

**Reynes Vs. Dumont**

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**Court :** US Supreme Court

**Decided On :** Apr-08-1889

**Appeal No. :** 130 U.S. 354

**Appellant :** Reynes

**Respondent :** Dumont

**Judgement :**

Reynes v. Dumont - 130 U.S. 354 (1889)

U.S. Supreme Court Reynes v. Dumont, 130 U.S. 354 (1889)

**Reynes v. Dumont**

**Nos. 174, 175**

**Argued January 23-24, 1889**

**Decided April 8, 1889**

**130 U.S. 354**

*APPEALS FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE SOUTHERN DISTRICT OF NEW YORK*

## SYLLABUS

The controversy in this case involves the allowance in favor of the trustee in bankruptcy of S. of liens upon certain bonds, owned in fact by C. and D., though ostensibly belonging to C. only, as pledged to secure, by express agreement, the general balance of account of a New Orleans bank,

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of which C. was President, and also, by implication from the usage of the banking business in which S. was engaged, C.'s general balance.

The Court is of opinion upon the evidence that the bonds were pledged to secure the remittance by the bank to S. of "exchange bought and paid for," that is, bills drawn against shipments and purchased by advances to the shippers, and that they cannot be held to make good a debit balance of the bank created by the nonpayment of certain drafts drawn by it directly on Europe and unaccompanied by documents.

A banker's lien rests upon the presumption of credit extended in faith of securities in possession or expectancy, and does not arise in reference to securities in possession of a bank under circumstances, or where there is a particular mode of dealing, inconsistent with such lien.

The pledge of these bonds to guarantee the remittance by the bank as before stated and the circumstances under which they were left in the possession of S., and had been made use of by C., preclude the allowance of the banker's lien claimed on behalf of S. as against the ultimate indebtedness of C.

The receipt by P. and the assignee of C. of the remaining bonds and money realized from bonds or coupons, after the satisfaction of the amounts decreed as liens by the circuit court, did not deprive P. and C.'s assignee of the right of appeal. *Embry v. Palmer*, [107 U. S. 3](#) , [107 U. S. 8](#) , approved.

Where the objection of want of jurisdiction in equity because of adequate remedy at law is not made until the hearing on appeal, and the subject matter belongs to the class over which a court of equity has jurisdiction, this Court is not necessarily obliged to entertain such objection even though, if taken *in limine*, it might have been worthy of attention.

The case, as stated by the court in its opinion, was as follows:

On the 14th of June, 1877, Frederick Dumont, August Henry Reine, and John David Moekel, who composed the firm of F. Dumont & Co., filed their bill in the Circuit Court of the United States for the Southern District of New York against Charles M. Fry, trustee of Schuchardt & Sons, bankrupts; Francois Laborde and E. H. Reynes, assignees of Charles Cavaroc & Son, bankrupts; the Louisiana National Bank of New Orleans, and N. W. Casey, receiver of the New Orleans National Banking Association, claiming to be the owners of 232 bonds of the City of New Orleans, each for the amount of \$1,000, which had been in the possession of Schuchardt & Sons, and were then in the

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possession of Fry, their trustee in bankruptcy, who also held moneys received from the coupons attached to the said bonds, and by amendment set forth that the bonds were purchased by Cavaroc & Son with the money of Dumont & Co., for their joint account, but not in the name of Dumont & Co., nor in the joint names of Dumont & Co. and Cavaroc & Son; that Fry, trustee, refused to deliver up the bonds, and claimed to hold them as security for sums due him from Cavaroc & Son and Casey, as receiver, and that Fry is not entitled to hold the bonds. The bill prays that he be decreed to deliver them up, with the money received from the sale of coupons cut therefrom, and for further relief.

Fry claimed to hold the bonds upon a banker's lien for a balance of account due Schuchardt & Sons by Cavaroc & Son, and upon a lien by agreement for an unsecured balance due by the New Orleans National Banking Association, to the extent of \$100,000. A decree was rendered December 6, 1882, sustaining the

liens asserted by the defendant Fry, and directing him to account as to the amount of the same, and of certain coupons which he had collected. March 5, 1884, a final decree was entered adjudging the amounts due on account of the alleged liens respectively and directing that so much of the said bonds as might be necessary to pay the same, with interest, should be sold under the direction of the master. This was done, and Fry was paid the amount of said liens, and the balance was turned over to Dumont & Co. and Reynes, surviving assignee, Laborde having died pending the action. The master's final report was confirmed February 11, 1885, and appeals were prosecuted by Dumont & Co. and Reynes, surviving assignee, to this Court.

The following facts appear in evidence:

Schuchardt & Sons were bankers at the City of New York during the period covered by the transactions in question, and correspondents and financial agents of Cavaroc & Son, who were engaged in the commission and banking business in the City of New Orleans. Charles Cavaroc, the senior member of the latter firm, was at the same time President of the New

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Orleans National Banking Association, with which Schuchardt & Sons had similar business relations. Two hundred and seventy-five bonds of the City of New Orleans -- a large part of them belonging to Dumont & Co., though it is not shown that Schuchardt & Sons had notice of this -- were left by Cavaroc & Son with Schuchardt & Sons in September, 1870, the number having been subsequently reduced to 232.

The bonds were purchased in 1870 with the proceeds of drafts on Dumont & Co. to the amount of about 1,000,000 francs, which had been renewed from time to time until after the failure of Cavaroc & Son, when Dumont & Co. paid them to the amount of 484,000 francs. Cavaroc & Son had negotiated drafts for 200,000 francs on Dumont & Co., with Schuchardt & Sons, shortly before the failure, growing out of the original purchase of bonds, and these, not having been paid,

were charged back to Cavaroc & Son by Schuchardt & Sons, thereby contributing to produce a debit balance of \$7,454.22 on January 12, 1874, although protested drafts on Maxquelier Fils for \$6,562.23 were also included.

These drafts for 200,000 francs had been accepted by Dumont & Co., and were protested, not for nonacceptance, but for nonpayment, and an action was commenced January 3, 1874, by Schuchardt & Sons against Dumont & Co. on their acceptances in the Supreme Court of New York, and an attachment levied on the bonds in question here in the hands of Schuchardt & Sons. Satisfaction of recovery in this suit would more than pay the debit balance of Cavaroc & Son as finally stated in these proceedings.

It was stipulated between the attorney for Dumont & Co. and the attorneys for the assignee of Cavaroc & Son that the balance of the bonds and moneys to be paid over after the liens awarded by the court were satisfied should be divided in the proportion of seventy-four percent to Dumont & Co. and twenty-six percent to Cavaroc & Son.

Both the Cavarocs testify that the bonds were left with Schuchardt & Sons for safekeeping, Cavaroc, Jr., referring to a particular loan on them in the fall of 1870, which led to their

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being sent to New York, where they then remained on account of the heavy express charge and the fact that New York was a better market in which to dispose of them, but Wells, a member of Schuchardt & Sons, testifies:

"On the 20th of September, 1870, we deposited with M. Morgan's Sons the above \$275,000 New Orleans bonds against a loan made by them of \$200,000 to the Bank of New Orleans, and \$110,000 to C. Cavaroc as part collateral for those loans. On the 21st December, 1870, M. Morgan's Sons returned us the above bonds against the payment of the two loans. On the 6th of March, 1871, we delivered \$5,000 of the above bonds to Henry Beers by order of C. Cavaroc. On the 1st of April, 1871, we delivered \$160,000 of above bonds to Marks & Febre by

order of C. Cavaroc. On the 29th of May, 1871, we delivered \$110,000 of above bonds to M. Morgan's Sons against a loan of \$100,000. On the 30th May, 1871, Marks & Febre returned us above \$160,000 bonds, against which we loaned Cavaroc \$100,000, falling due 2d of October, 1871. On the second of October, 1871, M. Morgan's Sons returned us the \$110,000 bonds on payment of their loan. On the 27th of February, 1872, we forwarded to Cavaroc at New Orleans, \$8,000 of above bonds as per his order. On the 13th of April, 1872, we delivered \$160,000 of above bonds to Importers' & Traders' National Bank of this city by order of Cavaroc. On the 28th of June, 1872, the Importers' & Traders' National Bank returned us the above \$160,000 bonds. On the 31st of August, 1872, we delivered \$30,000 of above bonds to Spofford Bros. & Co. by order of Cavaroc. On the 27th of May, 1873, we delivered \$50,000 of the above bonds to the Importers' & Traders' National Bank of New York by order of Cavaroc. On the 3d of September, 1873, the Importers' & Traders' National Bank returned the above \$50,000 bonds."

He considers that the bonds were held by his firm for any balances that the New Orleans National Banking Association might owe, and says that Schuchardt & Sons held them up to the time they were pledged to the bank as security for "whatever Cavaroc & Son might be indebted for," but that they had no written authority to hold the bonds collaterally for the bank's

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indebtedness, that he knew of, other than the letter of Cavaroc, Sr., of February 15, 1873, hereinafter set forth. He testifies, however, that there was

"a general understanding to that effect arrived at with [in] conversations with C. Cavaroc, Jr., at different times when he was in New York -- among others, in August or September, 1873,"

although in another portion of his evidence he says: "I think they were alluded to in 1873, during his visit to New York in the fall of 1873. I feel quite confident they were alluded to in 1873," which is "as positive" as he "can be upon the subject."

Any such understanding is specifically denied by Cavaroc, Jr., who asserts that he "Never made any agreement, verbal or otherwise, in reference to the bonds, with Mr. Wells or anyone else, and never made with Mr. Wells or anyone living any agreement or arrangement about the bonds or any other bonds to be held as general security in matters with the New Orleans National Banking Association, or even C. Cavaroc & Son; never had any conversation with Mr. Wells about the bonds in any manner whatever, outside of a remark, as above stated, in the summer of 1873, to know if our trust was all right in their vault, which any merchant would pass upon in conversation, to be certain that no accident happened to the trust or deposit for safekeeping."

The New Orleans National Banking Association dealt largely in foreign bills of exchange, which it negotiated through Schuchardt & Sons. By the course of business, the amount of the foreign bills it remitted from time to time to Schuchardt & Sons was credited by the latter to the former, and the latter drew upon the former from time to time, as funds were required. According to the custom of business at New Orleans, advances are made by bankers to shippers in anticipation of the actual delivery of drafts with accompanying documents, and the New Orleans Bank consequently advanced funds before it could remit drafts, so as to be credited by Schuchardt & Sons with their amount. For the mutual profit of both concerns, the bank had at times been permitted by Schuchardt & Sons to draw in advance of remittances. Cavaroc & Son were not

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only bankers, but large shippers of cotton abroad, and drew against the proceeds of their bills of exchange, which were accompanied by bills of lading. On the 4th of December, 1871, Schuchardt & Sons wrote the cashier of the New Orleans National Banking Association the following letter:

"New York, Dec. 4th, 1871"

"N. Augustine, Esq., Cashier New Orleans Banking Association, New Orleans, Louisiana."

"Dear Sir: In reply to your inquiry about drawing in advance against purchases of exchange we beg to say that we granted that facility at a time when your foreign exchange business with us was much more extensive, and consequently more remunerative, than at present, and when we held as security a deposit of N. O. city bonds. We were, moreover, induced to make these advances (although, as we explained at the time, we could make a much more lucrative use of the money by using it here) on the assurance of Mr. Cavaroc that you would only temporarily require such facilities, and that your business would increase to such an extent that the future would largely compensate us for any present sacrifices. To our regret, however, such has not been the case, and your business, instead of increasing, has greatly diminished. However, in order to evince our desire of doing all in our power to contribute to the development of our correspondence, we hereby authorize you to draw upon us in advance of remittances to the extent of \$100,000 (one hundred thousand dollars), with the understanding that such drafts are to represent exchange bought and paid for. We presume also that when the loan of the Trust Co., which falls due on the 21st inst., will be paid the securities will be replaced in our possession."

February 6, 1873, the cashier of the bank wrote Schuchardt & Sons:

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"New Orleans, Feb'y 6, 1873"

"Mess. F. Schuchardt & Sons, New York:"

"Are we still authorized to draw, *a decouvert*, \$100,000 (one hundred thousand dollars) against purchases of exchange advised by wire?"

"H. T. BLACHE, Cashier"

To which Schuchardt & Sons replied:

"New York, Feb'y 11, 1873"

"Henry Blache, Esq., Cashier of the N. O. National Banking Association, New Orleans:"

"The credit of \$100,000 (one hundred thousand dollars) *a decouvert* was predicated upon the deposit of New Orleans city bonds, and on their withdrawal we, of course, supposed the agreement cancelled."

"F. SCHUCHARDT & SONS"

Whereupon the cashier answered:

"New Orleans, February 15th, 1873"

"Messrs. Schuchardt & Sons, New York:"

"Your letter of December 4th, 1871, authorized us to draw, in advance of remittance, to the extent of \$100,000 (one hundred thousand dollars), represented by purchases of exchange, advised by telegraph. There was no mention of a deposit of city bonds to guaranty such overdraft, and we have been acting ever since under the impression that the credit was still in force. We now note that it is cancelled, and beg leave to refer you to the private letter of the President on the subject."

"H. T. BLACHE, Cashier"

And on the same day, the President, Cavaroc, wrote Schuchardt & Sons a letter, which he gives thus:

"New Orleans, February 15th, 1873"

"Mess. Schuchardt & Sons, New York:"

"In your letter of the 11th instant, you say: 'The credit of \$100,000 (one hundred thousand dollars) *a decouvert* was predicated

upon the deposit of New Orleans city bonds, and on their withdrawal we, of course, supposed the agreement cancelled.' You know that exchange at New Orleans is purchased by making advances until such time as the drafts are delivered, and it was with view of making our mutual transactions more active that we asked this credit, ' *a decouvert* ' at the time. In view of your remark, I have nothing to say except to authorize you to consider a portion of the bonds belonging to my firm, which you have in your possession, as collateral security in case you should not be covered ( *en cas de decouvert* )."

"C. CAVAROC, *Pres't* "

On behalf of Fry the following was introduced as the original:

"New Orleans, the 15 Fevrier, 1873"

"Messieurs F. Schuchardt & Sons, New York:"

"Messieurs & Amis: Dans votre lettre du 11 ct. vous dites: 'The credit of \$100 M *a decouvert* was predicated upon the deposit of New Orleans city bonds, and on their withdrawal we, of course, supposed the agreement cancelled.'"

"Vous savez que le change a New Orleans est achete en faisant des avances jusqu'a ce que les traites soient livrees & c'est afin d'activer nos rapports que nous vous avons demande, a l'epoque, ce decouvert."

"Devant votre observation, il n'y a rien a dire si ce n'est de vous autoriser a considerer comme securite collaterale une parties des 'bonds' que vous avez a ma maison, en cas de decouvert."

"Votre devoue,"

"C. CAVAROC"

And which is translated by Mr. Wells as follows:

"New Orleans, 15 February, 1873"

"Messrs. F. Schuchardt & Sons, New York: Dear Sirs: In your letter of 11th inst. you say:"

"The credit of \$100 M *a decouvert* was predicated upon the deposit of New Orleans city bonds, and on their withdrawal we, of course, supposed the agreement cancelled. "

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"You are aware that exchange is purchased at New Orleans by making advances until the delivery of the drafts, and it was for the purpose of giving activity to our correspondence that we at the time requested this *decouvert*. In the face of your observation, there is nothing to say except to authorize you to consider a part of my firm's bonds which you have as collateral security in case of (unsecured -- uncovered) balance of account."

"Yours truly,"

"C. CAVAROC"

Schuchardt & Sons replied:

"New York, Feb. 27, 1873"

"To the Cashier of the New Orleans Banking Association, New Orleans:"

"In reply to your worthy President's letter of the 15th inst., we take pleasure in authorizing you, in accordance with the terms therein stated, to value on us 'a *decouvert*' for a sum not exceeding as maximum \$100,000 (one hundred thousand dollars) against exchange purchases."

"F. SCHUCHARDT & SONS"

In the summer of 1873, Cavaroc, Jr., had two interviews with Wells, in New York, on his way to and from Europe at which nothing was said about these bonds "outside of a possible remark, to be positive that nothing had happened to our trust in their hands," but the subject of the amount of exchange Schuchardt & Sons

would be willing to negotiate for the firm or the bank was mentioned, an agreement arrived at to limit certain lines of credit, and a memorandum drawn up by Wells, in French, or partly in French and partly in English, as follows:

"Not more than 10 | M per week on Hambro."

"Not more than fr. 200 | M on first bankers of Paris."

"As much business paper [in French, *effects de commerce* ] as shall be desired, we reserving the right (as much in the interest of the bank as in our own) to limit the amounts on any one house."

"When the bank sends the drafts of the bank on third parties

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(Havre, Bordeaux, Marseilles &c.; &c.), it must put in the hands of Messrs. C. C. & Son, in trust, a deposit of securities, there to remain until the acceptance or the payment if we deem proper to await the payment."

"Seignouret's line, fr. 500 | M (for bank and C. C. & Son.)"

This must have been, Wells says, the latter part of August or the early part of September, 1873, and this is confirmed by the evidence of Cavaroc, Jr., that he arrived in New Orleans "the first part of September." Mr. Wells thinks he received a letter from Mr. Cavaroc dated on or about September 15th, and that he answered under date of September 19, 1873, and Cavaroc produces a letter, as follows:

"New York, Sept. 19, 1873"

"My Dear Mr. Cavaroc:"

"I have sufficiently explained to you on your last visit here that we should prefer receiving from the bank only such paper as it should have purchased, and, after mature consideration and consultation with Mr. Schuchardt, who has returned some days since, we have determined to request the bank to limit its exchange business with us to the forwarding of such drafts made by third parties as it shall

deem proper to purchase, and we beg you so to inform the bank. . . . We hope that the bank shall give great activity to its operations on the above basis, and in order to assist it as much as possible, we still authorize it to draw against purchases of exchange, and in advance of the remittances, to the extent of \$100,000, on the conditions specified in the letter of Mr. Cavaroc of 15th February last."

"Believe me, my dear sir and friend, yours most devotedly,"

"LAWRENCE WELLS"

"Money was loaned until tomorrow at 1 1/2 percent, and you will readily understand that it is no fun to be out of money, as we are now. The system which I propose to you above will in a measure remedy this, because we can draw as soon as we shall receive your telegram advising purchases."

An extract from the minute book of the bank, September 20, 1873, reads as follows:

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"  *CALLED MEETING* "

"NEW ORLEANS NAT. BANKING ASS'N"

"NEW ORLEANS, Sept. 20th, 1873"

"Present: C. Cavaroc, Pres't; A. Tertrou, J. Aldige, John Rocchi, H. A. Mouton, P. S. Wiltz, L. Haas, Jr."

"The President stated that the object of the meeting was to inform the board of the unpleasant state of affairs in general, and particularly of the panic then prevailing in New York."

"The suspension of Jay Cooke & Co., which was already announced, and which no doubt would be followed by many others, would surely tend to increase the present uneasiness and render our money market still more stringent. He would

therefore ask the board to suggest or adopt such measures as in their judgment they would think expedient to avert the impending crisis; whereupon it was unanimously--"

" *Resolved* that all precautionary measures to be taken be left entirely to the discretion of the president, the board hereby ratifying all that may be done by him. It is further"

" *Resolved* that with a view of securing the president against any eventual loss of the 232 7 percent City of New Orleans bonds belonging to the firm of C. Cavaroc & Son, and actually pledged to F. Schuchardt & Sons, agents of the bank at New York, as collateral security for the payment of all foreign exchange bills sent them for negotiation and by them endorsed, that he be, and is hereby, authorized to select as guaranty from the portfolio of the bank such papers as he may think proper, to the extent of (\$100,000) one hundred thousand dollars. "

"On motion, it is further"

" *Resolved* that the board hereby tender their thanks for the aid he is individually lending by leaving undisturbed a large cash balance (\$80,000) eighty thousand dollars, standing to the credit of C. Cavaroc & Son on the books of the bank."

"And the board adjourned."

October 4, 1873, the bank and Cavaroc & Son failed. N. W. Casey was appointed receiver of the bank, and Francois Laborde and Edward H. Reynes assignees of Cavaroc &

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Son. Schuchardt & Sons were adjudicated bankrupts February 19, 1876, and Charles M. Fry was appointed their trustee in bankruptcy. The balance due from the New Orleans bank to Schuchardt & Sons on October 4, 1873, the date of the failure, adding \$3.20 interest, from October 1st, was \$4,125.12, which was increased, by charging back protested drafts or acceptances and some minor items, to \$197,501.35, as per the following account:

Dr. N. W. Casey, Receiver New Orleans Nat'l Banking Assoc.

1873 Charles M. Fry, trustee

Oct'r 1. To balance . . . . . \$4,121.92

4. " days' interest on \$4,121.92 at 7 percent. . . . 3.20

7. " unpaid rem. on Nat'l Park Bank. . . . . 353.86

9. " protest charges on rem. on Phila., \$156,75. . . 2.06

14. " protest charges on rem. on Phila., \$100 . . . . 2.06

24. " protest charges on rem. \$230.47 & \$130. . . . 4.12

28. " protested drafts on G. Honorat & Co.

at Marseilles . . . . . f'cs 150,000

10 percent damages. . . . . 15,000

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f'cs 165,000-487 1/2 33,846.15

Nov'r 17. " unpaid acceptances of S. Frank & Co. . . . . 12,500.00

" protest charges on same . . . . . 1.31

Dec'r 29. " protested drafts on Seignouret Freres

& Co., Bordeaux, p'able

per Paris . . . . . f'cs 250,000

10 percent damages . . . 25,000

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f'cs 275,000-487 1/2 56,410.26

1874

Jan'y 12. " protested drafts on A. Dufloy

& Co. at Paris f'cs 200,000 29 Nov'r, 73

155,000 10 Dec., "

35,000 13 " "

10,000 19 " "

10 percent damages 40,000

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f'cs 440,000 - 487 1/2 . . 90,256.41

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\$197,501.35

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From this debt, certain amounts collected being deducted, a balance of \$180,624.58 was left, making, with \$14,691.05 due on gold account, a total indebtedness from the bank to Schuchardt

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& Sons of \$195,315.63, for which a certificate was issued by the receiver April 8, 1879. Schuchardt's cashier testified:

"The drafts on Dufloy, Seignouret, and Honorat were foreign exchange bills known as 'clean' -- that is, unaccompanied by documents -- drawn by the New Orleans Banking Association on those parties. The one on the National Park Bank was

drawn by the New Orleans National Banking Association to settle a collection made. The bills of exchange that figure up on the gold account were mainly cotton shippers' exchange, accompanied by bills of lading."

The debit balance of the bank on the gold account, October 1, 1873, was \$68,231.17, afterwards reduced to \$14,691.05.

It appears from the evidence of Casey that Schuchardt & Sons, or Fry, their assignee, claimed about \$38,000 in the Union Bank of London belonging to the New Orleans bank, and other funds in the hands of Dutfoy & Co. of Paris, amounting to 40,000 francs, and that at the time of the failure of the bank,

"certain assets belonging to the bank were in the hands of parties claiming to hold them as collateral security for the endorsement of certain bills of exchange which had been negotiated through Schuchardt & Sons, said bills being drawn by the bank upon Seignoutet Freres of Bordeaux, France. Suit was brought for the recovery of these assets, which resulted in my favor, as will appear by the decision of the Supreme Court of the United States in the case of *Casey v. Schuchardt*, [96 U. S. 494](#) ."

In that case, MR. JUSTICE BRADLEY, delivering the opinion of the Court, said:

"Schuchardt & Sons were bankers, in New York, through whom the New Orleans National Banking Association was in the habit of drawing on foreign houses, and who endorsed and disposed of the drafts, or transmitted them for collection, and made advances thereon. They were thus in the habit of endorsing and advancing on bills drawn by the bank on Seignouret Freres, of Bordeaux. In August and September, they became uneasy and required security, and it was agreed

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between them and the bank that they would receive and endorse drafts on Seignouret Freres, and accept the drafts of the bank on themselves to a certain limited amount, upon being secured by a pledge of commercial securities, to be deposited in the hands of Charles Cavaroc & Son. In pursuance of this

arrangement, on the 17th of September, the bank transmitted to Schuchardt & Sons its drafts on Seignouret Freres to the amount of 250,000 francs, and at the same time drew on Schuchardt & Sons against said drafts for the sum of \$50,000. On the same day or the day following, securities of the bank to the amount of \$60,000 were selected by the note clerk, by direction of Charles Cavaroc, president of the bank, put into an envelope endorsed with the name of Schuchardt & Sons, and handed to Cavaroc, who handed them to the cashier, and thereafter they were treated in precisely the same manner as the securities which were selected for the Credit Mobilier and the Park Bank, as shown in the cases which have just been decided."

October 9, 1873, Cavaroc & Son telegraphed Schuchardt & Sons:

"New Orleans, Oct. 9, 1873"

"F. Schuchardt & Sons, New York: Please deliver to L. Monroe two hundred and thirty bonds, one thousand dollars each, City of New Orleans seven percent, held in trust for us."

"C. CAVAROC & SON"

Monrose replied:

"New York, Oct. 9, 1873"

"C. Cavaroc & Son, New Orleans:"

"Schuchardt refuses delivering; says you pledged as security for bank."

"L. MONROSE"

And Schuchardt & Sons telegraphed:

"New York, Oct. 9th, 1873"

"C. Cavaroc & Son, New Orleans"

"According to your written authority, we hold New Orleans city bonds as collateral security against Bank of New Orleans.

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We insist on your delivering to Reynes the bills receivable held by you in trust. Answer. Also reply about bill lading per Queenstown."

"F. SCHUCHARDT & SONS"

October 11th, Cavaroc & Son wrote Schuchardt & Sons:

"New Orleans, Oct. 11, 1873"

"Mess. F. Schuchardt & Sons, New York:"

"Gentlemen: 'According to your written authority, we hold New Orleans city bonds as collateral security against Bank of New Orleans.'"

"By this phrase, you seem to imply that our 232 bonds ought to serve as a guarantee to you for the reimbursement of all kinds of debts and of all sums due by the bank."

"In response, we refer you to the letter of our senior partner, C. Cavaroc, February 15th last, which you yourselves invoke as the authority on which you base your rights ('according to your written authority')."

"Our authority is contained in the following terms: 'In your letter of the 11th inst., you say: *The credit of \$100,000 a decouvert* was predicated upon the deposit of New Orleans city bonds, and on their withdrawal we, of course, supposed the agreement cancelled.' You know that exchange at New Orleans is purchased by making advances until such time as the drafts are delivered, and it was with a view of making our mutual transactions more active that we asked this credit *a decouvert* at the time. In view of your remark, I have nothing to say except to authorize you to consider a portion of the bonds belonging to my firm, which you have in your possession, as collateral security, in case you should not be

covered."

"You see that according to the authority which you invoke, you have no right to cover yourself by means of these bonds, except those uncovered sums for which you might not have received the paper against which they were drawn at the moment of the demand for the restitution of the bonds. According to the books of the bank, which correspond

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within a few cents with the account current rendered by you under date of Oct. 1st, it appears that all the drafts which the bank has made on you up to this day have been properly covered, and that is all we guaranteed by the deposit of our bonds. These bonds are then at this moment released, and we renew the order that you deliver them to L. Monroe, who is requested to receive them."

"Yours &c.;"

"C. CAVAROC & SON"

The following definitions of "*a decouvert*," with translations, were furnished by counsel for Dumont & Co:

" *Credit a decouvert: Avances faites par acceptations ou par debours de caisse, sans etre granties par connoissements des marchandises consignees ou des contre-valeurs. "*

"Larousse, Grand Dictionnaire Universel"

" *Translation: Advances made by acceptances or cash disbursements, which (advances) are not covered by bills of lading, consigned goods, or other securities.*"

So Littré, dictionnaire de la Langue Française:

" *A decouvert. Terme de commerce: Etre a decouvert, etre en advance, n'avoir aucune garantie des avances faites. ( A decouvert. Commercial expression: To*

be ' *a decouvert* ' is to be in advance, to have no guarantee of the advances made.)"

So in the Dictionnaire de l'Academie:

" *A decouvert. Etre a decouvert* signifie en terme de commerce, n'avoir aucun gage, 'aucune garantie par sa creance.' (To be ' *decouvert* ' signifies to have no pledge, no security, for one's claim.)"

So, too, Bescherelle, Dictionnaire Nationale:

"Commerce. *Etre a decouvert: N'avoir aucun gage de sa creance.* (Commerce; to be ' *a decouvert*; ' to have no security or pledge for one's claim.)"

Mr. Wells gives this as from the French Dictionary of A. Spiers, 19th ed., Bamard, Bandry & Co., 12 Rue Bonaparte, Paris, 1866:

" *Decouvert*, n. m. 1 (com.) (of accounts) uncovered balance."

Cavaroc, Senior, testifies:

"There is a usage and meaning. The words ' *a decouvert* '

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we use more frequently in French than 'credit.' If I write in French to ask an open credit to a banker I will merely ask him: 'Let me draw on you *a decouvert* for one or two hundred thousand dollars.' If I say to the banker, 'I will cover you with exchange to that amount,' as soon as I cover to that amount, it is finished. I don't owe a cent to that amount; *a decouvert* is closed, and I have a right to go on again. It is a revolving credit. For instance, with Schuchardt, suppose I draw today \$100,000 on Schuchardt, and it was *a decouvert*, and the next morning or day after I sent to Schuchardt \$100,000 of exchange bought from different houses here, my *a decouvert* is finished -- it is closed. As soon as I have remitted exchange for the \$100,000 draft of the day preceding, the *a decouvert* is closed. Schuchardt is covered then. On the same day or next morning, I have a right to

draw \$100,000, and cover again. As soon as I have remitted \$100,000 exchange, I have a right to draw again. Therefore, when the bank remitted exchange to cover what the bank had drawn under that credit, a *decouvert*, the guarantee made by me, C. Cavaroc, ceased, and the right to hold these bonds ceased under that guaranty. . . . I desire to say, in explanation of the ' *a decouvert* ' spoken of in my testimony, that it had no relation to guaranty and to payment of the exchange remitted by the bank, nor of the solvency of the drawers or endorsers or acceptors, but merely embraced remittance of exchange by the bank. This is the signification of the words ' *a decouvert* ' here and in France, and in the letters sent and received by me, extracts of which are annexed, the words are so understood."

The balance of account claimed by Schuchardt & Sons as due from Cavaroc & Son January 12, 1874, was \$7,454.22, to which certain costs, disbursements, and counsel fees, and a payment in settlement of a judgment on a \$20,000 draft drawn on them by Cavaroc & Son, were added, with interest, making the amount December 19, 1882, some \$25,715.22. The amount proved up by Schuchardt & Sons against the New Orleans Bank was \$195,315.63, as has been stated. Upon this amount dividends had been paid before final decree to the amount of \$117,189.38.

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The circuit court held that the bonds were pledged to secure Schuchardt & Sons for any overdrafts of the bank which might from time to time arise, to the extent of \$100,000, and that Schuchardt & Sons were entitled to hold the bonds subject to the pledge to the bank as security for the indebtedness of Caravoc & Son, by virtue of a banker's lien, 13 F. 423, and further, that Caravoc & Son had pledged the bonds to secure the whole indebtedness of the bank to Schuchardt & Sons, with a limitation on the extent of the liability, and had not pledged them to secure a limited part of the indebtedness, and that therefore the dividends were not to be applied ratably, but the bonds could only receive the benefit of any receipts from dividends after the indebtedness had been paid down to \$100,000, 14 F. 293.

The original bill was ordered dismissed by the court *sua sponte* on the ground of want of jurisdiction in equity, 12 F. 21, but retained upon amendment. No objection on this ground appears to have been raised by defendants until upon hearing here. As to allowance of interest, see 18 F. 578.

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MR. CHIEF JUSTICE FULLER, after stating the facts as above, delivered the opinion of the Court.

The circuit court held that Cavaroc & Son had pledged the bonds to Schuchardt & Sons as security for any unpaid balance of account due from the New Orleans Bank, with a limitation to \$100,000 on the amount for which the bonds should be held liable. The unpaid balance was ultimately placed at \$195,315.63. The larger part of this balance resulted from charging back the drafts on Seignouret Freres & Co., Honorat & Co., and Dutfoy & Co., which amounted, damages included, to over \$180,000. The inquiry therefore presents itself, on this branch of the case, whether Schuchardt & Sons had a lien upon the bonds to secure these drafts in virtue of an agreement to that effect with Cavaroc & Son.

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When Schuchardt & Sons, on the 9th of October, 1873, refused to deliver the bonds on the order of Cavaroc & Son, they placed their refusal upon the ground that "according to your written authority, we hold New Orleans city bonds as collateral security against Bank of New Orleans," and Wells, a member of the firm, testifies that the only written authority was the letter of Cavaroc of February 15, 1873. The letter thus appealed to as embodying the authority relied on must be examined in the light of the correspondence of which it forms so important a part. As early as December, 1871, Schuchardt & Sons had by letter authorized the bank to draw upon them

"in advance of remittances to the extent of \$100,000 (one hundred thousand dollars), with the understanding that such drafts are to represent exchange bought

and paid for,"

and in February, 1873, when the bank asked "are we still authorized to draw, a *decouvert*, \$100,000 (one hundred thousand dollars) against purchases of exchange advised by wire?" the answer was,

"The credit of \$100,000 (one hundred thousand dollars) a *decouvert* was predicated upon the deposit of New Orleans city bonds, and on their withdrawal we, of course, supposed the agreement cancelled."

This assertion as to the deposit of bonds was denied by the cashier, and he then referred Schuchardt & Sons to a letter from the president, and that letter is the one in question. After quoting from Schuchardts' letter of February 11th, their statement that the \$100,000 credit was predicated on the deposit of New Orleans city bonds, Cavaroc thus proceeds:

"You know that exchange at New Orleans is purchased by making advances until the drafts are delivered, and it was in order to accelerate our transactions that we requested that credit of you at that time. In view of your suggestion, there is nothing to be said, except to authorize you, in case you are uncovered, to treat as collateral security a portion of the bonds in your possession belonging to my firm.

\* "  
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And

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to this Schuchardt & Sons responded to the bank that, "in accordance with the terms therein stated" ( *i.e.*, in Cavaroc's letter), the bank might value on them " a *decouvert* ," for a sum not exceeding as maximum \$100,000 (one hundred thousand dollars) against exchange purchases.

Thus, the written authority relied on was in no respect different from the understanding in the beginning, as shown by the letter of 1871, that the drafts to be drawn by the bank on the Schuchardts were "to represent exchange bought and paid for," and the bonds were to be held under the letters of February, 1873,

as collateral to advances by the Schuchardts before remittances of the exchange. And as late as September 19, 1873, Wells wrote that Schuchardt & Sons still authorized the bank

"to draw against purchases of exchange, and in advance of the remittances, to the extent of \$100,000, on the conditions specified in the letter of Mr. Cavaroc of 15th February last."

"Exchange bought and paid for" meant bills drawn against shipments, and purchased by advances made to the shippers upon the strength of documents to be furnished by them with the bills, to repay the advances so made. It was to enable the bank to make such advances in New Orleans that Schuchardt & Sons on their part advanced to the bank, and to assist the bank Cavaroc & Son were willing to, and did, pledge the bonds as collateral, to a maximum of \$100,000. The understanding was that the bonds should be held as collateral while Schuchardt & Sons were uncovered -- that is to say, not covered by the remittance of exchange purchased -- the bonds thus being used to bridge the interval between making the advances and the receipt of the drafts with bills of lading attached by Schuchardt & Sons.

The transactions between Schuchardt & Sons and the bank were very large, reaching, it is true, only about \$700,000 during the month of September, but amounting to millions during the year; in fact, Wells testifies that sometimes the bank sent "over a million in one day."

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The parties were dealing in exchange to their mutual profit, and all that Schuchardt & Sons stipulated for, and all that Cavaroc & Son agreed to, was that the bonds should be held as security while the merchandise was being purchased and shipped, and drafts against the shipments transmitted to Schuchardt & Sons in liquidation of their advances. We do not understand that Schuchardt & Sons were doing business absolutely without risk, nor that Cavaroc & Son, in view of the course of business, were regarded as called upon to guaranty Schuchardt & Sons

at all events. The latter had the drawers, the drawees, the endorsers, and the merchandise itself to rely on, and there is nothing in the letters or the testimony to indicate that, in addition to all this, they demanded, as to such drafts, other security. If a draft had gone forward with bill of lading attached, and the drawees refused to receive the consignment and accept the draft, and were otherwise under no obligation to do so, and the proceeds of the shipment sold for less than the amount of the draft, or if the acceptors became insolvent, and loss was thereby occasioned, Schuchardt & Sons, though they might, if such was the course of business, charge back the difference to the bank, could not, upon this evidence, claim that these bonds were security to make good a deficiency so created, and, even if they could, no such deficiency is shown to have occurred.

Upon what basis, then, can it be held that drafts drawn by the bank directly on Seignouret Freres & Co., Bordeaux, Honorat & Co., Marseilles, and Dutfoy & Co., Paris, "unaccompanied by documents," were secured by the bonds of Cavaroc & Son and Dumont & Co. by "written authority"?

The drafts on Seignouret Freres & Co. appear to have been drawn September 17, 1873, for, with damages, \$56,410.26; but the dates of the other drafts are not given, and the account between the bank and Schuchardt & Sons, prior to the 1st of October, 1873, is not before us. The drafts on Dutfoy & Co., amounting, with damages, to \$90,256.41, were protested November 29th, December 10th, 13th, and 19th. The drafts on Honorat & Co. were protested October 28th. No evidence is adduced on behalf of Schuchardt & Sons' trustee in bankruptcy

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as to the length of time on which these drafts were drawn. We believe we are justified, then, in assuming that it was after the interview between Cavaroc, Jr., and Wells, placed by the latter as transpiring the last of August or first of September, when it was agreed that the amounts of business paper -- that is, according to Wells, "bills of exchange drawn against shipments" -- which they would take, Schuchardt & Sons might limit, and the limitation was directly imposed of "not more than 10 | M per week on Hambro," and "not more than fr. 200 | M on

first bankers of Paris," and further that when the bank sent

"the drafts of the bank on third parties (Havre, Bordeaux, Marseilles &c.; &c.), it must put in the hands of Messrs. C. C. & Son, in trust, a deposit of securities, there to remain until the acceptance or the payment, if we deem proper to await the payment."

This was an arrangement made by Schuchardt & Sons, and evidenced by a memorandum prepared not by Cavaroc, but by Wells. It was not Cavaroc & Son acting with reference to the bonds who sought this agreement, but Schuchardt & Sons acting for their own protection in reference to transactions other than those with which the bonds were connected. The drafts of the bank on third parties were not exchange bought and paid for, nor were drafts drawn by the bank on Schuchardt & Sons against these bills drawn by it directly on Europe, advances made by Schuchardt & Sons against "purchases of exchange advised by telegraph." Schuchardt & Sons could have had no expectation of receiving another set of bills drawn against shipments to repay advances made to the bank on these "clean" bills already in their hands. They must have relied, as to these bills, upon the credit of the bank, the endorsers, and the drawees, and other securities deposited in the hands of Cavaroc & Son, and when Schuchardt, who appears to have been out of town, returned, and it was concluded to limit their operations, Wells writes to Cavaroc that they had

"determined to request the bank to limit its exchange business with us to the forwarding of such drafts made by third parties as it shall deem proper to purchase."

There is no intimation up to the 19th of September that Schuchardt & Sons regarded the

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bonds as pledged for anything except the remittance of exchange created by drafts against shipments. The transactions in purchasing such exchange, and transactions in the way of accommodation to the bank, or of the purchase of its

own drafts on Europe, were kept perfectly distinct, so far as appears. Cavaroc, Jr., testifies that in his interview with Wells, late in August or the first of September, when it was agreed that if the bank sent its own drafts, there must be a deposit of securities to insure their acceptance or payment, no agreement was made, verbal or otherwise, in reference to these bonds, and nothing said about them other than perhaps a casual remark. Wells does not deny this, although he says he feels "quite confident they were alluded to." But for a resolution purporting to have been passed by the directors of the bank on the 20th of September, there would be absolutely no evidence in this record that the bonds were to be or had ever been held as security for drafts drawn by the bank directly. These bonds did not belong to the bank. They were largely owned by Dumont & Co. They had never been used except upon a direct order from Cavaroc & Son. A distinct agreement with the latter that they should be held for the debts of the bank must be shown in order to the maintenance of a lien upon them. The resolution does say that the bank, in order to secure its president against "any eventual loss" of the bonds

"belonging to the firm of C. Cavaroc & Son, and actually pledged to F. Schuchardt & Sons, agents of the bank at New York, as collateral security for the payment of all foreign exchange bills sent them for negotiation, and by them endorsed,"

thereby authorizes him "to select as guarantee from the portfolio of the bank such papers as he may think proper, to the extent of (\$100,000) one hundred thousand dollars," and that statement may be inconsistent with the theory that all the bonds were pledged for was simply until remittances of exchange actually bought and paid for were made; but when we consider the circumstances under which Cavaroc was situated, that resolution, under which securities to the amount of \$100,000 were to be put into his hands, which might be held to secure drafts drawn by the bank itself, in accordance with

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the agreement with Schuchardt & Sons of the last of August or first of September, does not appear to us to overcome the written and other evidence as to the actual transaction.

There is no element of estoppel about it, and it is a mere question whether a resolution of that kind passed when both Cavaroc & Son and the bank were on the brink of bankruptcy, should be taken as evidence of such cogency as to overthrow all the correspondence and testimony to the contrary. It may go to the credibility of Cavaroc, it is true. He may have told one story on the stand under oath, and may told his directors another story in the bank, although it does not appear that he drew the resolution or was consulted as to the particular language in which it should be couched. The facts, as we hold them to be, were that the bonds had been pledged to the extent of \$100,000, as collateral to the remittance of exchange, and that it had been agreed with Schuchardt & Sons, by Cavaroc, on behalf of the bank, that in relation to drafts drawn by the bank directly, other securities should be put in the hands of Cavaroc & Son to secure such last-named drafts. Cavaroc therefore needed to have a resolution of the bank that he might take from its portfolio those additional securities, and the fact that the language of the resolution is broader than the terms of the pledge, or that it was inartificially drawn, or that it misrepresented the ownership of the bonds, does not entitle it to the weight attributed to it on the argument. As against third parties, the terms of a resolution of the directors of a national banking association, when the exigencies of a financial crisis are upon them, in the attempt to prefer one of the bank's officers cannot properly be regarded as decisive upon the question of the facts actually existing in respect to such third parties in a given case, and Dumont & Co. and the general creditors of Cavaroc & Son ought not to be foreclosed by Cavaroc's presence when this resolution was passed. Besides, it is not inconsistent with the terms of the resolution, to confine the reference to foreign bills to all exchange actually purchased, in which view the resolution would simply assert that the pledge was designed to secure not only the remittance, but the ultimate payment of such exchange,

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but could not be stretched to cover "clean" bills drawn by the bank itself.

The learned judge of the circuit court says:

"In short, it is evident from the relations of the parties, their course of business, the correspondence between them, and the construction placed upon the transaction by Cavaroc himself that the bonds were pledged to secure Schuchardt & Sons for any overdrafts of the banking association to the extent of \$100,000, which might from time to time arise. Such overdrafts were the credit ' *a decouvert* ' contemplated by the parties, and constitute the unpaid balance of account due from the banking association to Schuchardt & Sons."

The relations of the parties were that both were dealers in exchange and making money out of it. The course of business was: advances by the bank to shippers, advances by Schuchardt & Sons to the bank to enable it to make those advances to the shippers, the use of the money by the shippers in the purchase of merchandise, and the remittance of drafts drawn against shipments to Schuchardt & Sons in return for their advances. The correspondence between the parties from the first limited the transactions with which the bonds were concerned to exchange actually bought and paid for. This was the construction placed upon those transactions by both of the parties, unless this resolution of the directors of the bank is to be held as conclusive to the contrary. The indebtedness of the bank was not the result of losses upon any drafts purchased in the regular course of business, but was the result of charging back unpaid drafts, which had been drawn by the bank directly upon parties in Europe, without any accompanying bills of lading. These drafts were discounted by Schuchardt & Sons, apparently in reliance not simply upon the credit of the bank and the credit of Cavaroc & Son, if they endorsed such drafts, but upon the deposit of securities, as against them, in the hands of Cavaroc & Son at New Orleans, and the evidence of Casey shows that Cavaroc did undertake to get and hold securities for Schuchardt & Sons, as against drafts so situated. And this explains the telegram of Schuchardt & Sons to Cavaroc & Son of October 9th: "We insist on your delivering to Reynes the bills receivable held by you in trust."

This drawing by the bank directly on Europe was either a recent course of proceeding or it was not. If not, it is clear that the bonds had no relation to such prior action. If of recent occurrence, it is equally clear that it was independent of the regular dealings in exchange, in respect to which the bonds were held as security to the extent and under the circumstances defined in the correspondence.

As the bonds in large part did not belong to Cavaroc & Son, it is due to the latter to suppose that they had no intention of subjecting them to the risks now insisted upon, and the intimacy between Cavaroc & Son and Schuchardt & Sons, and the fact that the bonds were paid for by drafts on Dumont & Co., whose acceptances for a considerable part of the cost were held by Schuchardt & Sons, render the inference a not unreasonable one that Schuchardt & Sons knew that Cavaroc & Son had peculiar reasons for not treating the bonds with the same freedom as other securities, and this is confirmed by their levy of an attachment against Dumont & Co. upon the bonds, as belonging in whole or in part to the latter.

We do not concur, therefore, in the view that Schuchardt & Sons had, by special agreement, a lien upon these bonds to secure the drafts drawn on Seignouret Freres & Co., Honorat & Co., and Dufloy & Co.

The bonds were, however, pledged to secure the remittance by the bank of exchange actually bought and paid for. The letter of February 15th authorizes Schuchardt & Sons to treat "a portion" of the bonds as such security, to a maximum of \$100,000, but what portion is not defined, and it is evident that Schuchardt & Sons considered all of them as so pledged. There is nothing unreasonable in this, for although the bonds had cost \$189,360, yet, in the fluctuations of the market, all of them might not have been represented a reliable guaranty for more than \$100,000.

The answer of Fry sets up that they

"were deposited with the said Frederick Schuchardt & Sons as security for any indebtedness or balances of account which at any time might or could arise in the course of their aforesaid dealings in their

aforesaid character with the said Charles Cavaroc & Son and the said New Orleans Banking Association."

The decree adjudges that Schuchardt & Sons had a lien upon the bonds for the balance of the account of Cavaroc & Son with them, and "also" that they held them, to the extent of \$100,000, "by virtue of a pledge or hypothecation" to secure the indebtedness of the bank.

The circuit court said, 13 F. 428:

"The bonds having been left by Cavaroc & Son with Schuchardt & Sons, without any special agreement except the pledge of a portion of them for the New Orleans Banking Association, those not thus pledged are subject to the bankers' lien of Schuchardt & Sons."

And again, 18 F. 578

"The terms of the pledge were that the bonds then in the possession of the Schuchardts should be held by them as security for any advance or overdraft which might ultimately exist in the dealings of the parties, to the extent of \$100,000."

But if the bonds were liable by express contract for the obligations of the bank, could they also be made to respond to the indebtedness of Cavaroc & Son, in the absence of express agreement, by force of a lien implied from the usage of the business?

In our judgment, the bonds, being in effect all pledged to guaranty the remittance by the bank of exchange purchased, could not be held by implication as security for the indebtedness of Cavaroc & Son on a balance of account. The specific pledge withdrew them from the operation of the alleged bankers' lien, for it was inconsistent with the presumed intention of the parties. And, applying the principles upon which such a lien rests, it is doubtful whether it ever existed in favor of Schuchardit & Sons. Undoubtedly, while

"a general lien for a balance of accounts is founded on custom, and is not favored, and it requires strong evidence of a settled and uniform usage or of a particular mode of dealing between the parties to establish it,"

and

"general liens are looked at with jealousy, because they encroach upon the common law and destroy the equal distribution of the debtor's estate among his creditors,"

2 Kent, Com. \*636, yet a general lien does arise in favor

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of a bank or banker out of contract expressed or implied from the usage of the business in the absence of anything to show a contrary intention. It does not arise upon securities accidentally in the possession of the bank, or not in its possession in the course of its business as such, nor where the securities are in its hands under circumstances, or where there is a particular mode of dealing inconsistent with such general lien. *Brandao v. Barnett* (Common Pleas), 1 Man. & Gr. 908 (Exch.Chamb. In error) 6 Man. & Gr. 630; same case, House of Lords, 3. C.B. 519, 532, and also 12 Cl. & Fin. 787, 806; *Bock v. Gorrissen*, 2 De G., F. & J. 434, 443. In this latter case the foreign correspondents of a London firm directed the firm to purchase for them Mexican bonds to a specified amount at a specified price, and to hold the bonds at the disposal of the correspondents. The London firm made the purchase, and wrote the correspondents that they would, until further order, retain the bonds for safe custody, and it was held that the letters constituted a special contract sufficient to exclude a general lien on the part of the London firm, if they would otherwise have been entitled to any.

It was held in *In re Medewe*, 26 Beavan 588, that where a customer's security was specifically stated to "be for the amount which shall or may be found due on the balance of his account," it could not be held for a subsequent floating balance, but only for the then existing balance, and in *Vanderzee v. Willis*, 3 Bro.Ch. 21, that a security specifically given for a contemporaneous advance of 1,000 by the

banker was not applicable against an independent indebtedness of 500 afterwards arising upon an ordinary running account.

"A banker's lien," said MR. JUSTICE MATTHEWS, speaking for the Court in *National Bank v. Insurance Co.*, [104 U. S. 54](#) , [104 U. S. 71](#) ,

"ordinarily attaches in favor of the bank upon the securities and moneys of the customer deposited in the usual course of business, for advances which are supposed to be made upon their credit. It attaches to such securities and funds not only against the depositor, but against the unknown equities of all others in interest, unless modified or waived by some agreement, express or implied, or by conduct inconsistent with its assertion. "

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In [Bank of the Metropolis v. New England Bank](#), 1How. 234, [42 U. S. 239](#) , Mr. Chief Justice Taney, in delivering the opinion, referring to the general principle that a banker who has advanced money to another has a lien on all paper securities in his hands for the amount of his general balance, says:

"We do not perceive any difference in principle between an advance of money and a balance suffered to remain upon the faith of these mutual dealings. In the one case as well as the other, credit is given upon the paper deposited or expected to be transmitted in the usual course of the transactions between the parties."

"'Here, then,' said Caton, J., in *Russell v. Haddock*, 3 Gilman, 233, 238,"

"is the true principle upon which this, as well as all other bankers' liens, must be sustained, if at all. There must be a credit given upon the securities, either in possession or in expectancy."

*Fourth National Bank v. City National Bank*, 68 Ill. 398.

In *Duncan v. Brennan*, 83 N.Y. 487, 491, the language of the court is:

"The general lien which bankers hold upon bills, notes, and other securities deposited with them for a balance due on general account cannot, we think, exist where the pledge of property is for a specific sum, and not a general pledge,"

and in *Naponset Bank v. Leland*, 5 Met. 259:

"The notes were deposited under special circumstances. They were not pledged generally, but specifically, and this negatives any inference of any general lien if, in the absence of such special agreement, the law would imply one,"

and in *Wyckoff v. Anthony*, 90 N.Y. 442, that

"where securities are pledged to a banker or broker for the payment of a particular loan or debt, he has no lien upon the securities for a general balance or for the payment of other claims."

See also *Masonic Savings Bank v. Bang's Administrator*, 84 Ky. 135; *Bank of the United States v. Macalester*, 9 Penn.St. 475; *Hathaway v. Fall River Nat. Bank*, 131 Mass. 14. The facts in *Biebinger v. Continental Bank*, [99 U. S. 143](#) , were that a customer of a bank had deposited with it, as collateral security for his current indebtedness on discounts, a note secured by mortgage, which he withdrew for foreclosure at the sale under which he

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purchased the property, and left the deed he received with the bank at its request. His indebtedness to the bank was then fully paid, but after a temporary suspension of his dealings, he again incurred debts to it. It was held that as it did not appear that money was loaned or debt created on the faith of possession of the deed, the bank could not claim against the debtor's assignee an equitable mortgage by the deposit of the conveyance. There are instances of an express pledge of securities for a specific loan, where the surplus realized from them has been directed to be applied to satisfy a general debt, *In re General Provident Assurance Company, ex parte National Bank*, L.R. 14 Eq. 507, but there is no pretense in the case at bar of any ground for the application of the principle of tacking.

Subjected to the tests of these well settled rules, the facts do not admit of serious doubt as to the correct result.

The bonds were not lodged in the hands of the Schuchardts in the ordinary course of banking business. They were sent to New York for a specific purpose, and when that purpose was accomplished, permitted to remain for "safekeeping," and because New York was a better market than New Orleans, and the express charges for their return very heavy, as is said on one side, and for convenience in procuring loans, as is asserted on the other. But the loans made were always specific loans, and the bonds were always otherwise subject to Cavaroc & Son's call, and when the Schuchardts themselves loaned, as they did once or twice, it was upon an express pledge of a designated number of the bonds as security. Cavaroc & Son were bankers, as well as Schuchardt & Sons, and the latter appear to have reposed implicit confidence in them; yet there is no satisfactory evidence that they extended to Cavaroc & Son any special indulgence in the way of general accommodation. Their cashier thinks he can specify a case in which the bills of exchange sent by Cavaroc to Schuchardt were not accompanied by bills of lading, but he does not do so, and the acceptances of Dumont & Co. were on account of the purchase price of the bonds. If, as argued by counsel, there is a presumption, as between customer and banker, that the securities

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or property of the customer found in the possession of the banker have been left with him to secure him generally against loss, this is not an irrebuttable presumption, and each case stands upon its own circumstances.

And since Schuchardt & Sons did not claim at the time of the failure that they had a general lien, but simply that they held the bonds by "written authority . . . as collateral security against the Bank of New Orleans," we can arrive at no other conclusion than that Schuchardt & Sons were not entitled to maintain a bankers' lien against the bonds for the ultimate debit balance of Cavaroc & Son.

We are asked to dispose of the case adversely to appellants upon the ground that they received the remaining bonds and money after the liens decreed in Fry's favor were satisfied; but such receipt does not oust the jurisdiction. The acceptance by appellants of what was confessedly theirs cannot be construed into an admission that the decree they seek to reverse was not erroneous, nor does it take from appellees anything, on the reversal of the decree, to which they would otherwise be entitled. *Embry v. Palmer*, [107 U. S. 3](#) , [107 U. S. 8](#) . Nor can the objection be sustained that there was an absence of jurisdiction in equity because of the adequacy of the remedy at law. The Schuchardts had collected many thousands of dollars on coupons cut from the bonds after October 4, 1873, and before their own failure. Fry, their assignee, had made similar collections. Fry claimed to hold the moneys and the bonds to secure a balance of account due to the Schuchardts from the Cavarocs, and also as collateral to the indebtedness of the New Orleans bank. Dumont & Co. claimed a large part of the bonds as against the general creditors of the Cavarocs, and as against Schuchardt & Sons, and Cavaroc's general creditors claimed the residuum. As to the amount due to Fry, controversy over some thousands of pounds in the Union Bank of London was involved. An accounting was necessary between the parties, and a multiplicity of suits was inevitable unless the determination of the conflicting rights set up could be arrived at in a proceeding in equity. And in addition to these considerations, we think we ought not to regard with

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favor the raising of this objection, for the first time at this stage of the cause.

The rule as stated in Daniell's Chancery Practice 555, 4th Amer. ed., is that if the objection of want of jurisdiction in equity is not taken in proper time -- namely, before the defendant enters into his defense at large -- the court having the general jurisdiction will exercise it, and in a note on page 550, many cases are cited to establish that

"if a defendant in a suit in equity answers and submits to the jurisdiction of the court, it is too late for him to object that the plaintiff has a plain and adequate

remedy at law. This objection should be taken at the earliest opportunity. The above rule must be taken with the qualification that it is competent for the court to grant the relief sought, and that it has jurisdiction of the subject matter."

In [Wylie v. Coxe](#), 15 How. 415, [56 U. S. 420](#) , it is said:

"The want of jurisdiction, if relied on by the defendants, should have been alleged by plea or answer. It is too late to raise such an objection on the hearing in the appellate court unless the want of jurisdiction is apparent on the face of the bill."

It was held in [Lewis v. Cocks](#), 23 Wall. 466, that if the court, upon looking at the proofs, found none at all of the matters which would make a proper case for equity, it would be the duty of the court to recognize the fact and give it effect, though not raised by the pleadings nor suggested by counsel. To the same effect is [Oelrichs v. Spain](#), 15 Wall. 211. The doctrine of these and similar cases is that the court, for its own protection, may prevent matters purely cognizable at law from being drawn into chancery at the pleasure of the parties interested; but it by no means follows, where the subject matter belongs to the class over which a court of equity has jurisdiction, and the objection that the complainant has an adequate remedy at law is not made until the hearing in the appellate tribunal, that the latter can exercise no discretion in the disposition of such objection. Under the circumstances of this case, it comes altogether too late, even though, if taken *in limine*, it might have been worthy of attention.

*The decrees are reversed at the costs of Fry, trustee, in this and the circuit court, and the cause remanded for further proceedings in conformity with this opinion.*

\*

"Vous savez que le change a New Orleans est achete en faisant des avances jusqu'a ce que les traites soient livrees et c'est afin d'activer nos rapports que nous vous avons demande a l'epoque, ce decouvert."

"Devant votre observation, il n'y a rien a dire si ce n'est de vous autoriser a considerer comme securite collaterale une parties des 'bonds' que vous avez a ma

maison, en cas de decouvert."

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