

**QUESTIONS ON BANKING
PRACTICE FROM VOLS. I-XII
(INCLUSIVE) OF THE JOURNAL.
THE INSTITUTE OF BANKERS**

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W. TALBOT AGAR

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The Institute of Bankers.

Questions on Banking Practice,

From Vols. I—XII (inclusive) of the Journal.

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THE COUNCIL OF THE INSTITUTE.

*Classified and Indexed by W. TALBOT AGAR, Barrister-at-Law,
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PREFATORY NOTE TO THE FIRST EDITION.

From the date of the establishment of the Institute of Bankers the Council have received various Questions on Points of Practical Interest, which, together with Answers thereto, have been published from time to time in the Journal. These Answers, without claiming the authority of legal decisions or absolute infallibility in every detail of so much complicated or contentious matter, are such as the Council, after careful consideration, have felt themselves justified in giving as representing the generally accepted practice of Bankers at the time.

This book has been prepared with a view of rendering these Questions as readily accessible for reference as possible. Since the commencement of the issue of the Journal, the passing of certain Acts of Parliament, such as the Bills of Exchange Act, the Married Woman's Property Act, and others have rendered necessary the alteration, and in some cases the entire omission, of certain Questions. The remainder have undergone careful revision by the Council, and are now issued with their approval.

NOTE TO THE FOURTH EDITION.

This Edition comprises the Questions contained in previous issues of the Work, and, in addition, those which have since appeared in the Journal of the Institute to the end of 1891. The whole Work has again undergone careful revision by the Council.





QUESTIONS ON BANKING PRACTICE.

BANKER—

1.—QUESTION : Banker A receives from his customer (or another bank through the post) a bill of £20 domiciled with bank C in the same town. The bill is duly presented at maturity, and C tenders £16 in part payment, and marks the bill, "the balance £4 is promised to-morrow." Ought A to refuse the amount tendered, or, in the interest of his customer, to receive it ?

ANSWER : A should refuse part payment.

2.—QUESTION : Within what period must a banker present for payment cheques handed to him by his customer for credit ; and, if unpaid, when is the banker bound to return them or give notice to the customer ?

ANSWER : A banker receiving cheques from his customer for credit has, with regard to cheques drawn on bankers and others in the same place, the whole of the day on which they are received and of the next day for presentation, and if unpaid, they should be returned to the customer either by post on the evening of the said next day or by hand on the following morning.

3.—QUESTION : Give similar replies respecting cheques sent per post by another banker, both in the case of cheques drawn on the sendee, and of cheques drawn on bankers other than the sendee.

ANSWER : With regard to cheques drawn on other places which have to be forwarded by post to an agent for collection, the banker has in like manner up to the evening of the day after receipt to post them to his agent, and the agent has up to the day after his receipt of them to present them to the drawees.

A banker receiving cheques by post for payment drawn upon himself has the same time for presentment, it being held that he is acting as agent of the sender. (See Counsel's opinion, Question 4.)

4.—QUESTION : A cheque drawn upon banker A (say at Oxford) is paid to banker B (say at Bristol) by a customer for collection. B forwards it by the post of Monday to A (with whom he has no current account) with a request that the amount may be remitted in the usual

BANKER—continued.

course. A receives the cheque on Tuesday morning, retains it until Wednesday, and then returns it by post dishonoured to B. The usual, and it may be said almost invariable, course would have been to return it by the post of the day on which it was received, and B contends that A was under a legal obligation to do so. He argues upon the authority of the cases of *Bailey v. Bodenham*, 32 L. J. (C. P.), 254; *Prideaux v. Criddle*, 4 L. R. (Q.B.), 460; and *Heywood v. Pickering*, 9 L. R. (Q.B.), 432, that a presentment of the cheque through the medium of the post is a good presentment, and contends that it would be quite as reasonable for A to claim to retain a cheque presented over the counter as to do so in the case of one presented through the post.

A, on the other hand, contends that under the circumstances he became the agent of B for the purpose of presenting the cheque, that it was in that character, and not in his character of drawee, that the duty of returning the cheque or giving notice of dishonour to A was imposed upon him, and that, if this be so, his duty must be the same as if the cheque had been sent to him for presentation to another banker in the same town.

It is admitted on both sides that in the latter case the cheque need not have been returned until Wednesday.

You are requested to advise what, under the circumstances stated, was A's legal obligation in reference to the return, or otherwise giving notice of dishonour of the cheque.

(OPINION.)

We are of opinion that the Oxford bank (A) on dishonouring the cheque is under no legal obligation to return the dishonoured cheque or send off notice of dishonour to the Bristol bank (B) until Wednesday, the day after the cheque was received.

We think that in returning the dishonoured cheque and sending notice of dishonour the Oxford bank is acting, not in its capacity of drawee of the cheque, but as agent for the Bristol bank, and that its legal obligation is certainly fulfilled by its acting with reasonable diligence. According to all analogy, the bank would be acting with reasonable diligence if it returned the cheque and gave notice of dishonour on the Wednesday.

ARTHUR COHEN, Q.C.

M. D. CHALMERS.

5.—QUESTION: A B pays a country cheque to his account on a Monday, and being anxious to ascertain its fate without delay, requests his banker to forward it direct. The bank on which the cheque is drawn duly receives it on Tuesday, but does not return it until the following day, so that it is not received back unpaid until

BANKER—*continued.*

Thursday. Not receiving it on Wednesday, the banker informed their client that the cheque was cleared, and he acted accordingly. On representing the matter to the bank on which the cheque was drawn, they state that they are entitled to hold over the cheque until the second day, by the *Bills of Exchange Act*. Is this so?

ANSWER : The bank on which the cheque was drawn was entitled to hold it over until the day after receipt. See Question 4. The matter is not mentioned in the *Bills of Exchange Act*.

6.—QUESTION : A bill of exchange is remitted for collection from bank A to bank B, at which office the bill has been accepted payable. Bank B, though the bill is dishonoured, retains it until the day following, then returning it by post, the bill not having been noted. Is bank B within its rights and free from all liability in thus retaining the bill and not getting it noted? Would the answer be the same if it were a cheque drawn on bank B? Might the *Bills of Exchange Act*, 1882, sec. 49, sub-sec. 6, 12, 13, and sec. 51, be quoted as a defence by bank B?

ANSWER : Bank B is quite in order in retaining the bill sent to him for collection until the day following receipt (See Question 4), and, if an inland bill, noting is not necessary. The retention of a cheque until the following day is equally permissible, unless it has passed through the country clearing, the rules of which require return of cheques by first post.

7.—QUESTION : If a cheque on a bank be paid in to an account at the same bank, there being insufficient funds at the time to meet the cheque, should the cheque be returned unpaid at once? Or, if held, should the customer who pays it in be informed that the cheque is doubtful?

ANSWER : The cheque may be held till the next day, and no information need be given to the customer paying it in.

8.—QUESTION : Bearing in mind sections 49, 12 *b*, and 73 of the *Bills of Exchange Act*, 1882, it would seem that (inasmuch as a cheque is a bill of exchange payable on demand) it would be legal for a banker to retain until the day following a cheque received from another bank by post, or through the country clearing. But it would be contrary to custom to do so. If it is ruled that custom would override law, would the case be altered if notice of dishonour had been given by telegraph on the said day following?

ANSWER : It would be legal for a banker to retain a cheque which he had received by post from another banker till the following day,