from time to time, no portion of usurious interest included in the renewal note can be recovered. (First National Bank of Mead Centre *v.* Grimes, 49 Kans., 219.) And the usury is not purged by settlements and renewal notes without additional usury. (Pickett v. Merchants' National Bank of Memphis, 32 Ark., 346.) In a suit upon the last renewal the bank can recover only the principal sum originally advanced. (Snyder *v.* Mount Sterling National Bank, 94 Ky., 231.) And any payments made upon any of such notes will be applied to the principal. (*Id.*) And even though the interest upon the renewal notes has been reduced to the legal rate, no part of the same can be recovered. (Farmers' and Mechanics' Bank *v.* Hoagland, 7 Fed. Rep., 159.) A note given for already accrued interest, in part usurious, is without consideration; and suspension of the right of collection, between its date and maturity, in no way operates to supply the essential element otherwise lacking. (McGhee *v.* First National Bank of Tobias, 40 Neb., 92.) But in order to render the bank liable to the penalty of doubling the amount of interest paid prescribed by this section, the illegal interest must have been actually paid; and it is not sufficient that it was carried into renewal notes. (Brown *v.* Marion National Bank, 169 U. S., 416; Osborn *v.* First National Bank, 175 Pa. St., 494.)

Penalty for Taking Usury—Knowledge of Bank—Allegations of Complaint.—To subject the bank to the penalty for taking usurious interest there must have been paid not only a larger rate of interest than that allowed by law, but that larger rate must have been knowingly received. (Timberlake *v.* First National Bank, 43 Fed. Rep., 231.) And the petition or complaint must allege that it was knowingly received. (Henderson National Bank *v.* Alves, 91 Ky., 142; Schuyler National Bank *v.* Bullong, 24 Neb., 321.) As to when allegations of complaint are sufficient to sustain a judgment in an action against a

National bank for exacting usurious interest, see First National Bank *v.* Morgan (132 U. S., 141), Guild *v.* First National Bank of Deadwood (4 S. D., 566).

Amount of Penalty.—The penalty is twice the amount of interest paid, and is not limited to twice the excess above the legal rate. (First National Bank *v.* Watt, 184 U. S., 151; Henderson National Bank *v.* Alves, 91 Ky., 142; Schuyler National Bank *v.* Bullong, 28 Neb., 684; Hill *v.* National Bank of Barre, 15 Fed. Rep., 432; Second National Bank *v.* Fitzpatrick, 111 Ky., 228; Watt *v.* First National Bank, Minn., 76 Minn., 458.) But in a suit to recover such penalty the plaintiff cannot be allowed interest on the amount. (McCreary *v.* First National Bank of Morristown, 109 Tenn., 128.) It has been held, however, that a judgment against a National bank for twice the amount of interest paid, as a penalty for taking usury, should allow interest from the date of filing the petition to recover the penalty, that being the date of the first demand therefor. (Second National Bank *v.* Fitzpatrick, 111 Ky., 228.)

Payment of Interest—What Is.—In order that the borrower may maintain an action against the bank to recover the penalty provided by the statute for taking usurious interest, such usurious interest must have been actually paid, and it is not sufficient that such interest is merely charged to his account. (Hall *v.* First National Bank of Fairfield, 30 Neb., 99.) Nor is it sufficient that the interest was reserved from the original loan by way of discount. (Smith *v.* First National Bank, 42 Neb., 687; Citizens' National Bank *v.* Forman's Assignee, 111 Ky., 206), but where commercial paper is transferred to and discounted by the bank at a rate of interest exceeding the legal rate, and the net proceeds after deducting the interest charged, are credited to the transferee, this is a payment of the interest within the meaning of the statute. (National Bank of Rahway *v.* Carpenter, 52 N. J. Law, 165.)

When Right of Action Accrues—Limitations.—The period of two years within which the action to recover the penalty must be brought begins to run from the time the interest is actually paid, and not from the time it was agreed to be paid. (National Bank of Daingerfield *v.* Ragland, 181 U. S., 45.) And if such usurious interest is included in a note, the limitation does not begin to run until the note is paid. (*Id.*) So, where the interest upon one note is included in the amount of another note, which is subsequently paid in full. (Second National Bank *v.* Fitzpatrick, 111 Ky., 228.) Each payment of illegal interest is regarded as "a transaction" within the intent of the statute, and when such payment is actually made, or accrues, the two years' limitation commences to run. (First National Bank of Dorchester *v.* Smith, 39 Neb., 90; Lynch *v.* Bank, 22 West Va., 534; National Bank *v.* Carpenter,

52 N. J. Law, 165; Bobs *v.* People's National Bank, 21 Fed. Rep., 888.) In the case first cited the sum of $88, illegal interest, was paid upon a loan more than two years prior to the inception of the action, but the loan upon which such usurious interest was received by the bank was not paid fully until within two years before the bringing of the suit. It was held that the limitation began to run from the time the interest was so paid. It is not sufficient to set the statute in operation that the interest was reserved by way of discount. (Smith *v.* First National Bank, *supra*). But the payment of the loan is not a condition precedent to the right of the borrower to maintain an action to recover the penalty for the usurious interest paid. The penalty for all illegal interest paid within two years may be recovered in one action, whether the amount was in one payment or in several. (Hintermister *v.* First National Bank, 64 N. Y., 212.)

Who May Bring Action for Penalty.—Only the party paying the illegal interest, or his representatives, can recover the penalty therefor. (Timberlake *v.* First National Bank, 43 Fed. Rep., 231.) The action can not be brought by a guarantor or surety. (Lazear *v.* National Union Bank, 52 Md., 73.) And one of the joint makers of a note can not recover the penalty where the illegal interest was paid by the other maker. (Timberlake *v.* First National Bank, 43 Fed. Rep., 231; First National Bank of Corcordia *v.* Rowley, 52 Kans., 394.) But where a bankrupt has paid illegal interest, his assignee may bring such action. (Wright *v.* First National Bank, 8 Biss., 243; Crocker *v.* First National Bank, Thompson's National Bank Cases, 317; Henderson National Bank *v.* Alves, 91 Kentucky, 142. But see Osborn *v.* First National Bank of Athens, 175 Pa. St., 474.) But if the trustee in bankruptcy fails to administer such asset, the bankrupt, after discharge, may sue on the claim. (Lasater *v.* First National Bank of Jacksboro, 96 Tex., 345.) The right is conferred upon an artificial, as well as upon a natural, person. (Albion National Bank *v.* Montgomery, 54 Neb., 681.) But several of the joint makers of a note on which legal interest is paid by such parties individually can not unite in one action to recover such penalty. (Teague *v.* First National Bank of Salina, 5 Kan. App., 300.) The statute confers upon the parties separate rights. That they have paid equal amounts can not change the rule. The cause of action accrues to the one paying the unlawful interest, and to each one making such payments. There is no cause of action to the makers of the note on which usurious interest is paid. The cause of action arises when the unlawful payment is made, and to each of the ones making such payments. (*Id.*)

Effect of Usury on the Contract of the Parties.—Usury does not render the contract void (Farmers' and Mechanics' National Bank *v.* Dearing, 91 U. S., 29); nor defeat the title of the bank to the instru-

ment (Newell *v.* Somerset First National Bank (Ky.), 13 Ky. L. Rep., 275); nor does it avoid an endorsement or guaranty of the paper upon which the usurious interest is reserved or paid. (Lazear *v.* National Union Bank, 52 Md., 78; Oates *v.* First National Bank, 100 U. S., 239.) And the usurious character of the transaction between the bank and the payee will not affect the liabilities of antecedent parties to the instrument. (Smith *v.* Exchange National Bank, 26 Ohio St., 141.)

STATE LAWS.—The penalties provided by this section of the National Bank Act are exclusive; and the usury laws of the State, and the penalties therein provided, have no application to the National banks. (Farmers' and Mechanics' Bank *v.* Dearing, 91 U. S., 29; Stephens *v.* Monongahela Bank, 111 U. S., 197; Barnet *v.* Muncie National Bank, 98 U. S., 855; Hintermister *v.* First National Bank, 64 N. Y., 212; Central National Bank *v.* Pratt, 115 Mass., 539; Davis *v.* Randall, 115 Mass., 547; First National Bank *v.* Garlinghouse, 22 Ohio St., 492; Wiley *v.* Starbuck, 44 Ind., 298; Florence Railroad and Improvement Company *v.* Chase National Bank, 106 Ala., 364; Slaughter *v.* First National Bank of Montgomery, 109 Ala., 157; Charleston National Bank *v.* Bradford, 51 W. Va., 255.) Nor do the provisions of the Judiciary Acts of March 3, 1887, and August 13, 1888, have the effect of subjecting National banks to the penalties fixed by the States for exacting unlawful interest. (Norfolk National Bank *v.* Schwenk, 41 Neb., 381.) Nor is this the effect of the proviso to Section 4 of the Act of July 12, 1882. (Lanhum *v.* First National Bank of Crete, 46 Neb., 663.) But a National bank which has succeeded to the business of a private bank may incur the penalties which attached to the former institution when endeavoring to enforce the obligation acquired from it. (Exeter National Bank *v.* Orchard, 42 Neb., 579.) Where usurious interest is paid to a National bank, the transaction is governed by the laws of the United States, though the security is taken in the name of the President of the bank in his individual name. (Schuyler National Bank *v.* Gadsen, 191 U. S., 451.)

JURISDICTION OF STATE COURTS.—The defense of usury may be set up in an action brought in a State court (National Bank of Winterset *v.* Eyre, 52 Iowa, 114), and State courts have jurisdiction of actions for the recovery of the penalty prescribed for taking illegal interest. (Ordway *v.* Central National Bank, 47 Md., 217; Beltz *v.* Columbia National Bank, 87 Pa. St., 87; Hade *v.* McVey, 31 Ohio St., 231; McCreary *v.* First National Bank, 109 Tenn., 128.) Such action may be brought in any local court in the county having jurisdiction of the amount involved. (Schuyler National Bank *v.* Bullong, 28 Neb., 684; First National Bank of Tecumseh *v.* Overman, 22 Neb., 116; Henderson National Bank *v.* Alves, 91 Ky., 142. But see Newell *v.* National Bank of Somerset, 12 Bush, 57.) But the courts of one State have no jurisdiction

of an action against a National bank located in another State to recover the penalty. (Missouri River Telegraph Company *v.* First National Bank of Sioux City, 74 Ill., 217.)

CONSTRUCTION OF THE STATUTE.—The statute will be liberally construed to effect the ends for which it was passed, but a forfeiture under its provisions will not be declared unless the facts upon which it rests are clearly established. And since the courts uniformly incline against the declaration of a forfeiture, the party seeking such declaration should be held to make convincing proof of each fact essential to forfeiture. (Wheeler *v.* Union National Bank, 96 U. S., 785.) A doubt as to whether there has been a taking of illegal interest will be resolved in favor of the bank. (Timberlake *v.* First National Bank, 43 Fed. Rep., 231.) Thus in case of a claim of forfeiture for taking unlawful interest upon the discount of bills of exchange payable at another place, it should appear affirmatively that the bank knowingly received or reserved an amount in excess of the statutory rate of interest and the current exchange for sight drafts; and if it is not shown what the rate of exchange was, a charge of one-quarter of one per cent. in addition to the statutory rate of interest would not be sufficient to authorize a forfeiture. (Wheeler *v.* Union National Bank of Pittsburg, 96 U. S., 785.) But the statute is not a penal statute, and does not require to be strictly construed. (Albion National Bank *v.* Montgomery, 54 Neb., 681.)

USURIOUS LOANS TO DIRECTORS.—A director is not, by reason of his position, estopped from setting up the defense of usury in an action brought against him by the bank. (Bank of Cadiz *v.* Slemans, 34 Ohio St., 142.)

WHEN RULE DE MINIMIS APPLIES.—Where the illegal interest exacted amounts to only five cents, the rule *de minimis non curat lex* applies, and the bank will not be liable to a penalty therefor. (Slaughter *v.* First National Bank of Montgomery, 109 Ala., 157.)

WAIVER.—The forfeiture declared by the National Bank Act for taking illegal interest is not waived or avoided by giving a separate note for this interest, or by giving a renewal note in which is included the usurious interest. (Brown *v.* Marion National Bank of Lebanon, 169 U. S., 416.)

§ **114. Dividends and Surplus Funds.**—The directors of any association may, semi-annually, 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. (Rev. Stat. U. S. Sec. 5199.)

Dividend Periods.—This section is permissive, and it is doubtful if under it any other than semi-annual dividends are strictly legal. Some National banks, however, declare quarterly dividends, and a few declare dividends monthly.

Surplus Fund.—The section also provides for the accumulation of a surplus fund up to a certain limit. The sections intervening between Sections 5199 and 5204, Revised Statutes U. S., contain provisions which, if strictly observed, insure the sound condition of the bank and prevent the payment of unearned dividends, or the payment of dividends when the bank's business is too extended and the value of its assets in doubt.

Wrongful Refusal to Declare Dividends.—Where the earnings properly applicable to a dividend are ample for such purpose, and the directors, or a majority of them, acting in bad faith and without reasonable cause, refuse to declare a dividend, the courts will interpose on behalf of those stockholders who otherwise would be without remedy, and require the directors to make a dividend of a reasonable amount. (Hiscock *v.* Lacy, N. Y., 9 Misc. (N. Y.), 578.) An action for this purpose may be maintained in a State court. (*Id.*)

Suit to Recover Illegal Dividends.—The Receiver of an insolvent National bank may maintain a suit in equity against all the shareholders of the bank to recover dividends unlawfully paid to them out of the capital stock when the bank had earned no net profit and was in fact insolvent (Hayden *v.* Thompson, 36 U. S. App., 361.) In such a case

Amendment of Sec. 5200, Rev. Stat. (page 118 "Digest") approved June 22, 1906 :

"Sec. 5200. 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."

Note:—The Comptroller rules that the surplus of a National Bank referred to above does not include "undivided profits" and that therefore the latter can not be included as a basis for loans unless carried to the surplus fund by vote of the Directors.

Intent of Restriction.—The general purpose of this section is obvious. It is to prohibit any bank from hazarding a large amount of its funds in loans to any one person, and to require such a distribution of the risks among a large number of persons that the failure of any one or two customers will not so seriously involve the bank as to endanger its solvency. But the transactions of the banks would be unduly hampered if this rule applied in the case of all discounts, and so an exception is made in favor of "bills of exchange drawn against actually existing values," and "commercial or business paper actually owned by the person negotiating the same." In Second National Bank of Oswego *v.* Burt (93 N. Y., 233), it was said by the New York Court of Appeals: "The object of this provision of the currency act was to guard National banks from the hazard of loaning money in improvident amounts upon speculative and accommodation paper, but it contemplated and permitted, to an unlimited amount, the discount of paper used and required in facilitating the transfer of property and money in the transaction of the legitimate business of the country."

When Applicable.—Numerous questions arise under this section which cause bank officers much perplexity. A question of frequent occurrence is, Whether a loan may be made to a person who is already an indorser on paper discounted by the bank to the amount of one-tenth of the capital stock? It is quite clear from the language of the section that where one negotiates paper actually owned by him the liabilities of none of the parties to such paper are within the meaning of the provision. It has no more application to the maker or to the prior endorser than it has to the person negotiating the paper. Now, are the liabilities of the sureties included when the paper is *accommodation* paper? It is to be observed that the liabilities to which the law refers are for money *borrowed.* But the *indorsers* are not *borrowers,* and their liability, such as it is, is merely contingent. There does not appear to be anything in the spirit or intent of the law which would require the prohibition to be applied in the case of any person other than those to whom the loans are made. If it applied to the sureties as well, then the bank could not lawfully take any paper however numerous the parties thereto—if it, at the time, held paper to the amount of one-tenth of its capital stock, on which the name of any one of those parties appeared, and notwithstanding, moreover, that on the paper already held by the bank there might be many other and different sureties besides this one. We do not believe that any view of the law which would lead to such a conclusion would be sustained by the courts.

But it is to be remembered that the question, who is the borrower? is not always to be determined from the positions of the parties as they appear on the paper. The borrower may be the maker, or he may be an indorser. It is the person who negotiates the paper with the

bank, who procures the money upon it, that is the borrower, irrespective of whether he appears thereon as indorser or guarantor or maker.

Another question which often arises is, When one person is a partner in two firms, will a loan of the maximum amount to one of these firms preclude a loan to the other firm? The Comptroller of the Currency holds that the liability of the common partner is to be deemed the liability of each of the two firms. But as to the correctness of this ruling there may be some doubt. It is the *individual* indebtedness of the different parties which is mentioned in the statute. Nothing is said about including the liabilities of any other partnership, nor is such an intention necessarily to be inferred. As each partner is liable for all the debts of the firm, it is reasonable that his individual liability to the bank should be included in the liabilities of the partnership; but the fact that there is a common partner will not make one partnership liable for the debts of the other, and there would, therefore, be no reason why the liabilities of one firm should affect the right of the bank to make loans to the other firm.

Still another question is, Whether it is a violation of this provision to make a loan in excess of one-tenth of the amount of the capital stock, when such loan is secured by collaterals? Such loans would seem to be within the spirit, as well as the letter, of the law. There is the same danger that the collaterals may turn out badly that there is that the borrower himself may become involved or insolvent. The bank's estimate of their value must be, like its estimate of the responsibility of the borrower, merely a matter of judgment and opinion.

Penalty.—The only penalty for violation of this section is the liability which the bank incurs of a forfeiture of its franchises, as prescribed in Sec. 5239, Rev. Stat. U. S., and though the loan is in excess of the amount here prescribed, the bank can recover the full amount from the borrower. (Gold Mining Company *v.* Rocky Mountain National Bank, 96 U. S., 640; Corcoran *v.* Batchelder, 147 Mass., 541; O'Hare *v.* Second National Bank of Titusville, 77 Pa. St., 96; Wyman *v.* Citizens' National Bank of Faribault, 29 Fed. Rep., 734; Stewart *v.* The National Union Bank of Maryland, 2 Abb. U. S., 424; Smith *v.* First National Bank, 45 Neb., 444.) And a court of equity will not enjoin the bank, at the instance of the borrower, from transferring to innocent third persons notes and securities, on the ground that the notes represent part of a loan made in excess of 10 per cent. of the capital of the association. (Elder *v.* First National Bank of Ottawa, 12 Kans., 238.) Where a State bank makes a loan to one person of an amount in excess of one-tenth part of its capital, and is afterwards converted into a National bank, it may, after conversion, extend the time for payment of such loan without violating this section. (Allen *v.* The First National Bank of Xenia, 23 Ohio St., 97.)

§ 116. Banks Not to Loan Upon 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. (Rev. Stat. U. S. Sec. 5201.)

Bank Can Not Acquire Lien.—It is held under this section that a National bank can not acquire a lien on its own stock in the hands of its stockholders, and that any provision in the articles of association or by-laws, or in the certificates of stock prohibiting a transfer until the liability of the stockholder to the bank is paid, is wholly void. (Bank *v.* Lanier, 11 Wall., 369; Bullard *v.* National Bank, 18 Wall., 589; Third National Bank *v.* Buffalo German Ins. Co., 193 U. S., 581; S. C., 162, N. Y., 163; Conklin *v.* The Second National Bank, 45 N. Y., 655; Delaware, Lackawanna and Western Railroad Company *v.* Oxford Iron Company, 38 N. J. Eq., 340; Smith *v.* First National Bank, 115 Ga., 608; Evansville National Bank *v.* Metropolitan National Bank, 2 Biss., 527.) A provision of this character in the certificate of stock does not affect the rights of a transferee, or operate as notice to him, since the provision is wholly void. (Third National Bank *v.* Buffalo German Insurance Company, 192 U. S., 581.) But when a stockholder has pledged his stock to the bank, he can dispute the validity of such pledge only while the contract is executory, and the security still subsists in the possession of the bank; if the stock has been sold, and the proceeds applied to the payment of the debt, the court will not aid him to recover the value of his stock. (National Bank of Xenia *v.* Stewart, 107 U. S., 676.) Where a bank takes a pledge of its own stock to secure a deposit made with another bank, this is a lending upon the security of its stock within the meaning of this section. (Bank *v.* Lanier, 11 Wall., 369.) So this section forbids the bank to hold the stock of the shareholder to secure an indebtedness due from him to it on account of collections made for its account. (Conklin *v.* Second National Bank, 45 N. Y., 655.) But this section will not prevent a bank from holding a cash dividend as pledged for the indebtedness of the shareholder to the bank. (Hager *v.* Union National Bank, 63 Me., 509.) Nor does it forbid the shares of the stockholder to be attached for his indebtedness to the bank. (*Id.*)

Effect of Violation.—Inasmuch as no penalty is imposed either upon the bank or the borrower for a violation of this section, such violation may not be urged against the validity of the transaction by any one except the Government, at least unless the objection was made before the contract was executed or while the security was in the hands of the bank. (Walden National Bank *v.* Birch, 130 N. Y., 221.) Therefore, where the stock is held by the cashier in trust for the bank the invalidity of the transaction can not be set up as a defense in an action against his sureties for his wrongful conversion of the stock. (*Id.*) Nor is the statute available as a defense to one who has bought the stock of the bank, when sued by the Receiver for an assessment upon the same. (Lantry *v.* Wallace, 182 U. S., 536.)

Bank Disposing of.—Where a National bank purchases shares of its own stock, and divides them among its directors, to whom the shares are transferred upon the stock books, the transaction is void, and no title passes. (Meyers *v.* Valley National Bank, 13 National Bankruptcy Register, 34.)

The sale by an officer to himself of the stock of the bank owned by the bank may be ratified by the bank or its legal representative; but a sale by himself to the bank of its own stock, where he acts in the double capacity of seller and buyer, cannot be ratified when the purchase of the stock by the bank is not necessary to prevent loss upon a debt previously contracted. In the one case the sale of the stock is enjoined by law, and its sale by the president may be ratified, however irregular it may have been in the first instance; but the purchase of its own stock by the bank is interdicted by law, and for this act there can be no authorization in advance and no ratification afterwards. (Bundy v. Jackson, 24 Fed. Rep., 1628.)

Where a purchase of its own stock is made by a National bank for cash, and not for the purpose of preventing loss upon a debt previously contracted, the Receiver of the bank may recover from the seller the amount of money so paid to him. (Burrows *v.* Niblack, 84 Fed. Rep., 111.)

This section does not forbid a National bank to make a loan upon the security of the stock of another National bank. (National Bank *v.* Case, 96 U. S., 628.)

§ **117. Limit of Indebtedness of Association.**—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 asssociation for dividends and reserve profits. (Rev. Stat. U. S. Sec. 5202.)

A National bank may become indebted upon any contract within the scope of its powers to the full amount of its capital stock then actually paid in, notwithstanding that it has notes of circulation, deposits, special funds subject to draft, or funds for the payment of declared dividends to stockholders, which either alone or in the aggregate equal its paid-up capital stock. (Weber *v.* Spokane National Bank, 64 Fed. Rep., 208.) The fact that an indebtedness of a National bank was incurred in violation of Rev. Stat. U. S., 5202, is no defense to the bank or its receiver. (*Id.* reversing the decision of the United States Circuit Court in the same case. See 50 Fed. Rep., 735.)

§ **118. Circulating Notes Not to Be Hypothecated.**—No association shall, either directly or indirectly, pledge or hypothecate any of its notes of 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. (Rev. Stat. U. S. Sec. 5203.)

Notes of circulation are to be issued by the bank in ordinary course of business. This section is intended to prevent the organization of more than one National bank with the same capital. Thus it was feared that unscrupulous persons with a small capital, say sufficient to purchase the minimum of bonds required by law, might start an alleged bank, and by dishonestly certifying the capital paid up secure circulation which they could use in procuring additional payments of capital or money in bank. If the notes alone were in the bank, the suspicions of the examiner might be excited; but by changing them for other money, and with dummy paper to fill up, a bank with very little real capital could make a good showing on its books. This section becomes especially important, since the reduction of the minimum deposit of United States bonds to one-quarter of capital, in case of banks with a capital of $150,000 or less.

§ **119. Withdrawal of Capital—Dividends—Bad Debts.**—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 associations, 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. (Rev. Stat. U. S. Sec. 5204.)

To Prevent Impairment.—This section is intended to guard against any impairment of the paid-in capital, especially against that insidious form of impairment so dangerous to stockholders—its withdrawal in the shape of dividends.

Undivided Profits.—It has been contended that the undivided profits mentioned in the second sentence are undivided profits exclusive of legal surplus, which, if Section 5199 is strictly adhered to, should at all times equal one-tenth of the total net profits of the bank until such one-tenth exceeds one-fifth of the capital, and it is the rule of the Comptroller's office that the legal surplus must never be used to pay dividends, although it can, of course, be used to meet losses that undivided profits other than legal surplus are insufficient to meet. Net profits, both in this section and in Section 5199, seem to mean profits other than legal surplus which remain at the end of each six months after deducting all expenses, losses, and bad debts.

Bad Debts.—The definition of bad debts is as plain as can be made of a thing so difficult to define. There is one positive sign, viz., interest past due and unpaid for six months, and two qualifications; that is, even if interest is due and unpaid for six months, they are still not bad debts, if, first, they are well secured, and, second, also in process of collection. The indefiniteness of this definition consists in the difference of opinion which may arise as to security.

§ **120. Enforcing Payment of Capital Stock.**—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. (Rev. Stat. U. S. 5205, as amended by Act June 30, 1876, Ch. 156, Sec. 4; 19 Stat. U. S. 63.)

Procedure to Restore Capital.—Under this section the Comptroller takes the initiatory steps in the proceedings to restore an impaired or unpaid capital stock. He discovers this condition of affairs either through reports made to his office by the banks, or from reports made to him by examiners. After the notice is issued, the matter of making the assessment is in the hands of the directors, but they have no authority to make the assessment themselves. For this purpose it is necessary to call a meeting of the stockholders, and for the stockholders to lay the assessment themselves. (Commercial Bank *v.* Weinhard, 192 U. S., 243; S. C., 41 Oregon, 359; Hulitt *v.* Bell, 85 Fed. Rep., 98.) The assessment is enforceable only by subjecting the stock of the persons refusing to pay, and no action will lie against a stockholder personally. (*Id.*)

Appointment of Receiver.—The Comptroller, however, in his discretion, may appoint a receiver after three months. This, it would seem, makes it a matter of judgment for the directors or others most interested in the bank either to make good the impaired stock of the de-

linquent stockholders and trust to the sale to reimburse themselves, or to let the bank go into a receiver's hands at the end of three months, if the Comptroller should insist on the appointing a receiver.

§ 121. **Banks Not to Pay Out 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 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. (Rev. Stat. U. S. Sec. 5206.)

This section was inserted in the law at a time when there was still a large amount of State bank notes in circulation, and it had reference to these State bank notes as well as to the notes of National banking associations.

§ 122. **Check Not to Be Certified Unless Drawer Has Amount Thereof on Deposit.**—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. (Rev. Stat. U. S. Sec. 5208.)

Liability for Certification.—The bank will be liable upon the certification, though it is made in violation of this section. (Thompson *v.* St. Nicholas National Bank, 146 U. S., 240, S. C., 113 N. Y., 325.) In the case cited the following language of the New York Court of Appeals is quoted with approval by the Supreme Court of the United States:

"It will be seen that the statute affirms the legality of the contract of certification, and expressly prescribes the consequences which shall follow its violation. It therefore appears that, so far from making the contract of certification void and illegal, its validity is expressly affirmed, and the consequences which follow a violation are specially defined, and impliedly limit the penalty incurred to a forfeiture of the bank's charter and the winding up of its affairs. There is a clear implication from this provision that no other consequences are intended to follow a violation of the statute. It would, indeed, defeat the very policy of an act intended to promote the security and strength of the National banking system, if its provisions should be so construed as to inflict a loss upon them, and a consequent impairment of their financial responsibility."

§ **123. 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. (Rev. Stat. U. S. Sec. 5210.)

Blanks for this list are sent to all banks from the Comptroller's office each year, in time to enable the bank to make and send the list.

§ **124. Reports of Banks to Comptroller.**—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, verfied by the oath or affirmation of the president or cashier of such association, and attested by the signatures of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the associations 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 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. (Rev. Stat. U. S. Sec. 5211.)

The blanks for these reports are furnished by the Comptroller of the Currency. The reports must be signed and sworn to by the president or cashier. The vice-president or assistant cashier cannot sign. The attestation of the directors is an attestation of the correctness of the report. The directors are expected to know the condition of their bank. The reports, when made, are abstracted and filed in the Comptroller's office.

§ **125. Reports of Dividends and Net Earnings.**—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. (Rev. Stat. U. S. Sec. 5212)

Full instructions as to making reports of conditions, of dividends and of earnings will be found on page ——.

§ **126. Verification of Returns of National Banks.**—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 said 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. (Act Feb. 26, 1881, Ch. 82; 21 Stat. U. S. 352.)

§ 127. 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 retained 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. (Rev. Stat. U. S. Sec. 5213.)

These penalties for failure or delay in making reports are often enforced.

§ 128. Reports from Savings Banks, etc., in District of Columbia.—All savings banks or savings companies or institutions organized under authority of any act of Congress to do business in the District of Columbia shall be, and are hereby, required to make to the Comptroller of the Currency, and publish, all the reports which National banking associations are required to make and publish under the provisions of Sections 5211, 5212 and 5213 of the Revised Statutes, and shall be subject to the same penalties for failure to make or publish such reports as are therein provided, which penalties may be collected by suit before the supreme court of the District of Columbia. (Act March 3, 1901, Chap. 854, Sec. 713, 31 U. S. Stat., page 1302, as amended by Act June 30, 1902, Chap. 1329, 32 U. S. Stat., page 534.)

§ 129. Stamping Counterfeit Notes.—That all United States officers charged with the receipt or disbursements of public moneys, and all officers of National banks, shall stamp or write in plain letters the word "counterfeit," "altered," or "worthless," upon all fraudulent notes issued in the form of, and intended to circulate as money which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of

the United States, or of the National banks, they shall, upon presentation, redeem such notes at the face value thereof. (Act June 30, 1876, Ch. 156, Sec. 5; 19 Stat. U. S. 63.)

§ **130. Bank Examiners—Duties—Powers, etc.**—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. 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 associations 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. (Rev. Stat. U. S. Sec. 5240.)

EXAMINATIONS.—The examinations mentioned in this section are, as a rule, made about once a year in the case of each National bank. There is no provision as to the number of persons who may be employed as examiners by the Comptroller, or the number of times he may examine each bank within a given period. In practice, the territory of the United States is laid off into districts, which districts are, however, varied from time to time to suit the convenience of the Comptroller's office, or to conform to its views as to the efficiency of the service.

EXAMINERS.—A National-bank examiner receives a regular appointment, and then awaits orders from the Comptroller. He may be assigned to a district, or may be employed at large. An examiner may be employed steadily in one district, or he may be shifted from one district to another. There is no fixed salary. The amount earned each year depends on the number of banks which each examiner has assigned to him for examination. When the reports are received from the examiners they are scrutinized in the Comptroller's office, and if they indicate faults in the management of the banks, letters are addressed usually to the president or cashier calling attention to the points where improvement is necessary; sometimes, in bad cases, the directors are addressed either singly or collectively. The examiners from time to time send in their bill to the Comptroller, who, finding such bills correct, assesses each bank of which examination has been made according to the legal rule. When the money is paid in to the Comptroller by the banks it is sent to the examiner. The examiner has no right to ask a bank for any money in any way, shape, or form. His dealings are with the Comptroller, from whom he receives his directions and to whom he renders his bills.

EXAMINERS' FEES.—Section 5240, U. S. R. S., provides that a certain rate should be assessed against all banks in proportion to their capital in the States *then existing*, excepting from this fixed rate banks located in Oregon, California, Nevada, the Territories and the reserve cities. The fees for examination of banks located in the sections and cities excepted are, under the provisions of the section named, fixed by the Secretary of the Treasury upon the recommendation of the Comptroller of the Currency. The fees named in Section 5240, U. S. R. S., do not apply to banks in States which have been admitted as States since the passage of the law until such States become sufficiently settled to warrant the regular assessment. The special fees for the various localities exempted from the fixed rates

are according to the capital of the bank, and each State or Territory is considered separately according to the distances to be traveled expenses incurred, etc., in covering the entire State or Territory.

§ **131. 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. (Rev. Stat. U. S. Sec. 5241.)

The only visitorial powers mentioned in the act are those mentioned in the preceding section and in Section 5210, which permits officers authorized to assess taxes under State authority to inspect the list of stockholders during business hours. There are, also, the general visitorial powers of the Comptroller of the Currency. The courts of justice have, of course, the same power as they have over other persons or corporations, and subject to the same limitations of jurisdiction. The right of a stockholder of a National bank to inspect its books is a common-law right, and not dependent upon a State statute; and it is not impaired by the provisions of this section. (Harkness *v.* Guthrie (Utah), 75 Pac. Rep., 624.)

§ **132. Other Banks Forbidden to Use Word "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 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 committed or repeated.

The penalty under this section is a general one. If any one has knowledge of a violation of this provision he can lay a complaint before a United States commissioner, or the attention of the United States attorney of the district where the offense has been committed can be called to it. The court will assume that a bank which includes in its title the word "National" is organized under the National Bank Act. (Slaughter *v.* First National Bank of Montgomery, 109 Ala., 157.)

CHAPTER V.

TAXATION.

Section 133. Tax on Circulating Notes—General Provision.
134. Tax on Circulating Notes Secured by Two Per Cent. Bonds.
135. Semi-Annual Return of Circulation.
136. Assessment if Return is Not Made.
137. How Tax May be Collected.
138. Refunding Excess of Duties.
139. Duty on Notes of Insolvent Bank Abated.
140. When Circulating Notes Exempt from Tax.
141. Tax on Notes of State Banks, etc., Used for Circulation.
142. Tax on Notes of Cities, etc., Used for Circulation.
143. Monthly Returns of Notes of State Banks, Cities, etc., Used.
144. In Default of Returns Commissioner to Estimate.
145. Returns for Converted State Bank.
146. Certain Provisions Not to Apply to National Banks.
147. State Taxation of Shares of Stock and Real Estate.
148. State Taxation of National Bank Notes.
149. United States Bonds Exempt from Taxation.
150. Taxation of Banks in District of Columbia.

§ **133. Tax on Circulating Notes—General Provision.**—In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year upon the average amount of its notes in circulation. (Rev. Stat. U. S. Sec. 5214.)

The tax is upon the average amount of notes in circulation—not those held by the bank or in transit between it and the Comptroller's office or notes due from the Treasurer for redemption. The average may be calculated by adding together the amount of circulation outstanding each business day of the semi-annual period, and then dividing by the number of business days. See next Section.

§ 134. Tax on Circulating Notes Secured by Two Per Cent. Bonds.—That every National banking association having on deposit, as provided by law, bonds of the United States bearing interest at the rate of two per centum per annum, issued under the provisions of this Act, 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 said two per centum 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. (Act March 14, 1900, Ch. 41, Sec. 13; 31 Stat. U. S. 49.)

§ 135. Semi-Annual Return of Circulation.—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,† * * * * 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. (Rev. Stat. U. S. Sec. 5215.)

The blanks for these returns are sent to the banks by the Treasurer, and contain full instructions as to the proper manner in which to make these reports. For form and instructions see page 315. The tax on capital stock and deposits having been repealed, no return of the amount thereof is now necessary.

§ 136. Assessment if Return is Not Made.—Whenever any association fails to make the half-yearly return required by the preced-

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† The provisions omitted here required a return of the average amount of capital stock and deposits. These have been rendered obsolete by the repeal of the tax on those items.

ing 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. (Rev. Stat. U. S. Sec. 5216.)

It is best for the bank to make up its own average, as that made by the Treasurer would necessarily include notes of the bank not actually in circulation.

§ 137. **How Tax May Be Collected.**—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. (Rev. Stat. U. S. Sec. 5217.)

§ 138. **Refunding Excess of Duties.**—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. (Rev. Stat. U. S. 5218.)

There is, however, no special appropriation for this purpose. The claim for recovery of excessive taxes paid, if presented and found correct in the manner indicated in this section, is taken into account by the Secretary of the Treasury in making his estimates to Congress. The amount necessary to pay the claim is usually appropriated by Congress, and the claimant will then receive what is due him, by warrant, etc., as stated in the section.

§ 139. **Duty on Notes of Insolvent Bank Abated.**—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

*In this compilation, this comprises the *four* preceding Sections.

such National banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall so appear to him, is authorized to remit so much of said tax against insolvent State and savings banks as shall be found to affect the claims of their depositors. (Act March 1, 1879, Ch. 125, Sec. 22; 20 Stat. U. S. 351.)

Johnson *v.* United States, 17 Court of Claims Reports, 157.

§ **140. When Circulating Notes Exempt from Tax.**—Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation, deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation. (Rev. Stat. U. S. Sec. 3411.)

This section refers to State as well as National banks. State bank circulation has now been mostly if not entirely retired, and National banks ceasing to issue circulating notes generally deposit lawful money.

§ **141. Tax on Notes of State Banks, etc., Used for Circulation.**—Every National banking association, State bank, or State banking association shall pay a tax of ten per centum on the amount of notes of any person, or of any State bank, or State banking association, used for circulation and paid out by them. (Rev. Stat. U. S. Sec. 3412.)

§ **142. Tax on Notes of Cities, etc., Used for Circulation.**—Every National banking association, State bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city, or municipal corporation, paid out by them. (Rev. Stat. U. S. Sec. 3413.)

§ **143. Monthly Returns of Notes of State Banks, Cities, etc., Used.**—A true and complete return of the monthly amount of circulation, of deposits, and of capital, as aforesaid, and of the

monthly amount of notes of persons, town, city, or municipal corporations, State banks, or State banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June, by each of such banks, associations, corporations, companies, or persons with a declaration annexed thereto under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue. (Rev. Stat. U. S. Sec. 3414.)

It is believed that no notes of the description mentioned are now issued.

§ **144. In Default of Returns, Commissioner to Estimate.**—In default of the returns provided in the preceding section, the amount of circulation, deposit, capital, and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment, any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred dollars, besides the additional penalty and forfeitures provided in other cases. (Rev. Stat. U. S. Sec. 3415.)

§ **145. Returns for Converted State Bank.**—Whenever any State bank or banking association has been converted into a National banking association, and such National banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such National banking association shall be held to make the required return and payment on the circulation

outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association. (Rev. Stat. U. S. Sec. 3416.)

There are now no cases under this section.

§ 146. Certain Provisions Not to Apply to National Banks.—The provisions of this chapter, relating to the tax on the deposits, capital, and circulation of banks, and to their returns, except as contained in sections thirty-four hundred and ten, thirty-four hundred and eleven, thirty-four hundred and twelve, thirty-four hundred and thirteen, and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of Title, "NATIONAL BANKS." (Rev Stat. U. S. Sec. 3417.)

The constitutionality of the taxes imposed by the preceding sections has been sustained by the Supreme Court of the United States. (Veazie Bank *v.* Fenno, 8 Wallace, 533; Merchants' National Bank *v.* United States, 101 U. S., 1.) In Veazie Bank *v.* Fenno it was said: "Having thus in the exercise of undisputed constitutional powers undertaken to provide a currency for the whole country, it can not be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile." These taxes are not direct taxes. (See cases cited above.)

§ 147. State Taxation of Shares of Stock and Real Estate.—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 taxa-

tion 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 non-residents 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. (Rev. Stat. U. S. Sec. 5219.)

TAXES AUTHORIZED BY THIS SECTION EXCLUSIVE.—The taxes which the States are authorized by this section to impose are exclusive, and the National banks are not liable to any other tax imposed under State authority. (National State Bank of Oskaloosa *v.* Young, 25 Iowa, 311.) And the provision in Section 5214, Rev. Stat. U. S., "in lieu of all existing taxes," includes all State, county and municipal taxes. (*Id.*)

TAXES UPON THE SHARES—DIFFERENCE BETWEEN SHARES AND CAPITAL STOCK.—The personal property of a National bank can not be directly assessed for taxation by State authority. (City and County of San Francisco *v.* Crocker-Woolworth National Bank, 92 Fed. Rep., 273.) The taxes which the States are authorized to impose are taxes upon the shares of stock in the hands of the stockholders. Such taxes are not the same as taxes upon the capital of the bank. (Van Allen *v.* The Assessors, 3 Wall., 573.) "The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares, and, upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the act of Congress has left subject to taxation by the States, under the limitations prescribed." (*Id.*) Where new shares are issued they can not be taxed until the increase is approved by the Comptroller of the Currency. (Charleston *v.* People's National Bank, 5 S. C., 103.) The shares are taxable without regard to their ownership, and where a National bank owns stock in another National bank, it may be taxed thereon. (Bank of Redemption *v.* Boston, 126 U. S., 60.)

TO WHOM ASSESSED.—As the tax can be only on the shares they must be assessed to the shareholders in their names, and not in the name of the bank. (Miller *v.* First National Bank of Cincinnati, 46 Ohio St., 424.) And an assessment of the capital stock as the personal property

of the bank without mention of the shareholders is void. (Farmers' and Traders' National Bank *v.* Hoffman, 93 Iowa, 119.) And the shares cannot be assessed *in solido* against the bank. (First National Bank of Leoti *v.* Fisher, 45 Kan., 726; National Bank of Virginia *v.* City of Richmond, 42 Fed. Rep., 877; Citizens' Bank of Louisiana *v.* Board of Assessors, 52 Fed. Rep., 73; Whitney National Bank *v.* Parker, 41 Fed. Rep., 402. But see First National Bank of Aberdeen *v.* Chehalis County, 6 Wash., 64.) But, as we shall see hereafter, the bank may be required to pay the tax for its shareholders.

MEANING OF THE TERM "MONEYED CAPITAL."—The provision that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens is to be construed in the light of the purpose and object of Congress. The main purpose was to render impossible for the States, in levying taxes, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business, and operations and investments of a like character. The meaning of the term "moneyed capital" must, therefore, be limited to such capital as comes into competition with the National banks. It "includes shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by the use of money. The money capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property. * * * But 'moneyed capital' does not mean all capital the value of which is measured in terms of money. In this sense, all kinds of real and personal property would be embraced by it, for they all have an estimated value as the subjects of sale. Neither does it necessarily include all forms of investment in which the interest of the owner is expressed in money. Shares of stock in railroad companies, mining companies, manufacturing companies, and other corporations, are represented by certificates showing that the owner is entitled to interest, expressed in money value, in the entire capital and property of the corporation, but the property of the corporation which constitutes its invested capital may consist mainly of real and personal property, which, in the hands of individuals, no one would think of calling moneyed capital, and its business may not consist in any kind of dealing in money, or commercial representative of money. So far as the policy of the Government in reference to National banks is concerned, it is indifferent how the State may choose to tax such corporations as those just mentioned, or the interest of individuals in them, or whether they should be taxed at all. Whether property interests in railroads, in

manufacturing enterprises, in mining investments, and others of that description are taxed or exempt from taxation in the contemplation of the law, would have no effect upon the success of National banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money, where the banks are banks of issue, in receiving deposits payable on demand, in discounting commercial paper, making loans of money on collateral security, buying and selling bills of exchange, negotiating loans, and dealing in negotiable securities issued by the Government, State, National and municipal and other corporations. These are the operations in which the capital invested in National banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of National banks, and capital thus employed is what is intended to be described by the act of Congress." (Mercantile National Bank *v.* New York, 121 U. S., 138; Talbott *v.* Silver Bow County, 139 U. S., 438; Palmer *v.* McMahon, 133 U. S., 660; Bank of Redemption *v.* Boston, 125 U. S., 60; First National Bank *v.* Chapman, 173 U. S., 205; Commercial National Bank *v.* Chambers, 182 U. S., 556.)

Accordingly, it has been held by the United States Supreme Court that the exemption from taxation of shares of stock in corporations, the business of which does not come into competition with that of the National banks, is not a discrimination against National banks within the intendment of the law; and that the fact that a less rate of tax, or no tax at all, is imposed upon such corporations as railroad companies, manufacturing companies, mining companies, and insurance companies does not invalidate the tax upon National-bank stock. (Mercantile National Bank *v.* New York, 121 U. S., 138.) And in a recent case in the Supreme Court it was held that the powers conferred upon Trust Companies by the laws of New York do not call for any limitation of the decision in Mercantile National Bank *v.* New York; and such institutions are not in any proper sense banking institutions within the intendment of this section. (Jenkins *v.* Neff, 186 U. S., 230; S. C., 163 N. Y., 320.)

And a tax upon National-bank stock is not void, even though the State statute exempts from taxation the stock of many corporations the entire capital of which is invested in assessable property in the State, and though some of the property of such corporations, not moneyed capital, is not assessed at all, or at a lower rate than bank stock. (Talbott *v.* Silver Bow County, 139 U. S., 441.)

WHAT IS MEANT BY "GREATER RATE."—Any system of assessment of taxes which exacts from the owner of the shares of a National bank

a larger sum in proportion to the actual value of those shares than it does from other moneyed capital, valued in like manner, taxes the shares at a greater rate, notwithstanding that the percentage of tax on the valuation is the same as that applied to other moneyed capital. (Pelton *v.* Commercial National Bank, 101 U. S., 143; see also Whitbeck *v.* Mercantile Bank, 127 U. S., 193.) But where there is no discrimination against National bank stock in favor of other personal property, the fact that the assessment for taxation upon personal estate is at a higher ratio of valuation than upon real estate is no ground for the intervention of a court of equity at the instance of a National bank. (Mercantile National Bank *v.* Mayor, 172 N. Y., 35.)

Valuation of Shares.—In estimating the value of the shares, all the property and assets of the bank may be taken into consideration unless such property is taxed separately. (St. Louis National Bank *v.* Papin, 3 Cent. L. J., 669; 1 Nat. Bank Cas., 326; Stafford National Bank *v.* Davis, 59 N. H., 38.) And it has been held that where shares are taxed at their par value, the surplus fund may be taxed separately if it is not invested in Federal securities. (First National Bank *v.* Peterborough, 56 N. H., 38; North Ward National Bank *v.* City of Newark, 39 N. J. Law, 380. But see National State Bank *v.* Young, 25 Iowa, 311; County Commissioners *v.* Farmers' and Mechanics' National Bank, 48 Md., 117). If the shares are assessed at their actual cash value without any deduction for real estate, the latter should not be taxed separately. (Commissioners of Rice County *v.* Citizens' National Bank of Faribault, 23 Minn., 280.) As the tax is upon the shares and not upon the capital stock, it is not necessary that any deduction should be made for that portion of the capital which is invested in United States bonds or other non-taxable securities. (Van Allen *v.* The Assessors, 3 Wall., 573; Mechanics' National Bank *v.* Baker, 65 N. J. Law, 113.)

In fixing the actual value of shares of bank stock for the purpose of taxation, the real estate of the bank is to be taken at its actual value, notwithstanding it is assessed at a lower valuation. (Jenkins *v.* Neff, 163 N. Y., 320.) Under the statutes of Indiana the real estate owned by a National bank is not to be included in the valuation of the shares of stock for purposes of taxation. (Board of Commissioners of Morgan County *v.* First National Bank, 57 N. E. Rep., 728.) But where the real estate has been so included, and the bank has also paid a tax upon the real estate as such, the latter tax can not be recovered by the bank; for the wrong done was in the over-valuation of the stock, and not in the assessment of the real estate to the bank. (*Id.*) As to the rule in New Jersey, see Bank *v.* Williams (58 N. J. Law, 45), Mechanics' National Bank *v.* Baker (65 N. J. Law, 113).

Exemptions.—In Adams *v.* Nashville (95 U. S., 19) it was said by the Supreme Court, "the act of Congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in National banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so." Accordingly, it has been held by that court that a partial exemption of other moneyed capital will not deprive the State of the power to levy a tax on National bank stock. (Hepburn *v.* School Directors, 23 Wall., 480; see also Washington National Bank *v.* King County, 9 Wash., 607.) Thus bonds issued by a State, or under its authority, by its public municipal bodies, although they undoubtedly represent moneyed capital, may be exempted without this effect, since they are not ordinarily the subject of taxation. (Mercantile Bank *v.* New York, 121 U. S., 138.) So the State may exempt savings-bank deposits (*Id.*), or the credits of individuals such as accounts, promissory notes, and mortgages. (First National Bank *v.* Chehalis Co., 6 Wash., 64.) But all exemptions must be founded upon just reason, and not operate as an unfriendly discrimination against investments in National bank shares. (*Id.*) Where the exemptions in favor of other moneyed capital are so palpable as to show that there is a serious discrimination against capital invested in the shares of National banks, the tax upon such shares will be declared invalid. (Boyer *v.* Boyer, 113 U. S., 690.) And where a tax is imposed on the market value of the shares of a National bank without allowance of any deduction for the non-taxable securities and specifically taxed property held by the bank, and where it is also so assessed that the owners of shares thus taxed are deprived of the privilege allowed other moneyed capitalists of deducting from the amount of securities held by them the amount of bonds, securities, liquidated claims and demands due from them respectively to others, such a tax violates the provisions of the Statutes of the United States, and is void. (The First National Bank of Richmond *v.* The City of Richmond, 39 Fed. Rep., 389.) If in the practical execution of a State tax law it is found impracticable to list more than a small portion of the property subject to taxation, other than National bank shares, the National banks may demand such forms of relief as will protect the shareholders from paying a greater rate of taxation than is imposed on individual citizens. (First National Bank *v.* Lindsay, 45 Fed. Rep., 619.)

Deductions.—Stockholders of the National banks must be allowed the same deductions from the assessment against them upon their shares of stock that are allowed to the other taxpayers in the State on their moneyed capital. (People *v.* Weaver, 100 U. S., 539, reversing S. C., 67 N. Y., 516, and overruling People *v.* Dolan, 36 N. Y., 59.) And if the owners of other moneyed capital are permitted to deduct from the

assessed value thereof the amount of debts which they owe, the same privilege must be allowed to the holders of National bank stock. (People *v.* Weaver, 100 U. S., 539; Britton *v.* Evansville National Bank, 105 U. S., 322; Supervisors *v.* Stanley, 105 U. S., 305; First National Bank of Leoti *v.* Fisher, 45 Kans., 726; Mercantile National Bank *v.* Shields, 59 Fed. Rep., 952.) And the mode of assessment must be such that these deductions can be made; and, therefore, an assessment of all the shares against the bank *in solido* which would preclude such deductions, would be void. (First National Bank *v.* City of Richmond, 39 Fed. Rep., 309.) But it is immaterial that such deductions are allowed to holders of stock in railroad, insurance and manufacturing corporations, since such stock is not regarded as "moneyed capital." (Mercantile National Bank *v.* Shields, 59 Fed. Rep., 952.) Non-resident stockholders are entitled to the same deductions as resident stockholders. (*Id.;* Town of Farmington *v.* Downing, 67 N. H., 441.) Where the laws of a State require National bank shares to be assessed for taxation at their real value, it is not a discrimination against these banks that private banks are permitted to deduct the amount of their deposits from their taxable assets, and this privilege is withheld from National banks, for the general deposits are debts against the bank, and the real value of the shares depends upon the value of the bank's franchise, capital and property of all kinds, less the amount of its debts. (Engelke *v.* Schlender, 75 Tex., 559.) Under the statutes of Virginia a stockholder in a National bank is not entitled to have his indebtedness deducted from the value of his stock before it is assessed for taxation. (Burrows *v.* Smith, 95 Va., 694.)

NON-TAXABLE PROPERTY.—The intention of Congress was that the rate of taxation should be the same as, or not greater than, the tax upon moneyed capital, which is subject and liable to taxation, and which the State has the capacity to tax. (People *v.* Commissioners, 4 Wall., 241; Lionberger *v.* Rouse, 9 Wall., 468.) It is, therefore, no ground of objection to the validity of a tax on National bank stock that, while deductions are made from the personal estates of individuals and the capital of State corporations for the Government bonds owned by them, no such deduction is made on account of the capital of National banks invested in such bonds, or that private bankers are allowed to deduct legal tender notes, and no deduction is allowed for such notes held by National banks. (Adair *v.* Robinson, 6 Tex., Civ. App., 275; People *v.* Commissioners, *supra.*) And where a State had previously contracted with the banks, which it had chartered, that they should not be taxed above a certain rate, it was held by the Supreme Court that a tax on National bank stock at a greater rate is not invalid, if this rate is not greater than that assessed upon all moneyed capital within the State, except that of the State banks. (Lionberger *v.* Rouse, 9 Wall., 468.)

Real Estate in Other States.—The National Bank Act does not require that real estate situated outside of the State in which the bank is located shall be excluded in estimating the value of the shares for purposes of taxation. (Commercial National Bank *v.* Chambers, 182 U. S., 556.)

Mode in Which State Banks Must Be Taxed.—Where the State banks are taxed upon the capital, no tax can be imposed upon the shares of National banks, for as the capital of the State banks may consist of bonds of the United States which are exempt from taxation, a tax on capital is not equivalent to a tax on shares. (Van Allen *v.* The Assessors, 3 Wall., 573; Bradley *v.* The People, 4 Wall., 459.) But though the tax upon the State banks is not *eo nomine* a tax on shares, yet if it is equivalent to such a tax, the shares in the National banks located in that State may be taxed. (Frazer *v.* Seibern, 16 Ohio St., 614; Van Slyke *v.* State, 26 Wis., 655; Boynoll *v.* State, 25 Wis., 112.) But Congress meant no more than to require of the States, as a condition to the exercise of the power to tax the shares in National banks, that they should, as far as they had the capacity, tax in like manner the shares of banks of their own creation. (Lionberger *v.* Rouse, 9 Wall., 468.) Therefore, where a State has previousely contracted with the banks which it has chartered that they should not be taxed above a certain rate, a tax upon National bank shares at a greater rate is not invalid, if this rate is not greater than that assessed upon all the moneyed capital within the State, except that of the State banks. (*Id.*; City of Richmond *v.* Scott, 48 Ind., 568.)

State Constitution.—The taxation upon National bank shares by States must be characterized by such equality and uniformity as is required by the State constitution for the protection of individual citizens having moneyed capital. (First National Bank *v.* Lindsay, 45 Fed. Rep., 619.) National and State banks in Kentucky are subject to county and municipal taxation. (Deposit Bank of Owensboro *v.* Daviess County, 102 Ky., 174.) And the acceptance by the banks of the act known as the "Hewitt Law" does not preclude the State from subjecting them to other modes of taxation. (*Id.*)

Taxation by Territories.—Although the word "territory" is not mentioned specifically in the statute, the Territories have the same power of taxation of National banks that the States have. (Talbott *v.* Silver Bow Co., 139 U. S., 441.)

Insolvent National Bank.—The personal property of an insolvent National bank in the hands of a receiver appointed by the Comptroller of the Currency is exempt from taxation under State laws. (Rosenblatt *v.* Johnston, 104 U. S., 462; see Woodward *v.* Ellsworth, 4 Colo.,

580.) And where a National bank has become insolvent and the property representing the capital stock has been swept away, no tax on the shares can be collected from the receiver under a statute requiring a tax to be paid by the bank. (City of Boston *v.* Beal, 55 Fed. Rep., 26; S. C., 51 Fed. Rep., 306.)

State Bank Converted into National Bank.—While a State bank is changing to a National bank, and before the requirements of the State statute are fully complied with, it is subject to State taxation. (Commonwealth *v.* Manufacturers' and Mechanics' Bank of Philadelphia, 2 Pearson's Decisions, 386; 2 Nat. Bank Cas., 459.)

Branch Bank.—A National bank located in New Jersey, for the convenience of persons in Philadelphia, kept a clerk in that city who received deposits: *Held,* That the bank did not become located in Philadelphia so as to be liable to taxation. (National State Bank of Camden *v.* Pierce, 18 Albany Law Journal, 16; 2 Nat. Bank Cas., 177.)

Report to Comptroller Not Evidence of Value of Shares.—The written report of the officers of a National bank to the Comptroller of the Currency, made pursuant to Section 5211, Rev. St. U. S., does not purport to give the actual or estimated value of the bank's property, and is incompetent, alone, as a basis from which to deduce the actual value of the bank's stock. (Patterson *v.* Plummer, 10 N. D., 95.)

License Tax—Tax on Circulating Notes.—Neither the State nor its municipalities can impose a license or privilege tax upon the National banks. (Mayor *v.* First National Bank, 59 Ga., 648; City of Carthage *v.* First National Bank, 71 Mo., 508; National Bank of Chattanooga *v.* Mayor, 8 Heiskell (Tenn.), 814.) As to whether the States could tax the circulating notes of the National banks the decisions were in conflict. In North Carolina (Lilly *v.* Board of Commissioners, 69 N. C., 300; Ruffin *v.* Board of Commissioners, 69 N. C., 498) and Indiana (Board of Commissioners *v.* Elston, 32 Ind., 37) it was held that such a tax was invalid, while in Mississippi the contrary was held. (Horne *v.* Greene, 52 Miss., 452.) But now by the act of Congress approved August 13, 1894, such tax is expressly authorized. See next section.

Collection of Taxes.—While the tax is upon the shares it is usually collected from the banks, they paying for their shareholders. The right of the States to collect the tax in this manner has been sustained by the United States Supreme Court. (National Bank *v.* Commonwealth, 9 Wall., 353.) But the bank is not absolutely liable for the tax upon the shares; to render it liable it must be shown to have, or have had, dividends or other property belonging to the shareholders.

(Farmers' and Traders' National Bank *v.* Hoffman, 93 Iowa, 191; see, also, Hershire *v.* First National Bank, 35 Iowa, 272. But see First National Bank *v.* Douglas County, 3 Dill., 330.) A State may require the officers of National banks located within its territory to transmit lists of its stockholders to the taxing officers of the various towns and villages in which the stockholders who are residents reside. (Waite *v.* Dowly, 94 U. S., 527. But see First National Bank of Youngstown *v.* Hughes, 2 Nat. Bank Cas., 176.) And State courts have jurisdiction to compel the officers of National banks by mandamus to exhibit to the county assessors the list of the shareholders in their banks; and to this end it is not necessary the statute should be supplemented by State legislation. (Paul *v.* McGrau, 3 Wash. St., 296.) Where a National bank has become insolvent and the property representing the capital stock has been swept away, no tax on the shares can be collected from the receiver under a statute requiring the tax to be paid by the bank. (City of Boston *v.* Beal, 51 Fed. Rep., 306; S. C., 55 Fed. Rep., 26.)

Agreement of Bank to Pay Taxes.—An agreement by a National bank to pay taxes on its stock to it, and assessed at the time against the sellers, in consideration of being allowed to retain the dividends and surplus, is not illegal, although the taxes are not properly assessed. (Lull *v.* Anamosa National Bank, 110 Iowa, 537.)

Remedy for Illegal Taxation.—If the tax is for any reason illegal the bank may, on behalf of its stockholders, maintain a suit to enjoin the collection thereof. (Cummings *v.* National Bank, 101 U. S., 153; Hills *v.* Exchange Bank, 105 U. S., 319; Pelton *v.* Commercial National Bank, 101 U. S., 143; Boyer *v.* Boyer, 113 U. S., 143; Third National Bank *v.* Hughes, 76 Fed. Rep., 385.) But two banks against the stock of which separate assessments have been made can not join in such a suit. (Jones *v.* Rushville National Bank, 138 Ind., 87.) And where there is a statutory tribunal empowered to grant full relief in such cases, an injunction will not be issued until application shall have first been made to such tribunal. (Albuquerque National Bank *v.* Perea, 147 U. S., 87; First National Bank *v.* Bailey, 15 Mont., 301. See Eaton *v.* Union County National Bank, 141 Ind., 136; Castles *v.* City of New Orleans, 46 La. Ann., 542; First National Bank *v.* Brodhecker, 137 Ind., 693.) And where a National bank seeks an injunction to restrain the collection of a tax on the ground of excessive valuation of its shares, the sum admitted to be due must be first paid or tendered. (Albuquerque National Bank *v.* Perea, 147 U. S., 87.) A court of equity has jurisdiction to restrain the sale of the property of the bank for taxes assessed upon the stock of its shareholders. (Brown *v.* French, 80 Fed. Rep., 166.) And an action for this purpose may be maintained by the Receiver of an insolvent National bank. (*Id.*)

PLEADING.—To make a case entitling a National bank to relief, it must be shown that there is a discrimination in favor of some considerble amount of other moneyed capital. (Washington National Bank *v.* King's County, 9 Wash., 607.) The classes of unassessed moneyed capital must be stated with succinct particularity to enable the court to judge whether they belong to the class contemplated by the statute. (*Id.*) An allegation, "all the moneyed capital in the State owned by resident individual citizens, and invested as aforesaid in interest-bearing loans, discounts and securities, except that owned by and invested in incorporated banks located in this State" is too general a description of the capital in favor of which there is discrimination. (*Id.*)

§ **148. State Taxation of National Bank Notes.**—That circulating notes of National banking associations and United States legal-tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver, or other coin shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory: *Provided,* That any such taxation shall be exercised in the same manner and at the same rate that any such State or Territory shall tax money or currency circulating as money within its jurisdiction.

That the provisions of this act shall not be deemed or held to change existing laws in respect of the taxation of National banking associations. (Act August 13, 1894, Ch. 281, Secs. 1 and 2, 28 Stat. U. S., 278.)

This does not apply to the bank issuing the notes, but to the holders thereof.

§ **149. United States Bonds Exempt from Taxation.**—All stocks, bonds, Treasury notes, and other obligations of the United States shall be exempt from taxation by or under State or municipal or local authority. (Rev. Stat. U. S. Sec. 3701.)

So far as this section prohibits State taxation of legal-tender notes it was repealed by Act August 13, 1894. (See preceding section.)

§ **150. Taxation of Banks in District of Columbia.**—Each National bank located in the District of Columbia, as trustee for its stockholders, is required, through its president or cashier, to make

affidavit to the board of personal tax appraisers on or before the first day of August in each year as to the amount of its gross earnings for the year ended the 30th of June preceding, and to pay a tax thereon at the rate of six per cent. per annum. The real estate owned by such bank is taxed as other real estate in the District. (Act July 1, 1902; 32 U. S. Stat., 619.)

CHAPTER VI.

DISSOLUTION AND RECEIVERSHIP.

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§ **151. Voluntary Liquidation.**—Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock. (Rev. Stat. U. S. Sec. 5220.)

SHAREHOLDERS' POWER UNDER THIS SECTION.—Shareholders owning two-thirds of the stock have it in their power to place the bank in liquidation at any time, and so it would appear that the Comptroller's consent is not necessary; but as such vote does not debar the Comptroller from passing upon the bank's solvency and appointing a Receiver if insolvent, he should be promptly informed of the intention to go into voluntary liquidation.

Shareholders' Meeting.—The action must be taken at a meeting of stockholders duly assembled. (See note to Section 28.) The notice of meeting should clearly indicate the business to be transacted. The vote in favor of the liquidation must represent two-thirds of *all* the stock. But shareholders owning two-thirds of the stock may place the bank in liquidation, though this may be contrary to the wishes, and against the interests, of the owners of the minority of the stock. (Watkins *v.* National Bank of Lawrence, 51 Kans., 254.)

A person who, with full knowledge of all the steps taken in placing a bank in liquidation, receives and retains a dividend paid by the officers in control of the liquidating bank, will not be heard to deny the validity of the liquidation. (*Id.* See also First National Bank of Centralia *v.* Marshall, 26 Ill. App., 440.)

New Contracts.—After a National bank has been placed in liquidation, its officers have no authority to transact any business in its name, except such as is implied in the duty of winding up its affairs. (Richmond *v.* Irons, 121 U. S., 27; Schroder *v.* Manufacturers' National Bank of Chicago, 133 U. S., 67; Elwood *v.* First National Bank, 41 Kans., 475; Moss *v.* Whitzel, 108 Fed. Rep., 579.) Creditors who, after the bank has suspended payment and gone into liquidation, receive in settlement of their claims bills receivable, indorsed or guaranteed in the name of the bank by its President, can not claim as creditors against the shareholders, as the original debt is paid. (Elwood *v.* First National Bank, *supra.*)

Right of Stockholders to Inspect Books.—The stockholders of a National bank in process of liquidation may in a proper case by writ of mandamus require the officers and directors to exhibit to them the books, papers and assets of the bank, and permit them to examine the same. (Matter of Tuttle *v.* Iron National Bank, 170 N. Y., 9.)

Corporate Existence.—The placing of the bank in liquidation does not dissolve it as a corporation; but it will continue to exist as a body corporate for the purpose of suing and being sued until its affairs are finally closed. (National Bank *v.* Insurance Company, 104 U. S., 54; Ordway *v.* Central National Bank, 47 Md., 217. But see Hodgson *v.* McKinstry, 3 Kans. App., 412.)

Receiver.—Where the bank is insolvent the Comptroller of the Currency may appoint a receiver therefor, notwithstanding the stockholders have voted to place the bank in liquidation. (Washington National Bank of Tacoma *v.* Eckels, 57 Fed Rep., 870.) And a court of competent jurisdiction may appoint a receiver for a liquidating bank, where the bank is insolvent, or its affairs are being mismanaged. (Irons *v.* Manufacturers' National Bank, 6 Biss., 301; Elwood *v.* First

National Bank, 41 Kans., 475). But the appointment of a receiver by a court rests largely within the discretion of the court, and before it will take the property and business of a liquidating bank from the control of the directors into its own hands, it must appear that the danger of loss or injury to the rights of the plaintiff is clearly proved, and the necessity and right for the appointment of a receiver free from reasonable doubt. (Watkins *v.* National Bank of Lawrence, 51 Kans., 254.)

Liquidating Bank as Garnishee.—The right of a creditor of a depositor to make the bank a garnishee is not affected by the fact that the bank has gone into voluntary liquidation. (Birmingham National Bank *v.* Mayer, 104 Ala., 634.)

Dividends.—Liquidation dividends of a National bank belong to the holder of shares, whether those shares be recorded upon the books of the bank or not, and must be paid to the holder of such shares on demand. The negotiability or transferable character of the stock of a National bank depends upon the laws of the United States, and is not affected by State laws. (Bath Savings Institution *v.* Sagadahoc National Bank, 89 Maine, 500.)

Liquidation for Purpose of Consolidation.—The best plan, if two banks desire to consolidate, is to increase (see Section 5142) the capital of No. 1 to the extent necessary to equal the stock of both; put No. 2 in liquidation in the regular way, and sell out its assets to No. 1, paying for them in the increased stock to be distributed among stockholders of No. 2. The circulation of No. 2 being provided for by a deposit of lawful money, its bonds can be transferred to account of No. 1, which last will receive circulation thereon. The whole transaction in regard to circulation need not occupy over ten days. The lawful money can doubtless be borrowed for the necessary time.

For full information as to placing a bank in liquidation see page 246.

§ 152. Notice of Intention to Go into 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 the 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. (Rev. Stat. U. S. Sec. 5221.)

DATE OF LIQUIDATION.—The liquidation takes effect on the date of the vote and not on the receipt of the notice by the Comptroller, or it may take effect on some future date if so voted and reported to the Comptroller. Thus two-thirds may vote to liquidate; the vote may be taken on the third of the month; the notice may be sent on the sixth, and be received by the Comptroller on the ninth. The books of the Comptroller's office will place the association in liquidation on the third, but if the vote be taken on the third to commence to liquidate the association on the twentieth, then the Comptroller will note the liquidation as of that date.

NOTICE, ETC.—Blanks for certifying the notice to the Comptroller of the Currency are furnished by that office, and can be obtained on application there; also form to be used in making the publication required by the section. (See forms, page 247.)

Insertion of notice in a weekly paper or in the weekly issue of a daily in New York and at home, is regarded as fulfilling the requirements of the law. The notice should appear in each weekly issue of the paper within the two months from the date of the first issue in which the notice appears.

PROCESS OF LIQUIDATION.—Associations in voluntary liquidation retain their corporate existence, and can sue or be sued until their affairs are finally liquidated. The process of liquidation may be conducted by the directors and officers of the bank, or the directors may appoint a committee from their own number for the purpose. In any event it is better to keep up the board of directors by regular annual elections until the liquidation is complete. The usual course is to pay depositors in full, and then, as funds are realized from assets, pay pro rata dividends to stockholders. Usually there is a residue of deposits which are not called for. Before dividends are paid to stockholders funds to meet this residue if called for should be set aside.

§ 153. Mode of Enforcing Stockholders' Liability.—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. (Act June 30, 1876, Ch. 156, Sec. 2; 19 Stat. U. S. 63.)

The only authorized procedure for enforcing the individual liability of the shareholders of a National bank which has gone into voluntary liquidation is by a bill in equity in the nature of a creditor's bill, brought by a creditor "on behalf of himself and of all other creditors of the association." (Williamson *v.* American Bank, 109 Fed., 36; 115 Fed. Rep., 793.)

§ 154. Appointment of Receiver for Failure of Bank to Pay its Notes.—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. (Rev. Stat. U. S. Sec. 5234.)

§ 155. Appointment of Receiver Where Franchises Forfeited—in Cases of Insolvency.—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. (Act. June 30, 1876, Ch. 156, Sec. 1; 19 Stat. U. S. 63.)

This section is not unconstitutional. (Bushnell *v.* Leland, 164 U. S., 684.)

Decision of Comptroller.—Formerly, when a bank became insolvent, it was necessary, before the Comptroller could appoint a receiver, that one of the notes of the bank should be presented and protested for nonpayment; but by the act of June 30, 1876, it was provided that a receiver might be appointed whenever the Comptroller shall become satisfied of the insolvency of the bank.

And it has been held under this act that the decision of the Comptroller that the bank is insolvent is final, and is not reviewable by the courts (Washington National Bank *v.* Eckels, 57 Fed. Rep., 870.) Nor is the Comptroller's power in this respect limited by the authority given to the stockholders under Rev. Stat. U. S., Sec. 5220, to place the bank in liquidation (*Id.*); nor by the act of 1876, authorizing the appointment of an "agent" for the stockholders. (*Id.*)

Evidence.—In making the appointment the Comptroller is not required to have strictly legal evidence of the facts upon which he bases his action; but he is left to be satisfied as best he can be, under the peculiar circumstances of each case, of the facts and the necessity for his action. (Platt *v.* Beebe, 57 N. Y., 339.)

Removal of Receiver.—The receiver appointed by the Comptroller may be removed by him at any time. (Kennedy *v.* Gibson, 18 Wallace, 505.)

Jurisdiction of Courts to Appoint Receiver.—It has been held in several cases that the power of the Comptroller to appoint a receiver is not exclusive, and that a court of equity of competent jurisdiction may direct a receivership where, according to the rules of equity, it may do so in the case of other corporations. (Irons *v.* Manufacturers' National Bank, 6 Bissell, 301; Wright *v.* Merchants' National Bank, 1 Flippin, 561; King *v.* Pomeroy, 121 Fed. Rep., 287; 58 C. C. A., 209.) A receiver so appointed may enforce the individual liability of the stockholders for the debts of the bank. (King *v.* Pomeroy, 121 Fed. Rep., 287; 58 C. C. A., 209.) That a receiver may be appointed in a proper case by a Federal court for a bank which has gone into voluntary liquidation, there is no question. (Irons *v.* Manufacturers' National Bank, *supra;* Richmond *v.* Irons, 121 U. S., 27.) The expenses of such a receiver can not, however, be charged to the stockholders as a part of their statutory liability. (Richmond *v.* Irons, *supra.*)

Proof of Insolvency.—The return of an execution unsatisfied is proof of the insolvency of the bank. (Wheelock *v.* Kost, 77 Ill., 296.)

Effect of Appointment of Receiver.—The failure of a bank and the seizure by the Comptroller of the Currency ends the exercise of volition by the officers of the bank, suspends the payment of checks, matures all demand notes held by the bank, and applies to the payment of such notes, all balance on the books of the bank, standing to the credit of the makers of the notes. (Park National Bank of Chicago *v.* Niblack, 67 Ill. App., 583.) But the appointment of a receiver for a National bank by the Comptroller of the Currency does not operate to dissolve the corporation. (Chemical National Bank *v.* Hartford Deposit Company, 161 U. S., 1; Bank of Bethel *v.* Pahquioque Bank, 14 Wall., 383; Chemical National Bank *v.* Hartford Deposit Company, 156 Ill., 522.) And after passing into the hands of a receiver, a National bank remains liable through the remainder of the term, for accrued and accruing rent under a lease of premises occupied by it, although the receiver may have abandoned and surrendered them. (Chemical National Bank *v.* Hartford Deposit Company, 161 U. S., 1.) But if the lessor in the exercise of a power conferred by the lease re-enters and re-lets the premises, the liability of the bank thus re-letting is limited to the rent then accrued and unpaid, and the diminution, if any, in the rent for the remainder of the term, after the re-letting. (*Id.*)

Presentment of Paper.—Where a National bank has been placed in the hands of a receiver paper payable at the bank should be presented at the office of the Receiver. (Hutchison *v.* Crutcher, 98 Tenn., 421.) Presentment at the office of the receiver is not excused because the receiver has removed his office and the assets of the bank to another building in the same place. (*Id.*) Where a bank examiner is in charge the paper should be presented to him. (Auten *v.* Manistee National Bank, 67 Ark., 243.)

Bankruptcy Law Does Not Apply.—Insolvent National banks can be wound up only in the mode provided by the National-bank act; and it was held that the bankrupt act had no application to them. (*In re* Manufacturers' National Bank, 5 Bissell, 499.)

Questioning Validity of Appointment.—The legality of the appointment of a receiver can not be inquired into by the debtors or stockholders of the bank when sued by him; as to them, the action of the Comptroller in making the appointment is conclusive until set aside on the application of the bank. (Cadle *v.* Baker, 20 Wallace, 650; Peters *v.* Foster, 56 Hun., 607; Young *v.* Wempke, 46 Fed. Rep., 354.)

Supervisory Power of Comptroller.—The receiver is the instrument of the Comptroller, and is subject to the general direction of that officer. (Kennedy *v.* Gibson, 8 Wallace, 505.) But the language of the statute that the receiver shall act under the direction of the Comp-

troller means no more than that the receiver shall be subject to the direction of the Comptroller; it does not mean that he shall do no act without special instructions. Thus, he may bring an action to recover an ordinary debt due to the bank without having received special instructions from the Comptroller to do so. (Bank *v.* Kennedy, 17 Wallace, 19.) Specific authority given to a receiver to bring an action against a stockholder to recover an assessment is not withdrawn or affected by a subsequent general authority to compromise or sell all the claims or assets of the bank. (McLain *v.* Rankin, 119 Fed. Rep., 110.)

§ **156. Duties and Powers of Receiver.**—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. (Rev. Stat. U. S. Sec. 5234.)

Contracts of Receiver.—The receiver can not charge the estate of the bank by any executory contract, unless authorized so to do by the provisions of the law and the order of a court of competent jurisdiction obtained upon the terms of the law. (Ellis *v.* Little, 27 Kans., 701.) Persons dealing with him are bound to take notice of the limitations on his authority; and where he acts outside of his functions, and beyond his authority, the estate and the property of the bank are not charged thereby. (*Id.*) A Receiver has authority, upon sufficient consideration, to extend the time of payment of a debt owing the bank, where by so doing he can, in his judgment, strengthen the security he holds for the payment of the debt. (People's State Bank of Lakota *v.* Francis, 8 N. D., 369.)

Sales by Receiver.—Before the receiver can sell any of the property of the bank he must first have an order from a court of competent jurisdiction. (Ellis *v.* Little, 27 Kans., 707.) But it is not necessary that he should obtain from the Comptroller of the Currency formal authorization to make the application; nor is it essential that he should

likewise have the authority of the Comptroller to sell. (Richardson *v.* Turner, 52 La. Ann., 1613.) A Receiver may apply to a court of record of competent jurisdiction for an order to sell stocks and bonds in pledge in his hands. (Richardson *v.* Turner, 52 La. Ann., 1613.) But as the courts are not vested with any general supervisory, or directing power over National banks, they cannot order or authorize a receiver to sell at private sale securities held by the bank as pledgee, which do not come within the authority given by this section to order the sale or compounding of bad or doubtful debts, or the sale of real or personal property of the association. (*In re* Earle, 92 Fed. Rep., 22.) The provision that the Receiver "may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders," does not impose a personal trust and duty which will prevent him from selling and transferring the claim against a stockholder. (Waldron *v.* Alling, 73 App. Div. (N. Y.), 86.) And where the order directs him to sell, he can not exchange or trade the property for other property. (Ellis *v.* Little, 27 Kans., 707.) A sale made by a receiver under order of a court is to all intents and purposes a judicial sale. (*In re* Third National Bank, 9 Biss., 535; 4 Fed. Rep., 775); and the approval thereof by the court has the force and effect of a judgment, and such proceedings are not subject to collateral attack. (Schaberg's Estate *v.* McDonald, 60 Neb., 493.)

Compounding Debts.—Debts due to a National bank can not be compounded upon the order of the Comptroller of the Currency; but for this purpose the order of some court of competent jurisdiction is required. (Case *v.* Small, 10 Fed. Rep., 722.) Such an order may be made by a United States District Court. (Petition of Platt, 1 Benedict, 534.) But the court can authorize a composition of only such claims as are "bad or doubtful." (Price *v.* Yates, 2 Nat. Bank Cases, 204.) It is questionable whether the court has power to authorize the compounding of the statutory liability of a stockholder in a National bank. (*In re* certain stockholders of the California National Bank of San Diego, 53 Fed. Rep., 38; Butler *v.* Poole, 44 Fed. Rep., 586.) But even if it has the power, the court will refuse to compound such liability where it appears that some of the stockholders have conveyed away their property for the purpose of avoiding their liability, though it appear that in this way more money would be realized for the creditors. (*Id.*) And it has been held that a judgment recovered by the Receiver of an insolvent National bank against a stockholder on an assessment made by the Comptroller, although uncollectible, is not a "bad or doubtful debt," which a court may authorize the receiver to compound, under Rev. St., Section 5234. (*In re* Earle, 96 Fed. Rep., 678.) But a receiver may enforce a compromise agreement entered into for the settlement of a stockholders' liability. (McClain *v.* Rankin, 119 Fed. Rep., 110.)

Suits By and Against Receiver.—The receiver may sue either in his own name or in the name of the bank. (National Bank *v.* Kennedy, 17 Wallace, 19.) And a creditor may bring suit either against the receiver or the bank. (Bank of Bethel *v.* Pahquioque Bank, 14 Wallace, 833.) Thus, an action may be brought against a National bank, after the appointment of a receiver, to recover for rent due on a lease, and for breach of the terms thereof; and the receiver is not a necessary party to such action. (Chemical National Bank of Chicago *v.* Hartford Deposit Co., 156 Ill., 522.) In the case of ordinary debts due to the bank the receiver may bring a suit to recover them without special directions from the Comptroller. (*Id.*) But when the individual liability of the stockholders is to be enforced, the receiver, before beginning suit, must have the direction of the Comptroller. The determination on the part of those charged with winding up the affairs of the bank to resort to this ultimate remedy requires the exercise of due consideration; and a receiver ought not take it upon himself to decide so important a question without reference to the Comptroller under whose direction he acts; and, although it is his duty to collect the assets of the institution, he does not distribute them, and can not ordinarily know, without reference to the Comptroller, whether a prosecution of the stockholders will be necessary or not. (Kennedy *v.* Gibson, 8 Wallace, 505; Bank *v.* Kennedy, 17 Wallace, 19.) But a letter from the Comptroller, directing the receiver to institute suit, is sufficient evidence, if not objected to, that the Comptroller has decided that it is necessary to enforce the individual liability of the stockholders. (Bowden *v.* Johnson, 107 U. S., 251.) While a creditor of a National bank has a right to resort to the courts to have his claim adjudicated when it has been refused by the Comptroller of the Currency, it is doubtful whether the receiver of the bank, in a suit in which the Comptroller of the Currency is not a party, can be made to account for an administration for which the Comptroller is solely responsible. (Mervill *v.* National Bank of Jacksonville, 41 U. S. App., 529.)

Jurisdiction of Federal Court.—The receiver of an insolvent National bank may bring suit in a Federal court to collect assets of the bank regardless of the citizenship of the parties. (Fisher *v.* Yader, 53 Fed. Rep., 565; Linn County National Bank *v.* Crawford, 69 Fed. Rep., 532.) So, a suit by the receiver to enforce the individual liability of the stockholders in a case arising under the laws of the United States, and where the amount involved exceeds $2000, is within the jurisdiction of the United States Circuit Court. (Thompson *v.* German Insurance Company, 76 Fed. Rep., 892.) And so a suit against the receiver to compel him to pay out of the funds in his hands, as receiver, moneys claimed by the complainant is a suit arising under the laws of the United States, and can be removed into the Federal court. (Hot Springs Independent School District *v.* First National Bank of Hot

Springs, 61 Fed. Rep., 417.) And the question whether a savings bank which was a depositor with a National bank which has become insolvent shall be paid in full pursuant to a State statute, is a question arising under the laws of the United States, and entitles the receiver of a bank when sued for such deposit to remove the case into the United States Circuit Court. (Auburn Savings Bank *v.* Hayes, 61 Fed. Rep., 911.) The receiver is an officer of the United States within the meaning of Section 563, Rev. Stat. U. S., which gives the District Courts jurisdiction of "all suits at common law brought by the United States, or any officer thereof authorized by law to sue." (Stephens *v.* Bernays, 41 Fed. Rep., 401; Stanton *v.* Wilkinson, 8 Benedict, 357; Price *v.* Abbott, 17 Fed. Rep., 506; Platt *v.* Beach, 2 Benedict, 303.) Where the receiver takes a case by appeal or writ of error to the Supreme Court of the United States, he is not required to give a bond to answer in damages and costs. (Pacific National Bank *v.* Mixter, 114 U. S., 462; Pepper *v.* Fidelity and Casualty Co., 125 Fed. Rep., 822.)

State Courts—State Statutes.—In New York it is said that he will not be treated by the courts of that State as a foreign receiver, and can sue therein to recover an assessment levied on the shareholder of a bank located in another State. (Peters *v.* Foster, 56 Hun., 607.) And being a person expressly authorized to sue, he is excepted from the provisions of the code that the action must be brought in the name of the real party in interest. (*Id.*) An action by a receiver against the stockholders is governed by the State statute of limitations. (Butler *v.* Poole, 44 Fed. Rep., 586.)

District Attorney—State Statutes.—As the receiver is the agent of the United States, suits instituted by him should, under Section 380, Revised Statutes, be conducted by the United States district attorney for the district, but this provision is only directory, and if the receiver employs other counsel in a suit against a debtor of the bank, the defendant can not be heard to make the objection that this duty of the local officer of the Government has been devolved upon another. (Kennedy *v.* Gibson, 8 Wallace, 498.) But United States district attorneys are not entitled to any compensation, in addition to their salaries, for conducting suits brought by receivers of National banks. (Gibson *v.* Peters, 150 U. S., 342.) The receiver may at any time dismiss an attorney employed by him, regularly or otherwise, to prosecute claims of the bank, and employ another in his place, whom the court will, by order, substitute in the place of the dismissed attorney, except as to such cases as the latter may have commenced and finished. (*In re* Herman, 50 Fed. Rep., 517.) Where a contract has been entered into between the receiver and the attorney that the latter shall receive the attorney's fees provided for in the notes he was employed to collect, the court will not direct the substitution of another attorney in un-

finished cases until the receiver deposits the amount of the attorney's fees reserved in the notes as a security to the dismissed attorney for such services as he may have rendered. (*Id.*)

RECEIVER OCCUPIES SAME POSITION AS THE BANK.—Where a Receiver is placed in charge of the assets of a National bank, he stands, as to such assets, in the place of the bank, and is chargeable with knowledge of all facts known to the bank affecting the character of such assets. (People's State Bank of Lakota *v.* Francis, 8 N. D., 369.)

SUITS AGAINST DIRECTORS.—Suits against the directors for neglect or mismanagement of the affairs of the bank should usually be brought by the receiver, but if the receiver refuses to act, such suit may be brought by any shareholder on behalf of himself and the other shareholders. (Brinkerhoff *v.* Bostwick, 88 N. Y., 52.) And so, the suit may be brought by a shareholder on behalf of himself and the other shareholders when the receiver is himself a director and one of the persons charged with neglect or misconduct. (*Id.*) See further on this subject note to Section 165.

POWER OF BANK EXAMINER IN CHARGE OF BANK.—A bank examiner, who takes charge of the assets of a National bank under the directions of the Comptroller, is not the agent for the bank in such negotiations as the bank may be permitted to enter into with a view to the resumption of the business. (Tecumseh National Bank *v.* Chamberlain Banking House, 63 Neb., 163.)

DUTY OF DIRECTORS TO PRESERVE ASSETS.—The duty of the directors to take the necessary steps to preserve the assets of the bank does not end merely because a bank examiner has taken possession of the bank by direction of the Comptroller of the Currency. (Robinson *v.* Hall, 63 Fed. Rep., 222.) Their duties as directors in this regard do not cease until a receiver has been appointed. (*Id.*) Thus, it would be their duty to see that a mortgage given to the bank was duly recorded, notwithstanding a bank examiner was in charge. (*Id.*)

§ 157. **Advertisement of Comptroller to Creditors.**—The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspaper 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. (Rev. Stat. U. S. Sec. 5235.)

§ 158. Dividends to Creditors.—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. (Rev. Stat. U. S. Sec. 5236.)

How Claims Established.—The claims of creditors may be proved before the Comptroller, or established by suit against the bank. But creditors must seek their remedy through the Comptroller in the mode prescribed by the statute; they can not proceed directly in their own names against the stockholders or debtors of the bank. (Kennedy *v.* Gibson, 8 Wallace, 505; Bank of Bethel *v.* Pahquioque Bank, 14 Wallace, 383.) The decision of the receiver rejecting a claim is not final, but the creditor still has the right to sue therefor. (Bethel *v.* Pahquioque Bank, 10 Wallace, 383.) But a judgment only determines the validity of the claim, and the creditor must await the pro-rata distribution by the Comptroller, and can not have execution on his judgment. (*Id.*) A judgment against the receiver directing the manner in which the assets of the bank shall be distributed should be certified by the receiver to the Comptroller of the Currency and be paid in due course of distribution. (Mervill *v.* National Bank of Jacksonville, 41 U. S. App., 529.)

Interest.—Claims when proved to the satisfaction of the Comptroller are upon the same footing as if they had been put in judgment, and bear interest the same as a judgment. (National Bank of Commonwealth *v.* Mechanics' National Bank, 94 U. S., 437.) But a creditor who has obtained a judgment against the bank is not entitled to interest upon the face of the judgment, but only upon the amount of the claim at the date of the failure. (White *v.* Knox, 111 U. S., 784.) A depositor is entitled to interest from the time the bank suspends payment, and it is not necessary that he should have made any demand on the bank. (Chemical National Bank *v.* Bailey, 12 Blatchford, 480.) In estimating the dividends to be paid out of the assets, the value of the claims at the time the insolvency is declared is to be taken as the basis of distribution. (White *v.* Knox, 111 U. S., 784.) Interest should be allowed during the period of administration. (National Bank of Commonwealth *v.* Mechanics' National Bank, 94 U. S., 437; White *v.* Knox,

111 U. S., 784.) The refusal of a creditor to accept the receiver's offer to allow part of a claim without prejudice to a suit for allowance of the remainder, or to the receiver's right to still further reduce the claim if the court should hold such reduction proper, bars the creditor's right to interest on subsequent dividends on the part offered to be allowed, although it is subsequently adjudged that the whole of his claim should have been allowed; but he is entitled to interest on the dividends on the part rejected. (Chemical National Bank *v.* Armstrong, 59 Fed. Rep., 372.)

Claims for Torts.—Claims which arise out of the neglect or wrongful acts of the bank are to be paid out of the assets the same as the debts, technically so called. (Turner *v.* First National Bank, 26 Iowa, 562.)

Secured Creditors—Collaterals.—A secured creditor of an insolvent National bank may prove and receive dividends upon the face of his claim as it stood at the time of the declaration of insolvency, without crediting either his collaterals, or his collections made afterwards, subject always to the proviso that dividends must cease when from them and the collaterals realized the claim has been paid in full. (Merrill *v.* National Bank of Jacksonville, 173 U. S., 131; Chemical National Bank *v.* Armstrong, 59 Fed. Rep., 372; Mervill *v.* National Bank of Jacksonville, 41 U. S. App., 529. See also People *v.* Remington, 121 N. Y., 328.)

Claims Due the United States.—The priority of the United States is only for the deficiency in redeeming the notes of the bank. (Cook County National Bank *v.* United States, 107 U. S., 445.) Section 3466, United States Revised Statutes, which gives the United States a priority for all claims due it from insolvent debtors, does not apply. (*Id.*) As against the proceeds of the bonds deposited to secure the notes of the bank, the United States can set off no claim except for such deficiency. (*Id.*) And upon the failure of a National bank, its five per cent. redemption fund can not be retained by the Treasurer to pay taxes due to the United States, but the fund passes to the Comptroller as an asset of the association. (Jackson *v.* United States, 20 Ct. Cls., 298.)

Authority of the Comptroller.—Under Sections 5234 and 5236 of the Revised Statutes, the assets of an insolvent National bank so collected by the receiver are entirely within the control and disposition of the Comptroller of the Currency, and the receiver is without power in respect to the payment of dividends. The receiver is the mere instrument of the Comptroller, and is subject in all respects to his instructions. (Mervill *v.* National Bank of Jacksonville, 41 U. S. App., 529.)

Suits on Rejected Claims.—Notwithstanding the insolvency of a National bank, and the appointment of a receiver by the Comptroller of

the Currency, the corporation continues as a legal entity, and an action may be maintained against it on a claim rejected by the receiver. (Denton *v.* Baker, 24 C. C. A., 476; 79 Fed. Rep., 189.) As in such case there is an adequate remedy at law, the holder of the claim cannot maintain a suit in equity for an injunction to restrain the receiver from rejecting it. (*Id.*)

ACCEPTANCE OF DIVIDENDS—ESTOPPEL.—The acceptance of dividends upon a claim against an insolvent National bank as allowed by the Comptroller of the Currency does not estop the depositor from afterwards maintaining an action against such bank upon a claim not covered by such allowance of the Comptroller. (Chemical National Bank of Chicago *v.* World's Columbian Exposition, 170 Ill., 82.)

§ 159. Injunction upon Receivership.—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 a 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. (Rev. Stat. U. S. Sec. 5237.)

This section gives a bank opportunity to disprove mistaken charges, and a method of stopping unwarranted proceedings. (See Moss *v.* Whitzel, 108 Fed. Rep., 579.)

§ 160. Expenses of Protest, Examination and Receivership.—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. (Rev. Stat. U. S. Sec. 5238.)

Expenses of receivership are a first lien upon all assets except bonds to secure circulation.

§ **161. Equities in Real Estate, etc.—Protection of—Recommendation of Receiver.**—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. (Act March 29, 1886, Ch. 28, Sec. 1; 24 Stat. U. S. 8.)

It often occurred that real estate of the bank or other assets might be incumbered by mortgages or claims. This act was passed to provide a way in which these incumbrances might be removed, by paying them off with money derived from the collection of other assets.

§ **162. Same Subject—Approval of Comptroller and Secretary of Treasury.**—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. (Act March 29, 1886, Ch. 28, Sec. 2; 24 Stat. U. S. 8.)

§ 163. **Same Subject—Mode of Paying for Property.**—That whenever any such requests 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. (Act March 27, 1886, Ch. 28, Sec. 3; 24 Stat. U. S. 8.)

§ 164. **Disposition of Assets After Payment of Creditors—Agent for Stockholders—Mode of Distribution.**—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 qui trust. The proceeds of the assets of property of any such association which may be undisturbed 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." (Act June 30, 1876, Ch. 156, Sec. 3, as amended by Act March 2, 1897, Ch. 354; 29 Stat. U. S. 600.)

§ 165. Violation of National Bank Act—How Determined—Penalty For—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, however, 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. (Rev. Stat. U. S. Sec. 5239.)

When Bank Liable to Forfeiture.—To render a National bank liable to a forfeiture of its franchises for violation of law, the acts must have been committed by the directors, or have been knowingly permitted by them. (Trenholm, Comptroller of the Currency, *v.* Commercial National Bank of Dubuque, 38 Fed. Rep., 323.) Violations of law by the executive officers or agents of the bank, without the knowledge and consent of the directors, do not constitute grounds for forfeiting the franchises. (*Id.*) And in an information to procure the forfeiture of the bank's franchises, it is not sufficient to aver that the association committed the act complained of, for this averment might be sustained by showing that the act was committed by some executive officer or agent; but the information must charge that the act was done by the directors, or that they knowingly permitted it to be done. (*Id.*) Such a suit is within Section 1047, Rev. Stat. U. S., and must be brought within five years. (Welles *v.* Graves, 41 Fed. Rep., 459.)

Actions Against Directors—How Brought.—An action to recover damages from the directors for losses resulting from a violation of law may be brought, though the Comptroller of the Currency has not procured a forfeiture of the charter. (Stephens *v.* Overstolz, 43 Fed. Rep., 465. But see Welles *v.* Graves, 41 Fed. Rep., 459.) Where a receiver has been appointed for the bank, the action should be brought by him; for the personal liability of the officers and directors is an asset of the bank belonging equally to all creditors, and must therefore be enforced by the receiver for their benefit in proportion to the amount of their claims; and the action can not be brought by a creditor. (Boyd *v.* Schneider, 124 Fed. Rep., 239; Bailey *v.* Mosher, 63 Fed. Rep., 488; Exchange Bank *v.* Peters, 45 Fed. Rep., 13); nor by the individual stockholders. (Howe *v.* Barney, 45 Fed. Rep., 668.) But where the receiver refuses to bring an action against negligent directors to recover the amount which the shareholders have been compelled to contribute to pay the debts of the association, an action against such directors may be brought by a shareholder on behalf of himself and the other shareholders. (Nelson *v.* Burrows, 9 Abb. N. C., 280; Zinn *v.* Baxter, 65 Ohio St., 341.) And where the receiver is a director, and one of the parties charged with misconduct and against whom a remedy is sought, the action may be brought by a shareholder on behalf of himself and the other shareholders. (Brinkerhoff *v.* Bostwick, 88 N. Y., 52.) Such an action may be brought in a State court. (*Id.*) It must be brought by such shareholder on behalf of himself and all the other shareholders, the bank must be made a party, the judgment must be in its favor, and the proceeds of such judgment will inure to the common benefit of all the shareholders alike. (Zinn *v.* Baxter, 65 Ohio St., 341.) But in order that a stockholder may bring an action against the directors for losses caused by their negligence, he must have been a stockholder at the time when the acts complained of were committed, and must also be such stockholder when the action is brought. (Hanna *v.* Lyon, 179 N. Y., 107.)

It has also been held that the depositors in a National bank may maintain an action against the directors to recover for losses caused by the negligent performance of their duties as such directors. (Boyd *v.* Schneider, 131 Fed. Rep., 223.) And where a number of depositors are affected by the same acts of negligence, they may join in one suit against such directors. (Boyd *v.* Schneider, 131 Fed. Rep., 223.) An action against a director under this section is not an action to recover a penalty, and is therefore not within Section 1047, Rev. Stat. U. S., limiting suits for any penalty or forfeiture accruing under the laws of the United States to five years. (Welles *v.* Graves, 41 Fed. Rep., 459.)

Statute Remedial—Estate Liable.—The statute is remedial and not penal, and the liability of the director does not expire with his death, but survives against his estate. (Stephens *v.* Overstolz, 43 Fed. Rep., 465.)

Whether Action in Equity or at Law—Statutory Remedy Not Exclusive.—As to whether the suit against the directors should be brought in equity or at law, the authorities are not agreed. (See Stephens *v.* Overstolz, 43 Fed. Rep., 771; National Exchange Bank of Baltimore *v.* Peters, 44 Fed. Rep., 13; Welles *v.* Graves, 41 Fed. Rep., 459; Hirsh *v.* Jones, 56 Fed. Rep., 137.) The remedy of a creditor's suit given by the statute is cumulative and not exclusive. (King *v.* Pomeroy, 121 Fed. Rep., 287; 58 C. C. A., 209.) Thus, it does not preclude a common law action of deceit against the directors for false and fraudulent representations made by them. (Prescott *v.* Haughey, 65 Fed. Rep., 653.)

False Reports—Liability of Directors for.—Directors of a National bank who, in a simulated performance of the duties prescribed by the law applicable to such an institution, relative to the preparation and publication of advertisements, statements and reports, knowingly make and publish false statements and reports of the financial condition of the bank, with intent to deceive, and such matters are believed and acted upon by parties, to their damage, are liable for the damages, in an action for the deceit. (Stuart *v.* Bank of Staplehurst, 57 Neb., 569.)

§ 166. Transfers in Contemplation of Insolvency—Preferences. —All transfers of the notes, bonds, bills of exchange, or other evidence 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. (Rev. Stat. U. S. Sec. 5242.)

Meaning of "Insolvency."—The term "insolvency" as used in this section has the same meaning as it has in the National bankrupt law; that is, it does not mean an absolute inability to pay at some future time, upon a settlement and winding up of the bank's affairs, but a present inability to pay in the ordinary course of business. (Case *v.* Citizens' Bank of Louisiana, 2 Woods, 23.) The mere fact that a correspondent of a National bank refuses to pay a check drawn on it by such bank at a time when the account of the latter is overdrawn, does not constitute an act of insolvency on the part of the drawing bank, which would render subsequent transfers of property or payments made by it void, as preferences.

What Constitutes a Preference.—To bring a transfer of assets within the operation of this section, it is not necessary that the person to whom they are transferred should know of the insolvency, but it is sufficient if the insolvency is in the contemplation of the bank only. (*Id.;* National Security Bank *v.* Butler, 129 U. S., 223.) But it should appear that the money was paid in contemplation of insolvency, for the purpose of giving a preference, and with a view to preventing the application of the assets to the claims of creditors generally. (Hays *v.* Beardsley, 136 N. Y., 299.) And the fact that the bank was known to be insolvent at the time by the officer making payment does not make the payment illegal, where the person receiving payment was treated like any other creditor, and the object was not to give a preference over others. (*Id.*) If the person receiving payment was entirely ignorant of the insolvency of the bank, and acted in good faith, the fact that he was at the time a director does not make the payment illegal. (*Id.*) It will be presumed that any transfer of assets, made after the closing of the bank has been determined upon, whereby any creditor obtains a preference over other creditors, was made with the intent to prefer. (National Security Bank *v.* Price, 22 Fed. Rep., 697.) But it is not a preference unless given to an existing creditor to secure a pre-existing debt. (Casey *v.* Société de Crédit Mobilier, 2 Woods, 77.) And if the transaction be free from fraud in fact, and is intended merely to adequately protect a loan made at the time, the creditor can retain property transferred to secure such loan until the debt be paid, though the bank is insolvent and the person making the loan has reason at the time to believe that to be the fact. (Armstrong *v.* Chemical National Bank, 41 Fed. Rep., 234.) So, where the officers of a bank, which was in danger of failing, in the hope of avoiding a failure, pledged certain assets to a depositor in order to induce him to allow his deposit to remain with the bank, it was held that this was not a preference. (Roberts *v.* Hill, 23 Fed. Rep., 31. See also Bell *v.* Hanover National Bank, 57 Fed. Rep., 821.) So where certain property of the bank had been attached, it was held that a transfer of assets to secure the sureties on a bond given to release the attachment was not a preference. (Price *v.* Coleman, 22 Fed. Rep., 694.) And where a bank had in good faith accepted the draft of a National bank the day before the latter's insolvency, and afterwards paid the same, it was held that such bank might apply the proceeds of collections made by it on paper in its possession belonging to the insolvent bank to the payment of the debt, since its lien on such collections ran from the date of the acceptance. (McDonald *v.* Chemical Bank, 174 U. S., 610; *In re* Armstrong, 41 Fed. Rep., 381.) Remittances made in usual course of business to a correspondent before an act of insolvency committed are not preferences, though the bank is actually insolvent at the time, and is closed by the Comptroller of the Currency before the remittances are received by the correspondent. (Hayden *v.* Chemical National Bank, 80 Fed. Rep., 587.)

Notes given in renewal of other notes held by a National bank, the original notes not being returned to the maker, are not "evidences of debt" or "assets" within the meaning of this section. (First National Bank of Decatur *v.* Johnston, 97 Ala., 655.)

Deposits Made When Bank Insolvent—Recovery of.—Upon the general ground that one who has been induced to part with his property by the fraud of another, under the guise of a contract, may, upon discovery of the fraud, rescind the contract and reclaim the property, it has been held that a depositor in a National bank may recover funds deposited after the bank has become hopelessly insolvent, it being considered a gross fraud on the part of the bank to receive them under such circumstances, and that it is not a preference for him to so reclaim his deposit, because in such case he does not claim under a transfer from the bank, but under his original title, and he does not seek to enforce any right as creditor of the bank, but merely to reclaim his own property obtained by fraud. (Cragie *v.* Hadley, 99 N. Y., 131.) And the fact that the money deposited was not marked, and, by a mingling with the other funds of the bank, lost its identity, does not affect the right of the depositor to recover in full, if it can be traced into the vault of the bank, and it appears that a sum equivalent thereto remained continuously on hand in the bank until removed by the receiver. (Massey *v.* Fisher, 62 Fed. Rep., 958.) But the moneys or paper deposited or the proceeds thereof must be traced into the hands of the receiver. (Multnomah County *v.* Oregon National Bank, 61 Fed. Rep., 912; Spokane County *v.* Clark, 61 Fed. Rep., 538; Lake Erie, Etc., R. R. Co. *v.* Indianapolis National Bank, 65 Fed. Rep., 690. Compare San Diego County *v.* California National Bank, 52 Fed. Rep., 59.) Hence, where a bank which had received a note for collection and remittance, and had not remitted, failed with cash on hand less than the amount of the collection, it was held that the lien for trust funds converted was limited to the amount on hand, and did not extend to the other assets of the bank, where there was no proof that they were obtained with the money converted. (Boone County National Bank *v.* Latimer, 67 Fed. Rep., 27.) A creditor of an insolvent National bank, whose demand grows out of a fraudulent transaction perpetrated by the officers of the bank in contemplation of the immediate wrecking of their corporation, does not thereby become entitled to a preference over the general creditors of the bank. (Citizens' National Bank *v.* Dowd, 35 Fed. Rep., 340.)

Action of Replevin.—A person claiming title to property in the possession of a receiver which has come into his possession with the property belonging to the bank, may maintain an action of replevin therefor. (Corn Exchange Bank *v.* Blye, 101 N. Y., 303.) Hence, where money was deposited with the receiving teller of a bank a few minutes

before the bank closed its doors, to be credited to his account, and the teller not being aware of the impending failure, after crediting the amount in the depositor's pass book, put the money and deposit ticket to one side, and before the entry was made in the books of the bank, it closed its doors, and the money was by order of the directors placed apart, and in that condition delivered to the receiver, it was held that the depositor could replevy the money so deposited. (Faber *v.* Stephens, 35 Fed. Rep., 17.)

Set-off.—This section does not prohibit the allowance of any valid set-off, legal or equitable, which a debtor of a bank may have against any obligation owing by him to it at the time of its insolvency. (Armstrong, Receiver, *v.* Warner, 49 Ohio St., 376; Scott *v.* Armstrong, 146 U. S., 499.) A depositor may therefore set-off the amount of his deposit against his liability as maker or endorser of a note held by the receiver, though such note had not matured when the bank was closed, and the receiver appointed. (Scott *v.* Armstrong, 146 U. S., 499; Yardley *v.* Clothier, 49 Fed. Rep., 337; 51 Fed. Rep., 506; Adams *v.* Spokane Drug Co., 57 Fed. Rep., 888; Mercer *v.* Dyer, 15 Mont., 317; Hughitt *v.* Hayes, 136 N. Y., 163.) But the debtor of the bank will not be permitted to set-off against his liability a claim against the bank assigned to him after the bank had closed its doors. (Venango National Bank *v.* Taylor, 56 Pa. St., 14), though the assignment was made before the appointment of a receiver (Davis *v.* Knipp, 92 Hun., 297; Beckham *v.* Shackelford, 8 Tex. Civ. App., 660.) The court will not be astute to divide the day into fractions to defeat a right of set-off claimed by a creditor of an insolvent National bank. (Faber *v.* Hanover National Bank, 64 Fed. Rep., 832.)

Against the proceeds of the bonds deposited to secure circulation the United States can set-off no claim, except for money advanced to redeem notes. (Cook County National Bank *v.* United States, 107 U. S.,

The indebtedness of the stockholders on their individual liability, together with the other assets of the insolvent bank, constitute a trust fund for the benefit of its creditors; and in equity such indebtedness of a stockholder who is insolvent may be set-off against a dividend payable out of the trust fund, on a balance due him on his deposit account with the bank at the time of its failure. (King *v.* Armstrong, 50 Ohio

An assignment by the stockholder of his claim against the bank, before the direction of the Comptroller to enforce his liability, but after the insolvency of the bank, does not affect the right to set-off his liability against the dividend due on his claim, nor does the fact that the Comptroller, at the time of the assignment, had not determined the amount necessary to be collected from the stockholders for the payment of the creditors. It is sufficient that such direction has been given, and amount so determined when the set-off is made. (*Id.*)

State Statute—Debt Due Savings Bank.—A State statute directing that deposits made by savings banks shall be first paid out of the assets of an insolvent bank can have no application to an insolvent National bank, since such statute is in conflict with the provisions of the National-bank Act. (Davis *v.* The Elmira Savings Bank, 161 U. S., 275, reversing S. C., 142 N. Y., 590.). A State statute forbidding conveyances by insolvent debtors for the purpose of giving a preference applies to such conveyance made to a National bank. (Traders' National Bank *v.* Chipman, 164 U. S., 347.) Such a statute is not in conflict with any provisions of the National Bank Act. (*Id.*)

Federal Question.—The question whether a savings bank which was a depositor with a National bank which has become insolvent shall be paid in full pursuant to State statute is a question arising under the laws of the United States, and entitles the receiver of the bank when sued for such deposit to remove the case into the United States Circuit Court. (Auburn Savings Bank *v.* Hayes, 61 Fed. Rep., 911.) While an Illinois National bank in which a Michigan National bank had kept an account as a depositor, as to the payment of check and draft holders might act under the Illinois law as against the law prevailing in Federal courts, when such Michigan bank became insolvent and went into the hands of a Receiver appointed by the Comptroller, the Federal law became the law of the distribution of the assets, and the payment of checks by the Illinois bank under the Illinois law is no excuse in an action by the Receiver against the Illinois bank for the balance in its hands at the time of the appointment of the Receiver. (First National Bank *v.* Selden, 120 Fed. Rep., 212.

CHAPTER VII.

Crimes and Misdemeanors.

Section 167. Unlawfully Countersigning Notes.
168. Receiving United States or National Bank Notes as Security.
169. Embezzlement, Abstraction and Misapplication of Bank Funds—False Entries.
170. Illegal Certification of Check.
171. Obligations of the United States Defined.
172. Forging and Counterfeiting National Bank Notes.
173. Wrongful Use of Plates, False Plates, Notes, etc.
174. Passing, Selling, etc., Counterfeits.
175. Taking Impressions of Plates, etc.
176. Persons Having Impressions, etc., in their Possession.
177. Buying, Selling, etc., Counterfeits.
178. Issuing, etc., Notes of Closed Banks.
179. Receipt of Public Money When Not Authorized Depositary.

§ **167. Unlawfully Countersigning Notes.**—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. (Rev. Stat. U. S. Sec. 5187.)

This applies to officers of the Government. No cases have arisen under it since the National banking law went into force.

§ **168. Receiving United States or National-Bank Notes as Security.**—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 loans 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. (Rev. Stat. U. S. Sec. 5207.)

The provision of this section was designed to prevent the locking up of money. It was aimed at a favorite method of accomplishing this at one time put in practice in New York city, and, perhaps, elsewhere.

§ 169. Embezzlement, Abstraction and Misapplication of Banks' Funds—False Entries.—Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts, or wilfully 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 affiairs 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. (Rev. Stat. U. S. Sec. 5209.)

Intent.—An intent to defraud or injure the bank is an essential ingredient of every offense specified in this section. (McKnight *v.* United States, 115 Fed. Rep., 972; 54 C. C. A., 358.) And for the purpose of showing the intent, evidence of other transactions of similar character

is admissible, but may be considered by the jury only on the question of the knowledge and intent of the accused when he committed the acts charged in the indictment. (United States *v.* Breese, 131 Fed. Rep., 916.) But the intent to injure or defraud need not necessarily have been the object or purpose with which the act was done; it is sufficient if the natural and necessary effect of the act was to injure or defraud the bank or others, and it was willfully and intentionally done. (United States *v.* Breese, 131 Fed. Rep., 916.) If the acts charged are proved, the intent must be inferred therefrom, and while such inference or presumption is not conclusive, it throws the burden of proof upon the defendant. (United States *v.* German, 115 Fed. Rep., 987.)

Willful Misapplication and Abstraction.—The words "willfully misapplies" are new in statutes creating offenses, and they are not used in describing any offense at common law. They have no settled technical meaning like the word "embezzle" as used in the statutes, or the words "steal, take, and carry away" as used at common law. (United States *v.* Britton, 107 U. S., 655.) To constitute the offense the misapplication must have been for the use or benefit of the party charged, or of some person or company other than the bank, with intent to injure and defraud the bank, or some other body corporate, or some natural person. (*Id.*) It is something different from the acts of official maladministration referred to in Section 5239. (*Id.*) It is not necessary that the person charged with the offense should have been previously in the actual possession of such moneys, funds, and credits under or by virtue of any trust, duty, or employment committed to him. Nor is it necessary to the commission of this offense that the officer making the willful misapplication should derive any personal benefit therefrom. When the funds or assets of the bank are unlawfully taken from its possession, and afterward willfully misapplied by converting them to the use of any person other than the bank, with intent to injure and defraud, the offense, as described in the statute, is committed. (United States *v.* Harper, 33 Fed. Rep., 471; United States *v.* Breese, 131 Fed. Rep., 915.) The act may be done directly and personally, or it may be done indirectly through the agency of another. If the officer charged with it has such control, direction, and power of management by virtue of his relation to the bank as to direct an application of its funds in such manner and under such circumstances as to constitute the offense of willful misapplication, and actually makes such direction, or causes such misapplication to be made, he is equally guilty as if it was done by his own hands. (United States *v.* Harper, 33 Fed. Rep., 471; United States *v.* Fish, 24 Fed. Rep., 585.) A loan made in bad faith, and with the intention of defrauding the bank, is a wilful misapplication of its funds. (United States *v.* Fish, *supra.*) So is the allowance of a fraudulent overdraft. (*In re* Van Campen, 2 Benedict, 419.) And a bank president has no right to permit overdrafts, when he does not believe,

and has no reasonable grounds to believe, that the moneys can be repaid; and if coupled with such wrongful act, the proof establishes that he intended by the transaction to injure and defraud the bank, the wrongful act becomes a crime. (Coffin *v.* United States, 162 U. S., 664.) But the mere fact of the payment by the officers of a National bank of a check which creates an overdraft does not necessarily constitute a fraudulent misapplication of the funds of the bank. (Dow *v.* United States, 82 Fed. Rep., 904.) The procuring of a dividend to be declared by the bank when there are no net profits to pay it is not such an offense. (United States *v.* Britton, 108 U. S., 199.) Nor to allow a customer indebted to the bank to withdraw his deposit, though such act might be an act of maladministration on the part of the officer, and a gross neglect of official duty. (United States *v.* Britton, 108 U. S., 193.) Nor for an officer to procure the discounting by the bank of his own note, though he and the other parties to the note are insolvent. (*Id.*) It is no defense that the funds were misapplied with the consent of some of the directors; but the intent to defraud will be conclusively presumed from the commission of the offense. (United States *v.* Taintor, 11 Blatchford, 374; Breese *v.* United States, 106 Fed. Rep., 680.)

False Entries.—Any entry on the books of the bank which is intentionally made to represent what is not true, with intent either to defraud the bank or to deceive its officers, is a false entry within the meaning of this section. (Agnew *v.* United States, 165 U. S., 36; United States *v.* Harper, 33 Fed. Rep., 471.) If the false entry is calculated to deceive, the making of it in the books of the bank, with intent to deceive, is all that is necessary to bring the act within the meaning of the statute; and the fact that the act was not an adroit and skillful one does not relieve it of its criminal character. (United States *v.* Britton, 107 U. S., 655.) The erasure of figures already written in the books of the bank, and the substitution of other figures which falsify the state of the account, are a false entry. (United States *v.* Crecelius, 34 Fed. Rep., 30.) The entries may be made either personally or by direction. (Agnew *v.* United States, 165 U. S., 36; United States *v.* Harper, 33 Fed. Rep., 471; *In re* Van Campen, 2 Benedict, 419; United States *v.* Allen, 47 Fed. Rep., 696; Scott *v.* United States, 130 Fed. Rep., 429.) The entry upon the books of the bank from deposit slips, which contain false statements, is a false entry within the statute. (Agnew *v.* United States, 165 U. S., 36.) But it is not merely the making of false entries which is criminal, but the making them with intent to deceive such persons as those named in the statute. (United States *v.* Means, 42 Fed. Rep., 599.) A mere mistake, made inadvertently, or even through negligence, though in fact false, if believed by the officer making it to be true, will not constitute the offense. (United States *v.* Graves, 53 Fed. Rep., 700; United States *v.* Allen, 47 Fed. Rep., 696.)

Intention to deceive any one director or officer is as criminal under this section as the intention to deceive any number or all of them. (United States *v.* Means, 42 Fed. Rep., 599.) And the statute does not require that any person should have been in fact defrauded or actually deceived by the false entry in order to make the crime complete; if there was an attempt to deceive, and the false entry was knowingly entered, and was a false entry which was naturally and necessarily calculated to mislead, this would be sufficient, in the absence of contravening proof, to authorize a finding that the person making it made it with intent to deceive. (United States *v.* Graves, 53 Fed. Rep., 700.) But if the officers alleged to have been deceived were accomplices in the fraudulent speculations which the false entries were made to hide, an intent to deceive them cannot be inferred. (United States *v.* Means, 42 Fed. Rep., 599.)

False entries in a report made by the President and transmitted to the Comptroller of the Currency constitute this offense, though the report was not called for by the Comptroller. (United States *v.* Hughitt, 45 Fed. Rep., 47.) A false statement is a crime though done to save the bank. (United States *v.* Means, 42 Fed. Rep., 599.) Directors are officers within the meaning of the statute. (United States *v.* Means, 42 Fed. Rep., 599.)

It is no defense that the entries were made by a clerk and verified by the officer without actual knowledge of their truth, since it was his duty to inform himself. (United States *v.* Allen, 47 Fed. Rep., 696.)

The assistant cashier is indictable under this section for making a false entry in a report to the Comptroller, although he is not one of the officers authorized by Section 5211 to make such a report; for he may be regarded as within the category of "clerk or agent," within the terms of this section. (Cochran *v.* United States, 157 U. S., 286.) The president and assistant cashier are indictable as principals, under this section, for making a false entry in a report, although neither of them actually signed or attested the report. (*Id.*) Where false entries were made by a bookkeeper in a statement requested by a National-bank examiner purporting to give the balance due to depositors, which statement it was the duty of the examiner to make and not the bookkeeper, an indictment for making "false entries in a statement of the association" will not be sustained. (United States *v.* Ege, 49 Fed. Rep., 852.)

When the managers of a National bank make arrangements with depositors in the bank to give them credit at the bank for larger sums than appear upon the credit side of their accounts up to specified amounts and for a fixed time, and the proper officers of the bank make entries thereof in the books of the bank in good faith and in the belief that they have a right to do so, such an entry is not a false entry within the meaning of that term as used in Rev. Stat. Sec. 5209, and the person so making it is not guilty of a violation of that statute in so

doing. (Graves *v.* United States, 165 U. S., 323.) If an overdraft is made and allowed under circumstances making it a fraud upon the bank, the entry of the transaction just as it occurred on the books of the bank is not a false entry under this section. (Dow *v.* United States, 82 Fed. Rep., 904.)

Forgery by an officer of a National bank for the purpose of defrauding the bank or its stockholders does not constitute the offense described in Section 5418, Rev. Stat., and is not an offense against the United States, cognizable only by the Federal courts. (Cross *v.* State of North Carolina, 132 U. S., 131.)

Form of Report.—A National bank is not required to conform the headings of the various accounts on its books to any prescribed names, nor to the names stated in the form of report prescribed by the Comptroller, and therefore when a report is called for, if the person making it enters, under the headings in the prescribed form, a statement of the bank's condition which is true with respect to the headings in said form, he has fulfilled the demands of the law. (United States *v.* Graves, 53 Fed. Rep., 634.)

But where the form of report, as prescribed by the Comptroller, contains headings of "Loans and Discounts," and also of "Overdrafts," it is the duty of the bank officer to make his entries in such report in such manner that each of these headings shall truthfully state the condition of his bank as to such heading. (United States *v.* Graves, 53 Fed. Rep., 634.) It is not a "false entry" to enter under heading of "Loans and Discounts" items which, on books of the bank, and for convenience of its officers, have been temporarily withdrawn from that heading, and which are, from day to day, carried on the books of the bank under heading of "Suspended loans" while awaiting action of directors as to same being withdrawn from character of loans and entered up as a loss on profit and loss account. (*Id.*) The "liabilities," which are required by this section to be stated in the reports to the Comptroller, include contingent as well as absolute liabilities; and hence an unmatured note, payment of which at maturity is guaranteed by the bank, should be included in the list of liabilities. (Cochran *v.* United States, 157 U. S., 286.)

As a director is personally liable to the bank on paper made to it by a firm of which he is a member, the amount of such paper should be entered under the heading of "Liabilities of directors (individual and firm) as payers." (United States *v.* Graves, 63 Fed. Rep., 634.) The entry of "Loans and Discounts" in reports to the Comptroller does not guarantee the solvency of the makers of the paper, but is a statement that in truth and fact, at the date named in the report, the bank actually held and owned loans and discounts to the aggregate so reported. (*Id.*)

Aiding and Abetting.—Persons who are not officers or agents of the bank may be aiders and abetters of the officers in the violation of this section. (Coffin *v.* United States, 162 U. S., 664.)

When Criminal Laws of State Apply.—As the offense of embezzlement of the funds and property of the bank are provided for in the National banking law, an officer of the bank cannot be indicted therefor under State laws, nor have the State courts jurisdiction of such offense. (Commonwealth *v.* Ketner, 92 Pa. St., 372; Commonwealth *v.* Felton, 101 Mass., 204.) But where the property fraudulently converted belongs to the customers of the bank, as, for instance, property left on special deposit, the criminal laws of the State apply. (State *v.* Tuller, 34 Conn., 280; Commonwealth *v.* Tenney, 97 Mass., 50.) In State *v.* Tuller it was said: "That provision [in respect to embezzlement] goes to the being an internal working of the bank, and is intended to protect its property from its agents. It was not intended to regulate, and has not the effect of regulating the business of the bank with its customers. Now, the business of the bank is conducted within the jurisdiction of this State with our citizens and in conformity with our laws, and it is competent for the legislature to pass any laws affecting that business, or protect the bank or its customers in the conduct of that business by any penalty, and such law and penalty will not be predicated on any law or offense created by Congress or have any relation or be repugnant to the currency act, or in any manner infringe the jurisdiction of Congress or the Federal courts. It is theft by our law to steal from a National bank; it is burglary to break into one for the purpose of stealing, and it is cheating to obtain money from one by false pretenses. As a corporate being located in the State its property and interests and business are protected by State laws and subject to State legislation, and so it is competent for the legislature to protect its customers, the citizens of the State, in their business dealings with it, whatever they may be, whether constituting the relation of borrower and lender or of special or general depositor and bailee; and they may be controlled and protected by penal enactments without interference with the laws of Congress."

Larceny of the funds or property of the bank is punishable under State laws. (Commonwealth *v.* Barry, 116 Mass., 1.) And an officer of a National bank may be indicted for forgery under State laws, although such forgery might have been committed in order that the instrument forged might thereafter become the basis of false entries upon the books of the bank, within this section. (Cross *v.* State of North Carolina, 132 U. S., 131.) So an officer of the bank may be indicted under a State statute for making false and fraudulent entries in the books of the bank, such offense amounting to forgery at common law. (Luberg *v.* Commonwealth, 94 Pa. St., 85.) But the State courts have no jurisdiction of the crime of "false entries" as defined by this

section. (*In re* Eno, 54 Fed. Rep., 669.) A State statute forbidding banks to receive deposits when the bank is insolvent, and making such action a penal offense on the part of the officers of the bank, can have no application to National banks located in such State. (Easton *v.* State of Iowa, 188 U. S., 220; Slaughter *v.* First National Bank, 109 Ala., 157; State *v.* Menke, 56 Kans., 77; Contra State *v.* Fields (Iowa), 62 N. W. Rep., 653; State *v.* Easton, 113 Iowa, 516; State *v.* Bardwell, 72 Miss., 535.) Prior to the Act of February 26, 1881, a notary public holding his commission under a State had no authority to administer the oath required by Section 5211, Rev. St.; and, therefore, a cashier who made oath before such notary to a false statement of the condition of his bank was not guilty of perjury. (United States *v.* Curtis, 107 U. S., 671.)

INDICTMENT—FORM OF—ALLEGATIONS IN.—An indictment for a misapplication of the funds of a National bank must specify the particulars of the application, so as to show the application charged to be a criminal misapplication as distinguished from applications that are unlawful, but not criminal. (United States *v.* Eno, 56 Fed. Rep., 218; United States *v.* Warner, 26 Fed. Rep., 616; Batchelor *v.* United States, 156 U. S., 426.) Hence an allegation that the defendant, for the use, benefit, and advantage of himself, misapplied certain moneys of the bank by paying them to A & Co. is not sufficient; for it does not show that such payment was criminal; but the facts showing that the payment to A was not only unlawful, but a criminal application of the money, should be stated. (United States *v.* Eno, 56 Fed. Rep., 218.) But if the indictment describes specifically the funds misapplied, and the manner of the misapplication, it need not negative every possible theory consistent with an honest purpose in the disposition of the funds specified. (Evans *v.* United States, 153 U. S., 608.) And an indictment for aiding and abetting an officer in misapplying the funds of the bank and making false entries in its books need not specifically set out the act or acts by which the aiding and abetting were consummated. (Coffin *v.* United States, 162 U. S., 664.) In an indictment for willful misapplication of the funds of the bank it is not necessary to charge that the funds had been previously intrusted to defendant, since such act may be done by an officer or agent of the bank without his having previously received the funds into his manual possession. (United States *v.* Northway, 129 U. S., 327.) In an indictment for embezzlement of moneys, etc., it is not necessary to specify what portion was money, and what portion was other funds or credits. (Breese *v.* United States, 106 Fed. Rep., 680.)

An indictment for making a false entry in a report to the Comptroller need not allege that such report was made by the banking association, or that it was actually verified by the oath or affirmation of the president or cashier, or attested by the directors, as required by Section 5211; but it is sufficient to aver that the defendant made such false

entry in a certain report of the condition of the bank, . . . made to the Comptroller of the Currency in accordance with the provisions of Section 5211. (Cochran *v.* United States, 157 U. S., 286.) And it is sufficient if the indictment allege the substance of the reports in question without setting them out in full. (United States *v.* French, 57 Fed. Rep., 382.) It is not necessary to allege specifically that the reports were transmitted to the Comptroller of the Currency, or that they were published. (United States *v.* Potter, 56 Fed. Rep., 83.)

Embezzlement, abstraction, and willful misapplication of the moneys, funds, etc., of a National bank, as described in this section, constitute three separate crimes or offenses, which, under Rev. St., Sec. 1024, may be joined in one indictment, but must be stated in separate accounts. (United States v. Cadwallader, 59 Fed. Rep., 677.) But an averment in an indictment against an officer and agent of a National bank that defendant " did steal, abstract, take and carry away " property of the association, does not charge two offenses. (United States *v.* Jewett, 84 Fed. Rep., 142.) And an indictment charging embezzlement and abstraction of the property of a National bank is not demurrable because it charges the receipt of property by the defendant in different capacities, both as an officer and as an agent of the bank. (*Id.*)

An allegation that defendant, an officer and agent of a National banking association, did secretly, in a manner and by particulars to the jurors unknown, willfully, unlawfully and fraudulently convert to his own use, and misapply, from said association to himself, certain funds, sufficiently charges the offence of " willful misapplication " of property, under this section. (United States *v.* Jewett, 84 Fed. Rep., 142.)

Agent in Liquidation.—This section applies to an agent in liquidation appointed by the stockholders. (United States *v.* Jewett, 84 Fed. Rep., 142.)

§ 170. **Illegal Certification of Check.**—That any officer, clerk, or agent of any National banking association who shall willfully violate the provisions of an act entitled, "An Act in reference 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. (Act July 12, 1882, Ch. 290, Sec. 13; 22 Stat. U. S. 162.)

To constitute a criminal certification of a check by an officer of a National bank, it is not necessary that he should himself deliver the check to some person outside of the bank, or that he should take any part in such delivery; but the offense would be complete if, after he had written the words of certification, the actual delivery is made by some clerk or other officer of the bank without his knowledge. (Potter *v.* United States, 155 U. S., 438.) To constitute the offense the certification must have been "willful." (*Id.*) Where there is evidence tending to show a positive agreement on the part of the officers of the bank that the overdraft caused by such certified check should be practically treated as a loan from day to day, secured by ample collateral, and that before such certified check issued there was deposited in advance an ample amount of cash, such evidence must be submitted to the jury, on the question of criminal intent. (*Id.*)

§ 171. **Obligations of the United States Defined.**—The words "obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, National bank currency, coupons, United States notes, Treasury notes, fractional notes, certificates of deposit, bills, checks or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may (be) issued under any act of Congress. (Rev. Stat. U. S. Sec. 5413.)

§ 172. **Forging and Counterfeiting National Bank Notes.**—Every person who falsely makes, forges, or counterfeits, or causes or procures to be made, forged or counterfeited, or willingly aids or assists in falsely making, forging or counterfeiting, any note in imitation of or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or who passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited, or who falsely alters, or causes or procures to be falsely altered, or willingly aids or assists in falsely

altering any such circulating notes, or passes, utters, or publishes, or attempts to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by such banking association, knowing the same to be falsely altered or spurious, shall be imprisoned at hard labor not less than five years nor more than fifteen years, and fined not more than one thousand dollars. (Rev. Stat. U. S. 5415.)

§ 173. **Wrongful Use of Plates—False Plates, Notes, etc.**—Every person having control, custody, or possession of any plate, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, who uses such plate, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation, or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; and every person who engraves, or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of such obligation or other security, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate be used for the printing of the obligations or other securities of the United States; or who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such obligation or other security has been printed, with intent to use such plate, or suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or who has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security, engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; and every person who prints, photographs, or in any other manner makes or executes, or causes to be printed, photographed, made or executed, or aids in printing, photographing, making, or executing

any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or who sells any such engraving, photograph, print, or impression, except to the United States, or who brings into the United States from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States, or who has or retains in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not more than fifteen years, or by both. (Rev. Stat. U. S. Sec. 5430.)

Notes issued by a State bank are not obligations issued under authority of the United States within the meaning of this section. (United States *v.* Conners, 111 Fed. Rep., 734.)

§ **174. Passing, Selling, etc., Counterfeits.**—Every person who, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the United States with intent to pass, publish, utter, or sell, or keeps in possession or conceals with like intent any falsely made, forged, counterfeited, or altered obligation, or other security of the United States, shall be punished by a fine of not more than five thousand dollars, and by imprisonment at hard labor not more than fifteen years. (Rev. Stat. U. S. Sec. 5431.)

§ **175. Taking Impressions of Plates, etc.**—Every person who, without authority from the United States, takes, procures, or makes, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bed-plate, bed-piece, die, roll, plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things, to be used, or fitted or in-

tended to be used, in printing, stamping, or impressing any kind or description of obligation or other security of the United States, now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be punished by imprisonment at hard labor not more than ten years, or by a fine of not more than five thousand dollars, or both. (Rev. Stat. U. S. Sec. 5432.)

§ **176. Persons Having Impressions, etc., in Their Possession.**—Every person who, with intent to defraud, has in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or who, with intent to defraud, sells, gives, or delivers any such imprint, stamp, or impression to any other person, shall be punished by imprisonment at hard labor not more than ten years, or by a fine of not more than five thousand dollars. (Rev. Stat. U. S. Sec. 5433.)

§ **177. Buying, Selling, etc., Counterfeits, etc.**—Every person who buys, sells, exchanges, transfers, receives, or delivers, any false, forged, counterfeited or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be imprisoned at hard labor not more than ten years, or fined not more than five thousand dollars, or both. (Rev. Stat. U. S. Sec. 5434.)

§ **178. Issuing, etc., Notes of Closed Banks.**—In all cases where the charter of any corporation which has been or may be created by act of Congress has expired or may hereafter expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, knowingly

issues, reissues, or utters as money, or in any other way knowingly puts in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person knowingly aids in any such act, he shall be punished by a fine of not more than ten thousand dollars, or by imprisonment not less than one year nor more than five years, or by both such fine and imprisonment. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such bill, note, check, draft, or other security, bona fide and in the ordinary transactions of business, to utter as money or otherwise circulate the same. (Rev. Stat. U. S. Sec. 5437.)

This section was an act originally passed in 1837 to apply to the second Bank of the United States, the charter of which had then just expired. For some reason or other the compilers embodied this old act in the Revised Statutes.

§ 179. **Receipt of Public Money When Not Authorized Depositary.**—Every banker, broker, or other person not an authorized depositary of public moneys, who knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or who uses, transfers, converts, appropriates, or applies any portion of public money for any purpose not prescribed by law, and every president, cashier, teller, director, or other officer of any bank or banking association, who violates any of the provisions of this section, is guilty of an act of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be punished as prescribed in section fifty-four hundred and eighty-eight. (Rev. Stat. U. S. Sec. 5497.)

It will be seen from this section that all banks other than public depositaries are put on notice in regard to dealings with disbursing officers, etc., of the United States. If the provisions of this section are violated, such violation constitutes embezzlement. Sections 3639 and 3651 of the Revised Statutes are also of importance to bankers in this connection as having reference to public moneys.

CHAPTER VIII.

SUITS, JURISDICTION AND EVIDENCE.

Section 180. Jurisdiction of Suits By and Against National Banks.
181. Same Subject—Federal Courts.
182. Attachment, etc., Before Final Judgment Prohibited.
183. Proceedings to Enjoin Comptroller—Where Had.
184. United States District Attorney to Conduct Suits.
185. Instruments Certified by Comptroller as Evidence.
186. Certified Copy of Organization Certificate as Evidence.

§ 180. Jurisdiction of Suits By and Against National Banks.— 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. (Act July 12, 1882, Ch. 290, Sec. 4; 22 Stat. U. S. 162.)

§ 181. Same Subject—Federal Courts.—That 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 an officer thereof, or cases for winding up the affairs of any such bank. (Act Aug. 13, 1888, Ch. 866, Sec. 4; 25 Stat. U. S. 436.)

General Effect of this Section—Change in Law.—The effect of these enactments is to repeal the tenth subdivision of Section 629, Rev. Stat. U. S., which conferred upon the Circuit Court of the United States jurisdiction of all suits by or against any National banking association established in the District for which the court was held. (National Bank of Jefferson *v.* Fare, 25 Fed. Rep., 200.) The change in the law affected only suits brought after the passage of these enactments. (First National Bank *v.* Morgan, 132 U. S., 141.) National banks are now on precisely the same footing as individual or other corporations with respect to the right to sue or be sued in the Federal courts. (Peter *v.* Commercial National Bank, 142 U. S., 614.) And now a cause in which a National bank is a party defendant cannot be removed into a Federal court on the mere ground that the defendant is a National bank. (Leather Manufacturers' National Bank *v.* Cooper, 120 U. S., 778; Wichita National Bank *v.* Smith, 36 U. S. App., 530.) And a Receiver of the bank who is substituted as a party in place of the bank has no greater rights in this respect than the bank itself. (Wichita National Bank of Wichita *v.* Smith, 36 U. S. App., 530.) The assets of an insolvent National bank are not brought under the control or protection of the Federal courts by being taken into custody by a Receiver appointed by the Comptroller of the Currency, nor by the transfer of such assets from the Receiver to an agent of the stockholders. (Snohomish County *v.* Puget Sound National Bank, 81 Fed. Rep., 518.)

Federal Questions—Diverse Citizenship.—But these enactments do not place National banks under any disadvantage with reference to raising Federal questions in Federal courts. (Walker *v.* Windsor National Bank, 56 Fed. Rep., 76.) Thus, a suit upon the bond of the cashier of a National bank is a suit "arising under the laws of the United States," and is therefore within the jurisdiction of the Federal courts regardless of the residence of the parties. (*Id.*) So, the United States Circuit Court has jurisdiction of a suit brought against a director for negligent performance of his duties; for, as such suits rest upon the requirements of the United States laws and by-laws made pursuant thereto, it is a case arising under the laws of the United States. (Witters *v.* Foster, 28 Fed. Rep., 737.) And so, a suit against the receiver of a National bank to compel him to pay out of the funds in his hands as receiver moneys claimed by the complainant is a suit arising under the laws of the United States, and can be removed into the Federal court. (Hot Springs Independent School District, etc., *v.* First National Bank of Hot Springs, 61 Fed. Rep., 417.) When a State bank acting under a statute of the State calls in its circulation issued under State laws, and becomes a National bank under the laws of the United States, and a judgment is recovered in a court of a State against the National bank upon such outstanding circulation, the defense of the State statute of limitations having been set up, a Federal question

arises which may give the Supreme Court of the United States jurisdiction in error. (Metropolitan National Bank *v.* Claggett, 141 U. S., 520.) So, that court has jurisdiction to review a judgment in State courts involving the question whether a National bank is exempted from liability to account for bonds purchased by it on condition of selling back on demand. (Logan Bank *v.* Townsend, 139 U. S., 67.) The Federal courts have jurisdiction of an action between a National bank located in one State and a citizen of another State. (First National Bank *v.* Forest, 40 Fed. Rep., 705.) A Federal court is not deprived of jurisdiction otherwise vested in it of a suit against the executors of an estate by the fact that the estate is in the possession of a State probate court for purposes of administration, and the Federal court has jurisdiction to adjudge whether a liability exists, but can not issue execution to enforce the same. (Wickham *v.* Hull, 60 Fed. Rep., 326.)

Actions by and Against Receivers.—These enactments do not affect the jurisdiction of the Federal courts in cases of action brought for winding up the affairs of insolvent National banks; and the Receiver may bring an action in such courts to collect the assets of the bank without regard to the citizenship of the parties. (Fisher *v.* Yoder, 53 Fed. Rep., 565; Linn County National Bank *v.* Crawford, 69 Fed. Rep., 532; Hendee *v.* Connecticut, Etc., R. R. Co., 26 Fed. Rep., 677; Burnham *v.* First National Bank, 53 Fed. Rep., 163.) Thus, a suit brought by the Receiver of a National bank, by direction of the Comptroller of the Currency, to enforce a liability due to the bank, and to secure a sale under the order of the court of pledged securities, constituting a considerable part of its assets, is one for winding up the affairs of the bank, and within the jurisdiction of a Circuit Court of the United States, without regard to the citizenship of the parties. (McCartney *v.* Earle, 115 Fed. Rep., 462.) So, the Receiver may be sued in a Federal Court in relation to a contract made by him on behalf of the estate in the course of its administration. (Gilbert *v.* McNulta, 96 Fed. Rep., 83.) But the United States Circuit Court has not jurisdiction of a suit in equity against a receiver of a National bank appointed by the Comptroller of the Currency, where the amount in controversy is less than $2,000. (Smithson *v.* Hubbell, 81 Fed. Rep., 593.) And in a suit by a creditor of an insolvent National bank in behalf of himself and all other creditors to enjoin the receiver and the Comptroller from paying dividends on an alleged fraudulent claim which has been allowed by them, the jurisdictional amount is to be determined solely by the amount of complainant's own claim, and not by the aggregate of all the claims of those whom he assumes to represent, or by the amount of the dividends, the payment of which is sought to be enjoined. (*Id.*)

Agent of Stockholders.—The Federal courts have jurisdiction of an action by or against the agent of the shareholders, chosen under the

Act of June 30, 1876, regardless of the question of citizenship. (Guarantee Co. *v.* Hanway, 104 Fed. Rep., 369; Weeks *v.* International Trust Co., 125 Fed. Rep., 371.)

Jurisdiction of State Courts.—For jurisdictional purposes, a National bank is a citizen of the State in which it is located. (Hazen *v.* Lyndonville National Bank, 70 Vt., 543; Davis *v.* Cook, 9 Mo., 134.) The State courts have jurisdiction of an action brought by a shareholder on behalf of himself and other shareholders to recover of the directors of an insolvent National bank damages for injuries resulting from their negligence and misconduct. (Brinckerhoff *v.* Bostwick, 88 N. Y., 52.) And State courts have jurisdiction of actions against National banks to recover the penalty prescribed by Congress for taking usurious interest. (Schuyler *v.* Bullong, 28 Neb., 684; Henderson National Bank *v.* Alves, 91 Ky., 142; Ordway *v.* Central National Bank, 47 Md., 217; Bletz *v.* Columbia National Bank, 87 Pa. St., 87; Hade *v.* McVey, 31 Ohio St., 231.) They also have power to issue a writ of mandamus requiring the directors of a National bank in liquidation to exhibit the books to the stockholders. (Matter of Tuttle *v.* Iron National Bank, 170 N. Y., 9.) And where the period of corporate existence of a National bank has expired, and its affairs are being wound up, a Receiver for its property may be appointed by a State court upon the application of a stockholder. (Cogswell *v.* Second National Bank, 56 Atl. Rep., 574.) But State courts have no jurisdiction in criminal cases arising under the National-Bank Act. (*In re* Eno, 54 Fed. Rep., 669; Commonwealth *v.* Felton, 101 Mass., 204; Commonwealth *v.* Ketner, 92 Pa. St., 372.) And a State court has no power to make an order directing the receiver of a National bank who has been appointed by the Comptroller of the Currency to pay a judgment obtained against the bank before the receiver was appointed. (Ocean National Bank *v.* Carll, 7 Hun., 237.)

The State statute of limitations applies to a suit brought by the receiver of a National bank against a shareholder to recover an assessment upon his stock to pay the debts of the bank. (Butler *v.* Poole, 44 Fed. Rep., 586.)

§ 182. Attachment, etc., Before Final Judgment Prohibited.—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. (Rev. Stat. U. S. Sec. 5242.)

This section is constitutional. (Dennis *v.* First National Bank of Seattle, 127 Cal., 453.)

Attachments.—In the case of Pacific National Bank *v.* Mixter (124 U. S., 721) the Supreme Court of the United States said that although this provision forbidding attachments was evidently made to secure equality among the general creditors in the division of the proceeds of the property of an insolvent bank, its operation is by no means confined to cases of actual or contemplated insolvency; but the remedy is taken away altogether, and can not be resorted to under any circumstances. The effect of this provision is to write into all State attachment laws an exception in favor of National banks, and all such laws must be read as if they contained an exception in favor of National banks. And, as all power of issuing attachments against National banks has been eliminated from State statutes, there can be no laws of the State providing for such a remedy under which the Circuit Courts of the United States can act, and, therefore, these courts, as well as the State courts, have no power to grant an attachment. (*Id.*) As the attachment is void, a bond given by a National bank to dissolve such attachment, served by summons of garnishment, is also void. (Planters' L. & S. Bank *v.* Berry, 92 Ga., 264.) Nor is the giving of such bond an appearance in the attachment case so as to make valid a judgment entered on the bond in that case against the bank and the sureties executing the bond. (*Id.*) Sureties who have received assets of the bank to secure them from loss thereon, the obligation being illegal, will be discharged in equity and be compelled to transfer their collateral to the receiver of the bank. (Pacific National Bank *v.* Mixter, 124 U. S., 721.) Where service is made on a National bank only by attachment and publication or service out of the State, the attachment being prohibited by this section will be vacated and the service set aside. (Garner *v.* Second National Bank, 66 Fed. Rep., 369.) And a receiver of a National bank situated in another State, though not a party, may move to vacate an attachment. (People's Bank of the City of New York *v.* Mechanics' National Bank of Newark, 62 How. Pr., 422.) The provision of this section prohibiting attachments is not repealed by the Act of Congress of July 12, 1882, providing that the jurisdiction for suits thereafter brought against National banks shall be the same as for suits against State banks, and repealing laws inconsistent therewith. (Raynor *v.* Pacific National Bank, 93 N. Y., 371.) The prohibition applies whether the bank is solvent or insolvent. (Van Reed *v.* People's National Bank, 173 N. Y., 314.) But it does not apply where the bank intervenes in an attachment suit and claims the property. (Willard Mfg. Co. *v.* Tierney, 130 N. C., 611.) And an attachment sued out against a National bank as garnishee is not an attachment against the bank or its property within the meaning of this Section. (Earle *v.* Pennsylvania, 178 U. S., 449.) The right acquired by such an attachment is not lost to the attaching creditor by the suspension of the bank and the appointment of a receiver. (*Id.*) But the distribution of the bank's assets in the hands of the receiver cannot be in any wise directly controlled by the

State court issuing the attachment, or seized under an attachment or execution in the hands of any State officer. (*Id.*) The receiver may be notified by service upon him of an attachment issued from a State court of the nature and extent of the interest asserted or sought to be acquired by the plaintiff in the attachment in the assets in his custody. (Earle *v.* Conway, 178 U. S., 456.) But such an attachment cannot create any lien upon specific assets of the bank in the hands of the Receiver nor disturb his custody of those assets, nor prevent him from paying to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, all moneys coming to his hands or realized by him as Receiver from the sale of the property and assets of the bank. (*Id.*)

Injunctions.—This section forbids State courts to grant injunctions against National banks before final judgment; and the prohibition is not repealed by Stat. U. S. 1882, C. 290, Sec. 4, or Stat. U. S. 1887, C. 373, Sec. 4, or Stat. U. S. 1888, C. 866, Sec. 4. (Freeman Manufacturing Company *v.* National Bank of the Republic, 160 Mass., 398.) But this section does not deprive the Federal courts of the power to issue such an injunction. (Hoover *v.* Weiss Malting and Elevator Co., 55 Fed. Rep., 356.) And where the case is removed into the Federal court after an injunction granted by the State court, the Federal court may continue such injunction. (*Id.*) When a valid judgment has been obtained in a State court against a National bank, and the lien thereof has attached to its property, before the appointment of a Receiver, this section applies to prohibit the issue of an injunction by a Federal court, at the suit of the Receiver, to restrain the enforcement of such judgment. (Baker *v.* Ault, 78 Fed Rep., 374.)

§ 183. Proceedings to Enjoin Comptroller—Where Had.—All proceedings by any National banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to National banking associations, shall be had in the district where such association is located. (Rev. Stat. U. S. Sec. 736.)

§ 184. United States District Attorney to Conduct Suits.—All suits and proceedings arising out of the provisions of law governing National banking associations, in which the United States or any of its officers or agents shall be parties, shall be conducted by the district attorneys of the several districts under the direction and supervision of the Solicitor of the Treasury. (Rev. Stat. U. S. Sec. 380.)

A commission from the Department of Justice to an attorney appointing him a special assistant to a district attorney is not to be construed with technical nicety, and such a commission appointing an attorney as special assistant to a district attorney, to assist "in the preparation and trial" of cases of the United States against the officers of an insolvent National bank against some of whom indictments had previously been returned, is to be construed as having been given under Rev. St., Sec. 363, U. S. Com. St., 1901, p. 208, and to authorize the person so commissioned to assist in the performance of any duties of the district attorney, including appearing before the grand jury to present evidence for new indictments. (United States *v.* Twining, 132 Fed. Rep., 129.)

The fact that such commission is signed by the Solicitor General in the Department of Justice as "Acting Attorney General" does not affect the validity of the appointment. (*Id.*) Nor does the fact that the person appointed as a special assistant to a district attorney in the prosecution of criminal actions against the officers of an insolvent National bank had previously been employed by the receiver of such bank to prosecute civil suits against such officers. (*Id.*)

§ 185. Instruments Certified by Comptroller as Evidence.—Every certificate, assignment, and conveyance executed by the Comptroller of the Currency, in pursuance of law, and sealed with his seal of office, shall be received in evidence in all places and courts; and all copies of papers in his office, certified by him and authenticated by the said seal, shall in all cases be evidence equally with the originals. An impression of such seal directly on the paper shall be as valid as if made on wax or wafer. (Rev. Stat. U. S. Sec. 884.)

Certified copies of papers are usually furnished by the Comptroller's office upon affidavit setting forth what they are required for, and that the evidence can be procured in no other way, provided the parties requesting are entitled to receive them, and if the giving of the copies would not be detrimental to the public service.

§ 186. Certified Copy of Organization Certificate as Evidence.—Copies of the organization certificate of any National banking association, duly certified by the Comptroller of the Currency, and authenticated by his seal of office, shall be evidence in all courts and places within the jurisdiction of the United States of the existence of the association, and of every matter which could be proved by

the production of the original certificate. (Rev. Stat. U. S. Sec. 885.)

EFFECT OF CERTIFICATE AS EVIDENCE.—This certificate, together with proof that the bank has been acting as a National bank for a long time, is amply sufficient evidence to establish, at least *prima facie*, the existence of the corporation. (Mix *v.* National Bank of Bloomington, 91 Ill., 20.) See also Thatcher *v.* West River National Bank, 19 Mich., 196; Merchants' National Bank *v.* Glendon, 120 Mass., 97.) And such certificate is competent evidence in a State court. (Tapley *v.* Martin, 116 Mass., 275.) In a suit against the bank or its stockholders this certificate is conclusive evidence of the organization. (Casey *v.* Galli, 94 U. S., 673.)

CERTIFICATE OF DEPUTY COMPTROLLER.—Where the certificate is signed by the Deputy Comptroller, the court will assume that at the date of such certificate he was authorized to exercise the power and discharge the duties of Comptroller. (Keyser *v.* Hitz, 133 U. S., 438.) And it is no objection that it is signed by him as Acting Comptroller. (*Id.*) (Aspinwall *v.* Butler, 133 U. S., 595.)

PROOF BY OTHER EVIDENCE.—In an action by a National bank it is competent to prove by parol that it was carrying on a general banking business as a National bank authorized by the general laws of the United States under the name by which it had sued. (Yakima National Bank *v.* Knipe, 6 Wash., 348.)

PART SECOND.

MONOGRAPHS ON NATIONAL BANK SUBJECTS.

Methods of Organizing and Form of By-Laws.
Management of National Banks.
Liquidation and Consolidation.
Extension of Charter.
Reorganization Versus Extension.
National Banks as Government Depositaries.

METHODS OF ORGANIZING.

In organizing a National bank one of three methods may be pursued, according to existing conditions:

1. **De Novo**—creating a new bank.
2. **Reorganization** of State or private bank or co-partnership.
3. **Conversion** of an incorporated State bank.

ORGANIZATION DE NOVO.

Section 5133 U. S. R. S. provides that any number of natural persons, not less in any case than five, may organize a National bank.

Corporators Must Be Natural Persons.—The corporators must be natural persons (Section 5133, Revised Statutes)—that is, human beings, as distinguished from artificial beings which exist only in contemplation of law, such as corporations and joint-stock companies. The reason for excluding these merely legal entities is obvious. Such powers as they have are limited, and in most cases they are not authorized to become corporators of another artificial being, and their participation in the organization might give rise to questions affecting its validity. Partnerships, equally with corporations are excluded under the terms of the statute as corporators, but may be stockholders of a bank if not prohibited by the laws of the State in which the bank is located.

Married Women as Corporators.—Whether a married woman can be a corporator will depend upon the law of the State in which she resides and where the bank is to be located. If by the State law she is authorized to make a contract, and has the capacity to bind herself to all the liabilities and obligations of a shareholder, there is no reason why she should not participate in forming the corporation.

Infant Can Not Be Corporator.—An infant—that is, a person under legal age—should never be allowed to become a corporator, for his contract would not be binding and he could repudiate it upon becoming of age.

Corporators May Act by Agent or Attorney.—There seems to be no reason why a corporator may not execute the papers by an agent or attorney. In the case of the organization of a railroad corporation, it was said by the Court of Appeals of New York, that the instrument of incorporation might be executed by a duly authorized agent. (Matter of N. Y., L. E. and W. R. R. Co., 99 N. Y., 12.) There is nothing in the National banking law to require a different rule in the organization of a National bank. As was said in the case referred to, "the statute does not forbid it; the ordinary rules of law justify, rather than condemn it." The power of attorney need not, of course, be in any special form, but it should clearly state that the person giving it authorizes the person to whom it is given to execute in his name the articles of association and organization certificate and any other necessary papers and to take shares for him in the proposed association. It should be acknowledged in the same way as the organization certificate, and should be filed in the office of the Comptroller of the Currency together with the other papers.

The following is a form of power of attorney that may be used:

Know all men by these presents that I ——— ———, of ———, do hereby appoint ——— ———, of ———, my attorney, for me and in my name to sign and execute all papers and instruments that it shall be proper and necessary for the corporators of the National banking association to be located in the ——— of ———, county of ———, State of ———, and to be known as the ———, and to subscribe for ———

shares in the original capital stock of the said ———; hereby ratifying and confirming all that my said attorney shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand this ——— day of ———, 19—. [Signature.]

STATE OF ———,
***County of* ———,** } *ss:*

On this — day of —, 19—, before me, a notary public in and for the State and county aforesaid, appeared ——, known to me to be the person who executed the foregoing instrument, and acknowledged that he executed the same. [Signature of notary.]

[Seal of notary.]

The Subscription Paper.—The law does not require a preliminary subscription for the stock of the proposed bank, though such subscription is advisable, and is frequently the means of greatly facilitating the organization. By it the persons are brought together in a mutual contract, and are thus enabled to come to a full understanding on matters preliminary to the organization of the bank, about which there may be great difference of opinion. To postpone doing so until the articles of association are presented for signature to the various persons who are to become corporators might cause confusion and delay. For example, it is well to have an understanding as to what provisions the articles of association shall contain; who shall be named as the first directors of the bank; where the banking house shall be located; the exact number of shares each person interested is to have, and it frequently happens that persons are willing to become shareholders only upon prescribed conditions; that a certain man shall be president; that the banking house shall be located on a certain street, etc.; so it will be seen that the chances of misunderstandings and future disagreements are very materially lessened if the conditions are plainly set forth in a subscription paper.

The signing of the subscription paper does not necessarily constitute one a member of the corporation which is afterwards formed; and should the other subscribers refuse to admit him to participation in the organization, he would have only an action for damages. But when requested to do so by those promoting the organization, each subscriber would be bound to join in the execution of all the instruments necessary that the corporators should

execute for the formation of the corporation. Should any subscriber refuse to execute these instruments, and his refusal have the effect of preventing an organization, or greatly delay it, a court of competent jurisdiction might, upon petition of the other subscribers, decree specific performance. (See Lindley on Partnership, p. 925, and cases there cited.)

Form of Subscription Paper.

We whose names are hereunto signed do hereby subscribe, in the proportions hereinafter set opposite our respective names, for the stock of a National banking association to be organized under the laws of the United States with a capital stock of ——— thousand dollars, divided into ——— shares, of the par value of one hundred dollars each, the said National banking association to be located in the ——— of ———, State of ———, and to be called "The ———."

Signatures.	Shares.

Capital Required.—The capital required is according to the population of the place, as follows:

$ 25,000	where	the	population	does	not	exceed	3,000
50,000	"	"	"	"	"	"	6,000
100,000	"	"	"	"	"	"	50,000
200,000	"	"	"	exceeds.........			50,000

Entire Stock May Be Taken by a Few Persons and Afterwards Distributed.—When a considerable number are to become stockholders, and it is not definitely known how many shares will be taken by each, it may expedite the case to have a few (say the incorporators) listed in the organization certificate as the owners of the entire stock, but in order that the stock ledger may show the orginal holdings of stock the original stock certificates should be issued in the names of those listed, the certificates to be ultimately surrendered for reissue and assignment, in accordance with the agreement which may have been entered into in anticipation of the organization of the bank.

Temporary Stock Certificates.—The payment of the first and subsequent installments on stock should be credited on the temporary stock certificates, the latter to be surrendered in exchange for permanent certificates when the final installment is paid.

The following form of temporary certificate is in general use:

No. ——. TEMPORARY CERTIFICATE. —— Shares.

The ——— National Bank of ———.

This is to certify that ——— is entitled to ——— shares of the capital stock of the ——— National Bank of ———, capital $——, and that upon payment of all installments, amounting to $——, and surrender of this temporary certificate, a certificate of stock will be issued.

Witness the seal and the signatures of the president and cashier of the bank.

Dated ———, 190—.

The ——— National Bank of ———.

By ——— ———, ——— ———,

Cashier. President.

PAYMENTS ON ACCOUNT OF CAPITAL.

First installment,	——	per cent.,	amounting to	$——,	paid	——, 190—.
Second "	——	"	"	——	"	——, 190—.
Third "	——	"	"	——	"	——, 190—.
Fourth "	——	"	"	——	"	——, 190—.
Fifth "	——	"	"	——	"	——, 190—.
Sixth "	——	"	"	——	"	——, 190—.

ASSIGNMENT.

For value received I hereby transfer and assign to ——— this temporary certificate, and hereby appoint and constitute ——— ——— my true and lawful attorney to transfer said certificate, with full power of substitution in the premises.

Dated at ———, this ——— day of ———, 190—.

Witness: ——— ———. ——— ———.

Application to the Comptroller for Title.—When the promoters have fixed upon a name for the bank, the Comptroller should be notified, his approval of title selected being necessary. If capital is to be less than $100,000, the approval of the Secretary of the Treasury is also required. (Sec. 5138 R. S.)

The notice should read as follows:

Sir: Notice is hereby given that we, the undersigned, being natural persons and of lawful age, intend, with others, to organize a National banking association, under the title of "The ———," to be located at ———, county of ———, State of ———, with a capital of $———.

In order that we may effect such organization, we request that proper blank forms be sent to ———, at ———, and, if the title selected shall be approved, that it be reserved for us for the period of sixty days.

This application must be signed by at least five of the persons who are to participate in the organization, each applicant stating his residence, business and, in figures, his financial strength.

The Form of Title.—The name of the place in which the bank is to be located must constitute a part of the title. For example, "The Exchange National Bank of Omaha." If the name of the place is selected as the distinguishing part of the title, it must not also be added. Thus, if the title is to be, "The Omaha National Bank," the words "of Omaha" must not be added, as they would be superfluous. The addition of the name of the State is not allowed. It is best to make the title brief, not using unnecessary words, nor a long name or compound word as the distinguishing part. *E. g.,* "The National Susquehanna-River Bank, of the City of Harrisburg" would be very cumbersome.

The title "The First National Bank of ———" will not be granted in case another National bank has ever been organized at the place in question, whether still in existence or not, and the Comptroller will not grant the title of Second National Bank where such title would be a misnomer on account of the existence of two or more National banks in the place. Nor will he grant a title liable to be confounded with that of another National or State bank.

Standing of Parties Must Be Vouched For.—The Comptroller requires that the public official endorsing the applicants shall be sufficiently acquainted with them to be able to certify that he believes their statement correct, and that they are acting in good faith, and unless the applicants are reasonably well rated in Mercantile Agency reports further evidence of their good financial standing should be furnished.

Practice of Comptroller to Reserve Title.—It is the practice of the Comptroller, when an application, satisfactorily endorsed, is received, to reserve for the parties, for a reasonable time, the title selected. The time allowed is sixty days, but extension is sometimes granted under certain circumstances.

Organization Papers.—When the title selected has been approved by the Comptroller, he forwards to the applicants blank organization papers, with specific instructions for their execution. Written forms will be accepted only in exceptional cases, a great amount of labor is involved in examining papers thus prepared, which is avoided by the use of printed forms.

The organization blanks are as follows:

Articles of Association.

Organization Certificate.

Oaths of Directors.

Certificate as to Payment on Capital Stock.

Order for Circulation.

Signatures of Officers.

In the case of reorganization a Certificate of Directors in regard to assets purchased from the old bank is required, and if a conversion of a State bank, there is an additional form for shareholders to authorize conversion.

The execution of these papers is a very simple matter, but mistakes are very frequently made through carelessness. For example: the Corporate Title is not inserted exactly as approved by the Comptroller, perhaps abbreviated or name of State added; names of persons misspelled; errors made in jurat; oaths of directors antedating organization certificate, etc. Care should be taken to prepare the papers correctly, so as to avoid the delay incident to their return by the Comptroller for correction.

Articles of Association.—This is the first instrument to be executed. Sec. 5133 Revised Statutes provides that the Articles "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 conduct of its affairs."

The following is the form furnished by the Comptroller:

ARTICLES OF ASSOCIATION.

For the purpose of organizing an association to carry on the business of banking, under the laws of the United States, the undersigned subscribers for the stock of the association hereinafter named do enter into the following articles of association:

First. The name and title of this association shall be "The ———."

Second. The place where its banking house or office shall be located and its operations of discount and deposit carried on and its general business conducted shall be ———.

Third. The board of directors shall consist of ——— shareholders. The first meeting of the shareholders for the election of directors shall be held at ———, on the ———, or at such other place and time as a majority of the undersigned shareholders may direct.

Fourth. The regular annual meetings of the shareholders for the election of directors shall be held at the banking house of this association on the second Tuesday of January of each year; but if no election shall be held on that day it may be held on any other day, according to the provisions of section 5149 of the Revised Statutes of the United States; and all elections shall be held according to such regulations as may be prescribed by the board of directors, and not inconsistent with the provisions of the National banking law and of these articles.

Fifth. The capital stock of this association shall be ——— thousand dollars, to be divided into shares of one hundred dollars each; but the capital may, with the approval of the Comptroller of the Currency, be increased at any time by shareholders owning two-thirds of the stock, according to the provisions of an act of Congress approved May 1, 1886; and in case of the increase of the capital of the association, each shareholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The board of directors, a majority of whom shall be a quorum to do business, shall elect one of its members president of this association, who shall hold his office (unless he shall be disqualified, or be sooner removed by a two-thirds vote of all the members of the board), for the term for which he was elected a director; the directors shall have power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president from any cause to perform all acts and duties pertaining to the office of president except such as the president only is authorized by law to perform; and to elect or appoint a cashier and

such other officers and clerks as may be required to transact the business of the association, to fix the salaries to be paid to them, and continue them in office, or to dismiss them, as in the opinion of a majority of the board the interests of the association may demand.

The directors shall have power to define the duties of the officers and clerks of the association, to require bonds from them and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the election; to make all by-laws that it may be proper for them to make, not inconsistent with law, for the general regulation of the business of the association and the management of its affairs; and, generally, to do and perform all acts that it may be legal for a board of directors to do and perform, under the Revised Statutes aforesaid.

Seventh. This association shall continue for the period of twenty years from the date of the execution of its organization certificate, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth. These articles of association may be changed or amended at any time by shareholders owning a majority of the stock of the association in any manner not inconsistent with law; and the board of directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof for thirty days in a newspaper published in the town, city, or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

In witness whereof we have hereunto set our hands this ——— day of ———, nineteen hundred and ———.

[Signatures of corporators,
and there must be at least five.]

It formerly was required that the President or Cashier certify that the Articles of Association had been executed in duplicate. The Comptroller of the Currency now rules that the execution of the Organization Certificate by the parties executing the Articles of Association (as is required) and the acknowledgment of the same is sufficient.

This form, of course, may be varied to meet the views of the corporators, and any provisions may be inserted which are not inconsistent with the National banking laws, but, unless conditions specially require, it is advisable to conform to this form provided by the Comptroller of the Currency.

Signing of Articles.—It is unnecessary for more than five of the subscribers to the capital stock to act as incorporators and sign the articles of association

How Corporators Should Sign.—In executing the organization papers, each person should sign his Christian name and surname in full, as is usually done in the execution of deeds and other legal instruments.

Should Be Executed in Duplicate.—The law requires that a *copy* of the articles of association shall be filed in the office of the Comptroller of the Currency. It often happens that the original articles in the possession of the bank are lost or destroyed. For this reason it has become the practice to execute them in duplicate, and to file with the Comptroller one of these instead of a copy.

Sliding Scale of Directors.—It is well to have article three read, "The board shall consist of not less than five nor more than —— (fix limit) shareholders," then the number can be changed within that limit at any annual meeting without amending the articles. The number elected constitutes the board for the year, but should the bank's interests specially require an increase in directors during the year, the Comptroller may give his consent. Then it will be necessary, at a meeting of the shareholders called for the purpose and by a majority vote, to amend article three to read: "The board of directors shall consist of —— (number desired) shareholders," or the amendment may be an increase in the limit of the sliding scale. The shareholders (not the directors) may then elect the additional directors provided for, and the Comptroller consent to the change in number for the year.

Naming Directors in Articles.—Instead of providing, as in the form given (Article 3), for a meeting of shareholders to elect directors, the incorporators may designate, if they choose, in the articles the persons who shall constitute the first board of directors. In this event the third article in the preceding form should be made to read as follows:

The board of directors shall consist of ——— stockholders, and the following persons [here insert names] have been duly elected directors of this association, to hold their offices as such until the regular annual election takes place, pursuant to the fourth article of these articles of association, and until their successors are chosen and have qualified.

Qualification of Directors.—Section 5146, R. S., provides that a director of a National bank must be a citizen of the United States, and at least three-fourths of the Board must have resided in the State or Territory where the bank is located for the year just preceding their election, and must be resident therein while directors; every director also must own in his own right and free from pledge at least ten shares of the capital stock of the bank. This amount of the proposed stock it is necessary to pay for only as the regular payments on the stock of the bank are required by law.

Election of Directors.—Section 5145, R. S., provides that a National bank shall have at least five directors, who shall be elected at a shareholders' meeting, to be held before the bank is chartered, and afterwards at annual meetings in January. The usual date is the second Tuesday of January, but this is not obligatory. Notwithstanding the provision for such election, the Comptroller's Office has always construed Sec. 5147, R. S., as authorizing the first board of directors to be appointed or elected. In either case it is necessary that the directors be appointed or elected at the same time or immediately after the execution of the organization papers that they may elect the officers of the bank, to meet the Comptroller's requirement that the president or cashier certify to the execution of the articles of association. It is required that the annual election be held in January, even though a bank is organized and directors elected only shortly before that time, and though no change in the Directory may be desired. A full meeting is not necessary, as the number of shareholders present or represented is not material for a legal election.

Number of Directors.—In fixing the number of directors, it is well, as before stated, to adopt a sliding scale in articles of association, to avoid the necessity of calling a meeting of stockholders to

change the articles, in case it is deemed expedient at the annual meeting to increase or decrease the number. The form is given on a preceding page. We would suggest a board of at least seven members—as the law requires that the reports of condition, made five times during the year, shall be attested by not less than three directors; so that with a smaller board it will be seen that the liberty of the members to be absent from the place is curtailed.

Oath of Directors.—The oaths of directors required by Sec. 5147, R. S., may be taken singly or jointly as is most convenient; generally they are taken at the meeting to organize the board. They must not antedate the execution of the articles and organization certificate.

The oath should be administered by an officer having an official seal, and promptly sent to the Comptroller.

Blank forms for directors' oaths are furnished by the Comptroller of the Currency, but written oaths if in legal form may be accepted.

FORM FOR JOINT OATH OF DIRECTORS.

STATE OF ——,
County of ——, } *ss:*

We, the undersigned, directors of the ——, of ——, in the State of ——, being citizens of the United States and residents of the State of ——, do, each for himself and not one for the other, solemnly swear that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the statutes of the United States under which said association has been organized; and each for himself does solemnly swear that he is the owner in good faith and in his own right of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Signature.	Residence.

Subscribed and sworn to this —— day of ——, 19—, before the undersigned, a —— in and for said county.

[SEAL.] Notary Public.

Note.—If the officer administering the oath has no seal, a certificate of the proper State, county, or court official to the effect that such officer is authorized to take acknowledgments must be attached.

The form for single oath of director is the same as the joint oath, excepting that it is prepared for an individual. The Comptroller sends copies of both forms, but the execution of either is sufficient, the individual forms being for use in case of absence of a director at time of organizing.

Not Necessary to Provide for Increasing Capital Stock.—It was once required to provide in the articles of association for an increase of the capital stock (Section 5142, Revised Statutes), but such a provision is no longer necessary, for the Act of May 1, 1886, authorizes shareholders owning two-thirds of the shares, with the approval of the Comptroller, to increase the capital stock at any time and to any amount.

Provision for Lien on Stock Invalid.—Formerly it appears to have been not unusual, for the persons forming an association, to incorporate in either the articles of association or the by-laws, and in stock certificates, a provision to the effect that no shareholder, when indebted, either directly or indirectly, to the bank, could transfer his stock without the consent of the directors. This is a very common provision in the articles of association and by-laws of other than National banks and of moneyed corporations generally, and is, no doubt, an excellent one where the policy of the law admits of it. But the Supreme Court of the United States has held that any such regulation adopted by a National bank is void, because the bank would thus acquire an interest in its own stock in violation of Section 5201, Revised Statutes. (Bank *v.* Lanier, 11 Wall., 369.)

Official Signatures.—The Comptroller requires that the official signatures of the officers of the bank be furnished him with the organization papers. The officers should be promptly elected to avoid any delay in the execution of papers of the association requiring their signatures.

The seal of the bank is required to attest the signatures; yet, if it has not been made, the signatures should be forwarded, and later the Comptroller will send another blank for execution with seal.

This paper must not antedate the Oaths of Directors.

The form is as follows:

To the Comptroller of the Curency:

OFFICIAL SIGNATURES of the President, Vice-Presidents, Cashier, and Assistant Cashiers of "The .... National .... Bank of ...." appointed at a meeting of the Board of Directors held on the .... day of ...., 190.., as follows [*Original signatures necessary.*]

NOTE.—The signatures of officers should be forwarded annually, although no change may have taken place, and this paper will be returned for correction unless these directions are followed: (1) The signatures of the Vice-President and Assistant Cashier must be given, if the bank have such officers, in addition to those of the President and Cashier. (2) Write the word "none" where the office is vacant. (3) Affix the seal of the bank in the place designated. (4) Fill in the title of the bank, and be careful to insert date of appointment of officers. (5) Promptly forward to the Comptroller of the Currency.

The Organization Certificate.—The next step is to execute an organization certificate. The provisions to be made in this certificate are specially set forth in the statute (Section 5134, Revised Statutes), viz.:

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 the National Bank Act.

Every one of these provisions must be stated clearly and definitely in the certificate, but nothing else should be included in it.

The following is the form for the organization certificate, furnished by the Comptroller of the Currency:

ORGANIZATION CERTIFICATE.

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing an association for carrying on the business of banking under the laws of the United States, do make and execute the following organization certificate:

First. The name of the association shall be "The ———."

Second. The said association shall be located in the ——— of ———, county of ——— and State of ———, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be ——— dollars ($———), and the same shall be divided into ——— shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

Name.	Residence.	Number of shares.

Fifth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid laws of the United States.

In witness whereof we have hereunto set our hands this ——— day of ——— 190—.

[Signatures of incorporators.]

STATE OF ———,
County of ———, } *ss:*

On this the ——— day of ——— A. D. 190—, before me, a ——— of ———, personally came ——— ———, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

——— ———.

[Seal of notary or judge of court.]

Must be Signed and Acknowledged.—The persons signing the articles of association must also sign the organization certificate (Section 5134, Revised Statutes), and, in addition, each person signing such certificate is required to acknowledge his signature thereto before a notary public or a judge of some court of

record. (Section 5135, Revised Statutes.) In acknowledging signatures see that names are properly spelled if inserted by notary or person other than incorporators.

Before What Officer Acknowledgment Can Be Made.—The acknowledgment must be made before one of the officers specified above, but before no other. The acknowledgment can not be taken by the clerk of the court.

Officer Must Affix Seal.—The acknowledgment must be authenticated by the seal of the notary or court. This requirement is not dispensed with by any State law, that notaries are not required to have seals, and no certificate from a State officer or other evidence, that the attesting officer is a notary public and qualified to take acknowledgments, will answer in place of a seal. The seal of the court may, of course, be affixed by the clerk of the court, but it must not be understood because the clerk may affix the seal that the acknowledgment may be taken by him.

By Whom Organization Certificates Executed.—The organization certificate must be signed by the same persons who execute the Articles of Association; others also may sign if for any special reason their signatures are desired, but they must be subscribers to the stock of the proposed bank, and it is usually best not to have these papers signed until all preliminary matters are arranged as it sometimes happens that persons who were to be corporators, for one reason or another, decide not to take part in the proposed organization.

It is not necessary that all the subscribers to stock should join in executing these papers. The Comptroller holds that five of the subscribers are sufficient, and to save the trouble of obtaining many signatures often a few subscribers are selected for this purpose; but the names of all subscribers to the stock must be listed in the organization certificate, with their places of residence, though not necessarily in their own handwriting. (R. S., Sec. 5134.)

The names of those who sign the application for permission to organize the bank must appear in the organization certificate as

corporators or at least as shareholders, otherwise waiver of right to participate in the organization of any one or more such applicants, not participating, must be furnished the Comptroller. In the event that less than a majority of the applicants are parties to the organization either as corporators or stockholders, the Comptroller will not permit the organization to proceed until waivers are submitted and satisfactory information furnished as to the character and financial standing of the successors of the non-participating applicants.

When Organization Papers Should be Filed.—It is best to file the articles and organization certificate with the Comptroller as soon as executed, for until filed the association cannot act as a body corporate. (Sec. 5136, R. S.) The other papers should also be filed as soon as possible, so that if there are any errors they may be corrected; then when the fifty per cent. of capital has been paid in and certified to the Comptroller and bonds deposited there will be no delay in chartering the bank.

Association Becomes Body Corporate.—When the articles of association and organization certificate have been executed and filed with the Comptroller, the association becomes a body corporate from the date on which the organization certificate was executed. (Section 5136, R. S.) It can then enter into contracts as a corporation, call for payments upon capital stock and transact in its corporate name and capacity any business incidental and necessarily preliminary to beginning the banking business. (Section 5136, R. S.)

The U. S. Supreme Court has held (McCormick *vs.* Market National Bank, Chicago, 165 U. S., 538) that a lease or purchase of a banking house may not be contracted for until the bank has been fully organized and chartered, nevertheless the parties interested may secure an option, and thus hold the property until the lease or purchase can be legally made.

Payment on Stock Required.—Section 5168, R. S., requires that at least 50 per cent. of the capital stock be paid in and certified to the Comptroller before a National bank can be chartered. Delay

may be avoided by a few of the subscribers to the stock making payments sufficient to cover this requirement without waiting to receive the *pro rata* proportion from all the subscribers; still it is a question, in view of the provisions of Section 5141, relative to the sale of stock of delinquent stockholders whether this course is advisable. The point, however, has never been submitted for legal determination.

Calling for Payment on Stock.—The directors may call for the payment of 50 per cent. of the capital stock at any time, unless the stock has been taken on some agreement to the contrary, as, that the payment shall not be called for before a certain date or before the happening of a certain event. The authority of the directors to call for further payments on subscriptions to stock would appear to be limited by Section 5140, Revised Statutes, which provides that after the first payment of 50 per cent. of the capital, the balance shall be paid in monthly installments of at least 10 per cent., beginning one month from the date of the issue of charter. It might be held that this section merely prescribes the time within which the capital must be paid in. The point has never been judicially determined. A fair construction of the section referred to would seem to give a subscriber to stock the right to make payment in such monthly installments, unless a special agreement has been entered into by the subscribers, authorizing the board to call for payments of stock at pleasure, or in larger installments than is required by law. The second and subsequent payments of course need not be restricted to 10 per cent. each, as the capital stock may be paid if desired in advance of the time required by law. Certificates to the Comptroller of payments of installments should not include a fraction of a dollar.

Book Entry of Payments on Subscriptions.—Payments on subscriptions to capital stock should not be carried to stock account, nor entered in reports of condition to the Comptroller as capital stock until these payments are certified to the Comptroller. Prior thereto they should be credited to shareholders in a separate account and entered in the reports to the Comptroller under heading "Liabilities other than those stated" or "capital paid in, not certified."

Certificate of Payment on Stock.—When fifty per cent. of the capital stock has been paid in it is required by Section 5168, Revised Statutes, that this be certified to the Comptroller by the president or cashier and a majority of the directors of the bank. The form of such certificate is as follows:

CERTIFICATE OF OFFICERS AND DIRECTORS TO PAYMENT OF CAPITAL STOCK.

———, 190—.

The undersigned, officers and directors of ——— ———, located at ———, organized under the provisions of the Revised Statutes of the United States authorizing the organization of National banking associations, do hereby certify that of the authorized capital stock of $——— there has been paid into said bank, in cash, as permanent capital, $———, constituting the first installment, and that no part of this sum is represented by promissory notes or other evidences of debt; also that the name and place of residence of each director, and the amount of stock individually owned in good faith, are as follows:

Name of Director.	Place of Residence. (Town or City and State.)	Number of Shares of Stock.

NOTE.—The names, etc., of *all* the directors of the association must be listed, but only a majority of the directors and the president or cashier are required to certify and make acknowledgment.

It is further certified that the association has in good faith complied with all of the provisions that are required to be complied with before receiving authority to commence the business of banking.

[Signature of President or Cashier.]

[Signatures of a majority of the directors.]

STATE OF ———,
County of ———, } *ss:*

Before the undersigned, a ——— of ———, personally appeared the above-named directors and other officers of the aforesaid National bank, and made oath that the foregoing certificate and the matters and things therein set forth are true to the best of their knowledge and belief.

Witness my hand and seal of office this ——— day of ———, 190—.

——— ———.

[Official seal of officer.]

The Deposit of Bonds.—The organization papers including oaths of directors and certificate of payment of first installment of capital stock having been filed with the Comptroller, it only re-

mains to make the required deposit of United States bonds. These bonds must be assigned to "the Treasurer of the United States in trust" for the bank to be chartered. A certain deposit, according to capital, is required by law whether a bank takes out circulation or not. The bonds must be registered, but coupon bonds will be accepted, the Secretary of the Treasury being authorized to receive and issue registered bonds for them, bearing same interest, etc. The minimum amount of bonds required to be deposited is as follows:

1. For bank of $150,000 capital or less, an amount equal to one-fourth of the capital stock.
2. For a bank with capital over $150,000, a minimum of $50,000.

The Comptroller's Certificate.—When the bank has complied with all these conditions, the Comptroller issues a certificate that it is authorized to begin business under the National Bank Act, and he then wires the bank its charter number and authority to begin business. The bank may open for business on receiving advice that the charter has been issued, without awaiting receipt of the document.

Certificate Must be Published.—The bank must publish the Comptroller's certificate for at least sixty days in a newspaper published in the city or county where the bank is located. (Section 5170, R. S.) An insertion in a weekly newspaper or a weekly edition of a daily is sufficient. The oath of the publisher that the certificate has been published for the time required, with printed copy of certificate attached, cut from the newspaper, must be filed in the Comptroller's office.

Circulating Notes.—It is optional with a National bank whether it issues circulating notes or not, but as the law requires a certain bond deposit to be maintained with the U. S. Treasurer, regardless of note issue, the banks, with few exceptions, take out circulation.

Signing Circulating Notes.—Section 5172, Revised Statutes, requires that circulating notes of National banks shall be attested by the signatures of the president or vice-president and the cashier, but the Act of July 12, 1892, provides that all such notes "issued to or received by any National bank, though they may have been lost or stolen from the bank and put in circulation without the signatures above referred to," shall be redeemed by the bank. Such being the case, and no penalty being attached for failure to affix signatures, many of the banks have them lithographed, printed, or even stamped with rubber stamp.

Order for Circulation.—A National banking association is entitled to circulating notes to the amount of the face value of the U. S. bonds deposited as security therefor, unless the market value of the bonds is below par, and is entitled to a total amount equal to its capital stock paid in and certified to the Comptroller of the Currency, but not over one-third in five-dollar notes. An order for plates and notes should be sent to the Comptroller, with the organization papers.

The Comptroller furnishes a blank for the order as follows:

ORIGINAL ORDER FOR PLATES AND CIRCULATION.

——— National ——— Bank of ———, ———, 190—.

To the Comptroller of the Currency:

You are requested to have plates engraved for this bank, the cost to be paid upon demand, and circulating notes printed therefrom, as follows:

Cost of Plates.	No. of Sheets Ordered.	Denominations on Sheets.	Value per Sheet	Amount of Circulation.
$75.......	....	$5, $5, $5, $5....	$20.........	$...........
75.......	....	$10, $10, $10, $20	50.........	....
50..	....	$50, $100.	150........	....
		Total........	....	....

——— ———, Cashier.

Amount and Kind of Notes.—Original orders for circulation should be for one and one-fourth of the par value of bonds to be deposited. Circulation ordered in excess of the bonds deposited will be retained by the Comptroller to replace mutilated notes received for redemption and destruction.

The Act of March 14, 1900, provides that no national bank shall be entitled to receive from the Comptroller, or to issue more than one-third in amount of its circulating notes of the denomination of $5. Banks desiring the full amount of circulation to which they are entitled, including notes of the denomination of $5, must order, at least, two plates.

Time for Printing Notes.—It will require about forty days to engrave the plate and to print circulating notes, but the order can not be acted upon until all legal requirements are satisfied, including the deposit of bonds with the Treasurer of the United States, as the charter number of the association, which can not be previously determined, must appear upon the plate from which the notes are printed.

Cost of Engraving Plate.—There is no charge for printing the circulating notes of a National bank, but a charge as noted above is made for engraving plates. The plate generally ordered by banks is for $10 and $20 notes. No orders will be accepted for any combination of notes different from those specified.

Preparation of Organization Papers.—The foregoing instructions if carefully followed should save the delay of the return of papers by the Comptroller for correction, but we have found that frequently errors are made, and many of the banks organizing send their papers to us when executed to examine and make any corrections called for that do not require to be made by the organizers themselves or by the notary.

Our firm has represented National banks before the Treasury Department for over thirty years, and, from long experience, is in position to render efficient service in preliminary matters of organization, for which service we make no charge, and after the organization is completed act as attorney here for a small annual fee.

Purchase of Bonds.—We are in close touch with the large dealers in Government bonds, therefore are able to secure for the banks the amount they require for deposit with the United States Treasurer at the lowest market price.

REORGANIZATION OF STATE AND PRIVATE BANKS.

Where it is proposed to reorganize a State or private bank as a national banking association it is necessary to close the old bank in conformity with the provisions of the laws of the State governing, in which the bank is located, and then effect a new organization in conformity with the provisions of the National Banking Act, the procedure being the same, in so far as the execution of the corporate papers is concerned and the payment of capital, as though the organization was not to succeed any other bank.

It is assumed that the resolution, or other legal action on the part of the stockholders of the State bank placing it in liquidation, will be coupled with a provision for the organization of the National bank as its successor, in order that the interests of the stockholders of the old bank may be conserved in the new association.

When the proposed incorporators of the National bank have filed an application with the Comptroller of the Currency for reservation of title and authority to organize, and approval thereof is received, they may immediately proceed with the organization of the association.

Payment of Capital.—The Comptroller construes the law as requiring the payment of capital stock of a National bank in cash, not in notes or other evidences of debt; it therefore will be found advisable to collect from the most liquid assets of the State bank the amount necessary to enable the shareholders to pay their subscriptions to the stock of the National bank; that is, fifty per cent. prior to being authorized to begin business, and the balance in monthly installments of ten per cent. each. The directors may then contract with the liquidating agent of the closed bank for the assumption of liabilities to depositors and other creditors on a transfer of an equivalent amount of assets of a character which can be held by a National bank.

The construction of the law that payment of capital is to be made in cash is doubtless correct, although it is not specifically so stated.

In case a State bank wishes to effect a change to the National system without delay, and a sufficient amount of the assets cannot be converted at once into cash to enable the stockholders to make the 50 per cent. payment on capital required, it would appear that a credit might be given or loan made to the stockholders of the State bank by said bank on their stock or other security, so that they could pay the assessment on their stock in the new bank, in part or whole by check. These payments being then passed to the credit of the stockholders would be sufficient evidence of payment, and satisfy the requirements: some such arrangement would seem to be perfectly legitimate. The subscription to the stock of the new bank by the stockholders of the old bank and the purchase of assets of the old bank are, practically, mere matters of entry and counter entry on the books. A portion at least of the capital paid in is at once to be re-invested in assets of the State bank, such as bank building, etc., thus really returning the payments on stock to the stockholders for their interests in the assets of the liquidating bank.

The requirement that only fifty per cent. of the capital be paid at once when a bank reorganizes is sometimes an inducement to adopt this method in preference to conversion when a portion of the assets of the bank are not readily convertible into cash.

Certificate Regarding Assets.—The organization papers should be accompanied by a statement of the directors to the effect that no assets the holding of which contravene the provisions of the National banking law will be purchased or otherwise acquired by the association, the statement being in the following form and language:

CERTIFICATE, NON-ACQUIREMENT OF PROHIBITED ASSETS.

We, the undersigned, a majority of the board of directors of the ——— National Bank of ———, in the ——— of ———, State of ———, hereby certify that any assets purchased or which may be otherwise acquired by said association from the ——— Bank of ———, will not include real estate, except banking premises, stocks, loans secured by real estate, nor any loan in excess of 10 per cent. of the paid-in capital stock of the National bank. [Signatures of Directors.]

Subscribed and sworn to before me, ——— ———, this ——— day ———, 190—.

[Notorial Seal.] ——— ———, Notary Public.

These papers, having been filed with the Comptroller, and the required deposit of bonds made, the Comptroller will issue his certificate authorizing the bank to begin business.

Purchase of Assets of Liquidating Bank.—The National bank, in acquiring the business of the State or private bank, necessarily enters into a specific contract for the purchase of assets and assumption of liabilities to depositors and other creditors of the liquidating bank. In such cases bills receivable and other assets should be listed, carefully scrutinized and properly endorsed; the banking house, if purchased, deeded to the new bank, and the deed recorded; all general and individual accounts closed and transferred and new accounts opened and old pass books called in and new books issued.

Reorganization of a Private Bank.—The reorganization of a private bank requires a similar proceeding as that of a State bank, excepting that it is presumed the proprietors have authority, as individuals, to terminate their business and sell and transfer the assets to the National bank which is organizing.

Business Uninterrupted.—Arrangements may be made to enable the bank reorganized as a National bank to begin business simultaneously with the closing of the State or private bank which it succeeds, so that there need be no interruption in the business of the bank.

We will be glad to furnish any further information desired, or assist in effecting reorganization without charge. Papers when executed may be sent us to examine before filing with the Comptroller. We also are in position to furnish Government bonds for deposit with the United States Treasurer at the lowest price.

CONVERSION OF STATE BANK TO NATIONAL.

The National Bank Act provides (Section 5154, Revised Statutes,) that an incorporated State bank may enter the National System by conversion, the bank continuing without reorganization. This plan is sometimes found advantageous, although generally it is found to be preferable to close up the affairs of the old bank and reorganize.

Only Incorporated Banks Can Convert.—A bank proposing to convert to a National bank must be a State institution incorporated either by special charter or under some general statute.

Capital of Bank.—A State bank converting must have a capital paid in and unimpaired of not less than the amount prescribed by the National Bank Act (see amount required as given under organizing de novo). When it is necessary to increase capital of bank to convert, it depends upon the requirements of the laws of the State in which the bank is located whether it is better to increase under State laws, and then convert, or to put the State bank in liquidation and reorganize. Sometimes considerable delay is avoided by taking the latter course. When a bank increases its capital before conversion the Comptroller requires as evidence of payment of such increase a certificate of the State officer with whom the certificate of increase is filed.

Conversion papers cannot be lawfully executed prior to effecting the necessary increase in capital.

Assets of Bank.—The National Bank Act prohibits holding real estate other than the banking house property, loans on real estate or mortgages, or loans in excess of one-tenth of its capital (Section 5137 and 5200, Revised Statutes), and the Courts hold that it is ultra vires of a National bank to invest its funds in the stock of any other corporation. The Comptroller, therefore, requires that a State bank shall liquidate such assets before being chartered as a National bank, although if the assets of a State bank have been lawfully acquired under its State charter and the bulk of them are

found to be such as a National bank can hold, the Comptroller may charter the bank under guarantee that the balance will be liquidated within a specified time.

Examination.—In order to ascertain the condition of a bank proposing to convert, the Comptroller orders an examination before granting it a charter as a National bank.

Directors Continue to Be Such.—The board of directors of the State bank (if composed of not less than five members) may continue in office until the first annual election, regardless of the number of shares owned by each director (Section 5144, R. S.). But the directors' oath must be taken and forwarded to the Comptroller with the conversion papers.

At the time the first annual election is held subsequent to conversion, every shareholder, to be eligible as a director, must be the owner of at least 10 shares of stock of the bank, regardless of its par value.

Consent of Shareholders.—The first step in the process of conversion is to get the assent of shareholders owning two-thirds of the capital stock. (Section 5154, Revised Statutes.) Frequently this is done by merely obtaining the signature to a form of authority furnished by the Comptroller of the Currency, without calling a meeting of shareholders for the purpose of considering the matter. But unless the signatures of *all* the shareholders can be so obtained, the action should be taken at a duly convened meeting, thirty days' notice in writing being given; for, as will be seen in a subsequent place, where authority is given to any number of shareholders less than the whole number to determine any question relating to the corporate business, it is not meant that they can act wholly independently of the other shareholders, without giving them any voice in the matter, but every shareholder must be afforded an opportunity to express his assent or dissent; and, therefore, non-assenting shareholders are not bound by any action of the other shareholders had at a meeting of which each was not duly notified. The assent of the holders of two-thirds of the bank stock having been obtained, notice should be given the

Comptroller of the Currency of intention to convert, naming the title desired and requesting that proper blanks be sent.

The following is the form furnished by the Comptroller of the Currency for the assent of the shareholders.

FORM OF AUTHORITY FOR CONVERSION.

We, the undersigned, stockholders of the ——, located in the —— of ——, county of ——, State of ——, having a capital of —— dollars, do hereby authorize and empower the directors thereof to change and convert said bank into a National banking association under the sections of the Revised Statutes which authorize the conversion of State banks into National asociations, and of subsequent acts in addition to or amendatory thereof; and we do also authorize the said directors, or a majority thereof, to make and execute the articles of association and organization certificate required to be made or contemplated by said statutes, and also to make and execute all other papers and certificates, and to do all acts necessary to be done to convert said —— into a National banking association, and to do and perform all such acts as may be necessary to transfer the assets of every description and character of said —— to the National banking association into which it is to be converted, so that the said conversion may be absolute and complete; and we do hereby assume, and authorize the said directors to assume, as the name of the National banking association into which the said —— is to be converted, "The ——;" and we do hereby appoint —— ——, who are now the directors of the said ——, to hold their offices as such directors until the regular annual election of directors is held, pursuant to the provisions of said Revised Statutes, and until their successors are chosen and qualified; and we do hereby authorize the said directors of the said —— to continue in office the officers of the said ——, or to appoint or elect others, as to them may seem best.

In witness whereof we have hereunto set our hands and written against our names the number of shares owned by us, respectively, this —— day of ——, A. D. 18—.

Signatures of stockholders.	Number of shares owned by each.

Should Be Presented for Signature at Shareholders' Meeting.— For the reasons above mentioned the instrument should be presented to the shareholders for signature at a special meeting of shareholders called for the purpose of considering the question of conversion. If any regulation or by-law of the bank requires that

the action of the stockholders at a corporate meeting shall be by ballot (as is frequently the case), the "authority for conversion" should be put into the form of a resolution and adopted by a vote of the shareholders, and the Comptroller should be advised of the reason therefor.

By Whom Papers Executed.—In the case of a conversion, the articles of association and organization certificate are executed by the directors, and not by the shareholders. (Section 5154, Revised Statutes.) And it is not necessary that all of the directors should join in the execution of those instruments; the statute is complied with if a majority do so. (*Id.*)

Articles of Association.—The wording of the first part of the articles of association should be as follows:

ARTICLES OF ASSOCIATION.

We, the undersigned, directors of the ——, having been authorized by the owners of two-thirds of the capital stock of said bank to change and convert the said bank into a National banking association, under section 5154 of the Revised Statutes of the United States, and of subsequent acts in addition to or amendatory thereof, and to execute articles of association, do hereby, in our own behalf and in behalf of the stockholders whom we represent, make and execute the following articles of association.

First, the name and title of the association into which the said —— is to be changed and converted shall be "The ——."

From this point the articles will follow the form given under organization de novo.

The following is the form for organization certificate furnished by the Comptroller of the Currency in cases of conversion:

ORGANIZATION CERTIFICATE.

We, the undersigned, directors of the ——, having been duly authorized by the owners of two-thirds of the capital stock of said bank to change said bank into a National banking association, and to make the necessary organization certificate, under the sections of the Revised Statutes which authorize the conversion of State banks into National banking associations, and of subsequent acts in addition to or amenda-

tory thereof, do sign and execute the following organization certificate, which we hereby declare we are authorized to make by the owners of two-thirds of the capital stock of said ———:

First. The name and title of this association shall be "The ———."

Second. The said association shall be located and continued in the ——— of ———, county of ——— and State of ———, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be ——— dollars ($———), and the same shall be divided into ——— shares of ——— dollars each, as it is now divided in the said "The ———."

Fourth. The name and residence of each of the stockholders of the said ———, which is to become a National bank under the provisions of the Revised Statutes aforesaid, and the number of shares of ——— dollars each held by each stockholder are as follows:

Name.	Residence.	Number of shares.

Fifth. This certificate is made in order that the said ——— and the stockholders thereof may avail themselves of the advantages of the aforesaid Revised Statutes, and that the said ——— may be changed and converted into a National banking association under the name and title of the ———.

In witness whereof we have hereunto set our hands this ——— day of ———, eighteen hundred and ———.

STATE OF ———,
County of ———, } *ss:*

On this the ——— day of ———, A. D. 19—, personally came before me, a ——— of said country, ——— ———, directors of the ———, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

——— ———.

Certificate of Capital Paid In.—This is a certificate of the president or cashier of the bank to the Comptroller of the Currency, showing that the amount of paid-in and unimpaired capital of the bank converting meets the legal requirement. The following is the form:

CERTIFICATE RELATIVE TO PAYMENT OF CAPITAL STOCK OF STATE BANK CONVERTING INTO NATIONAL BANK.

It is hereby certified, that The ——— Bank ——— of ———, ———, which is to be converted into "The ——— National ——— Bank of ———," in conformity with the provisions of Section 5154 of the Re-

vised Statutes of the United States, authorizing the conversion of "any bank incorporated by special law or any banking institution organized under a general law of any State," has a paid in and unimpaired capital of $———.

——— ———, President or Cashier.

STATE OF ———,
County of ———, } *ss:*

Subscribed and sworn to before the undersigned, a ——— of the said county, this ——— day of ———, 190—.

[SEAL.]

———————
(Official title)———

Certificates of Stock.—A State bank converting to a National bank is not required to issue new certificates of stock, although it is preferable to do so. If the old certificates are retained they should be stamped to show the new corporate title and date of the changed jurisdiction.

Closing Affairs of Old Bank.—A State bank converting must be guided by State statutes as to closing up the affairs of the bank. Conversion to a National bank does not destroy or change the identity or corporate existence of the State bank, although its charter as a State bank then expires. The bank continues as a corporate body simply under changed jurisdiction; its rights to sue and be sued on obligations of the old bank are not affected.

Conversion or Reorganization.—It is impossible to determine without some knowledge of the status of a bank and local conditions which plan is preferable in changing to the National system. We are always pleased to have banks write us on the subject, and to advise as we may be able to. We have had long experience in National bank affairs, and assist without charge. Organization papers when executed may be sent to us to examine and make any corrections that may be necessary before filing with the Comptroller, and we are always pleased to furnish Government bonds required for deposit with the United States Treasurer at the lowest market price.

BY-LAWS.

The power to adopt by-laws for a National bank is conferred on the directors by the National Bank Act (Sec. 5136, R. S.), and is generally incorporated in the articles of association. It is a requisite of every valid by-law of a National bank that it shall be consistent with the National banking laws and with the articles of association; a by-law which is inconsistent with either the law or the articles is void. Directors often fall into the error of supposing that because they have power to amend the by-laws they may change them in any respect, but, as before stated, no amendment must conflict with provisions of the articles of association, as these provisions can be changed only by amendment of the Articles by the stockholders, and then only in conformity with law. Thus, a by-law prescribing the number of directors the bank shall have, and how many shall constitute a quorum, can not be amended by the directors to conflict with any provision of the articles of association.

The following form of by-laws has been found to cover the general requirements of National banks, but the by-laws may contain any provision not inconsistent with the law or articles of association.

GENERAL FORM FOR BY-LAWS.

By-laws of the [*here insert the title of the bank*] organized under the laws of the United States, and authorized by the Comptroller of the Currency to carry on the business of banking.

Elections.

1.—The regular annual meetings of stockholders of this bank for the election of directors and for the transaction of other legitimate business, shall be held between the hours of ten o'clock A. M. and four o'clock P. M. on the day specified in the articles of association, and the thirty days' notice of the time and object of such meetings thereby required shall be given by the president, vice-president, or cashier by publication in [*insert location of*

paper in which publication is to be made.] The board of directors shall, within one month previous to the date fixed for such meetings, appoint three stockholders to be judges of the election for directors, who shall hold and conduct the election, and who shall, under their hands, notify the person acting as cashier of this bank of the result thereof as soon as ascertained, and of the names of the directors-elect.

2.—The person acting as cashier shall thereupon cause the returns made by the judges of election to be recorded upon the minute-book of the bank, and shall notify the directors chosen of their election, and of the time for them to meet at the banking-house for the organization of the new board. If at the time fixed for such meetings there should be no quorum in attendance, the directors-elect present may adjourn from time to time, until a quorum shall be obtained.

3.—The directors-elect shall meet for organization, upon the notification given in accordance with law 2, within one week from the time of their election, but shall not do any business whatever prior to qualifying by taking the oath of office as required by law.

4.—If the annual election for directors should not be held on the day fixed by the articles of association, the directors in office shall order a special election, of which notice shall be given, judges appointed, and returns made and recorded upon the minute-book; and the directors chosen thereat shall be certified to the cashier, and notified as provided by laws 1 and 2.

Officers.

5.—The officers of this bank shall be a president, vice-president, cashier, teller and book-keeper, and such other officers as may be required from time to time for the prompt and orderly transaction of its business; and all officers, clerks, and agents shall be elected, appointed, or employed by the board of directors, or with the consent thereof, and their several duties may be prescribed by the board.

6.—The president shall hold his office for the current year for which the board of which he shall be a member was elected, unless he shall resign, become disqualified, or be removed; and any vacancy occurring in the office of president or in the board of directors shall be filled by the remaining members.

7.—The cashier and the subordinate officers and clerks shall be appointed to hold their offices respectively during the pleasure of the board of directors.

Officers.

8.—The cashier of this bank shall be responsible for all the moneys, funds, and valuables of the bank, and shall give bond, with security to be approved by the board, in the penal sum of ——— dollars, conditioned for the faithful and honest discharge of his duties as such cashier, and that he will faithfully apply and account for all such moneys, funds, and valuables, and deliver them to the order of the board of directors of this bank, or to the person or persons authorized to receive them. [*The bond usually required is from* $5,000 *upward, according to capital and volume of business of the bank—a surety company bond preferred.*]

9.—The president of the bank shall be responsible for all such such sums of money and property of every kind as may be intrusted to his care or placed in his hands by the board of directors or by the cashier, or otherwise come into his hands as president, and shall give bond, with security to be approved by the board, in the penal sum of ——— dollars, conditioned for the faithful discharge of his duties as such president, and that he will faithfully and honestly apply and account for all sums of money and other property of this bank that may come into his hands as such president, and pay over and deliver them to the order of the board of directors, or to any other person or persons authorized by the board to receive them.

10.—The teller shall be responsible for all such sums of money, property, and funds of every description as may from time to time be placed in his hands by the cashier, or otherwise come into his possession as teller, and shall give bond, with security to be approved by the board of directors, in the penal sum of ——— dollars, conditioned for the honest and faithful discharge of his duties, and that he will faithfully apply, account for, and pay over all moneys, property, and funds of every description pertaining to this bank that may come into his hands by virtue of his office as teller, to the order of the board of directors, or to such person or persons as may be authorized by the board to receive them.

11.—The bonds of the officers shall be placed in the custody of a stockholder of this bank, to be designated by the board of directors, who shall not be one of the bonded officers, to be surrendered by him only upon the order of the board.

Seal.

12.—The impression made below is an impression of the seal adopted by the board of directors of this bank.

[*Impression of Seal.*]

Conveyance of Real Estate.

13.—All transfers and conveyances of real estate shall be made by the bank, under the seal thereof, in accordance with the orders of the board of directors, and shall be signed by the president or cashier.

Increase of Capital Stock.

14.—Whenever an increase of stock shall be determined upon in accordance with the articles of association of this bank, it shall be the duty of the board of directors to cause all the stockholders to be notified thereof, and a subscription to be opened therefor, specifying the terms of payment agreed upon by subscribers. Each stockholder shall be entitled to subscribe for shares of the new stock in proportion to the number of shares he already owns; but if any stockholder shall fail to subscribe for such new stock as he may be entitled to, or to pay his subscription according to agreement, the board or directors shall determine what disposition shall be made of the privileges of subscribing for the new stock not taken.

Business of the Bank.

15.—This bank shall be open for business from ——— o'clock A. M. to ——— o'clock P. M. each day, except Sundays and days recognized by the laws of this State as holidays.

16.—The board of directors of this bank shall hold regular meetings at the banking-house for the transaction of business on ——— of each week, and should that day in any year fall upon a holiday, the regular meeting for that week shall be held on such other day as the directors at the preceding meeting may order.

The board may also hold special meetings upon the call of the president, cashier, or any three or more members, and whenever there shall not be a quorum at a regular or special meeting, the members present may adjourn the meeting from day to day until a quorum shall be obtained; and any meeting may be adjourned from time to time by a vote of a majority of a quorum present, but no business except adjournment shall be transacted in the absence of a quorum.

17.—There shall be a committee, to be known as the exchange committee, consisting of the president, ——— directors, and cashier, who shall have power to discount and purchase bills, notes, and other evidences of debt, and to buy and sell bills of

exchange; and who shall, at each regular meeting of the board of directors, make a report of all bills, notes, and other evidences of debt discounted and purchased by them for the bank since their last previous report.

18.—The board of directors may appoint one of its members or an officer of the bank to act as its secretary.

19.—No officer or clerk of this bank shall pay any check drawn upon it, or pay out money on any order, unless the drawer of such check or order shall, at the time of the presentation thereof, have on deposit in the bank funds sufficient to meet such check or order.

20.—The earnings of this bank shall be disposed of according to orders of the board of directors, made at regular or special meetings, and no dividend shall be paid to stockholders, or other disposition of earnings made, except upon order of the board.

21.—The organization papers of this bank, as executed and filed with the Comptroller of the Currency, the returns of judges of the elections, the proceedings at all regular and special meetings of the board of directors, the by-laws, and all changes and all amendments thereof, and the report of examining committees of directors, made according to law 28, shall be recorded in the minute-book; and the minutes of each meeting of the board shall be signed by the president and attested by the cashier.

22.—The board of directors shall have power to prescribe and, when expedient, to change the form of books and accounts to be used in the transaction of the business of this bank, and to prescribe the general or particular manner in which its affairs shall be conducted.

Transfer of Stock.

23.—The stock of this bank shall be assignable and transferable only on the books of this bank, subject to the restriction and provisions of the banking laws, and a transfer book shall be provided, in which all assignments and transfers of stock shall be made.

24.—Transfers of stock shall not be suspended preparatory to the declaration of dividends; and unless an agreement to the contrary shall be expressed in the assignments, dividends shall be paid to the stockholders in whose name the stock shall stand at the date of the declaration of dividends.

25.—Certificates of stock signed by the president and cashier shall be issued to stockholders, and the certificates shall state upon their face that the stock is transferable only on the books of the bank.

Expense.

26.—All the current expenses of this bank shall be paid by the cashier, who shall, every six months, or oftener if required, make to the board of directors a detailed statement thereof.

Contracts.

27.—All contracts, checks, drafts, etc., for this bank, and all receipts for circulating notes received from the Comptroller of the Currency, shall be signed by the president or cashier.

Examinations.

28.—There shall be appointed by the board of directors a committee of ——— members thereof, whose duty it shall be to examine every three months the affairs of this bank, to count its cash, and compare its assets and liabilities with the accounts of the general ledger, ascertain whether these accounts and all others are correctly kept, whether the condition of the bank corresponds therewith, and whether the bank is in a sound and solvent condition, and to recommend to the board such changes in the manner of doing business, etc., as shall seem to be desirable, the result of which examination shall be reported to the board at the next regular meeting thereafter.

Quorums.

29.—A majority of the directors, including the president, (or in his absence the vice-president,) shall be a quorum to do business.

Amendments.

30.—These by-laws may be changed or amended by the vote of two-thirds of the directors.

31.—A copy of the by-laws of this bank as in force shall be kept in a convenient place in the bank, to which any stockholder shall have free access during the regular hours of business.

MANAGEMENT OF NATIONAL BANKS.

The primary and principal object of banking is loaning money for the profit of the corporation, and the business is established and maintained by accommodating the public in receiving and disbursing its funds. This relation to the public calls for a variety of services, and thus a large amount of detail is involved in the conduct of a bank.

The Management of a bank is the Board of Directors, and under the Board an executive officer, generally the Cashier, and a clerical force, the executive officer's assistants—tellers, bookkeepers, discount clerk, collection clerk and messenger. In small banks the work of the clerical force is done by two or three persons, and in very large banks the work requires departments, with a force for each—even in the executive management. It therefore will be seen that a comprehensive treatment of the subject would require more space than can be given in a book of this character; but it may suffice to note briefly the duties of the Management, the officers and clerical force and some of the important points about bank affairs.

The Board of Directors.—This is the responsible representative of both shareholders and the depositors of the bank; therefore a shareholder accepting the office of a director should do so only after a very clear understanding of the trust he assumes, viz.: his personal liability and his responsibility for the proper management of the affairs of the bank. Hence the importance that he should inform himself as fully as possible from such evidence as he can obtain, especially by observation within and outside of the bank—

First. That the executive officer is trustworthy and competent, and that the several employees of the bank are of good character. This is seen in their general habits and social relations.

Second. A director should keep informed as to the business methods and the accounts of the bank, and have frequent examinations made by a committee of the Board of the cash and the books, also of collaterals and other valuables.

Third. He should scrutinize carefully the paper discounted, both as to the security and the amount of loans, and see that all investments of funds are reasonably safe and only such as a commercial bank should make.

The Comptroller of the Currency emphasizes the responsibility of directors by the following instructions:

"In order to obviate any excuse on the part of the directors of National banks, based upon the ground that they are not and have not been informed of the affairs of the banks with which they are officially connected, and therefore should not be held responsible for the same, all letters addressed to the officers of banks bearing upon the report of the Examiner are to be submitted to the directors, and the acknowledgment and answer thereto made over each director's individual signature."

President.—The work of a bank President varies according to circumstances. He may or may not share in the active management of the bank. As a rule, it may be said, he exercises a general oversight of the affairs of the bank, with special duties in connection with his position as President of the Board of Directors.

Vice-President.—As the title indicates, this officer is authorized, in the absence or inability of the President, to perform all acts and duties pertaining to the office of the President, excepting such as the law specifies shall be performed by the President. The National Bank Act provides in one or more instances that the Vice-President may act in place of the President, *e. g.*, it provides that he may sign the bank's circulating notes, the Comptroller's office therefore holds that in other cases where the Act does not specifically so provide he cannot perform the duties named for the President; for example, signing reports of condition of Bank, etc.

Cashier.—The Bank Cashier is usually the chief executive officer of the bank. Primarily he represents the will of the Board of Directors, and his duty is to see that the policy and plans formulated by it are properly carried into execution; yet he is not the mere representative and subordinate of the Board, he has also responsibilities as the chief executive officer and agent of the corporation. To him is generally intrusted the general management of the affairs of the bank, the receiving of deposits, the safe keeping of all funds, and their disbursement. His judgment is generally deferred to as to what paper the bank shall discount, and as to all invesments of the funds of the bank. He therefore should

be thoroughly conversant with the laws, customs and practices of the banking business, and especially of those of his office; he should maintain a vigilant oversight of all the work of his subordinates, being responsible for the good conduct and faithful service of the clerical force of the bank. To the public the bank usually is what the Cashier is; therefore while keeping uppermost in mind the trust committed to him, he must also recognize the bank's obligations to the public, upon which it is dependent for its profits. He should be known as one always approachable, and ready to consider carefully the wants of the bank's customers and as ready to respond generously, so far as consistent with his best judgment, and if unable to favor the customer, to manifest by kindly manner his regret.

He should not let political or other prejudices influence his conduct of the affairs of the bank, but manage it as a business institution, for the profit of the shareholders, yet also for the benefit of the community.

Assistant Cashier.—This officer is required only where the duties of the Cashier are more than can be performed by him. Hence, the work of an assistant is to relieve the Cashier in such ways as the Cashier or the Board may direct, and to perform his duties in his absence, excepting in such matters as the National Bank Act requires the action of the Cashier, the Comptroller holding that the Assistant Cashier can only act instead of the Cashier in cases where the law so states.

Paying Teller.—The Paying Teller occupies a position of great importance, being the disbursing officer of the bank, and having charge of its funds. He should be a man above reproach, a good judge of character, of quick wit, quick action, and the soul of good nature and forbearance.

Receiving Teller.—The Receiving Teller, as his name implies, receives deposits; sometimes also payments of collections and loans, if the bank is small and not requiring collection and discount clerks. His position is closely related to the Paying Teller, to whom he turns over his cash at the close of the day. He should possess strict integrity, good ability and a courteous manner, and have a natural tact for handling money and of passing on its genuineness.

Bookkeepers.—Very great responsibility rests upon the bookkeepers, since the paying out of the funds of the bank is governed by their records. They should be therefore accountants of great accuracy, understanding thoroughly bank bookkeeping, and keeping abreast of the times in adopting improved methods.

The General Bookkeeper of a National bank has the aggregates of all the business of the bank coming through the various channels, including accounts with correspondent banks, capital stock, profit and expense accounts; besides the usual general accounts he keeps an account with the U. S. Treasurer and Reserve Agents.

The Individual Bookkeeper has the accounts of the local depositors. This position involves a great amount of detail and requires great care and accuracy.

Discount Clerk.—The care of the record of loans and receiving payment for them falls to the Discount Clerk. He should be proficient in calculating time and interest. And his duties being of a confidential nature, he should avoid divulging the business of his desk to any persons but those entitled to know.

Collection Clerk.—The Collection Clerk has charge of the drafts, bills of exchange, notes, etc., sent to the bank for collection. He should be familiar with the laws and customs as to the various kinds of paper placed in his hands.

The Messenger.—The duty of the Bank Messenger is to present paper to those who are to pay or accept. He should be well posted in the law and regulations regarding collections.

Clerical Force.—The Clerical Force should be characterized by fidelity and efficient service, and of this there should be due recognition by the officers of the bank in a kindly word of appreciation from time to time, and, better still, in an increase of salary or an extra allowance occasionally when good dividends are declared.

Verification of Work.—One of the best rules for a bank to adopt is, that the work of each employee be examined and verified often by shifting of clerks, under the direction of the executive officer, and occasionally full examinations of the bank made in the

same manner. As often as every quarter a committee of directors, appointed for the purpose, should make an examination and a report thereof should be entered upon the minute-book.

Appointment and Bonds of Officers.—The officers, other than the President, should be appointed to hold their offices indefinitely, and their bonds should be executed accordingly, so as to obviate the necessity of requiring annual bonds from them, and to prevent the occurrence of a time when they would not be under bond.

Presidents, being annually appointed, should be required to give annual bonds; and in the appointment or reappointment of any officer a bond should be required of him. It will be found the best policy to pay all officers and other employees liberal but not extravagant salaries, so as to remove from them the temptation of speculating with or otherwise wrongly using the bank's funds.

Legal Attorney.—It is an excellent plan for banks to have a special attorney, possibly retained by the year, so that the executive officer of the bank may be able to command counsel and decide with promptness questions constantly arising which require knowledge of the law.

Loans and Discounts.—Ample and undoubted security should be required for all loans, and of a readily convertible character if in the shape of collaterals. Let nothing be done to encourage speculation, but give facilities only to legitimate business operations. Make loans and discounts on as short time as the needs of customers will permit, and insist upon the payment of all paper at maturity, if possible, whether the bank needs the money or not. Borrowers should not be encouraged to expect extensions and renewals of their paper to suit their own convenience. Such practice is not the attribute of good banking, the proper foundation of which is impartiality of treatment, and the exaction of the performance of contracts. Never renew a note or bill, or allow it to lie unpaid, merely because the money can not for the moment be placed to equally good advantage, for it is only by always requiring prompt settlements that the discount line can be controlled, and made at all times reliable.

Distribute the accommodations of the bank as widely as possible,

rather than concentrate them in a few hands; for large loans, though sometimes proper, are generally injudicious, and frequently unsafe, for large borrowers are apt to dictate their own terms as regards payment; and when this is the relation between a bank and its customer, the former is pretty sure to be the sufferer.

Every dollar of depositors' money loaned by a bank is owed for, and its managers are therefore under the strongest obligations to its creditors as well as to stockholders to keep its discounts under their own control.

Capital.—The capital of a bank should be a reality, not a fiction, and it should be owned by those who have money to lend and not by borrowers. No bank can have a prosperous career if its stockholders take out in loans the money they have put in as capital, for such a bank, being rendered unable to accommodate the business public outside of its owners, deprives itself of one of the principal means of success.

Surplus Fund.—It should be the chief aim of bank managers to make their respective institutions strong, and to keep them free from unavailable and undesirable assets. Not only should the capital be kept unimpaired, but a surplus fund should be created from the earnings that will be a protection to the capital and to creditors in the trying times that sooner or later overtake all banking institutions. There are few items, if any, that look better upon a balance sheet of a bank than a large surplus, and none so well calculated to secure for it public confidence; it is, therefore, on all accounts the best policy to accumulate such a fund as rapidly as possible, even if dividends to stockholders have to be kept down to a low rate for a time. The wisdom of this is seen in the provision of the Bank Act for the accumulation of and maintaining a surplus of at least fifty per cent. of the capital of the bank.

Reports.—The instructions given by the Comptroller of the Currency in regard to reports to be made to his office should be very closely followed; the blanks furnished by the Comptroller state very explicitly what is required, but very frequently reports are found by him to be incomplete, necessitating much correspondence. This may be avoided by verifying the reports before forwarding.

Stock Certificates.—The greatest care should be exercised in regard to stock certificates and transfers, and when new certificates are issued to see that those in lieu of which they are given are promptly surrendered and cancelled.

Collaterals.—The stocks, bonds, etc., held by banks as collateral security, should be regarded as special trusts, and hence carefully recorded and placed in the bank's vaults, where only the officer entrusted with their care can have access to them.

Bank Records.—In all corporate bodies the recording and careful preservation of the record of proceedings of all meetings held is of the utmost importance.

Have the organization papers executed in duplicate and one set incorporated in the minute-book as part of the record of action taken. Also have the proceedings of stockholders in the first election of directors fully recorded, so that there may be in permanent form a complete history of the organization of the bank.

The by-laws and all proceedings at meetings of directors and of stockholders should also be recorded in the minute-book. These records should very explicitly set forth the appointment of the judges of election for directors, and the returns of the judges, and the fact that the directors qualified by taking the prescribed oath. The *recording* of this fact is too often omitted. The importance of it is evident as showing that the directors qualified as required before transacting any business. The appointment of officers should also be recorded, bonds required of them, and the bonds approved by the directors; in short, all matters pertaining to the organization of the bank, and the subsequent proceedings of the directors in the supervision and management of its affairs clearly and fully set out in the records.

U. S. Treasurer's Receipt.—This receipt for U. S. bonds deposited by the bank with the Treasurer should be kept where readily available. Banks frequently are unable to find it when required by the Treasurer in the withdrawal of bonds. In case of loss a duplicate may be issued on affidavit that after diligent search the original cannot be found and will be surrendered if found, and such affidavit will be accepted for withdrawal of bonds in lieu of the Treasurer's receipt.

Certificates of U. S. Bond Examinations.—The certificate of the annual examination made by the agent of the bank, of the U. S. bonds of the bank on deposit with the Treasurer is generally called for by the Bank Examiner, and therefore should be kept where it can be readily produced.

In Conclusion.—It should be remembered that integrity, force, ability, faithfulness, promptness, carefulness and courtesy tell in banking, as well as in any other business. On the other hand, traits and conduct of the opposite character insure failure, but, given the better qualities in good measure in officers and clerks, success is assured. One specially important thing to bear in mind in banking is that new phases of business are contantly developing, and the most successful and most useful bank is the one which most quickly adapts itself to the times.

Do a straightforward, legitimate and upright business, and never be tempted by the prospect of large gains to engage in operations not sanctioned by prudence, or by the provisions of the laws governing National banks.

VOLUNTARY LIQUIDATION.

The closing of the business of a National bank is either by voluntary liquidation or involuntarily by appointment of a Receiver.

The closing by Receivership is treated fully in the first part of this work under the section of the Revised Statutes pertaining to Receivership.

Voluntary Liquidation may be for various purposes: an Association may for some reason wish to discontinue business before its charter expires, or on expiration of its charter, without renewing. In either case the object may be: To close business; To sell the business; To reorganize as a new association, or to consolidate with one or more other associations.

The procedure of liquidation, for whatever purpose, is practically the same, but as there are certain points to be noted according to the particular object in view, the subjects will be treated to some extent separately.

LIQUIDATION TO DISCONTINUE BUSINESS.

Authority.—The law authorizes any National bank to go into liquidation by a vote of its shareholders owning two-thirds of its stock. (Revised Statutes, 5220.) Nothing is said in the statute about the consent of the Comptroller of the Currency, but it will be found to facilitate the proceedings to give him notice in advance, that he may cause an examination of the bank to be made if he deems it necessary; for until he is satisfied that the bank is solvent, he will not consent to the withdrawal of the bonds of the bank deposited with the U. S. Treasurer, and, although a vote may have been taken to place the bank in liquidation, the Comptroller still has authority to appoint a receiver should he consider such action called for.

Procedure.—By implication, Section 5144 R. S. requires that a vote of the stockholders be taken at a meeting called for the purpose in the manner provided for in the articles of association or by-laws. If the articles are in the usual form this may be done by publishing notice of the meeting for thirty days in a newspaper

published in the town, city or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting. The notice should expressly state that the purpose of the meeting is to consider, and to vote upon, the question of placing the bank in liquidation. It is necessary that shareholders owning at least two-thirds of the stock vote in favor of the liquidation; the shareholders may vote by proxy at this, as well as at other meetings, but a director, other officer, clerk, teller or bookkeeper of the bank is prohibited by law from acting as such proxy.

The shareholders should incorporate in the resolution for liquidation a provision either that liquidation shall begin immediately on the day the vote is taken, or at a determined future date.

Form of Resolution.

Resolved, That The ——— National Bank be placed in voluntary liquidation under the provisions of sections 5220 and 5221, United States Revised Statutes, to take effect ———, 19—.

If desired there may be prefixed to the resolution such recital of the reasons for the action of the shareholders as may be deemed appropriate.

Certifying to the Comptroller.—The evidence to be furnished to the Comptroller of the Currency of the fact of liquidation is a copy of the resolution of the shareholders; a certificate of the cashier or president, under seal of the bank, that shareholders owning two-thirds of the stock have voted to place the bank in liquidation, and a copy of the notice calling the meeting, showing date of mailing or publication.

Notice to Creditors.—Notice to note-holders and other creditors to present their claims for payment should be published, as required by Section 5221 of the Revised Statutes, 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 bank is located. Notice in a weekly paper or in a weekly edition of a daily paper is sufficient.

Withdrawal of Bonds.—The bonds can be withdrawn as soon as the liquidation begins, provided the Comptroller of the Currency is satisfied that the bank is solvent, but the bank must first deposit with the Treasurer of the United States sufficient lawful money to retire all its outstanding circulating notes, and pay any tax due on circulation and charges for redemptions over the amount to the credit of the bank in the five per cent. redemption fund. Ordinarily, the five per cent. fund is ample to meet the tax and charges. In case this fund is more than sufficient or an excessive amount is deposited, the excess will be returned to the depositing bank. This deposit must be made within six months from date of going into liquidation. (Sec. 5222 R. S.)

No New Business.—When the bank has been placed in liquidation it can not transact any new business and the power of its officers to bind the shareholders is only that which results by implication from the duty to wind up and close its affairs. (Richmond *v.* Irons, 121 U. S., 27; Schroder *v.* Manufacturers' National Bank, 133 U. S., 67.)

The following is the form of resolution for liquidation and certification of vote to the Comptroller of the Currency and notice to be published, also form of oath of publisher. These forms are furnished by the Comptroller.

RESOLUTION FOR VOLUNTARY LIQUIDATION.

THE ——— NATIONAL ——— BANK OF ———, ———, 19—.

CHARTER NO. ———.

At a meeting of the shareholders of the ——— National ——— Bank of ———, held on ———, 19—, thirty days' notice of the proposed business having been given, at which —— shareholders were present, in person, and —— by proxy, representing —— shares of the stock of this association, it was—

Resolved, That "The ——— National ——— Bank" be placed in voluntary liquidation, under the provisions of sections 5220 and 5221, United States Revised Statutes, to take effect ———, 19—.

The above resolution was adopted by the following vote, representing two-thirds of the capital stock of the association:

Names of Shareholders.	RESIDENCE.	Name of Proxy.	No. of Shares.

STOCK VOTED AGAINST RESOLUTION.

Names of Shareholders.	RESIDENCE.	Name of Proxy.	No. of Shares.

STOCK NOT REPRESENTED AT MEETING.

Names of Shareholders.	RESIDENCE.	No. of Shares.

Total number of shares voted in favor of the resolution ......
Total number of shares voted against the resolution ... ..
Total number of shares represented at the meeting ......
Total number of shares not represented at the meeting ......
Total number of shares of capital stock ......

I hereby certify that the foregoing is a true and correct report of the vote and of the resolution adopted at a meeting of the shareholders of this bank held on ———, 19—.

[SEAL OF BANK.] ——— ———, *President or Cashier.*

Subscribed and sworn to before me, this —— day of ——, A. D. 19—.

[SEAL OF NOTARY.] ———, *Notary Public.*

The following is the form of notice to be published for a period of two months from date on which resolution to liquidate takes effect, in a New York and local newspaper and publication in a weekly or weekly edition of daily is sufficient. When publication has been made, affidavit of the publisher should be sent to the Comptroller of the Currency:

FORM OF NOTICE.

The ——— National Bank ———, located at ———, in the State of ———, is closing its affairs. All note-holders and other creditors of the association are therefore hereby notified to present the notes and other claims for payment.

——— ———,

Dated ———, 19—. *President or Cashier.*

AFFIDAVIT OF PUBLICATION.

STATE OF ———,
County of ———, } *ss:*

———, being duly sworn, deposes and says that he is the publisher of ———, a ——— newspaper published in the ——— of ———, county of ———, State of ———, and that the annexed advertisement of the

Certificate for Voluntary Liquidation of the ——— National Bank of ——— has appeared in each issue of said paper for a period of at least sixty days, beginning the ——— day of ——— and ending the ——— day of ———, 190—.

Subscribed and sworn to before me, ———, a ——— in and for the State and County aforesaid, this ——— day of ———, 190—.

[SEAL OF OFFICER.]

Oath to be sent to the Comptroller with clipping of advertisement.

Liquidating Agent.—When a National bank has been placed in liquidation, either by vote of shareholders or as a result of expiration of charter, the settlement of its affairs devolves by law upon the shareholders, either through an agent or committee specifically authorized by the shareholders, or in event of such non-authorization then through the board of directors and frequently the directors, by formal resolution, authorize one of their number to act as the liquidating agent.

All obligations of the bank become due and payable when the bank is legally closed, and they should be settled immediately. The assets remaining should be converted into money as promptly as possible and distribution made pro rata among the shareholders.

Dividend Payments.—Where full settlements with shareholders are not effected at once, the amount of the first dividend should be entered on stock certificates, when presented, and endorsements subsequently made as additional dividends are paid. When the assets have been fully paid to shareholders the certificates should be surrendered and cancelled.

Power of Liquidating Agent.—The liquidating agent stands in the same relation to the bank as do the directors during its active existence; that is, any transactions in connection with the sale or other disposition of assets, and general transactions relating to liquidation, should be effected under the name of the association by the liquidating agent.

LIQUIDATING TO SELL BUSINESS OR TO REORGANIZE.

Procedure.—See under Liquidation to Discontinue Business.

Private Disposition of Assets.—Where a bank is closed for the purpose of selling its business to another bank, or in contemplation of reorganization, by the unanimous consent of shareholders, all of the property of the bank may be legally disposed of without the formality of a public sale, the claims of creditors having been paid or provided for.

Shareholders' Rights.—Shareholders are entitled to the full value of their stock in cash, and the proper method of ascertaining the real value of the property, unless shareholders representing the stock are satisfied with the offer made, is by public sale, upon which they may insist.

Sale of Assets to New Bank.—Where the directors representing a majority of the stock of the closed bank organize a new bank they are at liberty as directors of the new association to buy the property of the closed bank at public sale, but have no right to buy it at a private sale at a price which they may put upon it themselves. Where, however, the price is a fair one and shareholders are allowed to participate in the reorganization, it is not likely that a court would order a public sale, there being no reasonable prospect of benefit from such public sale.

LIQUIDATION BY EXPIRATION OF CHARTER.

Settlement of Affairs.—The settlement of the affairs of a bank closed by expiration of the corporate existence is the same as though the bank had been placed in liquidation by vote of shareholders during its legal life. Usually the board of directors is kept up to superintend the liquidation, or a liquidating agent or committee may be appointed for the purpose.

No Vote Necessary.—No action on the part of shareholders is required to terminate the corporate existence of a National bank which has reached the end of its corporate life of twenty years. Expiration legally results from failure to effect extension.

Certification of Closing by Expiration of Charter.—Certification of expiration of a bank's corporate existence must be made to the Comptroller of the Currency, under seal of the association, by the President or Cashier, and notice to creditors that the association is closing published in a New York and local newspaper for a period of two months from the date of expiration of charter. Notice may be in a weekly paper or a weekly edition of a daily.

FORM OF CERTIFICATION.

To the COMPTROLLER OF THE CURRENCY,

Washington, D. C.:

It is hereby certified, in pursuance of sections 5220 and 5221 of the Revised Statutes of the United States, that the corporate existence of "The ———," located at ———, in the State of ———, having expired at close of business on the ——— day of ———, 19—, the bank is now closing its affairs under the provisions of section 7 of the act of July 12, 1882.

In testimony whereof I have, by instruction of the Board of Directors of said association, hereto subscribed my name and affixed the seal of said association at ———, aforesaid, the day and year above written.

——— ———,

[SEAL OF THE BANK.] *President or Cashier.*

NOTICE TO CREDITORS.

The ——— National Bank ———, located at ———, in the State of ———, is closing up its affairs, its corporate existence having expired at close of business on the ——— day of ———, 19—. All note-holders and others, creditors of said association, are therefore hereby notified to present the notes and other claims against the association for payment.

——— ———,

Dated ———, 19—. *President or Cashier.*

NOTE.—An affidavit of the publisher that the required publication has been made with a clipping, containing notice from one issue of each paper should be sent to the Comptroller of the Currency. See form of Affidavit under Liquidation.

Withdrawal of Bonds.—Bonds on deposit to secure circulation may be withdrawn at any time within six months of the date of expiration by depositing lawful money for the redemption of outstanding notes of the bank.

Extension to Liquidate.—The corporate existence of a National bank the charter of which has expired by limitation is extended by Act of July 12, 1882, for the purpose of effecting liquidation and only for that purpose.

LIQUIDATION FOR CONSOLIDATION.

Authority.—The only reference in the Bank Act to the consolidation of National banking associations is that contained in Section 5223, U. S. R. S., which is to the effect that 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 money for its outstanding circulation, but that its assets and liabilities shall be reported by the association with which it is in progress of consolidation.

By implication this provision would appear to authorize the assignment of bonds on deposit with the Treasurer of the United States to secure the circulation of the liquidating bank to the absorbing association, and to require the maintenance of a redemption fund for outstanding issues of the bank which has gone into liquidation. With the redemption of circulation of the closed bank would follow the issue of a like amount of notes of the absorbing association. As a matter of fact, this permissive feature has rarely been availed of, as it has been found more advantageous to deposit lawful money to redeem the notes of the liquidated bank and to simultaneously issue new notes of the absorbing association on the additional bonds assigned. In the event, however, that the banks in interest desire to pursue the course authorized by Section 5223, upon filing documentary evidence with the Comptroller of the Currency that the absorbing association has assumed all the liabilities, including circulation of the liquidating bank, the Treasurer of the United States, upon proper authority from the board of directors of the latter association, will assign and transfer bonds on deposit to secure such circulation to the continuing association.

Forms of resolutions relating to assumption of liabilities of a liquidated association, and transfer of bonds on deposit to secure circulation, to be executed and filed with the Comptroller of the Currency, are as follows:

Resolution Assuming the Liabilities of an Association Placed in Liquidation for Purpose of Consolidation.

I, ———, cashier of the ——— National Bank of ———, hereby certify that at a meeting of the Board of Directors of said association, held on the ——— day of ———, a resolution was adopted relative to the consolidation of the ——— National Bank of ——— with the association first mentioned, under section 5223 of the Revised Statutes of the United States, which resolution is in the words following :

"*Resolved*, That this association as a part of the consideration for the purchase of all the assets of the ——— National Bank of ———, does hereby assume all the liabilities of said ——— National Bank of ———, including the redemption of its circulating notes."

And, in pursuance of said resolution, the ——— National Bank of ——— has acquired all of the assets of the said ——— National Bank of ———, and assumed all its liabilities, including the redemption of its circulating notes, the association last mentioned having been placed in voluntary liquidation in conformity with the provisions of sections 5220 and 5221 of the United States Revised Statutes for the purpose of consolidation. ——— ———,

[SEAL.] *Cashier and Secretary of the Board of Directors.*

Resolution Authorizing Withdrawal and Assignment of Bonds as a Result of Consolidation.

At a meeting of the Board of Directors of ———, held at its banking house on ———, the following resolution was adopted :

Resolved, That the Comptroller of the Currency be, and he is hereby authorized to withdraw $———, U. S. bonds, deposited with the Treasurer of the United States by this bank to secure circulation, and described as follows :

$——— ——— per cent. of the loan of ———, and that the Treasurer U. S. be, and is hereby authorized to assign and transfer the same to said Treasurer in trust for ———, which association assumes the liabilities of the said ———, including the redemption of its circulating notes.

I certify that the above is a true extract from the minutes of said meeting. ——— ———,

[SEAL OF BANK.] *Cashier and Secretary of Board of Directors.*

Note.—The Treasurer's receipts for the bonds proposed to be withdrawn must be forwarded, with this form properly filled, to the Comptroller of the Currency.

Rights of Shareholders.—No rights exist, or are conferred by law, upon the shareholders of a liquidating association as shareholders of the bank with which its business is being consolidated,

nor can such shareholders become shareholders of the absorbing bank, except through the voluntary action of shareholders of the latter.

Increase of Capital and Allotment of Stock.—Assuming that shareholders of the liquidated bank are to become shareholders of the continuing association, it becomes necessary for the shareholders of the latter association to increase the capital stock to the requisite amount in conformity with the provisions of the Act of May 1, 1886, and to waive their right to participate in the increase in order that the stock can be sold to shareholders of the closed association. The right to participate in an increase in the capital stock of a bank exists at common law and is generally written into the articles of National banking associations. Waiver of that right is essential to enable the stock to be sold to others.

Assumption of Liabilities.—When shareholders of the continuing bank have effected an increase in capital, and authorized the sale of the stock to shareholders of the liquidated bank, the directors of the former may contract with the directors or liquidating agent of the closed association for the assumption of liabilities to depositors and other creditors, on transfer of an equivalent amount of assets, and for the purchase of assets representing shareholders' interests, to enable shareholders, with the proceeds, to pay for stock to be issued to them.

Payment for Stock.—It is not regarded as essential that the payment for such assets should be made in actual money, as a check (cashier's) or draft will answer the purpose as constituting a demand obligation, to be satisfied either in cash or in stock to be issued to the shareholders as a result of the contemplated consolidation.

Purchasing Assets of Liquidating Bank.—Where consolidation is effected without making provision for shareholders of the liquidated bank by increasing the capital of the continuing association, the consolidation resolves itself into a mere purchase of the business of the closed bank which may carry with it an assumption of liabilities to depositors and other creditors, offsetting an equivalent

amount of assets transferred, and the payment in cash of the liquidating value of assets representing shareholders' interests. A contract of that character may be entered into between the absorbing bank and the directors or liquidating agent of the closed association.

Liquidating Two or More Banks for Consolidation.—In some instances, where consolidation of business only is deemed advisable, it has been found preferable to place the associations interested in voluntary liquidation in conformity with the provisions of Section 5220 of the Revised Statutes, and organize a new bank. When the capital stock has been paid in, as required by law, the association may acquire the business of the liquidated banks in the manner hereinbefore outlined. This course is frequently found advisable where it is desired to effect a change in the personnel of the shareholders and to start business with a "clean sheet." Assets of the closed banks, not purchased by the new association, are ordinarily placed in charge of liquidating agents for collection and pro rata distribution to shareholders of record at date of liquidation.

EXTENSION OF CORPORATE EXISTENCE.

Provision for Extension.—The Act of Congress approved July 12, 1882, provided that any National banking association, 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, may extend its period of succession, by amending its articles of association, for a term of not more than twenty years.

The Act of Congress approved April 12, 1902, authorizes the Comptroller of the Currency 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.

The course of procedure, on the part of an association, in effecting a second extension of charter is the same as in the case of a first extension.

Date of Expiration of Old Charter.—The date of expiration of the old charter is determined by the date of execution of the organization certificate, as Section 5136 of the Revised Statutes provides that all associations organized under it shall have succession for twenty years from the date of the execution of the organization certificate. If the paper is lost, or the date in any way uncertain, information can be obtained on application to the Comptroller of the Currency.

Application for Extension.—Under the Act of July 12, 1882, and the regulations of the Comptroller's office, banks are permitted to file their application for extension with the proper papers at any time within two years prior to their expiration; but usually application for extension is not made until within a few months prior to expiration of charter, and this gives the Comptroller sufficient time to satisfy himself as to the condition of the bank, and upon request the necessary blanks will be sent from that office.

The following are the forms furnished by the Comptroller:

Amendment of Articles of Association.

In accordance with and in pursuance of the provisions of "An act to enable National Banking Associations to extend their corporate existence, and for other purposes," approved July 12, 1882, or any amendment thereof, we, the undersigned, shareholders of "The ———," located at ———, in the County of ——— and State of ———, owning the number of shares of the capital stock of said association set opposite our respective names, aggregating not less than two-thirds of the stock of said association, do hereby consent and agree that the ——— article of the Articles of Association of said National Banking Association be, and is hereby, amended to read as follows :

"This association shall continue until close of business on ———, 19—, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law."

In witness whereof, we, the undersigned, have hereto set our hands.

	Date of Signing.	Signature of Shareholder.	Address.	Signature of Proxy.	No. of Shares.

Certificate to the Comptroller.

——— ———, 19—.

To the Comptroller of the Currency,

Washington, D. C.:

Sir : In pursuance of the provisions of "An act to enable National Banking Associations to extend their corporate existence, and for other purposes," approved July 12, 1882, or any amendment of said act, I hereby certify that shareholders owning not less than two-thirds of the capital stock of "The ———," have consented in writing to the extension of the charter of said association; that the signatures to the attached amendment of the Articles of Association, executed in duplicate, are the true and correct signatures of said shareholders, or of their lawfully appointed attorneys, and that one of the instruments, in all respects like the other, is on file in the bank.

The foregoing certificate is made under seal of the association in accordance with a resolution of the Board of Directors adopted at a meeting held on the ——— day of ———, 190—, in which the president, or cashier, was also authorized to make an application for the approval of the amended Articles of Association, a copy of which resolution has been recorded on the minute book of the bank.

——— ———,

[seal of the bank.] *President or Cashier.*

(The above certificate should not be made prior to date on which the amendment is last signed.)

REQUEST FOR APPROVAL.

The Comptroller of the Currency is hereby requested to approve the foregoing amendment of the Articles of Association of said bank, extending its corporate existence for twenty years, pursuant to the act of Congress entitled "An act to enable National Banking Associations to extend their corporate existence, and for other purposes," approved July 12, 1882, or any amendment of said act.

——— ———,

[SEAL OF THE BANK.] *President or Cashier.*

Consent of Shareholders.—The law does not provide that a meeting of the shareholders shall be held, as it is necessary only to secure the written consent of those representing two-thirds of the stock, and this may be done by sending in advance to shareholders at a distance a power of attorney to be signed and returned, any person competent being empowered to act as attorney. The following form may be used for this purpose:

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:

That I, ———, of ———, hereby constitute and appoint irrevocably ——— my true and lawful attorney, for me and in my name and stead to sign all necessary papers in connection with the extension of the corporate existence of the ———, under the act of Congress approved July 12, 1882, or any amendment thereof, and I hereby consent that the ——— article of the Articles of Association of The ——— be so amended as to read as follows:

"This association shall continue until close of business on ———, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law."

Hereby granting unto my said attorney full power and authority to act in and concerning the premises as fully and effectually as I might do if personally present.

In witness whereof I have hereunto set my hand and seal this ——— day of ———, in the year 190—. ——— ———.

Signed and sealed in presence of ——— ———.

AUTHORITY OF REPRESENTATIVE OF OTHER CORPORATION CONSENTING TO EXTENSION CORPORATE EXISTENCE OF NATIONAL BANK.

———, 190—.

At a meeting of the ——— of the ——— of ———, held on the ——— day of ———, 190—, it was

Voted, That ——— be, and he is hereby, appointed irrevocably as its attorney, with power of substitution, to consent to and sign, in its

behalf, the amendment of the ——— article of the Articles of Association of The ——— National ——— Bank ———, said amendment reading as follows:

"This Association shall continue until close of business on ———, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law."

A true copy from the records.

Attest:

[AFFIX SEAL.]

These powers of attorney, signed by the shareholders, should not be sent to the Comptroller with the amendment to the articles of association, but retained in the files of the bank.

If preferred, a shareholders' meeting may be called for a convenient date to enable the shareholders to sign the necessary papers.

Notice of the meeting may be sent by mail to each shareholder, or given by publication. At this meeting the shareholders may appear in person or by attorney, the power given to the latter being similar in form to that inserted above.

Certificate of President or Cashier.—The certificate of the president or cashier that shareholders owning two-thirds of the stock have consented in writing to the extension and the request for approval should be executed, and transmitted to the Comptroller, at least two months previous to the expiration of the corporate existence of the bank, in order that the Comptroller may have sufficient time to cause the special examination to be made, as required by Section 3 of the Act of July 12, 1882, and to enable the bank to comply with possible conditions before the time for renewal of charter.

Authority to Sign.—If any shares of the bank stand in the name of administrators, executors, trustees, or guardians, and it becomes necessary to have the consent of the owners of these shares to make up the majority required to authorize the amendment, duly certified copies of the legal appointment of such administrators, executors, trustees, or guardians should be obtained and filed with the bank's records relating to the extension.

When stock stands in the name of an assignee, who signs the amendment, there must be evidence showing that the shares of stock

have been regularly transferred to him, as such assignee, on the books of the bank. When the amendment is signed by an attorney acting for shareholders, properly executed power of attorney is required.

Certificate of Extension.—The certificate of the Comptroller approving extension will be issued on the date of expiration of the existing charter.

Circulating Notes.—The law requires that circulating notes issued to the bank after the new period of succession begins shall be of different devices from those issued before; and this necessitates the procuring of new plates, which are prepared at the expense of the bank. This expense will be $50 for a plate of two impressions —$50s and $100s—and $75 for a plate of four, viz.: $10, $10, $10, $20, or $5, $5, $5, $5, the cost being the same as for the original plates.

A blank to enable banks to order the preparation of plates for the printing of new circulation will be furnished by the Comptroller, and the order should be made out and sent with the extension papers so that the plates may be engraved and the currency printed to be ready when the charter is renewed.

The new circulating notes for the full amount of the bond deposit will be issued to the bank at date of extension on deposit of lawful money sufficient to redeem its outstanding circulation, or they will be issued as the old notes come in by the usual course of redemption, until the end of three years from the date of extension, when the law requires the bank to deposit lawful money for the redemption of such portion of the old circulation as may then remain outstanding; but the full deposit may be made at once or in instalments. or at the end of three years.

Bond Deposit with U. S. Treasurer.—No transfer of bonds is necessary, as the extended association is in all respects identically the same as before extension, being placed in the same position as if the law had allowed it at the outset forty years from the date of its organization, of which twenty have expired.

Shareholders Dissenting to Extension.—Section 5 of the Act of July 12, 1882, conserves the interest of shareholders not desiring to continue their connection with the bank, but desiring to withdraw and to be paid the surrender value of their stock. The act provides that notice of intention to withdraw shall be given to the directors within thirty days from the date of issue of certificate authorizing extension of the charter, and that a committee of appraisal shall be appointed—one member by the withdrawing shareholder, one by the bank, and a third by the two. The bank and the dissenting shareholder may select as members of the committee expert accountants or any other persons competent to perform the duties of appraisers. In case the value fixed is unsatisfactory to the shareholder, he may appeal to the Comptroller of the Currency, whose appraisal shall be final and binding. The right of appeal is not given to the bank. In case the valuation fixed by the Comptroller exceeds the amount fixed by the committee, the expense of reappraisal must be borne by the bank; otherwise by the shareholder appealing. The law makes no provision for payment of expenses incident to the first appraisal; hence it is incumbent upon the withdrawing shareholder and the bank to determine this question. The shares appraised and surrendered must, after due notice, be sold at public sale within thirty days after the final appraisal.

Generally speaking, the market price of stock represents the surrender value, although, in some instances, the market price may be above or below the actual value of the stock. The proper course to pursue is to have a very careful examination made of the assets, taking into consideration the actual value of items exceeding the book value, and deducting items admittedly worthless. The question of "good will" is not to be considered, although it may be of material value to a bank continuing business.

REORGANIZATION VERSUS EXTENSION.

Reorganization May be Preferable to Extension.—The foregoing instructions apply to the extension of the bank which legally continues it in all respects what it was prior to extension.

It may, however, be deemed best by those principally interested in the National bank about to expire if owning the controlling stock not to avail themselves of the foregoing method. There are obvious reasons for this. For example: In a twenty years' life the personnel of the stockholders of an association undergoes great changes. The stock which was originally in the hands of active resident business men, who brought custom and business to the bank, by various vicissitudes falls into the possession of widows, heirs, and non-residents, whose only interest in the institution is to draw dividends. The active stockholders remaining in such associations will doubtless prefer in many instances to let the old association expire, and, with their proportion of the capital, joining with themselves other new capitalists such as they may think will add strength, form a new association to occupy the place vacated by the one which has expired.

Name of New Bank.—The proviso in Section 5 of the Act of July 12th, 1882, prevents the use of the old name for a new association unless all the shareholders in the old bank are assigned shares in the new bank proportionately to those they held in the old; therefore unless for some reason this is done it will be necessary to select a title materially different from that of the expiring association, as the Comptroller otherwise will not give his approval.

Procedure.—The new associates should make application to the Comptroller for authority to organize, and upon receipt of advice of approval and of organization blanks they should execute articles of association, organization certificate, oath of directors, and file these papers, with an order for circulation, in the office of the Comptroller of the Currency about two months prior to the expiration of the existence of the old bank. Fifty per cent. of the capital should be paid in, so as to be certified to the Comptroller at the same time bonds are deposited, and this should be done some time before the old bank expires.

As circulating notes can not be delivered under forty-five days from date of issue of certificate authorizing the bank to begin business, it may be found advisable to complete the organization a sufficient time in advance of the expiration of the charter of the old bank and opening of the new to insure the delivery of notes at that time.

The shareholders of the new bank can put into it moneys they derive from the old. The assets of the old bank can be sold in such manner by its directors as will realize the most for its shareholders, and generally it is advantageous to sell to the new bank all that can be legally taken by it. It cannot take any real estate except banking house nor real estate paper or mortgages, nor any stocks or assets of any kind known to be of questionable value.

No stockholder of the old bank can be compelled to take stock in the new bank. The transfer of deposits from the old bank to those of the new should be made by check or by agreement of new bank to honor checks of depositors in old bank, any depositor being at liberty to withdraw his deposit either before or after the change.

A set of new books, of course, should be opened by the new association.

Liquidation of Old Association.—The method of liquidating the old bank which goes out on expiration of charter is given in the chapter on Liquidation.

NATIONAL BANKS AS GOVERNMENT DEPOSITARIES.

Depositaries for Government funds are established in different parts of the country for the convenience of the Government, and thus serve also general business interests.

Prior to 1840, the banks were utilized for this purpose; then an Independent Sub-Treasury System was established, and this system, as remodeled in 1846, is still maintained. In 1864 provision was made in the National Bank Act that National banks might be designated by the Secretary of the Treasury as Depositaries of Public Moneys, excepting receipts for customs. (Section 5153, R. S.) The exception of customs was made on account of gold being then (during the Civil War) at a premium. The Government having to pay interest on the Public Debt in gold, all revenues payable in coin were brought into the Treasury.

It would be of advantage to the Government and banks on the Canadian and Mexican borders and elsewhere to have receipts for customs so deposited, but Congress has not yet changed the law so as to permit it.

The necessity of designating National banks Government Depositaries, in addition to the Sub-treasuries, has been that the latter system is not sufficiently extended to meet the requirements of Collectors and Disbursing Officers, and the designation of banks is determined by the requirements of the Government in this regard, that is, the designation of what are known as Regular or Permanent Depositaries, as distinguished from Temporary Depositaries.

Regular Depositaries are, as before stated, designated for the convenience of the Government as to its revenue receipts and its disbursements.

Temporary Depositaries are National banks designated for special deposit of Government funds. The provisions of Section 5153, R. S., invests the Secretary of the Treasury with authority to deposit all Public Moneys with the banks, excepting receipts from customs, so that when there has accumulated a large surplus in the Treasury, the Secretary has, for the business interests of the country, utilized the banks to put in circulation a certain portion of such surplus.

The first extensive use of the banks for this purpose was made in 1879, at the time of the resumption of specie payments, which resulted in the accummulation of a large surplus, and, from time to time, when the Government receipts have been largely in excess of expenditures, the Secretary has placed such surplus in circulation by designating some of the banks as Depositaries.

This latter class of Depositaries are, as above mentioned, designated in various sections regardless of locality, with a view to promoting business interests.

Security for Public Money Deposits.—The deposit of Public Moneys with the banks, whether Permanent or Temporary Depositaries, is made only upon the banks furnishing security satisfactory to the Secretary of the Treasury in accordance with the provision of the law (Sec. 5153, R. S.) that he shall require the association designated "to give satisfactory security by the deposit of United States bonds and otherwise."

The security at present and ordinarily required is Government bonds, in amount (at their face value) equal to the deposit of Public Moneys, which a bank is authorized to hold. The minimum bond deposit required is $50,000, face value, and the ruling of the Department is that no bank with less than $50,000 capital will be designated.

The Secretary has construed this provision as including, not only Government bonds, but *in addition to them* (not without them) other bonds, which in his judgment would be good security.

Upon this construction of the law he has accepted certain State and Municipal bonds; but the policy of the Treasury Department is to accept other security in addition to Government bonds only when the former are at a very high premium, and therefore difficult to obtain.

Amount of Deposit.—In the case of Regular Depositaries, the amount of deposits allowed is according to the receipts in the district where located, and if the receipts are large, two or more banks in the same place may be designated. The Collector of Internal Revenues is governed by the instructions of the Secretary as to the bank or banks with which he shall deposit. Generally, where there are two or more Depositaries he is permitted to alternate his deposits.

Excess of Deposits.—Any excess of Public Moneys deposited over the amount for which the bank has given security is required to be remitted to the nearest sub-treasury on the day it is deposited.

If this excess is continuous and large, the Secretary may permit a bank to increase its limit by the deposit of additional security, or may designate another bank an additional Depositary.

Kind of Deposits.—The deposits with banks are very largely from Collectors of Taxes on liquors and tobacco, the bulk of Internal Revenue being from these two sources, there are also receipts from sales of Public Lands and more or less from miscellaneous sources. These deposits of revenue receipts from all sources, excepting on imports, are the usual deposits with Regular Depositaries.

Other sections of the Revised Statutes provide that certain other Government Funds may be deposited with the banks.

FIRST:—FUNDS OF DISBURSING OFFICERS.—Sec. 3620, R. S., provides that "in places where there is no Treasurer or Assistant Treasurer, the Secretary of the Treasury, when he deems it essential to the public interest, may specially authorize in writing the deposit of such money in any other public depositary, or, in writing, authorize the same to be kept in any other manner and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors."

It will be noted that such deposits cannot be made with banks in places where there is a Sub-treasury. Second, That the designation of a National bank as a Government Depositary under Sec. 5153, R. S., does not authorize it to receive such deposits, but in order to become a Depositary for such funds, a Regular Depositary must be further designated specially for the purpose. Third. The provision that the Secretary may "in writing authorize Disbursing Officers' Funds to be kept in any other manner, as he may deem most safe and effectual to facilitate the payments to public creditors;" up to the present time has only been used for Disbursing Officers in out of the way places, permitting them to hold their own funds at their own risk, but generally when so situated Disbursing Officers keep their funds in some Depositary in New York, and local banks are glad to secure eastern exchange by cashing their New York drafts.

SECOND:—FUNDS OF POSTMASTERS.—Section 4046, R. S., provides that any Postmaster may deposit under the direction of the Postmaster-General in a National bank *designated* by the Secretary of the Treasury for that purpose, to his own credit as Postmaster any money-order or other funds in his charge, or negotiate drafts or other evidences of debt through such bank, when instructed or required to do so by the Postmaster-General for the purpose of remitting surplus money-order funds from one post-office to another, to be used in payment of money-orders.

The Post-office Department has found very little occasion for availing itself of this provision, excepting that in various sections of the country designated Depositaries have been authorized to receive surplus money-order funds for the convenience of local Postmasters, as otherwise it is necessary for the Postmasters to purchase exchange to transfer such funds. These deposits are reported to the Treasury Department like other deposits, and the latter credits the Post-office Department.

THIRD:—POSTMASTERS WHERE NO DEPOSITARY.—Section 3847, R. S., provides that a Postmaster within a county where there is no

designated Depositaries, Treasurer of a mint or Sub-Treasurer, may, at his own risk and in his official capacity, deposit in a National bank, in the place or county where he resides.

In case of such deposit this section provides that no authority or permission is, or shall be, given for the demand or receipt by the Postmaster, or any other person of interest, directly or indirectly, on any deposit made as herein described; and every Postmaster who makes any such deposits shall report quarterly to the Postmaster-General the name of the bank where such deposits have been made, and also state the amount which may stand at the time to his credit.

It will be seen from this provision of the law that arrangements for deposits referred to in this section are to be made, not with the Postmaster-General, but with the local Postmaster.

Court Funds.—Provision is made in Sections 995 and 996, Revised Statutes, that "All moneys paid into any court of the United States or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an Assistant Treasurer, or a Designated Depositary of the United States, in the name and to the credit of such court: *Provided*, That nothing therein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court." But that (Sec. 996, R. S.) no money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said courts respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

The deposit of moneys referred to in these sections of the Revised Statutes come under Miscellaneous Deposits. Other miscellaneous items, such as "the Semi-Annual Tax on National Bank Circulation, Patent Fees," etc., are not frequent.

Prohibitions.—Section 5488, R. S., imposes a penalty on any Disbursing Officer of the United States depositing public money intrusted to him, except as authorized by law.

Section 5497, R. S., imposes a penalty on any banker or broker or other person not an authorized depositary of public moneys, receiving from a Disbursing Officer, Collector of Internal Revenue, or other agent of the United States. any public moneys excepting in payment of a debt against the United States.

Accounting for Deposits and Disbursements.—A National bank having received the designation as a Depositary of public moneys. Regular or Temporary, and having made the deposit with the U. S.

Treasurer of the security required, the Secretary of the Treasury, through his "Public Moneys Division," orders the transfer to the bank of the amount of funds the bank is authorized to hold, unless the daily receipts from revenues, etc., are about sufficient to cover it. This amount can be used as any ordinary deposit, and in the case of Temporary Depositaries is simply charged to the bank until called in by the Secretary. In the case of Regular Depositaries, the account becomes active by deposits from Revenue Collectors, etal. and transfers. Collectors are required to deposit daily.

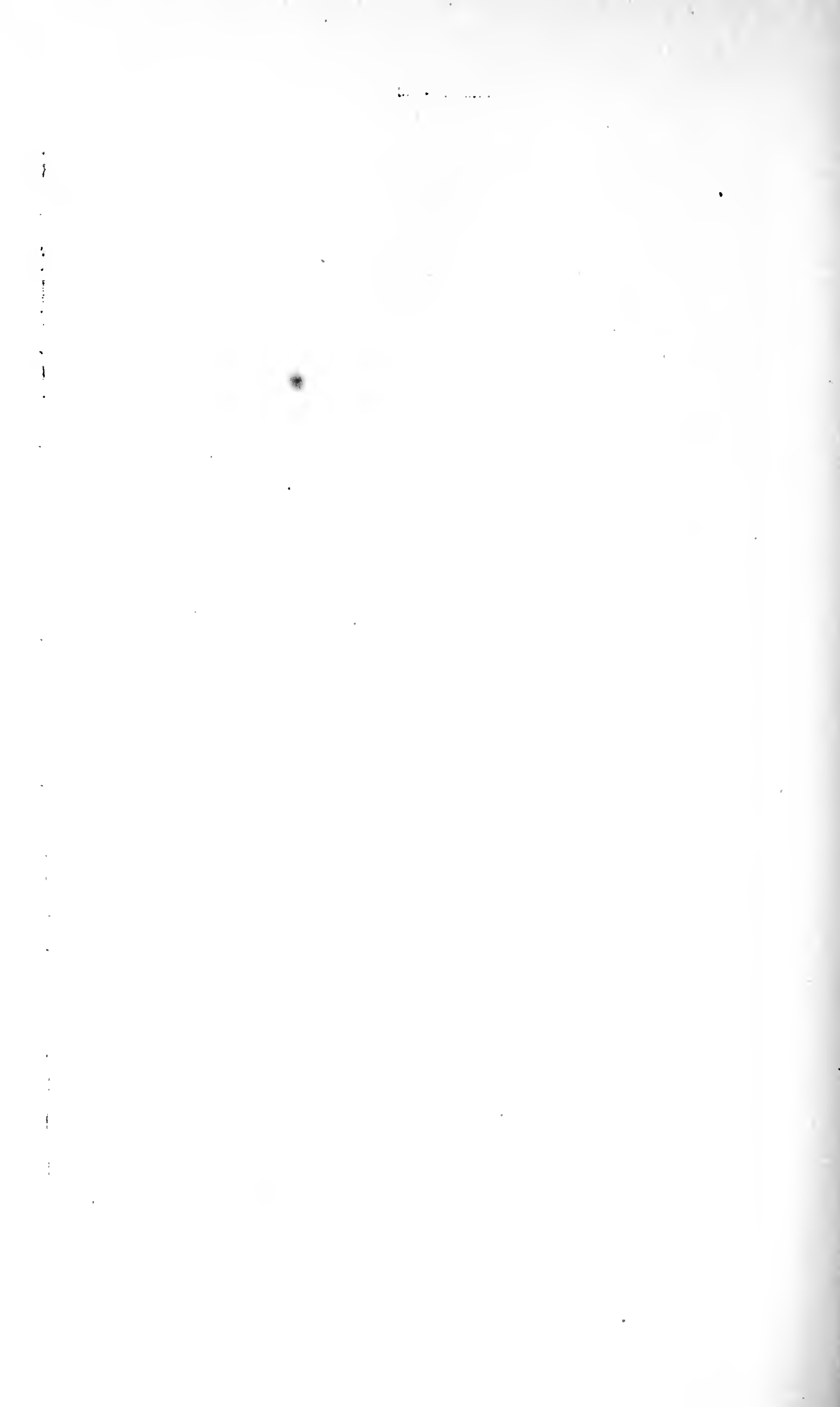
The account is in the name of the Treasurer of the United States. It is credited with all receipts of public moneys, from whatever source the Depositary is authorized to receive, and debited with any transfer of excess of deposits over balance allowed; Treasury drafts paid, and counter entries, if any, of errors in account, such entries being first approved by the Department.

These items are to be reported daily to the United States Treasurer, and a transcript of account sent him, four each month on certain days fixed annually by the Department, and a duplicate of the transcript to the Secretary of the Treasury, this duplicate to be accompanied with a detailed list of the deposits which make up the total receipts reported in transcript. A separate list for each officer depositing, and a certificate of deposit for each deposit made, is also to be sent on the day the deposit is made to the Secretary.

This double relation with the Department is regarded as necessary on account of the Depositaries being under the direct supervision and control of the Secretary, while the management of the funds is necessarily in the hands of the Treasurer.

The transcript shows on debit side all moneys paid. These payments may be on transfer orders, Treasurer's warrants, or on Treasurer's letter of instructions.

The certificates of deposits are issued in triplicate or duplicate according to the nature of the deposit, which determines the record to be made of same; for instance, for deposits of Collectors of Internal Revenue, the certificate is in triplicate, the original being sent to the Secretary, the duplicate to the Collector of Internal Revenue, to check account of Collector, and the triplicate for files of the Depositary.



PART THIRD.

Concerning Reports of National Banks to the Comptroller of the Currency—Lawful Money Reserve—Five Per Cent. Redemption Fund—Redemption and Reissue of National Bank Notes—Semi-annual Tax on Circulation.

Report of Condition of Banks.

Report of Earnings and Dividends.

Lawful money Reserve.
- Deposits Requiring.
- Funds Available for.
- Rules for Computing.
- Examples of Computation.

Five Per Cent. Redemption Fund.
- Remittances for.
- Ledger Account of.
- Assessment for Expenses of.

Disposition of Notes Redeemed.

New Issue for Notes Redeemed and Destroyed.

Semi-annual Tax on Circulation.
- Form for Making Return.
- Requirement and Penalty for Failure.
- Payments, How Made.
- Amount of.
- Calculation of.

FORM OF REPORT OF CONDITION REQUIRED

Charter No. ——.

Report of the condition of "The ——," at ——, in the State

DR.

	Resources.		Dollars.	Cts.
1.	Loans and discounts on which officers and directors are liable either as payers or indorsers (see schedule).......	$..		
	Loans and discounts on which officers and directors are not liable as payers or indorsers........................	$..		
2.	Overdrafts, secured, $—; unsecured, $— (see schedule)		.. .. ..	....
3.	U. S. Bonds to secure Circulation (par value), —— per cents, —— per cents.......................		.. .. ..	....
4.	U. S. Bonds to secure U. S. Deposits (par value) —— per cents..................................		.. .. ..	....
5.	Other Bonds to secure U. S. Deposits...............		.. .. ..	....
6.	U. S. Bonds on hand (par value) —— per cents.....		.. .. ..	....
7.	Premium on Bonds for Circulation, $——; Premium on other U. S. Bonds, $——..................		.. .. ..	....
8.	Bonds, Securities, etc., including premium on same (see schedule)..................................		.. .. ..	....
9.	Banking House, $——; Furniture and Fixtures, $——		.. .. ..	....
10.	Other Real Estate owned (see schedule)..........		.. .. ..	....
	....			
11.	Due from National banks (not approved reserve agents)		.. .. ..	....
12.	Due from State and private banks and bankers, trust companies, and savings banks.............		.. .. ..	....
13.	Due from approved reserve agents (see schedule)..		.. .. ..	....
	....		.. .. ..	....
14.	Checks and other cash items (see schedule)........		.. .. ..	....
15.	Exchanges for Clearing-house....................		.. .. ..	....
16.	Bills of other National banks.....................		.. .. ..	....
17.	Fractional paper currency, nickels, and cents......		.. .. ..	....
18.	Lawful Money Reserve in Bank. Specie, viz: Gold coin.............	$..		
	Gold certificates.......	$..		
	Gold ctfs. p'ble to order	$..		
	Gold cl'g-house certifi's	$..		
	Silver dollars.........	$..		
	Silver certificates......	$..		
	Fractional silver coin.	$..		
	Total coin and ctfs.	$..		
	Legal-tender notes.............	$..		
	....			
19.	Redemption fund with U. S. Treasurer (not more than 5 per cent. on circulation)................		.. .. ..	....
20.	Due from U. S. Treasurer.........................		.. .. ..	....
	....		.. .. ..	....
	Total		.. .. ..	....

I, —— ——, of the above-named bank, do solemnly swear that the above statement is true, and that the schedules on back of the report fully and correctly represent the true state of the several matters herein contained, to the best of my knowledge and belief.

Place for seal. Notary must not be an officer or director of the bank.

STATE OF ——, *County of* ——,

Sworn to and subscribed before me this —— day of ——, 190—.

—— ——, *Notary Public.*

Correct. Attest: —— ——, *Cashier.*

—— ——,
—— ——, *Directors.*
—— ——.

To be attested by three Directors other than the officer verifying the report.

BY THE COMPTROLLER OF CURRENCY.

[Form 2130—Reports—8-30-04]

of ——, at the close of business on the —— day of ——, 190—.

Cr.

	Liabilities.		Dollars.	Cts.
1.	Capital stock paid in..		.. .. ..	....
	....			
2.	Surplus fund..		.. .. ..	....
3.	Undivided profits, including amounts, if any, set aside for special purposes..	$..		
	Less current expenses and taxes paid.	$..		
4.	Circulating notes secured by U. S. bonds	$..		
	Less amount on hand and in Treasury for redemption or in transit.......	$..		
5.	State bank circulation outstanding...............		.. .. ..	....
	....			
6.	Due to National banks (not approved reserve agents)		.. .. ..	....
7.	Due to State and private banks and bankers........		.. .. ..	....
8.	Due to trust companies and savings banks..........		.. .. ..	....
9.	Due to approved reserve agents (see schedule).....		.. .. ..	....
	....			
10.	Dividends unpaid..		.. .. ..	....
11.	Individual deposits subject to check....	$..		
12.	Demand certificates of deposit..........	$..		
13.	Time certificates of deposit.............	$..		
14.	Certified checks........................	$..		
15.	Cashier's checks outstanding...........	$..		
16.	United States deposits......................................		.. .. ..	....
17.	Deposits of U. S. disbursing officers...............		.. .. ..	....
18.	Bonds borrowed...		.. .. ..	....
	....			
19.	Notes and bills re-discounted..............................		.. .. ..	....
20.	Bills payable, including certificates of deposit representing money borrowed......................		.. .. ..	....
21.	Liabilities other than those above stated...........		.. .. ..	....
	Total..		.. .. ..	....

Note 1.—This report must be sworn to by the *president or cashier, NOT by any other officer;* attested by not less than three directors, and forwarded to the Comptroller of the Currency with the least possible delay, as it is desired to complete the summary of reports as soon as possible after a call has been issued.

Note 2.—If special items, use the blank lines, but do not erase or change any printed item.

Note 3.—Write the word "no" where no amount is to be entered.

Loans and discounts. (Including loans and discounts on which officers and directors are liable.)

A.—On demand, paper with one or more individual or firm names	$....	....	....	..
B.—On demand, secured by stocks, bonds, and other personal securities	$....	....	....	..
C.—On time, paper with two or more individual or firm names	$....	....	....	..
D.—On time, single name paper (one person or firm) without other security	$....	....	....	..
E.—On time, secured by stocks, bonds, and other personal securities	$....	....	....	..
F.—Secured by real estate mortgages or other liens on realty (see schedule)	$....	....	....	..
....	....	....	....	..
X.—Loans for account of correspondents $———	$....	....	....	..
Total (item 1, resources)	$....	....	....	..
Included in the above are—				
G.—Bad debts, as defined in Section 5204, Revised Statutes $....	....	....	....	..
H.—Other suspended and overdue paper $....	....	....	....	..

Overdrafts.

Secured:				Unsecured:			
Standing six months or over	...	...	..	Standing six months or over	...	...	..
Temporary	...	...	..	Temporary	...	...	..
Officers and Directors	...	...	..	Officers and Directors	...	...	..
Total (item 2, resources)	...	...	..	Total (item 2, resources)	...	...	..

Bonds, Securities, etc. (Bonds, Claims, Judgments, and similar items should be included under this head.)

Enter face value of bonds.	Name of corporation issuing bonds, etc.	Am't at which carried on books.			Estim'd actual market value.			State whether taken for "debts previously contracted."
....	....	....	....	..	....	....	..	....
....	....	....	....	..	....	....	..	....
....	....	....	....	..	....	....	..	....
....	....	....	....	..	....	....	..	....
....	....	....	....	..	....	....	..	....
	Total (item 8, resources)	....	....	..	....	....	..	....

Other Real Estate Owned.

Describe property, state form of conveyance, and from whom obtained.	Amount at which ca'd on books.			Prior liens on property.			Estimated value of property.			Date when title was acquired.			State whe'r taken for "debts previously contrac'd."
....	....	....	..	....	....	..	....	....	..	....	....	..	....
....	....	....	..	....	....	..	....	....	..	....	....	..	....
....	....	....	..	....	....	..	....	....	..	....	....	..	....
....	....	....	..	....	....	..	....	....	..	....	....	..	....
Total (item 10, resources)	....	....	..	....	....	..	....	....	..	....	....	..	....

Loans and Discounts Secured by Real Estate Mortgages or other Liens on Realty.

Give name of borrower, form of collateral, and describe property.	Amount at which ca'd on books.			Am't prior lien on pr'y, if any.			Estimated value of property.			Date when security was taken.			State whe'r taken for "debts previously contrac'd."
....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....
....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....
....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....
....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....
....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....
....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....
Total (Item "F," Loans and Dis's.)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....

Checks and Cash Items other than Exchanges for C. H.

Checks and drafts on banks, etc., this city, not members of clearing-house..........	...	...	..			
Checks and drafts on other banks not members of clearing-house	...	...	..			
Total (item 15, resources)	...	...	..			

Average Reserve and Interest.

Average reserve for last thirty days (in bank and with Reserve Agents) on deposits and bank balances, was ——— per cent. The highest rate of interest paid by the bank on deposits is ——— per cent. On notes and bills re-discounted is ——— per cent; and on bills payable is ——— per cent.

Certificates of Deposit Representing Money Borrowed.

To whom issued.	Address.	Amount on demand.				Amount on time.				Rate of Int.
....	....	.....	.....	.....	.....	.....	.....	.....	.....	.....
....	....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total (include in item 20, liabilities)		.....	.....	.....	.....	.....	.....	.....	.....	.....

Loans Exceeding the Limit Prescribed by Section 5200 of the Revised Statutes, including Amounts which Exceed this Limit due from State, Private Banks and Bankers, Trust Companies, and Savings Banks. Overdrafts, if any, to be classed with Loans.

Name of borrower.	Enter full amount of loan.			Name of borrower.	Enter full amount of loan.		
....	.....	.....	.....	....	.....	.....	.....
....	.....	.....	.....	....	.....	.....	.....
....	.....	.....	.....	....	.....	.....	.....
....	.....	.....	.....	....	.....	.....	.....

Balances Due From or to Approved Reserve Agents.

From— **To—**

Enter name and location of bank.	Amount.			Enter name and location of bank.	Amount.		
Total (item 14, resources)				Total (item 9, liabilities)			

Liabilities of Officers and Directors.

Names of Officers and Directors.	Official Title.	Liability (individual or firm) as Payers.	Liability (individual or firm) as Indorsers or Guarantors.	Checks and Cash Items.	Over-drafts.	No. of shares Stock owned.
	President					
	Cashier					
	Vice-Pres't					
	Asst. Cash'r					
	Directors					
	do					
	do					
	do					
	do					
Total (see item 1, resources)						

REPORT OF CONDITION OF BANK.

[The Comptroller of the Currency requires that National banks use *only* the *printed* forms furnished by his office. Written forms sent by the banks will not be accepted.]

For the form of report required see page ——. The various items of the report are noted below, with explanatory notes and suggestions in regard to preparing reports.

RESOURCES.

1. Loans and Discounts.—These should embrace paper of all kinds representing money loaned by the bank. The various classes of paper composing the total are to be scheduled in the form for same, on back of the report; also properties covered in loans "on mortgages and other real estate security," if any such occur, and full information as to the following :

"Bad debts, as defined in section 5204, R. S."

"Other suspended and overdue paper."

"Liabilities of directors (individual or firm) as payers."

2. Overdrafts.—Enter the total of balances of all depositors' accounts which are overdrawn. These should be carefully classified in the proper schedule on the back of report. While overdrafts are unavoidable under certain local conditions of business, they should, as a rule, not be allowed. When such accommodation to a responsible customer is called for, a demand note should be taken for the loan, the customer credited, and bills receivable charged. If a certain maximum temporary credit is wanted to draw against, let a demand note be given the bank, the amount passed to the customer's credit, and in the settlement the customer charged interest for the amount checked out :

3. *United States Bonds to Secure Circulation* (*par value*).

4. *United States Bonds to Secure United States Deposits* (*par value*).

5. *Other Bonds to Secure United States Deposits.*

6. *United States Bonds on Hand* (*par value*).

Any U. S. bonds owned by the bank, but loaned to any other National bank, should be entered as a loan to that bank, or as a special item "U. S. bonds loaned." They should never be entered as on hand or deposited, as the report of the bank borrowing them will show them in this manner, and if reported by the bank making the loan would result in a duplication of the amount of bonds actually existing.

Bonds other than U. S. bonds deposited to secure government deposits should be shown separately from U. S. bonds at their par value. Any premium on them should be shown in "Bonds, securities, etc.," but the bonds themselves should not be shown in the schedule of bonds, securities, etc.

Enter these at their *par* value, taking care to indicate by the interest rate the class in each case. If more than one kind is held for any one of the purposes named, state the *amount* and *class* of each kind separately.

7. Premium on Bonds for Circulation—Premium on Other U. S. Bonds.—Enter the premium on U. S. bonds *only* at the actual market value of same, taking care to state the premium on bonds held "for circulation" separately from that on "other U. S. bonds." Premium on bonds of any other kind, on stocks, etc., must not be entered here, but included in item of "stocks, securities, etc."

8. Bonds, Securities, etc., Including Premium on Same.—This should embrace securities of all kinds (other than U. S. bonds) which are owned by the bank, viz.: bonds, stocks, chattel mortgages, judgments, claims, city or county warrants, etc. Securities held as collateral for loans must not be entered here. Under claims include all amounts due from failed or liquidating banks or corporations including National banks. These securities, etc., should be entered in the report at the values at which they stand on the books of the bank, and the "book" value should always represent the actual "market" value as nearly as possible. *Real estate* securities and real estate owned by the bank must not be entered here but with loans secured by real estate and "other real estate." All the items composing the total should be listed in the proper schedule on back of the report.

9. Banking House.—Enter *at its book value* (as nearly market value as possible), only such real estate held by the bank under section 5137, "necessary for its immediate accommodation in the transaction of its business," and no other.

Furniture and Fixtures.—Enter at their actual value to the bank all furniture and fixtures used in the conduct of its business.

10. Other Real Estate and Mortgages Owned.—Give the *book value* of all real estate (except the banking-house property) owned by the bank and held by virtue of any deed, mortgage, vendor's lien, or other instrument in writing. Any real estate not owned by the bank, but held by it as collateral for loans, should not be included here, but in "loans and discounts," and scheduled in the proper place on back of the report. All transactions in real estate should be made in strict conformity with the provisions of section 5137, which clearly de-

fines the purposes for which banks "may purchase, hold and convey" real estate. The evident intent of the restrictions there imposed was to prevent banks from investing their resources in a form which was not readily convertible.

11. DUE FROM NATIONAL BANKS, NOT APPROVED AGENTS.—Enter the total amounts due *from* such National banks as are *not* "approved reserve agents."

12. DUE FROM STATE AND PRIVATE BANKS AND BANKERS, TRUST COMPANIES AND SAVINGS BANKS.—Enter the total amounts due from such banks and bankers as distinguished from National banks. It has always been held by the Comptroller's office that, as these institutions are either corporations, firms, or individuals, any balance held by them in excess of one-tenth of the capital stock of the bank must be regarded as an excessive loan made in violation of section 5200. All such excessive balances should, therefore, be entered in schedule for "loans exceeding the limit prescribed by section 5200," etc., on the back of the report.

13. DUE FROM APPROVED RESERVE AGENTS.—Enter the total amounts due *from* such National banks as have been approved as "reserve agents" by the Comptroller and from such banks *only*. Amounts due from banks in liquidation or insolvent which had been reserve agents should not be entered here. Take care to enter in the proper schedule on the back of report the *name* of each such "reserve agent," the *location* of same, and the amount due from it.

14. CHECKS AND OTHER CASH ITEMS.—This should include only such items as are readily convertible into *cash, and no others*. Items of expenses and taxes paid, dishonored drafts and checks, overdrafts and similar items should be charged to appropriate accounts. Be careful to schedule items on back of report, properly classified, and see that the statements in schedule of these items on back of report and of all schedules agree with face of the report.

15. EXCHANGES FOR CLEARING-HOUSE.—These are checks or drafts on banks which are members of a clearing-house, and will occur only in the case of a bank located in a place where there is a clearing-house.

16. BILLS OF OTHER NATIONAL BANKS.—Enter circulating notes issued by *other* National banks, and these *only*. If a bank has any notes of its own issue on hand, they must be entered under "Notes received from Comptroller" in "liabilities."

17. FRACTIONAL PAPER CURRENCY, NICKELS AND CENTS.—Silver fractional currency must *not* be included here, but under "specie."

18. Items of Lawful Money Reserve in Bank.

Specie.—Enter only coin (not nickels, or cents) and certificates representing coin, taking care to state the amount of each kind in its proper place in schedule. Every bank should keep a daily record of such items in this form, to have the data for call for report of condition which is always made for a past date.

Gold Certificates.—This item should show certificates of deposit issued for gold deposited with the Treasurer, the lowest denomination being $20.

Gold Certificates payable to order issued under the act of March 14, 1900.—This item should show only certificates issued for gold deposited, payable to the order of the bank making the deposit, the minimum amount being $10,000. The only exception to this amount is in the case of a bank which still holds a certificate payable to order issued under the law before amended which permitted such certificates for $5,000 each.

Gold Clearing House Certificates.—Only banks which are members of a Clearing-House Association can hold these certificates, which represent a deposit made with the clearing-house of which the bank is a member, under the provisions of section 5192, U. S. R .S.

Legal Tender Notes.—Enter only U. S. Treasury "legal tender" notes, taking care not to include any "National bank" notes.

19. Redempton Fund With U. S. Treasurer (not more than 5 per cent. on circulation).—Enter the actual amount on deposit with the Treasurer of the U. S. for the redemption of circulation issued by the bank for which it is still liable.

No amount greater than five per cent. of the circulation outstanding should be entered here. If a larger amount is on hand with the Treasurer the excess over the five per cent. of circulation should be entered as "Due from U. S. Treasurer."

The redemption and the circulation accounts should be kept entirely separate. Only amounts remitted or due to the Treasurer should enter into redemption account. Notes received, destroyed, etc., should be entered in circulation account only.

20. Due from U. S. Treasurer.—This is intended to include any amounts due to the banks from the U. S. Treasurer (other than five per cent. fund), such as notes of other National banks or other forms of currency or bonds forwarded to him for redemption.

LIABILITIES.

1. Capital Stock Paid In.—Enter only "capital stock paid in" for which a certificate has been received from the Comptroller. "Capital stock paid in" for which no certificate has been received by the bank at date of call for report must not be included here, but entered under item 21, "Liabilities, etc."

2. Surplus Fund.—This should show whatever amount has been placed to the credit of this fund in accordance with the requirements of section 5199.

3. Undivided Profits.—This should represent such profits as have not been applied to the payment of expenses, losses, increase of surplus fund (where still necessary), or of dividends. Profits from *all* sources should be collected under this head. Profits of the bank carried in special accounts, such as "contingent fund," etc., should be included with undivided profits or entered as a special item under the title given to the account.

Current Expenses and Taxes Paid.—This should embrace all items of expenses and taxes paid, but not charged off to "undivided profits," and the total deducted from that item to give net undivided profits. Where expenses, taxes, etc., exceed the total earnings, the earnings should be deducted from expenses and the remainder shown as a special item "Expenses, etc.," on the side of resources.

4. Circulating Notes Secured by U. S. Bonds.—Enter the total of circulaton outstanding *for which the bank is liable.* A bank is no longer liable for circulating notes for the redemption of which it has deposited lawful money with the U. S. Treasurer. Should it have any of its own notes "on hand" or "in Treasury for redemption or in transit," they should be deducted here from the total circulation received, and the balance carried to outer column as circulation outstanding.

5. State Bank Circulation Outstanding.—This will apply only in the case of State banks converted to National banks, and refers to circulating notes issued by such banks prior to their conversion, and not presented for redemption.

6. Due to National Banks [not Approved Reserve Agents].— Enter the total amounts due *to* other National banks. Any amount which represents money borrowed for a stated period of time from another bank should be entered below in item of "bills payable."

7. Due to State and Private Banks and Bankers.—This should embrace all amounts due to such banks and bankers. Remarks as to "money borrowed" made in preceding paragraph are applicable here also.

8. Due to Trust Companies and Savings Banks.—Any amounts due to trust companies or savings banks should be entered here, whether due on open account or otherwise, and should under no circumstances be included with individual deposits.

9. Due to Approved Reserve Agents.

10. Dividends Unpaid.—Enter the total of dividends, if any, to credit of shareholders on books of the bank not yet called for by them.

11-15. Individual Deposits Subject to Check—Demand Certificates of Deposit—Time Certificates of Deposit—Certified Checks—Cashier's Checks Outstanding.—These embrace all classes of deposits (other than those of the U. S. or its disbursing officers). They should be carefully classified, according to character. If the bank has a savings department, all deposits received in it should be classified according to the form, or if preferred may be entered as a special item, stating whether on time or demand in the classification. If certificates of deposit have been issued for "money borrowed" by the bank, they should not be entered here, but in the item of "bills payable." "Overdrafts," if any, should not be deducted from the total amount at credit of deposits, but should be stated separately under item of "overdrafts."

16. United States Deposits.—Enter the total of deposits made by the U. S. Government other than those made by its disbursing officers.

17. Deposits of U. S. Disbursing Officers.—Enter only such deposits of Government funds as are subject to check by its disbursing officers.

18. Bonds Borrowed.

19. Notes and Bills Rediscounted.—This should include any portion of the "loans and discounts" which has been rediscounted by the bank for which it may be in any way liable, by indorsement or otherwise. While circumstances render rediscounts necessary at times, the resources of the bank should not be too largely used in this way, and only for short periods of time, to supply temporary demands of good customers.

20. Bills Payable.—Enter the total amount of "money borrowed" by the bank, which is represented either by its note, certificate of de-

posit, or other instrument issued by it, or by any credit given it by any bank or banker which is intended as a loan to it for any stated period of time. Money borrowed by means of "rediscounts" or "bills payable" (as defined in this paragraph), if it exceeds the amount of the capital stock, is in violation of section 5202.

21. Other Liabilities (Miscellaneous).—This total is intended to represent small items. If it includes any large items, specify what they are.

Average Reserve and Interest.—See that the "average reserve" for the thirty days preceding the date of the call is entered in the proper place on back of the report, as also "the highest rate of interest paid by the bank" on any money deposited with or borrowed by it.

Suggestions.—Before the report is signed, see that the footings of "liabilities" and "resources" balance; and that the items on each side are in their proper places observing the rulings of the columns; for example, two or four figures should not be entered in the columns intended for hundreds and thousands. Totals of all items should be entered in the outer columns where the form so indicates, and should not be entered inside and included with the total of specie, deposits or any other item as extended into the outer column. For instance, balances due to banks or dividends unpaid should not be entered directly above the classification of deposits, added in with deposits, and the total extended into the outer column as deposits, but each of these items should be extended separately. Be careful to have all schedules on back of the report properly filled out, and that the total of items in each schedule agrees with item in the face of the report. Where there are no items to be entered in any schedule on the back of report, write the word "none," as items are frequently omitted through inadvertence, and correspondence is made necessary thereby. Give number and name of bank on each loose schedule of report. See that the correct date is entered in the heading of the report. The report itself and all signatures thereto should be in ink in permanent form. Lead pencil should never be used for this purpose. An exact copy of the report should always be retained by the bank.

Oath and Attestation.—The report must be sworn to by the president or cashier (not the assistant cashier), *and no other officer of the bank is qualified to do this.* The report must be sworn to in the same State, as the law provides that the notary administering the oath must have been commissioned by the State where he resides and the bank is located, and the date when sworn to entered in the jurat. See that notory affixes seal. The attestation *must* be by *three* directors; the officer signing the report must *not* attest to its correctness as a director;

and the oath of the officer signing must be acknowledged before an official having a seal of office and one not an officer of the bank. See section 5211 and act February 26, 1881.

Publication of Reports.—Reports must be published in a newspaper of the place, or, if it has none, in one in the nearest place in the same county, and proof furnished of publication to the Comptroller. (See section 5211.) If the bank has been opened for business even for part of a day on the date a report of condition is called for a report should be made up and published. The Comptroller furnishes a convenient form for printer's "copy." The report must not be condensed for publication, but conform fully to report sent the Comptroller, excepting the schedules on back. The copy of report of condition on the back of proof of publication should be an exact copy of the face of the report of condition, and the signatures of directors, notary and officer swearing to the report may be copied on the blank furnished to the printer. It is not necessary for the directors to personally sign anything but the original report, and this is true with regard to the signatures of the notary and the officer swearing to the report.

The form of affidavit required for proof is furnished to the banks when reports are called for, and the instructions therewith must be strictly complied with. The seal of the officer before whom the printer makes oath to publication of the report must be affixed to the certificate of publication.

SCHEDULES.

Schedule of Loans and Discounts.—Item A is to cover only demand paper, with one or more individual or firm names, not otherwise secured.

Items B and E should include only loans and discounts secured by stocks, bonds, etc. (not stocks, bonds, etc., owned by the bank).

Item C should include only paper bearing more than one name, running for a stated time, without other security.

Item D includes time paper signed by only one individual or firm and not otherwise secured.

Item F should include all paper secured directly or indirectly by real estate and should agree in mount with the total of items shown in the schedule for "loans and discounts secured by real estate mortgages or other liens on realty." Paper bearing more than one name should be included here and not with item C if any portion of it is secured by real estate.

Loans on account of correspondents should show all loans made for correspondents where the notes and securities, or the securities only, are held by the bank making the loans, but the amount should not be included with the total of this schedule or shown in item 1 on the face of the report.

The total of this schedule should agree with the amount shown opposite item 1 of resources on the face of the report.

The amounts of G and H are not in addition to other items of loans and discounts, but should show the paper classed under the above items which is overdue or bad debts. If none of the paper held is overdue or classed as bad debts, the word none should be written in, as otherwise the report is incomplete.

All paper which has passed the date of maturity without payment or renewal is overdue. Paper upon which the interest is past due and unpaid for six months should be classed as bad debts unless *both* well secured and in process of collection.

Overdrafts.—All advances made for any purpose, for which no notes drafts, etc., are held by the bank, should be entered as overdrafts, and should under no circumstances be included with loans and discounts.

Bonds, Securities, etc.—See notes on these items on face of report. The total book value of this schedule should agree in amount with item of resources on face of report "Bonds, securities, etc." No items secured by real estate, however, should be entered in this schedule, but they should appear in the schedule for real estate loans or real estate owned, as the case may be.

Other Real Estate Owned.—All real estate owned by the bank (except that occupied as a banking house) should be entered in this schedule.

No matter how long real estate has been held it should be shown on the books and in reports at its actual value, and should not be charged off unless worthless. The law in providing that real estate shall be disposed of within five years refers to the title and not to the appearance of its value on the books. Until actually sold, it should be shown among the assets.

The total book value of this item should agree with item "Other real estate owned" of resources on the face of the report, and should never be included in the schedule of loans and discounts under item F.

Loans and Discounts Secured by Real Estate Mortgages or Other Liens on Realty.—This schedule should show every loan in any way secured by real estate, and give the information required by the different headings of the schedule in each case. When the space provided in the form for report is insufficient to list all such loans a complete list should be made on an extra sheet of paper and attached to the report.

The aggregate book value of these loans shown by the schedule should agree with item F of the schedule of loans and discounts, and should be included in item 1 of resources on the face of the report. It

should never be confused with "other real estate owned" nor entered as such on the face of the report.

Certificates of Deposit Representing Money Borrowed.—This schedule should show all certificates issued for money borrowed, but not certificates issued for deposits received unsolicited in the ordinary course of business. The amount shown in this schedule should be included with item "Bills payable including certificates of deposit representing money borrowed" on the face of the report, and should be published as "bills payable," which they represent.

Loans Exceeding the Limit Prescribed by Section 5200, U. S. R. S.—All balances from banks other than national which exceed 10 per cent. of the capital should be entered here. In the loans to individuals should be included all paper upon which the same party is signer, whether singly or jointly, all paper made for his accommodation and all overdrafs to him, and if the total exceeds 10 per cent. of the capital the excessive loan should be reported in this schedule.

In loans to firms or companies (not incorporated) should be included the liabilities of individual members thereof, accommodation paper and overdrafts.

Loans to corporations should not include loans to shareholders therein, unless made for the accommodation of the corporation.

Commercial or business paper actually owned by the person negotiating the same and bills of exchange drawn in good faith against actually existing values are not to be included with other liabilities in listing excessive loans.

Where a loan not in excess of 10 per cent. of capital has been made, and the bank is afterwards obliged to secure it by real estate to prevent loss, and in so doing is obliged to increase the amount either by a further advance or the purchase of a prior lien in order to protect its interest, thus making the total amount of the loan more than 10 per cent. of the capital, this should not be reported as an excessive loan, but only with loans secured by real estate. The courts have held that it is within the rights of a bank to make such further investment where necessary to protect a previous loan, even though the total exceeds the 10 per cent. limit.

Balances Due from or to Approved Reserve Agents.—The correct title of each reserve agent should be given. Where a bank has changed its title, or has been consolidated with another bank under the title of the other bank, the new title should be entered.

Any amounts due from banks in liquidation or insolvent, which were formerly approved reserve agents, should be reported in "Bonds, securities, etc.," and not with amounts due from reserve agents.

The total of amounts due from reserve agents as shown by the schedule should be entered in resources as due from reserve agents, and

the total due to reserve agents as shown by the schedule should be entered in liabilities as due to reserve agents. One of these items should not be deducted from the other and only the difference shown on the face of the report.

All amounts actually due to a reserve agent on collection or any other account should be shown as due to that reserve agent, as only net balances due from reserve agents are available as reserve.

Liabilities of Officers and Directors.—The total amount for which each director or officer is liable, either as payer or endorser, should be entered in this schedule. Any paper upon which two or more directors are jointly liable should be entered against each of them, but the amount of such liabilities above the face of the paper should be entered as a special item at the foot of the schedule, reading, "amount of joint liabilities of officers and directors over face of paper," and this amount deducted from the total of items entered therein, in order that the final total may represent the true amount of paper held by the bank upon which directors or officers are liable, and agree with this item as included in item one of resources on the face of the report.

[Form 2129.—Reports 11-12-03.]

Report of Earnings and Dividends

No. of Bank............ *No. of Dividend...........*

Capital stock at close of this earning period, $............

"The ....," located at ...., in the State of ...., for the period of ...... months ending ...., 190... Declared ...., 190... Payable ...., 190...

FIRST SECTION.

Item	Amount	Item	Amount
3. Premiums on U. S. bonds charged off since last report		1. Gross earnings and profits made since last report....	
4. Losses sustained through bad debts, decrease of values, etc., since last report.....		2. Losses recovered since last report (if any)..........	
5. Expenses and taxes paid since last report.........		....	
Totals of items 3, 4, and 5		....	
*6. Net earnings and profits or loss of past six months carried down to second section		....	
Total.........		Total.........	

SECOND SECTION.

Item	Amount	Item	Amount
12. Carried to surplus fund (not less than one-tenth of item 6, unless surplus is already 20 per cent. of capital)...		*6. Net earnings and profits or loss of past six months brought down from first section	
13. Dividend of....per cent. (on capital, $...........)....		7. Undivided profits or loss brought forward from item 14 of last report.........	
14. Amount of net profits undivided or loss to be carried forward to item 7 of next report		8. Amount withdrawn from surplus since last report.....	
		†9. Authorized reduction of capital used to meet losses or passed to profit account since last report..........	
		10. Paid assessment on capital stock since last report.....	
		11. Subscribed and paid in by shareholders since last report as surplus or profits..	
Total.........		Total.........	

THIRD SECTION.

Item	Amount	Item	Amount
18. Total surplus fund proper at date of this report........		15. Total profits as National bank since organization (less expenses, premiums, losses, etc.)..............	
19. Total dividends since organization as National bank...		16. Add profits and surplus of old organization at date of conversion to the national system	
20. Amount of net profits undivided or loss to be carried forward to item 7 of next report		†17. Total paid in by shareholders and reduction of capital used to meet losses and passed to profits..........	
Total.........		Total.........	

STATE OF———, }
County of———. } *ss:*

Sworn to and subscribed before me this ——— day of ———, 190—.

——— ———, *Notary Public.*

I, ——— ———, Cashier of the above-named bank, do solemnly swear that the above statement is true, to the best of my knowledge and belief.

——— ———, *Cashier.*

* In case the loss exceeds the profits for the six months, the excess of loss over the profits should be entered in item 6 in red ink and deducted from total amount charged off. (Items 3, 4, and 5.)

† Any reduction of capital other than that used to meet losses or passed to undivided profits is not to be entered on this report and can be omitted where previously included.

REPORT OF EARNINGS AND DIVIDENDS.

For form of report required see page ——. The various items of the report are noted below, with explanatory notes and suggestions in regard to preparing reports.

Blanks for making up this report are furnished by the office of the Comptroller of the Currency. In filling out the heading of the blank be careful to enter—

First. Charter number of bank. Second. Date at which dividend period *ends*. Third. Date of *declaration* of dividend. Fourth. Date at which dividend is *payable*. Fifth. Enter exact capital at date period

FIRST SECTION.

1. Gross Earnings Since Last Report.—This should represent the total of *gross* profits from *all* sources earned during the dividend period covered by the report, such as discount, interest, exchange, rents, etc., but no part of undivided profits earned during former periods should be included in this item.

2. Losses Recovered Since Last Report (if any).—This item requires no explanation. Any profits realized which the bank desires to show separately can be entered specially after the item.

Add these two items together, and from their sum deduct the following:

3. Premiums on Bonds Charged Off Since Last Report.—In case of any decrease in the market value of any United States bonds owned by the bank occurring during the dividend period, such decrease should be charged off on the books of the bank and the amount entered here.

4. Losses Sustained Through Bad Debts, Decrease of Values, etc., Since Last Report.—Any losses sustained on "loans and discounts" during the dividend period, and any decrease in the value of banking house, furniture and fixtures, other real estate, securities of any kind owned by the bank, and the amount of any bad debts, as defined by section 5204, should be included here.

5. Expenses and Taxes Paid Since Last Report.—Enter here the sum of all expenses and taxes paid since last report, whether they have been charged off or not.

The sum of items 3, 4 and 5 should be deducted from the sum of items 1 and 2, and the result will be item 6, which, added to 3, 4 and 5, will of course always equal the total of 1 and 2.

6. Net Earnings and Profits or Loss of Past Six Months (or of dividend period, if less than six months).—This represents the *net profits* remaining after deducting the sum of all items of "outgo" for the dividend period from the sum of the items of "income" during the

same period. If the "outgo" has exceeded the "income," the result will be a "net loss," and the figures representing such loss should be entered in *red* ink. In this case the printed words "earnings and profits" should be stricken out, leaving the word "loss" against entry and deducted from total of items 3, 4 and 5.

SECOND SECTION.

7. UNDIVIDED PROFITS OR LOSS BROUGHT FORWARD FROM LAST REPORT.—Enter here the balance of undivided profits remaining on hand at end of the previous dividend period, namely, the amount entered at item 14 or 20 of the last report. Should this item represent a *loss*, instead of a profit, the figures should be entered in *red* ink. This item should always be brought forward in full and no part of it included in the first section of report.

Should the bank have been converted from some other organization, the profits on hand at date of conversion should be entered here as well as under item 17.

8. AMOUNT WITHDRAWN FROM SURPLUS (IF ANY).—Enter amount in case there has been withdrawal from this fund. It should be borne in mind that, so long as surplus is below the required 20 per cent., no portion of it can be withdrawn, except for the purpose of charging off losses incurred, and no more than will meet the losses, and then only after any "undivided profits" on hand have first been exhausted. When the surplus exceeds the limit of 20 per cent., the excess over this limit may be used for the payment of dividends or otherwise, as the bank may elect.

The sum of items 12, 13 and 14 should always balance with items 6 to 11.

9. REDUCTION OF CAPITAL STOCK SINCE LAST REPORT (IF ANY).—Enter only reduction to meet losses or passed to profit account. Reduction of capital stock to return to shareholder forms no part of this report.

10. PAID ASSESSMENT ON CAPITAL STOCK SINCE LAST REPORT (IF ANY).—Any assessment on capital paid in is for the purpose of covering losses shown in item 6 and should only be entered in this item. Any increase in capital does not enter into this report.

11. SURPLUS SUBSCRIBED AND PAID IN BY SHAREHOLDERS SINCE LAST REPORT (IF ANY).—Any money subscribed and paid in by the shareholders either as a surplus fund or as a part of the profit account should be entered as indicated in this item, substituting the word "profits" for surplus in the latter case.

12. CARRIED TO SURPLUS FUND [NOT LESS THAN ONE-TENTH OF ITEM 6, UNLESS SURPLUS IS ALREADY 20 PER CENT. OF CAPITAL).—Any amount that has been carried to this fund in accordance with requirements of sec-

tion 5199. A bank *may*, if it desires, carry *more* than one-tenth of its net earnings for a dividend period to this fund; but so long as the surplus fund is less than 20 per cent. of its capital, it *must* carry at least one-tenth of its net profits for any dividend period to this fund before it declares a dividend.

13. Dividend of ——— Per Cent. (on Capital, $———).—Enter here the amount distributed to stockholders during the dividend period, taking care to enter the *rate* and the *amount* of capital in the proper blanks.

14. Amount of Net Profits Undivided, or Loss to Be Carried Forward.—Enter here the balance of undivided profits or loss remaining, after deducting items 12 and 13 from items 6 to 11.

THIRD SECTION

15. Total Profits as National Bank Since Organization (less expenses, premiums, losses, etc.).—The amount to be entered here is obtained by adding item 6 of the current dividend period to item 15 of the last dividend report made.

16. Add Profits and Surplus of Old Organization at Date of Conversion.—This will apply only in the case of a State bank converted to a National bank which had a balance of profits on hand at time of conversion. This balance, of course, remains unchanged, and must be the same in every report.

17. Total Paid in by Shareholders and Reduction of Capital Used to Meet Losses and Passed to Profits.—This item should include items 9, 10 and 11 added to item 17 of last report.

18. Total Surplus Fund Proper at Date of this Report.—This is obtained by adding the amount carried to surplus fund during the current dividend period (item 12), if any, to item 18 of the last report made.

19. Total Dividend Since Organization as National Bank.—This is obtained by adding the amount of any dividend declared during the current period (item 13) to item 19 of the last report made.

20. Amount of Net Profits Undivided or Loss, etc. (same as item 14 of this report).—This, like item 14, represents the balance of "undivided profits" or loss remaining at the close of the current dividend period.

The sum of items 18, 19 and 20 should exactly equal and balance the sum of items 15, 16 and 17.

GENERAL INFORMATION.

There are three classes of money which may come into the bank: 1st (item 15), total profits as a National bank; 2d (item 16), profits brought into the bank from a converted association, and 3d (item 17), money which was not earned, but was paid into the bank for special reasons.

The dividend report must be signed either by the *president* or the *cashier* of the bank. *No other officer of the bank is authorized by law to sign it.* The oath of the officer signing may be made before any officer qualified to administer an oath and affix a seal. An exact copy of each dividend report made to the Comptroller should always be retained by the bank on the extra blank furnished for this purpose. Each bank is allowed to select its semi-annual dividend periods, and must render a report of its earnings or loss for that period, whether it has declared a dividend or not. The law requires that whenever a dividend is declared by a bank, whether semi-annually or oftener, the report of same must be forwarded to the Comptroller within ten days after declaring the dividend. (Section 5212.) Section 5213 prescribes a penalty for failure to forward the dividend report within the required time.

SECTION 1 deals only with the profits realized and losses sustained during the period being reported, or since last report. No part of the profits earned or losses sustained, which have been previously reported (except as indicated in item 2) are to be included in this section. See that each section balances.

SECTION 2 deals only with the net profits (or loss) of current period and the undivided profits of previous periods, or losses, if any (item 14 of last report); and any amounts which may have been withdrawn from surplus fund, or obtained from sources other than through the earning capacity of the bank, and the disposition of such amounts.

SECTION 3 deals only with the total money received from all sources and its distribution into surplus fund, dividends declared, and undivided profits on hand.

Only amounts representing losses, expenses, depreciations in value, etc., should be charged off in the first section of the report. If any portion of the profits have been set aside in a special fund, this should be shown as a special item in the second section of the report under item 14, and as a special item in the third section under item 18 and should be included in the total shown as item 15 of the same section. Any amounts added to or deducted from a special fund should be shown in the second section, the amount shown in the third section to always be the exact amount of the fund when the report is made. Any amount withdrawn from this fund should be shown as item 8 of the second section, changing the word surplus to the title of the special account, and any amounts added to the fund should be shown as above indicated under item 14.

The fact that profits on hand from a previous period have been used to provide for losses during the period does not warrant adding such profits to earnings of the period in the first section, for if this is done the item of total profits in the third section will show more profits than have actually been realized by the amount thus added. Earnings on hand from a previous period should always appear as item 7 of second section, and added to the total earnings of the period less the total amounts charged off will show the actual amount of profits remaining on hand after deducting the dividends, etc., to be entered as item 14.

Where an increase of capital stock is sold for more than its par value, the excess should be included with profits in the first section of the report or entered as a special item in the first section as "Profits on account of increase of capital stock."

A sworn report of any dividend declared is required by law within ten days from date of declaration, and a statement by letter that a dividend has been declared is not sufficient, whether declared at the regular dividend dates or at intervening times.

If a dividend is not declared until a few days after the termination of a dividend period, it should be included in the report for the period, as it shows the disposition made of the earnings of the period, and the date of declaration in the heading of the report indicates that its declaration was delayed.

The fact that two or more dividends may be declared on one date, payable at two or more dates in the future, does not relieve the bank from reporting the entire dividends declared within ten days from the date of declaration, and the dates when the dividends are payable does not govern in this matter.

This report is to be made semi-annually to the Comptroller of the Currency. If no dividend has been declared, the report is still required, showing the earnings of the bank and the disposition of the same.

LAWFUL MONEY RESERVE OF NATIONAL BANKS.

Reserve requirements.

Regulations.

Computation.

The National bank act requires that National banks shall maintain a reserve to protect deposits. The law bearing on the subject is found in sections 5191, 5192 and 5195 of the Revised Statutes, as modified by section 2, part of section 3 of the act of June 20, 1874; part of section 12 of July 12, 1882, the act of March 3, 1887, the act of July 14, 1890, and act of March 14, 1900.

Classification of Banks as to Reserve.—The law divides the banks into three classes, as to reserve required, according to location:

1st. Central Reserve City Banks :—Section 5195 and act of March 3, 1887, designate certain cities "Central Reserve Cities," viz. : New York, Chicago and St. Louis, each bank in which is required to keep a reserve equal to twenty-five per cent. of its deposits, and this reserve to be in the bank's own vaults.

2d. Reserve City Banks.—Section 5191 names sixteen cities, including the preceding, which are called "Reserve Cities," in which each bank is required to keep a reserve equal to twenty-five per cent. of its deposits, and to these, under the act of March 3, 1887, have been added other cities (see full list, page ——); but the banks in reserve cities outside of Central reserve cities are allowed to keep one-half of their lawful reserve with National banks, approved by the Comptroller of the Currency, in Central reserve cities.

3d. Banks not in Reserve Cities.—Section 5191 further provides that each bank located elsewhere than in a Reserve city must keep a reserve equal to fifteen per cent. of its deposits, and section 5192 provides that three-fifths of this reserve may consist of balances, due the bank, from banks approved by the Comptroller of the Currency, in any of the Reserve cities, the other two-fifths to be in bank.

Reserve Required on Deposits Only.—Since the passage of the act of June 20, 1874, the only reserve required is a certain percentage of the aggregate deposits.

No reserve is required on Government deposits. The Secretary of the Treasury and the Comptroller of the Currency are given certain discretionary power under section 5191 R .S. and have waived the requirement on such deposits.

General and Individual Deposits.—Reserve is to be computed on all deposits which appear on the balanced statement of the bank, and for purposes of computing the reserve required, deposits are divided into two classes, General Deposits and Bank Deposits. The first consists of the following: "Individual deposits," including "deposits subject to check," "demand certificates of checks outstanding" or other like evidence of deposit; "dividends unpaid;" and "deposits of United States disbursing officers." By "bank deposits" is meant the total balance due National banks and other banks and bankers after deducting amounts *due from* such banks. In making such deductions, net balances with approved agents, are not to be deducted from the amounts due to banks, as a certain portion of such deposits may be counted as part of the reserve, so cannot be used also to offset liability, but any excess with approved agents above the proportion of reserve allowed to be with them can be utilized, *when ascertained*, to reduce balance due to banks.

Deductions Allowed.—Certain deductions are allowed to be made from the general deposits, viz., exchanges for clearing-house, checks on other banks in same place, National bank notes of other banks and amount due from United States Treasurer other than the 5 per cent. fund.

General Funds Available for Reserve.—The funds available for reserve in bank are comprised: First. Under the general term lawful money, which has been held to mean gold coin of the United States, silver dollars, fractional silver coin, and legal tender notes and Treasury notes of July 14, 1890. By special statute, clearing-house certificates are also available for reserve. (Section 5192, Revised Statutes.) In the same way are available United States gold and silver certificates (Section 12 of the act of July 12, 1882) and gold certificates payable to order (act March 14, 1900.)

Five Per Cent. Fund Set-off :—Section 3 of the act of June 20, 1874, requiring that each National bank be required to keep at all times with the Treasurer of the United States, in lawful money, a sum equal to five per cent. of its circulation, also provides that this five per cent. fund may be counted as reserve on deposits, but no surplus in this fund above five per cent. of circulation can be thus counted.

COMPUTING THE RESERVE.

The computation of the reserve is a simple matter. The bank act as amended states, it is to be either twenty-five per cent. or fifteen per cent. (according to a bank's location) of the "aggregate deposits;" what is comprised in these is given in detail, in the form furnished by the Comptroller of the Currency; bank deposits are included, but these

need to be ascertained separately : if the reciprocal accounts show a net balance due *from* banks, it must be omitted from the calculation, but if there is shown a balance due *to* banks this amount is to be added to the other deposits. [Should the amounts due from exceed the amounts due to banks, such an excess cannot be considered as decreasing the liability for other deposits, as amounts due *from* can only be used to offset liability for amounts due to banks.] From the total deposits certain specified items are allowed to be deducted; then as the five per cent. fund with the U. S. Treasurer is allowed to be counted as reserve, the amount of deposits that the fund will cover (*i. e.*, four or six and two-third times the fund, according to location) is to be subtracted, thus is ascertained the net amount of deposits requiring reserve, then twenty-five per cent. or fifteen per cent. of this remainder is the reserve required, and one-half or two-fifths of this according to location must be in bank, *more or all of it may be, but so much must be;* the balance may be with reserve agents (*i. e.*, one-half or three-fifths of the amount). If it is seen that there is a larger amount with reserve agents than the one-half or three-fifths allowed to count as reserve, this surplus or excess cannot be counted as reserve, but may be treated as due from banks and deducted from the balance due to banks (if there is a balance due to banks to offset), thus the total deposits on which the reserve is required will be decreased, making the reserve requirement less, which is sometimes an object. A short method of utilizing this surplus is given in our rules, otherwise the operation is quite long, for, after the surplus with reserve agents (found by the first calculation) is applied to reduce the amount due to banks, the total deposit requiring reserve is also reduced, hence the amount allowed with reserve agents as reserve is made less, so a further surplus with reserve agents is developed; this, in turn, is applied to reduce amount due to banks, and the reduction lessens again the total deposits requiring reserve, so also lessening again the amount allowed with reserve agents as reserve : thus another surplus is developed, which is applied, as the preceding, and this operation repeated until only the exact proportion of reserve allowed with agents is reached, and thus the entire surplus or excess with reserve agents is utilized, to reduce the aggregate deposits, and so the reserve required; the short method given in our rules avoids this long operation.

It will be seen that the only item requiring special attention is the surplus with reserve agents above the amount of reserve allowed to be with them, and this needs to be considered only when the home reserve is short, requiring the excess to be utilized, to reduce the amount of reserve required, but, as before stated, there must be a balance due to banks to make it possible to utilize such excess or any portion of it.

RULES FOR COMPUTING RESERVE.

For Examples see pages ——.

The following seven rules probably cover all cases that may arise:

For items comprising general deposits see examples following.

1. For banks located in Central Reserve Cities.

RULE:—Obtain the total of general deposits, deduct exchanges for clearing-house, checks on other banks in same place and National bank notes of other banks; then deduct amount due from banks from amounts due to banks, and the remainder, if a balance due to banks, add to the net general deposits, and deduct from the total four times the five per cent. redemption fund, twenty-five per cent. of the remainder is the required reserve which must all be in bank in one of the forms of lawful money or certificates available for reserve heretofore described.

In making calculations let it be remembered that if amounts due from banks equal or exceed amounts due to banks, both amounts must be omitted from the computation.

That four times the 5 per cent. fund is deducted as the amount of deposits covered by it.

If reciprocal accounts are kept, then by the whole amount is meant the net balance due from the agents.

2. For banks located in Reserve Cities other than Central Reserve Cities, where there is no excess with approved reserve agents in Central Reserve Cities.

RULE:—Obtain the total of general deposits, deduct exchanges for clearing-house, checks on other banks in same place, National bank notes of other banks and amount due from U. S. Treasurer other than the 5 per cent fund; then deduct amount due from banks from amount due to banks, and the remainder, if a balance due to banks, add to the general deposits and deduct from total, four times the five per cent. redemption fund, twenty-five per cent. of the remainder is the required reserve; one-half at least of this must be in bank; the remaining half may be with approved reserve agents. There is no limit on the amount of the reserve which may be kept in bank.

3. For banks located in Reserve Cities other than Central Reserve Cities, when evidently the home reserve is close and there is an excess over the permitted one-half held with reserve agents, and when the amounts due to banks are so large that it is apparent they will exceed all amounts due from banks, even including all excess with reserve agents.

RULE:—Obtain the total of general deposits, deduct exchanges for the clearing-house, checks on other banks in the same place, National bank notes of other banks and amount due from U. S. Treasurer other than the 5 per cent. fund; then deduct amount due from banks from amounts due to banks, and the remainder, if a balance due to banks, add to the

net general deposits and deduct from the total, four times the five per cent. redemption fund, from the result take the whole amount due from reserve agents. One-seventh of the remainder will be the exact reserve required at home.

This short method of applying the excess with the reserve agents to reduce the reserve required at home is based on the known ratio of the reserve required at home to deposits—in this case (of 25 per cent. banks) it is one-eighth. What is wanted is to apply the excess with reserve agents to reduce reserve liability on deposits, and it is evident in deducting the entire balance with reserve agents from the deposits requiring reserve there is left seven-eighths of the final net deposits [*i. e.*, of the final net amount which will require reserve], since in the deposits ascertained are two quantities, eight-eighths of the final net deposits and eight-eighths of an amount to be offset by the eight-eighths of excess with reserve agents; and in the reserve agents' balance is two quantities, one-eighth of the amount of final net deposits and the eight-eighths of excess, so the total balance with agents being subtracted, there remains *seven-eighths of the final net deposits*, and one-seventh of this remainder is one-eighth, which is the amount of reserve required at home.

4. For banks located in Reserve Cities other than Central Reserve Cities where evidently the home reserve is close, and there is an excess over the permitted one-half with the reserve agents, and when the total of amounts due to banks exceeds the total of amounts due from banks, but not so largely as to plainly show that it will exceed the total due from banks plus the excess over amount allowed as reserve with the reserve agents.

Rule:—Obtain the total of general deposits, deduct exchanges for the clearing-house, checks on other banks in same place, National bank notes of other banks and amount due from U. S. Treasurer other than the 5 per cent. fund; then deduct amount due from banks from amounts due to banks, and the remainder, if a balance due to banks, add to the general net deposits and deduct from the total four times the five per cent. redemption fund. Take one-eighth of the remainder, subtract this from the total balance due the reserve agents, and the remainder equals seven-eighths of the total excess with reserve agents, and by adding one-seventh of this amount to it we have the full excess available to apply against bank deposits (*i. e.*, against the net amount due to banks); if this excess equals or is less than the balance due to banks, then the whole can be applied, and this is done by taking one-eighth of the excess and deducting it from the deficiency in home reserve (the proportion of the excess available for this purpose), thus reducing or perhaps cancelling it). Having ascertained what seven-eighths of the excess is, often it is apparent that the total excess is less than net balance due banks, and so one-seventh of the seven-eighths (which is one-eighth of total) is at once seen to be the amount to apply.

If the excess is found to be larger than the net balance due to banks, then, instead of one-eighth of the excess, one-eighth of the amount of balance due to banks only can be applied to reduce the deficiency in home reserve, as the use of the excess is limited by the amount of such balance.

This short method of applying the excess is the same principle as in the preceding rule; we ascertain readily what seven-eighths of the excess with the reserve agents is, that is, one-eighth of the deposits ascertained contains two quantities, viz.: one-eighth of the net deposits, *i. e.*, of the final net amount on which the reserve is required, and one-eighth of an amount which is to be offset by the excess with reserve agents—on the other hand, the net balance of reserve agents contains two quantities, viz.: one-eighth of final net amount on which reserve is required, and the full eight-eighths of the excess, so by subtracting there is left seven-eighths of the excess, and by adding one-seventh of this amount to it we have the full eight-eighths that can be applied to reduce the reserve required, and one-eighth of this (or what is the same, one-seventh of the seven-eighths) is the proportion that can be applied on home reserve.

5. For banks not in Reserve Cities when there is no excess with approved reserve agents.

Rule:—Obtain the total of general deposits, deduct exchanges for clearing-house, checks on other banks in same place, National bank notes of other banks and amount due from U. S. Treasurer other than the 5 per cent. fund; then deduct amounts due from banks from amounts due to banks, and the remainder, if a balance due to banks, add to the net general deposits and deduct from the total six and two-third times the five per cent. redemption fund; fifteen per cent. of the remainder is the required reserve. Two-fifths at least of this must be in bank, the remaining three-fifths may be with approved reserve agents. There is no limit as to the amount of the reserve which may be kept in bank.

6. For banks not in Reserve Cities when evidently the home reserve is close, and there is an excess over the permitted three-fifths with the reserve agents, and when the amounts due to banks are so large that it is apparent that the excess with reserve agents, added to the amounts due from banks, will not exceed amounts due to banks.

Rule:—Obtain the total of general deposits, deduct exchanges for clearing-house, checks on banks in same place, National bank notes of other banks and amount due from U. S. Treasurer other than the 5 per cent. fund; then deduct amount due from banks from amounts due to banks, and the remainder, if a balance due to banks, add to the net general deposits and deduct from the total six and two-third times the five per cent. redemption fund; from the remainder take the whole amount with approved reserve agents, and six ninety-firsts, or, approximately, one fifteenth of the result is the exact home reserve required.

This short method of ascertaining the home reserve is similar to that given in Rule 3; in deducting the entire balance with reserve agents from the deposits ascertained, ninety-one one-hundredths of the net deposits remain, since in the deposits are two quantities, viz. : one hundred one-hundredths of the final net deposits requiring reserve, and one hundred one-hundredths of an amount to be offset by the excess with reserve agents; on the other hand, in the reserve agents' balance are two quantities, viz. : nine one-hundredths (three-fifths of fifteen per cent.) of final net deposits, and one hundred one-hundredths of the excess, and by subtracting the latter from the former ninety-one one-hundredths of the final net deposits remain, and six ninety-firsts of this is six per cent. [two-fifths of fifteen per cent.], the reserve required at home.

7. For banks not in Reserve Cities when the home reserve is close, and there is an excess over the permitted three-fifths with the reserve agents and when the total of amounts due to banks exceeds the total of amounts due from banks, but not so largely as to plainly show that it will exceed the total due from banks plus the full surplus with reserve agents.

RULE :—Obtain the total of general deposits, deduct exchanges for the clearing-house checks on other banks in the same place, National bank notes for other banks and amount due from U. S. Treasurer other than the 5 per cent. fund; then deduct amount due from banks from amounts due to banks; and the remainder, if a balance due to banks, add to the general net deposits, and deduct from the total six and two-thirds times the five per cent. redemption fund; take nine per cent. of this amount (*i. e.*, three-fifths of fifteen per cent.) and subtract it from the total balance with reserve agents, the remainder will be ninety-one one-hundredths of the excess with reserve agents, available to reduce reserve liability on deposits, and by finding and adding nine one-hundredths, or say one-tenth of the ninety-one one-hundredths to this amount, the total excess is obtained; if this excess is equal to or less than the balance due to banks, then the whole can be utilized and the proportion available to apply on home reserve is found by taking six per cent. of the excess (*i. e.*, two-fifths of fifteen per cent.) and deducting it from the amount of deficiency in home reserve, thus reducing or perhaps cancelling it. If the excess is greater than the balance due to banks, then instead of six per cent. of the excess six per cent. of the amount of balance due to banks only can be applied to reduce the deficiency in home reserve, as the use of the excess is limited by the amount of such balance.

The explanation of this short method is similar to that given in Rule IV. By subtracting nine per cent. (*i. e.*, three-fifths of fifteen per cent.) of the net deposits from the total balance with reserve agents, the remainder is equal to ninety-one one-hundredths of the excess with reserve agents, since in the balance with reserve agents are two quanti-

ties, the nine per cent. of the final net deposits and the full one hundred one-hundredths of the excess with said agents, and in the nine per cent. of the deposits is the nine per cent. of the final net deposits and nine one-hundredths of an amount which may be offset by an equal amount of excess with reserve agents, so by subtracting there is left ninety-one one-hundredths of the amount of excess, and then by finding and adding nine one-hundredths we ascertain the total excess to be applied, or it is sufficiently close to add one-tenth of the ninety-one one-hundredths.

AVERAGE RESERVE.

The Comptroller of the Currency requires that in each report of condition of bank called for by him there shall be a statement of its average reserve on deposits for the preceding thirty days. The average reserve for this or any other period may be ascertained by finding the net deposits requiring reserve for each day in that period, and adding the results together for a divisor. In the same way the reserves held on the same days should be added together for a dividend. The quotient will be the percentage of average reserve for the period, or take the percentage of reserve for each business day for the period, and divide the total by the number of such days. To obtain this average reserve a daily and exact record of the amount of each kind of currency must be kept, and in assorting the cash, National bank notes should be separated, and from these the notes of the bank's own issue. A record should also be kept of daily net balances of the various kinds of deposits, and on the other hand of the five per cent. fund, the cash reserve in bank and the amount of balance with reserve agents not exceeding the one-half or three-fifths of reserve allowed with them.

APPROVED RESERVE AGENTS.

Any bank outside of the reserve cities may select any National banks within any such cities as depositaries for its funds, and such funds so deposited, when the selection is approved by the Comptroller, are allowed to be counted as a part of the required reserve of the depositing bank. In the same way banks in reserve cities may select for approved agents banks in Central reserve cities. The bank making selection writes to the Comptroller of the Currency for his approval of the bank or banks chosen.

THE RESERVE CITIES.

Central Reserve Cities:

New York City, Chicago, St. Louis.

Other Reserve Cities:

Boston, Albany, Brooklyn, Philadelphia, Pittsburg, Baltimore, Washington, Savannah, New Orleans, Louisville, Dallas, Fort Worth, Houston, Cincinnati, Cleveland, Columbus, Indianapolis, Detroit, Milwaukee,

Cedar Rapids, Des Moines, Dubuque, St. Paul, Minneapolis, Kansas City, Kans., Wichita, Kansas City, Mo., St. Joseph, Lincoln, Omaha, Denver, Salt Lake City, San Francisco, Los Angeles, Portland, Ore.

RICHMOND AND CHARLESTON, although named in section 5192 R. S. among the cities wherein fifteen per cent. banks are permitted to deposit three-fifths of their reserves, they are not named in section 5191 R. S. among the cities wherein banks are required to keep the larger reserve of twenty-five per cent. This larger reserve was reqlired principally because of the greater responsibility incurred by receiving the deposit of bank reserves. The banks located in Richmond and Charleston were not designated under section 5191, and have not since deemed it advisable to be so designated.

Pratts' Form for Computing the Lawful Money Reserve of Banks in Reserve Cities.

Items on Which Reserve is Required

General Deposits.

Individual deposits, viz:

Deposits subject to check,—Demand and Time ctfs., Cashier's cks., Certified cks., &c...... $..........

Dividends unpaid.......................... $..........

Deposits of U. S Disbursing Officers............ $.......... $..........

Less Deductions Allowed.

Exchanges for Clearing House................. $..........

Checks on other banks in same place........... $..........

National Bank Notes (other than own issue).... $..........

Due from the U. S. Treasurer................. $.......... $..........

Net General Deposits........................ $..........

Bank Deposits.

Due to National Banks....................... $..........

Due to State Banks and Bankers............... $.......... $..........

Less.

Due from National Banks.................... $..........

Due from State Banks and Bankers............ $.......... $..........

[2]Net Bank Deposits (Net balance due banks if any)............... $..........

[If net balance is due from banks, then there are no bank deposits requiring reserve, and as such balance cannot offset any other deposits, omit it entirely.]

The sum is the total Deposits on which reserve is required, viz:........ $..........

Deduct 4 times the five per cent. (5 %) fund (*i. e.* the amount of deposits covered by this fund as reserve)...................... $..........

[1]***Net Deposits*** requiring reserve is............................... $..........

25 % of this is the total Reserve required, viz: | $..............

Proportion of Reserve to be in bank is ½, viz: | $..............

Any excess with Reserve Agents above the proportion allowed to be with them can be counted as due from banks, so if the Home Reserve is short and there is a balance due banks, the excess with Agents can be used to lessen Reserve required. The following are short methods for applying it:—

RULE A.—If the excess is considerably less than the net balance due banks, subtract from the *Net* deposits[1] the entire net balance with Reserve Agents,[3] viz:.. $..........

One-seventh of the remainder.............................. 1/7 ....

is the exact Reserve required to be *in bank,* viz:............... $..........

RULE B.—If the excess is evidently near the amount of net balance due banks,[2] from the net balance due from Reserve Agents,[3] viz:........ $..........

subtract the amount of Reserve required in bank as first calculated, viz: $..........

Increase the remainder by one-seventh of it (the remainder).... 1/7 $..........

This gives the exact excess that can be applied, viz:............ $..........

and is applied as follows:

(*m.*) If this excess equals or is less than the net balance due banks,2 the Home deficiency can be reduced by one-eighth of the excess.

(*n.*) If the excess is greater than the net balance due banks,2 only an amount of the excess equal to one-eighth of this net balance can be so used.

Items Composing the Net Reserve and Distribution of the Same.

One-half of the Net Reserve required is ....

Items making up the same may consist of*

Net Balance with approved Reserve Agents, viz:

	....
	....
	....
	....
	....
	....
[3]Total net balance..........................	....
†Excess with Reserve Agents..................	....
Deficiency with Reserve Agents...............	....

One-half of the Net Reserve required is....... ....

Items in Bank's possession to make up the same, viz:

Gold Coin..................................	....
Gold Treasury Certificates..................	....
C.H.Certificates for Coin or Legal Tenders	....
Silver Dollars..............................	....
Silver Treasury Certificates................	....
Fractional Silver...........................	....
Legal-Tender Notes.........................	....
U. S. Certificates of Deposit for Legal Tenders..............................	....
Excess in items held by the Bank...........	....
Deficiency in items held by the Bank........	....

Excess in the entire Reserve held, $....................

Deficiency in the entire Reserve held, $....................

*If reciprocal accounts are kept with reserve agents, only the *net* amount due from such agents is available for reserve.

†Any excess with reserve agents can not be counted as reserve, and is available only to reduce or cancel net balance due to banks and bankers.

Pratts' Form for Computing the Lawful Money Reserve of Banks not in Reserve Cities.

Items on Which Reserve is Required.

General Deposits.			
Individual deposits, viz:			
Deposits subject to check,—Demand and Time ctfs., Cashiers' cks., Certified cks., &c......	$...........		
Dividends unpaid...........................	$...........		
Deposits of U. S Disbursing Officers............	$...........	$...........	
Less Deductions Allowed.			
Exchanges for Clearing House.................	$...........		
Checks on other banks in same place...........	$...........		
National Bank Notes (other than own issue)....	$...........		
Due from the U. S. Treasurer.................	$...........	$...........	
Net General Deposits......................			$...........
Bank Deposits.			
Due to National Banks.......................	$...........		
Due to State Banks and Bankers..............	$...........	$...........	
Less.			
Due from National Banks....................	$...........		
Due from State Banks and Bankers............	$...........	$...........	
[2]Net Bank Deposits (Net balance due banks if any)...............			$...........

[If net balance is due from banks, then there are no bank deposits requiring reserve, and as such balance cannot offset any other deposits, omit it entirely.]

The sum is the total Deposits on which reserve is required, viz:........ $...........

Deduct $6\frac{2}{3}$ times the five per cent. (5 %) fund (*i. e.* the amount of deposits covered by this fund as reserve)...................... $...........

[1]***Net Deposits*** requiring reserve is.............................. $...........

15 % of this is the total Reserve required, viz: | $..............

Proportion of Reserve to be in bank is $\frac{2}{5}$ths, viz: | $..............

Any excess with reserve agents above the proportion allowed to be with them as reserve can be counted as due from banks, so if the Home reserve is short, and there is a balance due banks, the excess with Agents can be used to lessen reserve required. The following are short methods of applying it:—

RULE C.—If the excess is evidently considerably less than the net balance due banks, subtract from the *net deposits,*[1] the entire *net balance* with *Reserve Agents,*[3] viz:..................................... $...........

$\frac{6}{91}$st or (unless exact amount is needed) approximately say $\frac{1}{15}$ of the remainder is the Home Reserve required, viz:........................ $...........

RULE D.—If the excess is apparently near the amount of *net* balance due banks,[2] from the net balance due from Reserve Agents,[3] viz:........ $...........

Subtract 9 % of the net deposits requiring Reserve,[1] viz:........ $...........

Increase the remainder by $\frac{9}{100}$ or say $\frac{1}{10}$ of it.................. $...........

The total is the exact excess that can be applied, viz:........... $...........

and is applied as follows:

If this excess equals or is less than the net balance due banks,[2] six per cent. of it can be applied to reduce Home deficiency, but if the excess is larger than the net balance due banks,[2] only an amount of the excess equal to six per cent. of said net balance can be so applied.

Items Composing the Net Reserve and Distribution of the Same.

Three-fifths of the Net Reserve required is		....
Items making up the same may consist of* Net Balance with approved Reserve Agents, viz:		
	....	
	....	
	....	
	....	
	....	
	....	
[3]Total net balance..............................	....	....
†Excess with Reserve Agents..................		....
Deficiency with Reserve Agents................		....

Two-fifths of the Net Reserve required is.......		....
Items in Bank's possession to make up the same, viz:		
Gold Coin..............................	....	
Gold Treasury Certificates..................	....	
C.H.Certificates for Coin or Legal Tenders	....	
Silver Dollars..............................	....	
Silver Treasury Certificates..................	....	
Fractional Silver...........................	....	
Legal-Tender Notes.........................	....	
U. S. Certificates of Deposit for Legal Tenders..................................	....	....
Excess in items held by the Bank............		....
Deficiency in items held by the Bank.........		....

Excess in the entire Reserve held, $....................

Deficiency in the entire Reserve held, $....................

*If reciprocal accounts are kept with reserve agents, only the *net* amount due from such agents is available for reserve.

†Any excess with reserve agents can not be counted as reserve, and is available only to reduce or cancel net balance due to banks and bankers.

EXAMPLES OF COMPUTING NATIONAL BANK RESERVE.

The following examples illustrate the short methods of computing the reserve required to be maintained by National banks.

The rules given for computing the reserve in ordinary cases are so simple it is thought no example of these is necessary; but illustrations of the Short Methods of Computation in certain cases may be helpful to beginners in the National Banking System, therefore, the following examples are given:

EXAMPLE 1.

Illustrating Rule 3, Pratts' Short Method.

Individual Deposits......	$1,275	000		
Dividends Unpaid.......		110		
Disbursing Officers, &c...	12	000	$1,287	110
Deduct—				
Exchanges for Cl'g House	58	000		
Checks on local Banks...	15	000		
Other Nat'l Bank Notes.	1	500	75	500
Due from the U.S. Treas'r	1	000		
			1,211	610
Due to Banks...........	340	000		
Due from Banks.........	95	000	245	000
			1,456	610
Less 4 times 5 per cent. fund (2250)...........			9	000
Total net Deposits.......................			1,447	610
Subtract—				
Net balance with Reserve Agents.............			205	000
One-seventh of remainder....................			1,242	610
Is the Exact Reserve required to be in Bank—viz:			177	515
Total of items (cash, etc.) in Bank to Count as Reserve			178	211
Excess in Bank...............................				696
Excess with Reserve Agent...................			27	485

COMPUTING RESERVE.

EXAMPLE 2.

Illustrating Rule No. 4, Pratts' Short Method.

Individual Deposits..	$2,400	000						
Dividends Unpaid....		220						
Disburs'g Officers, etc.,	174	000	$2,574	220				
Deduct—								
Exch'ges for Cl'g H'se	116	000						
Checks on local Banks	30	000						
Other National Banks	4	000						
Due from U. S. Treas.	1	000	151	000	$2,423	220		
Due to Banks........	680	000						
Due from Banks.....	620	000			60	000		
Total Deposits..........					$2,483	220		
Deduct 4 times the 5 per cent fund (4500)......					18	000		
Total Net Deposits..........					2,465	220		
25 per cent. of this total is the total Reserve required, viz:—..........							$616	305
And 50 per cent of this is the amount required at home							308	153
If amount of Reserve at home is short by this estimate, as in this case and conditions will admit, the excess with Reserve Agent may be applied.								
Total of items (cash, etc.) in Bank to Count as Reserve.....							303	700
Short on first estimate..........							$ 4	453

Net balance—		
With Reserve Agents............	362	000
Amount with Reserve Agents allowed to Count as Reserve....	308	153
The remainder is seven-eighths of the Exact Excess, viz:......	53	847
Add one-seventh of this,.........	7	692
Exact Excess is................	61	539

This total being larger than net balance due banks—only one-eighth of said balance can be applied on Home Reserve—viz:	7	500
Changing the deficit to an Excess, of—..........	3	053

Rule *B*, *m*, would apply, if in the above example the balance due to banks was a larger amount than the total excess with Reserve Agents, then one-eighth of that Excess could be used to reduce the deficiency.

COMPUTING RESERVE.

EXAMPLE 3.

Illustrating Rule 6, Pratts' Short Method.

Individual Deposits...........	$360	000				
Dividends Unpaid............		150				
Dep. U. S. Disbursing Officers.			$360	150		
Less—						
Exchange for Clearing House,.	10	000				
Checks on local Banks........	3	000				
Other National Bank Notes..	1	500				
Due from U. S. Treasurer....	1	000	15	500		
			344	650		
Due to Banks...............	80	000				
Due from Banks.............	10	000	70	000		
Totals Deposits........................			$414	650		
Less $6\frac{2}{3}$ times 5 per cent. fund (2250)...			15			
Total net Deposits..................			$399	650		
Subtract—						
Net balance with Reserve Agents........			45	000		
$\frac{6}{91}$st or say $\frac{1}{15}$th of the remainder......			$354	650		
Is the $\frac{2}{5}$ths Home Reserve required—viz:.					23	643
Total of items (cash, etc.) in Bank to count as Reserve..................					23	740
Approximate Excess.....................						103

(Or by taking exactly $\frac{6}{91}$st of the $354,650.
from total cash items, etc., gives the
Exact Excess—viz: $357.)

Three-fifts added to the above two-fifths gives the total minimum Reserve required, three-fifths of which may be with the Reserve Agents.

COMPUTING RESERVE.

EXAMPLE 4.

Illustrating Rule 7, Pratts' Short Method.

Individual Deposits...........	$244	000							
Dividends Unpaid............		430							
Dept. U. S. Disbursing Officers.			$244	430					
Less—									
Exchanges for Clearing House.	8	000							
Checks on Local Banks.......	2	500							
Other National Bank Notes...		500							
Due from U. S. Treasurer.....	1	000	12	000					
					$232	430			
Due to Banks...............	52	000							
Due from Banks.............	28	000			24	000			
Total Deposits..................................					$256	430			
Deduct 6⅔ times 5 per cent. fund ($2,250)........					15	000			
Total net Deposits..........................					$241	430			
15 per cent. of this is the total Reserve required—viz:......							$36	214	
Amount required at home 6 per cent. (⅖ths of 15 per cent.) of total net Deposits..............................							14	485	
If amount of Home Reserve by this estimate is short, and conditions admit, the Excess with Reserve Agents may be applied.									
Total of items (cash, etc.) in Bank to Count as Reserve.....							14	257	
Short on first estimate..............................								228	

Net balance—			
With Reserve Agents...............	$ 42	000	
Amount with Reserve Agents allowed to Count as Reserve.............	21	728	
The remainder is $\frac{91}{100}$ of Exact Excess	20	272	
Add $\frac{9}{100}$ or say $\frac{1}{10}$th of this; [for Exact Excess $\frac{9}{100}$th]..............	2	027	
Approximate total Excess...........	22	229	

6 per cent. (i. e. ⅖ of 15 per cent.) of this, is amount that can be applied on Home Reserve........................	1	337	+
Making Home Reserve in Excess of requirements...........	$ 1	109	+

THE FIVE PER CENT. FUND.

THE FIVE PER CENT. DEPOSIT.—Every newly-organized National bank is required, immediately upon the receipt of its circulation, to deposit with the Treasurer of the U. S. a sum equal to five per centum of the amount, in lawful money of the U. S., "to be held and used for the redemption of such circulation," in accordance with Section 3, Act of June 20, 1874, par —.

On any additional circulation issued to National banks on a further deposit of bonds a similar deposit is required.

In estimating the circulation upon which the deposit is required, the bank must include all notes of its issue in its possession, signed or unsigned, as well as those in actual circulation.

KEEPING FUND INTACT.—Upon receipt of advices of redemption, banks are required to remit the Treasurer to make good their five per cent. fund, without awaiting the receipt of the notes fit for circulation, or the certificate of destruction of the notes unfit for circulation as this fund is required to be kept intact for further redemption of notes, and also for the reason that it is allowed to be counted as reserve.

Banks which have made deposits of lawful money of the U. S. for the retirement of a portion of their circulation, and those whose notes have been destroyed without reissue, are required to maintain the five per cent. deposits only on the remainder. The excess over the required amount is remitted to the bank immediately on receipt from the Comptroller of the Currency of advice of the amount retired.

Banks which have voted to go into liquidation must maintain the full five per cent. deposit, until lawful money of the United States is deposited for the retirement of their outstanding circulation. All of their notes redeemed, whether fit or unfit for circulation, are charged to the five per cent. fund and destroyed. When the deposit is made, the excess of the five per cent. fund over the amount required to cover the expenses of redemption and any tax due is surrendered, the redemption of the balance of the circulation outstanding having been provided for by the lawful money deposit.

Banks may keep with the Treasurer any amount they choose in excess of the required five per cent.; but they are not permitted to count such excess as a part of their lawful money reserve. It should be entered on their reports of condition, under item: "Due from U. S. Treasurer other than five per cent. redemption fund."

REDEMPTIONS.—The redeemed notes of the several National banks are assorted, prepared for delivery, and charged to their five per cent. accounts, and advices of redemption are forwarded to them, in regular rotation, following an alphabetical arrangement; and no departure from this practice can be made for the accommodation of any bank.

If the amount due does not exceed the five per cent. deposit of the bank, the notes fit for circulation are forwarded to it by express, and the notes unfit for circulation are delivered to the Comptroller of the Currency on the same day that the advice of redemption is issued. If the bank's five per cent. account is overdrawn by the redemption, a sufficient amount of the notes to cover the overdraft is held until it is made good.

The law requires the return of the redeemed notes fit for circulation to the respective associations by which they were issued, and the delivery of those unfit for circulation to the Comptroller of the Currency for destruction, and no other disposition can be made of them.

All of the redeemed notes of banks which have made a deposit of United States notes for the retirement of all or a portion of their circulation are charged to that deposit.

Upon a change in the title of a National bank all of the redeemed notes issued under the former title are destroyed, and the same course is pursued with notes of the old issue of banks whose charters have been extended.

REMITTANCES.—Remittances for credit of the five per cent. fund may be made in any of the following ways:

I. By a check drawn on New York, payable to the order of the Assistant Treasurer U. S. in N. Y., and collectible through the clearing-house, forwarded directly to that officer, with instructions to deposit the amount on account of the five per cent. fund.

II. By a deposit of lawful money of the U. S. with the Assistant Treasurer U. S. in Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis or San Francisco, on account of the five per cent. fund. Banks not situated in one of the above-named cities should make the deposit through their correspondents.

III. By a remittance of lawful money of the United States, addressed to the Treasurer U. S., Washington, D. C., marked with the amount and nature of the contents, and with the words "for credit of the five per cent. fund," and "under Government contract with the United States Express Company from the nearest point of transfer." The express charges, if not prepaid, will be deducted from the proceeds of the remittance at Government contract rates.

National bank depositaries are not authorized to receive deposits for credit of the five per cent. fund.

Assistant Treasurers are not authorized to receive remittances by express on account of the five per cent. fund; and only the Assistant Treasurer in New York is authorized to receive checks on that account.

It is not necessary to advise the Treasurer of remittances on account of the five per cent. fund, unless they are made directly to him.

National banks should make only such deposits on account of the

five per cent. fund as they desire to have applied in the redemption of their notes, or in payment of the expenses of redemption.

Acknowledgments of remittances made by one bank for credit of the five per cent. account of another are sent only to the bank whose account is credited.

LEDGER ACCOUNTS.—A National bank should keep, in connection with its circulation, two accounts—a "circulation" account and a "five per cent. fund" account.

THE "CIRCULATION" ACCOUNT.—1st. Credit circulation received from the Comptroller on U. S. bond deposit made by the bank.

2d. When notices are received from the U. S. Treasurer of redemptions made, debit the amounts reported by him. The credit is to the five per cent. fund as stated below.

3d. When the Treasurer returns notes redeemed as fit for circulation, or when the Comptroller sends new notes for mutilated notes received from the Treasurer and destroyed, credit this account, unless put in the bank's vaults, then the amount is not to be credited nor counted as in circulation until used.

By keeping this "circulation" account, the bank's books will always show the amount of "circulation outstanding." This item is called for in the regular reports to the Comptroller of the Currency, and is also the basis for semi-annual tax on average amount of circulation.

THE "FIVE PER CENT. FUND" ACCOUNT.—1st. Debit with the remittance made the U. S. Treasurer, required by law, viz.: an amount equal to five per cent. of the circulation issued to the bank.

2d. When notices of redemptions are received from the Treasurer, credit the amounts redeemed, the debit being against the "circulation" account, as above stated.

3d. When the bank makes remittances to cover redemptions reported by the Treasurer, to reimburse the five per cent. fund for amounts paid out, debit the bank's "five per cent. fund" account.

The Treasurer calls for remittances when redemptions are reported to the banks, but frequently the banks do not remit until returns are made to them, and may remit by New York draft. The redemptions cover two kinds of notes, those in good condition, called "fit for circulation," and others mutilated or worn, called "unfit for circulation;" the former are returned to the banks when a few hundred dollars have been redeemed, the latter are sent to the Comptroller of the Currency to destroy and to issue new currency in same amount.

Banks are charged with the full amount of their notes unfit for circulation delivered to the Comptroller, whether the exact amount is re-issued by him or not. Sometimes the exact amount is not sent, on account of the rule of the Department to remit only full sheets of notes, *i. e.*, four notes, viz.: $5, $5, $5, $5, or $10, $10, $10, $20, or two

notes of $50 and $100, so if the redemptions are of an odd amount, say, $510, the Department will only send 25 sheets of $5 notes or 10 of plate 10-10-10 20, but the bank may send additional notes for redemption, two fives or four tens, which with the $10 balance will entitle the bank to another sheet, thus making the account on the bank's books correspond with the books of the Treasury Redemption agency. Again, the remittance of new currency may be short on account of the redemption of a half note; in such case the account on the bank's books will show the difference. If a bank prefers, it can cut a note and forward half for redemption to add to the credit of the former half redeemed in order to get credit for a full note, and carry the other half of note cut, in cash, until another redemption of a half, when the one held in cash can be sent on to remedy the matter again.

In addition to these accounts, a "memoranda account" should be kept of circulating notes, printed, say in back of the general ledger.

When a bank makes its first order for the printing of its circulating notes, the order should be for about twenty-five per cent. more than the bank is entitled to on its bond deposit, so as to cover the redemptions to be made from time to time. When a bank fails to cover the additional amount in its order, the Comptroller changes the order and advises the bank. This amount and all supplemental orders should be charged in the "memoranda account," and against these items should be credited all new currency received from the Department, whether on the original order, supplemental orders, or in return for circulating notes redeemed and destroyed. This account will always show the amount of currency on hand in the Comptroller's vaults, and when additional orders should be made. It will be well to note the bank's number (lower lefthand corner of notes) and also the Treasury number (opposite righthand corner) in this memoranda account, as the notes are received from the Comptroller. The Comptroller makes no record of numbers on notes destroyed, but only of denominations and amounts, as noted in certificate of destruction sent to the bank; from this may be kept a record of the amounts of each denomination destroyed, if desired.

Assessment for Expenses.—The expenses incurred for "the charges for transportation and the costs for assorting" the redeemed notes of National banks are assessed upon the several banks, including those which have made deposits of lawful money for the reduction of their circulation *in proportion to the amount of their circulation redeemed,* and charged to them in their five per cent. accounts. The assessment is made by fiscal years, and is levied as soon after the end of each fiscal year (June 30th) as the accounts can be settled and the computations made.

Under Section 8 of the Act of July 12, 1882, National banks making deposits of lawful money for the retirement in full of their circulation

are, at the time of the deposit, assessed for the cost of transporting and redeeming the notes then outstanding, a sum equal to the average cost of the redemption of National bank notes during the preceding year, and any notes redeemed during the year then current are included in the assessment.

Remittance should be made for the amount of the assessment, immediately on receipt of the notice thereof, in the same manner as for notes redeemed, unless there is a sufficient excess to the credit of the bank in the five per cent. fund to cover it, in that case the amount is charged to that fund and balance remitted the bank.

METHOD OF VERIFYING REMITTANCES.—Packages of National bank notes received for redemption at the Treasury Department are charged to, and receipted for, by the counters, with the seals unbroken; and the counters are required to count, return, and obtain a receipt for the contents of each package before receiving another. An inventory of the contents according to the amounts marked on the straps is made immediately on opening the package, and the contents of each strap are separately proved. Discrepancies are noted on the proper strap, which is returned to the owner. "Shorts" are at once reported and verified by the teller in charge. The packages are charged to the counters by the amounts on the wrappers, and any discrepancy between these amounts and the contents is reported as an "over" or a "short" by inventory.

DISPOSITION OF NOTES REDEEMED.—The notes are then assorted and examined by experts. The currency fit for circulation is sent to the several banks of issue, and that which is unfit for circulation is cancelled by cutting off the signatures of the president and cashier, then done up in sealed packages and delivered daily to the Comptroller of the Currency, who has it examined, counted, and schedules made for the banks, of what is to be destroyed each day. It is then delivered to clerks from the office of the Secretary of the Treasury, occupying a room for the time being in the Comptroller's office, to be examined and counted. After this count the notes are further cancelled by punching, and then delivered as required by Section 5184 of the Bank Act, par. —, to the agent of the bank in the same room, who examines and counts them and verifies the amount. The package is then checked off from the schedules in the presence of four witnesses, representing the Secretary of the Treasury, the U. S. Treasurer, the Comptroller of the Currency and the bank the notes of which are to be destroyed. It is then deposited in a box and locked, then, accompanied by the witnesses, taken to the macerator and ground into pulp. New currency is sent the banks for the same. Frequently notes are pronounced unfit for circulation though apparently in good condition, but they are notes so thoroughly worn, that they would bear

but little further use, and the expense of new notes is so very small that it is not a consideration.

Issue of New Circulating Notes.—The issue of new circulating notes to National banks is under the control of the Comptroller of the Currency, and all inquiries and requests in regard thereto should be addressed to him.

New currency is ordered to be printed on requisitions from the banks, specifying the amounts and denominations desired. Banks should keep an account of the amount of their incomplete currency in the Comptroller's office, and should make requisitions on him for the printing of additional supplies, a sufficient time in advance of the exhaustion of those previously ordered, to cover the time required for the printing of the new notes.

TAX ON CIRCULATING NOTES.

National banks are required, under provisions of the Revised Statutes, Section 5214 amended by Act March 3, 1883, and Act of March 14, 1900, to pay semi-annual duty on their notes in circulation, and in Section 5215 it is made the duty of the Treasurer of the United States to prescribe the form for making return by each National bank of the average amount of its notes in circulation for each half year for the purpose of assessment. The following is the form:

SEMI-ANNUAL RETURN OF CIRCULATION SUBJECT TO DUTY.

Return of the average amount of Notes of the ——— National ——— Bank of ———, State of ———, in circulation for the six months next preceding the first day of ———, 190—, with the duty thereon, made pursuant to the provisions of Section 5215, Revised Statutes of the United States, and the act of March 14, 1900, in order to enable the Treasurer of the United States to assess the duty on circulation imposed by Section 5214 of said statutes, as amended by Section 1 of "An act to reduce internal revenue taxation, and for other purposes," approved March 3, 1883, and the said act of March 14, 1900.

Amount of circulating notes received from the Comptroller of the Currency, $———

Average amount of notes in circulation for the period based on U. S. two per cent. Consols of 1930, $———

Duty on average amount of notes in circulation based on on U. S. two per cent. Consols of 1930, at one-fourth of one per cent., $———

Average amount of notes in circulation for the period based on any or all other U. S. Bonds, $———

Duty on average amount of notes in circulation based on all other U. S. Bonds at one-half of one per cent., $———

Total amount of duty, $———

I, ——— ———, of the above-named National bank, do solemnly swear that the above is a true statement of the average amount of the notes of said bank in circulation for the time named.

——— ———

Subscribed and sworn to before me, this ——— day of ———, 190—.

——— ———

REQUIREMENT AND PENALTY FOR FAILURE.—This return, with each blank filled with the proper amount as indicated, and subscribed and sworn to by the President or Cashier of the bank before an officer

qualified to administer oaths, must be sent to the Treasurer of the United States within ten days from the first days of January and July, respectively, in each year, under a penalty of two hundred dollars, and payment must be made within the months of January and July.

How Payment Made.—Payment may be made by deposit of the amount of duty to the credit of the Treasurer of the United States, with him, or with any Assistant Treasurer or National bank Depositary. Triplicate certificates should be issued therefor, the "original" of which must be forwarded to the Secretary of the Treasury, the "duplicate" to the Treasurer, and the "triplicate" held by the bank making the deposit as its voucher therefor. The certificate must state that the deposit is on account of semi-annual duty. No other receipt will be issued.

If there is no depositary convenient, payment may be made by draft on New York (collectible through the Clearing House) to the order of the Treasurer, or by remittance to him in lawful money of the United States, or notes of National banks, for which the Treasurer will issue his certificate of deposit, and send the duplicate to the bank.

Percentage Assessed and Period.—The duty on circulating notes is one-half of one per centum on the average amount *outstanding* for the six months based on all U. S. bonds, except the two per cent. consols of 1930; on notes based on two per cent. consols of 1930 the duty is one-fourth of one per cent. on the average amount of notes *in circulation* for the six months.

Liability begins on the first days of January and July in each year, unless a bank had at that time no circulation *outstanding*, in which case it begins with the date of the first issue of notes, and terminates on the 30th day of June or the 31st day of December (as the case may be), date of commencement and termination both included.

Banks that have before made returns will report for the full semi-annual term of 181, 182, or 184-days, as the case may be; and banks that have not before made returns will report their circulating notes from and including the date of their first issue.

Computing Amount.—To ascertain the average amount, add together the daily balances of the notes in circulation from the proper date of the commencement of the liability to duty (including for each Sunday and holiday the balance of the preceding business day), to and including the 30th day of June, or the 31st day of December, as the case may be. The aggregate of daily balances for the first six months of any year will be divided by 181—the number of days from January 1 to June 30, except in leap year, when the sum will be divided by 182. The aggregate of daily balances for the last six months of any year will be divided by 184—the number of days from July 1 to December 31.

Banks not making daily statements, and obtaining their averages from weekly statements, should add together the weekly balances, including for each day in any fractional part of a week one-seventh of the weekly balance next preceding such fractional part. The aggregate of balances for the first six months of any year will be divided by the number of weeks from January 1 to June 30 (25 and six-sevenths or 26, as the case may be). The aggregate of balances for the last six months will be divided by 26 and two-sevenths—the number of weeks from July 1 to December 31.

Banks having circulation subject to duty for a period less than a half year, which make their estimates from daily balances, will divide the aggregate of the balances of the item for the time for which it is liable to duty by the number of days in the half year; and banks which make their estimates from weekly balances, by the number of weeks and the fractions thereof in the half year. The quotient thus found will be the average amount subject to duty for each six months, respectively, and should be entered in the Return, and duty computed thereon at the full semi-annual rate.

A bank retiring its circulation, or any portion of it, is relieved from duty on the amount retired from the time of making the deposit of lawful money to redeem the same.

A bank which has gone into liquidation, in making its final return, must estimate duty upon circulation to the time of making the deposit of lawful money with the Treasurer of the United States to redeem the same. The item should be averaged for the full six months, according to the foregoing rule, and the duty calculated at the prescribed rate. The amount thus determined is the correct proportion for the time for which the item is liable.

Tax Required Only on Actual Circulation.—It should be noted that the provision of the Revised Statutes as to duty on the circulation of National banks applies only to the currency of National banks actually in circulation; that is, it does not include circulating notes of the bank received from the Comptroller of the Currency, or in transit from him, which have not been put into circulation by the bank, nor does it include the circulating notes redeemed by the U. S. Treasurer, which have not been returned to the bank, and put in circulation again, or notes redeemed and destroyed for which new circulating notes are issued until such new notes are received and put in circulation.

Items on Blank.—It will be seen in the blank sent for the semi-annual return on circulation that the amount of circulating notes received from the Comptroller is called for. Whatever the object may be of having this item given, it does not have to do with the return for assessment, which is simply the bank's notes actually in circulation and the amount of semi-annual tax due on same. This, as be-

fore stated, may include two items in case the bank has more than one class of bonds as security, or rather two per cent. bonds of 1930 and other bonds. On the two per cent bonds, the tax is only one-fourth of one per cent. semi-annually, while on other classes of Government securities it is one-half of one per cent., so that the bank having two per cent. bonds and other bonds will need to determine and state amount of circulation it has on each when computing the tax due. For this purpose separate accounts of notes in circulation should be kept according to the class of bonds by which they are secured. Banks occasionally pay in excess of amount due, failing to observe the difference in tax according to bonds held.

MISCELLANEOUS FORMS OF COMPTROLLER OF CURRENCY.

Form of Proxy for use at Shareholders' Meeting for Election of Directors.

I do hereby constitute and appoint ———, of ———, in the county of ——— and State of ———, my lawful proxy, for me and in my name to vote ——— shares of the stock of the ——— National bank of ———, owned by me and standing in my name on the books of said bank, at the annual meeting of the stockholders thereof to be held for the election of directors on the ——— day of ———, A. D., 189—, pursuant to law, and at all future meetings of stockholders which shall be held for a similar purpose until this authority shall be revoked, hereby ratifying and confirming whatsoever the said ——— may lawfully do by virtue hereof; and I hereby revoke and annul any and all authority heretofore given by me, authorizing any person for me, or in my name, to vote my stock in said bank.

In witness whereof I have hereunto set my hand and seal this ——— day of ———, A. D., 189—.

——— ———, (L. S.)

Resolution to Increase Capital Stock.

The ——— National ——— bank of ———

(Date.) ———

At a meeting of the shareholders of the ——— National ——— bank of ——— held on ——— thirty days' notice of the proposed business having been given, at which ——— shareholders were present in person and by proxy, representing ——— shares of stock of this Association, it was—

Resolved, That, under the provisions of the Act of May 1, 1886, the Capital Stock of this Association be increased in the sum of $———, making the total capital $———.

The above resolution was adopted by the following vote, representing more than two-thirds of the Capital Stock of the Association:

Name of Shareholder.	Residence.	Name of Proxy.	No. of Shares.

Total number of shares voted in favor of the resolution ———

Total number of shares voted against the resolution ———

Total number of shares represented at the meeting ———

I hereby certify that the above is a true and correct report of the vote and of the resolution adopted at a meeting of the shareholders of this bank held on ———

[Seal of Bank.]

——— ———,

President or Cashier.

Subscribed and sworn to before me, this ——— day of ———, A. D. —

[SEAL OF NOTARY.]

——— ———,
Notary Public.

CERTIFICATE OF INCREASE OF CAPITAL STOCK.

No. ————.

——— National ——— bank of ———

———, 190—.

To the Comptroller of the Currency,
Washington, D. C.

It is hereby certified, That the capital stock of ——— National ——— bank of ——— has been increased pursuant to the provisions of the act of Congress approved May 1, 1886, in the sum of ———— dollars, all of which has been paid in cash, not in promissory notes or other like evidences of debt, and that the paid-up capital stock of the bank now amounts to ———— dollars.

[SEAL OF BANK.]

——— ———,
President or Cashier.

STATE OF ———,
County of ———, } *ss:*

Subscribed and sworn to before me this ——— day of ———, A. D. 190—.

[SEAL OF NOTARY.]

——— ———,
Notary Public.

FORM OF RESOLUTION FOR REDUCTION OF CAPITAL STOCK AND CERTIFICATION OF VOTE TO THE COMPTROLLER OF THE CURRENCY.

———, 190—.

——— National ——— bank of ———

At a meeting of the shareholders of the ——— National ——— bank of ——— held on ———, thirty days' notice of the proposed business having been given, at which shareholders were present, in person and by proxy, representing ——— shares of stock of this Association, it was—

Resolved, That, under the provisions of Section 5143, U. S. Revised Statutes, and of the law amendatory thereof, the Capital Stock of this Association be reduced in the sum of $———, leaving the total capital, after said reduction, $———, when approved by the Comptroller of the Currency.

The above resolution was adopted by the following vote, representing more than two-thirds of the Capital Stock of the Association:

NAME OF SHAREHOLDER.	RESIDENCE.	NAME OF PROXY.	NO. OF SHARES.

Total number of shares voted in favor of the resolution. ———
Total number of shares voted against the resolution ———
Total number of shares represented at the meeting ———
Total number of shares of capital stock ———
I hereby certify that the above is a true and correct report of the vote and of the resolution adopted at a meeting of the shareholders of this bank held on ———.

[SEAL OF BANK.] ——— ———,
President or Cashier.

Subscribed and sworn to before me, this ——— day of ——— A. D. 190—.

[SEAL OF NOTARY.] ——— ———,
Notary Public.

FORM OF RESOLUTION FOR CHANGE OF NAME OF BANK AND CERTIFICATION OF VOTE TO THE COMPTROLLER OF THE CURRENCY.

——— National ——— bank of ———

———, 190—.

At a meeting of the shareholders of the ——— National ——— bank of ——— held on ———, thirty days' notice of the proposed business having been given, at which shareholders were present, in person and by proxy, representing ——— shares of capital stock, it was—

Resolved, That, under the provisions of the Act of May 1, 1886, the corporate name of the ——— National bank of ——— is hereby changed to ———.

The above resolution was adopted by the following vote:

NAME OF SHAREHOLDER.	RESIDENCE.	NAME OF PROXY.	NO. OF SHARES.

Total number of shares voted in favor of the resolution ———.
Total number of shares voted against the resolution ———.
Total number of shares represented at the meeting ———.
Total number of shares of capital stock of the bank ———.
I hereby certify that the above is a true and correct report of the vote and of the resolution adopted at a meeting of the shareholders of this bank held on ———.

[SEAL OF BANK.] ——— ———,
President or Cashier,

Form of Resolution of Board of Directors for Bond Transfer in Change of Name of Bank.

———————

———, 1904.

At a meeting of the board of directors of the ——— bank of ——— held at their banking house, ———, 1904, the following resolution was adopted:

Resolved, That the Comptroller of the Currency be, and he is hereby, authorized to withdraw $——— U. S. bonds, deposited with the Treasurer of the United States by this bank to secure circulation, and described as follows:

$——— of the loan of ——— $——— of the loan of ———
$——— of the loan of ——— $——— of the loan of ———

and that the Treasurer U. S. be, and is hereby, authorized to assign, and transfer the same to the Treasurer U. S. in trust for the ——— National Bank of ——— to conform to change of title.

I hereby certify that the above is a true extract from the minutes of said meeting.

[Seal of Bank.]

——— ———,

Cashier and Secretary of the Board of Directors.

Note.—The Treasurer's receipts for the bonds proposed to be withdrawn must be forwarded (with this form properly filled) to the Comptroller of the Currency.

Application to Have City Designated a Reserve City.

To the Comptroller of the Currency:

Sir: In accordance with the provisions of the act approved March 3, 1887, the National banks, whose corporate names are hereunto subscribed by their duly authorized officers or agents, do hereby make application that the city of ———, in the State of ———, be added to the cities named in Sections 5191 and 5192 of the Revised Statutes of the United States, so that balances due from associations, approved by the Comptroller of the Currency located in the city of ——— aforesaid may, to the extent authorized by law, be included in the lawful money reserve required to be kept by all National banks, except banks in the cities named in said Sections 5191 and 5192 of the Revised Statutes, and such cities as, in pursuance of the said act of March 3, 1887, have been added thereto.

[Applicants to sign as follows:]

The National Bank of ———, by ———, *President or Cashier.*

Authority of Officer to Sign Application for Designation as a Reserve City.

——— ———, 189—.

At a meeting of the board of directors of the ——— bank of ———, held at their banking house ———, 189—, the following resolution was adopted:

Resolved, That ——— the ———, of this bank, be, and he is hereby, authorized to sign the corporate name of the bank to an application to be made to the Comptroller of the Currency that, in accordance with the provision of the act of March 3, 1887, the city of ——— be added to the cities named in Sections 5191 and 5192 of the Revised Statutes of the United States.

I hereby certify that the above is a true extract from the minutes of said meeting.

[Seal of Notary.]

——— ———,

Cashier and Secretary of the Board of Directors.

Withdrawal of Bonds.

At a meeting of the board of directors of the ——— bank of ———, held at their banking house ———, 189—, the following resolution was adopted:

Resolved, That the Comptroller of the Currency be, and he is hereby, authorized to withdraw $——— U. S. bonds, deposited with the Treasurer of the United States by this bank to secure circulation, and described as follows:

$——— of the loan of ———, and that ——— be, and is hereby authorized to sell, assign, and transfer the same, and to appoint one or more attorneys for that purpose.

I hereby certify that the above is a true extract from the minutes of said meeting.

[Seal of Bank.]

——— ———,

Cashier and Secretary of the Board of Directors.

Note.—The Treasurer's receipts for the bonds proposed to be withdrawn must be forwarded (with this form properly filled) to the Comptroller of the Currency. In case the bonds are simply to be transferred from one account to another of the same bank the Treasurer of the U. S. should be authorized to act.

Notice to Shareholders of Impairment of Capital.

———, 190—.

Sir:—You are hereby notified that this association has received notice from the Comptroller of the Currency that its capital stock has become impaired by the amount of $———, and that under the provisions of Section 5205, United States Revised Statutes, this de-

ficiency in the capital stock must be made good by assessment upon the shareholders pro rata to the amount of capital stock held by each, or the bank placed in liquidation.

Your proportion of the assessment upon ——— shares held by you amounts to $———.

You are hereby notified that a meeting of the shareholders of this association will be held on the ——— day of ——— at ——— for the purpose of considering and voting upon the question of paying the assessment within three months from ——— 190—, the date of the Comptroller's notice, or placing the bank in liquidation.

——— ———
——— ———
——— ———

Directors of ———————.

FORM OF STATEMENT OF U. S. BONDS HELD BY U. S. TREASURER.

The following is a statement of the United States bonds held by the Treasurer of the United States in trust for the ——— National ——— bank of ——— on the ——— day of ———, 190—, from the books of the said Association, and is furnished for comparison with the records of the Comptroller of the Currency and for making examination of said bonds deposited with the Treasurer of U. S., as required by Section 5166, Revised Statutes.

TITLE OF BONDS. [Numbers and denominations of bonds not required. Give only total amount of each class.]	Amount of Bonds on Deposit with the Treasurer of the U. S. as Security.	
	For Circul'g Notes.	For Gov't Deposits.
2 per cent. Consols of 1930	$——|——|——	$——|——|——
3 per cent. Loan of 1908-1918	——|——|——	——|——|——
4 per cent. Founded Loan of 1907	——|——|——	——|——|——
4 per cent. Loan of 1925	——|——|——	——|——|——
5 per cent. Loan of 1904	——|——|——	——|——|——
....	——|——|——	——|——|——
....	——|——|——	——|——|——
Total	——|——|——	——|——|——

Office of Comptroller of the Currency.
Correct as to bonds held for security of circulating notes.

——— ———,
Cashier.

——— ———,
For Comptroller of the Currency.

FORM OF POWER OF ATTORNEY TO NATIONAL BANK AGENT TO WITNESS DESTRUCTION OF MUTILATED NOTES AND TO EXAMINE BONDS OF BANK.

Know all men by these presents, That ———, of Washington, D. C., are severally and separately hereby appointed the true and lawful agents of the ——— National ——— bank of ——— to witness for and in behalf of said bank the destruction of its circulating notes,

as required by Section 5184 of the Revised Statutes of the United States relating to National banks and Act of Congress approved June 23, 1874.

Also to examine and compare the bonds deposited in the office of the Treasurer of the United States, in trust for said bank, with the books of the Comptroller of the Currency and the accounts of said Association, as shown by the transcripts which may be furnished from time to time; and if said bonds are found to be correct, and to agree with said books and transcripts, to execute to the said Treasurer certificates in accordance with the requirements of Section 5166 of the Revised Statutes of the United States relating to National banks.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said bank this ——— day of ———, 190—.

[SEAL OF BANK.]

——— ———,
President or Cashier.

FORM OF POWER OF ATTORNEY TO NATIONAL BANK AGENT TO SEND NEW CURRENCY BY REGISTERED MAIL.

Know all men by these presents, That ———, of the City of Washington, D. C., are hereby appointed the true and lawful agents of the ——— National bank of ——— to receive from the Comptroller of the Currency for and in behalf of said bank any incomplete National Bank currency which may hereafter be due and issuable to it under Sections 5171 or 5184, Revised Statutes of the United States, or under Section 6, Act of July 12, 1882, and this bank will be responsible for the redemption of currency so delivered to said Agents, the same as if delivered directly to the bank.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said bank, this ——— day of ———, 190—.

[SEAL OF BANK.]

——— ———,
President or Cashier.

PART FOURTH.

Regulations governing Issue, Redemption, etc., of U. S. Paper Currency and Coin—Transmission and Express Charges, including National Bank Notes—Transmission of U. S. Paper Currency and National Bank Notes by Registered Mail Insured—Transfer, Conversion, etc., of United States Bonds.

Issue of Paper Currency, Coin, etc.
Issue of Treasurer's Transfer Checks.
Redemption of U. S. Paper Currency and Coin.
Transmission to U. S. Treasurer of U. S. Paper Currency, Coin and National Bank Notes.
Transportation Charges Under Express Contract
Transportation of U. S. Paper Currency and National Bank Notes by Registered Mail Insured.
Counterfeit Notes and Coins.
Lost Treasury Warrant or Check.
U. S. Coupon Bonds.
U. S. Registered Bonds.
Assignment of Bonds.
Power of Attorney for Transfer.
Exchange for New Bonds.
Closing of Transfer Books.
Payment of Interest.
Lost Bonds.
Called Bonds.
Issues of U. S. Bonds.
Indorsement of Treasury Drafts.

REGULATIONS OF U. S. TREASURER'S OFFICE.

ISSUE OF PAPER CURRENCY.—New United States notes, silver certificates, or gold certificates, will be forwarded by express, at expense of the consignee, at Government contract rates, or by registered mail, registration free, at the risk of the consignee, in return for such notes or certificates unfit for circulation, National-bank notes, subsidiary silver coin, or minor coin received for exchange or redemption. *Treasury notes of* 1890, fit or unfit for circulation, will be accepted.

Silver certificates ($1, $2 and $5) are issued by the Treasurer or Assistant Treasurers upon a deposit of standard silver dollars.

Gold certificates [$20, $50, $100, $500 and $1,000] are issued by the Treasurer or Assistant Treasurers upon a deposit of gold coin.

ISSUE OF GOLD COIN.—Gold coin is issued in redemption of United States notes and Treasury notes of 1890 by the Treasurer and all the Assistant Treasurers.

ISSUE OF STANDARD SILVER DOLLARS AND SUBSIDIARY SILVER COIN.—Standard silver dollars are issued by the Treasurer and Assistant Treasurers in redemption of silver certificates and Treasury notes of 1890, and are sent by express, at the expense of the Government, in sums or multiples of $500, for silver certificates or Treasury notes of 1890, deposited with the Treasurer or any Assistant Treasurer.

Subsidiary silver coin will be paid in any amount by the Treasurer or Assistant Treasurers in the cities where their several offices are, or will be sent by express, in sums of $200 or more, at the expense of the Government, or by registered mail, at the risk of the consignee, in packages of $50, registration free, as the depositors may request, from the most convenient Treasury office. Upon the deposit of an equivalent sum in U. S. currency or National bank notes with the Treasurer or any Assistant Treasurer or National bank depositary. For this purpose drafts may be sent to the Treasurer U. S. in Washington or Assistant Treasurer in New York, payable in their respective cities to the order of the officer to whom sent. Drafts on New York City must be collectible through the clearing house, and should be drawn to the order of the Assistant Treasurer of U. S., New York, and mailed to him direct.

Subsidiary silver coin is sent from the nearest subtreasury office by express, transportation free, in sums of not less than $200. When desired, a less amount will be sent by express, at the expense of the consignee for tranpsortation.

ISSUE OF MINOR COIN.—One-cent bronze and five-cent nickel pieces will be paid in any amount by the Treasurer or Assistant Treasurers in the cities where their several offices are, or will be sent by express, in sums of $20 or more, at the expense of the Government, or by registered mail, in like sums, at the risk of the consignee, registration free, as the depositors may request. from the most convenient Treasury office upon the deposit of an equivalent sum in U. S. currency or National bank notes with the Treasurer or any Assistant Treasurer or National bank depositary. For this purpose drafts may be sent to the Treasurer in Washington or Assistant Treasurer in New York, payable in their respective cities to the order of the officer to whom sent Drafts on New York City must be collectible through the clearing house, and should be drawn to the order of the Assistant Treasurer of the U. S., New York, and mailed to him direct.

The express charges on new silver or minor coin sent from the mints of the United States must be paid by the consignee on delivery.

The offices of the Assistant Treasurers are located in the following cities, viz.: New York, Boston, Philadelphia, Baltimore, New Orleans, Cincinnati, Chicago, St. Louis, and San Francisco.

ISSUE OF THE TREASURER'S TRANSFER CHECKS.—Subject to the convenience of the Treasury, and provided that the express charges on remittances have been prepaid at bankers' rates, the Treasurer will issue transfer checks on the Assistant Treasurers, payable to the order of the sender or his correspondent, for United States notes, Treasury notes of 1890, and gold certificates unfit for circulation, or National-bank notes sent to the Treasurer for redemption, or for subsidiary silver coin or minor coin sent in multiples of $20 to the Treasurer or an Assistant Treasurer.

REDEMPTION OF PAPER CURRENCY.—United States notes, Treasury notes of 1890 and gold certificates are redeemable in cold coin, and silver certificates in silver dollars, by the Treasurer and Assistant Treasurers. National-bank notes are redeemable in lawful money of the United States by the Treasurer, but not by the Assistant Treasurers.

United States notes, Treasury notes of 1890, gold certificates, and silver certificates unfit for circulation, when not mutilated so that less than three-fifths of the original proportions remains, may be presented to the Treasurer or any Assistant Treasurer for exchange, at face value, for new United States paper currency. Fractional currency notes are redeemable in lawful money.

United States notes, Treasury notes of 1890, fractional currency notes, gold certificates, silver certificates, and National bank notes, when mutilated so that less than three-fifths, but clearly more than two-fifths, of the original portion remains, are redeemable by the Treasurer only, at one-half the face value of the whole note or certificate. Fragments not clearly more than two-fifths are not redeemed, unless accompanied by the evidence required in next paragraph.

Fragments less than three-fifths are redeemed at the face value of the whole note when accompanied by an affidavit of the owner or other person having knowledge of the facts that the missing portions have been totally destroyed. The affidavit must state the cause and manner of the mutilation, and must be sworn and subscribed to before an officer qualified to administer oaths, who must affix his official seal thereto, and the character of the affiant must be certified to be good by such officer or some one having an official seal. Signatures by mark (X) must be witnessed by two persons who can write, who also must give their places of residence. The Treasurer will exercise such discretion under this regulation as may seem to him needful to protect

the United States from fraud. Fragments not redeemable are rejected and returned. Paper currency which has been totally destroyed can not be redeemed. The Department does not furnish blank forms for affidavits.

RETURNS FOR PAPER CURRENCY.—For remittances received under the Government contract:

For remittances from a place where there is no subtreasury, returns will be made in new United States paper currency by express, at the expense of the consignee, at Government contract rates; or in subsidiary silver coin, in sums of $200 or more, at the expense of the Government for transportation.

For remittances from a place where there is a subtreasury, returns will be made in new United States paper currency by express, at the expense of the consignee, at Government contract rates; or, subject to the convenience of the Treasury, in the Treasurer's transfer checks on the subtreasury in the place whence the remittance is received.

No exchange for remittances of currency to the Treasurer for redemption under the Government contract will be furnished either by transfer checks or shipments of currency.

REDEMPTION OF SILVER AND MINOR COIN.—Subsidiary silver coin and coins of copper, bronze, or copper-nickel may be presented in sums or multiples of $20, *assorted by denominations in separate packages*, to the Treasurer or an Assistant Treasurer for redemption or exchange into lawful money, and STANDARD SILVER DOLLARS for exchange into silver certificates only. When forwarded by express, the charges should be prepaid.

Depositors of subsidiary silver coin will obtain quicker returns and aid the Department in retiring the old issues from circulation, if they will present coins of the old designs and the new in separate packages.

No foreign, mutilated, or defaced silver coins, or coins to which paper or any other substance has been attached as an advertisement, or for any other purpose, will be received. Reduction by natural abrasion is not considered mutilation.

Minor coin that is so defaced as not to be readily identified, or that is punched or clipped, will not be redeemed or exchanged. Pieces that are stamped, bent, or twisted out of shape, or otherwise imperfect, but showing no material loss of metal, will be redeemed.

TRANSMISSION TO THE TREASURER.—United States notes, Treasury notes of 1890, gold certificates, silver certificates, and National bank notes should be sent in separate remittances. The notes should be assorted by denominations and inclosed in paper straps, not more than 100 notes to each strap, and the straps should be marked

with the amount of their contents. Not more than 8,000 notes should be put in one package.

An inventory, giving the amount of each denomination of notes, the total amount in the package, the address of the party sending, and the disposition to be made of the proceeds, should be inclosed with each package, and a letter of advice sent by mail. *A compliance with the foregoing regulations will insure prompt returns for remittances.*

The package, if it be sent by express, should be put up in a stout paper, sealed and addressed to the "Treasurer of the United States, Washington, D. C." The wrapper should be plainly marked with the owner's name and address, the amount and kind of currency inclosed, and, if the sender desires the benefit of the Government contract, with the words "under Government contract with the United States Express Company from the nearest point of transfer."

When gold, silver, or minor coin is shipped for credit of the 5 per cent. redemption fund, or as a transfer of funds, it should be so stated on the shipping tag attached to the bag.

It is the duty of postmasters to register free of charge all letters on which the postage has been fully prepaid, addressed to the Treasurer, containing currency of the United States for redemption. It is recommended that all such letters be registered as a protection against loss.

Remittances of money by mail should be addressed to the "Treasurer of the United States, Washington, D. C." Such remittances and returns therefor by mail are invariably at the risk of the owners. All communications to the Treasurer in regard to packages lost in the mail are referred for investigation to the Chief Post Office Inspector, Post Office Department, Washington, D. C., to whom any subsequent inquiry on the subject should be addressed.

Paper currency presented for redemption or exchange, or for credit of the Treasurer at the offices of the Assistant Treasurers, must be assorted by kinds and denominations, and inclosed in paper straps, the straps not to contain more than 100 notes each, and must be plainly marked with the amount of the contents.

EXPRESS CHARGES.—The Government contract with the United States Express Company for the transportation of moneys and securities extends to all points accessible through established express lines reached by continuous railway communication, in all the States and Territories of the United States, *excepting* Alaska, Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah and Washington, but does not embrace sea, river, or stage transportation of any kind.

The contract rates for the transportation of all kinds of paper currency to or from Washington are:

Between Washington and points in the territory of the United States Express Company and reached by it, 20 cents per $1,000 or fractional part thereof over $500; sums of $500 or less, 10 cents.

Between Washington and points in the territory of another express company, *excepting* points in Texas, Arkansas, Colorado, Kansas, Nebraska, Montana, North Dakota, South Dakota, Wyoming, and the Indian and Oklahoma Territories, 60 cents per $1,000 or fractional part thereof over $500; sums of $500 or less, 40 cents.

Between Washington and points in Colorado, Kansas, and Nebraska, 75 cents per $1,000 or fractional part thereof over $500; sums of $500 or less, 50 cents.

Between Washington and points in Texas, Arkansas, Montana, North Dakota, South Dakota, Wyoming and the Indian and Oklahoma Territories, $1 per $1,000 or fractional part thereof over $500; sums of $500 or less, 65 cents.

Express charges are paid by the Government, at contract rates.

On standard silver dollars, in sums or multiples of $500.

On subsidiary silver coin in sums of $200 or more.

On minor coin, sent by the Treasurer or Assistant Treasurers, in sums or multiples of $20, and

On National bank notes sent to the Treasurer for redemption in sums or multiples of $500.

Express charges deducted:

On the United States notes, Treasury notes of 1890, gold certificates, or silver certificates, sent for redemption or exchange, or any kind of lawful money sent for credit of the 5 per cent. redemption fund, and on National bank notes sent for redemption in other amounts than multiples of $500, the charges, if not prepaid, are deducted from the proceeds at contract rates.

On United States notes, Treasury notes of 1890, gold certificates, or silver certificates, returned for United States currency or National bank notes, redeemed or exchanged, the charges are deducted at contract rates.

Express charges prepaid by sender:

On gold coin, standard silver dollars, subsidiary silver coin, and minor coin, sent for exchange or redemption, the charges must be prepaid by the sender.

On transfers of funds from National bank depositaries, under letters of instruction, the charges must be paid by the depositaries.

Express charges can not be prepaid at Government contract rates.

The Treasury has no control over rates exacted when the charges are prepaid, or for transportation outside of the territorial limits of the contract.

No charge is made for the amount of express charges inclosed with a remittance when separately noted on the wrapper. Packages should always be marked with the exact amount of the contents.

INCOMPLETE CURRENCY FROM WASHINGTON BY REGISTERED MAIL, INSURED.—The Comptroller of the Currency will deliver the new currency of a National bank to an agent duly authorized by power of attorney to forward to the bank by registered mail insured. We act in this capacity for a large number of the banks, covering the risks in one of the strongest and most reliable marine insurance companies. This method is found less expensive, than sending by express, to many banks off the line of the Express company which has the Government contract for transportation of moneys. A. S. Pratt & Sons will furnish estimate of expense and blank power of attorney on application.

COUNTERFEIT NOTES AND COINS.—The act of June 30, 1876 (19 Statutes, 64) requires "that all United States officers charged with the receipt or disbursement of public moneys, and all officers of National banks, shall stamp or write in plain letters the word 'counterfeit,' 'altered,' or 'worthless,' upon all fraudulent notes issued in the form of and intended to circulate as money which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States or of the National banks, they shall, upon presentation, redeem such notes at the face value thereof."

Counterfeit notes found in remittances from banks are returned canceled for the purpose of enabling them to make reclamation, and after such use they must be returned for transfer to the Secret-Service Division of the Treasury Department.

Counterfeit notes found in remittances from individuals are forwarded direct to the Chief of the Secret-Service Division. The sender is advised of the fact, with the information that if he will communicate with the Chief, giving a history of the note, arrangements will be made to have the counterfeit note submitted for reclamation.

Counterfeit coins found in remittances to this office are at once canceled and sent to the Secret-Service Division of the Treasury Department, a receipt for the same being returned to the depositor. Should the coins be desired for the purposes of reclamation, the depositor may correspond with the Chief of the Secret-Service Division.

Counterfeit coins received at the subtreasuries are retained, to be called for by agents of the Secret-Service at stated periods. Receipts are issued to the senders or depositors, when desired, for the purpose of enabling them to make reclamation for coins so retained.

LOSS OF TREASURY WARRANT OR CHECK.—In case of the loss or destruction of a Treasury warrant or one of the Treasurer's checks, and upon application for a duplicate, payment of the original warrant or check is stopped, and the applicant is furnished with a form of bond of indemnity, upon return of which, properly executed, a duplicate is issued.

REGULATIONS REGARDING U. S. BONDS.

U. S. Coupons, Bonds, Exchange, etc.—Coupon bonds of the United States are payable to bearer, and pass by delivery without endorsement. They are convertible into registered bonds of the same loan, but the law does not authorize the conversion of registered into coupon bonds.

Coupon bonds forwarded to the Department for exchange into registered bonds should be addressed to the Secretary of the Treasury, Division of Loans and Currency.

There is no expense attending the exchange at the Department; but when bonds are sent by express the charges must be paid by the party transmitting them.

Form of Letter to the Secretary of the Treasury.

Sir: Herewith I send $——— U. S. coupon ——— per cent. bonds of the act of ———; which please exchange into registered bonds in the name of ——— ———, and send the new bonds to ——— ———.

Interest checks to be mailed to ——— ———.

Respectfully, ——— ———.

United States Registered Bonds.—Registered bonds of the United States differ from coupon bonds in the following respects, namely: (1) They have expressed upon their face names of those who own them, denominated *payees;* (2) they are payable only to such payees or their assigns; and (3) the property or ownership in them can be transferred only by assignment. For assigning, there are forms on backs of the bonds with directions for execution of assignments.

An account is opened in the Department with each holder of one or more registered bonds, with description of bonds. All transfers must be made on the books of the Register of the Treasury.

Assignment of Bonds.—In the execution of assignments follow carefully the directions on the backs of the bonds and write name of the assignee plainly in the space designated. Assignments *must be dated* and properly acknowledged; and the seal of the acknowledging officer should be affixed to his certificate on the back of each bond.

If a bond is to be divided among two or more parties, their names and the amount to each should be stated in the assignment. If part of a bond is assigned to one party, a new issue for the remainder of the bond will be made to the former payee. *Provided, however,* That the amount assigned shall correspond with one or more of the denominations in which the bonds are issued.

Registered bonds should not be assigned in blank, as that makes them payable to bearer, and so the title would pass by delivery.

A detached assignment should never be resorted to, except when the blank form for assignment on the bond shall have been already used; and then only when there shall not be sufficient space somewhere on the back of the bond for another assignment. The payee should sign the assignment, as name is written on face of the bond. If the bond be issued to a firm, the assignment must be in the name of the firm by a member thereof who has authority to sign for the firm, of which authority the officer witnessing the signature must be satisfied; if issued to joint owners, co-trustees, executors, administrators, or guardians, each person must sign for himself; if to a corporation or company, the official character of the person executing the assignment, and the authority of such person to dispose of the bond, should be duly verified by vote or resolution of the board of directors of the corporation or company, certified under its seal, and this certified copy should be lodged with the Register of the Treasury. Where such officer is authorized by virtue of his office to execute the assignment, a certificate, under seal, of this fact and of his election to the office, and that he still holds and exercises such office, must be furnished together with a certified copy of the charter or by-laws of such corporation or company, showing the authority claimed thereunder.

All such evidence of authority will be placed on file in the Department, and, if general and permanent in its character, need not be reproduced in subsequent transactions under the same power, if proper reference be made thereto.

Assignments by Representatives and Successors.—In case of death or successorship, the representative of the deceased person, or the successor, must furnish official evidence of such decease or successorship, and of his own appointment, authority, or power. An executor or administrator may assign bonds standing in name of the deceased person in whose stead such executor or administrator shall be acting. Where there are two or more legal representatives, all must unite in the assignment, unless by a decree of court or testamentary provision some one or more of them is or are designated and empowered to dispose of the bonds. If the bonds had been held by the deceased in the capacity of a fiduciary or trustee, a court having jurisdiction must appoint a successor, who should execute the assignment in order to secure the transfer or payment of the bonds.

An executor, administrator, trustee, guardian, or attorney cannot assign bonds to himself, unless he be specially authorized to do so by a court possessing jurisdiction of the matter. The order of court may read as follows :

STATE OF ———, } ss :
County of ———, }

IN THE PROBATE COURT OF SAID COUNTY.

In the Matter of Estate of Richard Roe, Deceased; John Doe, Administrator.

Be it remembered that on this the ——— day of ———, 190—, it is made to appear to the satisfaction of the court, upon the petition of John Doe, administrator of the estate of Richard Roe, deceased, and upon the evidence submitted at the hearing, that said John Doe is justly and legally entitled in his own right to the ——— United States registered ——— per cent. bonds, for $——— each, numbered ——— and ———, and inscribed in the name of said Richard Roe: It is now, therefore, adjudged and decreed that said John Doe, as such administrator, be authorized to assign said bonds to himself (or, it is adjudged and decreed that the assignment of said bonds heretofore executed, to wit, on ———, 190—, by said John Doe, as such administrator, to himself as an individual, is now hereby in all things ratified and confirmed), to the end that he may have new bonds issued in his name and his title thus perfected.

——— ———,
Judge of said Court.

The clerk of said court should certify to the official character of the judge, the genuineness of his signature, the correctness of the copy, and affix the seal of the court. And the judge should make a like certificate as to the authority and signature of the clerk.

FOREIGN SUCCESSORSHIP ASSIGNMENTS.—Where a payee, at the time of his death, was a resident of a foreign country, the party claiming to direct and execute the transfer must furnish an exemplified copy of the will or other instrument conveying the requisite authority, duly certified under the hand and seal of the proper officer, attested by the certificate of a United States minister, chargé, consul, vice-consul, or commercial agent, or, if there be none such accessible (which fact shall, in such case, be certified), by that of a notary public, to the effect that such exemplified copy is executed and granted by the proper tribunal or officer, and is in due form and according to the laws of that country. The assignment should be executed as hereinbefore directed.

ASSIGNMENTS BY ATTORNEY.—Persons entitled to assign bonds may appoint for that purpose an attorney, who, by virtue of the authority so conferred, can execute the assignment in the same manner as provided for the constituent, and can appoint one or more substitutes, for that purpose; but an attorney or substitute must not assign the bonds to himself individually.

Where in a foreign country it is the custom to file powers of attorney in public offices and furnish certified copies therefrom, a certified copy, properly authenticated by the United States Minister, chargé, consul, vice-consul, or commercial agent may be accepted; but in all other cases the original power of attorney must be filed with the Department.

No officer of the Treasury of the United States should be selected as such attorney.

Powers of attorney authorizing the assignment of bonds should be sent, for record, to the Register of the Treasury.

Form of Power of Attorney.

Know all men by these presents.

That I, ——— ———, do hereby appoint ——— ——— my attorney to assign any and all United States bonds now standing (*or which may hereafter stand*) in my name on the books of the Treasury Department, granting to said attorney full power to appoint one or more substitutes for that purpose, hereby ratifying and confirming all that may be lawfully done by virtue hereof.

Witness my hand and seal this the —— day of ——, A. D. 18—.

——— ———. [seal.]

Executed before me this the ——— day of ———, A. D. 18—.

——— ———.

[Official seal.]

Note.—To be acknowledged before an officer authorized to take acknowledgments.

Form of Authority by Resolution (No. 1).

At a regular meeting of the board of directors of the —— —— ———, of ———, ———, held ———, 18--, it was, on motion,

"*Resolved*, That A. B., president, and C. D., cashier, are, or either of them is, hereby authorized and empowered to assign any and all United States bonds now standing (*or which may hereafter stand*) in the name of this bank [*or* institution]."

I certify that the above is a true copy from the minutes.

——— ———,

[Corporate seal.] *Secretary of the Board.*

Note.—This resolution should be certified by some officer of the institution other than the one empowered to assign the bonds.

Form of Authority by Resolution (No. 2).

At a regular meeting of the board of directors of the ———, held at ———, on the ——— day of ———, A. D. 190—, it was

Resolved, That the president ——— ——— and the ——— be, and they are hereby, jointly and severally, authorized and empowered to sell,

assign and transfer all or any U. S. registered bonds now standing, or which may hereafter be registered in the name of ——— ——— upon the books of the U. S. Treasury Department, and to appoint one or more attorneys for that purpose; and also, all or any U. S. registered bonds which this ——— ——— now owns and holds, or may hereafter acquire, by assignment or mesne assignments from the party in whose name the same is inscribed, with full power to appoint a substitute; and also, as the representative of this ———, all or any U. S. registered bonds which this ——— ——— is, or shall be, authorized and empowered to sell, assign, and transfer as attorney for the owners and holders thereof, with full power to appoint a substitute.

I certify the foregoing to be a true copy from the minutes.

[SEAL.] ——— ———,

Secretary of Board of ———.

NOTE.—This resolution should be certified by some officer of the institution other than the one empowered to assign the bonds.

When passed at a *special* meeting, the certificate must be signed by *two* officers.

This second form, it will be seen, is more comprehensive, giving the person designated authority to assign not only bonds in the name of the corporation or institution interested, but also bonds held by it in a fiduciary capacity and such bonds as it may acquire by assignment or mesne assignments.

It is recommended that resolutions be adopted only at *regular* meetings. But when passed at a special meeting, the certificate may be as follows:

We certify that at a *special* meeting of the board of directors of ———, duly held at ———, on the —— day of ———, at — o'clock — M., 19—, the foregoing resolution was adopted, and is now in full force.

And we certify that notice was duly given, personally, to all the members of the said board of directors of the time and place of said meeting, and of the object thereof, for more than ——— days prior thereto, and in time to enable all to attend said meeting; and that at such meeting so held a quorum of all the members of said board was present and voted for the adoption of said resolution.

FORM OF AUTHORITY UNDER BY-LAWS.

At the annual meeting of the stockholders of the ——— ——— ———, of ——, ——, held ——, 19—, —— —— was duly elected president, and ——— ——— was duly elected cashier; and as such they are jointly or severally empowered by the by-laws (a certified copy of which is hereto annexed) to sell and assign any and all United States bonds now standing (*or which may hereafter stand*) in the name of this bank [*or* institution]. ——— ———,

[Seal of bank *or* institution.] *Secretary.*

Acknowledgments of Assignments, when not made at the Treasury Department, must be made either before an Assistant Treasurer of the U. S., a U. S. judge or district attorney, clerk of a U. S. court, collector of customs or internal revenue, or president, vice-president or cashier of a National bank. The witnessing officer should append his official title and affix his seal of office, if he have one; if he have no seal of office, he should certify such to be the fact. The president, vice-president or cashier of a National bank must append the title and affix the seal of the bank. The impress of the seal must in every case be made upon the bond.

Foreign Acknowledgments may be made before a United States minister, chargé, consul, vice-consul, or commercial agent. A notary public, or other competent officer, in a foreign country may take acknowledgments; but his official character and jurisdiction must be properly verified. (See under head "Foreign successorship assignments.") The official seal, where there is one, should in all cases be affixed, as per foregoing direction; and where there is none this fact should be made known and attested.

Translations.—Powers of attorney, and all other legal documents executed in the United States, must be in the English language. If executed abroad in any other language, such powers must be accompanied by an accurate translation into English, and by a sworn certificate of the person who made such translation, properly acknowledged before a notary public or other competent officer having a seal, to the effect that the translation is correct and complete.

Execution of Powers.—Powers of attorney for the transfer of bonds must be acknowledged in the presence of some one of the officers authorized to take acknowledgments of assignments; and where such officer has an official seal it must be affixed; where he has none he should so state.

Powers of Substitution must be executed and acknowledged in the same manner as powers of attorney, and should likewise follow the same general form.

Transmission of Bonds.—When registered bonds are properly assigned, they should be transmitted to the Register of the Treasury for reissue, and should be accompanied by a letter of explicit instructions, stating the amount enclosed, the loan to which the bonds belong, the denominations of the bonds desired in exchange therefor, the name and residence of each assignee, and the post office address to which it is desired the interest checks shall be mailed.

When bonds of different loans are forwarded in one remittance, a separate letter of instructions should accompany the bonds of each loan.

When coupon and registered bonds are transmitted at the same time, the former should be sent to the Secretary of the Treasury, and the latter to the Register of the Treasury. For form of letter to the Secretary see under coupon bond.

Form of Letter Transmitting Registered Bonds for Transfer.

Register of the Treasury.

Sir: Herewith you will receive $——— U. S. registered bonds of the ——— per cent. loan of ———, which please transfer, per as assignment, to ——— ——— of ———, ———.

Please send the new bonds to the subscribed address.

Mail checks for the interest to ——— ———, ———, ———.

Very respectfully, ——— ———.

No fees will be charged by a United States minister, chargé, consul, vice-consul, or commercial agent for witnessing and certifying an assignment of, or power to assign, bonds, or collect interest thereon. No charge is made by the Department for transferring registered bonds.

New Bonds.—Registered bonds received for transfer are cancelled, and new bonds in their stead are issued in the name of the assignee. These bear interest from the first day of the quarter or half year (as their interest term may run) in which the transfer shall have been made. As a rule, returns are made on the same day that the bonds are received, and made invariably by registered mail unless otherwise instructed. When bonds are sent or returned by express the entire expense thus incurred must be borne by the party desiring the transfer.

Date of Interest Payments.—The interest on registered bonds of the existing loans falls due upon the following dates, respectively:

Three per cent. loan of 1908-1918......Feb. 1; May 1; August 1; Nov. 1
Four per cent. funded loan of 1907......Jan. 1; April 1; July 1; Oct. 1
Four per cent. loan of 1925..........Feb. 1; May 1; August 1; Nov. 1
Two per cent. consols of 1930..........Jan. 1; April 1; July 1; Oct. 1
Four per cent. Philippine loan........Feb. 1; May 1; August 1; Nov. 1
District of Columbia 3.65 per cent..............Feb. 1 and August 1

The two latter are not United States loans, but records of same are kept and transfers are made at the Department.

Interest—How Paid.—Interest on registered bonds of the above-described loans is paid by check, which is sent by mail; when address is not known checks will be held by the Treasurer until called for by the payees thereof.

The checks are payable, when properly indorsed, on presentation at the U. S. Treasury or at the office of any Assistant Treasurer of the United States.

Holders of these bonds should notify the Register of the Treasury of any change in their post-office address at least fifteen days before the interest falls due; and in case of the appointment of an attorney to indorse the interest checks, notice of this fact should likewise be given to the Register. Such holders should also transmit to the Auditor of the Treasury all powers of attorney authorizing the indorsement of interest checks, and advise him specifically, at which of the offices referred to above it is desired that the interest checks, under such powers, shall be paid.

Closing of Transfer Books.—For the purpose of preparing the interest schedules, the transfer books are closed during the month immediately preceding the date of payment of the interest, with the exception of the four per cent. loan of 1925, the Philippine loan and the District of Columbia 3.65 per cent. loan. The books of the two former loans close on the 15th day of the months preceding the date of the payment of interest, and of the District of Columbia 3.65 per cent. loan the books close 10 days before the interest period.

If bonds forwarded for transfer be not received prior to or upon the day fixed for closing the transfer books, the transfer will not be effected until after the reopening of the books; and consequently the interest for that quarter or half year (as the interest term may be) will be declared in favor of the parties whose names appear upon the face of the old bonds, and to them the assignees must look for any interest claimed.

Form of Power of Attorney to Collect Interest Checks.

Know all men by these presents, that ——— ——— of ———, do appoint ——— ——— ——— attorney to receive from the proper officer and to indorse checks for interest in ——— name on the books of the Treasury Department of the United States; granting to said attorney power to appoint one or more substitutes for the purpose herein expressed; hereby ratifying and confirming all that may lawfully be done by virtue hereof.

Witness ——— hand- and seal- this ——— day of ———, 18—.

——— ———. [L. S.]

——— ———. [L. S.]

Signed, sealed and acknowledged in the presence of—

(To be acknowledged as directed below.)

——— ———

Note.—When intended to be special, insert after the word "interest" in this form [due on the ——— of the ———, 19—, on all bonds stand-

ing in ———.] When general, insert [now due and which may hereafter accrue on all bonds standing, or which may hereafter stand, in ———.]

EXECUTION OF POWERS OF ATTORNEY TO INDORSE INTEREST CHECKS.—Powers of attorney must be acknowledged either before the Treasurer or an Assistant Treasurer of the U. S., a U. S. judge, U. S. district attorney, clerk of the U. S. court, collector of customs, collector of internal revenue, president, vice-president or cashier of a National bank, or a notary public. If in a foreign country, powers must be acknowledged either before a U. S. minister, chargé, consul, vice-consul, commercial agent, or notary public. If before the latter, his official character and the genuineness of his signature must be properly verified.

The acknowledging officer must add his official designation, residence and seal, if he have one; if he have no seal of office, he should certify such to be the fact.

Powers of attorney and testamentary evidence designed as authority to collect interest checks should be filed with the Auditor for the Treasury Department.

FORM OF AUTHORITY BY RESOLUTION FOR THE INDORSEMENT OF INTEREST CHECKS.

At a regular meeting of ———, held at ———, in the State of ———, on the ——— day of ———, 19—, a quorum being present, it was, on motion,

Resolved, That ——— ——— be, and is hereby, authorized to receipt for and to indorse checks for interest due, or to become due, on all United States bonds registered in the name of ——— ——— on the books of the Treasury Department, with power to appoint one or more substitutes for the purposes herein expressed, until such authority is officially revoked, and notice of revocation is properly given to the Treasury Department.

A true copy of the minutes.

(Signed.) ——— ———, *President.*

[SEAL.] Attest: ——— ———, *Secretary.*

NOTE.—Where the society or institution has no *seal*, it will be requisite to acknowledge the instrument before a notary or some other competent officer having an official seal. If the president, cashier, secretary, or treasurer be authorized to indorse the checks, the instrument must be certified by an officer other than the one empowered to make the indorsement.

The Auditor of the Treasury should be advised where interest checks indorsed by attorneys will be presented for payment.

INTEREST TO JOINT HOLDERS OF REGISTERED BONDS.—Interest will be paid to any one of several joint holders, or co-trustees, executors, administrators, or guardians; but in the execution to a third party of a power to collect interest checks all must join. In case of the death of any such joint holders, co-trustees, etc., the survivor or survivors will be recognized as having full authority, upon due proof of such death and survivorship.

PAYMENT OF INTEREST ON U. S. R. BONDS IN NAME OF MINORS.—When government bonds are registered in the names of infants, checks issued in payment of interest thereon will be paid only to the proper guardian of such infants, when the Secretary of the Treasury has been notified of such infancy.

Neither the father nor mother of an infant has the right, as a general rule, to indorse or collect such checks.

The guardian of an infant, in order to indorse and collect interest checks in favor of his ward, is required to file with the Auditor for the Treasury Department evidence (1) of guardianship, (2) of his authority being in force, and (3) of the identity of his ward as the payee in the bonds.

The Government is not liable to refund to an infant, on his arriving at the age of majority, money paid to him on his indorsement of checks during minority, when the Secretary of the Treasury had not been notified of the fact of infancy. (Department Circular No. 6, dated February 7, 1881.)

UNCLAIMED INTEREST.—The interest on registered bonds which has been returned to the Treasury as unclaimed can be collected only in person or by attorney at the U. S. Treasury.

For the convenience of the public, and to save charges, powers to collect specified unclaimed interest may be made in favor of the Chief of the Division of Loans and Currency of the Secretary's office.

LOST REGISTERED BONDS.—In case of the loss of registered bonds, the Secretary of the Treasury should be promptly notified, in order that a caveat may be entered against the transfer of the missing bonds on the books of the department.

FORM OF REQUEST FOR CAVEAT.

SECRETARY OF THE TREASURY.

SIR: The registered bonds described below, standing in my name, were stolen from the undersigned on or about the —— of —— last. Please enter a *caveat* against their transfer:

No. ——, for $——, Act of ——, 19—, —— per cent., and No. ——, for $——, act of ——, 19—, —— per cent.

Very respectfully, —— ——,

—— ——.

Lost Coupon Bonds, Notes and Coupons.—The Government cannot protect, and will not undertake to protect, the owners of lost coupon bonds (they being payable to bearer) and Treasury notes issued and remaining in blank at the time of loss, but such bonds and notes will be paid to the party presenting them in the course of regular business; and no attention will be paid to caveats which may be filed for the purpose of preventing such payment. (Department Circular of April 27, 1867.)

Duplicate for Destroyed or Defaced Bonds—Section 3702 R. S.—Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the U. S. has, wholly or in part, been destroyed, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof, they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call.

Section 3703 R. S.—The owner of such destroyed or defaced bond shall surrender the same, or so much thereof as may remain, and shall file in the Treasury a bond in a penal sum of double the amount of the destroyed or defaced bond, and the interest which would accrue thereon until the principal becomes due and payable, with two good and sufficient sureties, residents of the U. S., to be approved by the Secretary of the treasury, with condition to indemnify and save harmless the U. S. from any claim upon such destroyed or defaced bond.

Duplicates for Lost Registered Bonds—Section 3704 R. S.—Whenever it is proved to the Secretary of the Treasury, by clear and satisfactory evidence, that any duly registered bond of the U. S., bearing interest, issued for valuable consideration in pursuance of law, has been lost or destroyed, so that the same is not held by any person as his own property, the Secretary shall issue a duplicate of such registered bond, of like amount, and bearing like interest and marked in the like manner as the bond so proved to be lost or destroyed.

Section 3705 R. S.—The owner of such missing bond shall first file in the Treasury a bond in the penal sum equal to the amount of such missing bond, and the interest which would accrue thereon, until the principal thereof becomes due and payable, with two good and sufficient

sureties, residents of the U. S., to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the U. S. from any claim because of the lost or destroyed bond.

Parties presenting claims on account of a coupon or registered bond of the U. S. which has been destroyed, wholly or in part, or on account of a registered bond which has been lost, will be required to present evidence showing :

1. The number, denomination, date of authorizing act, and rate of interest of such bond; whether coupon or registered; and, if registered, the name of the payee. In the case of a registered bond, it should also be stated whether it had been *assigned or not* previous to, or since, the alleged loss or destruction, and, if assigned, by whom, and whether assigned in bank or to some person specifically by name; and if assigned in the latter manner the name of the assignee should be given.

2. The time and place of purchase, of whom purchased, and the consideration paid.

3. The place of deposit of the missing bond; whether or not any person or persons, other than the owner, had access thereto; and in the event of its having been accessible to other parties, their affidavits, in addition to that of the owner, should be furnished, showing their knowledge of the existence of the bond, and of the fact of its loss or destruction.

4. The material facts and circumstances connected with the loss or destruction of the bond.

5. It should be shown by the affidavits of credible persons, if practicable by U. S. officers, that the statements of the claimant as set forth in his affidavit are worthy of the confidence of the Department, and that he is the identical person named in the application.

6. Affidavits sworn to before a notary public, a United States commissioner or a justice of the peace must be accompanied by a certificate from the proper court showing that the officer was in commission on the date of the execution of the document.

In all cases the evidence should be as full and clear as possible, that there may be no doubt of the good faith of the claimant. Proofs may be made by affidavits duly authenticated, and by such other competent evidence as may be in the possession of the claimant.

General Form of Affidavit.

——— } *ss* :
———

Personally appeared before me, a notary public in and for the city of ———, county of ——— and State of ———, the subscriber, ——— ———, of ———, county of ———, and State of ———, who, being duly sworn according to law, deposes and says that ——— is the lawful owner of the following described registered bonds of the United States, viz.:

No. ——, for $——, act of ——, 19—, —— per cent., and No. ——, for $——, act of ——, 19—, —— per cent., registered in —— name on the books of the Treasury Department, ——, 19—; that no assignment or transfer of said bonds [or either of them] has been made or authorized by ——— or ——— attorney, either in blank or by a specific assignment, or in any manner whatever; that said bonds have not, nor has either of them, by hypothecation, pledge, loan, or otherwise, passed from the custody or control of said —————, (his or her) knowledge or consent; that the said bonds were stolen from ———, the said ——— ———, at ———, on the ———, by some person or persons unknown to ———; and that due diligence has been exercised in endeavoring to recover the said bonds, without success. [State what has been done.]

——— ———,

of ——— ———, ——.

Sworn to and subscribed before me this the ——— day of ———, A. D., 18—. And I certify that said ——— ——— is personally well known to me to be the identical person mentioned in the foregoing affidavit.

——— ———,

[NOTARIAL SEAL.] *Notary Public.*

Affidavits and other evidence pertaining to the claim should be transmitted to the Secretary of the Treasury. Upon receipt of such documentary evidence it will be referred to the Comptroller of the Treasury for his opinion as to its sufficiency. The applicant will be advised of the decision as soon as it is reached. *If it be favorable to such applicant*, a blank indemnity bond will be forwarded to him for execution; and when this indemnity bond shall have been duly executed, returned to the Department, and approved by the Comptroller of the Treasury and the Secretary, the relief desired will be granted.

Sections 3703 and 3705 of the Revised Statutes require that the person giving a bond of indemnity shall furnish two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury. The act of August 13, 1894, however, authorizes the acceptance of a surety company, duly incorporated, in lieu of the two sureties provided for in the sections above quoted. When a surety company has been duly accepted by the Treasury Department its sufficiency need not be certified as is required in the case of personal sureties.

A duplicate in lieu of a lost registered bond will not be issued within six months from the time of the alleged loss.

The interest on an uncalled registered bond will be paid to the payee thereof even though the bond has been lost or destroyed.

Under a decision of the Attorney-General of the U. S. of January 29, 1878, the Secretary of the Treasury cannot give relief in cases where coupons previously detached from the bonds have been destroyed. The decision makes a distinction between coupons destroyed when still attached to the bond and those detached and afterwards destroyed. In

the former case it would amount to a partial destruction or defacement of the bonds themselves; in the latter, the coupons form no part of the bonds, but are then the basis for independent claims, possessing all the essential attributes of commercial paper. That is, a claimant for relief for a coupon destroyed while still attached to bond can get it from the Secretary of the Treasury, under the provisions of Section 3702; but if destroyed after detachment, the claimant must present his claim in the usual manner, and await action of Congress.

Called Bonds.—All U. S. called bonds forwarded for redemption should be addressed to the Secretary of the Treasury, Division of Loans and Currency. When registered bonds are so forwarded they should be assigned to "the Secretary of the Treasury for redemption." Assignments must be dated and properly acknowledged, as prescribed in the note printed on the back of each bond.

Where checks in payment of registered bonds are desired in favor of any one but the payee, the bonds should be assigned to the "Secretary of the Treasury for redemption for account of"—(here insert the name of the person or persons to whose order the check should be made payable.) A party cannot, as attorney, assign bonds for redemption for account of himself as an individual.

Coupons Detached from Called Bonds.—In accordance with a decision of the Attorney-General, January 29, 1878, the Treasury regards a coupon detached from a bond of the United States as a separate obligation, the holder of which is entitled to receive the face value thereof at any time after its maturity on presentation. The rule is therefore established that United States coupon bonds which have been called for redemption should have attached to them, when presented for payment, all of the unmatured coupons. If any such coupons are missing, their face value will be deducted from the proceeds of the bonds when redeemed, and will be held in the Treasury for the redemption of such missing coupons when they are presented.

Detached coupons, belonging to called bonds, maturing on dates subsequent to the date of maturity of the bonds, will not be paid at the subtreasuries of the United States, but should be forwarded to the Treasury Department at Washington for payment.

All correspondence in relation to bonds that have been called in for redemption, or coupons belonging thereto, should be addressed to the "Division of Loans and Currency," Secretary's office.

Exemption of United States Bonds from Taxation.—Section 3701 of the Revised Statutes provides as follows: "All stocks, bonds, Treasury notes, and other obligations of the United States shall be exempt from taxation by or under State or municipal or local authority." This section makes the exemption from taxation binding only upon "State or

municipal or local authority;" but, according to the express terms of the act of Congress of July 14, 1870, the bonds and the interest thereon of the funded loans which are thereby authorized—namely, the loan of 1881, the loan of 1891, and the four per cent. consols of 1907—"shall be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority; and the said bonds shall have set forth and expressed upon their face the above specified conditions." (See also Section 5219, Revised Statutes.)

BONDS OF THE UNITED STATES.

INTEREST BEARING.

Consols of 1907: Act July 14, 1870, and January 20, 1871, 4 per cent., payable July 1, 1907.

Ten-twenties of 1898: June 13, 1898, 3 per cent., payable after August 1, 1908.

Loan of 1925: Act January 14, 1875, 4 per cent., payable February 1, 1925.

Consols of 1930: Act of March 14, 1900, 2 per cent., payable April 1, 1930.

BONDS MATURED AND INTEREST CEASED.—Loan of 1858, June 14, 1858, 5 per cent., payable 15 years from January 1, 1859.

Fives of 1860: June 22, 1860, 5 per cent., payable 10 years from January 1, 1861.

Sixes of 1880: February 8, 1861, 6 per cent., payable December 31, 1880.

Oregon War Loan: March 2, 1861, 6 per cent., payable 20 years from July 1, 1861.

Sixes of 1881: March 3, 1863 (continued April 11, 1881), 3½ per June 30, 1881.

Five-Twenties of 1862: February 25, 1862, 6 per cent., payable after 5 and within 20 years from May 1, 1862.

Currency Sixes Pacific R. R.: July 1, 1862, and July 2, 1864 (issued 1865-1869), 6 per cent., payable in 30 years.

Sixes of 1881: March 3, 1863, 6 per cent., payable June 30, 1881.

Five-twenties of 1864: March 3, 1864, 6 per cent., payable after 5 and within 20 years from November 1, 1864. R

Ten-forties: March 3, 1864, 5 per cent., payable after 10 and within 40 years from March 1, 1864.

Five-twenties of 1864: June 30, 1864, 6 per cent., payable after 5 and within 20 years from November 1, 1864.

Five-twenties of 1865: March 3, 1865, 6 per cent., payable after 5 and within 20 years from November 1, 1865.

Consols of 1865: March 3, 1865, 6 per cent., payable after 5 and within 20 years from July 1, 1865.

Consols of 1867: March 3, 1865, 6 per cent., payable after 5 and within 20 years from July 1, 1867.

Consols of 1868: March 3, 1865, 6 per cent., payable after 5 and within 20 years from July 1, 1868.

Funded Loan of 1881: July 14, 1870, and January 20, 1871, 5 per cent., payable after May 1, 1881.

Sixes of 1881: July 17, and August 5, 1861 (continued April 11, 1881), 3½ per cent., payable at pleasure of U. S.

Sixes of 1881: March 3, 1863, (continued April 11, 1881), 3½ per cent., payable at pleasure of U. S.

Funded Loan of 1881: July 14, 1870, and January 20, 1871(continued May 12, 1881), 3½ per cent., payable at pleasure of U. S.

Funded Loan of 1882: July 12, 1882, 3 per cent., payable at pleasure of U. S.

Funded Loan of 1891: July 14, 1870, and January 20, 1871, 4½ per cent., continued at 2 per cent., payable at pleasure of U. S.

Five per cent. loan of 1904: July 14, 1870, and January 14, 1875, issued February, 1894, payable in 10 years.

INDORSEMENT OF TREASURY DRAFTS.

The name of the payee, as indorsed, must correspond in spelling with that on the face of the draft; no guarantee of an indorsement, imperfect in itself, can be accepted. If the name of a payee, as written on the face of a draft, is spelled incorrectly, the draft should be returned to the Treasurer of U. S. for correction.

Indorsements by mark (X) must be witnessed by two persons who can write, giving their places of residence.

Indorsements by executors, administrators, guardians or other fiduciaries must be accompanied by certified copies, under seal, of letters testamentary, letters of administration, of guardianship, or other evidence of fiduciary character, as the case may be.

Payees and indorsees must indorse by their own hands; officials, officially with full title; firms, the usual firm-signature by a member of the firm, not by a clerk or other person for the firm.

Every indorsement must be by the proper written (not printed) signature of the person whose indorsement is required.

Powers of attorney for the indorsement of drafts in payment of claims must state the number, date and amount of draft, and number and kind of warrant, and be dated subsequently to the date of the drafts; must be witnessed by two persons, and must be acknowledged by the constituent before the Treasurer of the U. S. or an Assistant Treasurer, a judge or clerk of a District Court of the U. S., a collector of customs, a notary public under his seal, or a justice of the peace in those States only in which such justice has authority to take acknowledgments of deeds, or commissioner of deeds; if before either of the two

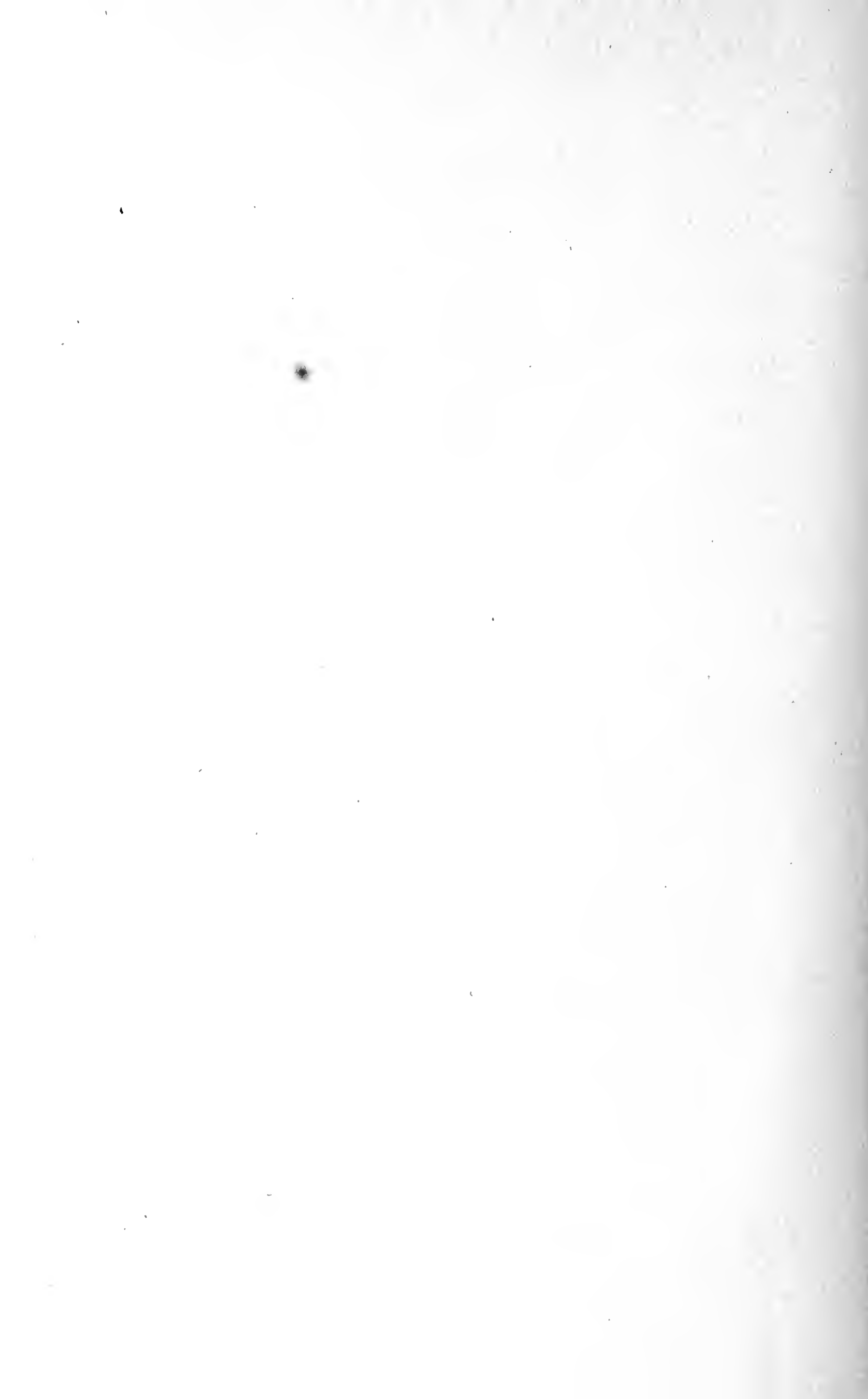
latter, the certificate and seal of the county clerk as to the official character and signature of the justice or commissioner is required.

If executed in a foreign country, the acknowledgment must be made before a notary public with his seal attached, or a U. S. Consul or Minister. The officer taking the acknowledgment must certify that the letter of attorney was read and fully explained to the constituents at the time of acknowledgment, and that said constituent is personally well known to him to be the identical person named in and who subscribed his name to said power of attorney. (See Revised Statutes, sections 1778 and 3477.)

Evidence of authority to indorse for incorporated or unincorporated companies must accompany drafts drawn or indorsed to the order of such companies or associations. Such evidence should be in the form of an extract from the by-laws or records of the company or association, showing the authority of the officer to indorse and receive and receipt for moneys for the company, and giving his name and the date of his election or appointment, which extract must be verified by a certificate under seal signed by the president and secretary, or by one of these officers and not less than two of the directors; which certificate must state that such authority remains unrevoked and unchanged. If the company have no seal, the extract should be certified as correct by a notary public or other competent officer under his seal. When a resolution is adopted at a special meeting of directors, it must be shown that all had notice of the time and place of such meeting, and that a quorum assented to the resolution.

In cases where an individual or a copartnership is doing business under a company title, the affidavit of the owner or of the members of the copartnership will be required, showing the fact of ownership and naming the person who is authorized to indorse and receive and receipt for moneys for the owners.

The indorsement of all the joint holders or co-trustees, executors, administrators, guardians or other fiduciaries will be required on drafts, and in the execution of a power to a third party to collect, all must join. In case of death of either, the survivors will be recognized as having full authority upon due proof of such death and survivorship.



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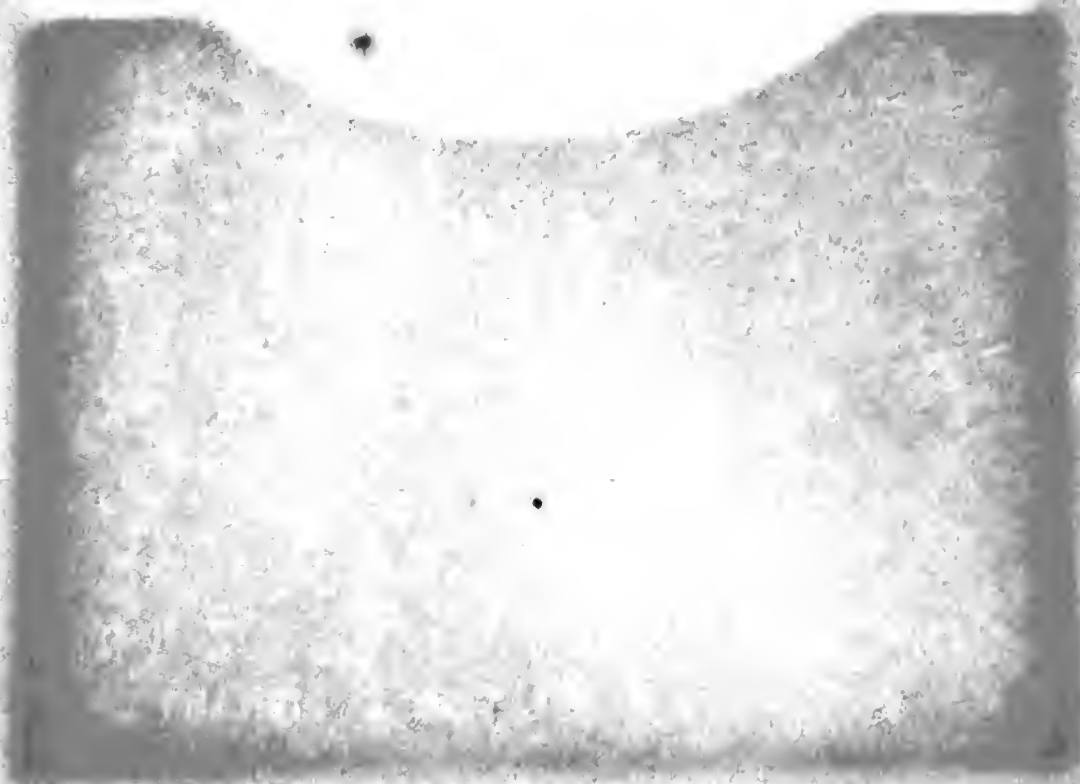

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