

**A HANDY BOOK ON THE LAW OF
BANKING: WITH A CLEAR AND
COMPLETE EXPOSITION OF ITS
PRINCIPLES, CUSTOMS, AND PRACTICE,
IN ENGLAND, SCOTLAND, AND IRELAND**

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A Handy Book on the Law of Banking: With a Clear and Complete Exposition of Its Principles, customs, and practice, in England, Scotland, and Ireland by William John Lawson

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[ENTERED AT STATIONERS' HALL.]

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ITS PRINCIPLES, CUSTOMS, AND PRACTICE,
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BY
WILLIAM JOHN LAWSON,
AUTHOR OF "THE HISTORY OF BANKING."

"Laws ought not to be subtle, since they are designed for people of common understanding."—MONTESQUIEU.

THIRD THOUSAND.



LONDON:
EFFINGHAM WILSON, ROYAL EXCHANGE.
1859.

P R E F A C E.

HAVING had upwards of thirty years' experience of the law and practice of banking, I feel myself justified in having undertaken the compilation of the following treatise.

Much of the law of banking is the result of such cases as have, from time to time, been decided in our courts. It is thus greatly a matter of precedent. All such works, however, as contain what may be termed the written laws, have been carefully consulted and condensed.

My endeavour has been to embrace the legal results of as many decisions as I could consistently with the desire of bringing the work within the compass of what its title imports.

WILLIAM JOHN LAWSON.

CONTENTS.

CHAPTER.	PAGE
I.—INTRODUCTION.—On the Nature and Attributes of Charters	5
II.—Of the Powers, Privileges, and Advantages of the Bank of England	8
III.—Of the Nature and Quality of Bank of England Notes	14
IV.—Laws, Customs, and Practices of Banks not being Banks of Issue	20
V.—Laws and Customs relating to Bankers' Cheques, with an Account of the Clearing House, and Nature of the Business carried on there	32
VI.—On the Laws and Regulations of Banks of Issue	42
VII.—On Joint-Stock Banks and the Laws by which they are regulated	49
VIII.—On the Laws, Customs, and Practices of Banking in Ireland	56
IX.—On the Laws, Customs, and Practices of Banking in Scotland	62

CHAPTER I.

INTRODUCTION.

1. *How Corporations may be established.*
2. *How Charters are distinguished from Acts of Parliament.*
3. *By whom Charters are granted, and how.*
4. *Difference between Incorporated and Unincorporated Bodies.*

1. As all future banks of more than six partners must be established by letters patent or by Royal Charter, we propose to glance cursorily at the nature of charters, and then consider the peculiar laws, principles, customs, and practices of the existing banks, in the United Kingdom.

When a body of men become incorporated by Royal Charter or letters patent, they are termed bodies politic or corporate, and they may be established in three different ways, viz., by prescription, by letters patent, or by Act of Parliament, but most generally by patent or charter. The City of London is a corporation by prescription.

When a corporation is lawfully created, all powers, such as to purchase and grant, sue and be sued, are tacitly annexed to the Charter; and although no powers to make laws, statutes, or ordinances, are given by a special clause to a corporation, they are included by law, in the very act of incorporation, as without such powers the charter would be inoperative.

2. Charters are distinguished from Acts of Parliament in this way, viz., that the former are writings sealed with the Great Seal of England, by virtue of which, a body of men are authorised to do or to enjoy anything exclusively for a period of time named in the Charter, and which of themselves, singly or collectively, they are unable to do.

3. The privilege of granting charters is the exclusive prerogative of the Crown, and they are usually stated to be granted by "virtue of the King's prerogative Royal, and of his especial grace, certain knowledge, and mere motion."

Letters patent or Charters are so called by reason of the form, as being open with the seal affixed, ready to be shown for the confirmation of the authority thereby given; but in the case of an incorporated body constituted by Act of Parliament, there is nothing to show save a printed statement of the proceedings of the Houses of Parliament on a given day, which statement is called an Act of Parliament, and usually begins thus: "Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same;" and so forth.

Thus for instance the Bank of England was established conjointly by an Act of Parliament and Royal Charter; its common seal is and must be affixed, to every bank note that is issued, and consists of the not very handsome representation of Britannia. The Bank of Scotland was incorporated by an Act of the Scottish Parliament, and the Bank of Ireland by the Irish Parliament; the two latter have, therefore, no written authority.

Royal Charters, for the formation of banking establishments, were seldom granted; we had until recently only one in England—the Bank of England; and in Scotland four—the Royal Bank, the British Linen Company, the National Bank, and the Commercial Bank of Scotland. In Ireland there are none.

4. In an incorporated bank, the law does not recognise individuals, but knows it only in its corporate character; for a corporation being an invisible body cannot manifest its intentions by any personal act or oral discourse; it is said to have no soul or conscience, but acts and speaks only by its common seal. In an unincorporated body, on the contrary, the law recognises individuals only in their character as co-partners in the undertaking.

The following are some of the legal advantages of an incorporated over an unincorporated bank. No creditor

can attach any shareholder without first seeking his remedy against the corporate funds and property of the bank, which must first be exhausted before any legal proceedings can be taken against an individual shareholder, and not then without special application to a judge, and even in that case the law provides a remedy, for every shareholder must contribute an equitable proportion to protect the party who may be sued.

Nor can the losses of the corporation be unjustly entailed upon any single member of the body Corporate, but must be distributed over the whole of the members in proportion to the number of shares held by them respectively.

When a charter is put an end to by the parties themselves it is said to have committed suicide.

CHAPTER II.

OF THE POWERS, PRIVILEGES, AND ADVANTAGES OF THE CORPORATION OF THE BANK OF ENGLAND.

1. *Powers granted by the Charter.*
2. *On the privilege of its being Bankers to the State.*
3. *Nature of its business with the Government, and the legal safeguards that surround it:*
4. *The separation of the Bank into two independent Departments, one for the issue of Notes and the other for Banking purposes. Legal effects of this measure.*
5. *Regulation as to the public Accounts.*
6. *Its Agency business.*

1. In giving a digest of the laws and customs relating to banking, it must be evident that the Bank of England claims our first consideration; for history furnishes no example that can at all be compared with it, for the range and multiplicity of its transactions, and for the vast influence it possesses over public and national affairs.

The charter of this important corporation, which is in force at the present day, was granted in 1694, by William and Mary. It enumerates at some length the fundamental principles of the corporation, and displays, in the manner in which it is drawn up, a considerable extent of knowledge of commercial affairs.

It restricts the corporation to the dealing in bills of exchange, and in gold and silver. It prohibits its members, as a body, from taking part in any mercantile concern, but authorises them to make advances of money on the security of merchandise lodged with it, or pledged by written documents. It also provides for the manner in which such pledged goods may be disposed of, in case of non-redemption.

The privileges conferred by this charter have from time to time been made the subject of parliamentary inquiries,