

Banks and others who may purchase lien notes must remember that the right to the securities goes with the paper (see following section), and it is incumbent upon them to see that the vendor does not nullify the contract by repossessing himself of the property which constituted the *consideration* for which the note is given.

In *Imperial Bank v. Bromish*, 16 C.L., T. 21 (1895), the instrument was held to be non-negotiable, but the lien clause had the wording—"the title, ownership and *right of possession* of said cattle for which this note is given, shall be and remain in — until this note is fully paid."

Of course with the *right of possession* reserved, as in the previous case, the sale was conditional, so the case does not prove the non-negotiability of a properly drawn lien note.

In *Prescott v. Garland*, 34 N.B. 291 (1899), besides several other drastic agreements, the lien clause read, "And that the said harness is meantime only on hire until paid for," and "on any default all payments to go as rent."

Of course this could only be a written agreement, and not a promissory note, as the court justly held.

From these six cases cited it certainly becomes manifest:

1. That where the lien clause reserves in the vendor the *title* or *ownership* until the article is paid for, the instrument is a negotiable promissory note, for there is no *condition* that attaches to the promise to pay.

They are promissory notes according to general mercantile law, and so many States and Provinces have declared in their favor that there should no longer be any question remaining as to their negotiability.

2. But in all cases where the lien clause reserves in the vendor the *right of possession* of the article for which the note is given, the sale is only conditional, and therefore the promise to pay cannot be held to be non-conditional, for if the legal owner should repossess himself of the property before the maturity of the note there would result a "failure of consideration."

If the preceding conclusions are legitimate deductions from the essential distinctions in the character of the instruments, and from the judicial finding of the courts in the six cases herein cited, it ought not to be a matter of doubt when a lien note is a negotiable instrument, and when it is not, except by *assignment*.

193 Form of Negotiable Lien Note.

The following form, according to the first three cases cited, is unquestionably a *Negotiable Lien Note*, for it has every element of negotiability:

\$100.00.

LYNN VALLEY, March 6th, 1910.

Three months after date I promise to pay Oliver Austin, or order, One Hundred Dollars, for value received.

The title of the property in the Bell Organ, No. 4326, for which this note is given, is not to pass, but to remain in the said Oliver Austin until this note or any renewal thereof is fully paid.

W. A. SANDERSON.

In the above note both parties to the contract understand that a sale has taken place. It is an *executory* sale and not a *conditional* one. Mr. Sanderson has the actual possession and the exclusive use of the organ, but by the