

## CHAPTER V.

### PAYMENTS.

#### 135 Payments in Money.

Unless otherwise stated, every debt is payable in money. If in gold, it must be in gold; if at a certain place, it must be there; if to be sent by letter or by express, it must be that way. If the directions are complied with fully, even if the other party should fail to receive the money, the debt is paid nevertheless. Of course, the party must be able to prove that he actually sent the money, and sent it according to agreement.

#### 136 Payments in Property.

When the agreement is such, any debt or contract may be paid in goods, or other property, or in service. If such articles are not tendered at the time and place agreed upon, the debt becomes payable in money. Or if any property other than the kind agreed upon is tendered, it may be refused, and the debt collected in money. (See "Chattel Notes.")

#### 137 Payments by Negotiable Paper.

A promissory note or acceptance being merely a *promise* to pay, is not an absolute payment; and if it is not paid at maturity the debt stands the same as before. The case is different, however, if the note of a third party is given in payment for goods or on a debt. For instance, Jones gives Smith a note he held against Brown in payment for goods or on a debt. This note pays the debt. Of course, if Jones indorsed the note, so as to make himself liable when he transferred it, then Smith can proceed against him as surety on the note, but not for the original debt.

#### 138 Counterfeit Money, or Forged Paper.

Counterfeit money, a forged note or cheque given and received in good faith does not discharge a debt. The person receiving either must return it to the party who paid it to him within reasonable time. The debt still remains, and may be collected as though no such payment had been made.

#### 139 Whom to Pay.

Payments should always be made to the person mentioned in the contract, unless it be a negotiable instrument, then to the *holder only*. Never pay a note unless you get the note back or the party can prove its loss. If no other person is mentioned, then payment must be to the creditor himself, or his legal representative, such as an agent, executor, attorney, etc. Care must be exercised when making payment to his representative that said party is authorized to receive the money.

#### 140 Presumption of Payment.

A note, acceptance, due bill, or receipt in the hands of a debtor is presumptive evidence that the debt has been paid and will so be held unless there is positive evidence to the contrary. If there has been a great lapse of time without any demand being made the presumption is that the debt has been paid, hence the Statute of Limitations (which see).

#### 141 Application of Payments.

The person making the payment has the right to make the application.