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The Berlin Produce Exchange

Author(s): A. W. Flux

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tion. These tables, extremely well printed, exemplify the passion for minute accuracy which is inherited by every native of Japan.

Any reader of this remarkable book will be strongly impressed by a sense of Japanese *buoyancy*—that most characteristic virtue of the race. What other country in the history of the world has had thrust upon it such a chaos of revolution and such a Herculean labour of reconstruction to be faced? and what other country would have achieved the end so quickly or so serenely? It is the Japanese tenacity of purpose combined with the Japanese light-heartedness which made the phenomenon possible.<sup>1</sup> That curious combination of qualities should be noted by European observers, as capable of producing strange economic results in future years. English economists, unless they have lived on the Pacific coast, must find extreme difficulty in recognising the fact that there are 500,000,000 human beings minutely civilised, very healthy and intelligent, possessed of vast economic potentiality, yet accustomed to exhibit their powers on economic lines widely divergent from those laid down in the canonical books. The history of their development has been so different from ours—almost as different as if they had lived on another planet—that we are apt to dismiss them with an impatient contempt. A genuine effort to grasp the national character of the Chinese and Japanese might teach new truths, and would prepare the English nation for wise commercial procedure in relation to the surprising economic developments which the twentieth century will witness on the shores of the western Pacific.

ERNEST FOXWELL

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### THE BERLIN PRODUCE EXCHANGE

THE recent resumption of the operations of the Berlin Produce Exchange in its old quarters has recalled attention to the circumstances under which its functions were interrupted on the passage of the Exchange Act of June 22, 1896.<sup>2</sup> That Act subjected all Exchanges in the German Empire to regulations in which might be required the

<sup>1</sup> The writer remembers the calmness with which the Japanese Government carried through the Bill, in March, 1897, amidst a chorus of adverse criticism from nearly every Englishman who held the eye or ear of the public in Tokyo, criticism of a high-pitched intensity, culminating in threats of the commercial ruin of Japan should the measure be adopted. Every well-educated foreign resident was then a Bimetallic apostle of the most denunciatory type, and the papers were daily filled with columns of dialectic cannonade directed against the intellectual calibre of the Government, and its failure to read history or to grasp axiomatic principles. The English newspapers, knowing little of currency matters, found it simpler to copy arguments from the bimetallic tracts. The said Government read it all, and quietly pushed its way (p. viii.); quickly converting—by methods suitable to the circumstances—an ignorant and hostile Diet into an overwhelming majority in their favour, and then rapidly disarming opposition in the Upper House. The onward progress of Japan has been directed by first-class Generals since 1868.

<sup>2</sup> For a discussion of the Act, *cf.* the article by Professor Lexis in *ECONOMIC JOURNAL*, September, 1897.

association of representatives of agricultural and milling interests with the committee of control of any Produce Exchange. The detailed regulations for Berlin (to which alone this note refers, though the Exchanges of some other towns were also, as a result of the law, suspended for a time) provided for a controlling committee of the Exchange in two sections, of which that for the Produce Exchange was to consist of nine elected members of that section of the Exchange. With these, for purposes connected with dealings in agricultural products, were to be joined five representatives of agriculture and associated industries, to be nominated by the Minister for Agriculture, Domains and Forests; and two representatives of the milling industry or other industries related to it in the dealings of the Exchange, these two to be nominated by the Minister for Commerce and Industry. Of these additional members, two were required to be present in order to render valid proceedings of the committee, or of a sub-committee to which the control of price-quotations was to be assigned.

The refusal of the Produce Exchange to accept the provisions of the law was in the main due to this attempt to impose an outside and probably hostile control upon its business operations. The immediate result was the secession of the members from their accustomed meeting-place in the hall of the Exchange to a hall in a building only separated from the Exchange by the width of a street, when the law came into force on January 1, 1897. This assembly in the Feen-Palast, however, was declared to come within the legal meaning of an Exchange, and, consequently, came to an end in June 1897. The dealers were not lacking in resource, and their second excursion was hardly a longer one than the former had been. Adjoining the Exchange itself was a house which, in view of future needs for extension, had been acquired by the trustees of the Exchange. No need having arisen for any further step in utilising the property for Exchange purposes, it remained in use by other parties. The produce-brokers found a refuge in this house, the interior of which was readily adapted to the purpose of offices where, each dealer being in his own office, but conveniently near to other dealers, transactions were continued till the end of March of the present year.

As the result of a series of negotiations between the government and the merchants, certain modifications of the regulations were adopted by which the merchants were enabled to accept the conditions prescribed by the law for their corporate existence as a produce-exchange. These changes of regulations were agreed to on February 10, and, so far as they touch the points mentioned above, were as follows:—The elected committee of the Produce Exchange is enlarged so as to consist of twelve members, of whom two shall be chosen from those members of the Exchange who are millers: the five representatives of agriculture are to be selected by the Exchange from a list of ten which shall be submitted for the purpose by the Landes-Oekonomie-Kollegium.

The necessary preliminaries having been completed on March 26, the produce-brokers returned to their old haunts in the hall of the Exchange at the beginning of the first week in April, and the submission of the Berlin Exchange to the Law of 1896 was formally completed.

But an interesting further point is associated with the rebellion of the brokers against the new law, namely, the interdiction by that law of future dealings, in accordance with exchange methods and the usual stipulations of exchange contracts, in grain and mill products. It is to be observed that the quotations of prices for deliveries in future months of wheat, rye, &c., which had ceased to appear in the newspapers since the beginning of 1897, were resumed in April, when the brokers resumed operations in their old quarters. The question not unnaturally arises whether the prohibition of grain futures has been removed, or what the position of the question actually is. This I shall try to explain, as briefly as is possible in a case where much hangs on legal technicalities, in accordance with the results of recent inquiries made on the spot.

It may be definitely stated at the outset that there has been no recent change in the law touching future dealings in grain. These future dealings are not, and have never been, prohibited. What has been and continues to be prohibited is a particular class of time-bargains, defined in the Exchange Law (§ 48). The actual purchase and sale of grain for future delivery went on while the brokers conducted their business in the offices fitted up, as before described, in a building adjoining the Exchange, and goes on still.

But the business is not, in form, quite identical with that which was formerly carried on. The usual stipulations of exchange contracts include the fixing of a definite time at or within which the fulfilment of the contract is required. In stocks a definite date, that of the next account; in goods a definite period, such as a named month, within which delivery may be made at seller's option, is commonly assigned for the fulfilment of a contract of sale or purchase. Where such definite date or period for fulfilment is found, one of the marks of the kind of business which the law prohibits in some cases, controls in others, is found. The commercial code of the German Empire, however, contemplates bargains for the delivery of goods at a date subsequent to that of the bargain, and lays down certain conditions in respect of them. One of these conditions affects the limit of time allowed for delivery on such contracts, and provides that the seller may require a reasonable extension of the time agreed on, which, under certain conditions, must be granted. This extension of time is not a mere granting of three days of grace, but is to be of such duration as the conditions of any individual case may appear to render reasonable. It may run to a week or ten days. No precise limit can be laid down. If a dealer claim that a bargain is in accordance with the

provisions of the Commercial Code, he must submit to this uncertain extension as a possibility of the case.

A second mark of contracts in futures fulfilling the usual stipulations of the Exchange is that they are subject to regulations laid down by the authorities of the Exchange; and the third distinguishing feature specified in the text of the law is that an official fixation of prices for future delivery takes place for bargains of such a kind on the Exchange concerned.

Among the regulations affecting such transactions which the governing authorities of Exchanges usually make are rules providing for the grading into definite qualities of the goods dealt in, and the fixing of definite qualities as deliverable on contracts; and the determination of a definite unit of quantity in terms of which the quantities bought or sold shall be expressed, or as the minimum amount for a single contract. These regulations, combined with the statement of the time for delivery in terms common to a large mass of transactions, facilitate the process of setting off any one purchase (or sale) against any other sale (or purchase). In so doing the road is made easy for persons, not regular dealers in any commodity, to speculate on the rise or fall of the prices of that commodity for future delivery. Such gambling in differences the law proposed to check, and, as a means of doing so, enumerated the characteristics above-named by which an ordinary time-bargain subject to the terms of the Commercial Code, and free to any one to enter upon, might be distinguished from a time-bargain proper to Exchange-operations and which was only open to registered brokers, or which, as in the case of grain, was entirely prohibited.

For dealings of the latter nature, the usual facilities of the Exchange may not be utilised, and this rule is even extended to such dealings as, though independent of the co-operation of any part of the Exchange organisation, exhibits the customary forms of such prohibited exchange transactions. Printed price-lists for such forbidden transactions, or price-lists produced by any mechanical process of reproduction, may not be published, under penalties specified in the law.

Now the present dealings in grain for future delivery take place on the Exchange, printed price-lists are certainly circulated, and an official price is reported in the newspapers. Clearly, then, either the business is conducted under the provisions of the Commercial Code, or it is a violation of the law. That the former is the case is contended by the dealers, though the judgment of the law-courts on any particular case, were it sought, is regarded as doubtful. A fair parallel is found in the case of some kinds of dealings with stock-brokers in this country, which may or may not be regarded by a judge as falling under the Gaming Act. Attempts to repudiate liability on this ground sometimes succeed, sometimes fail, as the records of tried cases show. At present there is an unwillingness to test the matter in Berlin. Some recent

cases carried from one court to another, as to the interpretation of the Exchange Law, show a disposition of the courts to stretch the law on the ground that its avowed purpose must govern the interpretation of the actual words employed.

The contract-notes employed have undergone considerable alteration in detail in the effort to make them clearly in accordance with the provisions of the Commercial Code. From January 1897 each note had printed at its head a statement that the contract excluded all usages of the Exchange. The conditions under which it was entered into were fully detailed in the note itself, even to the naming of the experts from whom were to be chosen arbitrators to determine whether grain was tenderable or not. These gentlemen had formerly been selected by the Committee of the Exchange and the list of names had been posted in the building, but such dependence on the organisation of the Exchange was now rendered illegal. The wording of the contract-note distinctly contemplated the trading in quantities, not precise multiples of the usual unit, and reference was made to the provision for extension of time for delivery which, as pointed out, attaches to bargains under the Commercial Code.

In the course of the negotiations recently carried on, a further modification of this note was laid before representatives of the agriculturists by delegates of the Association of Grain and Produce Dealers of Berlin in the presence of the State Commissioner, and, with some minor changes then suggested, is now generally used. It rests, however, on no authority other than that of the dealer using it, especially on no co-operation of the Committee of the Exchange. The new note claims, by a printed title, to refer to a deal in real grain, but omits the reference to usages of the Exchange. It is curious to observe that the experts, who are to judge the question whether actual deliveries are tenderable, are no longer named, but are to be nominated by the Association of Grain and Produce Dealers. The terms of the note require the passing of every delivery by such experts instead of appealing to them only in case of disagreement.

The fact that the conditions under which the contract is made are not recognised or authorised in any official way by the Exchange, and are in form determined by each dealer for himself is an important matter, though the fact that all (or, if not all, most) of the dealers have agreed among themselves to use identically worded notes might, one would imagine, enable their act to be judged as a merely formal variation of exchange procedure, insufficient to distinguish the new mode of conducting business from the old. The specific statement of subjection to the Commercial Code in the matter of a variable extension of time for delivery, the careful avoidance of the appearance of being subject to exchange rules by having no rules on the subject framed by the Committee of the Exchange, together with the abstention from the use of the facilities afforded by the Exchange for the passing of delivery-notes from one to another of those who may have become purchasers

of a contract the fulfilment of which is effected by the tendering of the delivery-note, are, as it seems, the chief points in which the business now carried on differs from that defined in the Law and forbidden. As already stated, it is not certain that these differences will be held to be sufficiently distinctive should the matter come before the Law Courts.

One further point, however, may be raised in this connection, namely, whether the intention of the Law to suppress gambling has been effectively secured. If the intention was to exclude (from the speculation in grain) merely those whose regular business did not involve dealing in grain, that is, to check the gambling by outsiders merely, it may be said to have largely effected its purpose. If it was expected to stamp out all sales and purchases in which actual grain was not delivered and received, it has failed, for it is still possible, in the interval between midday and six o'clock, to pass the delivery-note from one to another of a considerable string of brokers. The fact that the fulfilment of every contract is felt to be assured rather by the character of the other party to it than by its own legal character, even though the latter is now claimed to be sound, restricts trade considerably. During the cessation of operations of the Produce Exchange, all contracts rested on the standing of the contracting parties, and brokers refused to enter into contracts with persons against whom the help of the law might be needed to enforce fulfilment. A very large part of the former business has been cut out by this condition, but the business actually conducted has not in any case involved the repudiation of a contract. The influence of Berlin in the world's grain trade, which, at any rate in dealings in rye, was formerly very great, has been seriously undermined, since Berlin has been disabled from conducting business on the terms universal in other countries. Foolish gamblers have been saved from ruining themselves in this particular way, though none can say that they have been checked in their gambling, or prevented from ruining themselves thereby; and the gains which formerly came to Berlin as the great distributing centre for rye in Europe and generally as an important clearing-house for grain-dealings, have been substantially reduced in the process. I shall not discuss here whether grain-prices have been either raised or rendered more steady as a further result. Space does not admit of giving evidence on that point, so I shall content myself with a reference to the opinions expressed to me by several who should have knowledge on the point, that there is a lack of evidence that either of these results, which were anticipated by some supporters of the legal prohibition, has been attained.

A. W. FLUX