dated at the time it was made. The word "pay" is not indispensable, but any expression amounting to an order or direction or promise to pay, as the case may be, is sufficient. They must be payable in specie, and must be for the payment of a certain sum of money only, and not be made to pay a sum of money, *or* do something else, or to pay a sum of money *and* do something else (*see* Byles on Bills).

It would be impossible to mention here all the various irregular instruments purporting to be bills and notes upon which judicial opinions have been given, but they will be found collected in the books that treat on the subject. There is, however, a case of *Palmer* v. *Fahnestock*, 9 U C. C. P. 172, of considerable interest to mercantile men, which it would be well to refer to. The action was brought on an instrument purporting to be a promissory note, with the words "with exchange on New York" inserted after the statement to be paid. The defendants demurred to the declaration on the ground that the instrument was not a promissory note, the amount being uncertain and indefinite. *Draper*, C. J., C. P., in delivering judgment said, "On the face of this note it is payable in Kingston, and it is, for all that appears, made in this Province, and, if that could make any difference when it is payable here and sued upon here, I assume it is also made here, I cannot, therefore, treat it as an engagement to make a payment in New York, neither maker nor endorser having engaged for that. I rather read it as a promise to pay in Kingston such a sum of money as will be equivalent to £72 17s. in New York, and, if this be the true reading, the instrument ceases to have certainty in amount. . . . . I am afraid this decision will give rise to trouble and disappointment among commercial men who have adopted this system of giving and taking notes of hand in this form. . . . . But, upon the fullest consideration, I do not perceive that we can hold that the amount to be paid is made certain either by the terms of the instrument, or by the application of any rule of law as in the case of a note payable with interest."

Although a writing be defective as a bill or note it may nevertheless be evidence of an agreement, but in such a case it requires no stamp under our Act.

An I. O. U. does not amount to a promissory note and requires no stamp. It is only to be looked upon as an acknowledgment of a debt, (*Fisher* v. *Leslie*, 1 Esp. 425; *Beeching* v. *Westbrook*, 8 M. & W. 412.

The clause with reference to letters of credit is sufficiently explicit. But a question might arise under the next clause as to whether "deposit receipts" given by bankers come within the Statute. In the English Act there is a special provision with respect to them. It will be seen moreover that this receipt is to entitle the depositer to receive the money from a *third* person. In fact the writing here alluded to would be in the nature of a letter of credit. An ordinary deposit receipt would only entitle the depositer to receive the amount deposited from the bank or banker who received the money and gave the receipt. It would therefore seem that it would not require a stamp.

Section 9 provides that any person who puts his name to or becomes a party to or pay any bill, draft, or note chargeable with duty, before such duty (or double duty as the case may be) has been paid by affixing the proper stamp, shall incur a penalty of one hundred dollars, the instrument shall be invalid and of no effect at law or in equity, and the acceptance or payment or protest thereof shall be of no effect, unless some subsequent party to the instrument or person paying the same, may, *at the time* of his so paying or becoming a party thereto pay a double duty thereon, but that this shall not release the prior party who ought to have paid the duty from the penalty he has incurred.

It has been held in several cases in England under a similar enactment that a bill or note not duly stamped is not available in evidence, even as an admission, (*Jardine* v. *Payne*, 1 B. & Ad. 663; *Cundy* v. *Marriott*, Ib. 696.) But Lord Ellenborough considered that it might be looked at to ascertain a collateral fact (*Greyory* v. *Fraser*, 3 Camp. 454.) This was an action for money lent. The plaintiff's witnesses proved that he had lent money to the defendant, who gave a note for it on unstamped paper. The defence was that the defendant was made drunk by the plaintiff, and induced to sign the note produced; but that he had received no part of the amount of it. His Lordship said—"The note certainly cannot be received in evidence as a security, or to prove the loan of the money; but I think it may be looked at by the jury as a cotemporary writing to prove or disprove the fraud imputed to the plaintiff." In *Keable* v. *Payne*, 8 A. & E. 555, in assumpsit for goods sold, plaintiff's case was that defendant had received them of M. who had received them from plaintiff, the owner, by pretending to purchase them by means of a cheque which M. knew would be dishonoured. *Held* that in support of this case, the cheque, though unstamped (a stamp there being necessary,) was admissible in evidence,—(see *Reg* v. *Gompertz*, 9 Q. B. 824 to same effect.) Nor is it any defence to a prosecution for forgery that the instrument was not duly stamped.—(*Rex* v. *Hawkswood* 3 East P. C. 955).

It may naturally be asked with reference to this section, how is a subsequent holder of a note to know whether the stamp was affixed before it was signed by the prior party