TREASURES OF THE LAW OFFICE

Digest of Canadian Mercantile Laws

LEGAL AND BUSINESS FORMS

DIGEST

OF THE

MERCANTILE LAWS OF CANADA AND NEWFOUNDLAND

THE TECHNICAL POINTS AND MAIN FEATURES OF BOTH
THE COMMON AND STATUTE LAWS

TOGETHER WITH THE VARIOUS

LEGAL AND BUSINESS DOCUMENTS IN GENERAL USE

FORMING A WORK OF

READY-REFERENCE FOR MAGISTRATES, CONVEYANCERS, PROFESSIONAL AND BUSINESS MEN, LANDOWNERS, CONTRACTORS, ETC.

Lawyers will also find it convenient as a condensed and well-classified collection of most vital legal points for the various Provinces.

SIXTH EDITION, FORTY-SECOND THOUSAND
REVISED AND ENLARGED

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PREFACE

THE subject treated in this volume is one to which no class of persons in Canada can be indifferent, for no man can properly discharge the duties he owes to the public, or to himself, or to his family, without in some degree possessing a definite knowledge of the laws by which all are bound and the obligations resting upon each as an individual.

There is no good reason why every intelligent business and professional man should not understand particularly the laws of contract, agreement, guaranty, negotiable paper, chattel mortgages, mortgages, landlord and tenant, Statute of Limitations, wills, etc., as fully and clearly as any judge or lawyer in the land, for they belong to business life just as much as does the knowledge of the qualities and values of goods and commodities.

This "Digest of Business Laws" is not intended to make lawyers out of laymen, nor even to take the place of a lawyer in cases where a lawyer is needed, but it is intended to furnish its readers with such a detailed, systematic compilation of those business laws with which every person in the community comes in daily contact that will enable them to act intelligently and promptly in the conduct of their business and avoid making those needless mistakes which so often involve loss and lead to ruinous litigation. It is doubtless the only purely law book published in Canada that is written from the standpoint of the layman, giving the information that laymen need, detailed and direct, free from technical language and the mediæval phraseology employed in the Statutes.

The success that has attended the publication and sale of the five previous large editions of this work is sufficient evidence that it is meeting the general and increasing demand on the part of business and professional men for a more accurate and critical knowledge of those laws that confront them in everyday life. The man who thinks it his duty or a virtue to remain ignorant of his legal rights and obligations, so that solicitors and court officials may profit at his loss, is not addressed in these pages, but all others are invited to enter within and examine for themselves the contents of this, the sixth and enlarged edition of this work, which has been prepared with great care.

Toronto, September, 1906. W. H. A.

INDEX TO CHAPTERS.

(General Index at back of Book.)

DIGEST OF MERCANTILE LAWS

OF

CANADA AND NEWFOUNDLAND.

CHAPTER I.

INTRODUCTORY.

1 In this volume constitutional and international law will not be dealt with, neither will municipal nor school laws be touched; but the single aim has been to present in condensed form a reliable digest of the mercantile laws of Canada and Newfoundland.

2 Legislative Bodies.—In Great Britain, the Imperial Parliament including the House of Commons and the House of Lords. In Canada, the Dominion Parliament, including the House of Commons and Senate, and a Legislative Assembly for each of the Provinces. In the United States, Congress, including the House of Representatives and Senate, and the various State Legislatures.

But besides these great legislative bodies in each country there are various other minor corporations possessing extensive legislative powers. Every city, town, county, township, and incorporated village has power conferred upon it by Paraliament to pass by-laws which have the full force of statute law within their jurisdiction.

In Canada all authority is divided between the Dominion Parliament and the Legislative Assemblies of the different Provinces. The Legislative Assemblies have delegated to county, township, city, town and school corporations certain legislative powers for the purposes of local self-government.

Incorporated companies, lodges, and various associations working under Government charter, also have power to pass by-laws and adopt constitutions or measures that bind their members in all things pertaining to the association or company as firmly as they would be by the national laws.

Therefore, members of such associations must not forget that they are required in all matters pertaining to them to comply with their regulations, and in case of any supposed wrong they must first exhaust the machinery which those regulations provide for the redress of grievances before taking the case to court for suit.

3 Divisions of Law.—The two great divisions of law are: (1) Common Law; (2) Statute Law.

Besides these two grand divisions of the law there are various other divisions used because of the different objects to which the law applies, as Civil, Criminal, Mercantile, Marine, Constitutional, International, Military, Canon or Ecclesiastical Law, etc.

4 **The Common Law** is what is called the unwritten law. It had its origin in the early days of Britain. The various races from which have sprung the British people, brought with them, when they invaded and settled in the country, their respective customs and rules of action, which, after the various Provinces became united under one government, caused considerable confusion for a time, until a general body of law was established for the whole kingdom, and thus called the *common law*. Owing to the fact that but few of the early inhabitants were able to read or write, the laws were for a long time simply preserved in memory, hence also called the *unwritten law*. The term *unwritten* does not now apply in the same sense that it did then, because every principle of the *common law* has long since found its way into print through the thousands of volumes of reports giving the rulings and decisions of the various courts, thus furnishing precedents for guidance in all future cases equal to any written law as to uniformity and definiteness. In every other State in Europe the old Roman law predominates.

5 **Statute Law** is sometimes called the written law, in contradistinction to the *unwritten* or common law. It is a law that has been formally written out and introduced into Parliament as a Bill, which being passed becomes a law of the land under the name of Statute Law.

Probably not one quarter of our commercial laws are found in the statutes; but they have grown up through long years of custom and usage, and from time to time receiving the sanction of the courts of justice, have become a well-defined body of laws as stated in Section 4—sometimes called the Law Merchant.

6 **Uniformity of Laws.**—The laws in Great Britian, Canada, the United States and Newfoundland are very similar, owing to the fact that Newfoundland and all the States of the Union, except Louisiana, and all the Provinces in the Dominion, except Quebec, adopted the common law of England, thus making it the fundamental law of the English-speaking world; and it prevails in all cases where it has not been abrogated or modified by Statute Law.

Louisiana and Quebec adopted the old French law, which is an embodiment of the Roman law; therefore, people having dealings in Quebec must keep that fact in view. For instance, a promissory note outlaws in Quebec in five years from maturity or last payment, whereas in all the other Provinces and Newfoundland it is six years.

CHAPTER II.

CONTRACTS.

7 **Contract.**—Agreement, bargain, contract, all virtually mean the same thing. There are legal and illegal contracts, void and voidable contracts, valid and invalid. Contracts may be either express or implied or merely gathered from circumstances. Some are binding when made by spoken words, others require to be in writing, while some must be under seal in order to be binding.

As contracts are the basis of every business transaction, whether great

or small, this chapter will cover those which the business and professional man will be most likely to come in contact with.

8 Oral Contracts are those made by spoken words, and are ususlly called verbal and sometimes parole. They are binding for the sale of *personal property* (but not for real estate), up to a certain amount fixed by statute in each Province. In Ontario the oral agreement for the sale of personal property would be valid for any amount *under* $40. (For other Provinces, and for technical details, see Statute of Frauds, Section 22, also see when a verbal agreement binds.) They are also binding for a lease of property for one year and under, and under certain conditions for three years and under (see Terms of Lease).

Oral agreements are binding between master and servant unless they exceed one year; and in regard to other things they are limited in time to one year.

9 Written Contracts may be printed or written, or partly printed and partly written. They may be *formal,* using the legal phraseology, containing the details of the whole contract; or they may be *informal,* merely contained in letters that have passed between the parties.

To make a binding agreement for the sale of real estate, it is essential that it be in writing.

10 Contemporary Written and Verbal Agreements.—As a usual thing a written contract cannot be affected by a contemporaneous oral agreement. If the written instrument purports to embody the whole contract, the court would not be inclined to receive other evidence to show that the intention of the parties was different. But if the writing does not give evidence of containing the whole agreement, or shows evident omissions, then in that case evidence would be received to prove a contemporaneous verbal agreement.

11 Contract Under Seal, (also called Specialty Contracts) must of necessity be in writing. They do not require a *consideration* to make them valid. The seal indicates greater deliberation and solemnity in executing such contracts, and a person is presumed to enter into them with a full knowledge of their contents, hence debarred from afterwards pleading "insufficient consideration."

For use of seal by joint stock companies, see Section 61.

For seal on promissory notes, see Section 61.

12 Implied Contracts are those where the terms are not definitely stated, but are *presumed* to be understood. They are as binding as express contracts, but sometimes are difficult to prove, or are misunderstood. *Example*: A customer leaves his order with a grocer to have delivered at his residence five dozen eggs and $2 worth of sugar. Nothing is said about the price of eggs or the number of pounds of sugar sold for a dollar, or anything about payment; but the parties themselves and the law *presumes* a tacit understanding as to the prices and the time of payment.

For liability by implication of husband for wife's purchases, see Section 28, also Husband's Liability.

For new tenancy by implication, see Section 365.

Fora contract of service by implication, see Section 420.

13 Voidable Contracts are those which take their full and proper legal effect unless they are set aside by some one entitled to do so. They bind both parties until set aside. The party defrauded may void the contract if he

chooses or he may affirm it and compel the other party to perform it.

Contracts, not for necessaries, made with minors, or with persons of unsound mind, or with Indians on their reservations, are voidable, not void, as it is optional with such persons whether they will honor their contracts or repudiate them. Also fraudulent contracts are voidable, not void. See Section 19.

14 Illegal Contracts are utterly void from the beginning and cannot be enforced. They have no legal effect except in so far as a party to them may incur a penalty. An illegal contract is where the thing to be performed, or not to be performed, is forbidden by law. In all such cases, if either party has performed his part of the contract he cannot compel the other to perform his, and if either party has paid money he cannot recover it back, as the contract is regarded as wholly vicious, and no court would attempt to enforce it. But if an innocent party has paid money it may be recovered back.

In a contract containing two or more promises that are entirely distinct, so that one could be performed without the others, and it turned out that one was illegal, the illegal part would fall, but the others can be enforced.

But illegality does not always appear "on the face" of a contract, and in such a case it must be established by *evidence*.

The following are examples of illegal contracts:

1. Contracts in restraint of trade.
2. Contracts in restraint of marriage.
3. To obstruct the course of public justice.
4. Contracts with alien enemies in time of war.
5. Contracts to lead an immoral life.
6. Sabbath desecration.
7. Bets or wagers.

15 Contracts Against Public Policy.—The policy of every community or State is to advance the public good, hence whatever contracts are opposed to the general good are said to injuriously affect public policy, and are, therefore, void. Among such the following three sections are included:

16 Contracts in Restraint of Trade, are void. For instance, a merchant sells his business, including stock and good will, and agrees not to engage in business again of any kind; it is void, because lawful trade is considered beneficial and in the public interest. He could, therefore, commence business again and the purchaser would have no redress. He could, however, legally bind himself not to engage in business again in a particular locality, or in a certain line of business, as that would be only a partial restraint of trade, hence not within the meaning of the law.

All combines, as among manufacturers, dealers, etc., which attempt by coercive measures to control the trade, or the market, for the purpose of inflating prices, are illegal, and render the individuals or firms composing them liable to penalties. This does not penalize concerted action to secure fair and reasonable prices. It is the coercive feature that refuses to sell to or bars out such dealers or workmen as do not enter the "combine," or who refuse to co-operate with it, or sell at a lower price, that is illegal and punishable.

17 Contracts in Restraint of Marriage.—Marriage is held to be in the public good, hence any contract which wholly restrains marriage is void. The *condition* that he or she must not marry if attached to a bequest to any

person (except a wife or husband) in a will is void. The person would take the property. A partial restraint of marriage, where it is reasonable, may be valid, as where a bequest is left to a child on condition that marriage should not be effected until the age of twenty-one, or, say, twenty-five years. It would be valid, because it would merely fix a date when there would be less danger of contracting an ill-advised marriage. But if the time fixed should be, say, fifty years of age, it would be void, because that would be unreasonable.

A husband's bequest to his wife on condition that she does not marry again, though selfish, is legal, because she has once been married, hence it is not in restraint of marriage.

18 Contracts to Obstruct the Course of Justice are void. An agreement of a public official to do something contrary to his duty cannot be enforced; and money promised him to use extra exertions in the discharge of his duty in a particular course cannot be recovered.

19 Fraudulent Contracts are voidable—not void. A definition cannot be given that would cover all the forms of fraud, but the following will make sufficiently clear what would constitute fraud:

1. A false statement as to the facts knowingly or recklessly made by a party, or

2. A concealment of facts that are known to one and not readily discernible by the other, and yet such as should be revealed. The misrepresentation must *actually deceive* in order to make a case of fraud. To sustain an action of deceit there must be proof of fraud—fraud that actually deceives—and nothing short of that will suffice.

The party who has been defrauded may void the contract if he wishes, or he may affirm it and compel the other party to perform it. If he wishes to void it, two things are necessary:

(1) He must not accept any benefit derived from it, or to continue to act under it after he has discovered the fraud;

(2) He must give prompt notice of the fraud after he has discovered it.

The dishonest party cannot disaffirm the contract, but in all cases is bound to carry it out, if the other party demands it. If both parties practise fraud, neither one can enforce the contract against the other.

20 Selling Property Obtained by Fraud.—In many cases a person obtaining goods or any kind of property through fraud, and transferring them to an innocent third party for value, gives a good title.

A promissory note obtained through fraud cannot be collected by the party who obtained it; but upon coming into hands of a third party, before maturity, for value, and who did not know of the fraud, would be valid and good against the maker; so would a stolen note. But a forged note cannot be collected; it is void from the beginning.

21 Fraud by Insolvent Traders.—(See insolvent debtors.)

22 Statute of Frauds and Perjuries.—This famous Statute was passed in the 29th year of the reign of Charles II. of England, 1678, and still exists there, in this country (except Quebec), in Newfoundland, and in the United States (except Louisiana), with but slight change. It was designed to prevent the frequent commission of frauds and perjuries in regard to the enforcing of old claims, and various kinds of promises to answer for the debts of others, and provided that certain contracts had to be in writing to be binding. The

following are the requirements of the Statute which come within the scope of this work as they have been varied by our Statutes:

1. That leases of land for more than three years must be in writing and under seal.

2. Contracts for the sale of lands, or for any interest in lands, except a lease for three years and under, must be in writing.

3. Every agreement that by its terms is not to be performed within one year must be in writing.

4. Every special promise to answer for the debt, default or miscarriage of another must be in writing.

5. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry (engagement), must be in writing.

6. Contracts made for the sale of personal property of $40 and upwards must be in writing, unless part or all of the goods have been delivered, or a part of the purchase price paid. In Quebec, British Columbia, Manitoba, Alberta, Saskatchewan, North-West Territories and Newfoundland the sum is $50, and in Prince Edward Island, $30. In the Yukon, $50.

Each of these sub-sections will be treated in appropriate chapters.

23 False Pretence is a representation either by words or otherwise (a shake or nod of the head) of a matter of fact either present or past, which representation is known by the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation; hence, there are four essentials to constitute *false pretence*:

1. There must be a false statement or act.

2. The offender must know at the time of making the statement that it is false.

3. The goods or money in question must be parted with in consequence of such false statement.

4. The false statement must be made with the intent to *deceive*.

The penalty for obtaining goods or money by false pretence is three years' imprisonment.

24 Theft or False Pretence.—In theft the owner of the property has no intention of parting with it to the person taking it; but in the case of false pretence the owner of the goods does intend to part with them, but his consent to part with them is secured by the false representations made to him. In general it is not stealing to take something growing out of the earth of less value than 25 cents.

25 Embezzlement is the taking of money that has not yet come into possession of the employer. For instance, a debtor pays him money for the employer and he keeps it himself; therefore, whenever money is received by the employee and is not accounted for, or its receipt denied, it is embezzlement. By the law of Canada this is now classed as theft.

26 Breach of Trust is a term used in connection with a person who is appointed a trustee of any property for the use and benefit of some other person, or a public or charitable purpose, and who fraudulently appropriates it to some other use. Persons guilty of this offence are liable to seven years' imprisonment.

27 Proposition and Its Acceptance.—A Contract is composed of two elements—a proposition and an acceptance. A proposition in some form

is the beginning of every contract. One person makes an offer of some kind to another, and if the other person accepts the offer in the same sense as made, then there is a contract. But if in accepting he makes any change in the terms, there is no contract. Example: one man offers to sell a horse to another for $100 cash. The other party says he will buy the horse but will only give $85. This is not assenting to the proposition, but is in effect a *new proposition.* Any other change in the terms would have the same effect, as for instance, the second party would say to the first that he would accept the offer but could not pay for three months. There is no assent here, no mutual agreement, hence no contract.

28 Time for Acceptance.—An Oral proposition which does not include any provision as to time ceases when the parties separate. A written proposition with no time limit named is good until accepted (if done within a reasonable time), or until withdrawn.

If a time is fixed for acceptance, it must be given within that time, otherwise the acceptance would be a nullity. An acceptance may be given by an act as well as by words, as in case of all implied contracts. Example: The wife or children purchasing necessaries at a store, the assent of the father is *implied,* and binds him, unless notice to the contrary has been given.

29 Assent Obtained Through Fraud is not binding on the party who was defrauded. Such a contract may be rescinded by the innocent party, but he must do so immediately after he discovers the fraud. He must also refuse to exercise ownership over the subject matter of the contract or accept any profits arising from it.

30 Assent Obtained Through Force is not binding. If assent is obtained through threat of bodily harm, imprisonment, or any similar illegal pressure, it is void, because under *duress.* But a threat to dismiss from employment unless a certain proposition were agreed to by an employee would not be *duress,* and a contract signed under that kind of pressure or force would be legal.

31 Assent Through a Mutual Mistake does not bind either party because there was no actual assent given. There is, however, but small latitude allowed in law for mistakes or ignorance.

32 Proposition by Mail.—When a proposition is made by letter the contract is closed when the letter of acceptance is placed in the post-office. A proposition that does not prescribe any time for acceptance continues valid until revoked, or until a reasonable time has elapsed before acceptance.

An acceptance given by telegraph closes the contract when the message is delivered to the company.

33 Withdrawal of Proposition.—A proposition may be withdrawn any time before the acceptance has been given.

In case a proposition made by letter is to be withdrawn, the letter of withdrawal must be *received* by the other party before the letter of acceptance is placed in the post-office, otherwise it is too late.

If withdrawn, by telegram or by telephone, the message of withdrawal must be delivered to *the other party* before his *letter* of acceptance is placed in the *post-office,* or his acceptance by *telegraph* is delivered to the *telegraph company,* otherwise it is too late.

34 Consideration in Contracts.—This law term refers to the *reason or inducement* upon which the parties to a contract give their assent and agree

to be bound. In every binding contract there must of necessity be a *legal consideration*, and what the law denominated a "sufficient consideration." (Exceptions: Instruments under seal and negotiable paper, which see.)

There are various kinds of *consideration*, and as this is one of the most important features of a contract, several will here be enumerated:

35 Good Consideration is one based upon *natural love and affection*. Example: A father may deed to his child a portion of his land, and it would be valid. He could not recover it afterwards even if he desired to do so. A mere *promise*, however, to give a deed some time in the future would not be binding. (See Insolvent Debtors).

36 Valuable Consideration is usually, but need not necessarily be, a monetary consideration. It may be something given or done, or something promised to be given or done by or for the person making the promise. Any of these would constitute a "sufficient consideration."

A promise to marry is held a valuable consideration.

37 Illegal Consideration is where the act to be performed is wholly or in part immoral or contrary to public policy, or forbidden by statute; as smuggling goods into the country, selling lottery tickets, publishing or selling immoral literature. Notes given in satisfaction of a wager on an election, or a horse race, or in settlement of a "bucket shop" transaction, or to a hotel keeper in payment for liquor, or a note towards election expenses are void. (See Section 14).

38 Gratuitous Promises, that is, promises without a consideration, are not binding, because there is no equivalent given. If there is no *consideration* there is no reason for the contract; hence a mere promise to give or do something cannot be enforced.

A promise (unless in writing), to pay another's debt that has already been incurred, is gratuitous and cannot be enforced. (See Statute of Frauds).

Mutual promises, however, if made at the same time, are binding, as the one promise is a "consideration" for the other promise.

39 Consideration in Contracts Under Seal.—Contracts under seal are valid without a consideration. The placing of a seal on a contract makes it final. The seal itself is said to impute a consideration.

40 Consideration in Regard to Negotiable Paper is *presumed*. Promissory notes, acceptances and cheques in the hands of an innocent holder for value are valid, even if they were issued without a consideration. With such paper consideration is presumed, and an innocent third party buying them before maturity may collect them. The party to whom they were given without value could not enforce payment; neither could third parties if they purchased them after maturity. Accommodation notes and acceptances are common examples of this kind.

41 Failure of Consideration voids the contract. Example: A person agrees to give $500 for a certain interest in a patent to manufacture gas, and afterwards the patent is found to be void. The contract cannot be enforced, and if a note were given it cannot be collected.

Partial failure of consideration does not void the contract, and the other party may obtain damages for the part that failed.

42 Legal Incapacity.—The classes of persons whose rights and interests the law protects by placing them more or less under legal incapacity to contract are:

1. Persons under 21 years of age.
2. Idiots and lunatics.
3. Persons wholly intoxicated.
4. Indians living on their reservations.
5. Those under sentence of death.

43 Minors or Infants.—Minors, called in the law books, Infants, are, in Canada, all persons, male or female, under twenty-one years of age. In a few of the States of the United States females are of age at eighteen years, but not so in Canada.

A minor cannot waive his rights of infancy by any possible agreement, either oral or written, that will bind him.

A wife, however, under age, may bar her right to dower.

A minor may sign as witness to any document, if old enough to understand what he is doing, and to give evidence in court, if necessary.

A minor may also act as agent and bind others in contracts.

In Quebec minors cannot sign as witnesses to Wills made in "Authentic Form."

44 Minors may Contract for Necessaries.—Whatever things are necessary for him in his station and condition in life he may contract for, if he is not living with his parents or guardians, who are able and willing to support him. If he should not pay for such necessary articles, the dealer from whom he purchased them may sue and recover from him just the same as though he were of full age.

The things usually reckoned as necessaries for minors are board, clothing, education and medical attendance, according to their station in life. A suit of tweed clothing for a son of a mechanic, or any person in a similar station in life, would be regarded as a necessary, but a sealskin overcoat or a gold watch would not be. A fur coat or a gold watch would be held a necessary for a millionaire under age.

Minors not at home and supporting themselves may sue and recover for wages earned by them. They are also liable for any damage done or wrong committed by them; also for any criminal offence. Wages of minors may be garnisheed in payment for necessaries only.

They may also contract for life insurance within certain limitations, and be held liable for the premiums (see Section 46).

But if the minor gives a note for the premium the note cannot be collected by suit.

In Quebec minors are emancipated from some of the disabilities of minority: 1. By marriage. 2. Judicially by a court. 3. By engaging in trade, as a banker, merchant, or mechanic, he is reputed of age for all acts relating to such trade or business. (C. C. Article 323).

But in all cases a curator or guardian must be appointed to such emancipated minor.

An emancipated minor may grant leases for terms not exceeding nine years, receive his revenues and give receipts for same and perform all other acts of mere administration, and be held liable on his contracts in connection with his business or trade.

But he cannot bring an action or defend an action, nor borrow money without the aid of his curator, and cannot give a mortgage or deed without authority of a court or judge or prothonotary.

In all other respects the same as minors in the other Provinces.

45 Luxuries for Minors would be anything beyond what the law classes as necessaries. For any such articles bought on credit the merchant cannot compel the minor to pay. If, however, the original goods are in his possession, the merchant has the power to replevy and take them back, but he cannot take them himself by force.

46 A Minor's Note, given even for necessaries, cannot be collected If a merchant should chance to take such a note for *necessaries,* he could not sue on the note, but he could hold the note until maturity and then sue on the open account, and present the note as evidence of the debt. He could not sue until the note matured, as that would be the date of payment.

The note is not void, so that if there were an endorser, or a joint maker, or a surety, they would be liable on it, even if given for luxuries.

A minor may also transfer or sue on a note which he holds, for although he is not bound, others competent to contract who are indebted to him are liable on contracts made with him.

47 Minor Ratifying or Rescinding Contracts.—When a minor comes of age he may ratify a contract made before age, which is yet to be performed. The ratification must be in writing to bind him, or by unreasonable delay in repudiating it.

He may also rescind a contract that has been executed; but in such a case he must restore to the other party the *consideration,* if it be within his power to do so.

48 When Parents are Liable for Minors Debts.—While the minor is living at home and supported by his parents or guardians, they are liable for *necessaries* purchased by the minor, unless notice has been given to the contrary. They cannot be held liable for *luxuries.*

Parents are also liable in case the minor is not living at home, but is supporting himself and collecting his own wages, if they should pay part of his bills or accounts. They then render themselves liable for all of them. They may aid him if they wish by giving money direct to him, but must not pay any of the debts he contracts if they do not wish to become liable for all of them.

49 Lunatics.—Such persons having lost their reason are manifestly incompetent to contract. But unless the insanity is of such a nature as to be patent to everybody, it must be established by legal proceedings to be relieved from a contract he may have entered into. To be adjudged insane it is necessary to be so adjudged by a Committee on Lunacy, or by a judge, or a court of competent jurisdiction. A person who makes a contract with a lunatic is bound by it as though he were dealing with a person competent to contract. No person but the lunatic or his legal representatives can void a contract that he has made. Contracts for necessaries for him the law holds binding.

In some cases of insanity, persons have intervals during which they are perfectly sane. These are called "lucid intervals," and contracts made during such periods are binding.

50 Drunken Persons.—A person merely strongly under the influence of liquor is not legally, although he may be mentally, incompetent to contract. To be relieved from liability on a contract he may have entered into, he must be wholly intoxicated, so as to be unable to use his reason, unless the other party furnished the liquor. Drunkenness will not relieve from criminal prosecution.

51 Indians.—Our Indians living on their reservations are wards of the Crown, and thus protected from fraud and deception by being placed in a similar position to minors, and rendered incapable of bindig themselves in a contract. A person who makes a contract with them is bound, but the Indian is not bound, not even for necessaries.

52 Alien Enemies.—According to International Law all commerce between nations at war is suppressed, and contracts entered into (even bills of exchange), after the declaration of war are illegal and void, unless the Crown gives a special license. Contracts made before the war commenced are suspended during its continuance, but may be enforced after peace is declared.

Aliens in Canada in times of peace may own property and contract as freely as natural-born subjects or those who have taken the oath of allegiance, but they cannot vote at any municipal or parliamentary election.

53 Parts of a Formal Contract.—A formal contract will include:

1. Date.
2. Names of all parties in full.
3. Recitals or explanations, and reasons, if any.
4. The consideration.
5. The subject-matter.
6. All the several agreements between the parties.
7. Signatures of all parties, as they usually sign their names.
8. Seals, if any.
9. Signature of witness.

In drawing contracts be specific in naming all the terms and conditions of the agreement. State accurately the names in full, residence and occupations of the parties to the contract, and the different promises each one is to perform. If a person has several Christian names, include them all. A person who has no trade or profession is usually called a "gentleman." In giving the residence of the parties the smallest municipality must be mentioned first, as a township, or village, or town, or city, then the county, and lastly the Province.

The person agreeing to do work or to sell an article is usually called "the party of the first part," and the party paying the money "the party of the second part"; but there is really no difference which comes first.

54 Signing of Contracts.—The instrument if to be registered should be signed in the presence of a disinterested witness. If the instrument has already been signed it will be sufficient for a person to *acknowledge* his signature in the presence of the witness, when words like the following may be used: "I acknowledge this to be my hand, and seal" if a seal is used. Some contracts require to be under seal.

In all documents to be registered, as deeds, mortgages and bills of sale, it is necessary for the witness to verify his witnessing and signature by an affidavit, which is written on or attached to the document.

55 Signature by Mark.—A person who cannot sign his own name must *request* some other party to do it for him. The following will illustrate the usual form:

Witness: J. C. SUMMERS. WILLIAM $\overset{his}{\underset{mark}{\times}}$ WINTERS.

A person signing his name this way may take hold of the pen while his name is being written, or he may not; he may make his own cross or he may not, just as he wishes. There must, however, be a witness to the signature.

56 Signature by One who Cannot Read.—When a person who cannot read is executing an instrument, it is required that it be read over and explained to him in the presence of the witness, so that he may fully understand what he is doing. The witness, in signing such an instrument, should mention the fact in some such words as the following:

Signed, sealed and delivered after first having been read over and explained in the presence of J. C. SUMMERS. WILLIAM $\overset{his}{\underset{mark}{\times}}$ WINTERS.

Of course for a promissory note the word "sealed" should be omitted, as a seal would destroy the negotiability of the note.

57 Witnesses to Documents.—It is not essential to the validity of any document or agreement that its execution be witnessed, except in the case of Wills, and where a person signs "by mark" as in the two preceding sections. The only object in having one or more witnesses to a lease, a deed, or bond, is to prove the execution afterwards, if required, and to comply with the requirements of the Registration Act for documents that have to be recorded.

58 Erasures and Corrections.—If any such should become necessary to make it should be done before the document is executed. In making the corrections do not use a knife or rubber, but simply draw a line through the words with pen and ink so that the original words may be clearly seen. Then write the correct words between the lines, using a caret to show where they should be read in. The witness should put his initials on the margin opposite every such correction or interlineation as evidence that they were made before the execution of the document.

59 Various Sheets.—When a document is written on more than one sheet they should be fastened together and paged before being signed. Some who are extraordinarily formal will use a ribbon and put a seal over the tie of the ribbon. The witness sometimes places his initials on each sheet and mentions the number of sheets with his signature.

60 Various Documents.—When an agreement is composed of two or more separate documents they are usually marked with the letters of the alphabet, as A, B, C, etc., and referred to as "Schedule A." "Schedule B," etc. Example: Contracts for the erection of large structures are usually accompanied by plans and specifications marked A, B, etc., which are attached to and form part of the agreement.

61 A Seal should be placed on all important contracts.

Anything affixed after the name will answer for a seal as well as a regular seal bought for the purpose.

All corporate bodies and joint stock companies are required by law to

have a corporate seal, which the officers must impress on all contracts signed by them, on which seals are essential.

Promissory notes and bills should not be under seal, as a seal would destroy their negotiability by placing them among "Specialty Contracts."

62 Requisites of a Contract.—From what has been given, the requisites of a valid contract may be summarized as follows: (1) It must be possible. (2) It must be lawful. (3) It must be made by persons who are competent to contract. (4) It must be assented to by each and all the parties. (5) It requires a consideration, except for those under seal and for negotiable instruments. (6) It must be without fraud. (7) Some may be verbal, others must be in writing, and some under seal, according to the nature of the contract.

63 Interpretation of Contracts.—Although it is supposed that parties entering into a contract fully understand its terms, and will use language in expressing them that will explicitly give their meaning, yet it often happens that such is not the case; hence certain rules have been adopted to interpret them when ambiguity occurs. The following are those of chief importance:

1. THE INTENTION of the parties at the time of the contract was made is considered, rather than the literal meaning of the words.

2. CUSTOM AND USAGE of that particular business and place will be regarded when the wording of the contract is doubtful.

3. THE TECHNICAL WORDS AND PHRASES used will be given the meaning in which they are employed in that particular business.

4. VARIATIONS BETWEEN WRITING AND PRINTING.—When one part of a contract is written and another printed, if they disagree the written portion will be accepted. The same is true with a note or cheque.

5. LIBERAL CONSTRUCTION.—Where the wording of a contract is ambiguous it is the rule of the courts to construe it liberally, so as to give effect to the common sense of the agreement, even sometimes rejecting objectionable clauses and supplying omissions. But where the Statutes fix a definite meaning to words, they will invariably be construed in that sense.

6. CONSTRUCTION AS TO TIME.—When no time is mentioned in the contract for its execution, the presumption is that it must be done at once, or in a reasonable time, and the courts will so construe it, according to the nature of the work to be done.

7. CONSTRUCTION AS TO PLACE.—It is a settled rule that:

(*a*) All matters bearing upon the interpretation, the validity and the execution of contracts, as well as capacity of the respective parties thereto to contract in such case, are determined by the law of the place where the contract is made, unless the law of the place where the contract is to be carried out forbids it.

(*b*) All matters relating to its performance are governed by the law of the Province or country where the contract, by its terms, is to be performed.

(*c*) All matters respecting the remedies to be pursued, the bringing of suits, service of process, etc., are governed by the law of the place where action is brought.

64 Completion of Contracts.—The element of time is an important feature of all contracts. A contractor not completing his contract within the time specified is liable for whatever damages actually occur.

In cases where no time is fixed for the completion of a contract it must

be performed within a "reasonable time," according to the circumstances, which, if not mutually agreed upon, would be for the court or judge to determine.

Penalty Clause—

Where a definite time is fixed for the completion of the contract and a stated sum agreed upon by way of damages if not completed by such date, say $20 per day for each and every day thereafter, until completion, such agreement is enforceable, providing it is not nullified by some act of the owner himself. For instance, the contract is for the construction of a particular building according to certain plans and specifications, using certain kinds of material; but during the course of erection some change is made, either by the request or consent of the owner of the building, in the substituition of some other kind of material in place of that agreed upon; or some change is made in the plan of some room, or hall, or stairs or chimney, no matter what: this makes a new contract. It is not the building the contractor bound himself under a penalty to complete by such date, and therefore he is released from the stipulated damages.

To prevent such changes from nullifying the penalty clause they must be embodied in an additional written agreement, signed by the contracting parties, in which it is definitely stated that the other parts of the original agreement, including the penalty clause, are to remain in force.

65 Cancelling Contracts.—In cases where a person has been induced through fraud, or falsehood, or misrepresentation of any kind, to enter into a contract to purchase land or any kind of personal property, he can repudiate the contract or bargain, and if he has paid money he can recover it. But he must act as soon as he discovers the fraud, and restore, or offer to restore, the property in the same condition it was in when he received it. The fraud or misrepresentation must be of a material nature and actually deceive.

A purchaser who would rescind a contract must be in a position to restore the property. If he treats the property as his own (more than to care for it) after discovering the fraud, he cannot afterwards return it and recover his money. If a portion of the goods were used before the discovery of the fraud, it would be for the court to determine the value of the portion used. There is no chance for a person to rescind a contract merely because he changes his mind. (See Section 33 for withdrawal of a proposition.)

66 Breach of Contract is a failure to do what was required or covenanted to do, or the doing of what was forbidden.

67 Damages for Breach of Contract or Wrongs.—The law provides two classes of remedies for the enforcement of the rights created by contract —civil and criminal. The criminal are for the punishment of crime, and in a general sense are dealt with by the Crown; the civil belong to the individual and enable him to enforce his personal rights. His remedy is by suit for damages. There are different classes of damages: (1) Compensation for the actual loss sustained. (2) Nominal, where the failure to perform the contract is not regarded as intentional but merely through inability to do so. (3) Liquidated, where the amount is previously agreed upon in case damages should be awarded. (4) Speculative, where the profits that would have resulted from the performance of the contract are known, they may be recovered. (5) Exemplary, where for a malicious violation of a contract a sum in excess of the actual loss is awarded as a punishment—"smart money."

68 Injunction and Mandamus.—Where a person is doing something he contracted not to do, or is infringing upon the rights of another, an order may be obtained from the court restraining him from further action until the case has been legally adjudged. This order is called an injunction and can be obtained from the judges of the higher courts only.

The cost varies. If the party desiring an injunction will go to the judge direct and make application for himself, becoming personally responsible under a bond for whatever damages may arise out of it and the matter stops with the service of the injunction, it need not cost over $5.00. But if he employs a solicitor or barrister to make application for an order of injunction and who thus becomes responsible for damages that may arise, it will cost from $20 to $50, and possibly $75 if the injunction is resisted and the case has to be fought out.

The same judges may grant a mandamus, ordering one to do his duty in a particular case. This is usually used against a public official.

69 Place of Suit.—In case of trial for breach of contract the place where the contract is made is where the suit will be tried.

Contracts made by letter have for their place where the letter of acceptance was signed, hence there the suit should be.

In regard to real estate, the place of contract is where the property is situate.

A promissory note not made payable at any definite place would be sued where it was dated; but if payable at some other place, then that would be place of suit. A note is said to be made where it is delivered to the payee. (Section 83 Bills of Exchange Act).

Goods ordered or sold from store or warehouse and taken by purchaser or shipped from there, would generally have that place for place of suit. Goods delivered by traveller to the retail dealer, the place of suit would be there.

In cases where a traveller or the manufacturer calls on the retail trader and secures orders for goods, that will be the place of suit.

But Section 85 of the Division Courts Act of Ontario says: "The action may be entered and tried in the court nearest to the residence of the defendant, irrespective of the place where the cause of action arose," and the same permissive power is given the courts in all the provinces.

70 Contract to Build a House.—To more fully illustrate the opening closing, signature, witnessing and general wording of a contract the following concise agreement for building a house is given:

ARTICLES OF AGREEMENT made and entered into on this 24th day of March, A.D. 1906, between J. H., of Toronto (merchant, or other occupation), and C. S., of St. Catharines, builder, it is agreed in manner and form following, viz.:

The said C. S. covenants and agrees with the said J. H. to make, erect, build and finish in a good and substantial and workmanlike manner on lot ...., plan ...., the property of the said J. H., situate on the .... side of .... street, in the .... of ...., a dwelling house, agreeably to the draft, plan and specifications hereunto annexed, of good, substantial materials, by the .... day of .... next.

And the said J. H. covenants and agrees to pay unto the said C. S. for the same the sum of —— dollars, in lawful money of Canada as follows: The sum of —— dollars in —— days from the date hereof, the sum of —— dollars when the said dwelling house shall be completely finished, and the sum of —— dollars thirty days after the said dwelling house shall be completely finished. And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties hereunto bind themselves, their executors, administrators and assigns each unto the other in the sum —— dollars as liquidated damages, and not by way of penalty.

In witness whereof the said parties to these Presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of F. E. Misener. JAMES HENDERSON. CHARLES SUMMERS.

For penalty clause, see Section 64.

CHAPTER III.

GUARDING AGAINST FRAUD.

71 Although this is purely a law book and not a book on business, still this chapter is so essential to the business community that it can scarcely be omitted.

The itinerant swindler is always operating somewhere, in some line. Every class in the community have this enemy to watch against. The following sugestions may be of service:

1. Never give money or a note, except it be to a well-known firm, until the article purchased is in your possession and found to be according to agreement.

2. An article or a machine having been ordered, which, upon arrival at the freight or express office, is found to be not according to agreement, should not be received. Of course, if the article is according to contract it must be received if delivered at the place and time agreed upon; but if not according to contract the article should be refused, and payment therefor cannot be enforced.

3. Always take a copy of every agreement that is made in writing, or any order given for machinery, goods, etc. The agent should sign the company's name, together with his own, to the copy you retain, which should also be marked "copy" by him. Never neglect to do this, if you would avoid the risk of having your order changed by an unscrupulous agent into a promissory note.

4. In dealing with an agent, or any other person, where a written contract, agreement or note is made, be assured of this, that nothing but the

written document will be considered in court. No matter what else the other party promises in addition by word of mouth, or even in writing, if on a separate paper or not referred to specially in the written contract as a part of the agreement, it is utterly worthless where innocent third parties are interested.

5. Never cash a private cheque for a stranger, no matter what his "Letters of Introduction" may be. The banks and brokers will look after a man who actually has money in any bank in the world.

72 Swindling Note.—The form of swindling note shown on this page—which is made by merely cutting off the righthand end of what was supposed to be simply an agreement to sell six harrows, to be paid for after they were sold—is an old one. After the end is removed, it is a regular promissory note, which could be sold to any person who knew nothing of the swindle, and by being thus transferred to an innocent holder for value it would be collected. The swindle does not always take this form, but sometimes the note would be in the middle of a sheet, and by cutting away the top, bottom and sides a regular form of note would be left. This illustration, however, is enough to put thoughtful persons on their guard against all similar forms of trickery.

It is seldom that such documents are necessary in legitimate business, and the attempt to use them should be received as a strong suspicion of fraud of some kind, so strong that they should not be signed.

$175.00 TORONTO, *February 28th, 1906.*

Six months after date I promise to pay Jas. Brown, or bearer, when I sell six harrows the sum of ONE HUNDRED AND SEVENTY-FIVE DOLLARS when collected, to be payable at Toronto, with interest at eight per cent. per annum if not paid when due.

Wm. J. Simmons *Agent for Jas. Brown.*

Witness: S. S. Smith

73 Note Preventing Fraud.—The non-negotiable note given in section 123 is the best protection that can be devised against the frauds and swindles that have caught even the shrewdest of men. In purchasing a machine or any line of goods through an agent from a strange firm without opportunity for a sufficient test, if a note is to be given, write out such a note as that. That kind of note is valid and can be collected as well as any other form, *provided* there is no fraud; but if there is fraud in connection with the transaction, it could not be collected. It is positively non-negotiable, so that the payee cannot transfer it to an "innocent holder for value" to be collected. It can be transferred by assignment; but in that case the purchaser does not get any better title to it than had the original holder, hence the maker is safe.

Or the following form, written on plain paper instead of using any printed blank, would be an effectual guard in cases where some fraud would be intended. The words "and not otherwise or elsewhere" are not absolutely necessary, but they are evidence that there was a decided intention

that the note should not be transferred, and that it should not be payable at any other place than the one specified.

$100.00. *Guelph, March 6th, 1906.*

Three Months after date I promise to pay to James Smith, only, One Hundred Dollars, at the Imperial Bank here, and not otherwise or elsewhere, for value received.

John Winters.

CHAPTER IV.

GUARANTY AND SURETYSHIP.

74 Guaranty and Suretyship is a promise of one person to another to answer for the debt, default or miscarriage of a third party. According to the Statute of Frauds and Perjuries (see Section 22) all such promises must be in writing in order to be binding.

This famous Statute is over 300 years old, hence no excuse for not knowing its provisions.

75 Verbal Recommendations.—The representation or assurance made by one person concerning the character, conduct, or credit of another by which such person obtains goods or credit does not bind such person as a surety, unless it is in writing. R.S.O. Chap. 146, Sec. 7. It is the same in all the Provinces.

76 A Verbal Promise that Binds may not differ much in *sound* from a promise that does not bind, but the distinction in *form* and effect is very marked. The forms of expression in this and the following section are very common in business and will serve to illustrate the distinction:

A person goes with his hired man to a store and says to the merchant, "Give this man goods (naming the amount), and I will see it paid," or, "I will be responsible." This is binding when given merely by word of mouth, if the sum does not exceed the amount for which an oral agreement is binding (see Section 22), because it is an original promise to pay the debt himself, and not answering for the debt of another. It is his own order, and he virtually tells the merchant to charge the goods to him direct, which the merchant should do in such case, although the goods are for the benefit of the other party. It is a "valuable consideration," and makes the contract binding if the goods are taken.

Again, if A were to go to B and say, "if you do not press C for your claim for one month, at the end of that time I will pay you," this would also be a direct promise by A to pay the debt, and would therefore be binding without being put in writing.

The extension of time given is a "sufficient consideration" to constitute a binding contract.

77 Oral Promise that Does not Bind.—But instead of using the form of expression employed in the preceding section,

Suppose he were to say to the merchant, "Give this man goods up to (naming the amount), and if he does not pay you by such a time (naming date), I will myself," or "send the bill to me." This would be worthless spoken by word of mouth, because it is "answering for the debt or default of another," and therefore utterly void unless put in writing. Even if there were witnesses it would still be void, according to that famous "Statute of Frauds and Perjuries," which has been good law since 1678. It leaves the debt on the other party, the guarantor only agreeing to pay in case the debtor fails to do so. Every form of wording that may be used where this is the effect, is utterly worthless, unless put in writing.

78 Letters of Recommendation—Great care should be taken in the wording of a letter of recommendation where financial obligations are to be created or business relations formed, if nothing but a simple recommendation is intended. All such phrases as "He is good for them," or naming a certain amount and saying, "He would be safe to that extent," etc., if in writing, would constitute a guarantee. The liability may be evaded by modifying such expression by, "I would regard him as safe" for such an amount, or, "I think you would be entirely safe in giving him credit" for such an amount, or, "I would trust him," or, "I think you could trust him," or, "He has always paid me," etc. With any such modifying phrase, which any lawyer or banker would use, much may be said to the credit of a worthy person without being held as a surety.

79 Guarantee of Debt Already Incurred.—In guaranteeing the payment of a debt already incurred, the guaranty must not only be in writing, but there must be a *consideration*, for *gratuitous promises* are not enforceable in law.

> *In consideration of One Dollar, the receipt of which is hereby acknowledged, I guarantee that the debt of One Hundred and Twenty-five Dollars now owing to James Forsyth by Henry Johnston shall be paid at maturity.*
>
> LONDON, Aug. 29th, 1906. WILLIAM JENNINGS.

This guarantee might be addressed to James Forsyth merely in the form of a letter, and closed with "Yours respectfully," etc., and be just as binding.

Another Form.—If there be a consideration involved it is not necessary to express it in the guaranty, as:

To C D, of .....

> *In consideration of your staying proceedings in the action you have commenced against ..... in the (name of court), of the county of ..... to recover the sum of ..... dollars (or if you will grant an extension of time to B to pay his account, as the case may be), I hereby guarantee to you that the amount, by weekly instalments of ..... dollars (or otherwise), shall be paid until*

the indebtedness is cancelled, and in default of payment of any one instalment I further agree that the balance then due shall be recoverable against me upon this guaranty.

Dated this ..... day of .....19 .

(*Signature.*)

The staying of proceedings, or an extension of time, would be a sufficient consideration.

80 Guaranteeing Future Purchases.—This is what would be called a "continuing guarantee":

BRANTFORD, July 30th, 1906.

In consideration of One Dollar, the receipt of which is hereby acknowledged, I hereby guarantee the payment of all goods purchased by John Dillon from Alfred Freeman during the remainder of the year 1906, total amount of said purchase not to exceed One Hundred and Fifty Dollars.

WALTER JONES.

A guaranty of payment for goods purchased "*from* this date" would not cover goods purchased "*on* that date."

A guaranty of payment for goods sold by a firm to a person would not hold good for future purchases if such firm changed its *personnel* without a renewal of the guaranty.

An agreement of guaranty made with one person cannot be assigned so as to give the assignee the right of action against the guarantor.

81 Guaranty of Performance to be indorsed on Lease, Bond, or other written agreement.

For value received I hereby guarantee to the bona fide owner of the within contract, his heirs or assigns, the full performance thereof on the part of "A B," together with all legal costs and expenses in enforcing such performance from "A B" and myself, or either of us.

Dated this ..... day of ..... 19 .

Signed. (*Seal.*)

82 Guaranty of Payment of the money part of a contract:

For value received I hereby guarantee the payment on the part of (A B) of the sum of money contracted to be paid by him in the within contract and at the times and the manner therein mentioned, together with all costs and expenses incurred in collecting the same from (A B) and myself, or either of us.

Dated ..... the ..... day of ..... 19 .

Signature. (*Seal.*)

83 Creditor's Obligations to Guarantor.—If the employee betrays his trust; or the debtor makes default in payment, the creditor is required:

1. Give the guarantor notice of default within reasonable time after it is known, unless the guaranty waives the right of notice.

2. Give the guarantor, as soon as he has made good the default, all his rights against the debtor, and if any property of the debtor, or other collateral security is in his hands, turn it over to the guarantor.

The guarantor, after making good the default, takes the place of the creditor, and may recover from the debtor not only the original debt, but also all expenses and costs incurred.

84 Discharge of Guarantor.—Guaranties have been divided into two classes:

One when the "consideration" is *entire*, as guaranteeing payment of a promissory note or the performance of the covenants in a lease. When such lease is granted the guaranty runs on through the duration of the lease, and would not be revoked by the death of the guarantor.

The other is when the "consideration" passes at different times, and is therefore *divisible*, as the guarantee of a running account at a banking house, or store. Such guaranty may be revoked by notice to that effect, and would also be determined by the death of the guarantor and notice of that event.

Keeping in view the above distinction it will readily be seen that any one of the following events or acts discharges the guarantor:

1. The expiration of the time, or the completion of the contract.

2. Notice by the guarantor to the creditor if the "consideration" is *divisible* as stated above.

3. Death of the guarantor and notice of that event, if the consideration is *divisible*. As stated above, this could not apply to a negotiable instrument not yet due, or to any contract the time for which to be executed had not yet arrived.

4. Any alteration of the agreement without the knowledge and consent of the guarantor operates as a discharge, even though the alteration may be for his benefit.

5. In guaranteeing the fidelity of a clerk any change of employment from that for which his fidelity was guaranteed, would release the guarantor.

6. An extension of time by *valid agreement* given by the creditor to the debtor on a negotiable instrument or other contract releases a surety or guarantor unless he gives his consent.

A mere voluntary extension of time would not release the surety, neither would a mere *promise* to extend the time, because the promise would not be legally binding.

In order to be a discharge to the surety, the agreement with the debtor must be one that *binds* the creditors to an extension of time for payment, so that they are prevented from proceeding against the debtor themselves during that time, and which consequently prevents the surety from exercising his right of paying the creditors and suing the debtor upon the claim.

7. Fraud, either in respect to the contract itself; or some fraud or deception practised by the creditor himself, or by the debtor with the creditor's consent, by which the surety was induced to guarantee the debt, releases the surety from his obligation.

85 Notice of Revocation of Guarantee where a power of revocation is reserved:

Whereas, by a written agreement of guarantee dated the ..... day of ..... 19 , I became surety to you for (name) of (address). I, the undersigned (surety) in pursuance of a power for that purpose reserved and contained in the said agreement (if that were done), now give you notice that I hereby revoke and determine the said agreement from the day of ..... next ensuing; and that my liability thereunder shall from and after that, the said last date, wholly cease and be determined.

Dated ..... the ..... day of ..... 19 .

To (person to whom the guarantee was made). (*Signature.*)

86 Rights among Sureties.—When several persons unite in a guaranty each one is required to contribute equally to the satisfaction of the claim should the debtor make default. If one were found to be insolvent the others would be bound to bear the burden equally. In case one paid the whole amount he could recover from his co-sureties their equitable share of the loss.

This proportional distribution of the liability holds unless there is an agreement among the sureties that changes it. If the last surety (as with indorsers on a note) were to add to his signature, "surety for the above names," or words of similar import, he would not be a co-surety, but would merely be liable in case the others fail.

The respective liabilities among indorsers on notes and acceptances are given in the chapter in Indorsement, which see.

CHAPTER V.

PAYMENTS.

87 Payments.—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.

88 Payment 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 Section 131.)

89 Payment by Notes.—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.

90 Counterfeit Money and 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.

91 To Whom Payable.—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.

92 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 hold 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).

93 Application of Payment.—The person making the payment has the right to make the application. Where a debtor owes more than one debt to the same creditor, and they are all due, the debtor has the right to say on which debt the payment shall be applied. If the debtor does not say on which debt it should be placed, then the creditor may apply it as he may desire. When neither debtor nor creditor makes the application, but credit is merely given for the receipt of so much money, in case the business matters were settled in court, the court would apply the payment on the debt that is considered the most burdensome to the debtor. If the debts were a book account, an indorsed note, a chattel mortgage and a judgment, the court would apply it on the judgment. If the debt were a book account only, the court in applying the payment would begin with the items longest standing.

94 Compromise.—A disputed claim may be paid by any sum where there is an agreement to accept such sum in satisfaction for the claim. The agreement should be in writing, or have a witness. "Accord" and "satisfaction" are terms used in settlement of disputed claims by compromise.

95 Composition Deed.—In case of an insolvent person, where the creditors accept a certain rate on the dollar and give him a discharge, the release is called a Composition Deed.

96 Arbitration and Award.—In case of any dispute, where parties agree to leave the settlement to arbitration, they are obliged to accept the award as final, providing the arbitrators keep within the limits prescribed for them, in the Deed of Submission.

The process is the same in all the provinces. The agreement should be in writing, giving the names of the arbitrators and signed by the parties to the dispute, or their authorized agents. It may also be filed with the clerk of the proper court.

97 Legal Tender of Payment.—A legal tender is the attempted performance of a contract, whether it is to do something or to pay something. If payable in goods, then goods of that kind and quality must be offered at the exact place and time called for in the contract. If payment in money, it must be in the lawful money of the country, if that is demanded. A creditor cannot be forced to accept a cheque as payment.

The refusal to accept part payment on a note or debt does not affect the debt in any way. The refusal to accept payment tendered in full does not cancel the debt, but is usually a bar to all interest and expense thereafter.

A tender of payment if coupled with a condition, as for a receipt in full, or for the cancellation of a certain document is not good.

98 Merging Securities.—The higher security merges the lower. Where one person would be owing another on a book account or note, and then gives a mortgage for the same debt, the mortgage, being under seal, is a higher security, and thus the book account or note is merged into the mortgage, hence would be no longer binding. If there were an indorser on the note he would be relieved. If it is desired that the mortgage should not merge the note, it must be stated in the mortgage that it is given as *collateral security;* then the note would still be binding, and the payment of either one discharges both.

If a note contains a statement on its face that it was given as collateral security it is not a promissory note, but merely a written promise, and is not negotiable, except by assignment.

Where collateral security is given with a note the right to such security goes with the note, and may still be held, even after the note may be outlawed.

99 Legal Tender Money.—In Canada our Canadian copper coins are legal tender for the payment of a debt up to twenty-five cents; Canadian silver for $10; Dominion of Canada notes, British gold sovereigns, half-sovereigns and any multiples of the sovereign (at $4.86⅔ each), and United States eagles and half-eagles and any multiples of the eagle, for any amount.

Mutilated coin is not legal tender, even when the mutilation does not lessen the weight of the coin, as a stamped name or word on it.

There is no provision in Canada for the redemption of mutilated silver coin, but coin worn smooth or thin by use are redeemable at office of Receiver-General.

The uttering of mutilated coin is a criminal offence.

100 Without Prejudice.—The two words, "without prejudice," have great importance when used in a legal sense. This use can be best shown by an illustration, *e.g.*: Two persons are at variance and likely to be drawn into court, but the one desires amicable settlement, and is willing to make any reasonable concession to affect it. He, therefore, takes these two words, *without prejudice*, and writes them across the upper left-hand corner of his letter, or in the body of the letter, and then makes his proposition, whatever it might be. The effect of those words is, that if the other party should not accept the proposition and terms thus offered, but the case goes to suit, this letter cannot be used in court as evidence against the writer. Hence, by

using these words in that way a person who wishes to avoid litigation may safely make advances to secure a peaceful settlement, and if not successful his case is not jeopardized. A convenient form at the beginning of the letter would be similar to the following:

Dear Sir: "Without prejudice" I hereby make you the following proposition, etc.

Also, a debtor who may be taking the benefit of the Statute of Limitations may, by using these words, frankly acknowledge the justice of the claim against him, and assure his creditor that he will still pay him, or may even pay money to him, without reviving the *legal liability.* Also in offering to make payment on a disputed account or claim by way of a compromise, these words prevent the offer being held to be an acknowledgment of the claim. Every man should be familiar with their use, and make use of them whenever occasion requires, instead of trusting to the other party's honor.

CHAPTER VI.

NEGOTIABLE PAPER—PROMISSORY NOTES.

101 Negotiable Paper includes those instruments in use in community which pass freely from one person to another by simple delivery or by indorsement, and are payable in money only. The word which gives them this negotiability is *bearer* or *order.* Those which are transferable by simple delivery are written payable to a certain person, firm or corporation, or *bearer;* and those which are transferable by indorsement are written payable to a certain person, firm or corporation, or *order,* and require to have the payee's name written across the back to be transferred.

The paper must be properly signed and delivered in order to be valid. A promissory note, draft or cheque signed and complete in form is not a contract until it is delivered, and if stolen at that stage and sold, even an innocent purchaser for value would not get a good title, so as to collect it. It is like forged paper.

The instruments classed under Negotiable Paper are promissory notes, acceptances, bank notes and cheques, but besides these are also the following, which are negotiable by indorsement: Warehouse Receipts, Bills of Lading and Coupon Bonds. Dominion notes are not classed among negotiable instruments, because the Dominion of Canada cannot be held to be a person as a chartered bank would be. Bonds, mortgages, agreements for the sale of real estate, leases, chattel notes, etc., are negotiable by *assignment,* and the purchaser can enforce the contract to the same extent that the original owner could if he had not transferred them, but they are not called "negotiable instruments."

102 Promissory Notes.—A promissory note is an *unconditional* written promise to pay a certain sum of *money* at a specified time or on the

happening of a certain event. Three essentials—Unconditional, money only, time certain, as follows:

1. There must be no *condition* expressed. If there be a condition expressed in the note, its character as a promissory note is destroyed and it becomes nothing but a written agreement, binding on both parties, but not negotiable, except by assignment.

Any condition added, as "this note is held as collateral security," destroys it as a negotiable instrument.

2. It must be payable in *money*. If it is made payable in anything except money its negotiability is destroyed and it is called a chattel note. (See Section 131.) It may be payable in any kind of money, or money of any country.

3. It must be made payable at some *specified time* or on the happening of a certain *event*. If made payable so many days or months after the death of a certain person it would be as valid as if made payable after *date*, as they are usually drawn, because it is an event certain to occur, although the time of happening is uncertain.

103 Parties to a Note.—At the inception of a contract by promissory note the parties to the note are maker and payee, and occasionally an indorser. After its transfer other parties become interested, and the *holder* takes the place of the *payee*. If the original payee in transferring indorses it in the usual way, he becomes surety for subsequent holders.

104 "Innocent Holder for Value" is nearly the same as what the Act designates as "a holder in due course," and means one who took a negotiable instrument under the following conditions:

1. That the instrument is complete and regular, on its face.

2. That he became the holder of it before it was overdue, and that if it had been previously dishonored he had no notice of such fact.

3. That he took it in good faith and for value, and that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it to him.

Any person thus becoming the holder of a negotiable instrument will collect it no matter how great the fraud by which it may at first have been obtained except in case of those marked "Given for patent right," or in case of forged paper.

After the paper has thus passed through the hands of a holder in due course, and been purged from its infirmity, it becomes immaterial whether any subsequent holder has notice or not of any prior defects or illegality. This is a case where a man may give a better title than he himself has.

A person, however, becoming the holder of an *overdue* note or acceptance, or a non-negotiable note, or a note marked "given for patent right," takes it subject to all the equities and defects of title which affected it at its maturity, and henceforward no person who takes it acquires any better title than it had at that time, and also is liable to whatever counter-claim or defences that may exist between the maker and the original payee. The payee is not a "holder in due course."

"Notice" of infirmity, or defect in the title would include any information that a prudent person would gather from looking at the instrument, as well as information that might have come through other sources. The purchaser cannot shut his eyes and ears and then say he had no notice. For

instance, one or more notes offered at an unusually large discount is sufficient *notice* to the "purchaser to beware," and if cashed without inquiry, say at even 25 per cent. discount, the purchaser could not claim to be "an innocent holder for value."

105 Defective Title.—In particular the title of a person who negotiates a bill or note is defective within the meaning of this chapter, when he obtained the note or acceptance, or the acceptance of the bill by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration; or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.

106 Place of Payment.—It is not necessary to the validity of a note to mention in it any place of payment; but it is desirable, for various reasons, that it should be done. The maker would then know where to find it at maturity. Also, if there is an indorser on the note, it is better for the holder if it is made payable at a certain place, as he would have less difficulty in making the legal presentment required in order to hold the indorser. (See Section 175.)

If no place of payment is mentioned in the note it is payable where made and the holder is under no legal obligation to present it for payment at maturity; it is the maker's duty to find his note and pay it, and if he does not do so, the note may be sued the next day, or be allowed to run on and draw interest.

107 Signatures to Notes.—A person need not sign his own name to a note with his own hand, but it is sufficient if his signature is written thereon by some other person, by or under his authority. In case of a corporation it is not necessary to attach the seal to a note or bill if the corporate name is used. (For a person who cannot write, see Section 55.)

A trade name, or assumed name, even the initials or a stamp would answer where it is clear that the parties intended to adopt them as their signature.

A note or acceptance drawn or signed with lead pencil would be valid; so would an indorsement in pencil be binding; but no person of ordinary prudence would use a pencil, as it can be too easily erased and changes made.

Signature to note by agent that binds the principal and not the agent:

James Fitzgerald,
by J. W. Smith,
Agent.

But to sign,

J. W. Smith,
Agent for James Fitzgerald,

would bind Smith and not Fitzgerald.

A corporation signature that binds the company and not the officer signing the note:

The Standard Fuel Company, Limited,
by J. W. Smith,
Treasurer.

The common error is:

J. W. Smith,
Treasurer Standard Fuel Co., Ltd.

The last signature would bind Smith personally and not the company.

In all cases where a person is signing documents in a representative capacity he must use the name of his principal. Merely signing his own name and then writing agent, or secretary, or president, under it is worth no more than if he wrote alderman, captain, or liberal or consevative after his name.

108 Value Received.—These words are usually inserted in a promissory note, but they are not necessary to its validity. In regard to negotiable paper, value (consideration) is *presumed.*

109 Alterations of Notes and Acceptances.—When any note or acceptance is *materially* altered without the consent of all the parties liable on it, the bill is void, except as against the person who made, or who assented to the alterations, and also against *subsequent* indorsers.

The alterations that are held to be material, and that destroy the bill, are:

1. The change of date.
2. Change in the sum payable, making it either greater or less.
3. The time of payment, no matter whether it is hastened or delayed.
4. Change of place of payment, or striking out one or the addition of a place of payment when no place is specified, and no instruction given to write in a place of payment.
5. A change in the number or relation of the parties.

In general, any interlineations made in a note or draft by the holder after it has been signed will relieve both the drawer and prior indorsers without regard as to whether such parties are prejudiced or benefited. It is not the contract they executed.

Restoring the altered parts will not revive the instrument, or the liabilities of the parties discharged by such alteration.

110 Defects that do not Invalidate.—A bill is not invalid by reason that it is not dated, or that it is dated by mistake on Sunday; that it does not specify that value has been given, or name the place where it was drawn or where it is payable. It might be dated either forward or backward. If through oversight no date were placed on a note or draft, the holder would have the right to insert the proper date, according to the intention of the parties at the time the instrument was made. If a payee transferred a note made payable to him or order and neglected to indorse it, then died or moved out of the country so his signature could not be obtained, and the maker refused to pay the holder, the court would order its indorsement.

111 Days of Grace.—Three days of grace are allowed on all notes and acceptances, except those drawn payable *on demand,* which have no days of grace allowed, neither have cheques. A note or acceptance payable a certain time after demand would have three days of grace.

In Newfoundland and England sight drafts have no days of grace allowed.

112 Maturity.—A note or acceptance is legally due on the third day of grace for those on which days of grace are allowed, and may be paid at any time during the business hours of that day. If payable at a bank, it must be paid during banking hours.

When the time is expressed in days, the actual number of days must be counted. In computing the time, the day upon which the note is dated is

not included, but commences on the following day. If the time is expressed in months, it means calendar months and not merely thirty days. For instance, a note dated April 10th, at three months, falls due July 10th, and the three days of grace added makes July 13th as its legal date of maturity.

A note or acceptance falling due on Sunday, or any legal holiday, is payable on the following day, unless that again were a holiday, in which case it would be the first business day thereafter. In New York, and some other States of the Union, a note or acceptance falling due on Sunday or a legal holiday is payable the day before, but not so in Canada or Newfoundland or England.

113 Accommodation Paper.—An accommodation note or acceptance is one where the person signing the note or accepting the draft does so without receiving any value therefor, but merely for the purpose of lending his name to some other person. The accommodation party is liable on the instrument to any holder for value, whether such holder, when he took the note or acceptance, knew such party to be an accommodation party or not. The person for whom the accommodation party signed the paper could not collect it.

114 Payment of Notes.—Payment of negotiable paper of any kind should never be made except to the actual holder of the paper who has it in his possession to deliver over, and who does deliver it over upon receipt of the payment. Serious losses are constantly occurring by a neglect of this plain business procedure. Payment even to the supposed holder who has not the note in his possession is not redeeming the note, but is simply placing that much money in his hands and trusting to his honor to apply it to the note. The note, however, may have been transferred and the true holder could collect it over again, or it may be in the bank and the party to whom payment was made may be on the eve of bankruptcy, hence the note would have to be paid over again.

Paying money to an agent of a firm who has not the note to hand over, is simply trusting to the honesty of the agent. His receipt would be worthless as a set-off if the agent kept the money and the firm sued on the note.

115 Cancelling Signature.—When a note is paid the name should never be torn off, as is sometimes done, but simply draw one or two lines through the signature of both maker and indorser, or better still, have a stencil stamp and punch out the letters p-a-i-d, and file the note away as a voucher. There is the same necessity for preserving a redeemed note as there is for a receipt.

116 Surety is the person who agrees to pay in case the maker fails to do so. The obligations of a person who signs a note on its face as a surety are the same to the public as that of the maker and he has the same defenses that the maker has.

When a person thus signs his name on the face of a note, as surety, he should put the word *surety* after his name so that if any complications should arise in the future between the maker and the surety, or between either one and the estate or heirs of the other, the paper itself would declare whose debt it was.

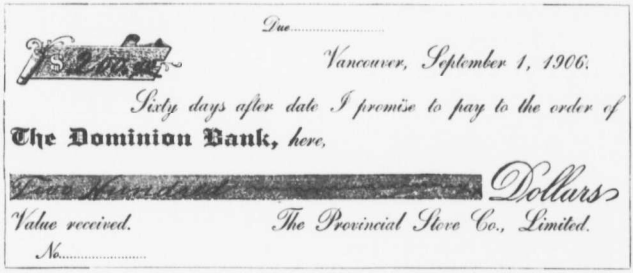
If he puts his name on the back of the note he is an *indorser* only, and the holder of the note must meet the requirements of the law in regard to

presenting the note for payment, otherwise his liability ceases (Section 175). But if he writes his name on the face with that of the maker, he is not a surety only, but becomes one of the makers, and is, therefore, held for payment, whether the holder presents the note for payment or not.

117 Note Obtained through Fraud is voidable in the hands of the original holder, if the maker can prove the fact of fraud or misrepresentation, but if it has been transferred to another person before maturity, who gives full value for it and does not know of the fraud, then this third party will collect it. No difference what the fraud may have been, or deception, this innocent holder for value has a good title and will collect it.

118 A Forged Note is void from the beginning, and cannot be collected under any circumstances, except from an indorser, if the note is in the hands of a "holder in due course."

119 Individual Note is where t ere is but one signature, and that not of a company or firm.


Due.....

Vancouver, September 1, 1906.

Sixty days after date I promise to pay to the order of

The Dominion Bank, here,

Dollars

Value received. The Provincial Stove Co., Limited.

No.....

The above form is in common use, and usually indorsed before delivery to the payee. In this case the note is presumed to be given by John Jones to The Provincial Stove Co. Ltd., in settlement of account. The Company indorses it in the usual way and discounts it at the Dominion Bank. In indorsing it before delivery to the payee the Company will be held as surety for the maker, and if not paid at maturity will be liable to the Bank as indorsers only, and not as a guarantor, nor joint maker.

"That a person indorsing a note before delivery to the payee is an indorser only is sustained by the courts of Quebec, Nova Scotia, Manitoba, and the Supreme Court of Canada." (McLaren.)

120 Joint and Several Note is one signed by two or more persons, who thus promise to pay either jointly, or individually, if necessary. There are several forms for the wording in general use, as: "We, or either of us, promise to pay," or "We jointly and severally promise to pay," and signed by two or more persons, or simply "I promise to pay," and let as many sign it as are interested, it being an "I promise" for each one. The latter form is preferable, because shorter.

Due _____

$ 200.00 Edmonton 1st Sept. 1906

Four months after date I promise to pay

W. W. Unsworth or order

at The Canadian Bank of Commerce here

Two Hundred Dollars

value received David Butler

C. H. White surety

In the above joint and several note each one is liable for the whole amount, and if the holder found it necessary to sue in order to recover payment, he could proceed against both at once, or against either one, just as he thought best. If he sued one and collected the whole amount from him; then that one, if they were equally interested, could sue and collect half from the other, including half of the costs of the previous suit. But if the party who paid the note happened to be a mere surety for the other, he would collect the whole amount from the other party who received the value.

121 A Joint Note is written "we promise to pay," or "we jointly promise to pay," and signed by two or more persons, who are not *partners*.

Due _____ D _____

Quebec Sept 4, 1906

Ninety days after date We promise to pay

to the order of J. W. Lamoreaux

at The Bank of Ottawa here $ 140.50

One Hundred and forty 50/100 Dollars

for value received A. N. Angers

W. R. St. John

In the above form both parties are supposed to have received value and agree to pay it jointly. If it should become necessary to sue in order to collect it, the parties must be sued jointly. If, however, one of the parties left the country and his address could not be ascertained so as to serve him, he may be served *substitutionally*. That is done by obtaining an order from the County Judge to serve another member of the family or otherwise as he may direct. Suit could then proceed against the other party.

If one of these two parties, instead of having an equal interest in the *consideration* for which the note was given, had no interest at all, but merely signed the note as a surety, and he should leave the country *before maturity*,

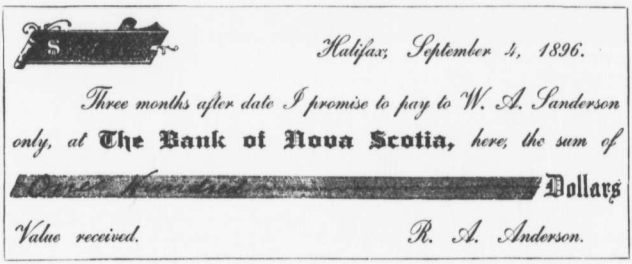
or it was found that he was insolvent, so that nothing could be collected from him, the whole amount would be recoverable from the other party who received the value.

In the Province of Quebec the French law governs, and each one of the joint makers of this note is liable for half the amount only. (It ought to be the same in all the provinces but as it now stands legal opinion is divided.)

122 A Partnership Note is usually written "*we*" promise to pay, but in that case it is not in fact a joint note, although it has that form, but is a joint and several note. Although three or four may sign, each member of the partnership is individually liable for payment of the whole note on account of the partnership laws.

123 Non-Negotiable Notes are those made payable to a certain person firm or corporation, without using either of the words *bearer* or *order*, and placing the word *only* after the name of the payee. This form of note, shown on this page, containing the word *only*, shows on its face that it was the intention of the parties to it that it should not be transferred, and it cannot be by merely delivery or indorsement, as in case of other notes.

Simply marking out the word *order* or *bearer* from the printed blanks is not sufficient to make the bill non-negotiable. Before 1890 such a note was absolutely non-negotiable, but not since that date. A bill or note now made payable to a particular person, but which does not contain additional word *prohibiting* transfer is still negotiable, notwithstanding the words *bearer* or *order* are omitted. It is regarded by the Statute as simply an omission, the same as forgetting to date the bill, which any holder could subsequently insert. Hence to make the bill non-negotiable it is absolutely necessary to put the word "*only*" after the name of the payee.



A non-negotiable note or bill may be transferred by assignment the same as a book account or due bill. The party who purchases such a note takes it subject to all the defects and equities that may burden it, and in no respect obtains any better title than the original owner possessed.

The material distinctions between a negotiable instrument and a non-negotiable instrument are:

1. That the party to a non-negotiable instrument who has agreed to pay money or property under it has a right when the money or property is demanded either by the original payee or a purcheser of the instrument, to a set-off against it for any claims that he has aginst the original owner. But in a negotiable istrument the *bona fide* pruchaser for value before maturity can enforce payment for the full amount against the maker without regard to any counter-claims or defense that the maker might have against the original owner.

2. That an indorser of a non-negotiable instrument is not liable for payment.

124 Patent Right Notes.—Any note or acceptance given for a patent right, or for any interest in a patent right, must have legibly written or printed across the face of it, before the instrument is issued, the words: "Given for a Patent Right." And without such words thereon, the instrument, or any renewal of it, is void, unless in the hands of a holder in due course.

Any person who intentionally transfers a note or acceptance which he knows is given for a patent right, or for an interest in a patent right, and is not thus marked, is liable to a fine not exceeding $200, or one year's imprisonment.

The purchaser of a patent right note or acceptance that is thus marked, receives no better title than the original owner possessed. Hence, if the instrument is affected with fraud or any illegality, the mere transference does not relieve it in the hands of an innocent holder for value.

125 Notes by Married Women.—In all of the Provinces married women may now control their own separate estate, and enter into contracts independently of their husbands; hence in signing a note or other contract they should use their own Christian name, as "Sara A. Jones," instead of "Mrs. J. W. Jones."

$50.00. OSHAWA, September 3rd, 1906.

Thirty days after date I promise to pay Henry Alexander, or order, Fifty Dollars, at the Domniion Bank here, for value received.

SARA A. JONES.

Where a bill is payable to the order of a married woman, thus; "Mrs. J. W. Jones," the proper mode of indorsement is to indorse the bill as she is described, "Mrs. J. W. Jones," then add her own proper signature, "Sara A. Jones," under it. The same form of signature would be used in accepting a draft (incorrectly) drawn on a married woman, as "Mrs. W. H. Stevens."

126 Date of Maturity Stated.—The following form of note, which names the date of payment, is frequently used, and is to be recommended:

$75.00. OWEN SOUND, July 10th, 1906.

On the tenth day of December, 1906, I promise to pay to G. H. Johnson, or order, Seventy-five Dollars, for value received.

W. P. HENDERSHOT.

127 Restricting Place of Payment.—The form shown here is a joint and several note restricting the place of payment, so that if it is not presented at the place stipulated on the date of maturity, no cost or expense will be incurred until after it has been presented. The makers contract to pay this

Due..... *D.....*

Regina, September 6, 1906.

CANADA

Three months after date I promise to pay to the order of James Smith, at **The Bank of Ottawa,** *here,*

One Hundred **Dollars**

for value received. *A. Montgomery.*

note on January 8th, 1906, at the Ontario Bank. The holder is supposed to have the note at the bank at maturity, but if there is no indorser on it he wishes to hold, he need not, however, do so. The omission to present the paper for payment at the bank on the date of maturity does not discharge the makers.

But it is the duty of the makers to have the money at such place to meet it and if it is not presented the money should be left there until it is presented, and if any suit were instituted thereon before its presentation no costs would be added. Bank of Canada *v.* Henderson, 28 Ont., R. 360 (1897.)

If the note were payable at any other place, a tender of the money at such place would also be a bar to any subsequent costs, and probably to interest after maturity.

The Statute says that in such cases the question of costs and subsequent interest is left to the discretion of the court, but no judge, except under peculiar circumstances, would allow costs in a case of that nature, and but very few would allow interest after maturity.

128 Note Signed by One who Cannot Write.

$100.00. BELLEVILLE, August 4th, 1906.

Three months after date I promise to pay to the order of E. F. Milburn, at the Bank of Commerce here, One Hundred Dollars, with interest at six per cent. per annum, for value received.

his

Witness: C. J. SUMMERS. WILLIAM × WINTERS.

mark

The party signing a note in this way may take hold of the pen while his name is being written, or he may not; he may make his own cross, or he may not, just as he wishes. He may direct another person to sign his name, or to make his cross, and it would be legal. There must, however, be a witness to

the signature. The party assisting to make the note may sign as such witness if no other person would be convenient.

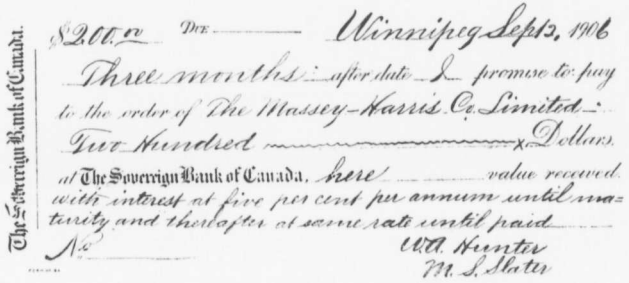
129 Lost Notes or Bills.—Where a note or acceptance has been lost the debt is not thereby cancelled. If it was lost before maturity the person who was the holder may apply to the maker or acceptor to give him another of the same tenor, giving him security to indemnify him against all persons in case the lost bill should be found again, and if not paid when due a copy may be protested.

If no tender of indemnity were offered before action would be taken to collect it, the plaintiff would very seldom be allowed his costs, and would probably be ordered to pay the costs of the defendant.

The lost instrument is usually advertised as a warning to the public not to purchase it, but such advertisement would not prevent an innocent holder for value from collecting it, that is, a person who purchased it without knowing of the loss or advertisement.

Any person finding such an instrument and attempting to conceal it, or negotiate it instead of trying to find the owner, is liable on a charge for larceny or theft.

130 Protecting Interest after Maturity.—The form shown here retains the same rate of interest after maturity that it bears before. The legal rate of interest in Canada at present is five per cent., but any rate can be collected


The Sovereign Bank of Canada.

$200.00 Dr. Winnipeg Sept 3, 1906

Three months after date I promise to pay to the order of The Massey-Harris Co. Limited Two Hundred ~~~~~ Dollars at The Sovereign Bank of Canada, here value received with interest at five per cent per annum until maturity and thereafter at same rate until paid

No

Wm. Hunter
M. S. Slater

that a person legally agrees to pay, as we have no usury laws. A note drawn for a higher rate than five per cent., if not paid at maturity will then drop to five, and if drawing less than five it will rise to five unless it expressly stipulates the contrary, in either case.

The usual way in which this is attempted to be done, by writing immediately after the rate of interest the words "until paid," is not sufficient. The courts rule that that simply means at maturity, for that is the time when the instrument is contracted to be paid.

To make the rate named in the note binding after maturity, words like the following must be used, "with interest at (the rate desired) until maturity, and thereafter at the same rate until paid," or "both before and after maturity until paid."

Another mistake sometimes made is in naming a higher rate of interest after maturity if the note is not paid when due, as, for instance, "at five

per cent. until maturity and ten per cent. thereafter, if not paid at maturity." In this case only five per cent. could be collected. Increasing the rate thus after maturity is in the nature of a fine, and there is no authority except a court that can inflict a penalty.

A note, however, could read, say, "with interest at ten per cent. both before and after maturity until paid, but if paid at maturity five per cent. will be accepted. This wording would hold good and does not have the appearance of a penalty for an anticipated default as does the other wording.

A note drawn "with interest at say one per cent. per month" would legally draw only five per cent. unless the rate per annum was also stated, see Section 141. St. John *v.* Rykert, 10 S.C., Can. 278 (1884).

131 Chattel Notes are payable in merchandise of some kind instead of money. They are, therefore, not negotiable, even if the words *bearer* or *order* should be inserted, but they may be transferred by assignment the same as a due bill or book account. Following is one form:

BRANTFORD, July 29th, 1906.

Five months after date I promise to pay James Smith, at his store, One Hundred Barrels of good Baldwin Apples at market prices. J. W. WINTERS.

The price per barrel might be named, as at $1.50 per barrel if the amount the apples were intended to pay had been agreed upon.

If the party giving such a note does not tender the articles at the time and place mentioned in the note, the holder may sue; and if payment in the chattel is not made, the amount becomes payable in money. If the articles are cumbersome and he *offers* to deliver them, it will be sufficient. If the payee refuses to receive them the debt is discharged by the tender of the articles, according to the directions in the note, but the *property* in the articles tendered passes to the payee. If, therefore, the debtor should be compelled to take the goods home again, he becomes the bailee for the payee, and must give them ordinary care, but at the risk and expense of the payee. If at any time afterwards the creditor requests their delivery, they must be delivered up if the expenses that may have been incurred, as cartage, storage, insurance, etc., are paid. If perishable goods, like strawberries they should be sold and money retained.

132 Collateral Note.—It often occurs that a person wishes to borrow money on his own note where security would be necessary, and yet may not wish to give an indorser, but he has shares in some stock company or bank, or has a mortgage which he could place with the creditor as collateral and thus secure him. In such case the following note would be in order:

$200.00. DUNNVILLE, May 10th, 1906.

Three months after date, for value received, I promise to pay Wm. Braund, or order, at the Bank of Commerce, here, Two Hundred Dollars, with interest at six per cent.

Having deposited with the said Wm. Braund six shares in the Ontario Navigation Co., Limited, I authorize him upon the

non-performance of this promise at maturity to sell them, either at public or private sale, without demanding payment of this note or the debt due thereon, and without further notice, and apply the proceeds, or as much as may be necessary, to the payment of this note and all necessary expenses and charges, holding myself responsible for any deficiency. A. J. PALMER.

N.B.—A life insurance policy could not be used as above unless the *beneficiaries* signed the note, and the assignment was recorded on the company's books.

In all cases where collateral security is given with a note, the right to such security goes with the note, and may still be held even after the note might be outlawed.

An article, say a gold watch, left in this way as collateral security would not be "pawned," and the lender of the money would not be liable to a fine for practising pawnbroking without a license. The transaction is legitimate and legal, as the money is not loaned on the article. It is safer, however, to keep to paper securities.

133 Instalment Note.—It does not affect the negotiability of a note to make it payable in instalments. Action may be taken as soon as the first instalment is due, allowing the three days of grace, but only for the amount of instalment, as each instalment is considered a separate note. An instalment note with a proviso that:

"In the event of default in making any of the above payments at the time mentioned, the whole amount of this note shall become due and payable forthwith" is valid.

The following instalment note will illustrate the form:

$60.00. HUMBERSTONE, July 1st, 1906.

On the first day of each month hereafter for four months consecutively, I promise to pay to Messrs. Augustine & Kilmer the sum of Fifteen Dollars, the whole amounting to Sixty Dollars, the first of such payments to be made on the first day of August next. Interest both before and after maturity until paid at the rate of six per cent. per annum.

In event of default in making any of the above payments at the time mentioned, the whole amount of this note shall thereupon become due and payable forthwith. JAMES HARDY.

Notes payable by instalment have three days of grace allowed on each instalment.

As to presentment and notice of dishonor each instalment is treated as a separate note, and in order to bind the indorser for any instalment of interest, the note must be presented when instalment falls due, and notice of dishonor given such indorser. Jennings *v.* Napanee Brush Co., 41 C.L., T. 595.

134 Lien Note.—A lien note proper is an ordinary promissory note with a clause added, which prevents the *ownership* of the article sold from passing to the purchaser until the note has been paid in full.

Such a note may be taken for an article being sold, but not for a debt

that has already been contracted. The purchaser takes possession of the article, and has the full use of it, but he does not acquire its *ownership* until the full amount of the note, or any renewal of it, is paid.

There is a conflict of authority as to whether lien notes are negotiable instruments or not, but the weight of authority is in favor of treating them as such when properly worded. And as such instruments are in general use a brief summary of the cases that have been cited *for* and *against* their negotiability will here be given:

In Chicago Railway Equipment Co. v. Merchants' Bank, 136 U.S. 269 (1890), the Judge held that "the instrument was a negotiable promissory note, according to the Statute of Illinois, where it was made, as well as by the general mercantile law."

In Merchants Bank *v.* Dunlop, 9 Man., 623 (1894), Justice Killam "held, that the note was a negotiable promissory note," such note being "an absolute promise to pay."

In Choate *v.* Stephens, 116 Mich., 28 (1898), it was "held that the clause retaining the title does not impair the negotiability of the note." The instrument "imports an absolute, not a conditional, sale, with reservation of title by way of security."

The finding of the courts in the three preceding *cases* cited has not been controverted by any different or later decisions.

The three following *cases* that have been cited as against the negotiability of lien notes do not afford such proof, because the lien clause is radically different in these *cases*.

In Dominion Bank *v.* Wiggins, 21 Ont., A.R. 275 (1894), judgment was first given the Bank as indorsee, but the Court of Appeal in reversing the judgment of the lower court, held that the lien clause—the title and right to the possession of the property for which this note is given shall remain in —— until this note is paid" was "fatal to the negotiability of the note."

Certainly it would be fatal, because the lien clause is dangerous. It not only reserves the *title* in the property, but it also reserves the right to the *possession* of the machine for which the note was given. With that wording the vendor may retake possession of the article at any time he wishes, even before the note falls due, as the learned judge affirmed, and which in this identical case actually occurred.

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 only reserves 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 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.

135 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, October 6th, 1906.

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 terms of the contract he is precluded from disposing of it until it is paid for, the same as he would be if it were covered by a chattel mortgage.

Mr. Austin has reserved the ownership, but under no circumstances can he take back the organ except for non-payment of the note at maturity.

If the vendor desires to do so he may treat the note as any other without regard to the lien clause. If it is not paid at maturity he may sue for the amount, and in the event that he fails to recover payment he may then resort to the lien clause and take possession of the article.

By the wording of the lien clause in the above note, if the purchaser does not pay for the article in full and the vendor or indorsee would have to take it back that would cancel the remainder of the debt, and if the article did not re-sell for enough to cover the remainder, no more could subsequently be recovered from the debtor.

If this note were transferred by indorsement only, the holder would have the right, if not paid at maturity, to sue either the maker or the indorser. But to have the benefit of the lien clause so as to have the right to take possession of the article or to follow it and claim it if it has been disposed

of, the transfer must be by assignment in addition to the indorsement of the paper.

In such case it is advisable to place a seal on the assignment, as that furnishes indisputable evidence of the consideration.

136 Model Form of Negotiable Lien Note.—By the following form if the note is not paid at maturity and the vendor takes the property back, and in reselling it he does not obtain enough to pay the remainder of the debt and costs, the note is still binding and the remainder may be collected by suit.

$100.00. SASKATOON, 10th September, 1906.

On the thirteenth day of January, 1907, *I promise to pay to Wm. J. Brown or order, One Hundred Dollars, at the Bank of Hamilton here, for value received with interest at the rate of seven per cent. both before and after maturity, until actually paid.*

The title of the property in the store fixtures for which this note is given is not to pass, but remain in the payee of this note until the same is paid in full, and in case of default in payment he shall be at liberty without process of law to take possession of and sell the same and apply the proceeds upon this note after deducting all costs of taking possession and sale, and I acknowledge having received a copy of this note.

Witness: A. NOXAL. E. ZIMMERMAN.

A person who sells an article covered by a lien note or a chattel mortgage is guilty of a "wrongful conversion," and the person who purchases such article only acquires whatever title or equity such vendor has in it. If such purchaser thinks, or is led to believe, that he is acquiring the actual and complete ownership of such article he is defrauded, and has the same remedy that he would have in any other case of fraud.

137 Assignment of Lien Note.—The following concise form for the assignment of a lien note written across the back is sufficient.

For value received, I hereby transfer the within note, and all my rights, title, and interest in the goods and chattels for which the said note was given, unto (*name*).

(Date,) (Signature)————

138 Non-Negotiable Lien Agreement.—There are many forms of lien agreements called also "hire receipts," which, although embodying a form of promissory note, are so burdened with conditions, and requirements that they cannot rank in any sense as negotiable instruments. In many instances some of the clauses constitute illegal contracts. For instance, "the right to break open locks and doors" to retake the goods is frequently one of the clauses in such agreements, which to exercise would be a criminal offence, punishable by imprisonment—no one can make a contract to allow another to commit a crime. See Illegal Contracts, Section 14.

The following form is a copy of a lien agreement extensively used by an Ontario firm and is about as strong as need be:

$150.00. CHATHAM, ONT., Sept. 1st, 1906.

On or before the first day of March, 1907, for value received I promise to pay the Dominion Furniture Co., Limited, or order, at their office, Chatham, One Hundred and Fifty Dollars, with interest at 7 per cent. per annum till due, and 12 per cent. interest per annum after due until paid.

I also promise and agree to furnish security, satisfactory to you, at any time if required. If I fail to furnish such security when demanded, or if I make any default in payment, or should I dispose or attempt to dispose of my land or any part thereof or of my personal property, you may then declare the whole price due and payable, even before the maturity of the same, and suit therefor may be immediately entered, tried, and finally disposed of in any Court having jurisdiction where your Chatham Office is located, and I waive my rights to exemption from seizure given by statute, and you may retake possession of the vehicle or property so sold to me, without process of law, and at any time thereafter without notice to me, may sell the same at public auction or private sale, the proceeds thereof, less proper charges of retaking possession and sale, to be applied on account of the amount of the purchase price and interest, then unpaid; such sale or right to sell shall in no way affect or limit my liability for the full purchase price, or your right to sue for and recover from me said full purchase price and interest, except that in the event of such sale I shall receive credit on account, as before provided, and shall thereafter be liable to pay the balance only. Upon such sale, if any, my right to possession and delivery before and after full payment, and all my other rights and claims thereto shall forever cease. Subject to these provisions I am to have possession and use of the vehicle or property at my own risk of damage or destruction from any cause whatsoever; but the property therein and the title thereto is not in any event to pass to me, on the contrary, shall remain in you until full payment of the purchase price and interest or any obligations or renewals thereof given therefor, and I agree not to remove the article or articles out of the Province of Ontario.

I am the owner of ....., Lot ....., Tp. ....., containing .....acres, worth $4,000, *mortgaged for* $600 *only, which lot I pledge as security for the payment hereof, and I fully understand that this note may be registered against my land, all my chattels being free from encumbrance except* $100, *and I understand that it is upon this representation that the goods are delivered to me.*

Witness: W. WISE. J. SAUNDERS.

In the above document the last clause at least could profitably be copied by other firms, for if the statements concerning the land and chattels are not true the party signing it would be guilty of obtaining goods under "false pretense."

Waiving the right to exemptions would hold good in all the Provinces except Manitoba.

The document could be registered against land in all cases except where it is under the Torrens System. As to the rate of interest after maturity see Section 130.

To protect the owner against subsequent purchasers and mortgagees for value the provisions of the "Conditional Sales" Act must be complied with, which see.

For place of suit, see Section, "Change of Venue."

139 Bank Holidays.—The following are legal holidays by the Dominion Act respecting Bills of Exchange, for all the Provinces: Sunday; New Year's Day; Good Friday; Easter Monday; Christmas Day; Victoria Day (May 24th); Dominion Day; H. M. Birthday, now merged into May 24th; Thanksgiving Day—any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday or a general feast or thanksgiving; Labor Day. When New Year's, Christmas, King's Birthday, Victoria Day or Dominion Day falls upon Sunday, then the day following is a public holiday.

Alberta, Saskatchewan, N.W. Territories and Yukon also have the above days with Ash Wednesday and Arbor Day (second Friday in May) added.

And in the Province of Quebec all the above days (except Arbor Day), and also the following: The Epiphany; the Ascension; All Saints' Day; Conception Day.

Promissory notes falling due upon Sunday or a holiday will legally mature on the day next following which is not a holiday.

The time limit also of any contract expiring or falling upon a holiday, the time so limited shall extend to, and such thing may be done on, the day next following which is not a holiday.

Persons engaged under a contract of service, and apprentices, cannot be compelled to work on any legal holiday, except under special agreement.

Employees working by the week, month or year, unless otherwise specially agreed to, are entitled to their wages for the holidays.

Civic Holidays being merely local are not bank or general holidays, hence negotiable paper and all outside contracts must be attended to.

Easter Monday is a bank holiday but not a general holiday.

140 Legal Holidays in Newfoundland are: Sunday, New Year's Day, Good Friday; Christmas Day; Victoria Day (May 24). Any day that may be proclaimed as a holiday by the Governor-in-Council by notice in the "Royal Gazette." Among these would be the King's Birthday, the date of the commemoration of which is generally prescribed by the British authorities. It is not necessarily November the 9th, and is generally in June.

141 Interest.—The legal rate of interest in Canada is now five per cent. as fixed by Chapter 29 of 1900, Dominion Parliament.

Therefore, a note drawn where nothing is said about interest will not draw interest until maturity; but if not paid at maturity it will then commence to draw five per cent. A note drawing a higher rate than five per cent., if not paid at maturity will drop to five, and a note drawing a lower rate than five, if not paid at maturity will rise to five per cent.

If the rate is over or under five per cent., and it is desired that it should

remain at that rate after maturity also, a clause must be added like the following: "With interest at (the rate desired) until maturity, and thereafter at the same rate until paid," or "both before and after maturity."

Respecting interest for a shorter period than one year, Section 2 of Chap. 8 of 1897, as amended by Chap. 29 of 1900, says: "Whenever any interest is by the terms of any contract, whether under seal or not, made payable at a rate per day, week, month or for any period less than a year, no interest exceeding the rate of five per cent. per annum shall be recoverable unless the contract contains an express statement of the yearly rate of interest which such other rate is equivalent."

By this amendment if a note were drawn at twelve per cent. per annum it could be collected, but if it read, "one per cent. a month," only five per cent. per annum could be collected.

Section 3 of Chap. 8 of 1897 reads: "If any sum is paid on account of any interest not recoverable under the last preceding section, such sum may be recovered back, or deducted from any principal or interest payable under such contract."

The above section empowers any person who is now paying or who has paid such high rate of interest on a note or mortgage written with interest at so much per day, week or month without stating the annual rate to which such rate is equivalent, they need pay no more than at the rate of five per cent. per annum, and if they have paid more they can recover back the amount, providing it has not been barred by the Statute of Limitations.

The four preceding paragraphs do not apply to mortgages on real estate.

Compound interest cannot be collected unless it is agreed in the contract to be paid.

Book Accounts differ from Notes. A book account overdue will not draw interest unless the merchant has it printed on his invoices and bills he gives with the goods that interest will be charged after a certain date. Then it can only be five per cent. unless the debtor consents to pay more. Simply having eight or ten per cent., as the case may be, printed on the invoices does not make the charge binding, and the debtor may refuse to pay anything over five.

Judgments also draw five per cent. interest, except in Manitoba, where four per cent. is allowed. Chartered banks are allowed seven per cent., but there is no penalty if they charge more.

They cannot, however, recover more than seven per cent. by suit.

In Newfoundland the legal rate is still six per cent. In other respects it is the same as the Dominion Act, except that the yearly rate is not required to be stated where the rate per day, week, or month would be in excess of the legal rate.

The Money-Lenders Act, Chap. 32, assented to July 13, 1906, applies to all persons in Canada, except registered pawnbrokers, who advertize or hold themselves out as carrying on the business of money-lending, and who make a practice of lending money at a higher rate than ten per cent. per annum. "No money-lender shall stipulate for, allow or exact on any negotiable instrument, contract or agreement concerning a loan of money, the principal for which is under $500, a rate of interest or discount greater than 12 per cent. per annum; and the said rate of interest shall be reduced

to the rate of five per cent. per annum from the date of judgment in any suit for the recovery of the amount due." Sec. 3.

In any suit concerning a loan of money by a money-lender, for a sum under $500, wherein it is alleged that the rate of interest paid or claimed exceeds 12 per cent. per annum, including all fines, bonus, expenses, etc. (except taxable charges for conveyancing), the court may re-open any transaction therewith no matter how it has been closed up by statement or new agreement, and release the debtor from paying any more than 12 per cent. per annum, and if anything in excess of that rate has been paid or allowed by the debtor, the court may order the creditor to repay it, and may alter or set aside wholly or in part any security given in respect to the transaction.

In case of a negotiable instrument negotiated to a *bona fide* holder before maturity, although the original holder may have discounted it at a higher rate than 12 per cent. per annum, the new holder will recover the whole amount; but the party paying the instrument may reclaim from the money-lender all that was paid in excess of 12 per cent. per annum.

The Act also applies to negotiable instruments due and payable before July 13th. Where the interest or discount is over 12 per cent. per annum they must not bear after July 13 more than 12 per cent. until judgment, and five per cent. after judgment.

As to negotiable instruments made before July 13, but maturing after that date, they must not exceed 12 per cent. after maturity.

The penalty—"Every money-lender is guilty of an indictable offence and liable to imprisonment for a term not exceeding one year, or to a penalty not exceeding $1,000, who lends money at a greater rate than authorized by this Act." Sec. 9.

"The Act does not apply to any small loan or transaction in which the whole interest or discount charged or collected does not exceed 50 cents." Sec. 10.

The Act does not apply to the Yukon Territory.

CHAPTER VII.

ACCEPTANCES.

142 Acceptance, in commercial language, is the name given to a draft after it has been accepted. A draft is an unconditional written order from one person, called the *drawer*, to another called the *drawee*, to pay a certain specified sum of *money*, at a specified time, to a third party, called the *payee*. Drafts are also called Bills of Exchange. Bills of Exchange are divided into two classes viz., Inland and Foreign.

If a draft is payable in anything but money, or if it orders something to be done in addition to the payment of money, it is not a Bill. But to name a particular account to be debited with the amount, or to include a statement of what gives rise to the bill, would not be *conditional*, hence would not affect the bill.

143 Inland Bill of Exchange.—Those payable in the same country in which they are drawn are called Inland or Domestic Bills of Exchange. For instance, a bill drawn by a Montreal merchant on one in Toronto, or Winnipeg, or Vancouver, would be an Inland Bill.

In Canada, Inland or Domestic Bills have three days' of grace allowed on all except those payable "on demand."

In Newfoundland and England Inland Bills have three days' of grace allowed on all except those payable "on demand," or "at sight."

144 Foreign Bills of Exchange are those payable in another country from which they are drawn. For instance, a bill drawn by a Toronto manufacturing firm on a merchant in New York or St. John's, Nfld., or London, Eng., would be a Foreign Bill of Exchange. Also a bill drawn in any other country on a person in Canada would be a foreign bill, as in case of the following Chicago bill:

$500.00. CHICAGO, Sept. 4th, 1906.

Thirty days after date pay to the order of The First National Bank, with exchange on New York, Five Hundred Dollars, value received, and charge to account of

To E. F. & Co., Toronto.

THE A. B. & Co.
Per C. D., Manager.

Adding "with exchange" to a bill does not destroy its negotiability, as the sum is certain; but to make it payable in "sterling exchange" or "New York exchange" would destroy its negotiability, as such exchange is not money.

All foreign bills payable in Canada must be protested for non-acceptance, and also for non-payment in order to hold the drawers and indorsers liable.

The Newfoundand Bills of Exchange Act contains the same requirements for foreign bills.

Bills drawn on foreign countries must conform to the requirements of such foreign countries in order to be valid there.

In Great Britain the Stamp Act of 1891 requires that bills of exchange must bear the proper revenue stamp when issued. The penalty for either issuing, or presenting for payment, an unstamped bill is a fine of ten pounds; neither can the bill be collected by suit. Canadian notes and bills payable in Britain must conform to the Stamp Act before they are presented for payment. Of course voiding the instrument would not cancel the debt, but it causes confusion and delay and would release any indorser that might be on the paper.

"An important judgment affecting the relations of Canadian merchants was given by Justice Phillimore in King's Bench Court, July 22, 1906, in which the Bank of Montreal sued the Exhibit and Trading Company, Limited, Liverpool, to recover £405 on a promissory note drawn by the defendants and payable to the Goderich Organ Company. It was indorsed to the bank and payment was resisted on the ground that the promissory note had been materially altered by the addition of the word "limited" to the name of the payees after the execution of the instrument; also on the

ground that the note was unstamped. Judgment for defendants on both points."—Canadian Associated Press.

For material alterations, see Section 109.

This note should have been returned to the English company for correction, instead of being corrected by the payee company, as either the omission, or the addition, of the word Limited would be very material, constituting, as it would, a different company.

Both the Bills of Exchange Act and Company's Acts require strictness in regard to the use of the registered name of the company, not only in respect to the use of the word Limited, but in all other respects.

The following summary of essential requirements, in addition to the Canadian Law, taken from "Lovell's Legal Compendium," as prepared by John W. Blair, advocate of Montreal, will be of interest to importers and exporters:

A bill must be dated to comply with the laws of France, Germany, the Netherlands and Italy.

The nature of the consideration must be stated according to the laws of France and the Netherlands.

A bill must be drawn payable to *order* and would be invalid if payable to *bearer* according to the laws of France, Spain and Russia.

The *payee* must be named to accord with the law of Germany.

The place of payment must be stated for France, Germarny and Italy.

All foreign bills payable either in Canada or Newfoundland must be protested for either non-acceptance or for non-payment.

145 Set of Exchange.—In the days of sailing vessels, delays and losses were frequent in ocean mails, hence the Foreign Bills of Exchange were usually sent in sets of three, called a "set of exchange," and each sent by a different route, or on a different day, so as to guard against delays or accident, one of the three being almost certain to reach its destination. But the great ocean liners now are as reliable as the mail train, therefore it is no longer necessary to transmit more than one bill of a set of exchange, as per following forms:

£100. LONDON, 25th August, 1906.

At ninety days after date pay this First of Exchange (Second unpaid) to our order the sum of One Hundred Pounds, for value received, payable at current rate of exchange for demand bills.

To MESSRS. A. & S.,
Toronto.

FOR A. M. & S., LIMITED.
J. R. A.
B. W. A.
Directors.

As the commercial value of money continually fluctuates the drawers of the above Exchange will not know the exact amount they will have to pay until the date of maturity. It may be more, or it may be less than $486⅔ on that date.

Exchange for £200 Stg. TORONTO, 4th Sept., 1906.

At sight of this First of Exchange (Second and Third unpaid) pay to the order of E. F. & Co Two Hundred Pounds Sterling, value received.

TO THE BANK OF MONTREAL, London, Eng. A. & B. Co., Limited. Per A. E., Secretary.

Quite an anomaly exists in our market quotations on foreign exchange. When sterling exchange is quoted at 9½ it is at par, and not at a premium.

In the early years of the old Province of Canada the par value of the British pound sterling and the sovereign was fixed at $4.44 4-9; but when the United States adopted their gold standard and fixed the par value of the pound sterling at $4.86 2-3, the gold coming into Canada rapidly gravitated to the States. Then in 1853 the Parliament of Canada passed a new Currency Act and made the par value of the pound sterling and the British sovereign in the two provinces $4.86 2-3 each.

Again in 1871 the Dominion Parliament in the new Currency Act for the whole Dominion made the par value of the pound sterling and the sovereign $4.86 2-3, just 9½ per cent. more than the old standard of $4.44 4-9.

Instead of the commercial institutions adopting the new standard, they have continued to use the old, and when sterling exchange is at par, $4.86 2-3, it is quoted on our markets at 9½ premium. Therefore, when our morning papers quote sterling 60 days sight, or demand, at 9½ it means at par, and when less than 9½ it is selling below par, and when over 9½ it is at a premium.

146 Parties to a Draft.—There are three parties to a draft—drawer, drawee and payee. The drawer is the one who makes or draws the draft. His name always stands in the lower right-hand corner.

The drawee is the one on whom the draft is drawn, that is the one who has to pay it. He thus pays the debt due the drawer, and his name is always written in the lower left-hand corner.

The payee is the one in whose favor the draft is drawn—the one who is to receive the money. The payee is the same in both notes and drafts, and in each case his name is placed in the body of the instrument.

It will be noticed from the above that two debts are paid by one draft, hence the origin of the use of bills of exchange.

A note or draft may be made payable to one or to two or more persons jointly, or to the holder of an office for the time being.

147 Negotiation of Bills.—In transferring notes or acceptances before maturity, if they are made payable to a certain person or *order*, the payee must write his name across the back; that is, *indorse* them. After that first indorsement by the payee, they may pass freely from one person to another without further indorsement.

The transferring of negotiable paper before maturity to an "innocent holder for value" (see Section 104) gives a good title. By indorsing the paper before transference, of course, renders the indorser liable for payment in case the maker of the note or acceptor of the draft fails to pay. Liability may be evaded by indorsing "without recourse" (see Section 165) if the purchaser will permit of such indorsement.

If they are made payable to a certain person or *bearer*, then they are transferred simply by delivery or handing them over to the purchaser, in which case the payee does not become liable for payment to any future holder.

It is better, however, to use the word *order* instead of *bearer*, because in that case if the note were lost or stolen it could not be disposed of to and collected by an innocent purchaser for value, as it would lack the indorsement of the payee.

148 Negotiating Overdue Bills and Notes.—The transferring of negotiable paper after maturity, or a non-negotiable note before maturity, does not give the pruchaser any better title than the original holder possessed. They are subject to any defect of title that affected them at maturity and any defence or counter-claim that the maker would have against the original payee.

149 Acceptance of Drafts.—A draft is not binding until it has been accepted, any more than an ordinary order on a merchant would be binding on him before he has accepted it. In accepting a draft the mere signature of the drawee written across the face is sufficient without the usual words being added. A draft is usually accepted by writing across the face of it, pretty well towards the upper end, which is the left-hand side, the word "Accepted," giving the date, where to be payable, and then signing the name immediately under, as:

"Accepted August 28th, 1906.
"Payable at Imperial Bank here.
"D. A. McLaren."

Drafts drawn payable "at sight," or a certain time "after sight," or a "demand" draft that is not paid when presented, should give the *date* of "acceptance," but a draft drawn payable a certain time after "date" need not have the date of acceptance given; but even with these it is as well to give the date of acceptance, too. Where a draft is accepted it is said to be "honored," and where acceptance is refused it is said to be "dishonored."

A *promise* to accept a bill is not an acceptance and would not protect a bank if it relied on such promise.

An acceptor may revoke his acceptance at any time before he *delivers* the paper, or has *given notice* that he has accepted it; but after either act the acceptance becomes irrevocable. (Section 21 B. of Ex. Act.)

150 Time Allowed for Acceptance.—When a draft is presented for acceptance the drawee may, if he deems it desirable to do so, demand two days' further time in which to decide whether he will accept or not, and in such case it cannot be legally protested for non-acceptance until the expiration of that time.

But if the time is not asked it may be protested the day it is first presented, if acceptance is refused or cannot be obtained. The exact wording of the Act is:

"The drawee may accept a bill on the day of its due presentation to him for acceptance, or at any time within two days thereafter. When a bill is thus duly presented for acceptance and is not accepted within the time above mentioned, the person presenting it must treat it as dishonored by

non-acceptance. If he does not the holder shall lose his right of recourse against the drawer and indorser." (Section 42 B. of Ex. Act.)

The object of this section of the Statute is plain. A debtor is under no legal obligation to accept a draft drawn on him by a creditor, and as protest fees for non-acceptance could not be collected from *him*, it is in the interest of the *drawer* that reasonable time be allowed the drawee to decide whether he will accept or not before treating the paper as dishonored. The time allowed by the Act is three days, including the day of first presentation.

If the bill is returned accepted, but the acceptance is not dated within this time, the holder may refuse to take the acceptance, and may treat the bill as dishonored by non-acceptance. (2 Edw. VII., Chap. 2, Sec. 1.)

In case of time drafts drawn on well-known firms, when not attached to Bills of Lading, it is the custom with banks to leave them for acceptance. A draft thus left, if it is not returned accepted within the two days after presentation, it must be treated as dishonored. If it is wrongly or accidentally detained in the hands of the drawee protest may be made on a copy or written particulars of the bill gathered from the bill book.

A sight draft left with the drawee for acceptance and accepted on the last of the days allowed by the Act for acceptance has not received a qualified acceptance, providing the date of acceptance is not later than the day of the actual acceptance of the bill. (Chap. 2 of 1902.)

Newfoundland has followed the English Statute, which states that the draft must be accepted "within the customary time," or the holder must treat it as dishonored.

151 General Acceptance is the term used when a draft is accepted in the ordinary way, by writing the name, date, and usually a place of payment, across the face. (See Section 153.)

152 Qualified Acceptance is when the acceptance in express terms varies the effect of the draft from what it was originally. The acceptor has that privilege within certain limits. The holder may also refuse a qualified acceptance and treat the paper as dishonored by having it protested for non-acceptance. Any one of the following would be a qualified acceptance:

(1). A Conditional Acceptance, one in which the acceptor makes the payment conditional upon something contained in it, as: "Accepted payable out of the funds of Amity Lodge, No. 32, A.F. & A.M., A. Mattison, Treasurer."

In such a case A. Mattison would not make himself personally liable, but the holder may refuse such acceptance and treat the paper as dishonored, as the Lodge might not have any funds.

(2) Partial Acceptance, where the acceptor only agrees to pay part of the amount stated in the draft, as: "Accepted September 4th, 1906, for fifty dollars. W. Johnson."

In this case, say the draft was for $75, the drawer and indorser would have to be notified that it was only accepted for part, which they could refuse if they wished to do so.

(3) Acceptance Changing Time, where the acceptor changes the time, as, for instance, from sixty to ninety days. The holder may refuse it.

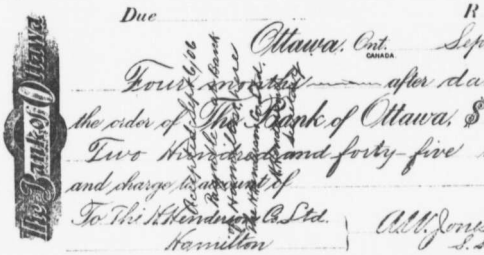
(4) The Acceptance of some one or more of the drawees, but not all.

It would bind those that accepted, but the holder may still refuse it unless all accept.

In all such cases where the original conditions of the draft are changed, the drawer and all indorsers are relieved unless they are notified. If, after receiving such notice, they do not within a reasonable time express their dissent, they are held to have given their assent to the change, and thus remain bound.

An acceptance that designates a particular place for payment is not qualified, but if it makes the bill payable at a particular place only, and not elsewhere, it would be a qualified acceptance.

153 Acceptance by Officer of Company.—A bill drawn on an incorporated company should be drawn on the company and not on any officer or director. A secretary or managing director of a stock company in accepting a draft drawn on the company should sign the company's name only.



It is the same with a partnership firm, a partner in accepting a draft or signing a firm note should sign the partnership name only. But if he signs his own under that of the firm name it is still the acceptance of the firm. But if he accepts simply in his own name it binds him personally and not the firm. (Owens *v.* Von Oster, 10 C.B. 318.)

One of the rules of the Canadian Bankers' Association requires that in indorsements of negotiable paper by incorporated companies, not only the name of the company should be used, but also the official position of the person signing the name should be given. The custom has become general, not only in indorsing, but also in drawing and accepting bills, for the person signing the name to indicate his official position as in above form.

154 Time Draft After Date differs from a time draft after sight.

$175.00. SAULT STE. MARIE, Aug. 31, 1906.

Ninety days after date pay to the order of L. A. Green, at The Canadian Bank of Commerce here, One Hundred and Seventy-five Dollars, value received, and charge to the account of

To W. W. ANDERSON,
Charlottetown,
P. E. Island.

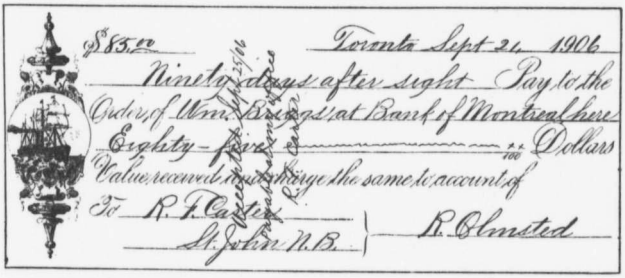
D. A. MCLAREN.

In accepting the above draft, which is payable after "date," W. Winters need not write the date of acceptance, as the time when it will mature is

fixed in the draft, being made payable ninety days after its date, which would be November 29th, with three days' grace, making it December 2nd.

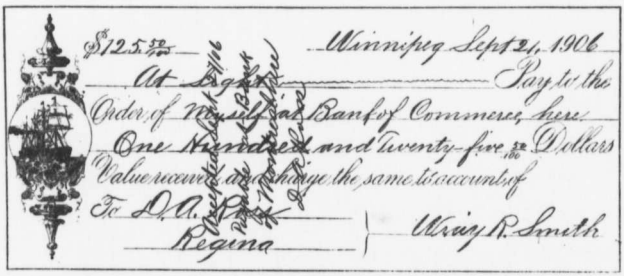
155 Time Draft After Sight.—The form shown on this page is a "time draft," drawn the 21st of September, 1906, and payable ninety days after *sight*. It was accepted September 25th, 1906, and would therefore fall due ninety days after that date, December 24th, and the three days of grace being added make it legally mature December 27th, 1906.

It was made payable at the Bank of Montreal at Toronto, but Mr. Carter in accepting it, it will be noticed, made it payable at his own office, and therefore the bank that presented it to him for acceptance will now have to present it at Mr. Carter's own office for payment when it falls due. Of course, Mr. Carter could have made it payable at some other bank at St. John, if he had wished to do so, but probably he did not have a bank account, and therefore it would be more convenient for him to pay it at his own office.



After payment the money will be forwarded to the Bank of Montreal at Toronto, as Mr. Olmstead directed when he drew the draft.

156 Sight Draft.—The form shown on this page is a sight draft. It is drawn by Wray R. Smith, of Winnipeg, on D. A. Ross, of Regina. It will



be noticed that Mr. Smith made it payable to himself, and therefore the *drawer* and *payee* are the same person in this case.

This form of draft is supposed to be paid when it is presented, but if the

drawee needs the time he may accept it in the usual way and take the three days of grace, except Newfoundland and England. It will be seen by the form shown here that Mr. Ross took advantage of the three days of grace and "accepted" it in the usual way.

It was drawn September 21st, payable at the Bank of Commerce, Winnipeg, but in accepting it Mr. Ross made it payable at the Bank of Montreal, Regina.

It was accepted September 27th, and will therefore be payable September 30th. But September 30th falls on Sunday, and, therefore, the acceptance is legally due on Monday, October 1st.

Sight Drafts and Time Drafts are both governed by the same laws for presentment and payment, except that in Newfoundland and England sight drafts have no days of grace.

157 Demand Draft.

$220.00. COBALT, ONT., Sept. 6, 1906.

On demand pay to the order of A. De Cew, at the Sovereign Bank here, Two Hundred and Twenty Dollars, for value received, and charge to account of

TO THE R. SMITH CO., H. P. MOORE.
Orillia.

The above form of draft has no days of grace allowed, but is payable when demanded, that is, within the time allowed by Statute for accepting drafts, and if not then paid it must be treated as dishonored.

If it is not paid when presented, the drawer, of course, has the privilege of giving time. In that case it would be "accepted" as other drafts, placing the date of acceptance upon it. It would not commence to draw interest until it was presented, but would commence at that date to draw five per cent. The Statute of Limitations would also commence to run from the date of acceptance in favor of the acceptor.

"In case of urgency, say, for instance, where a demand draft is attached to a bill of lading of perishable goods, a more speedy acceptance is required, special instruction should be given, as otherwise the drawee would be justified in claiming, and the party presenting the bill in granting the delay mentioned in Section 42 of the Act." (McLaren, page 238.)

158 Discounting Bills and Notes.—A bill may be discounted either before or after acceptance. If discounted before acceptance it is done solely on the credit of the drawer or indorser, and if it is dishonored by non-acceptance an immediate right of recourse against the drawer and indorser accrues to the holder, without waiting for the maturity of the paper.

But absolute compliance with the provisions of the Bills of Exchange Act as to presentment to the drawer for both time and demand bills, and notice of dishonor if not accepted or paid, is compulsory to preserve the right of recourse against such drawer and indorser.

159 Collection of Notes and Acceptances.—Notes and drafts made payable at a certain place should be presented there for payment on the third day of grace, even if there is no indorser on them.

If there are indorsers on the bill, and it is not presented on the third day of grace, if that is a business day, the indorsers are discharged. (See Section 175.)

If the bill is payable at a bank, then it must be presented during banking hours; but if not at a bank, then the holder has the ordinary business day for presentment.

If there are no indorsers, then it need not necessarily be presented on the date of maturity, but must be presented for payment before any action is taken, or the holder would likely be saddled with the costs, and possibly lose the interest after maturity as well.

If payment is not received the paper must be treated as dishonored in order to preserve recourse against drawers and idorsers. As to when protest is compulsory see Section 178.

Of course private individuals who may be collecting bills and notes in their possession must observe all these requirements just the same as the banks do. A demand for payment must be made on the third day of grace, and they must have the paper ready for delivery if payment is offered. If payment is not received it is absolutely essential that notice of the dishonor be given the indorsers, otherwise they are free.

CHAPTER VIII.

INDORSEMENTS AND PROTESTS.

160 Purposes of Indorsement.—Indorsements may be either (1) for the purpose of negotiation, (2) for additional security, (3) for the acknowledgement of a partial payment of the instrument, (4) or for identification.

In the absence of evidence to the contrary, a person writing his name on the back of a negotiable instrument is *presumed* to be an indorser, and writing his name on the face a maker or drawer, as the case may be.

"Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course and is subject to all the provisions of this act respecting indorsers." (Section 56, B. of Ex. Act.)

The drawer cannot sue an indorser, even if he makes himself the payee.

161 Forms of Indorsement.—There are several ways in general use of indorsing a note or draft, to conform to the requirements of the business community in safeguarding the complex and sometimes the opposing financial interests of the contracting parties. The following are chief, and parties who may not be familiar with them can readily understand their different uses by noticing the wording in each form as illustrated on the back of the note given on next page, and the explanation given opposite the indorsement.

(Back of Note.)

(Indorsement in Blank.)
James Smith.

(In Full.)

Pay J. Murray or order.
James Smith.
or
Pay to the order of J. Murray.
James Smith.

(Restrictive.)

Pay A. Sanderson only.
James Smith.

(Qualified.)

Without recourse.
James Smith.

162 Indorsement in Blank.

The name only is written across the back of the instrument. It holds the indorser liable for payment, and the note or draft may be transferred thereafter simply by delivery. It is the form in general use but the following form is preferable in some respects.

163 Indorsement in Full.

This indorsement not only passes the title of the note to J. Murray and holds James Smith liable for payment if the maker fails, but it also makes it compulsory for J. Murray to indorse it if he wishes to transfer it to another person. It is the safest indorsement, because if the note were lost no one could collect it but the indorsee if he had not indorsed it again in blank. "Pay J. Murray" would also be an indorsement in full. The second form, "Pay to the order of J. Murray," would compel him to indorse it before receiving the money, thus securing proof of payment to him.

164 Restrictive Indorsement.

This indorsement not only transfers the title of the note, but it restricts payment to A. Sanderson. It does not absolutely prohibit the further transfer of the bill, but it is evidence to third parties that other transactions may be depending on it, and therefore subsequent holders take it subject to the equities that may burden it when it receives the "restrictive indorsement."

There are various forms for this kind of indorsement, as for example: "Pay D for the account of H," or "Pay D or order, for collection." If such bills are further transferred, the holders take them merely as agents of the first indorsee, and not as "holders in due course," and are subject to the same liabilities that the first indorsee had.

A note or bill payable to *bearer*, or to a certain person or bearer, cannot have its negotiability restricted by indorsement, but those using the word *order* may be so restricted, as shown above.

165 Indorsement Without Recourse.

This indorsement called also "Qualified Indorsement," transfers the bill, but the indorser evades liability for payment. It is simply for the purpose of negotiation, and not security for payment. Banks, of course, would not ordinarily discount paper indorsed in that way. No subsequent holder can have any claim against such an indorser.

This indorsement is also written:

"Without recourse to me."
James Smith.

If " A " indorse a note for the maker before its delivery to the payee, the payee may then indorse it " without recourse " above A's name and negotiate it and be free from liability.

166 Indorsement of Guarantee.

" I hereby guarantee the payment of the within note.
James Smith."

In this case James Smith does not incur any greater liability than he would have incurred by simply writing his name on the back of the note, because every indorser by his indorsement guarantees the payment of the paper to subsequent holders, if the provisions of the law respecting presentment and notice of dishonor are complied with.

In the above indorsement of guarantee, presentment and notice of dishonor are essential.

The following form is preferable and has meaning:

" For value received, I hereby guarantee payment of the within note, and waive protest and notice thereof.
James Smith."

The above guarantee does not waive due *presentment* for payment, which if not done would free him from liability.

167 Guarantee of Collection of bill or note.

" For value received, I hereby guarantee the collection of the within note. James Smith."

In this case the guarantor is not liable until a legal attempt to collect by suit has failed, and for that reason in many cases it would be better for the guarantor than a simple indorsement.

168 Indorsement Waiving Protest.

Presentation and protest waived.
James Smith.

This form is usually employed when done before maturity to *prevent* protest.

The following form is in general use when done at maturity to save *cost* of needless protest:

I hereby accept notice of non-payment and waive protest.
James Smith.

169 Indorsement of Partial Payment.

Received on the within note, Aug. 26th, 1906, Twenty Dollars ($20.00).
Sept. 16th, 1906, Forty Dollars ($40.00). H. A.

It is usual in indorsing payments on a note to give the date and amount, and if different persons receive the money, the initials of the person should be given

Oct. 10th, 1906. Paid on within, $10.00.
J. Parks.

In case as above, where the maker indorses his own payment, it affords the best of evidence of payment in a question of outlawing.

He cannot then, subsequently, deny making the payment, as is sometimes otherwise done.

170 Indorsement of Identification.

W. Carter is hereby identified.
James Smith.

This indorsement identifies the holder of the paper at the Bank without making the indorser liable for payment.

171 Specific Indorsement.

For collection only on account of
James Smith

This is a precautionary measure used to guard against loss in sending the paper by post, or through other hands. Other wording of specific indorsement would be:

For discount only to credit of
James Smith.

For deposit only to credit of
James Smith.

For deposit only to credit of James Smith.
David Jones.

The last of the above forms would answer for a clerk who had not authority to indorse his employer's name.

If a bank were to pay cash in any of the above or similar cases, it does it at its peril.

172 Indorsement Consenting to Extension of Time.

Presentment, demand, protest and notice waived, and consent given that time of payment of this instrument may be extended without prejudice to my liability as indorser. J. W. Smith.

173 The Indorser's Contract.—By his indorsement of negotiable instrument he, in effect, agrees in good faith with all the subsequent holders: (1) That the instrument itself is genuine, and all the names on it previous to his own are competent to contract. (2) That he has a good title to the bill. (3) That he is competent to contract. (4) That the maker will pay the bill at maturity. (5) That in case the maker fails to pay the bill he will pay it himself, providing he does not give notice to the contrary in the

form of indorsement he employs; and providing the holder complies with the law relating to negotiable instruments.

The indorser on even a forged note is liable to "a holder in due course," although the maker whose name was forged would not be liable. (Choquette *v.* Leclaire, 2 R. 19, S.C. 521, 1900.)

174 Relation between Indorsers.—Where two or more persons indorse the paper at *the same time* as security, and the maker fails to pay, the holder may sue all; or he may sue and recover from either one he thinks best. In case he collects the note from one, then that one may collect a proportionate share from each of the others. If there were three of them, he could collect one-third from each of the other two; and if only two, then he would collect half from the other party.

But if the indorsements were at different dates, as they naturally would be where paper is indorsed as it is transferred, the liabilities are altogether different. In fact, where two or more indorsers are on a bill or note, each indorsement is deemed to have been made in the order in which it appears on the paper, until the contrary is proved. Therefore, where the indorsements are at different dates the first indorser is security for all after him, the second is security for the third, and following, etc.

(Back of Note.)

James Smith.
Peter Jones.
Henry Brown.

If the maker of such a note failed to pay, the holder could sue all the indorsers, or any one of them he might choose. Say there were three, as in the form shown on this page, and the holder sued and collected from all, one-third from each, then, in that case, Jones and Brown could collect what they paid from Smith, thus making him pay all, because he was surety for both. If Smith, however, proved to be insolvent, and Jones and Brown had to pay the whole debt, then Brown would collect what he paid from Jones, because Jones indorsed before him, and was, therefore, his surety. Jones would have to pay the whole debt, and look to Smith and the maker, who are both liable for it to him; and one or the other might sometime be in a position to pay. If Smith were sued either by the holder or one of the subsequent indorsers, and paid the amount, he could only look to the maker of the note.

175 To hold Indorsers Liable.—To hold an indorser liable for payment on a note or bill that is not paid at maturity, it is necessary:

1. To present the note or bill for payment on the third day of grace, and during business hours. If this is not done, the indorsers are free.

2. If it is not paid, the paper must be treated as dishonored. If it is a foreign bill or a Quebec bill it must be protested. In other cases protest is not essential. (See Section 178).

3. Notice of the dishonor must be forwarded to the drawer and indorsers on that day or not later than the day following.

This notice must contain the following three facts:

(1) That the note or bill (giving its date, amount, name of maker, indorsers, etc.) had been presented for payment;

(2) That payment was refused;

(3) That the holder looks to him (the indorser) for payment.

This notice may be sent by a notary, or the holder himself may send it.

An oral notice is also legal, but it is always better that it be put in writing.

It may be sent merely as a letter, but stating clearly the three facts above mentioned. The postage must be prepaid.

If the letter is not registered, it would be advisable to have a witness to its contents, and delivery to the post-office, or have some person deliver the letter to the post-office so as to be able to prove its delivery. A notary usually delivers his notices at the post-office himself so there would be no possibility of neglect.

176 Indorser's Address.—If an indorser has added an address to his signature the notice of dishonor must be sent to that address, but if he has not given such address, then the notice must be given as follows:

1. Either to the indorser personally; or,

2. To his post-office, if known, but, if not known, then to the post-office nearest to his place of residence.

3. If he lives in one place and does business in another, notice may be sent to either place.

The indorser might not receive the notice for several days or weeks after, but that would not make any difference so long as the paper had been duly presented and the notice of dishonor mailed to his supposed address. The notice should be sent within twelve hours. A similar notice is also sent to the maker or drawer; in fact, to every name appearing on the paper. Notice is excused:

1. When after reasonable diligence notice cannot be given to or does not reach the drawer or indorser sought to be charged.

2. By waiver of notice, either express or implied.

177 Place of Presentment of a bill or note for payment.—If there are no indorsers on the paper that the holder desires to hold liable for payment in case the maker or acceptor fails to pay at maturity, presentment for payment is not essential so long as presentment or demand for payment is made before entering action, and before it is barred by Statute of Limitations.

But if there are indorsers or a drawer that the holder wishes to hold liable for payment, then presentment becomes absolutely essential, and must be:

1. At the place specified in the paper, if any.

2. If at a certain bank the paper must be at such bank on the due date. If at the office of the maker or acceptor it must be presented there on the proper date.

3. If no place of payment is specified, then at the address of the maker or acceptor, if given.

4. If no address is mentioned in the bill, then at his place of business, if known; if not known, then at his ordinary place of residence, if known.

5. If neither is known, then at his last known place of business or residence, or wherever he may be found.

6. Where the place of payment specified in the acceptance is any city,

town, or village, and no place therein specified, the bill will be presented to the drawee's or acceptor's known place of business or residence, and if there is no such place found, then at the post-office, or principal post-office is sufficient.

When circumstances beyond the control of the holder prevent presentation at proper time, it is excused; but it must be presented as soon as the hindrance ceases.

Many a holder has lost his security by not presenting the paper for payment as the law requires, and many an indorser has paid a note from which he was legally discharged by the holder failing to comply with the legal requirements.

178 Protest.—As some traders are not familiar with the provisions of our Bills of Exchange Act in respect to protesting negotiable paper for non-acceptance, and for non-payment, a *verbatim* copy of the Act is here given:

"Where an inland bill has been dishonored, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; but it shall not, except in the Province of Quebec, be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

"But in the case of a bill drawn upon any person in the Province of Quebec, or payable or accepted at any place therein, in default of protest for non-acceptance or non-payment, as the case may be, and of notice thereof, the parties liable on the bill other than the acceptor are discharged.

"Where a foreign bill, appearing on the face of it to be such, has been dishonored by non-acceptance, it must be duly protested for non-acceptance; and where such a bill which has not been previously dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If not so protested the drawer and indorsers are discharged.

"Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonor, except as in this section provided, is unnecessary." (Section 51, B. of Ex. Act.)

When a bill is protested, the protest must be made or noted on the day of its dishonor. If for non-acceptance it may be any time after acceptance was refused, but if for non-payment it must not be until after three o'clock in the afternoon.

A bill must be protested where it is dishonored, or at some other place in Canada, within five miles of the place of presentment and dishonor, except in such case where the bill is presented through the post-office and returned by post dishonored, it may then be protested at the place to which it is returned not later than the day of its return, or the next juridical day.

In Newfoundland an inland bill does not need to be protested either for non-acceptance or non-payment. But foreign bills must be protested for dishonor the same as in Canada.

179 Form of Protest for non-payment.—The following form of protest of a supposed note payable to Henry Brown at the Bank of Ottawa, Toronto, signed by John Smith and indorsed by J. W. Jones, of Brampton, Ont., will show the routine followed by a notary in protesting negotiable paper:

ON THIS 10th day of January, in the year 1906, I, M. A. Brown, Notary Public for the Province of Ontario, dwelling at Toronto, in the Province of Ontario, at the request of Henry Brown, did exhibit the original PROMISSORY NOTE, whereof a true copy is hereunto annexed, unto the teller of the Merchants' Bank (Promisor if the note was not payable at the Bank), and speaking to him did demand payment thereof;
unto which demand he answered: "No funds."
WHEREFORE I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the Promisor and Indorsers of the said Note, and other parties thereto or therein concerned for all costs, damages, and interest present and to come for want of payment of the said NOTE. All of which I attest by my signature.

M. A. BROWN,
Notary Public.

(See previous sections in cases where the paper is not protested.)

180 Notice to Indorser.

Toronto, January 10, 1906.

To J. W. Jones, Brampton, Ont.

Sir,—

Mr. John Smith's Promissory Note for $65.50, dated at Brampton the 7th day of October, 1906, payable three months after date to Henry Brown, or order, and by you indorsed, was this day, at the request of Henry Brown, duly protested by me for non-payment.

M. A. BROWN,
Notary Public.

When an indorser receives a notice of protest, if there is a previous indorser on the paper, he should immediately forward the protest notice to such indorser, in order to hold him liable in case the holder neglected to notify him.

181 Noting for Protest.—Where a bill or note cannot be paid on date of maturity, it may be "noted" for protest, when it will be held over for a day. This is done by the notary public. If not then paid the paper must be protested the next business day.

182 Fees for Protesting.—In Ontario the fees for protesting a note or draft or cheque is 50 cents, and 25 cents for each notice sent to maker and indorsers, and amount of postage actually expended.

Quebec.

Presenting, noting, and protest, $1.00.
Each notice, 50c.
Postage additional.

Nova Scotia and Prince Edward Island, R.S.C., Chap. 123, Sec. 7, 8.

Protest for local bills, 50c.
Each notice, 25c.
Protest charges for bills not local, $2.50.

New Brunswick, R.S.N.B., Chap. 188.
Presentment and noting, 50c.
Presentment, protest and notices, $1.00.
Manitoba, charges regulated by usage.
Protest, $1.00.
Each notice, 50c.
Postage extra.
Alberta, Saskatchewan and N. W. Territories, charges governed by usage.
Protest, $2.00.
Each notice, 50c.
Postage actually paid.
British Columbia, charges governed by usage.
Presentment, protest and notices, $2.50.
Postage in addition.

183 Protest by Magistrate.—When there is no notary public, or none whose services can be obtained at the place where the paper is dishonored, any Justice of the Peace resident at the place may present and protest the paper and give the necessary notices.

184 Form of Protest by a Justice of the Peace.

(A copy of the bill or note and indorsements.)

On this.....day of....., in the year of 19.., I, A. B., one of His Majesty's Justices of the Peace for the district (or county) of....., in the Province of....., dwelling at (or near) the village of....., in the said district, there being no practising notary public at or near the said village (or other cause) did at the request of....., and in the presence of....., well known unto me, exhibit the original bill (or note), whereof a true copy is above written, unto C. D., the acceptor (or drawer of promisor) thereof, personally (or at his residence, office, or usual place of business), in....., and speaking to himself (or his wife, his clerk, or his servant, etc.) did demand acceptance (or payment) thereof, unto which demand he (or she) answered, ...wherefore, I, the said Justice of the Peace, at the request aforesaid, have protested, and by these presents do protest against the drawer and indorsers (or promisor and indorsers, or acceptor, drawer and indorsers) of the said bill (or note) and all other parties thereto and therein concerned, for all exchange, re-exchange and all costs, damages and interest, present and to come for want of acceptance (or payment) of the said bill (or note), all of which is by these presents attested by the signature of the said (witness) and by my hand and seal.

(Protested in duplicate.)

Signature of witness.
Signature and seal of the J. P.

In Newfoundland, where the services of a notary cannot be obtained to protest a bill, any householder or substantial resident of the place, in the presence of two witnesses, may give a certificate which shall in all respects operate as a protest. The following is the statutory form:

"Know all men that I, A. B. (householder), of....., in....., at the request of C. D., there being no notary public available, did, on the..... day of....., 19.., at.....demand payment (or acceptance) of the bill of exchange hereunder written from G. F., to which demand he made answer (state answer, if any). Wherefore, I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

J. K. }
G. H. } Witnesses. (Signed) A. B.

185 Without Prejudice.—The two words, "without prejudice," have great importance when used in a legal sense. This use can best be shown by an illustration, *e.g.*: Two persons are at variance and likely to be drawn into court, but the one desires amicable settlement, and is willing to make any reasonable concession to affect it. He, therefor, takes these two words, *without prejudice,* and writes them across the upper left-hand corner of his letter, or in the body of the letter, and then makes his proposition, whatever it might be. The effect of those words is, that if the other party should not accept the proposition and terms thus offered, but the case goes to suit, this letter cannot be used in court as evidence against the writer. Hence, by using these words in that way a person who wishes to avoid litigation may safely make advances to secure a peaceful settlement, and if not successful his case is not jeopardized. A convenient form at the beginning of the letter would be similar to the following:

Dear Sir: "Without prejudice" I hereby make you the following proposition, etc.

Also, a debtor who may be taking the benefit of the Statute of Limitations may, by using these words, frankly acknowledge the justice of the claim against him, and assure his creditor that he will still pay him, or may even pay money to him, without reviving the *legal liability.* Also in offering to make payment on a disputed account or claim by way of a compromise, these words prevent the offer being held to be an acknowledgment of the claim. Every man should be familiar with their use, and make use of them whenever occasion requires, instead of trusting to the other party's honor.

CHAPTER IX.

BANKS AND BANKING.

186 Chartered Banks.—At Confederation, 1867, the business of banking in Canada came under the jurisdiction of the Federal Parliament, and our Canadian banking system, taken all in all, is undoubtedly the finest in the world.

This brief *resume* of the organization of banks, security of bill holders, and the practical work of banking as it touches traders, is given for the information of the public rather than for the banking fraternity.

All banks organized since Confederation have taken their charters from

the Dominion Government, and the banks previously organized either by Imperial or Provincial Parliaments as their charters expired, have been renewed by the Dominion Government.

Private persons or corporations may engage in the business of banking, but cannot issue paper currency, nor use the word "Bank," "Banking Company," "Banking House," "Banking Association," "Banking Institution," or any similar term on their sign, or in connection with their name in business in any way.

The penalty for a violation of this Section of the Act is a fine not exceeding $1,000, or imprisonment for a term not exceeding five years, or both, in the discretion of the court.

187 Incorporation of New Banks.—Banks are organized and incorporated in much the same manner as are other Stock Companies by opening a Stock Book, soliciting subscribers, appointment of Provisional directors, and then applying for charter.

At present the capital stock in a Chartered Bank must not be less than $500,000, divided into shares of $100 each.

At least $250,000 of the $500,000 must be paid in, which sum in actual money, must be temporarily deposited with the Minister of Finance and Receiver-General.

There must not be less than five Provisional Directors, nor more than ten.

The Bank must not commence business or issue notes until it has received the certificate permitting it to do a banking business.

Upon the issue of the certificate the $250,000 deposited with the Treasury Department is returned to the bank except $5,000, which is retained until the time for the annual adjustment when this deposit must be made equal to five per cent. of the average amount of its note circulation from the time it commenced business to the time of such adjustment.

The charter carries with it the privilege of issuing a bank currency, and establishing branches, which are not required to deposit anything as security.

In Canada the charters of all the banks expire at the same time, no matter when the bank was started. The period is ten years and renewable for ten years more, and so on from one period to another. The present charters will expire July 1, 1911.

If a bank suspends payment for ninety days it loses its charter, and its affairs are wound up.

188 The Business of Banking is dealing in money and debts, and includes the issuing of notes for circulation, receiving deposits, discounting and collecting commercial paper, and in a general way dealing in money, and documents payable in money, domestic and foreign public securities, etc.

The means at its disposal are:

1. The capital paid in by the shareholders;
2. The deposits of its customers;
3. The amount of its own notes it can keep out in circulation;
4. The money in transmission through it.

The chartered banks are prohibited from engaging in trade, or dealing in goods or lands, or lending money upon their security; but they may take as *collateral* security for loans, mortgages on real estate, chattel mortgages, warehouse receipts, bills of lading, stocks, bonds, debentures etc.

They cannot take a mortgage on real estate or on chattels as security for for a loan, but after a loan has been made they may take a mortgage as collateral security. They must not lend money upon their own stock, or the capital stock of any other Canadian bank. They cannot hold real estate that comes into their hands for more than seven years except for use of the bank unless the time is extended by the Treasury Board, which in any event must not exceed five years longer.

Banks may issue as much note currency as the requirements of trade demand, up to the full amount of their unimpaired paid up capital.

Notes smaller than $5.00 are issued by the Dominion Government, but the $5.00 notes and over that in multiplies of fives by the banks.

The various banks send back the notes of all other banks it receives each day for redemption and pushes out its own notes, hence redemption is going on every day.

When requested to do so, every chartered bank is required to make payment in Dominion notes to the extent of $100 in any denomination that may be desired.

Banks may charge any rate of discount without incurring any penalty, but cannot recover by suit more than 7 per cent.

Collection fees charged by banks are: Under thirty days, one-eighth of 1 per cent.; thirty days and over but under sixty days, one-fourth of 1 per cent.; sixty days and over but under ninety days, three-eighths of 1 per cent.; ninety days and over, one-half of one per cent.

These fees, however, are now virtually obsolete, as the banks are not charging as much.

Agents' fees when collected by other banks in addition. For small sums a minimum fee of fifteen cents is charged.

189 Security for Note-Holders and Depositors.—Our bank notes ar secured:

1. By being made a first charge on the assets of the bank.

2. By the double liability of the shareholders of all banks, except the Bank of British North America, which holds its charter from the Imperial Government.

3. Each bank is required to keep in the hands of the Dominion Government a deposit equal to 5 per cent. of its average note circulation, which fund is called the "Bank Circulation Redemption Fund," and should the liquidator be unable to redeem all the notes of any bank that may have failed, recourse is had to this fund. And if this fund should not be sufficient to redeem all the notes of the insolvent bank, then all the other chartered banks are required to contribute *pro rata* an additional sum sufficient to make good the deficiency.

With this deposit with the Government, the double-liability of the shareholders, together with the general assets of the bank, note-holders are always amply secured.

As the bank notes draw five per cent. interest from the date of suspension until the liquidator announces that he is ready to redeem them, other banks will cash them at par, and are required by the Bank Act to do so.

Dominion Government claims against the bank are a second charge on its assets, the Provincial Government third, and then depositors, and other creditors.

As banks are required to make a full return to the Government each

month of their circulation, and deposits, and the amount of their reserves, any bank attempting to lessen its reserves below a reasonable percentage of its circulation would soon lose public confidence enough to put depositors on their guard.

The total amount of the note circulation must never exceed the amount of the unimpaired paid-up capital of the bank, and no dividends or bonus must be paid out that will impair its paid-up capital.

With these guards and securities it is literally impossible for a note-holder of a Canadian bank to lose.

The Government of Canada will pay gold for Dominion notes when presented at any branch office of the Receiver-General.

The chartered banks redeem their notes in gold when presented at the place where they are made payable.

Any branch of a bank is required, when demanded, to pay in legal tender notes any sum up to $100, and in such denominations as may be desired.

If the holder of any bank bill loses it through fire, or it is otherwise destroyed, he is entitled to have it redeemed in full by giving indemnity, the same as in lost promissory notes. But identity is difficult unless the holder knew its number.

Torn, mutilated or soiled bills may also be exchanged for new ones.

190 Cheques.—A cheque is a bill of exchange drawn on a bank, payable on presentation. They have no days of grace.

Formerly cheques were usually written payable to *bearer*, but it is preferable to use the word *order*, so as to secure the payee's indorsement if the cheque should be transferred.

A cheque is not legal tender, and a person cannot be compelled to accept it in payment for a debt.

The form shown below is the standard form now used in the United States and quite generally in Canada.

Toronto, September 4, 1906.

Imperial Bank of Canada

PAY TO THE ORDER OF

The D. A. Ross Co. *$150.00*

One Hundred and Fifty ~~~~~ *Dollars.*

A. R. Somerville.

In the above form the cheque is not payable to the payee, but to his *order*, hence he must indorse it before the bank would have a right to cash it, or receive it on deposit.

191 Use of Cheques.—The practice of making payment by cheque is becoming general. It saves time in counting change, prevents mistakes in counting, and liability of loss by theft. A returned cheque from the

bank, bearing the payee's indorsement, is also the best evidence of payment a man can have, and should be filed away the same as a receipt.

Cheques are negotiable the same as notes are, and are subject to the same laws that govern other bills of exchange as to validity, presentment for payment, and notice of dishonor in order to hold drawer and indorsers.

A cheque may be made to answer for a receipt for payment of a particular debt by inserting after the amount what it was given for, as "in full of account," or "for invoice of 10th inst.," etc., but as to being evidence of payment it is subject to the same laws that govern receipts.

Cheques operate as payment until presentation has been made and payment refused.

192 Presentation of Cheques.—A cheque received should be presented for payment not later than the following day, or forwarded if the bank is in a different place or town. Even twenty-four hours, under certain circumstances, have been held to be an unreasonable time to hold it, and the holder in such cases must bear whatever loss may occur through failure to present it promptly.

Presentation and notice of dishonor, if not paid, are just as necessary with cheques as with other bills, to hold the drawer and prior indorsers liable, if they have been transferred.

A cheque refused to be paid by a bank upon which it was drawn should usually be immediately returned to the drawer if it had not previously passed through other hands, unless it had been "certified by the bank," in which case the bank is liable.

193 Cheque Payable to Bearer.—A cheque payable to bearer may be paid to bearer, notwithstanding the fact that a previous holder may have indorsed it "payable to the order of F." The drawer's instructions must be observed.

A cheque payable to "cash" is payable to bearer.

The following cheque, if transferred before being presented to the bank for payment, needs no indorsement, but, like a promissory note payable to bearer, is legally transferred by delivery.

When the holder presents it at the bank for payment, no indorsement is called for in the form of the paper.

Ottawa, September 6, 1906.

Quebec Bank

Pay to A. J. Brown ..... *or Bearer* $200.00

Two Hundred ~~~~~ *Dollars.*

A. Montgomery.

It is in effect the same where the drawer makes his cheque payable to

a certain person or order. In such case the drawer does not restrict the negotiability of his cheque, neither does he place any responsibility on the payee to indorse the paper in the event that he does not negotiate it.

St. John, Nfld.,
September 16, 1906.

The Bank of Nova Scotia

Pay to N. Squires ..... *or Order*

One Hundred and Fifteen ..... *Dollars* $115.00

E. Augustine.

The above cheque is payable to Mr. Squires personally, but if he negotiates it Mr. Augustine makes it compulsory for him to indorse it, thus securing indisputable evidence of payment when the indorsed cheque is cashed by the bank.

Banks usually require the person presenting a cheque for payment to indorse it, no matter how it is written, but this is only a custom of the banks, and not law. A cheque written payable to a certain person or bearer, or to a certain person or order, needs no indorsement when presented by the person himself at the bank on which it was drawn.

But as the bank's liabilities are unavoidable if it pays a forged or a raised cheque, or pays the wrong party, that simple precaution to procure proof as to whom the money was actually paid is only reasonable, and an indorsement, *sans recours*, would serve the purpose.

The indorsement of the cheque, however, in such case without using the words "without recourse," would not render the indorser liable for payment to the drawee bank. When a bank cashes a *bona fide* cheque of its customer, that is the end of it, if the money has been paid to the right person.

If, however, any other bank except the drawee bank were to cash the cheque, the indorsers in that case would be liable to such bank if the drawee bank refused to honor it.

Also, if when presenting the cheque for payment at the bank upon which it was drawn, he were told there were no funds, or not sufficient funds to cover it, he would then give it an indorsement of guarantee, he would, of course, be surety to the bank.

Paying a cheque drawn payable "to order" to the wrong person, even though of the same name, is the same thing in effect as paying it on a forged indorsement and cannot be charged to the customer's account; hence the reasonableness of always requiring the person who receives payment to indorse the paper.

A cheque made payable to James Smith, guardian of Mary and William Brown, should be indorsed "James Smith," simply. The teller, however,

must know that the indorser—James Smith—is the person described as guardian for Mary and William Brown; so in all cases where the payee is very minutely described, it is for the protection of the bank in identifying the payee and not as a direction for the form of the indorsement.

194 Defects and Alterations in Cheques.—A cheque is not invalid by reason that it is not dated, or that it is dated on Sunday, or dated forward or backward. (See Section 110 for defects that do not invalidate.)

A cheque that is POST-DATED is held not to be a cheque, but a bill of exchange, payable at maturity and entitled to three days' of grace.

For material alterations, see Section 109.

195 Cheque without Funds at Bank.—For a person to obtain goods or money by giving a cheque when he had no *account* at the bank would be obtaining the goods or money under false pretences, the penalty for which is three years' imprisonment. But if the money were deposited in a bank to cover the cheque before its presentment, there would then be no fraud in it, although the transaction would be irregular.

But simply not having enough money in the bank to cover the cheque would not incur any such penalty, unless the amount of cheque would be so much greater than the usual amount on deposit that a fraudulent intent would be manifest, or in case where numerous cheques would be given greatly exceeding the usual amount on deposit or the amount to his credit at that time, it would be difficult to escape a penalty for fraud, or for obtaining goods or money under false pretences.

196 Certified Cheques.—The practice of "certifying" cheques for the drawer instead of cashing them is a favor on the part of the bank to its customers. In sending cheques to strangers or to distant cities, or for deposit with tender on a contract, or other cases where the equivalent of actual cash is necessary, the drawer may request the bank to "certify" or mark them "good." In that case it is immediately charged against the drawer's account in the bank, just the same as though he had drawn out the money himself. It is done by writing the word "certified" or "good" on the face of the cheque, giving the name of the bank, and initials of the ledger-keeper.

A "certified cheque" sent anywhere in the country will be cashed by other banks. A cheque thus marked "good" discharges the drawer, and he is precluded from countermanding payment of such certified cheque that has passed out of his hands.

A cheque marked "good for two days only," carries the guarantee of the bank for the two days, but if not presented for payment within that time, the guarantee is lost, and the cheque becomes as though it had not been certified.

The drawer of a certified cheque has no authority to countermand payment after it has passed into the hands of the payee without the consent of the payee.

197 Crossed Cheques.—Where it is desired that a cheque should not be negotiable, except through a bank, it may be "crossed." The crossing may be either general or special.

1. A cheque is crossed *generally* when it has:

(*a*) Two parallel transverse lines drawn across the face, or

(*b*) Two parallel transverse lines drawn across its face with the word "Bank" written between them, with or without the words "not negotiable," or

(*c*) Two parallel transverse lines, either with or without the words "not negotiable" written between them.

2. A cheque is crossed *specially* when the name of a particular Bank is added, as "Bank of Toronto," in which case the cheque is crossed to that particular Bank.

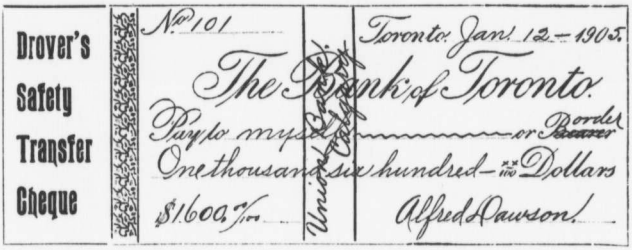
3. Any person receiving an uncrossed cheque is at liberty to cross it either generally or specially, or if it is crossed generally when he receives it he may cross it specially.

The drawer only can uncross a cheque that has once been crossed by writing between the lines "pay cash," and initialing it, after which it will be negotiable again.

Crossed cheques are extensively used in England where the banks are not held responsible for the indorsation of cheques, hence business men to be on the safe side very commonly "cross" their cheques so they cannot be paid in cash over the counter, but must be paid through a customer's account, who being personally known at the bank, payment to the wrong person would be impossible. But in Canada the banks are held liable for the indorsation of cheques, hence no need of "crossing." Cheques are here so extensively used in payment of wages, etc., paid to thousands of persons who have no account at a bank that "crossing" is scarcely ever resorted to.

A crossed cheque payable to a person not a customer of the bank may be cashed by the bank, but it assumes liability if it pays to the wrong party.

198 Form of Crossed Cheque, which constitutes a genuine safety transfer cheque.



Drovers and other business men who receive large sums of money in the city would find safety in using these "crossed cheques." Instead of carrying the money home with them they could deposit it in one of the city banks, and take a "certified" cheque crossed to their home bank. In case of robbery no person could possibly make any use of such cheque, as it is absolutely non-negotiable, and only payable at their own town bank and through their own account.

199 Paying Forged Cheques.—If a bank pays a forged cheque the bank is the loser. It is the same with "raised cheques," where they have been raised from a smaller to a larger sum, the bank loses the difference unless it can be shown that the drawer's carelessness in writing the cheque facilitated the forgery. For instance: If you were to write a cheque for "five" dollars, and commenced so far from the end of the paper that the forger had sufficient room to write "fifty" before the five, thus making it "fifty-five"; or, if you were to leave blank space enough after the "five" for an expert to turn the "five" into "fifty," or to add "hundred," and the imitation in the writing was good, the bank would not be held responsible. Also, in cases where the drawer is careless in writing his signature, having no uniform style, so the bank could not positively identify his signature, then the bank would not be held responsible for payment of a forged cheque.

200 When Banks may Refuse Payment of a cheque:

1. If payment has been countermanded by the drawer before the cheque has been accepted, or countermanded by an executor, assignee, or court.

2. Notice of the drawer's death. Payment after the death, but before notice, would be valid.

Notice of the death of an attorney who signs a cheque under a power of attorney, and delivers it before his death, does not require the bank to withhold payment, as the attorney is only an agent.

3. Where a garnishee order has been served on it.

4. If a cheque is not regular on the face of it, or is overdue, or is post-dated, the bank would pay it at its peril.

5. Official notice of the drawer's insolvency. Rogers *v.* Whiteley, 9, A. C. 118 (1892.)

The holder of a cheque has no action for damages against a bank if it refuses payment. He may sue the drawer or a prior indorser, or he may garnishee the funds of the drawer in the bank.

201 Relationship between Bank and Depositor in general is that of debtor and creditor. The bank is not a trustee nor agent nor bailee to the depositor, and is not subject to those laws. The banks relationship is very wide in its general course of business, but to the depositor it is limited.

As a debtor the bank is under an implied obligation to pay the depositor's cheques drawn on it to the extent that it is a debtor, but no further.

If a depositor draw a cheque on his bank for a greater sum than he has to his credit, three courses are open to the bank to choose from:

1. It may refuse to cash the cheque, or

2. It may, if it feels safe in assuming the obligation, cash the cheque and become the creditor to the depositor to that extent, or

3. It may make a partial payment, paying to the extent of the funds to the credit of the depositor, providing the holder of the cheque will receive it.

While there is no legal impediment to prevent such partial payment, it would lead to endless annoyances to the banks and to frequent complications in trade if such a procedure were allowed to become a bank custom.

202 Deposit by Minors—Section 84 of the Banking Act provides for the deposit of funds in a chartered bank in the name of a minor without any distinction as to age. The minor may add to or draw from such deposit either principal or interest from time to time without the intervention of the parents or guardians.

The amount that may be kept on deposit is limited to $500, in those Provinces where the provincial laws would not permit such person to contract in this way if it were not for this Section in the Banking Act.

Money thus on deposit of a deceased minor can only be withdrawn from the bank by an administrator. If the bank wishes to allow the parent or guardian to withdraw the money, it may, of course, do so, but at its own risk. An indemnity bond in most cases would be sufficient protection.

The Newfoundland Bank Act also provides for children's deposit accounts allowing them to deposit and draw out funds the same as the Canadian Bank Act.

203 Small Points Worth Remembering by both trader and banker

When a draft has been accepted by the drawee and returned to the bank the acceptance is irrevocable.

If a drawee writes his acceptance on a draft, it is still in his power to cancel it while the paper is in his possession.

If a drawee writes his acceptance on a draft and notifies the bank that he has done so, he cannot thereafter cancel the acceptance.

An indorser on a non-negotiable note or bill is not liable for payment.

A bank should not "certify" a post-dated cheque either for the drawer or payee.

If a bank pays money to an innocent holder for value on a forged cheque it cannot recover the money from such third party.

All parties whose names appear on a forged bill or note are liable to an innocent holder for value, except those whose names are forged.

By Section 54 of the B. of Ex. Act, the acceptor of a forged draft would be precluded from denying to holder in due course the genuineness of the drawer's signature.

A bank that certifies a cheque that is afterwards "raised" is liable for the original amount of the cheque only.

By section 103 of the Bank Act, chartered banks are authorized to cash at par all cheques issued by the various Departments of the Dominion Government, but not of any of the Provincial Legislatures.

A cheque that is marked "in full of account to date" does not necessarily bind the payee, even if he accepts it and has it cashed, unless it also makes such settlement the condition of its acceptance.

Presentation of a bill for payment may be made any time during the day of the due date, even after three o'clock, if the notary or holder can find any person authorized to pay or refuse payment.

Waiving "notice of dishonor" does not relieve the bank from the obligation of presentation for payment.

If a person accepts a bill after his majority, or gives a note for a debt contracted before age, it will bind him, as it is a ratification of the contract.

It is said "a guarantor is a favorite of the law," and he is allowed to

stand on the precise wording written above his name, and he waives no rights that his written contract does not waive.

A partner or an officer of a stock company cannot bind the company on an accommodation indorsement.

The holder of a note, whether a bank or a private individual, cannot part with the custody of collateral security without releasing the indorsers unless they give their consent.

Promissory notes held by a bank as collateral security for advances to a customer cannot be garnisheed, as they are personal property and not money due.

The legal intention and effect of each of the signatures on a negotiable instrument was established generations ago, and the courts invariably construe the contract of each in accordance with the time honored customs. The scales of justice in this respect are held evenly, and men in business must not "wince" if they are pinched by a law one or two hundred years old.

If a cheque is not presented within a reasonable time, the indorsers are discharged, but the drawer only to the extent that he has suffered damage by the delay. In other respects a cheque is good until barred by the Statute of Limitations.

As indorsements on the back of a cheque, like other bills of exchange, are an essential part of the contract, a cheque that has an indorsement of a partial payment written on it should either be refused when presented to the bank as being irregular or payment made only for the remainder.

If coupon bonds or a mortgage is left with a bank as collateral security the bank will be liable if the customer loses through neglect to collect the interest.

A bill that is not paid at maturity may be noted on the due date, and protested the next day if not paid, but cannot be protested later.

If a cheque is presented for payment which has the word "duplicate" written across its face, but is in other respects regular, the bank may safely cash it, and refuse to cash the original, should it be presented before receipt of the drawer's notice stopping payment of the original.

A cheque for which payment has been refused, or stopped, should be returned to the party presenting it without any mutilation. It is presumed to be the property of the person presenting it.

The holder of a dishonored cheque that has not been "certified," has no action against the drawee bank, but he may sue both the drawer and indorsers, if any.

In presenting a draft for acceptance that has not been discounted, the bank is agent for the drawer. The drawer desires to retain the good-will of his customer, as well as to collect payment for a previous sale, hence the statutory time allowed for acceptance is not a favor to the drawee only.

As the drawee is under no legal obligations to accept a draft drawn on him by his creditor, he is not liable for protest charges for non-acceptance.

If the drawee demands the statutory time allowed for acceptance, and the bank protests even a demand draft before the expiration of that time it is premature. If within the time allowed by the Act the drawee were to ask

for the draft and tender the money for its face, and the bank were to refuse payment unless protest charges were also paid, it would do so at its own risk if the drawee were on the eve of insolvency.

For any bill not a Quebec bill or a foreign bill, the essential things to be done according to the Bills of Exchange Act, to hold drawer and indorsers liable are:

1. To properly present the bill for payment on the due date, and if not paid,

2. To give notice of the dishonor to the drawer and indorsers not later than the next day. Protest is permitted, and has become a custom, but is not essential.

A bank, in the interests of its customer, may take part payment on a bill or note, unless specially forbidden by the payee to do so and by notice of dishonor reserve recourse against drawer or maker and indorsers for the remainder.

Presentation for payment of either a cheque or other negotiable instrument may be made at any hour during business hours of the due date, but the paper must not be protested or treated as dishonored until the close of the day, 3 o'clock for banks. The whole day belongs to the debtor.

Where a bill is held over for a few days after maturity by arrangement with the drawer and indorsers, the arrangement must amount to a waiver of notice or an admission of notice of dishonor. If not paid at the end of the time the bill could not then be protested.

In protesting an inland bill that is not a Quebec bill, even if the protest was premature, or for any other reason nullified, the drawer and indorsers would still be liable, providing the bill had been properly presented for acceptance or payment, as the case may be, and notice of dishonor forwarded to such drawer and indorsers not later than the day following the dishonor.

When a bill is received with a "no protest" slip attached or a request in an accompanying letter not to protest, the bill should be returned promptly if not honored, so that the party receiving the returned bill may be in a position to notify prior parties. In Quebec, of course, the "no protest" slip would not be used.

In presenting a draft that has been discounted, the collecting bank is agent for the bank that discounted the paper, hence a rigid compliance with the provisions of the Bills of Exchange Act as to presentment, notice of dishonor if not accepted within the statutory time allowed for acceptance, and if the paper is protested the protest must not be premature, nor after the time fixed by statute, as either one would be fatal if complications arose.

In an action against an indorser it is not necessary to prove that there were not sufficient funds at the place named in the instrument for payment, and for an inland bill, except a Quebec bill, it is not necessary to prove that the paper was protested, but merely prove due presentment, non-payment, and notice of dishonor.

204 Bank Draft is a draft of one bank on another, payable on demand. The cost to the remitter is usually one-quarter of one per cent. more than the face, but it is cashed at par by the bank on which it is drawn. It is

a safe medium for the transmission of money to others, or in carrying sums of money when made payable to your own order. When drawn on a foreign country they are called Foreign Bills of Exchange. The following would be treated as a foreign bill both in Canada and Newfoundland:

Bank of Montreal

Toronto, January 6th 1905

Pay to the Order of William H. Jones

Two Hundred and Eighty Dollars.

S. Vincent,
Manager.

E. Dickaut,
Accountant.

To Bank of Montreal,
ST. JOHN'S, NFLD.

205 Deposit Receipt, usually called "certificate of deposit," is a receipt given by a bank for money deposited. It bears interest, but is not negotiable in Canada. In a legal sense it does not differ much from any other form of receipt. In most of the States of the American Union, except Pennsylvania, it is classed as a negotiable instrument.

The following is one form of such receipt:

FORM OF BANK DEPOSIT RECEIPT.

(*Name of Bank*.....)

$..... No.....

Toronto,....., *1905.*

RECEIVED *from* .....
the sum of..... *Dollars, which amount will be accounted for to*.....*by this Bank, and will bear interest at the rate of*.....*per cent. per annum until further notice. Fifteen days' notice of withdrawal to be given, and this receipt to be surrendered before repayment of either Principal or Interest is made.*

No interest will be allowed unless the money remains in the Bank.....*months.*

This receipt is not negotiable.

For.....(*Bank*).

....
Accountant. *Manager.*

206 Bills of Lading are classed as negotiable instruments. When the bill of lading for goods purchased has been received the owner may transfer it to a *bona fide* purchaser for value, or he may pledge it as security for

advances from a bank and in both cases give a good title and shut out the right of *stoppage in transit.*

The shipper may also attach the bill of lading to a sight or demand draft payable to the order of a bank, thus compelling the purchaser to pay the draft before the delivery of the bill of lading and goods.

207 Letter of Credit.—It is a common custom for persons going to a foreign country on business, to deposit money in a bank at home and receive from such bank a letter of credit upon a bank in the country where the money will be needed, or upon an agent of the bank in such country, authorizing such bank or agent to cash the drafts or cheques of the payee up to the limit stated in it. This letter of credit costs nothing except its face value, and enables the holder to obtain funds in the foreign country as readily as he could in his own town, without the risk of carrying it with him. It is not a negotiable instrument.

Persons of well-known financial standing, or one who has a satisfactory guarantor, may obtain a letter of credit from a banking house without depositing the money until he returns.

208 Circular Letters of Credit are commonly used by *travellers*, as by this means money may be obtained in various countries the same as by the ordinary letter of credit in a particular country.

The following is one form of a Letter of Credit:

CIRCULAR LETTER OF CREDIT.

Issued by

No..... £.....*Stg.*

THE CANADIAN BANK OF COMMERCE,

Ottawa,.....190..

To the Banks named in our Letter of Indication (Introduction).

This letter will be presented to you by..... in whose favor we have opened a credit of..... sterling, to be availed of by his (her) demand drafts on the Bank of Scotland, Lothbury, London, which we request that you will negotiate at the current rate of the day, less your usual charges.

The drafts should bear the following clause:

Drawn under.....credit No.....; they should be drawn within one year from date hereof, and date and amount of each draft cashed are to be entered in the space provided on the back of this letter.

Mr..... is provided with a copy of our Letter of Indication, wherein.....signature may be found.

For the Canadian Bank of Commerce,

.....

.....

This letter of credit is accompanied by a letter of introduction, bearing the signature of the payee, also a list of agents or correspondents where the money may be drawn.

209 Warehouse Receipts are receipts given by the owners of warehouses, elevators, etc., acknowledging the receipt of goods and chattels stored or kept for the owners of such property. These receipts are negotiable by indorsement, and are used largely as collateral security by business men along with their notes for advances by Banks.

The following is one form of such receipt:

WAREHOUSE RECEIPT.

Received *in Store from W. H. Hamilton, in Warehouse at 29 Wellington Street, Toronto, Goods as per schedule of the total value of $950.00, to be delivered pursuant to the order of W. H. Hamilton to be indorsed hereon, and on production of this receipt only.*

This is to be regarded as a receipt under the provisions of the Revised Statutes of Ontario, Chap. 122, and of the Revised Statutes of Canada, Chap. 120, intituled "An Act respecting Bank and Banking," as the same may be amended by subsequent Acts. Clauses of the Criminal Law relating to Warehouse Receipts are printed on the back hereof.

EMPIRE WAREHOUSE CO., LIMITED.

TORONTO, OCT. 10TH, 1906.

CHAPTER X.

DUE BILLS, ORDERS AND RECEIPTS.

212 Due Bills.—A due bill is a written acknowledgment of a debt. They are not negotiable, either by delivery or by indorsement, no matter if the word *bearer* or *order* is used, because they are not a promise to pay.

They may be transferred by *assignment*. The following is a very good form, written across the back:

"For value received, I hereby assign to James Smith the within due bill."

HARRY POTTS.

Smith should notify the maker of the due bill that he had purchased it, and that the money is to be paid to him only.

213 Forms of Due Bills.

1. Payable in goods.

NELSON, B.C., Aug. 4th, 1906.

Due James Smith Ten Dollars in goods from our store.

$10.00. HIBBARD & SONS.

2. Payable in money.

FORT ERIE, Aug. 4th, 1905.

Due James Smith for value received Ten Dollars.

$10.00. W. LAUR.

214 An I. O. U. is payable in cash, and on demand if there is no agreement to the contrary. The creditor's name is not usually inserted, but it is better to insert it. They are not a promise to pay, hence not negotiable.

HAMILTON, Aug. 4th, 1906.

I. O. U. Twenty-five Dollars.

J. J. HERRON.

But if a promise to pay were added to the I. O. U., it would be negotiable, as follows:

J. W. Smith, I. O. U. Twenty-five dollars, to be paid Dec. 4th.

J. J. HERRON.

215 Orders.—An order is a written request to deliver goods or money on account of the person making the request. When such order is received and acceded to, the person signing the order should be charged for the amount. If the order is in favor of a third party, the name of the party receiving the goods or money should be mentioned in the entry, and the order preserved until settlement is made.

They differ from a draft in being more simple in form and generally for goods instead of for money. If the drawee owes the drawer the amount payment can be enforced by the payee.

1. COBALT, Ont., Aug. 12th, 1906.

Mr. James Smith:

Dear Sir,—Please pay to Henry Brooks or order Thirty-five Dollars and charge the same to the account of

$35.00. S. W. JONES.

2. MORDEN, Man., May 19th, 1906.

Mr. W. Winters:

Dear Sir,—Please let Mr. H. Brooks have from your store Fifteen Dollars in such goods as he may wish and charge to account of

ALEX. B. BARRON.

3. AYLMER, May 26th, 1906.

Mr. W. Winters:

Dear Sir,—Please pay to the bearer, Mr. H. Brooks, Thirty-five Dollars from the funds left with you yesterday.

W. A. PHILLIPS.

216 Receipts.—A receipt is a written acknowledgment of having received a certain sum of money or other value.

A receipt is not absolute evidence of payment, but it throws the burden of proof upon the party who impeaches it. It may have been obtained before payment was made, and then payment refused, or it may have been obtained through fraud, or for some other purpose; but the burden of proof rests upon the party who gave it to show wherein it is not valid.

A receipt given in full of all demands to date would not bar the creditor's claim for an additional item of account if an error had been made which he could satisfactorily prove. It is evidence only that so much value had been received or money paid.

A cheque received, and having marked on it "in full of all demands" or "in full of account," which does not cover the account in full, may still be indorsed and cashed at the bank in the usual way without losing the balance of account. If the debtor inserted those words in the cheque through mistake the court would correct it, if proven; and if done intentionally the court would also order the correction. If, however, it stated that the amount should be paid on the condition of its being received as payment in full of account, then its acceptance and indorsement by the creditor would cancel the balance of debt. It would then be a "compromise" settlement and binding.

It is a creditor's duty to give a receipt on the payment of a debt, but generally he cannot be compelled by law to do so. When he holds a debtor's note, or any other security, he is compelled to surrender it on payment, also a mortgage when paid.

When a receipt is taken from an agent or collector it should have the name of the principal on it, as well as that of the agent or collector, who should always designate himself as "agent" or "collector."

When a receipt is likely to be refused, payment should not be made except in the presence of witness.

When a receipt is given for money paid on a note or other contract, and an indorsement made, the latter should state the fact that a receipt was given, and the receipt should state that the amount had also been indorsed on the note, or other written instrument.

The following forms of receipt are in general use:

217 Receipt on Account.

BROCKVILLE, May 28th, 1906.

Received from James Smith One Hundred Dollars on account.

$100.00. H. SUMMERS.

218 Receipt in Full of Account.

THOROLD, Aug. 28th, 1906.

Received from Leslie McMaan One Hundred Dollars in full of account to date.

$100.00. J. BATTEN.

219 Receipt of Rent.

BRANDON, June 1st, 1905.

Received from James Smith One Hundred Dollars for three months' rent of store, No. 4 St. Paul Street, due May 1st.

$100.00. PETER MYERS.

220 Receipt for Money at the Hands of a Third Party.

OTTAWA, July 6th, 1906.

Received from Peter Smith, by the hands of A. Young, One Hundred Dollars, in full of all demands.

$100.00. H. BATTEN.

221 Receipt for Legacy.

KILLARNEY, MAN., July 2nd, 1906.

Received from J. E. Anger, executor of the last will and testament of Henry Williams, of Winnipeg, deceased, the sum of Four Hundred Dollars, in full of a legacy bequeathed to me by said will.

ALBERT HOWIE.

222 Receipt by Clerk.

WELLAND, May 12th, 1906.

Received of Peter Smith Forty Dollars in full of account.

$40.00. GEO. BURGAR (*per* JONES).

223 Receipt for Note.

BELMONT, MAN., May 16th, 1906.

Received from Peter Smith note at four months from this date for One Hundred Dollars in full of account.

$100.00. C. E. WEEKS.

224 Receipt for Property Held in Trust.

SYDNEY, N.S., Aug. 16th, 1906.

Received from Peter Smith one Gold Watch to be held in trust for him, and delivered to his order without expense.

J. B. MACK.

225 Receipt for Payment of Interest on Mortgage.

TRURO, N.S., June 1st, 1906.

Received from Peter Smith One Hundred Dollars, being amount in full for six months' interest, due April 2nd, on his mortgage, in my favor, dated October 2nd, 1902, which amount is also indorsed on the mortgage.

$100.00. O. L. HORNE.

226 Receipt for Money on a Note.

TORONTO, May 4th, 1906.

Received of Peter Smith One Hundred Dollars, in part payment of his note in my favor, dated September 4th, 1904, which amount is also indorsed on the note.

$100.00. J. W. SYKES.

227 Release.—A release is a written discharge of a debt, claim, or demand held against one person by another. No special form of wording is necessary, simply using words that convey the intention to release, acquit, and discharge the person from the debt or obligation. It is given under seal, and will discharge any debt whether acknowledged or not.

Releases may be individual, as when one person releases another from a debt or demand, or they may be mutual, as when two persons have been trading with one another, and have contra accounts running for a considerable time. When a settlement is made, they very frequently release each other from all demands. A release will bar out any chance of opening up the matter again by showing that a mistake had been made, whereas a mere receipt in full of the demands would not do so. And they should be used more frequently than they are. The following is full form:

228 General Form of Mutual Release.

This Indenture, made the 17th day of June, A.D. 1906, between Henry N. Hibbard, of the first part, and Benjamin M. Disher, of the second part, all of the Township of Bertie, County of Welland, Province of Ontario, merchants.

WHEREAS, there have been divers accounts, dealings, and transactions between the said parties hereto, respectively, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have, respectively, agreed to give each other the mutual releases and discharges hereinafter contained in manner hereinafter expressed:

Now, therefore, these Presents Witnesseth that in consideration of the premises and of the sum of one dollar of lawful money of Canada to each of them, the said parties hereto, respectively, paid by each of them at or before the sealing and delivery hereof (the receipt of which is hereby acknowledged), each of them, the said parties hereto, respectively, doth hereby for himself, his heirs, executors, administrators and assigns, remise and lease and forever acquit and discharge the other of them, his heirs, executors, administrators and assigns, all his and their lands and tenements, goods, chattels, estate, and effects, respectively, whatever and wheresoever, of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have, or has or ever had, or might or could have against the other of them, on any account whatsoever of and concerning any matter, cause or thing whatsoever between them, the said parties hereto, respectively, from the beginning of the world down to the day of the date of these presents.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of N BREWSTER. HENRY N. HIBBARD. (L.S.) BENJAMIN M. DISHER. (L.S.)

CHAPTER XI.

STATUTE OF LIMITATIONS.

230 The time within which the various kinds of debts must be paid, or action commenced to recover payment, is fixed by Statute, and if action is not commenced within that time they are said to be outlawed. The debt is not cancelled, but the creditor loses his right to sue and recover payment by legal process. In Quebec the debt is cancelled, as well as the right of action barred.

Action is commenced by the issue of a summons or writ. It is not required to obtain judgment within the specified time, but merely that the writ be issued.

The Statute limiting the time within which an action at law must be commenced for the collection or enforcement of a claim is called the Statute of Limitations. The time limit for the various kinds of debt is given in following sections:

231 Promissory Notes and Acceptances in all the Provinces of Canada, except Quebec, outlaw in six years after maturity or last payment made on either interest or principal. The date of maturity is the last day of the three days of grace, hence the time commences to count the day after the third day of grace, except for those payable on demand.

Any payment, or written acknowledgment of the debt, will keep the paper alive six years from that date as against the party making the payment or the acknowledgment, but not against any other person whose name is on the paper.

In Quebec the time is five years instead of six. The law is the same in other respects, except that the debt as well as the right of action is barred in Quebec.

In Newfoundland and England the time is also six years.

Demand notes are deemed to be due when they are made, and demand acceptances when they are accepted; therefore, six years from those dates they are outlawed as far as the maker or acceptor is concerned. But it is different with indorsers on such paper, as no right of action accrues against them until a demand for payment has been made and dishonored, and therefore action on the bill is not barred against them until six years from date of demand. But a demand note having an indorser must be presented for payment within a "reasonable time," otherwise the indorser is discharged.

In Quebec the time would be five years, but in other respects the same.

232 Accounts, Etc.—Action for the recovery of merchants' accounts and all other debts founded upon any lending or other contract, not under seal, for the recovery of rent, or interest, or arrears of legacy, or arrears of dower must be commenced within six years after the cause of action arose, or the last payment, or a written acknowledgment of the debt or claim.

In Newfoundland and England the time is the same.

In the Province of Quebec it is five years for such accounts. Professional fees, as of doctors and advocates, justices, notaries, and rents, interest and commercial matters in general are barred after five years from maturity or

last payment. Slander, libel and wages of employees engaged for a shorter period than one year outlaw in one year. Damages for injuries and wages for employees engaged for a longer period than one year outlaw in two years. Breaches of contract, restitution to minors, rectification of tutors' accounts, contractors' and architects' warranty outlaw in ten years.

In all the Provinces, Newfoundland and England accounts are, with regard to outlawing, "itemized," that is, each item or purchase is treated as a separate account, and all moneys paid on it are, unless otherwise specified, applied to the oldest items. This particular feature of accounts should be remembered.

They commence to outlaw from the date of purchase unless there is a time fixed for payment, in which case that would be the due date.

A debtor has the right, when making a payment, to say on what particular account it shall be applied. In case he neglects to do this, the creditor has the privilege of applying it to any part he likes. In case neither one applies it to any particular debt, it is by law, in case of personal accounts, applied to the oldest items.

The various purchases on different days being put into one bill and rendered to the debtor does not merge them into one debt so as to change the time for outlawing of any particular purchase, but they all remain entirely separate, and six years from the date of purchase of each item it is outlawed, unless there has been a part payment made on that individual purchase, or a written acknowledgment. (Five years for Quebec.) A part payment on a running account does not therefore keep the whole bill alive.

The items of an account may, however, be merged into a single debt by what is called an "Account Stated." To form an "account stated," an agreement must be come to between the debtor and creditor by which the whole account is either verbally or tacitly *acknowledged*. Where this has not been done, if the merchant wants a part payment to keep all the items of the account alive, he must apply part on every individual purchase, even if it is not more than twenty-five cents on each. This can be done by a day-book entry without saying anything to the debtor. The following or similar words would answer: "Received from James Smith, $4.50 on account, an equal amount to be applied on each purchase up to date." Give the customer the ordinary receipt on account without any reference to the special application you have made of the payments.

A definite formal settlement in writing between the parties, even though no money is paid, will serve to extend the time for another period of six or five years, as the case may be.

An I.O.U. is an "account stated," as well as acknowledged.

233 Judgments in all the Provinces (except Quebec) continue in force twenty years from the date when entered, or last execution on them, or a written acknowledgment.

In Quebec they remain in force for thirty years; Newfoundland, twenty.

In New Brunswick Judgments in the Justices, Parish Court, Commissioners' or Stipendiary Magistrates' Court outlaw in six years if no execution issues, but in County or Supreme Court twenty years.

Foreign judgments cannot be enforced in Ontario after six years from the entry in the foreign country.

234 Mortgages on Real Estate in Ontario and Manitoba outlaw in ten years after maturity or last payment on either principal or interest; in British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland they outlaw in twenty years; in Alberta, Saskatchewan, North-West Territories and the Yukon, twelve years, and in Quebec thirty years if the mortgage is duly registered.

In each province and country a part payment of either principal or interest, or a written acknowledgment of the debt will extend the time for another period of ten, twelve, twenty or thirty years, as the case may be.

Action upon bonds, covenants or any instrument under seal, except mortgages on real estate, may be commenced any time within twenty years.

The equity of redemption if not barred by sale, or foreclosure, or deed holds good for twenty years.

235 Devises are barred in the same length of time that mortgages on real estate are, from the time a right to receive it accrued, unless devisee were a minor or under some other disability, in which case the Statute of Limitations does not commence to run until the removal of such disability. Arrears of legacy barred in same time that interest is.

236 Dower.—The right to recover dower (where dower is allowed) by a widow out of her deceased husband's estate is also barred in the same length of time a mortgage on real estate is barred. The right to dower accrues at the husband's death. Arrears of dower barred in same time that interest is.

237 Chattel Mortgages as between debtor and creditor in all the provinces (except Quebec) and Newfoundland will hold the claim for twenty years, being an instrument under seal and not affecting interest in lands. As against other creditors, however, they only hold the property as security for a period varying in the different provinces from one to five years. (See Section 246.) Chattel mortgages are not used in Quebec.

238 Ownership by Possession.—A person having continuous peaceable possession of land (except in trust), paying taxes on same and treating it as his own, acknowledging in no way the right or title of any other person for the same, becomes the owner of the property in Ontario and Manitoba after ten years; in Alberta, Saskatchewan, North-West Territories and the Yukon, twelve years; in New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland in twenty years. In Quebec ten years give a possessory title.

A person, without the knowledge of the grantee, "squatting" on land yet in a state of nature, usually called "wild land," which has been granted by the Crown, but which the grantee has not taken actual possession of by fencing, or residing on, or cultivating some portion of it, must in all the Provinces, and Newfoundland, occupy it for 20 years to get title by possession. He would not acquire the ownership of any portion of the property which he did not actually occupy for the whole 20 years.

Land enclosed by a fence while the land is "in a state of nature," and subsequent survey showing the fence to include land belonging to an adjoining owner, the Statute of Limitations would not commence to operate until such survey and discovery.

In cases where a fence is fraudulently placed or removed, the Statute would not commence to run until the time the fraud is discovered.

In respect to land brought under the Torrens System and registered, no length of possession gives title against the registered owner.

239 Easements.—To acquire a prescriptive right to the use of a lane or way over another person's property the right must be actually enjoyed by the person claiming right thereof without interruption for the full period of twenty years.

The same holds good for a water pipe or drain through a neighbor's property.

This applies to all the Provinces and Newfoundland.

240 Crown Lands.—No action by the Crown (Provincial) to recover lands or any rents or interest in lands can be brought after sixty years from the time when the right to bring action first accrued.

An acknowledgment in writing extends the time sixty years from date of such acknowledgment.

No length of occupancy of the shores and margins of streams owned by the Dominion gives a right of possession.

241 Reviving Outlawed Debts.—In promissory notes, acceptances and book accounts, a part payment or a written acknowledgment will revive them and keep them alive again from that date for a further period of six years. Mortgages, legacies, dower, rents, etc., are kept alive in same manner.

In Quebec a part payment or a written acknowledgment before the debt is barred by Statute will keep it alive, but would not revive the claim after it had been outlawed, as the debt itself is cancelled as well as the right of action barred.

Money also paid by the debtor to the creditor on account, without any instructions as to what debt it should apply to, may be applied by the creditor (except in Quebec), to any such debt that has been barred by Statute, and thus reduce it. This cannot be done by a third party to whom such debt may have been transferred, neither does it revive the balance.

Payments of money on a promissory note by one of the parties do not prevent it from outlawing in six years (five for Quebec) so far as the indorsers are concerned.

Written acknowledgments from one joint debtor will not affect the other.

A written acknowledgment of a debt that will take it out of the Statute requires to be:

1. An acknowledgment of the debt from which a promise to pay is inferred, or

2. There must be an unconditional promise to pay the debt, or

3. There must be a conditional promise to pay the debt, and evidence that the condition has been performed.

A promise to pay as a debt of honor is not sufficient, as it does not admit the legal liability.

An acknowledgment of the debt, coupled with a statement that he will never pay it, will not take the debt out of the Statute.

242 Exceptions to Outlawing.—Bank bills or bank notes, or other evidence of debt issued by a bank, never outlaw by lapse of time.

Statute of Limitations does not apply to express trusts. For instance, a farm deeded in trust to a person for heirs or other persons would never become the property of the trustee by possession, even if he occupied it sixty

years. Land owned by the wife, but worked and improved by the husband and even assessed in his name, does not become his by right of possession. To money left in bank in trust the Statute of Limitations does not apply, and no lapse of time will bar the right to recover it.

Also, where there is any legal disability on the part of either the debtor or creditor so that the action cannot be commenced, the time does not begin to count until the disability is removed.

The disability, however, of whatever nature it is, must be in existence at the time when the debt became due, if a debt, or in other cases "when the cause of action arose." If the debtor were living outside the province at the time the debt fell due, the time for outlawing would not commence until he returned. If, however, he left the country after the debt was due and before action was commenced, it would then not form an exception, because action could have been taken to collect before he went away.

Disabilities, however, do not hold indefinitely, and each province and country has fixed the limit, ranging, respectively, from twenty to forty years.

The absence of one joint debtor from the country does not prevent the Statute from running against the other.

The whole of this Section is the same in Newfoundland.

CHAPTER XII.

CHATTEL MORTGAGES

243 A Chattel Mortgage is a lien on personal property—goods and chattels. It is in reality a deed or conveyance of the property as security for a debt or for borrowed money, with a proviso that when the debt is paid the mortgage becomes null and void.

The debtor is called the mortgagor and the creditor the mortgagee. The effect of a chattel mortgage is practically the same as a Bill of Sale. It is a conveyance of the *title*, but not of the *possession* of the property; but the mortgagee may take *possession* of the property also on a breach of any of the covenants.

The Statutes, except in Yukon, do not give a form for chattel mortgages with which they are compelled to comply, nor define what covenants they shall contain; therefore, to know what the covenants, provisos and conditions are, the mortgage itself must be carefully read. The printed forms in general use are what have been settled by conveyancers as being appropriate and suitable to meet the usual requirements of borrower and lender, and therefore the mortgage should be carefully read before signing it, as the covenants and conditions may vary much. There is a definite statutory form for a Discharge and Renewal.

In Quebec chattel mortgages are not used. Bills of Sale will hold the property as between the debtor and creditor, but are not binding there against third parties unless the goods are taken possession of by the creditor.

244 Description of Property.—They must contain a full description of the goods and chattels, so they can be readily distinguished; also, where

they are located and whose possession they are in at the time. In describing an animal, give age, color, sex, name, breed, and any particular spot or mark. In describing a machine, give the manufacturer's name and number of machine, color and condition.

245 Must be a Bona-fide Transaction.—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continuel change of possession of the goods mortgaged must be registered, or a true copy of it, as provided in each province, together with the affidavit of an attesting witness of the due execution of such mortgage, which affidavit shall contain the date of the execution of the mortgage; and also the affidavit of the mortgagee, or his agent, stating that the mortgagor is justly indebted to the mortgagee in the sum mentioned in the mortgage, that the mortgage was executed in good faith and for the express purpose of securing the payment of the money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor.

Mortgages to secure future advances with which to carry on business are also valid, so are mortgages to secure indorsers and sureties if registered within the time required in each province. Also written contracts or agreements to give a mortgage are valid if registered.

A chattel mortgage given by a person who is on the eve of insolvency may be set aside on the ground that it was given to defeat creditors, or to give one a preference over other creditors.

But a person who is able to pay his debts is not insolvent, although he may be considerably in debt, and a chattel mortgage given by him even after a judgment may have been secured against him would be good providing a seizure of the goods had not been actually made.

An affidavit of *bona fides* by the mortgagee or his agent must in all cases be filed with the instrument for either an absolute or a conditional Bill of Sale in order to be binding against third parties; but in British Columbia, by amendment of 1904 (Chap. 8), the time for filing such affidavit may be extended by an order from the Court or Judge in Chambers, and in such case a copy of such order must be filed with the Bill of Sale.

246 Registration.—To hold the goods against judgment creditors, and subsequent purchasers and mortgagees in good faith for valuable consideration, the mortgage or Bill of Sale must be registered in the district where the goods are located within a specified number of days, together with two affidavits, one of a witness and one of *bona fides* by the mortgagee, otherwise against such parties it becomes absolutely null and void. The time varies in the different Provinces. It would, however, still be good against the debtor or mortgagor as evidence of debt and a lien on the goods for the amounts.

In Ontario they require to be registered at the office of the Clerk of the County Court within five days after their execution. They remain in force one year without renewal. Fee for registering, 50c.

For the districts of Algoma, Thunder Bay, or Nipissing they must be filed within ten days after their execution in the office of the District Court Clerk.

For the districts of Parry Sound, Muskoka or Rainy River they must be

filed within ten days in the office of the Clerk of the First Division Court of the district in which the goods are situate.

For the Provisional county of Haliburton they must be filed within seven days from execution in the office of the Clerk of the First Division Court.

For the District of Manitoulin they must be filed within ten days in the office of the Deputy Clerk for Manitoulin.

Chattel mortgages made by an incorporated company whose head office is not in Ontario, thirty days are allowed for filing.

A mortgage securing bonds made by an incorporated company on its rolling stock may be filed in the office of the Provincial Secretary within the five day limit, or thirty days if the head office of the company is not in Ontario. Renewals of such mortgages must also be filed in such office, instead of in the office of the Clerk of the County Court.

In Manitoba they must be filed at the office of the Clerk of the County Court in the registration district in which the goods are situate, within twenty days from date, and if not filed within that time they cannot be filed thereafter. They remain in force two years without renewing. Fee for filing, 50c.

A copy of any chattel mortgage, conditional sale or lease respecting the cars and rolling stock of railways, certified by a notary to be a true copy thereof may be registered in the office of the Provincial Secretary and will then need no renewal. Fee, $2.00.

The registration of a discharge of same is also $2.00.

Where a mortgage is made by an incorporated company whose head office is not in Manitoba, it may be registered within thirty days instead of twenty, as for other mortgages.

Where a mortgage is given by an incorporated company as security for debentures, and the by-law of the company authorizing the issue of such debentures is filed with the mortgage, the mortgage does not need to be renewed.

Growing crops cannot be mortgaged, except in payment for seed grain, and in such case they have priority over any mortgage then registered and also over any executions in the hands of a sheriff.

In Alberta, Saskatchewan, and the **North-West Territories**, they must be filed within thirty days from execution at the office of the Clerk of the Registration District in which the property is situate, and they only take effect from date of filing. They are good for two years without renewal. Fee for filing is 50c.

Mortgages against growing crops are not valid unless it is to secure the purchase price of seed grain, and then they have preference over all other mortgages or bills of sale previously given, or executions. The mortgage must contain the date of the purchase of the seed grain, the number of bushels and price per bushel, and the same information must be in the affidavit of *bona fides*.

In British Columbia chattel mortgages are filed with the Registrar of the County Court in each county or Registration District in which the property is situate, and if more than one Registrar of a County Court they are to be filed with the nearest one within the county or district. They are good for five years without renewal.

When the goods covered by a Bill of Sale are within the corporate limits of a city or town in which is situate an office of the County Court, where such Bill of Sale may be registered, it must then be registered within five days, but in all other cases twenty-one days are allowed. Fee for filing is $2.00.

Registered Bills of Sale have priority over those unregistered, and where more than one registered Bill of Sale covers the same property, they have priority according to the date of registration.

A subsequent Bill of Sale given in substitution for a prior unregistered Bill of Sale, and covering the whole of or any part of the same property covered by the first, and given to secure the same debt or any part of such debt, it shall, so far as it is for the same debt as the first, and also so far as it covers the same chattels as are covered by the first, be absolutely void unless it is established to the satisfaction of the Court that the second instrument was given to correct some material error in the first, and not for the purpose of evading the Bills of Sale Act.

Mortgages given by incorporated companies to secure bonds or debentures covering real estate as well as personal chattels, if registered according to the requirements of the Lands Registry Act, need not be registered according to the provisions of the Bills of Sale Act.

In Yukon Territory they must be registered within thirty days from execution in the Registration District in which the goods are situate. Fee for registering, $2.00. Good for two years without renewal.

In New Brunswick they must be filed within thirty days in the office of the Registrar of Deeds. Fee for filing is 25 cents. Must be renewed yearly.

In Nova Scotia there is no time limit within which they must be filed, but they only hold good against laws of insolvency, *bona fide* purchasers, judgment creditors and subsequent mortgages in good faith for valuable consideration after filing. They remain in force three years.

Either the original Bill of Sale or a certified copy may be filed, and if there is any schedule annexed or referred to it must also be included, and if the instrument is subject to any condition whatever it must be considered a part of it and be filed with the instrument, otherwise the Bill of Sale is null and void against all third parties.

In Prince Edward Island the original must be filed in the office of the Prothonotary of the Supreme Court accompanied by the usual affidavits of witness and *bona fides*, otherwise is void against third parties.

In Newfoundland, Bills of Sale and mortgages of personal property being deeds of gift, or where the consideration is over $400, and where the possession of the property remains in the mortgagor, they must be registered in the office of the Registrar of Deeds in order to be binding against subsequent purchasers, mortgagees, etc., or an assignee when a deed of conveyance is made for the benefit of creditors.

Fee for registering when value of property does not exceed $400 is $2.00, and when exceeding $400 it is 25 cents extra for each additional $100.

247 Removal of Mortgaged Goods.—Chattel mortgages only hold the property in the one county or registration district where they are filed or

registered, and every chattel mortgage contains a covenant that the goods will not be removed from the county or registration district where they are situate.

If all or a portion of the goods covered by a chattel mortgage should be permanently removed to another county or registration district, a duly certified copy of the mortgage must be filed in the proper office of that county or district for chattel mortgages, otherwise the goods are liable to seizure and sale under an execution, neither would the mortgagee have recourse against subsequent purchasers or mortgagees for value. In case the goods are removed without consent they may be seized and sold to satisfy the mortgage on a breach of the covenant, if the mortgagee prefers it.

In Ontario a copy of the mortgage must be filed in the office of the County Court Clerk where the goods have been removed to within two months.

In Manitoba six months, and subsequent renewals must be filed in such Judicial District to which the goods are removed.

In Alberta, Saskatchewan, Yukon and N.-W. Territories a certified copy must be filed with the Clerk of the Registration District to which they are removed within three weeks from such removal. If mortgagor wishes to remove the goods from the district, the Statutes require him to give the mortgagee notice twenty days prior to such removal.

248 Form of Chattel Mortgage.

This Indenture made (in duplicate) the tenth day of May, one thousand nine hundred and six—

BETWEEN James Smith, of the Township of Stamford, in the County of Welland, Province of Ontario, merchant, hereinafter called the Mortgagor, of the first part; and Walter Winters, of the Township of Stamford, in the County of Welland, Province of Ontario, yeoman, hereinafter called the Mortgagee, of the second part.

WITNESSETH that the Mortgagor for and in consideration of Five Hundred Dollars of lawful money of Canada to him in hand well and truly paid by the Mortgagee at or before the sealing and delivery of these Present (the receipt whereof is hereby acknowledged) hath granted, bargained, sold and assigned, and by these Presents DOTH GRANT, bargain, sell and assign unto the Mortgagee, his executors, administrators and assigns, ALL AND SINGULAR the goods, chattels and store fixtures hereinafter particularly mentioned and described; that is to say:

One bay horse four years old, having black mane and tail and white star on forehead; three Jersey Cows; twenty-four Southdown Sheep; thirty-six Hives of Bees; one Gladstone Carriage, made by Augustine & Kilmer; one Democrat Wagon; two sets single Harness; one light Sleigh; one J. & J. Taylor Safe, No. 4326; all the counters, shelving, show cases, weighing scales and fixtures used in connection with the grocery business conducted by the Mortgagor in the village of Stamford.

All of which said goods and chattels are the property of the Mortgagor and are now upon the premises situate and known as Lot No. 19 in the seventh Concession in the Township aforesaid, in the County of Welland and Province of Ontario, together with all goods and chattels, that may be added to or substituted for the said goods and chattels, or any of them as herein mentioned.

TO HAVE AND TO HOLD all and singular the said goods, chattels and store fixtures hereby assigned or intended to be assigned unto the said Mortgagee of the second part, his executors, administrators and assigns, as his or their own proper goods and effects.

PROVIDED ALWAYS and these Presents are upon this express condition that if the Mortgagor, his executors or administrators do and shall well and truly pay or cause to be paid unto the Mortgagee, executors, administrators or assigns the full sum of Five Hundred Dollars, with interest for the same at the rate of five per cent. per annum, on the tenth day of May, 1906, then these Presents shall be void and every matter and thing herein contained shall cease, determine and be utterly void to all intents and purposes anything herein contained to the contrary thereof in anywise notwithstanding:

AND the mortgagor for himself, his executors and administrators, shall and will warrant and forever defend by these Presents all and singular the said goods, chattels and property unto the Mortgagee, his executors, administrators and assigns against the Mortgagor, his executors and administrators, and against all and every other person or persons whomsoever.

AND the Mortgagor doth hereby for himself, his executors and administrators, COVENANT PROMISE AND AGREE to and with the Mortgagee, his executors, administrators and assigns, that the Mortgagor, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the Mortgagee, his executors, administrators or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, on the day and time and in the manner above limited for the payment thereof: AND ALSO IN CASE DEFAULT SHALL BE MADE IN THE PAYMENT of the said sum of money in the said proviso mentioned or of the interest thereon or any part thereof, or in case the Mortgagor shall attempt to sell or dispose of or in any way part with the possession of the said goods and chattels or any of them, or to remove the same or any part thereof out of the County of Welland, or suffer or permit the same to be seized or taken in execution without the consent of the Mortgagee, his executors, administrators or assigns to such sale, removal or disposal thereof first had and obtained in writing, THEN and in such case it shall and may be lawful for the Mortgagee, his executors, administrators or assigns with his or their servant or servants, and with such other assistant or assistants as he or they may require at any time during the day, to enter into and upon any lands, tenements, houses and premises wheresoever and whatsoever where the said goods and chattels or any part thereof may be, and for such person to break and force open any doors, locks, bars, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures and place for the purpose of taking possession of and removing the said goods and chattels: AND upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful and the Mortgagee, his executors, administrators or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels or any of them or any part thereof at public auction or private sale, as to them or any of them may seem meet: AND from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sums and sum of money as may then be due by virtue of these Presents, and all such expenses as may have been incurred by the Mortgagee, his executors, administrators or assigns in consequence of the default, neglect or failure of the Mortgagor, his executors, administrators or assigns in payment of the said sum of money with interest thereon as above mentioned, or in consequence of such sale or removal as above mentioned, and in the next place to pay unto the Mortgagor, his executors, administrators and assigns, all such surplus as may remain after such sale and after payment of all such sum or sums of money and interest thereon as may be due by virtue of these Presents at the time of such seizure, and after payment of the costs, charges and expenses incurred by such seizure and sale as aforesaid:

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the Mortgagee, his executors, administrators or assigns to sell and dispose of the said goods and chattels, but that in case of default of payment of the said sum of money with interest thereon as aforesaid, it shall and may be lawful for the Mortgagee, his executors, administrators or assigns peaceably and quietly to have hold, use, occupy, possess and enjoy the said goods and chattels without the let, molestation, eviction, hindrance or interruption of the Mortgagor, his executors, administrators or assigns or any of them or any other person or persons whomsoever. AND the Mortgagor doth hereby further COVENANT, PROMISE AND AGREE to and with the Mortgagee, his executors, administrators and assigns, that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due at the time of such sale, that the Mortgagor, his executors or administrators shall and will forthwith pay or cause to be paid unto the Mortgagee, his executors, administrators and assigns all such sum or sums of money with interest thereon as may then be remaining due:

AND the Mortgagor doth put the Mortgagee in the full possession of said goods and chattels by delivering to him this Indenture in the name of all the said goods and chattels at the sealing and delivery hereof:

AND the Mortgagor COVENANTS with the Mortgagee that he will, during the continuance of this mortgage and any and every renewal thereof, insure the chattels hereinbefore mentioned against loss or damage by fire in some insurance office (authorized to transact business in Canada) in the sum of not less than Five Hundred Dollars, and will pay all premiums and moneys necessary for that purpose as the same becomes due, and will on demand assign and deliver over to the said Mortgagee, his executors and administrators, the policy or policies of insurance and receipts thereto appertaining: PROVIDED that if on default of payment of said premium

or sums of money by the Mortgagor, the Mortgagee, his executors or administrators may pay the same, and such sums of money shall be added to the debt hereby secured (and shall bear interest at the same rate from the day of such payment) and shall be repayable with the principal sum hereby secured.

IN WITNESS WHEREOF the parties to these Presents have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of CHARLES SUMMERS. — JAMES SMITH. — WALTER WINTERS.

RECEIVED *on the day of the date of this Indenture from the Mortgagee the sum of Five Hundred Dollars mentioned.*

Witness: CHARLES SUMMERS. — JAMES SMITH.

AFFIDAVIT OF MORTGAGE.

ONTARIO: COUNTY OF WELLAND, TO WIT: I, Walter Winters, of the Township of Stamford, in the County of Welland, yeoman, the Mortgagee in the foregoing Bill of Sale by way of Mortgage named, make oath and say:

That James Smith, the Mortgagor in the foregoing Bill of Sale by way of Mortgage named, is justly and truly indebted to me, the deponent, Walter Winters, the Mortgagee therein named, in the sum of Five Hundred Dollars mentioned therein. That the said Bill of Sale by way of Mortgage was executed in good faith and for the express purpose of securing the payment of the money so justly due or accruing due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the said Bill of Sale by way of Mortgage against the creditors of the said James Smith, the Mortgagor therein named, or preventing the creditors of such Mortgagor from obtaining money of any claim against him.

Sworn before me at the Town of Welland, in the County of Welland, this tenth day of May, in the year of our Lord, 1906. — WALTER WINTERS.

E. R. HELLEMS, *J.P. in and for the County of Welland.*

AFFIDAVIT OF WITNESS.

ONTARO: COUNTY OF WELLAND, TO WIT: I, Charles Summers, of the Village of Niagara Falls South, in the County of Welland, make oath and say:

That I was personally present and did see the within Bill of Sale by way of Mortgage duly signed, sealed and delivered by James Smith and Walter Winters, the parties thereto, and that the name Charles Summers, set and subscribed as a witness to the execution thereof, is of the proper handwriting of me this deponent, and that the same was executed at the Town of Welland, in the said County of Welland, on the tenth day of May, one thousand nine hundred and six.

SWORN before me at Welland, in the County of Welland, this tenth day of May, in the year of our Lord, 1906. — CHARLES SUMMERS.

E. R. HELLEMS, J.P.

249 Maturity of Chattel Mortgages.—If a chattel mortgage having the usual covenants for payment of principal and interest is not paid at maturity the mortgagee is free to take any one of several courses:

1. He may go himself upon the premises and take possession of the goods and remove them, or he may send a bailiff.

If he takes possession of the goods he is expected to sell them either by public auction or by private sale, and if there is any surplus money after payment of principal, interest and costs it must be turned over to the mortgagor or his legal representatives. But some mortgages are so written that

he is not bound to sell, but may simply take possession of the goods and hold them as his own, or

2. He may sue the mortgagor for the amount due on the mortgage; or,

3. He may leave the goods in the hands of the mortgagor and extend all the time for payment he desires up to twenty years. Any time during that time he deems it necessary he may take possession of the goods, if they can be found. Of course, if he desires to keep both his lien and preference over other creditors good, he must file a renewal statement within the time provided by statute in the Province where the goods are located. He can file this renewal statement without the mortgagor's consent or request.

A chattel mortgage drawn for a shorter period, in any of the Provinces, than time fixed by statute for renewal, that is not paid when due need not be closed or renewed until the expiration of the statutory time. An earlier renewal would be useless and a waste of money.

A chattel mortgage that has not been renewed at the proper time according to statute, if the mortgagee wishes to retain his priority over other creditors he must take possession of the goods, after which any desired time may be extended. Of course, if during the time the mortgage stood void against third parties, any of the goods were purchased or mortgaged or seized under execution the mortgagee could not make his mortgage valid against such parties by taking possession, but it would be good against all others.

250 Causes for Taking Possession.—The mortgagee cannot take possession of the goods until the mortgage is due, unless some covenant is broken that gives the right of possession. (See previous section for proceedings at maturity.)

The things that usually give the right to take possession of the mortgaged goods are:

1. Default in payment.
2. Removal of the goods out of the Registration district without written consent of mortgagee.
3. Seizure of the goods for rent or taxes.
4. Execution levied against the goods under any judgment at law.
5. If mortgagor attempts to sell or dispose of any of the goods.

Furniture and goods not included in the mortgage cannot be seized unless there is a general clause covering them.

To take possession illegally gives the owner of the goods or his legal representatives a claim for damages which may be recovered by ordinary suit, and if successful the amount of the judgment would be applied on the mortgage debt.

251 Renewal of Chattel Mortgages—A chattel mortgage being an instrument under seal and not affecting interests in lands, holds the *claim* against the debtor for twenty years. Each Province has, however, fixed by statute a shorter time in which it holds both the lien on the *property* and priority of claim over other creditors. Therefore, if the mortgage is not paid at maturity and it is desired to be binding against third parties it must be renewed promptly within the time provided in each Province.

In Ontario it holds the property for one year only from date of execution unless renewed, or the goods taken possession of, or a new mortgage

executed. To hold the goods against other creditors it must be renewed *within the last thirty days* before the year expires, and so on from year to year as long as it runs.

In Manitoba they run for two years, and must be renewed within the last 30 days before the time expires.

In Alberta, Saskatchewan, Yukon and North-West Territories they remain in force for two years from date of filing without renewal, but must be renewed within the last thirty days before the expiration of the two-year period: and after the first renewal at the end of the two-year period, if the mortgage is not paid it must be renewed annually within the last thirty days every year thereafter from the date of filing the previous statement.

In British Columbia they are good for five years without renewal, but may then be renewed.

A mortgage given by an incorporated company to a bondholder or trustee to secure debentures issued by the company need not be renewed every five years, as other Bills of Sale have to be, provided a copy of the by-law authorizing the issue of the debentures, verified by affidavit and seal, and properly signed, be registered with the mortgagee. (Chap. 5 of 1902.)

In Nova Scotia they remain in force three years, but may be renewed within the last 30 days before the expiration of the three year limit and so on from time to time.

In New Brunswick a renewal statement must be filed each year within the last 30 days before the year expires showing the amount yet due. If this is not done and the goods are taken under execution the holder of the mortgage has thirty days in which to file such statement, and if not done he loses his claim on the goods, and they may be sold under the execution.

The renewal statement is similar in all the Provinces and must contain the information shown in the following Renewal Form of a chattel mortgage, which gives:

The date of original chattel mortgage, the parties to it, their residence, date of filing, and that the mortgage has not been assigned, and if it has been assigned, it must give the name of the assignee, and if assigned more than once it should give each assignment, and the name of the holder at the time of renewal, also the original amount of the mortgage, the amounts paid, and date when paid, and the amount still due.

The following form, simply by changing name of Province, will answer for every Province:

252 Form of Renewal Statement.

Statement exhibiting the interest of Walter Winters, of the Township of Stamford, County of Welland, yeoman, in the property mentioned in a Chattel Mortgage dated the 2nd day of August, 1905, made between James Smith, of the Township of Stamford, County of Welland, merchant, of the one part, and Walter Winters, of the Township of Stamford, aforesaid, of the other part, and filed in the office of the Clerk of the County Court of the

County of Welland, on the 2nd day of August, 1905, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said Walter Winters is still the mortgagee of the said property, and has not assigned the said Mortgage. One payment has been made on account of the said Mortgage.

July 29th, 1906. Cash received, $230.

The amount still due principal and interest on the said Mortgage is the sum of three hundred dollars, computed as follows:

Principal	$500 00
Interest, 1 year ending August 2nd, 1906	30 00
	$530 00
Cr.	
By cash, July 29th, 1906	230 00
Balance due	$300 00

COUNTY OF WELLAND, } I, Walter Winters, of the Township of Stam-
TO WIT: } ford, in the County of Welland, the mortgagee named in the Chattel Mortgage mentioned in the foregoing statement, make oath and say:

1. That the within statement is true.

2. That the Chattel Mortgage mentioned in the said STATEMENT has not been kept on foot for any fraudulent purpose.

SWORN before me at the Town of Welland, in the County of Welland, this 29th day of July, A.D. 1906. } WALTER WINTERS.

E. R. HELLEMS, *a commissioner for taking affidavits in the H.C.J., etc.*

253 Assignment of Chattel Mortgage.—A chattel mortgage is not a negotiable instrument, but it may be transferred by assignment. The assignment must be filed at the same office where the mortgage is filed, and same fee charged as for a discharge.

Manitoba requires the assignment to be registered within 20 days from date to be binding against third parties.

254 Discharge of Chattel Mortgage.—When a chattel mortgage has been paid a discharge should be filed also at the office where the mortgage is filed. The fee for Ontario, Manitoba, Alberta, Saskatchewan, and North-West Territories is 50c.; New Brunswick, Nova Scotia and Prince Edward Island, 25 cents.

In British Columbia the mortgage is discharged by being marked "satisfied." The fee is $1.00. Newfoundland fee is $1.00. Yukon Territory fee is $2.00.

See following Statutory Form of DISCHARGE:

255 Form of Discharge.

DOMINION OF CANADA,
PROVINCE OF ONTARIO.

To the Clerk of the County Court of the County of Welland, I, Walter Winters, of the Township of Stamford, County of Welland, yeoman, do certify that James Smith, merchant, of the Township of Stamford, County of Welland, Province of Ontario, hath satisfied all money due on or to grow due on a certain Chattel Mortgage made by James Smith, aforesaid, to Walter Winters, of the Township of Stamford, aforesaid, which mortgage bears date the 2nd day of August, A.D. 1905, and was registered in the office of the Clerk of the County Court of the County of Welland, on the 2nd day of August, A.D. 1905, as No. 4287.

That such Chattel Mortgage has not been assigned, and that I am the person entitled by law to receive the money, and that such Mortgage is therefore discharged.

Witness my hand this 29th day of July, A.D. 1906.

Witness:
CHARLES SUMMERS,
Stamford, Student.

WALTER WINTERS.

ONTARIO:
COUNTY OF WELLAND,
TO WIT:

I, Charles Summers, of the Township of Stamford, County of Welland, student, make oath and say:

1. That I was personally present and did see the within Certificate of Discharge of Chattel Mortgage duly signed, sealed and executed by Walter Winters, one of the parties thereto.
2. That the said Certificate was executed at the Town of Welland.
3. That I know the said parties.
4. That I am a subscribing witness to the said Certificate.

SWORN before me at Welland, in the County of Welland, this 29th day of July, in the year of our Lord 1906.

CHARLES SUMMERS.

E. R. HELLEMS, *a commissioner for taking affidavits in H.C.J.*

256 Expense in Foreclosing Chattel Mortgage.—The Ontario Statutes allow the following fees and expenses, and no more unless agreed upon:

1. For making seizure where amount of debt does not exceed $100.00, $1.00.
2. Where it exceeds $100.00, $1.50.
3. One man keeping possession, per day, $1.00.
4. If printed advertisements are used, not to exceed $1.50.
5. For catalogues, sale and commission and delivery of goods, 5 cents on the dollar on the net proceeds of sale up to $100.00. When over $100.00, then 2½ per cent. on the excess over $100.00.
6. When debt is paid before sale, a commission of 2½ per cent., and the amount actually disbursed in cartage not to exceed $2.00.

The party levying the distress must give a copy of the charges to the person distrained upon.

The expense in the other provinces is similar. See Section 383.

257 Cautions.—Read all the covenants carefully. If a mortgage is taken as security for a debt previously contracted it will not give priority over other creditors if there is not sufficient other property to pay their claims in full.

If money is actually paid over it will hold against other creditors unless done on the eve of bankruptcy, when it might be set aside by an action for that purpose.

If the mortgagee gives consent to the mortgagor to dispose of any of the articles covered by the mortgage, it virtually destroys his lien, and other creditors may come in and share *pro rata*. Relieving part relieves all as far as priority is concerned. This, of course, does not apply to mortgages covering goods in a store or other property of trade, in which case the amount of goods only is required to be maintained.

A chattel mortgage covering the growing crops of a farm would not cover the crops of the next year unless it so expressly provided.

Articles of furniture, etc., belonging to the wife either by purchase or gift cannot be seized under a mortgage given by the husband, even though they are named in it, unless she also signed the mortgage.

If the mortgagor disposes of any of the goods covered by a mortgage, or removes them out of the county without the consent of the mortgagee he is liable to a criminal action. It is also a breach of a covenant that gives the mortgagee the right of possession.

If the mortgagee simply takes possession of the goods and holds them as his own without selling them, the mortgagor has then an "equity of redemption" for a limited time, which the courts will recognize, and he may enter an action against the mortgagee for redemption or sale of the goods.

CHAPTER XIII.

MORTGAGES

260 A Mortgage on real estate is a deed or conveyance of the property by the debtor to the creditor to secure the payment of a certain sum of money, with a "proviso" that it shall become void upon the payment of the debt and accumulated interest. It must therefore be remembered that all the mortgagor retains is the possession and "equity of redemption."

Mortgages should be executed in duplicate under the Torrens System as well as the old. The mortgagee retains one copy.

261 Securing Clear Title.—Before paying over the money, either on mortgage or for purchase, the following searches must be made if you would know what kind of a title you are obtaining. The routine is much the same in all the provinces:

1. The Abstract Index (and you should read the documents), for deeds, mortgages, assignments, agreements, dowers, trusts, settlements, leases, lis pendens, mechanics' liens, by-laws, plans, cautions (within three years).

2. The General Register, for wills, probates, letters of administration, assignments for benefit of creditors, power of attorney, etc.

3. The Sheriff's office, for executions, attachments, sheriffs' deeds within six months, etc.

4. The Treasurer's office, for taxes and tax sales within eighteen months.

5. See whether a survey is necessary to show that the land mentioned in the instrument is the land you valued and intended to take the interest in.

6. Note whether any easement of way, water, sewer, light, etc., may be held over the land, affecting it injuriously.

In the Solicitor's Abstract from the Registrar, covering Nos. 1 and 2, look out for undischarged mortgages, dower, life estate and other registered claims affecting or overlapping some part of the lands. Without such Solicitor's Abstract properly explained you may be getting a title from some one who has only a life or other small interest, though he may have lived on the property for fifty years.

The Sheriff's Certificate will be safe if it covers all the parties who owned the land during the previous ten years for Ontario and Manitoba. For the other Provinces, see Section 238.

If the present fences and improvements have been standing longer than ten years for Ontario and Manitoba (see Section 238 for other Provinces), a survey may not be necessary. The surveyor should show whether there are any water-courses, walks, roads or overhanging eaves, or other easements (privilege or right), affecting the land.

Where the Land Titles' Act or Torrens System is in force, the Certificate of Title will contain all the facts under 1, 2 and 3.

7. It is also well, especially if the interest is large, to secure a title by possession with proper declarations; also the terms of tenancy must be made certain if a tenant occupies the premises; also see that no Mechanics' Liens attach within 30 days.

Make sure that your solicitor has ascertained all the above facts before you pay over the money, because these searches are not always made.

262 Registration of Mortgages.—In all the Provinces a mortgage is binding on the property as soon as it is executed, but the first mortgage registered is the one that has priority of claim against the property unless express notice is proved.

All mortgages and other instruments to be registered must be verified by affidavit in proper form of a subscribing witness present at the time of signing.

The Torrens System is now in force in British Columbia, Manitoba, Ontario, Alberta, Saskatchewan, and the North-West Territories (see Section 309), and all grants from the Crown since that time in these Provinces are under its provisions. Where lands are under that system mortgages on them must be registered in order to be valid, and they cannot be registered without the production of the certificate of title. A memorandum of the transaction is entered by the proper officer at the Land Titles office on the Certificate of Title held by the owner, and also on the duplicate certificate in the office, and this constitutes the registration.

Mortgages on lands not brought under that system are registered in the usual way by leaving a copy in the Registry Office. Under both systems mortgages are executed in duplicate.

263 Fees for Registration under the Registry Acts of the different Provinces are very much the same. For Ontario the fees under the old system are $1.40 where the aggregate of words to be copied does not exceed 700, and 15 cents for each additional hundred words up to 1,400, and 10 cents for each additional hundred words or fraction of a hundred over 1,400.

In Ontario the statutes provide that in order to lessen the cost of registration the mortgage may have indorsed upon it "not to register in full," in which case the registrar does not copy the mortgage in his books, but the mortgage is numbered and filed, and merely the date and name entered in the books. The fee is $1.00.

264 Implied Covenants in a mortgage are:

1. To pay the mortgage money and interest (not the personal covenant)
2. A good title.
3. A right to convey.
4. That on default the mortgagee shall have quiet possession.
5. Free from all encumbrance.
6. That the mortgagor shall execute such further assurance of the lands as may be requisite.
7. That the mortgagor has done nothing to encumber the lands.

There are no other covenants *implied* in a mortgage, but any others may be expressed that are agreed upon.

Loan companies and sometimes private individuals put in various extra covenants to better secure themselves, and these should all be carefully noticed before signing the mortgage.

For the usual covenants that a mortgage contains see Section 266, "Form of Mortgage," which follows the Ontario Short forms of Mortgage with Covenants.

265 The Personal Covenant.—It must not be forgotten that nearly every mortgage contains a Personal Covenant by the debtor to pay the creditor the sum named in the mortgage similar to this:

> "The said mortgagor covenants with the said mortgagee that the mortgagor will pay the mortgage money and interest."

The mortgage is simply a lien on the property as security for the payment of the stipulated sum. Therefore, if the debtor after giving the mortgage should sell the property it is not enough that the purchaser assume the mortgage, because the personal covenant still binds the original debtor. The mortgage should either be discharged, or a release under seal obtained from the creditor or mortgagee. In Ontario, on mortgages given since 1894 the personal covenant expires with the mortgage (in ten years after maturity or last payment), but not so as yet in the other provinces.

This personal covenant does not hold against the person who may buy the property subject to the mortgage.

If the person buying property subject to an existing mortgage covenants with the *mortgagor* to pay the mortgage, the mortgagor can enforce its payment when it is due. The *mortgagee*, however, cannot compel the purchaser to pay either principal or interest, but he can foreclose.

The "personal covenant" is not implied in a mortgage, but it is usually inserted, unless omitted for cause. In fact it is contained in all the printed

forms so that it must be struck out if it is intended that the mortgagor is not to become personally liable for the debt.

The "implied covenant" to pay the mortgage money and interest given in preceding section, the courts have ruled, is not what is called the "personal covenant" that the mortgagee can sue on to recover any deficiency that may remain after selling the mortgaged property.

If the Personal Covenant is omitted or struck out of the printed form used, and the mortgagor does not repay the loan and interest, the mortgagee has recourse to the property only which has been conveyed to him by way of mortgage, which he may either take possession of and hold, or sell. If he elects to sell such property and it does not bring enough to cover the mortgage debt and interest, he cannot then sue on any *implied covenant* for the deficiency and seize other property not covered by the mortgage. If the mortgagee wants the benefit of the Personal Covenant in addition to the property mortgaged, he must see that it is embodied in his mortgage.

266 Form of Mortgage.

This Indenture made (in duplicate) the first day of March, one thousand nine hundred and six, in pursuance of the Act respecting Short Forms or Mortgages;

BETWEEN James Robert Manning, of the Township of Ancaster, in the County of Brant, Province of Ontario, yeoman, of the first part, hereinafter called the mortgagor;

Ida Jane Manning, wife of the party of the first part, of the second part;

And William John Brown, of the Township of Ancaster aforesaid, gentleman, of the third part, hereinafter called the mortgagee.

WITNESSETH that in consideration of One Thousand ($1,000) Dollars of lawful money of Canada now paid by the said Mortgagee to the said Mortgagor (the receipt whereof is hereby acknowledged), the said Mortgagor doth Grant and Mortgage unto the said Mortgagee, his heirs, executors, administrators and assigns forever.

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster aforesaid, containing by actual measurement One hundred Acres, more or less, being composed of Lot Number Twelve (12), on the Fourth (4th) Concession of the Township of Ancaster aforesaid; and Ida Jane Manning, of the second part, hereby bars her dower in said lands.

PROVIDED this mortgage to be void on payment of One Thousand Dollars of lawful money of Canada with interest thereon at five per cent. per annum, as follows: The said principal sum of One Thousand Dollars to be due and payable in four equal annual instalments of Two Hundred and Fifty Dollars each, with interest at the rate of five per cent. per annum on the unpaid principal, payable annually with each instalment of principal. The first of such payments of principal and interest to be due and payable on the first day of March, A.D. 1907, and taxes and performance of statute labor.

The said Mortgagor covenants with the said Mortgagee that the Mortgagor will pay the mortgage money and interest and observe the said proviso, that the Mortgagor has a good title in fee simple to the said lands, and that he has the right to convey the said lands to the said Mortgagee;

And that on default the Mortgagee shall have quiet possession of the said lands, free from all encumbrances;

And that the said Mortgagor will execute such further assurances of the said lands as may be requisite;

And that the said Mortgagor has done no Act to encumber the said lands;

And that the said Mortgagor will insure the Buildings on the said lands to the amount of not less than Six Hundred Dollars currency;

And the said Mortgagor doth Release to the said Mortgagee all his claims upon the said lands subject to the said proviso.

Provided that the said Mortgagee on default of payment for four months may, on giving three months' notice in writing, enter on and lease or sell the said lands.

Provided that the Mortgagee may distrain for arrears of interest.

Provided that in default of the payment of the interest hereby secured the principal hereby secured shall become payable.

Provided that until default of payment the Mortgagor shall have quiet possession of the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of R. H. OLMSTED. — JAMES ROBERT MANNING. IDA JANE MANNING.

COUNTY OF BRANT, TO WIT: I, Russell Hamilton Olmsted, of the Village of Ancaster, in the County of Brant, manufacturer, make oath and say:

1. That I was personally present and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by James Robert Manning and Ida Jane Manning, two of the parties thereto.
2. That the said Instrument and Duplicate were executed at the Village of Ancaster, of the said Township of Ancaster.
3. That I know the said parties.
4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the Village of Ancaster, in the County of Brant, this first day of March, in the year of our Lord, 1906. — R. H. OLMSTED.

H. N. HIBBARD, *a commissioner for taking affidavits in H. C. J., etc.*

267 Sinking Fund Mortgages are those in which the principal and interest together are divided into a number of equal yearly, or half-yearly or quarterly or monthly payments. This form is not used much in Canada since legislation made it compulsory to state in the Repayment Clause the four following particulars: (1) The amount of the loan. (2) The rate of interest. (3) The part of each payment that is for interest. (4) And the part of each payment that is for principal.

With this protection the borrower may know whether he is paying five, six or twenty per cent. interest, as the case may be. The Building Societies are about the only institutions still using this old "sinking fund" form of mortgage.

268 Interest on Mortgages is implied, unless expressly stipulated to the contrary. Mortgages on real estate may draw any interest that the mortgagor covenants to pay, but in Canada if the rate is not named it will be five per cent.; Newfoundland six.

If the interest is not paid when due the mortgagee usually has power either to take possession, or foreclose and sell, or he may sue for the arrears of interest.

Or if there are goods and chattels of the mortgagor on the premises he may distrain for the arrears of interest. The mortgagee cannot seize or sell the goods or crops of a tenant on the property for either overdue interest or principal. Neither can he seize or sell the goods and chattels of the mortgagor that are exempt by statute from seizure under an execution or landlord's warrant.

The mortgagee's right to distrain for interest is limited to one year's arrears of interest as against execution creditors or an assignee for the general benefit of creditors. Goods distrained for interest shall not be sold except after such public notice as is required under a landlord's warrant.

If a mortgage does not contain the "personal covenant," then interest in arrears could not be recovered after six years, Quebec five years. But, although the mortgagee could not in this case recover more than six (or five) years' arrears of interest by suit or distress, still if the mortgagor ever wanted to redeem the property he would in that case be compelled to pay the arrears of interest.

In Ontario he may sue for the arrears of interest in the Division Court if the amount is within its jurisdiction, but he cannot employ the judgment summons process to enforce payment. The different instalments of interest or principal may be sued for separately so as to bring them within the jurisdiction of the Division Court.

For rate of interest recoverable, see Section 141.

269 Payment of Mortgage.—The repayment clause, which provides when and how the loan or debt is to be repaid, should have great care and be made so explicit that there cannot be any doubt as to the time and manner of the payments.

When a mortgage falls due it may be paid without any notice to the mortgagee.

If it is overdue and the mortgagee *demands* payment for the whole amount or even part it may be paid in full if the mortgagor wishes to do so. But if only part is paid, together with the interest due, then in that case, unless the mortgage provides otherwise, the mortgagor (usually), cannot subsequently, except by consent, pay the balance without giving six months' notice, or paying six months' advance interest. This six months' advance interest in payment of a mortgage past due (which is in reality only six months' notice) is a custom that has become law although it is not found in the Statutes.

Manitoba has by statute removed this relic of the middle ages, and neither notice or an interest bonus is required to pay such a debt past due.

In Ontario.—By amendment of 1903 it is enacted that where default has been made in the payment of any principal money secured by mortgage on real estate in this Province after the passage of this Act, June 11th, the mortgagor, notwithstanding any agreement to the contrary, may redeem any time upon payment of principal in arrears and three months' advance interest; or he may give the mortgagee three months' notice of his intention to make such payment at the expiration of the time named, and if he make such payment on such date, together with the interest due at such date, he need pay no further interest.

If he fails to make payment, however, at the time mentioned in the notice, he cannot, thereafter, make payment without paying both principal and interest due and three months' interest in advance.

Nothing, however, in this amendment shall limit existing rights of the mortgagee from recovering by action, or otherwise, such principal in arrears after default has been made.

This amendment does not affect the provisions of section 25 of the Loan Corporations' Act.

The Ontario Legislature of 1903 passed another amendment which provides that for all mortgages on real estate in this Province made after July 1st, 1903, drawn to run five years from date, may be paid any time after five years by payment of principal and interest due, together with three months' advance interest in lieu of notice.

In all the Provinces and Newfoundland, if a mortgage is payable by instalments and one or more instalments are in arrears the mortgagee may sue for the overdue instalments, or he may sue for the possession of the property, but he cannot be thereby compelled to accept the whole sum of the mortgage debt, neither to foreclose unless he desires to do so.

When making payments of either principal or interest the payment should be indorsed on the back of the mortgage, still a receipt for the payment operates as a legal discharge of the mortgage to the extent of the payment.

270 Prepayment of Mortgages.—If a mortgage has not yet become due, generally speaking the mortgagee cannot be compelled to accept payment, unless there is a clause in the mortgage binding the mortgagee to accept payment sooner. There are, however, some exceptions, as the following:

1. By a Dominion statute, chap. 27, Sec. 7, R.S.C., provision is made, which applies to all the provinces, for the payment of mortgages after they have run five years, no matter for what length of time they were drawn. As the clause is very concise it is here quoted in full:

"Whenever any principal money or interest secured by mortgage of real estate is not in the terms of the mortgage payable till a time *more* than five years after the date of the mortgage, then any person liable to pay or entitled to redeem the mortgage, may, after the expiration of five years, tender to the person entitled to receive the money the amount due for principal and interest, together with three months' further interest in lieu of notice; no further interest shall be chargeable, or payable, or recoverable at any time thereafter on principal money or interest due under the mortgage." The mortgagee, of course, cannot be compelled to receive the money until it is due, but if the tender of the money is made as above no further interest can be collected.

2. If, for default in payment, for either principal or interest or for any other supposed breach of covenant, the mortgagee enters action to recover payment, or demands payment, then the mortgage may be paid in full without further notice and without advance interest.

271 Mortgagee's Power at Maturity.—If the mortgage is not paid at maturity the mortgagee has several remedies, any one of which he may pursue: He may bring an action to obtain payment for principal and interest due; or he may bring an action of ejectment and obtain possession of the land by order of the court and then collect the rents and profits until the full mortgage debt and interest are paid; or he may bring suit to have the mortgage foreclosed, in which event all equities of redemption are barred and he becomes the absolute owner; or if the mortgage contains a "power of sale" he may take the legal steps to sell, but if the mortgage has no "power of sale" he may bring action to have the lands sold under the direction of the court.

272 Transfer of Mortgages.—Mortgages are not negotiable by indorsement, but may be transferred by assignment. The assignment is also an instrument under seal, and must be recorded at the same place the mortgage is registered.

If a mortgage is assigned the assignee takes it subject to all the equities that bound the original holder. Therefore, if a payment were made on it before the assignment the assignee could not force the mortgagor, his heirs, executors, administrators or transferer to pay it again. He could only look to the assignor. But if a payment were made after it had been assigned then the assignee could make the mortgagor pay it over again, and the mortgagor would have to look to the mortgagee for a refund of the money. In these respects it will be noticed a mortgage differs entirely from a promissory note transferred before maturity for value.

273 Form of Assignment.

This Indenture made (in duplicate) the first day of September, in the year of our Lord one thousand nine hundred and six:

BETWEEN William John Brown, of the Township of Ancaster, in the County of Brant, Province of Ontario, student, of the first part, hereinafter called the "Assignor," and James Wilson, of the City of Hamilton, in the County of Wentworth, Province of Ontario, merchant, hereinafter called the "Assignee," of the second part;

WHEREAS, by a mortgage dated on the first day of March, one thousand nine hundred and three, James Robert Manning, of the Township of Ancaster, County of Brant, Province of Ontario, farmer, and wife, did grant and mortgage the land and premises therein and hereinafter described to William John Brown aforesaid, his heirs, executors, administrators and assigns for securing the payment of One Thousand Dollars of lawful money of Canada, and there is now owing upon the said Mortgage the sum of One Thousand and Twenty-five Dollars.

NOW THIS INDENTURE WITNESSETH, that in consideration of One Thousand and Fifteen Dollars of lawful money of Canada, now paid by the said Assignee to the said Assignor (the receipt whereof is hereby acknowledged), THE said Assignor DOTH HEREBY ASSIGN and set over unto the said Assignee, his executors, administrators and assigns, ALL that the said before in part recited Mortgage, and also the said sum of One Thousand and Twenty-five Dollars now owing as aforesaid, together with all moneys that may hereafter become due or owing in respect of said Mortgage and the full benefit of all powers and of all covenants and provisos contained in said Mortgage. And also full power and authority to use the name or names of the said Assignor, his heirs, executors, administrators, or assigns, for enforcing the performance of the covenants and other matters and things contained in the said Mortgage. AND the said Assignor DOTH HEREBY GRANT AND COVENANT unto the said Assignee, his heirs and assigns, ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster, in the County of Brant, Province of Ontario, containing by admeasurement One Hundred Acres, be the same more or less, being composed of Lot Number Twelve (12), in the Fourth (4) Concession of the Township of Ancaster aforesaid, TO HAVE AND TO HOLD the said Mortgage and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged TO THE USE of the said Assignee, his heirs, executors, administrators and assigns, absolutely forever; but subject to the terms contained in said Mortgage.

AND THE SAID ASSIGNOR for his heirs, executors, administrators and assigns doth hereby covenant with the said Assignee, his heirs, executors, administrators and assigns, THAT the said Mortgage hereby assigned is a good and valid security, and that the said sum of One Thousand and Twenty-five Dollars is now owing and unpaid, AND that he has not done or permitted any act, matter or thing whereby the said Mortgage has been released or discharged either partly or in entirety: AND that he will upon request do, perform and execute every act necessary to enforce the full performance of the covenants and other matters contained therein.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in the presence of D. E. POTTER. — WILLIAM JOHN BROWN. (L.S.) JAMES WILSON. (L.S.)

RECEIVED on the day of the date of this Indenture from the said Assignee the sum of One Thousand and Fifteen Dollars.

WITNESS — W. J. BROWN.

COUNTY OF WENTWORTH, TO WIT: I, Dexter Edgar Potter, of the City of Hamilton, County Wentworth, Province of Ontario, student, make oath and say:

1. That I was personally present and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by James William Brown, one of the parties thereto.
2. That the said instrument and Duplicate were executed at the City of Hamilton.
3. That I know the said party.
4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at Hamilton, in the County of Wentworth, this first day of September, in the year of our Lord 1906. — D. E. POTTER.

J. W. LAMOREAUX, *a commissioner for taking affidavits in H.C.J., etc.*

274 Assignment by Indorsement on Back of Mortgage.

This Indenture made (in duplicate) the first day of September, in the year of our Lord one thousand nine hundred and six:

BETWEEN William John Brown, of the town of Dundas, within named, of the first part, and James Wilson, of the City of Hamilton, of the second part.

WITNESSETH, that the party of the first part in consideration of the sum of $250 to him paid by the second party, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and assigned, and by these presents doth grant, bargain, sell, and assigns to the party of the second part, his heirs, executors, administrators and assigns all the right, title, interest, claim and demand whatsoever of him, the party of the first part, of, in and to the lands and tenements mentioned and described in the within Mortgage. And also to all sum and sums of money secured and payable thereby and now remaining unpaid.

TO HAVE AND TO HOLD the same and to ask, demand, sue for and recover the same as fully to all intents and purposes as he, the party of the first part, now holds, and is entitled to the same.

IN WITNESS WHEREOF the parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, Sealed and Delivered in the presence of JAMES BLACK. } WILLIAM JOHN BROWN. (seal)

275 Discharge of Mortgage.—When a mortgage has been paid the mortgagee is required to give the mortgagor a discharge, which is a statutory form of receipt. When this has been filled out and signed in the presence of witness duly sworn, it is registered by the mortgagor.

If the mortgage has been assigned, the assignment should be as accurately described in the discharge as the mortgage itself. The date, registration, etc., should be taken from the Registrar's certificate on the assignment.

A discharge may be given at any time at or after payment, either by the mortgagee or his assigns or executors.

A discharge operates as a re-conveyance of the lands to the mortgagor or his legal representatives, and is as good as a re-conveyance.

When a mortgage has been paid in full the mortgagee is compelled by law to hand back the mortgage, and return all title deeds and other papers he may hold in connection with the property that belong to the mortgagor. The mortgagee is also bound to give a discharge when payment in full is made. The mortgagor should immediately register the discharge.

The mortgagor may instead have a re-conveyance of the property prepared and have the mortgagee sign it if he wishes it, but it is sufficient, however, to simply have a discharge executed and registered.

Or he may require the mortgagee to assign the mortgage debt and convey the mortgaged property to any third person the mortgagor directs.

For a Form of Discharge of Mortgage, see Section 255 of Chattel Mortgage, which is the same in every particular, simply by omitting the word chattel wherever it occurs and changing the name of Ontario for other provinces required.

We give here, however, the form of discharge authorized by statute for New Brunswick, which is almost *verbatim* that of Ontario, as follows:

276 Form of Discharge of Mortgage.

To the Registrar of Deeds of the County of King's, I, John Doe, of the Parish of Havelock, in the County of King's and Province of New Brunswick, farmer, do hereby certify that James Roe, of the Parish, County and

Province aforesaid, farmer, and Mary Roe, his wife, have satisfied all money due on or to grow due on a certain mortgage made by the said James Roe and Mary Roe, his wife, to me, the said John Doe, which mortgage bears date the sixth day of September, A.D. 1905, and was registered in the Registry Office for the County of King's, aforesaid, on the tenth day of September, A.D. 1905, in Libro No. 5, as number 54 on folio 5; and that I am entitled by law to receive the money, and that such mortgage is therefore discharged.

In witness whereof I, the said John Doe, have hereunto set my hand and seal this fourteenth day of March, A.D. 1906.

Witness:
PETER JONES.

JOHN DOE. ✵

The Discharge must be accompanied by an affidavit of the mortgagee. See following form for New Brunswick:

New Brunswick,
King's County,
To wit:

On the 14th day of March, A.D. 1906, before me, Peter King, one of His Majesty's Justices of the Peace in and for the said County of King's, personally came and appeared the within-named John Doe and acknowledged that he did sign, seal and execute the within release or discharge of mortgage for the purposes therein contained.

PETER KING,
J.P. in and for King's County.

277 Power of Sale.—Every mortgage contains a clause similar to the following:

> "Provided that the mortgagee on default of payment for four months may, on three months' notice, enter on and lease or sell the said lands," etc.

The statutory time mentioned in this paragraph may be changed by the mortgage agreement, and whatever number of months is stated in the mortgage will hold.

The mortgagor may pay the debt within the time mentioned in the Notice and prevent a sale or leasing.

In case the mortgagee demands payment of the whole mortgage debt, because a payment of either principal or interest is in arrears, the mortgagor may either pay off the mortgage according to the notice, or he may pay the arrears of principal or interest, as the case may be, with interest on the arrears since due, together with the cost of notice, and the mortgage must stand as before. But the payment must be made promptly before action further than the notice is taken.

278 Form of Notice to Sell.

I hereby require you on or before the .....day of..... 19.. (a day not less than two calendar months from the service of the notice, and not less than six months after the default, unless the mortgage provides otherwise), to pay off the principal money and interest secured by a certain indenture dated the ..... day of ....., 19.., and expressed to be made between (here state the parties and describe the mortgaged property), which

said mortgage was registered on the ..... day of ....., 19.. (and if the mortgage has been assigned, add " and has since become the property of the undersigned "). And I hereby give you notice that the amount due on the said mortgage for principal, interest and costs, respectively, is as follows: (state the separate amounts).

And unless the said principal money, interest and costs are paid on or before the said ..... day of ..... I shall sell the property comprised in the said indenture, under the authority of the Act entitled, " An Act respecting Mortgages on Real Estate."

Dated the .....day of ....., 19...

(Signed) .....

This notice may be registered in the Registry Office of the county or district in which the lands are situate, and serve as proof of compliance with the Act. The two months' notice may run concurrently with the time of default as it may be given any time after default.

When such demand for payment has been made and notice of sale given no other proceedings can be taken until the time expires, unless an order from the Court is obtained.

The mortgagor may pay the debt within the time mentioned in the notice and prevent a sale.

In case of sale the money derived from the sale goes first to cover costs of sale, then the interest and next the principal, and remainder (if any) goes to the mortgagor.

The land may be sold either by public or private sale, and either for cash or credit, and the mortgagee or assigns may buy in and resell the said lands, or any part thereof, either by private sale or public auction, without being responsible for any loss or deficiency for, or on account of such estate; and that no purchaser under such power of sale shall be bound to inquire into the legality or regularity of any sale under the said power, or to see to the application of the purchase money.

Where the mortgagee becomes the purchaser he is required to give the mortgagor a release of the mortgage debt, but not if sold to a third party.

A mortgage might provide for a sale " without notice," but where no time is fixed it must be two months. It is questionable if the courts would uphold a sale " without notice " as it is contrary to equity and would destroy the equity of redemption. It should not be in a mortgage, but some companies have it inserted.

279 Sale by Second Mortgagee.—If the second mortgagee sells the property under the power of sale in his mortgage without redeeming the first mortgage, such sale does not affect the rights of the first mortgage. The purchaser merely takes the place of the mortgagor, except as to the " Personal Covenant."

280 Mortgagee Taking Possession.—A mortgagee may take possession of the property at any time after the mortgage falls due, or if interest is past due, and may collect the rents and apply them on the mortgage.

The mortgagor cannot compel him to foreclose nor sell, but he can compel him to give an account of the rents and his dealings with the property. If

he is ready to pay the principal and interest he may bring an action to redeem should the mortgagee be unwilling to receive the money.

Also, if the mortgagor should abandon possession of the property it gives the mortgagee the right to take possession, but he must keep an account of all rents and income derived from it, and account to the mortgagor or his assigns for the same or to subsequent mortgagees.

A mortgagee who simply takes possession of the property without foreclosure, or a sale, is not the absolute owner of the property, in reality only a "trustee," as the mortgagor in that event still retains his equity of redemption, and may hold the mortgagee liable for all damages that may be done to the property. The mortgagor may, any time within twenty years, redeem the property by procuring an order from the court, that is, enter an action to recover possession of the property (see Section 282), and in that case the mortgagee would be compelled to account for all his dealings in connection with the property and make good any waste, such as needlessly cutting down the standing timber, destroying or removing from the property any of the buildings, or for buildings that may have been burned down (if insured), and the insurance money not been used to replace the buildings, etc.

To become the absolute owner of the property without the expense of foreclosure or a sale, the mortgagee must obtain from the mortgagor a release of his equity of redemption, either by purchase or otherwise, or let it rest until it is barred by statute.

When a mortgagee takes possession and evicts a tenant of the mortgagor who is willing to remain in possession and pay rent, the mortgagee is liable for the rent during the whole period of said tenancy.

Where a mortgagee takes possession and remains in actual possession of the premises, using them in place of a tenant, he is chargeable for the same rent that a tenant would reasonably be expected to pay for them. This is called "occupation rent." The Statute of Limitations does not apply in case of "occupation rent," and the mortgagee would get no title simply by possession, but he is rather in the position of a "trustee." Such rent would be applied by the courts first to the payment of interest, and the remainder to the mortgage principal. But when in case the tenant of a mortgagor is ordered by the mortgagee to pay rent to him, and he promises to do so but does not, in that event it would not be held that the mortgagee is in possession, and he would not be held liable for such rent.

But the mortgagee is liable for rents which, but for wilful neglect, might have been received, and naturally would have been received if property had been left in hands of the mortgagor.

A mortgagee taking possession under an agreement with the mortgagor at a certain rental does not bind subsequent mortgagees who did not assent. They can claim a fair rental to be charged so as the faster to pay off the first mortgage.

281 Foreclosure.—The object of foreclosure is to take away the mortgagor's equity of redemption, and also to bar claims of subsequent mortgagees without a sale of property. Foreclosure of mortgage is merely filing a bill of foreclosure against the mortgagor calling upon him to redeem his estate forthwith, with payment of principal, interest and costs, and if he fail to do

so within the time specified by the court (usually six months) he is forever barred of his equity of redemption.

Unless the mortgage specifically provides otherwise the mortgagee may, upon default in payment of either principal or interest according to the terms of the mortgage, or for the length of time mentioned in the statute, commence a suit for foreclosure.

And if the mortgagor desires to prevent the foreclosure he may, any time before judgment, pay the amount of mortgage, interest and expense incurred to date; or if the mortgagor or any subsequent mortgagee desires to force a sale of the property instead of a foreclosure he may do so by filing in the office from which the writ of foreclosure was issued a memorandum stating as follows:

"I desire a sale of the property instead of foreclosure," at the same time stating the true reason, as for instance, "that the property is valuable and would sell for more than the mortgage debt." In Ontario he would be required to deposit $80 in the court to which he applied for the sale, to cover the expenses of a sale, unless the Judge would not require it, or would order otherwise. Similar provision exists in all the Provinces, and the question of amount of deposit is in the discretion of the Judge.

282 Period for Redemption.—When an order for foreclosure has been obtained the mortgagor and subsequent mortgagees have six months in which to redeem before final foreclosure. Where there are several mortgagees or encumbrancers who have proved their claims in defence at the suit for foreclosure, the court will usually grant from one to three months additional time in which for them to redeem, according to their respective priorities. The court may also for sufficient cause allow a shorter period than six months if it is deemed necessary.

After foreclosure, if the mortgagee should sue on the covenant for an alleged balance due, it gives the mortgagor the right of redemption in case he pays the balance of debt. In such case the mortgagee must have the mortgaged estate still in his possession, so as to be in a position to be redeemed. Therefore, upon the commencement of the action on the covenant the mortgagor should file a bill for redemption, and upon payment of the debt he will be entitled to the estate and whatever securities the mortgagee held belonging to the mortgagor.

The mortgagee may be put to his election. If, after the final order for foreclosure the mortgagor is prepared to pay off the mortgage debt, and notifies the mortgagee to that effect, and the mortgagee consents to receive the money, the right of redemption is restored. But if he refuses to receive such payment he would be restrained by a court of equity if he should thereafter attempt to sue on the covenant.

It is possible to have a final order of foreclosure set aside, but there must be substantial grounds for it.

The equity of redemption is barred by Statute of Limitations in 20 years, for all the Provinces and Newfoundland, after the mortgagee takes possession.

283 Unsatisfied Mortgages.—If a mortgage for a certain amount covers certain properties of a debtor which, upon being sold, do not pay the

whole claim of principal, interest and expenses, and the debtor has other property, the mortgagee can come on that other property until his full claim has been satisfied. To do so he would sue on the Personal Covenant and thus securing judgment against the debtor personally, issue an execution which would bind all the property of the mortgagor.

Of course the mortgagee could not touch the goods or crops of a tenant, nor even the personal property of the mortgagor *exempt* from seizure, under an execution or landlord's warrant.

If the mortgagee became the purchaser of the mortgaged land when sold he is required in that case to give the mortgagor a release of the mortgage debt. But if sold to a third party and a balance remained unpaid he would still have a further claim as above stated.

284 Outlawing of Mortgages.—See Section 234.

285 Notice of Intention to pay off a mortgage.

I hereby give you notice that at the expiration of ..... months from date hereof I shall pay to you or your executors, administrators or assigns, the principal money and interest due by me to you on the security of a certain indenture dated the ..... day of ....., 19.., made between ..... (me), of the one part, and ..... (you), of the other part.

Dated at ....., this ..... day of ....., 19...

To (name of Mortgagee). .....

Mortgagor.

CHAPTER XIV.

PROPERTY

286 Definition.—The legal definition of property is "The right and interest which a man has in lands and chattels to the exclusion of others." A man purchases so many acres of land and thus acquires the possession and exclusive right to its use. He drains it, plants it with fruit trees, erects buildings upon it, and thus increases its value. The soil itself is not his, but he has acquired the right to its possession and use—a right that excludes all others from its use.

In the common language of the people property means the thing itself. Thus, a man buys a bay horse; he calls it his property, but in legal language it would be his "property in the bay horse." That is, the right and title to its possession and use.

287 Division of Property.—Property is divided into Personal and Real, usually called Real Estate. In Quebec they are styled Movables and Immovables.

1. Personal property includes all classes of property except lands and buildings. It consists of such things as are movable from place to place with the owner, as money, mortgages, negotiable paper, letters patent, stocks,

carriages, machinery, farm implements, live stock, book accounts, annual crops, nursery stock, good-will and lease of property for a term of years.

2. Real property includes lands, buildings, trees growing upon the soil, and every natural source of wealth, such as coal, gas, oil and minerals that may be buried in the soil.

Temporary buildings, not placed upon stone foundations nor nailed to the permanent buildings, counters, shelving, etc., belonging to tenants, trees and shrubs planted to be removed again, as nursery stock, do not become a part of the realty, but are personal property of the tenant. (See Tenants' Fixtures.)

288 Rights Over Other's Property.—A person having property removed from the street or road, and pays another property holder between him and such street or road a certain sum for a right of way, as a lane, to reach his property, he acquires a perpetual right, which also passes to his successors, unless otherwise specified in the contract.

Also where a person is permitted to use a way or lane in passing to and from such property without any kind of agreement or remuneration being paid or offered for the full period of 20 years, he acquires a prescriptive right to its continual use.

To prevent a prescriptive use of a way it must be shown that the right to such way " was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing." See following Section.

If he has fruit trees standing so near the division line that the limbs overhang a neighbor's property, the fruit on the limbs that overhang the fence still belongs to him, and if it falls on his neighbor's ground he has a right to go on such ground to gather and take it away. He is not liable to an action for trespass for so doing, but would be liable for any damage through the falling of the fruit, or in exercising his right to collect and take it away.

The neighbor also has the right to cut off the limbs that overhang his property, or the roots which extend into it. But before doing so he should give due notice, and demand their removal, and if his demand is not complied with he can then cut them off.

But the provision that formerly protected the owner of a building from having his windows darkened or a pleasant view cut off by the erection of a high fence or a building by his neighbor is now virtually abolished, except where building restrictions are placed in the deed.

289 Acknowledgment for Use of Private Way or road that will prevent the acquiring of a perpetual right.

" I (name), hereby acknowledge that the road (or path) between (state clearly the land over which it passes and its terminal points), over the land of (owner of land), now used by me, my servants, agents and friends, is not used as of right, but by the express written permission of the said (name) owner.

Dated at ....., this ..... day of ....., 19...

(Signature.)"

290 Joint Ownership is where two or more persons own a piece of property jointly. All have a right to it at the same time.

This class of ownership occurs where a syndicate of persons combine to purchase and hold for speculative or other purposes a portion of land or other

property. Also, when a person dies without a will, his heirs have a joint interest.

Joint walls built by two parties on the dividing line between two properties would be an illustration of joint property. Neither one could take it down without the consent of the other, but neither one can go on the ground of the other to repair it without permission.

Also, in case husband and wife have real estate deeded to them as joint owners neither one can sell without the consent of the other, and neither one can will his or her interest to any other person, but in case of death of either one the other takes the whole interest. No will need be made. The best form of deed for such title for husband and wife to take is in Fee Simple, as joint tenants and not as tenants in common nor as tenants by entireties.

In cities, friction frequently occurs when one property owner attempts to use a brick wall built closely along the dividing line but on the other property, by joining his building to it or using it for a support for one end of the joists of his building without first obtaining consent of the owner of such building. It would be a trespass, and what is legally termed a "continuing trespass." In such case the court has a discretionary power, either to order the removal of the joists, and the restoration of the wall to its original position, or to determine the sum which the trespasser should pay for the right to continue the use of such wall as a joint or "party wall."

291 Life Ownership is where a person has the use of property during his natural life. It may be acquired by gift or will. He cannot sell or mortgage more than his life interest in such property. He cannot decrease its value by removing buildings, etc., or make any disposition of it at his death.

292 Sale of Real Estate.—There are two kinds of sales, viz., Executed and Executory.

1. EXECUTED SALES are those where the sale has been completed by the payment of the money and the execution and delivery of the deed of conveyance.

EXECUTORY SALES are those where possession has been passed by agreement for sale, but the title does not pass until the price has been paid in full.

The seller of real estate has a lien on the property sold for the purchase price, which is as binding as a mortgage. If payments are not made according to agreement he has the option of suing for them, or if not made within a reasonable time he may regain possession by an action to have the sale cancelled.

293 Agreement to Sell or Buy Real Estate, unless in writing, signed by the contracting parties or their duly authorized agents, is not binding on either party. See Statute of Frauds and Perjuries, Section 22.

A verbal agreement made, even if money is paid on it to "bind the bargain," does not bind either party if he wishes to repudiate it. Paying down a small amount of money, as is frequently done at such a time, has no legal effect whatever. The party who paid the money, if he changes his mind, could forfeit the money and repudiate the agreement, and the party who received the money could return it and repudiate the agreement. A receipt given for such payment by stating what it was given for might hold the one who gave it, but it would not bind the other party.

When a bargain is made for the sale of real estate that cannot be exe-

cuted immediately, a memorandum of the agreement should be written out and signed by both the parties. This makes the contract binding without anything being paid down. An ordinary agreement without seal is sufficient, simply stating that (S. Smith) agrees to sell his farm or his house and lot, as the case may be, for the price agreed upon, giving the number and concession, the terms of payment, interest, etc., and that (J. Jones) agrees to buy at the price named, and both sign it, will constitute a valid agreement.

294 Part Performance.—If under a verbal agreement for the sale of real estate the purchaser legally enters into possession of the property it would have the effect of taking the matter out of the Statute, and by decisions of Courts of Equity the transfer would be valid. But a part payment of the purchase price without entry into possession would not make the verbal agreement binding if either party wished to repudiate it. If the purchaser changed his mind he would lose the money paid, and if the buyer changed his mind he could return the deposit and declare the sale off.

295 Form of Agreement for Sale.—This agreement for sale of land does not convey a title, but is simply a binding promise to convey, and may be proved by affidavit of witness and registered by the purchaser, except where the Torrens System is in use. It is also transferable by assignment:

Articles of Agreement made and entered into this 1st day of June in the year of our Lord one thousand nine hundred and six.

BETWEEN James Gray, of the Town of Simcoe, in the County of Norfolk, Province of Ontario, vendor, of the first part;

And William Franklin, of the Township of Woodhouse aforesaid, purchaser, of the second part.

The said James Gray and William Franklin, do hereby, respectively, for themselves, their respective heirs, executors and administrators agree each with the other, THAT the said James Gray shall sell to the said William Franklin, and that the said William Franklin shall purchase all that certain parcel or tract of land, being composed of Lot No. 10 in the Fifth Concession of the Township of Woodhouse, aforesaid, containing by admeasurement fifty acres more or less, together with the appurtenance and the freehold and inheritance thereof in Fee Simple in possession free from all encumbrances, at or for the price or sum of one thousand dollars of lawful money of Canada, being the residue of said purchase money, on the 20th day of September next, at which time the purchase is to be completed, and the said William Franklin shall, on and from that day, have actual possession of said premises, all outgoings up to that time being discharged by the said James Gray.

That the production and inspection of any deeds or other documents not in the possession of the said James Gray, and the procuring and making of all certificates, attested office or other copies of or extracts from any deeds, wills or other documents, and of all declarations or other evidences whatever, not in his possession, which may be required, shall be at the expense of the said William Franklin.

That on payment of the said sum of $1,000 at the time specified for the payment thereof, as aforesaid, the said James Gray and all other necessary parties shall execute a proper conveyance of the said premises with their appurtenances and the freehold and inheritance thereof in Fee Simple in possession free from all dower or other encumbrances, unto the said William Franklin, his heirs and assigns, or as he or they shall direct.

That if from any cause whatever the said purchase shall not be completed on the said 20th day of September next, the said William Franklin shall pay interest at the rate of five per cent. on the residue of the purchase money from that day till the completion of the purchase.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and the year first above mentioned.

Signed in the presence of)
HARRY POTTS.)

JAMES GRAY.
WILLIAM FRANKLIN.

296 Fraudulent Sale of Real Estate.—Any person who knows of the existence of an unregistered prior sale, mortgage or other encumbrance upon any real property who fraudulently makes any subsequent sale of the same is liable to one year's imprisonment and a fine not exceeding $2,000.

297 Warranty Deed with full covenants is one that guarantees a perfect title and quiet enjoyment of property to the purchaser and his heirs and assigns after him. The covenants are all written out at length, but owing to the expense of registering they have been legally "boiled down" so as to express all the covenants in fewer words, and thus called a Warranty Deed with abbreviated covenants. Printed forms kept by leading stationers.

298 Form of Statutory Deed.—The following is the Ontario short form or Statutory or Warranty Deed with abbreviated covenants (for deed under Torrens System, see Section 314):

This Indenture made (in duplicate) the first of November, in the year of our Lord one thousand nine hundred and six, IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES.

BETWEEN James Smith, of the Township of King, County of York, and Province of Ontario, merchant, of the first part, and

Mary Jane Smith, wife of the party of the first part, of the second part, and Walter Winters, of the Township of King, County of York, and province aforesaid, yeoman, of the third part.

WITNESSETH that in consideration of Three Thousand Dollars ($3,000) lawful money of Canada, now paid by the said party of the third part to the said party of the first part (the receipt whereof is hereby acknowledged), he, the said party of the first part, DOTH GRANT unto the said party of the third part, in Fee Simple.

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of King, County of York, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the south part of Lot Number 19 in the 7th Concession of the Township of King, aforesaid.

TO HAVE AND TO HOLD unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use FOREVER, SUBJECT, NEVERTHELESS, to the reservations, limitations, provisos and conditions expressed in the original GRANT made thereof from the Crown.

The said party of the first part COVENANTS with the said party of the third part, THAT he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part.

And that the said party of the third part shall have quiet possession of the said lands, free from all encumbrances.

And the said party of the first part COVENANTS with the said party of the third part, that he will execute such further assurances of the said lands as may be requisite.

And that he will produce the title deeds enumerated hereunder and allow copies to be made of them at the expense of the said party of the third part.

And the said party of the first part COVENANTS with the said party of the third part that he has done no act to encumber the said lands.

And the said party of the first part RELEASES to the said party of the third part, ALL HIS CLAIMS upon the said lands.

And Mary Jane Smith, the party of the second part, hereby bars her dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in presence of C. ROY ANGER. } JAMES SMITH. MARY JANE SMITH.

Affidavit of Witness:

COUNTY OF YORK, TO WIT: } I, C. Roy Anger, of the City of Toronto, County of York, and Province of Ontario, student, make oath and say:

1. That I was personally present and did see the within instrument and duplicate duly signed, sealed and executed by James Smith and Mary Jane Smith, two of the parties thereto.

2. That the said instrument and duplicate were executed in the Township of King.
3. That I know the said parties.
4. That I am a subscribing witness to the said instrument and duplicate.

SWORN before me in Toronto, in the County of York, this first day of November, A.D., 1906. } C. ROY ANGER.

JOHN H. WILLIAMS, *a commissioner for taking affidavits in the County of York.*

299 Quit Claim Deed is made by a person who does not hold a perfect title to a property in favor of some one that has a claim to the property. It is much like an ordinary deed without the covenants. It conveys only the party's interest in the property without any guarantee of title. It would be used when a mortgagee purchases the land already mortgaged to him, the covenants being already made in his favor in the mortgage. It would also be used when heirs in common of an estate quit their claim to one another and to executors.

300 Form of Quit Claim Deed.

This Indenture made (in duplicate) the first day of October, in the year of our Lord one thousand nine hundred and six.

BETWEEN James Smith, of the Township of Stamford, County of Welland, Province of Ontario, merchant, of the first part; and Walter Winters, of the Township of Stamford, County of Welland, Province aforesaid, yeoman, of the second part.

WITNESSETH that the said party of the first part, for and in consideration of the sum of three thousand dollars ($3,000) of lawful money of Canada, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these Presents (the receipt whereof is hereby acknowledged), has granted, released and quitted claim, and by these Presents doth grant, release and quit claim unto the said party of the second part, his heirs and assigns forever, all estate, right, title, interest, claim and demand whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or expectancy of him the said party of the first part, of, in, to or out of

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Stamford, in the County of Welland, Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the south part of lot No. 19, in the Seventh Concession, in the Township of Stamford, aforesaid.

To have and to hold the aforesaid lands and premises, with all and singular the appurtenances thereto belonging and appertaining unto and to the use of the said party of the second part, his heirs and assigns forever.

Subject, nevertheless, to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in presence of CHARLES SUMMERS. } JAMES SMITH. ✹

Received on the day of the date of this indenture, the sum of Three Thousand Dollars ($3,000).

Witness: CHARLES SUMMERS. } JAMES SMITH.

301 Deed-Poll is a deed made by one person, as in case of a Sheriff's Deed.

302 Trust Deed is one made to a person called a trustee, conveying property to him to be held in trust for some other person. The Statute of Limitations does not apply in such cases. He is empowered by the conveyance to carry out its provisions whatever they may be, as to collection of

rents, sale of property, etc., and for investment of the funds. He cannot use the property for his own personal benefit. The person for whose benefit the trust is held cannot exercise any authority over it.

303 A Deed of Gift of property from father to son, or from husband to wife, or wife to husband, etc., with "natural love and affection" for the *consideration*, is valid, unless done on the eve of insolvency to defraud creditors, when a creditor may have such conveyance set aside.

If a husband deed his property to his wife to save it from his creditors, he cannot thereafter compel her to re-convey it to him, for natural love and affection is as valid a consideration as a money consideration is, and the registration of the deed makes it final, and irrevocable by the donor.

A gift of chattels by mere word of mouth is good, if accompanied by delivery; but a gift of chattels by deed is binding without delivery.

304 Tax Sale Deeds.—All the provinces allow the sale of lands for arrears of taxes if there is no personal property from which the tax may be recovered. The title to property derived from a tax sale extinguishes all other titles, heirs included, if the sale was legal and the proceedings according to Statute. In Ontario after three years the land may be sold.

305 Purchaser Restricting Nature of Title.—In purchasing land a man should decide when having the deed made how he wants to hold it, either:

1. In his own name, his wife holding her dower in the ordinary way, in those provinces allowing dower; or,

2. In his own name, his wife having no dower in it; or,

3. In his wife's name, he having no interest; or,

4. In the names of man and wife, each having a half interest as partners; or,

5. In the names of man and wife jointly, so that when one of them dies the other owns it all without the formality of a will or any other process. (See Section 290.)

306 Writing Deeds—Any person may write a Deed who is capable of describing the property, and it will be legal, but in most of the provinces they would not dare to make a charge for so doing unless they held the proper license, or were a duly qualified solicitor, etc., and they would not become personally liable for a mistake. In Ontario a charge could be made, but it could not be collected by suit. The Christian names of the various parties must be given in full. The Deed should be written in duplicate, one for registration and one retained by the purchaser. There need also be a witness, who makes an affidavit that he saw the instrument signed. The affidavit may be made before a Registrar, Deputy Registrar, a Judge, a Notary, a Magistrate or a Commissioner for taking affidavits. The forms are practically the same for all the provinces, and printed blanks can be obtained from nearly any stationer.

An agreement or deed may be signed and sealed, but it has no binding effect on the maker until it is delivered into the hands of the parties in whose favor it is drawn or their representative.

Where there is any contradiction between different parts of a Deed or other document, the part that is in writing holds against the part that is

printed, and in mortgages what is written first over the last, but in wills the last written holds over the first.

When land is conveyed to a corporation it is made to "their successors" instead of their "heirs," and to their "successors in office," where a conveyance is made to trustees. Corporation deeds do not need the affidavit of the witness, as the affixing of the corporate seal of the corporation or company is sufficient evidence of genuineness when signed by their chief officer.

307 Who Should Sign.—Any person who has anything yet to do should sign the deed. If the purchaser paid the whole purchase price, hence having nothing further to do, he would not sign. If, however, there was a mortgage or claim that he had covenanted to pay off or to allow a portion of the property to be used as a lane or way, etc., then he would be required to sign so as to bind himself.

For land in which a wife would have no dower she would not be required to sign a deed or mortgage. For this reason the wife does not usually sign a chattel mortgage unless part of the goods mortgaged belong to her.

308 Registration.—All instruments respecting titles of real estate should be registered in the Registry Office or Land Titles Office of the County or Registration District in which the property is situate as soon as possible after their execution, as all documents take precedence according to priority of registration, whether under the old system or under the Torrens System.

Also, if a deed or mortgage should be lost or destroyed, a duly certified duplicate can be had at any time from the Registrar for a small fee. For twenty-five cents the title of any property may be examined and copies taken from documents respecting it.

The fees for registration vary according to the number of words in the deed.

All deeds and documents to be registered must be verified by affidavit in proper form of a subscribing witness present at the time of signing.

309 Torrens System of Lands Transfer has come to us from Australia A similar system has been in force in England for centuries under the name of Copyhold. It is now in force in Manitoba, Alberta, Saskatchewan, North-West Territories, British Columbia and Ontario. So far in Ontario it has been adopted by the County of York and City of Toronto, County of Elgin and City of St. Thomas, County of Ontario, and the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Manitoulin, Thunder Bay and Rainy River. Other municipalities may introduce it simply by by-law, which should be speedily done. It is referred to as the "Land Titles Act."

If landowners only really knew the advantages of this system over the medieval system now in vogue, and the money it would save in searching titles every time property changes owners, they would not lose any time in asking the county councils to pass a by-law adopting the Torrens System.

Lands granted by the Crown since the introduction of this system are subject to this Act, and the old cumbersome system of conveyancing cannot be used, but all dealings with such lands must be recorded on the "Certificate of Title." All other lands may be brought under the Act on the application of the persons interested and payment of a small fee.

The application, with the deeds, is left at the Land Titles Office, where

the necessary blanks and all information may be obtained. The title is there fully investigated, and if found secure against ejectment or against the claims of any other person, the proprietor will receive a "certificate of title," which operates as a government guarantee that the title is perfect and there is no going behind it. If a certificate of title should be issued to the wrong person the government is liable for the damages to the injured party. The certificates are issued in duplicate, one being given to the proprietor and the other retained in the Land Titles Office. Crown grants of land bought since the Act came into force are also issued in duplicate. The one retained in the office constitutes the Register Book. Therefore, if a proprietor wishes to mortgage, lease, or in any wise encumber his land he executes a memorandum of such mortgage in duplicate or lease in triplicate, which he presents at the Land Titles Office with the "certificate of title." The proper officer makes a record of the transaction on the certificate of title, and also on the duplicate certificate which is in the office. This constitutes the registration of the instrument, and a note under the hand and seal of such officer of the fact of such registration is made on both duplicates of the instrument, one duplicate is then filed in the office, and the other handed to the mortgagee or lessee; thus each party will have a certificate showing him exactly the nature of his interest.

When a mortgage is paid under this system a receipt is indorsed on the duplicate mortgage held by the mortgagee, which is then brought to the Land Titles Office, and the fact of the payment of the mortgage is noted on the certificate of title.

When a lease is surrendered it has "surrendered" indorsed on it, "signed" by the lessee and "accepted" by the lessor, and being properly attested is brought to the office where the proper officer records the fact of its surrender on the certificate of title.

Both mortgages and leases under this system may be transferred by indorsement written upon the copy of the instrument held by the proprietor and then registered.

All instruments for registration must be free from erasures, properly witnessed, and proved. For deeds or transfer in fee one instrument is sufficient, while mortgages require two copies and leases three.

In this system it must not be forgotten that it is not the execution of an instrument that transfers the title, but its registration in the Land Titles Office.

All necessary information can be obtained at the Land Titles Office.

310 Mortgage under Torrens System, two copies to be executed.

I, A. B., being registered as owner of an estate (here give nature of interest), subject, however, to such encumbrances, liens and interest as are notified by memorandum underwritten (or indorsed hereon), of that piece of land (describe it), part of ..... Section ....., Township of ..... range ..... (or as the case may be), containing ..... acres, be the same more or less (here state rights of way, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grants refer thereto for description of parcels and diagrams otherwise set forth in the usual way of boundaries, and accompany description with a diagram), in consideration of the sum of.....dollars lent to

me by C. D. (insert description), the receipt of which sum I do hereby acknowledge, covenant with the said C. D.:

First, that I will pay to him, the said C. D., the above sum of..... dollars on the ..... day of .....

Secondly, that I will pay interest on the said sum at the rate of .... on the dollar in the year, by equal payments on the ..... day of ..... and on the .....day of....., in every year.

Thirdly (here set forth special covenants, if any).

And for the better securing of the said C. D., the repayment in manner aforesaid of the principal sum and interest, I hereby mortgage to the said C. D. my estate and interest in the land above described.

In witness whereof I have hereunto signed my name this ..... day of ..... 19..

Signed by the above named A. B., in the presence of .....

Signature of Mortgagor.
(No Seal).

(Insert memorandum of mortgages and encumbrances).

When a mortgage is paid under this system a receipt is indorsed on the duplicate mortgage held by the mortgagee, which is then brought to the Land Titles Office, and the fact of the payment of the mortgage is noted on the certificate of title.

311 Transfer of Mortgage or Lease under the Torrens System.

I, C. D., the mortgagee (encumbrance or lease, as the case may be), in consideration of ..... dollars, this day paid to me by E. F., of ..... the receipt of which sum I do hereby acknowledge, hereby transfer to him the mortgage (encumbrance or lease, as the case may be, describing the instrument fully), together with all my rights, powers, titles, and interest therein.

In witness whereof I have hereunto subscribed my name this.....day of....., 19..

Signed by the said C. D., in the presence of .....

C. D., Transferrer.
Accepted, E. F., Transferee.
(No Seal).

312 Lease, under the Torrens System, three copies to be executed.

I, A. B., being registered as owner, subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or indorsed hereon) of that piece of land (describe it) part of.....Section ....., Township of....., range..... (or as the case may be), containing .....acres, more or less (here state rights of way, privileges, if any, intended to be conveyed along with the land, and if the land dealt with contains included in the original grant or certificate of title or lease refer thereto for description and diagram, otherwise set forth the boundaries of metes and bounds), do hereby lease to C. D., of (here insert description), all the said land to be held by him the said C. D., as tenant, for the space of.....years, from (here state the date and terms), at the yearly rental of.....dollars, payable (here insert terms of payment of rent), subject to the covenants and powers implied (also set forth any special covenants or modification of implied covenants).

I, C. D., (insert description), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this.....day of....., 19..

Signed by above A. B., as lessor, and C. D., as lessee, in the presence of .....

Signature of Lessor (A. B.).
" Lessee (C. D.).
(No Seal).

(Here insert memorandum of mortgages and encumbrances, if any.)

When a lease is surrendered it has "surrendered indorsed on it, "signed" by the lessee and "accepted" by the lessor, and being properly attested is brought to the office where the proper officer records the fact of its surrender on the certificate of title.

313 Caveat Forbidding Registration or Granting a Certificate of Title under the Torrens System.

To the Registrar of .....District:

Take notice that I, A. B. (insert description), claiming (state the nature of the estate or interest claimed, and the grounds upon which such claim is founded), in (describe the land and refer to certificate of title), forbid the registration of any transfer effecting such land, or the granting of a certificate of title thereto, except subject to the claim herein set forth.

My address is (give in full).

Dated this.....day of....., 19..

Signed by the above-named in the presence of .....

(Signature.)

I, the above-named A. B. (or C. D., as agent for the above, as the case may be), of (residence), make oath (or affirm) and say, that all allegations in the above caveat are true in substance and in fact (and if no personal knowledge add "as I have been informed and verily believe").

Sworn before me, etc.

(Signature.)

314 Memorandum of Transfer, under the Torrens System.

I, A. B., of....., being registered owner of an estate (state the nature of estate), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or indorsed hereon), in all that land described, as follows:

do hereby in consideration of the sum of $..... paid to me by E. F., of ....., the receipt of which sum I hereby acknowledge, transfer to the said E. F., all my estate and interest in the said piece of land (when a less estate then describe such estate).

In witness whereof I have hereunto subscribed my name this..... day of.....

Signed in the presence of .....

A. B.

315 Sale of Personal Property.—In the sale of personal property, as in all other contracts, the parties themselves must be competent to contract. The seller must have a valid title to the property to be sold; the property must be something not forbidden by law to be handled, and the sale must be be without fraud.

1. A contract of sale may be absolute or conditional.

2. When under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but when the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

3. An agreement to sell becomes a sale when the time elapses, or the conditions are fulfilled subject to which the property in the goods is to be transferred.

4. Selling personal property, which is still retained in possession, is binding as between the parties themselves, but is not binding against creditors or subsequent purchasers unless a Bill of Sale is registered.

316 When Sale is Completed.—In sales that have been completed there is usually a delivery of the property and a continued change of possession, but not necessarily so. Goods yet in charge of a railway or in a warehouse may be delivered by simply handing over the bill of lading or warehouse receipt. This is called a "constructive delivery."

When the contract for the sale of specific articles or goods is completed the right to the property is immediately vested in the buyer, as also the risk, and the right to the price in the seller, unless the contract specially provides otherwise.

If the buyer assumes the risk of the delivery or leaves the goods in possession of the seller and they are destroyed before delivery, it will be the loss of the buyer; but if the seller assumes the risk of delivery then the loss will be his. The courts have ruled "that where a *legal bargain* is made for the purchase of goods and nothing is said about payment or delivery the ownership nevertheless passes immediately so as to cast upon the purchaser all future risk," and the parties are in the same position as they would be after a delivery of the goods. If this fact is borne in mind it will remove all doubt in numerous cases of injury, or death of live stock, etc., between time of purchase and removal of the goods or chattels. (See following section.)

In case of live stock, for instance, say a team of horses were purchased and $20 paid on account of the price, with the agreement that they were to remain on the premises a few weeks, the sale would be completed and the risk as well as the ownership would pass to the purchaser. If either of them should die or be stolen before removal the vendor would not be responsible for the loss unless it could be shown that the death or loss was occasioned by his gross or wilful negligence. If he can by reasonable or ordinary care prevent the animals from being stolen or from dying while in his possession, he is bound to exercise such care, and if he should neglect to do so, and loss result from such neglect, he will be liable to the purchaser to the extent of the loss.

317 Agreement of Bargain and Sale of Goods.—Memorandum of agreement made this ..... day of ....., 19.., between A., of (place), of the one part, and B., of (place), of the other part, witnesseth:

That the said A agrees to sell and the said B agrees to buy the goods hereinafter mentioned, the property of the said A, for the price or sum of ..... dollars.

(Enumerate and describe the articles so they can be identified).

(Signed) A.
(") B.

Agreements with corporations would need the corporate seal, but with other agreements relating to personal property, no seal is necessary.

318 Bill of Sale.—If the goods are not delivered at time of sale, but still left in the possession of the former owner, a Bill of Sale must be filed in the office where Chattel Mortgages for that district are filed, in order to make such a sale binding against judgment creditors, and subsequent purchasers and mortgagees for value. It will be noticed here that a Bill of Sale differs from a Chattel Mortgage in that it is an absolute sale of the goods, and not merely a lien on them as a security for payment of a debt, hence only one party signs it. (See form in following section.)

319 Form of Bill of Sale.

This Indenture made the fourth day of April, in the year of our Lord one thousand nine hundred and six, between James Smith, of the Town of Welland, in the County of Welland, and Province of Ontario, merchant, vendor of the first part, and Walter Winters, of the City of Toronto, County of York, and Province of Ontario, gentleman, the vendee of the second part.

WHEREAS the said party of the first part is possessed of the stock of dry goods and groceries and store and office fixtures hereinafter set forth, described and enumerated, and hath contracted and agreed with the said party of the second part for the absolute sale to him of the same for the sum of six hundred dollars.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of six hundred dollars of lawful money of Canada, paid by the said party of the second part, at or before the sealing and delivery of these Presents (the receipt whereof is herbey acknowledged), he, the said party of the first part, hath bargained, sold, assigned, transferred, and set over by these Presents doth bargain, sell, assign, transfer and set over, unto the said party of the second part, his executors, administrators and assigns, ALL THOSE the said dry goods and groceries and store and office fixtures, as per inventory hereunto attached and marked "A."

AND all the right, title, interest, property, claim and demand whatsoever, both at law and equity, or otherwise howsoever, of him the said party of the first part, of, in, to and out of the same and every part thereof.

TO HAVE AND TO HOLD the said hereinbefore assigned dry goods, groceries and store and office fixtures and every of them and every part thereof, with the appurtenances, and all the right, title and interest of the said party of the first part thereto and therein as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns, to and for his sole and only use forever.

And the said party of the first part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators, in the manner following, that is to say: That he, the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned dry goods, groceries and store and office fixtures, and every part thereof; and that the said party of the first part now hath in himself good right to assign the same unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these Presents; and that the said party hereto of the second part, his executors, administrators and assigns, shall and may from time to time, and at all times hereinafter, peaceably and quietly have, hold, possess and enjoy the said hereby assigned goods and fixtures and every of them, and every part thereof, to and for his

own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him the said party of the first part, or any person or persons whomsoever, and that free and clear, and freely and absolutely released and discharged, or otherwise, at the cost of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and encumbrances whatsoever.

And moreover, that he, the said party of the first part, and all persons rightfully claiming, or to claim any estate, right, title or interest of, in, or to the said hereby assigned goods and fixtures and every of them, and every part thereof, shall and will from time to time, and at all times hereafter upon every reasonable request of the said party of the second part, his executors, administrators or assigns, but at the cost and charge of the said party of the second part, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and fixtures unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these Presents, so by the said party of the second part, his executors, administrators or assigns, or his council shall be reasonably advised or required.

IN WITNESS WHEREOF the said party to these Presents have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the presence of CHARLES SUMMERS. } JAMES SMITH. ✹

Affidavit of purchaser as to the sale being *bona fide* for value:

COUNTY OF YORK, TO WIT: } I, Walter Winters, of the City of Toronto, in the County of York, the vendee in the foregoing Bill of Sale named, make oath and say:

That the sale therein made is *bona fide*, and for good consideration, namely, the actual present payment in hand to the vendor by the vendee of the sum of six hundred dollars, and not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors of the said bargainor, or any of them.

SWORN before me at Toronto, in the County of York, this 4th day of April, A.D. 1906. } WALTER WINTERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

Affidavit of witness proving the signing, sealing and delivery of the Bill of Sale:

COUNTY OF YORK, TO WIT: } I, Charles Summers, of the City of Toronto, in the County of York, make oath and say:

That I was personally present and did see the within Bill of Sale duly signed, sealed and delivered by James Smith and Walter Winters, the parties thereto, and that I, this deponent, am a subscribing witness to the same. And that the name Charles Summers, set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at the City of Toronto, County of York, on the 4th day of April, A.D. 1906.

SWORN before me at the City of Toronto, County of York, this 4th day of April, 1906. } CHARLES SUMMERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

320 When a Verbal Agreement Binds.—In all the Provinces the sale of personal property by verbal or oral agreement is binding up to a certain sum, but beyond that amount it does not bind either seller or buyer, no matter how many witnesses there may be to the bargain.

In Ontario, New Brunswick and Nova Scotia anything under $40 will bind; but if the amount is $40 or more, it is utterly worthless.

In Manitoba, Alberta, Saskatchewan, North-West Territories, British Columbia, Yukon Territory and Quebec anything under $50 binds.

In Prince Edward Island, $30; Newfoundland and England, $50.

In each place if the amount is not *under* the figures here named, then

in order to be binding, the contract must either be in writing, or a part or the whole of the goods delivered, or a part payment made.

But up to the amounts there named for the respective Provinces, a bargain made "by word of mouth" is every whit as binding as though it were in writing.

Retail merchants and other traders giving verbal orders to commercial travellers or others for a smaller sum than those respectively for the different Provinces named above cannot cancel their order, except by permission of the wholesale house or the manufacturing firm; and if the goods are not received when shipped in accordance with the order, the shippers have an action for damages, which would naturally be the price of the goods. But if the amount is over the sums named here for each Province, the order may be cancelled any time before the goods have been actually shipped.

321 Breach of Contract of Sale.—If either party should violate a binding contract of purchase or sale, he would incur a penalty to the amount of damages the other party could prove he had suffered by the breach of contract, which amount would naturally be the price of the article. Illustration: A cattle buyer agrees to purchase ten head of cattle from a stock raiser and pays $20 to bind the bargain, and is to take them within ten days. After he goes away, he sees the market quotation show a great depression in foreign prices and he concludes not to carry out his contract. He cannot recover his $20, but the stock raiser can sue him for the balance of the purchase money.

It must be remembered that usually only such damages can be recovered as actually occur. When an article or goods have been bought for the purpose of resale, and if at the time of the purchase the existence of a sub-contract for the goods is made known to the seller, and the seller then makes default in delivering the property, the purchaser may either purchase the article from some other person to fulfil the sub-contract and charge the seller with the advance price he may be compelled to pay, or he may repudiate the sub-contract and recover damages from the seller and for whatever damages he may be charged with for breach of the sub-contract.

If a purchaser is misled by the seller as to the quantity of goods he is purchasing; or part of the goods he supposed he was purchasing prove to belong to other parties, he may either claim a reduction in the price or refuse to carry out the contract of purchase and recover back any money that may have already been paid.

322 Barter is where one article is given in exchange for another or for service, and if there is no warranty given as to the soundness or quality the property in each passes with the delivery of the article and the exchange is complete. Neither party can forcibly or otherwise take the article back he bartered away, except by consent of the other, without becoming liable to an action for theft and also for damages. In a sale the price is payable in money.

323 The Property Sold must Exist.—Jones sells Smith a certain horse at a certain price, but after the sale is concluded it is discovered that the horse is dead, both parties having been ignorant of the fact. There is no sale, even though the money had been paid.

324 Property may have a Potential Existence.—The natural products of the soil, the increase of live stock or other property may be sold in advance. For instance: A farmer may sell his apple, peach or pear crop before the buds even begin to show; or the wool clipped from his sheep the following spring, etc. They are not yet in existence, but they are possible; hence they may be sold, or pledged in security for a loan.

325 Sales on Trial.—When articles are purchased on trial at a certain price they must be rejected before the time expires if they do not suit, or the sale is complete, and the party bound to keep them.

326 Selling Under Guarantee.—The descriptions of machinery as to manner and excellence of work, or the quality of other goods, that appear in newspaper advertisements and circulars cannot be made a binding guarantee to protect the purchaser. To have an effective guarantee of excellence, or that the machine or instrument will do what is claimed for it in the circulars, it must either be in a definite form of a guarantee, or in a written or typewritten letter. The courts allow for a good deal of what may be called exaggeration in mere advertisements.

What is said in circulars is merely "a statement of intention," and not a guarantee. If it is absolutely untrue it makes a difference, as it would then be a case of false pretence.

If an agent were to say what the circular says, and on the strength of that statement you buy the machine, you could cancel your contract on the ground of deceit, but you would have to be in a position to prove it if he did not put it in writing.

In cases where there is a verbal warranty by the agent besides, and perhaps differing from the statement in the circular, you cannot take both, but must elect which one you will rely on to support your case.

A warranty given at the time of the sale of chattels is good, but a warranty after the sale is not good, because there is nothing to support the subsequent agreement. (Benjamin, page 606.)

327 Sales by Sample or Description are made on the warranty, either implied or expressed, that the goods when delivered will correspond in kind and quality with the description given or sample shown, and if such is not the case, there is no binding sale, and the article should not be retained or used. If the seller agreed to remove the article if unsatisfactory, the notice should be given as per agreement, and the article cared for until removed. If a cumbersome machine were left an unreasonable time, it must still be cared for, but storage could be charged and collected before delivering the property.

328 Selling Stolen Goods does not give them a good title in the hands of an innocent purchaser for value, as it does in the case with promissory notes. They can be retaken wherever found. Receiving stolen goods, knowing them to be stolen, is an indictable offence. Punishment—Fourteen years' imprisonment.

329 Auction Sales.—The auctioneer is the agent for both the seller and the buyer; hence, binds both by his acts. When he is selling, he is acting as agent for the seller, but in the act of "knocking down" the article to a certain bidder he is agent of the purchaser, and in the memorandum of the

sale he makes in his book he acts for both parties, and binds both. Auctioneers' licenses are granted by counties and cities, who may charge a fee, and also give special rules for their governance; and no other person may sell by public auction.

In Ontario, and probably all the Provinces, a merchant could not sell his own goods by public auction without a license.

Bailiffs who sell goods under distress for rent need no license.

An auctioneer in selling goods is subject to the "Statute of Frauds," as to the amount for which a verbal agreement is binding.

In Manitoba and Ontario the buyer could not be compelled to take the article he bid on if the price was $40, or upward, unless the auctioneer himself made the entry of sale. He cannot transfer his authority as agent to the clerk who is making the memorandum; therefore, the bargain between seller and buyer is only a verbal one in all cases where a clerk makes the entry of sale.

330 Sale of Book Accounts is effected by assignment. The following brief instrument is sufficient:

For value received, I hereby sell, assign and transfer to (person's name) the accompanying accounts and claims against the persons whose names are enumerated (enumerate the names and accounts).

(*Signed*) J. WINTERS.

Every form of account or debt due to a person, and chose in action, may be sold or transferred by assignment as readily and validly as negotiable paper may be by delivery and indorsement. The debtor must be notified that the account or debt has been transferred and instructed that payment must be made to such assignee.

The above form of assignment, or one similar to it, will answer for all accounts, but for mortgages, see Section 253; for lien notes, see Section 137.

331 Notice of Assignment by the creditor to the debtor:

Dear Sir,—

Take notice that I have this ..... day of ....., 19.., assigned to C. D., of (place), the debt (or account) of ..... dollars due from you to me; and I hereby request you to pay the said sum to him forthwith, and I declare that his receipt for the same shall be a sufficient discharge to you from the said debt.

To (name). Yours, etc.,

A. B.

332 Notice by Assignee of the assignment of the account:

Dear Sir,

I hereby give you notice that by an agreement in writing, dated the ..... day of ....., 19.., that the debt of ..... dollars owing by you to A. B., has been absolutely assigned to me; and further take notice that you are to pay to me the said debt of ..... dollars (forthwith), on or before the ..... day of ..... next, and in default thereof I shall pursue such remedies as are allowed by law for the recovery of the said debt.

To (name). Yours, etc.,

C. D.

The following less formal notice in most of cases would be more in keeping with friendly business intercourse.

To Mr.....

I, the undersigned, of (place), hereby give you notice that the debt of ..... dollars owing by you to Mr. ..... has been this day assigned to me, and I require you to pay the same to me.

Dated this ..... day of ....., 19...

(Signature and Address).

After receiving such notice either from the creditor or the assignee, the debtor can only legally pay the debt to the assignee.

The transfer of a debt by assignment is not like transferring a negotiable instrument before maturity by indorsement, which gives the holder a right to collect the face of the paper without regard to any counter-claims the maker might have against the payee. But the transfer of a debt by assignment does not shut off any counter-claims the debtor may have against the assignor at the date of the transfer; therefore the assignee is bound by all the rights and equities of the defendant who could set off counter-claims, or damages allowed by the jury. The assignee merely takes the place of the creditor at the date when the assignment was made.

333 Assignment of Debt.—The following form of assignment with warranty is preferable to the form given in Section 328:

Know all men by these Presents that I, ..., of ....., in consideration of ..... dollars to me paid by ....., of ..... (the receipt whereof I hereby acknowledge), do hereby assign to the said ..... absolutely, a certain debt owing to me from ....., of ....., for (goods supplied or as case may be), and all and every sum or sums of money now due or to become due thereon, and I hereby warrant that the said debt is still due and owing to me from the said ....., and that I have not previously assigned or encumbered the said debt or any part thereof.

In witness whereof I have hereunto set my hand and seal this ..... day of ....., 19...

Signed, sealed, etc. Signature.

334 Stoppage in Transitu.—Goods not yet paid for, having been shipped to the purchaser may be stopped by the unpaid seller while they are in transit under certain well-defined conditions.

If after shipping the goods the seller receives an intimation that the purchaser has become insolvent or is on the eve of insolvency, he may forbid the delivery of the goods to the purchaser, and the carrier company must obey such order, if it still holds the bill of lading.

If it should turn out, however, that the purchaser is not insolvent, then the seller who unlawfully stops the goods in transit may be required to indemnity the purchaser's loss, or to deliver the goods and pay damages sustained by the delay in delivery.

The right of stoppage in *transitu* ends when the goods have been legally delivered by the carrier or wharfinger to the purchaser. The delivery of the bill of lading to the buyer is *ipso facto* an actual receipt of the goods.

The purchaser, however, may extinguish the vendor's right of stoppage in *transitu* before the *transitus* is ended by transferring the bill of lading to a *bona fide* indorsee for value:

1. When the bill of lading is transferred to a *bona fide* purchaser for value, or

2. When instead of selling the goods the bill of lading is transferred to a *bona fide* pledgee, as security for an advance, or a debt.

335 Conditional Sales are what have been referred to under the head of "Lien Note." In selling sewing machines, organs, pianos, agricultural and other machinery, it is common to sell them, under a lien agreement the buyer obtaining the possession and use of the article, but the seller retaining the ownership until it is paid for. These conditional sales are binding and enforceable by common law, and all the Provinces recognize them; but each Province, and Newfoundland, has enacted special legislation, some of them to protect the interests of innocent third parties, but all of them to protect the unpaid seller.

A man purchasing an article under these lien agreements and not acquiring the ownership of it, merely its possession, until it is paid for, if he were to sell it, could not give a good title, and the sale would be fraudulent. It will be noticed that in a bill of sale the ownership changes, but not the possession, while in conditional sales the possession changes, but not the ownership.

Landlords may seize and sell such property for rent, but they must pay the balance of purchase money. It is the same with execution creditors.

Also chattels purchased by the tenant but affixed to the realty, remain subject to the lien, and the owner or a mortgagee can only retain such chattel by paying balance of purchase price.

Again, if an article, say a waggon, covered by such lien were taken to a shop for repairs, the mechanic would have a preference lien on such waggon while it remained in his possession for the amount of his bill, and could hold it until paid or sell it by auction, and a storage warehouse would also hold it for the charges.

In Quebec the conditional agreement is binding, but if the article is retaken the part of the money paid on it must be returned to the purchaser, or tendered to him, unless the value of the article has been deteriorated and to that extent the money paid may be retained. If there is an agreement that if the article is not paid for in full that the sum paid shall be forfeited as damages for non-performance of agreement, it will hold good.

336 Changing the Venue.—It has been a common practice among manufacturing and sales firms to insert a clause in the written agreement providing that in case suit had to be entered to enforce payment, the action may be tried in a Court other than the one having jurisdiction where the purchaser lived.

The Ontario Legislature, in its Session of 1906, repealed the amendment of 1903, which allowed the place of trial to be fixed by the vendor if the agreement to that effect was printed in "red ink" across the face of the contract; and passed the following amendment to come in force Jan. 1, 1907:

"No proviso, condition, stipulation, agreement or statement which pro-

vides for the place of trial of any action shall be of any force or effect" under the following conditions:

1. "If in a Division Court action the defendant within the time allowed for disputing the plaintiff's claim files with the clerk of the court out of which the summons issued a notice disputing the jurisdiction of such court, and an affidavit by such defendant or his agent that in his belief there is a good defence to the action on the merits; and further stating the Division Court wherein the cause of action arose and the defendant resides.

2. "If in any other court than a Division Court the defendant makes motion to change the venue or place of trial, according to the practice of such court."

This amendment applies in all other cases as well as under Conditional Sales transactions.

337 Registration of Conditional Sales—All the provinces require the registration of these conditional sales under certain circumstances in order to protect the owner against certain third parties.

In Ontario the Lien Law provides that for these conditional sales in order to be binding against subsequent purchasers or mortgagees without notice in good faith for valuable consideration, the agreement must be in writing signed by the bailee or his agent.

And in respect to manufactured articles one of two things must be done:

(1) At the time possession is given to the purchaser the name and address of the vendor must be painted, printed, engraved on or attached to the article. This protects the seller, but is of no value to the public, as that is a common mode by which firms advertize themselves.

(2) If this is not done, then a copy of the lien note, receipt note or agreement must be filed at the office of the County Court Clerk within ten days from the execution of the receipt note.

Household furniture (except musical instruments) is not held in the Act to be manufactured articles.

For all other goods, including household furniture and live stock, registration is necessary. Fee for filing is 10 cents.

It will be noticed that putting the name of the vendor on the article instead of registration is intended to protect the vendor but not the public. In fact the vendee could remove the name after receiving the article and the statute would still be complied with.

In New Brunswick three things are required. (1) The name of the manufacturer must be printed, stamped or painted on the article. (2) A copy of the writing filed in the office of the Registrar of Deeds for that county within ten days from the execution of such receipt note. Fee for filing, 10 cents. (3) The manufacturer or seller must leave with the purchaser a copy of the lien agreement or hire receipt at the time of sale or within twenty days thereafter.

In Nova Scotia the agreement must be signed by the parties, with affidavit setting forth the contract, and registered like a bill of sale.

In Prince Edward Island to be binding against third parties one of two things must be done. Either (1) the name of the manufacturer must be printed, stamped on or otherwise attached to the article, or (2) a copy of the

lien agreement or receipt note must be filed in the office of the Prothonotary or Deputy Prothonotary. This does not apply to household goods, except pianos, organs or other musical instruments.

In Manitoba a copy of the note or agreement need not be filed, but in case of *manufactured* articles the name of the manufacturer or vendor must be painted, printed, or stamped on the articles.

In Quebec the conditional agreement is binding, but if the article is retaken the part of the money paid on it must be returned to the purchaser, or tendered to him, unless the value of the article has been deteriorated and to that extent the money paid may be retained. If there is an agreement that if the article is not paid for in full that the sum paid shall be forfeited as damages for non-performance of agreement, it will hold good.

Such articles may also be retaken from third parties who may have purchased them even in good faith unless they were purchased at a fair, or market, or a public sale, or from a trader dealing in such articles, or unless barred by three years' possession.

In Alberta, Saskatchewan and North-West Territories when for a sale of goods of value of $15.00 or over, to be binding against executions, attachments, subsequent purchasers or mortgagees without notice for valuable consideration, the agreement must be in writing, signed by the manufacturer or agent, and such writing or a copy of it filed in the office of the Registration Clerk for Chattel Mortgages in the registration district in which the purchaser resides, within thirty days from sale; and also in the registration district to which the goods may be removed (if they are removed) within thirty days from such removal, verified in each case by affidavit of the vendor or his agent that the sale is *bona fide*. Fee for registration, 25 cents. They take priority from date of filing, same as chattel mortgages.

The Statute does not apply to receipt notes or orders for farming, and agricultural implements of less value than $30.00, and other goods not exceeding $15.00.

They may be discharged or partially discharged by filing a receipt or certificate same as in case of a chattel mortgage, and the seller is required to give such receipt when the claim is paid.

Also, upon demand of any creditor or interested person he must file with the Registrar within twenty days a sworn statement of the amount due thereon, and failing to do so he forfeits his right under same as against such creditor or interested person.

In the Yukon, if the amount is $15.00 or over, the agreement must be in writing and registered within thirty days of the sale in the office where chattel mortgages are registered in the registration district in which the buyer lives, or to which the goods may be removed, and verified by affidavit of the seller or his agent. It holds good for two years, and may then be renewed by filing a statement in the same office similar to the statement for the renewal of a chattel mortgage (which see). The statement must be filed during the last thirty days before the expiration of the two years, and thereafter the renewal must be annual.

For a false statement in the renewal statement the seller becomes liable to a fine not exceeding $100.00. The fee for registering is $2.00.

In British Columbia all conditional sales are void against subsequent purchasers and mortgagees without notice in good faith for valuable consideration, unless a true copy of the receipt, note or instrument is filed within twenty-one days at the office where Bills of Sales are filed for that district. Here the articles need not bear the manufacturer's or vendor's name.

Such property is liable to distress by landlord for three months' arrears of rent.

338 Retaking Possession.—Articles thus sold and the note not being paid at maturity, the seller may retake them at once, or he may sue on the note, and if he fails to recover he may then retake the articles. It is not necessary to procure the help of an officer, but care must be taken not to commit a breach of the peace. If the conditional purchaser resists, force must not be used, but the article must then be taken by an "action of replevin," if it cannot be obtained peaceably by any other way; it would not be theft to take it without permission.

339 Time to Redeem.—In Ontario, Alberta, Saskatchewan, and North-West Territories, New Brunswick, British Columbia and the Yukon, goods thus retaken by the manufacturer or seller must be retained twenty days from the time possession was retaken before they can be sold to others unless the agreement provided otherwise. Any time during those twenty days the purchaser may redeem them by paying arrears, interest and legal costs.

340 Notice of Sale.—In Ontario, New Brunswick, Alberta, Saskatchewan and North-West Territories, goods, when the price of which exceeds $30.00, being thus retaken for a breach of the condition, must not only be retained for twenty days, but cannot be sold without five clear days' notice to the debtor. The notice may be given orally or by letter. If sent by letter it should be registered and posted at least seven days before the day of sale. The said five days or seven days may be part of the twenty days in previous section. The North-West Territories and the Yukon require the goods to be retained twenty days, even though the amount is less than $30.00, and also the five days' notice. In each case if the agreement named the time it would hold.

341 Form of Notice.

To (person's name), of (place):

Sir,—Please take notice that at the expiration of five days from the service of this notice upon you, *to wit,* upon the ..... day of .....19.., I shall proceed to sell the following goods or chattel (describe the property) at the ..... in the ..... of ..... in the county of ..... province of ..... The said goods were taken possession of by me on account of a breach of condition in the conditional sale or promise of sale thereof to you by me. If you desire to redeem the said goods or chattel you may do so at any time within the twenty days required by Statute after the ..... day of ..... (the day of taking possession) on payment of the sum of $....being the amount in arrears on such conditional sale, together with the interests, costs and actual expenses incurred in taking possession.

Dated this ..... day of ....., 19..

(Signed).....

342 Third Parties Asking Information.—In Ontario and most of th other Provinces any prospective purchaser of an article thus covered by a lien may demand and is entitled to receive, within five days thereafter, from the manufacturer or vendor claiming ownership, full information concerning the amount yet due and the terms of payment. A refusal or neglect to furnish such information incurs a penalty not exceeding $50.00 upon conviction before a Stipendiary or Police Magistrate or two Justices of the Peace. Appeal from such judgment is to the Judge of the County Court without jury. The inquiry may be by letter giving the name and post-office address, and a reply within five days by registered letter to such address would be sufficient.

New Brunswick requires the information to be given within 20 days to interested persons. In Alberta, Saskatchewan, and North-West Territories if demand for information is made by a creditor or interested person as to the amount yet due, a sworn statement must be filed within 20 days with the Registrar. Failure to do so would forfeit his rights against such interested person.

343 Copy of Lien with Vendee.—The Act in some of the Provinces requires that a copy of a lien note or agreement be left with the purchaser:

In Ontario and British Columbia within twenty-one days; **New Brunswick and Prince Edward Island** it must be left at the time or within twenty days thereafter.

CHAPTER XV.

LANDLORD AND TENANT.

345 The relation subsisting between landlord and tenant is that which subsists between the owner of houses and lands and the person to whom he grants the use of them for a specified time for a stipulated consideration called *rent*. In the law books the landlord is called the *lessor* and the tenant the *lessee*. The same class of persons who can contract in regard to notes and bills can contract as regards landlord and tenant; that this, those of the full age of twenty-one years and of sound mind.

In this chapter the essential provisions of the law of Landlord and Tenant, as applicable to all the Provinces and Newfoundland will be given, and as the cases where landlord and tenant are liable to disagree through a conflict of interest have been so often settled by suit there remains scarcely any reasonable grounds for a misconception of rights and obligations.

346 Lease is the name given to the contract between landlord and tenant. It may be either verbal or written, or under seal. Oral, verbal and parole all mean the same thing, viz., by word of mouth. In this chapter, *verbal* will be employed, as it is in common use.

It must be remembered that a lease is the *agreement*, and not the paper on which it is written. A lease, if written, should be under seal to be valid

—that is by Deed. Where a seal is not attached the writing is only an "agreement" for the term specified, same as an oral or verbal lease.

The lease should state all the conditions and agreements, for verbal promises do not avail much in law where there is a written instrument. The tenant might sue the landlord on a separate and distinct verbal agreement that the house should have certain things done by the landlord in consideration of the tenancy being created by the written lease, but it should be in the lease to make it unquestionable.

There must also be something of a transfer of possession to create a lease. (See Section 353 for Farm in Shares.)

347 Mortgage vs. Lease.—If a valid lease is given prior to a mortgage the mortgage will not affect the tenant's rights; but if a lease is given after a mortgage is placed on the property, and the mortgage falls due, and is not paid, the mortgagee can dispossess the tenant, and even take the growing crops. Of course, the tenant would have a cause of action against the landlord, but a landlord who had lost the property under a mortgage would not be likely to be in a financial position that the tenant could recover any money from him by way of damages.

348 Term of Lease.—The usual terms of lease are (1) week; (2) month; (3) quarter; (4) year; (5) at will; and (6) for life.

1. In all the Provinces a verbal lease for one year and under is valid, and the lessor may bring action and recover the rent though the lessee has not entered. The lessee may also successfully sue for possession if it is refused.

2. Verbal leases for a term not exceeding *three years* from the making thereof, when completed by entry and payment of rent, are valid.

But a verbal lease, or a writing not under seal, to lease premises for *over three years*, or for three years from a *future* time, thus making the time more than three years from date of making, the lease is void against third parties.

A verbal lease, or a lease in writing not under seal, for over one year, but not exceeding three years, where the tenant has not entered upon the premises, will not support an action to compel the tenant to enter or to pay rent, nor the landlord to give possession, still it may be ground upon which an action for damages could be maintained for breach of agreement.

3. A lease for a term exceeding three years and up to seven must be in writing and under seal, otherwise in Ontario and New Brunswick it would be held a "tenancy at will" only. In British Columbia, Nova Scotia, Alberta, Saskatchewan, Yukon and North-West Territories they must be registered as well as under seal.

4. A lease for over seven years must in all the Provinces be in writing, under seal and recorded. If not registered a person buying the property without notice of this lease could, by giving six months' legal notice, eject the tenant.

In Quebec leases for over one year must be registered. House lease is presumed to be from May to May, if renting by the year, and farm lease from October to October.

A lease of a house where no time is specified, is held to be annual, ter-

minating May 1st each year, where the rent is at so much per year, but a monthly lease where rent is at so much per month.

349 When Rent is Payable.—Rent may be payable in any way agreed upon, either in advance or at the end of the term. It might be a monthly tenancy, and yet the rent payable weekly; or a yearly tenancy, with the rent payable monthly or quarterly. Whatever the agreement may be for payment, the tenant has the whole day on which the rent falls due in which to pay it, and no expense can be incurred until the day after the rent is due.

Rent, like other debts, cannot be sued or distrained for until it is due, even though the tenant may be leaving the premises.

350 Lease by Minors, Idiots, Lunatics, etc.—A lease by a minor is not absolutely void, but voidable. The lessee cannot void it,when the minor comes of age he may void it or ratify it.

Leases to minors are not absolutely void, but may be voided when they come of age, or any time before age if it is not for necessary apartments or lodgings, according to their station in life.

If the rent falls due after they attain their majority and they have not repudiated the lease, they will be liable for the rent, no matter whether it was for necessary lodgings or not.

In Quebec an emancipated minor would be liable on such contracts in connection with his business. See Section 44.

Idiots and lunatics in all the provinces may also make leases that are necessary, but cannot be made to take a house that is unnecessary if the landlord was aware of their condition and took advantage of it.

In Manitoba an habitual drunkard cannot make a valid lease. In Ontario and the other Provinces if he were so drunk as not to be capable of knowing that he was making a lease, he may void it when he becomes sober, or he may ratify it and make it binding.

351 "**Joint Tenants**" is simply another name for joint owners of a building or other property; and "tenants in common" means owners in common, and are in some respects similar to a partnership. To lease their joint property requires the consent of both, but either one may, without concurrence of the other, give a legal notice to vacate, may also distrain for his share of overdue rent, or may demand a higher rent, or require it to be paid weekly or monthly, or in advance; of course, in such case, being required to give a legal notice.

352 Farm Rent.—In the absence of an express agreement, if a lease of farm or garden terminates otherwise than by the death or bankruptcy of the landlord, the tenant in giving up possession on his own account must leave the growing crops as well. But if the lease were of an uncertain duration and without any fault of the tenant it terminates unexpectedly, then in that case the tenant has the legal right to harvest the crops already sown. But crops sown after a legal notice to quit had been received, or sown when they would not ripen before the expiration of the lease, the tenant would not have right to harvest and take away. If, however, the landlord agrees to allow a tenant to remain after his lease expires and on the strength of that agreement puts in a crop he will be allowed to reap it.

A crop of wheat growing at the time of executing the lease should be

reserved, otherwise the tenant would be entitled to it if it belonged to the lessor.

Also in case of person occupying a house and lot as monthly tenant, and plants, say, a crop of vegetables, before he has any notice from the landlord to vacate, he will be entitled to the crop and may either sell it, or retain it, and will be entitled to go upon the premises to remove them when they mature. Campbell *v.* Baxter, 15 C.P. 42; Nelson *v.* Cook, 12 U.S., R. 22.

353 Farm on Shares.—Whatever the agreement may be will hold, and care should be taken that every detail should be clearly understood as to division of crops from year to year, disposition of straw and manure, use of firewood and timber, etc. For instance, whatever division of crops is agreed upon will continue through the term of the tenancy, so that if the owner finds the seed and takes a specified share it remains the same through each year, although part of the land, and perhaps the larger part, might be a hay crop, which did not need seed after the first year.

A person working a farm on shares and having the exclusive possession becomes a tenant and subject to the laws of Landlord and Tenant, and entitled to six months' notice to quit, same as other yearly tenants. But if he were to work it on shares, each party furnishing a part of the seed and dividing the profits, both parties thereby being equally in "possession," there is no *lease*, and the owner, in case the laborer or tenant had agreed to pay a certain amount in money, could not distrain for it.

354 Short House Lease.

This Indenture made the fourth day of April, in the year of our Lord one thousand nine hundred and six, in pursuance of the Act respecting Short Forms of Leases, between John Batten, of the Town of Thorold, in the County of Welland, gentleman, hereinafter called the lessor, of the first part, and Leslie McMann, of the same place, merchant, hereinafter called the lessee, of the second part.

WITNESSETH, that in consideration of the yearly rents, covenants and agreements hereinafter respectively reserved and contained on the part of the said lessee, his executors, administrators, and assigns, to be respectively paid, observed and performed, the said lessor hath demised and leased, and by these Presents doth demise and lease unto the said lessee, his executors, and administrators, all that certain tenement or business premises known and described as the Batten Block, No. 120 Front Street, in the Town of Thorold, County of Welland, Province of Ontario, including the basement or cellar, yard and outhouse, together with all other rights and appurtenances thereto belonging, or usually known as part or parcel thereof, or as belonging thereto; TO HAVE AND TO HOLD the said premises for and during the term of three years, to be computed from the fourth day of April, 1906, and from thenceforth next ensuing and fully to be completed and ended.

YIELDING and paying therefor yearly, and every year during the said term hereby granted unto the said lessor, his heirs, executors, administrators, or assigns, the sum of three hundred dollars in lawful money of Canada, to be paid in even quarterly instalments on the following days and times, that is to say: on the fourth days of July, October, January and April in each and every year during the continuance of the said term, without any de-

ductions, defalcation, or abatement whatsoever, the first of such payments to become due and be made on the fourth day of July next, and the said lessee, his heirs, executors, administrators and assigns, doth covenant, promise and agree to, and with the said lessor, his heirs, executors, administrators or assigns, in manner following, that is to say:

That he, the said lessee, his executors, administrators and assigns shall and will well and truly pay or cause to be paid to the said lessor, his heirs, executors, administrators or assigns, the said yearly rent hereby reserved at the time and in the manner hereinbefore appointed for payment;

And to pay taxes, except for local improvement;

And to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted;

And to keep up fences;

And that the said lessor may enter and view state of repair, and that the said lessee will repair, according to notice in writing, reasonable wear and tear and damage by fire, lightning and tempest excepted.

And will not assign or sublet without leave;

And that he will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted;

Provided that the said lessee may remove his fixtures.

Provided that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt or made fit for the purposes of the lessee.

Proviso for re-entry by the lessor on non-payment of rent, or non-performance of covenants.

The said lessor covenants with the said lessee for quiet enjoyment.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered, in the presence of Adam Young. } John Batten. Leslie McMann.

355 Farm Lease.

In a farm lease other clauses are usually inserted, similar to the following, defining particularly how the land is to be tilled, crops to be raised, disposition of straw, which parties using this form may insert:

And that the said lessee will, during the said term, cultivate, till, manure and employ such part of said demised premises as is now, or shall hereafter be brought under cultivation, in a good husband-like and proper manner, so as not to impoverish or injure the soil, and plough said land in each year during said term (seven) inches deep, and at the end of said term will leave the land so manured as aforesaid. And will crop the same during the said term by a regular rotation of crops in a proper, farmer-like manner, so as not to impoverish or injure the soil of the said land, and will use his best and earnest endeavors to rid said land of all docks, wild mustard, red roots, Canada thistles and other noxious weeds. And will preserve all orchard and fruit trees (if any) on the said premises from waste, damage or de- or be made thereupon. And will allow any incoming tenant to plough the the said premises, all the straw and manure which shall grow, arise, renew

or be made thereupon. AND will allow any incoming tenant to plough the said land after harvest in the last year of the said term, and to have stabling for two horses and bedroom for one man. AND will leave at least ten acres seeded down with timothy and clover seed.

AND shall not nor will during the said term cut any standing timber upon the said lands, except for rails or for buildings upon the said demised premises, or for firewood upon the premises, and shall not allow any timber to be removed from off the said premises. AND ALSO, shall and will, at the cost and charges of the said lessee, well and sufficiently repair, and keep repaired, the buildings, fences and gates erected now, or that may be erected, upon the said premises.

356 The Landlord's Covenant.—The only covenant the landlord usually makes is to give the tenant "quiet enjoyment." If evicted by another person, who has a prior or better claim to the property, the tenant may recover from the landlord any damages that he may sustain. If the landlord is to make any repairs it must be mentioned in the lease.

In Quebec the landlords implied covenant means something, see Section 360.

357 Misrepresentation of Landlord.—If a house were leased upon the distinct assurance of the landlord that it was in good sanitary condition, and it subsequently turned out that the landlord's statement was untrue, the tenant could move out and refuse to pay rent. The landlord would also be liable in an action for damages.

But if nothing were said about the sanitary or other conditions of the house before the tenant enters, he could not then avoid paying rent even though the house were unsafe to occupy, neither could he recover damages from the landlord. There must be a special guarantee from the landlord that the sanitary conditions, etc., are good if he is to be responsible. In Quebec the case is different. See Section 360.

358 Tenant's Privileges.—The execution of the lease vests the tenant with all the rights incident to possession. He has the exclusive use of the property, and exercises all the rights of the owner for the time being, and may even eject the landlord should he trespass.

He has a right to a legal notice to quit from the landlord if his lease is for an uncertain time.

Also to the crops that are on the ground if his tenancy is terminated unexpectedly and not through his fault.

Also to sublet the premises or a portion of them to others unless his contract prohibits it.

The tenant, in case of fire, is free from rent, and no proceedings can be commenced for the recovery of any such rent until the premises are rebuilt or made fit for the purposes of the lessee.

In Quebec the law is the same.

359 Tenant Damaging Property.—There is an implied covenant in all leases, verbal or written, that the tenant will take reasonable care of the premises and make all breakages good, and deliver the property up at expiration of lease in as good condition, save "ordinary wear and tear," as when he took it. Therefore, if the tenant damages the property the land-

lord may sue and obtain judgment. He has no lien, however, on the tenant's goods for the damages, and if he were to retain any article for such purpose the tenant could recover damages.

Also, if the tenant circulated a false report that the premises were unsanitary, and the landlord thereby suffered loss through failure to sell or lease the property, the tenant would be liable in an action for damages, providing the report was positively untrue and the landlord could prove actual loss thereby.

In Quebec the tenant is deemed to be liable for injuries and loss to the premises during the lease unless he can prove that he is without fault; also for fire unless he can prove to the contrary.

360 Repairs.—Except in Quebec the relationship between landlord and tenant does not bind either one to make repairs. It is entirely a matter of *agreement*. If the landlord has not agreed to make repairs he cannot be compelled to do so during the term of the lease. The tenant cannot make the repairs, no matter how much they are needed, and deduct the cost from the rent; and if he moves out in consequence of the bad condition of the premises he must still pay rent until his lease expires, even though the premises are in an unsanitary condition. It must be remembered that everything depends upon the agreement. If there is nothing in the lease (or bargain) binding either of the parties to make repairs, then neither party can compel the other to make them.

The following sub-sections cover the points where misunderstanding is most likely to occur between landlord and tenant:

1. Repairs necessitated by natural decay the landlord is "supposed" to make, also to keep in repair the roof, outside doors and locks; but all breakages are to be made good by the tenant. If, however, there is no agreement, either verbal or written, for the landlord to keep the premises in a fit and proper condition for habitation, or in a healthy condition, the tenant cannot compel such repairs to be made even though the house becomes uninhabitable. If the tenant moves out before the expiration of the lease he will still be required to pay rent, unless the landlord "accepts possession" by taking the key, or commencing repairs, or rents the place to another.

2. If in the lease, either verbal or written, the landlord agrees to make repairs or certain repairs, and subsequently refuses or neglects to do so, the tenant may bring an action for breach of contract, or he may notify the landlord of the repairs to be made, and that in his default in making them within a certain time (give date), he will do so, or cause them to be done. He can then make the repairs, should the landlord fail to do so, within the time named in the notice, and either sue the landlord for the amount or deduct it from the rent. Mehr. *v.* McNab, 24, Ont. R. 653.

But the tenant cannot make the repairs and then deduct the amount from the rent unless he has previously given this notice and demand.

A mere verbal *promise* to make repairs is not binding on the landlord unless some consideration can be shown to support the promise. For instance, to pay a higher rent than it would be without the repairs, or to pay in advance, or to take a new lease for a longer term, etc., neither would a mere promise on the part of the tenant bind him.

3. The breach of a covenant to repair gives the injured party the right

of action for the damages sustained. The courts, however, have almost nullified this liability on the part of the landlord for actual loss or injury the tenant, or his family, may sustain through a breach of this covenant to make special repairs. Generally the landlord is not held to be liable for any further damages than the cost of making the repairs. The tenant knows the defects and has the authority after due notice to make the repairs himself and deduct the amount from the rent. This seems to be the tenant's only remedy.

4. If the agreement to repair is conditional on prompt payment of rent, then falling in arrears of rent would relieve the landlord from making the repairs. But if it were not so conditional, then the fact of the tenant falling in arrears of rent would not relieve the landlord from his covenant to repair, but it might give him the right to retake possession.

5. If the payment of rent is *conditional* on the landlord making certain repairs then the tenant is relieved from payment of rent until the repairs are completed as per agreement.

6. Unless the lease requires the tenant to repair he will not be liable for injuries done to the property, which were not caused by his own acts or negligence, or those of his agents.

7. Written leases usually contain a proviso that the tenant shall repair, "reasonable wear and tear, accidents by fire, lightning and tempest excepted." Such exceptions include the renewing and repairing of plumbing, furnaces and pipes, leaky roof, and broken door locks, which the tenant cannot be forced to make.

The mechanic who does the repairing must, of course, in all cases look for his pay to the party who engaged him.

The above proviso saves the tenant from the obligation to rebuild in case the building was destroyed or partially destroyed by fire not caused by the tenant's negligence.

In Quebec the relation between landlord and tenant differs materially. There is an implied warranty on the part of the landlord that there are no faults or defects on the premises that will prevent or diminish their use by the tenant. C.C. 1614.

If there should be a defect unknown to the landlord, he cannot be made to pay damages further than an equitable reduction of the rent, or a cancellation of the lease.

The landlord is required to make all necessary repairs during the term of the lease, unless the lease provides otherwise.

Landlords are under obligation to inspect their own property to ascertain the necessity for repairs they are required to make, and are not exempt from liability for accidents for want of notice on the part of the tenant that such repairs are necessary. C.C. 1613. Trudeau *v.* Meldrum, 8 R. de J., 410.

The landlord is liable in damages for accidents and injuries to wife and children of tenant if caused by defects in the building. The tenant cannot, however, remain quiet about defects until rent is due and then complain of damages caused by landlord's neglect as ground for non-payment of rent.

If the landlord neglects to make repairs stipulated in the lease, or

which he is compellable by law to make, the tenant may, by summary proceedings:

1. Either compel him to make them; or,

2. To obtain permission to make the same at the expense of the landlord; or,

3. In default of making such repairs to rescind the lease; or,

4. To recover damages for the violation of the obligations imposed by or arising from the lease.

The tenant is required to make good all breakages caused by him or his agents and to leave the premises in as good a condition as he found them, ordinary wear and tear excepted.

361 Frozen Water Pipes.—If the lease provides that the tenant shall make all repairs, then in that case the tenant would be liable for the repairs to frozen water pipes. But if there is no written agreement or lease then the question of liability for such repairs will depend entirely upon which party was "responsible for the damages" occurring. If the freezing and bursting of the pipes was caused by the improper construction of the house, or by the negligence on the part of the landlord, or his agent, and not due to any act or neglect on the part of the tenant, then the landlord will be liable for the cost of repairs. But if the freezing of the pipes was caused by negligence of the tenant, then he, and not the landlord, will be liable for the repairs. The plumber, however, must look to the party who hired him for the payment of his bill.

362 Tenant and Taxes.—In all ordinary written leases the landlord must pay the taxes, unless an express provision is made to the contrary.

If the tenant is not assessed his goods cannot be seized for taxes and he should not pay them, for if a tenant "voluntarily" pays taxes which he is not obliged to pay, he cannot deduct the amount from the rent. Herring *v.* Wilson, 4 O.R., 607; MacAnany *v.* Tickell, 23 U. C. R. 499.

But if the tenant is assessed and his name on the collector's roll, his goods are liable and may be seized (although the agreement may be that the landlord is to pay the taxes), in which case he should pay the taxes beore seizure and then demand the amount from the landlord, or he may legally deduct it from the rent.

If a tenant agrees to pay taxes and does not do so, the landlord may sue for the amount, and if he wishes to do so he is entitled at the same time to obtain an order from the Court to evict the tenant for non-performance of agreement.

If the landlord agrees to pay water rates and does not do so, and the tenant is compelled to pay them, he can deduct the amount from the rent.

A covenant in a lease to pay taxes does not include local improvement taxes unless that is specially stated in the lease. This does not apply to ground rent, where the tenant owns the building, as:

In Ontario a lease for seven years or over, when the land only belongs to the lessor, and made under the Act respecting Short Forms of Leases, containing the covenant to pay taxes and omitting the words "except for local improvements," shall be deemed a covenant by the lessee to pay local improvement taxes. (Chap. 12, Sec. 27 of 1901.)

It would be the same in all the Provinces where only ground rent is paid and the building the property of the lessee.

363 Tenant's Fixtures.—There are "tenant's fixtures," "landlord's fixtures," "trade fixtures," and "immovable fixtures," but a reasonable regard to the circumstances in each particular case, coupled with a sense of natural justice, will always determine the individual rights involved.

The regulations are the same in this respect in all the Provinces. The law is briefly stated in the Ontario Statute, which reads:

"The lessee may, on or prior to the expiration of the term, remove and carry away all fixtures, fittings, machinery or other articles upon the premises, which are in the nature of trade or tenant's fixtures, or which were brought upon the premises by the lessee. But he shall make good any damages to the premises caused by such removal." All the Provinces have like provisions.

1. Tenant's fixtures must be something of a personal character. Anything that is affixed to the freehold so that it cannot be separated without doing serious damage to the freehold becomes a part of it.

2. Anything that is sunk into the ground, as a well, trees, buildings of stone or brick, are the same as the soil itself, and therefore a part of the freehold. But buildings placed on stone boulders, or posts, or plate, are "tenant's fixtures," and may be removed without injury to the soil, hence remain the property of the tenant.

3. The machinery of a manufactory is a trade fixture, and can be removed. Temporary partitions, counters, shelving, etc., placed in the building by the tenant, would be trade fixtures, and could be removed; but doors and windows, likewise permanent partitions, could not be removed, as they become a part of the building proper.

To determine in all cases what are "fixtures," is one of the most difficult questions in connection with the law of landlord and tenant. Much depends on the agreement, something on the nature and length of the tenancy, and the kind of business carried on by the tenant on the premises, so that what under certain circumstances could be removed as being tenant's fixtures, would, under different circumstances, be a criminal act to remove them. For instance, if a tenant dug a well and put a pump in it and used the same for a few years, he could not then, when moving out, take away the pump or fill up the well without becoming liable in an action for damages as "committing waste," unless he had that agreement with the landlord. But if the tenant were engaged in a business that required the well and pump to conduct it, they would then become a part of the machinery and be "trade fixtures." When leaving the premises he could remove the pump, and, to save himself from liability for accidents, could fill up the well. The preceding illustrations will be sufficient to enable any person to be reasonably certain what would in each case be a "tenant's fixture" and capable of removal.

Where there is doubt as to whether a certain fixture should be regarded as a tenant's fixture or be held as part of the freehold, the presumption is always in favor of the freehold.

It is an axiom in law "that the expression of one thing is an omission of all the rest," and for this reason, if anything is mentioned in the lease as a

tenant's fixture, other things, though of a kindred nature, would be supposed to be omitted intentionally, and therefore remain a part of the freehold.

A tenant claiming anything as a fixture must remove the article promptly or make it known that he claims it, otherwise he waives his right to it.

The law in Quebec is the same for this Section.

364 Tenant Moving Out.—A tenant can move out of premises any time he desires to do so before the tenancy expires, and if there is no rent due the landlord cannot stop the goods. But if there is any rent due the landlord can prevent the removal of the goods (except the exemptions) until the arrears of rent are paid.

But a tenant moving out before the expiration of his lease is still liable for the stipulated rent until the lease expires, unless:

1. The landlord accepts the premises, thus releasing him; or,

2. Unless another tenant, acceptable to the landlord, enters, and the landlord releases the first tenant.

If there is nothing in the lease forbidding the tenant to sublet the premises, he may rent them to another person, but he will remain liable to the landlord for the rent, so must collect the stipulated rent from the new tenant and not trust him to pay the landlord direct.

In such cases where there is nothing in the lease forbidding the tenant to sub-let, the landlord will be compelled to either accept the new tenant, or to receive the premises and free the first tenant.

365 New Tenancy by Implication.—Where a tenancy for one or more years expires by lapse of time or by notice, and the tenant remains in possession, without any new agreement being made, paying the same rent, it becomes "a yearly tenancy" by implication of law, and the presumption is that the terms of the former lease will hold good. Any time afterwards that either party wishes to terminate it the regular six months' notice would be required. The same would be true for a quarterly, monthly or weekly tenancy.

A "tenancy by implication" is ordinarily implied by the payment and acceptance of rent, and such implication can only be prevented by one or the other of the parties interested giving satisfactory proof that it was paid or received by mistake, or upon some other condition or agreement.

As tenancy by implication is a question of fact, and not of law, the facts must be evident. Hyatt *v.* Griffiths, 172, B. 505.

In Quebec if a tenant remains in possession more than eight days after the expiration of his lease without any opposition or notice on the part of the lessor, a tacit renewal of the lease takes place for another year, or other term for which such lease was made if less than a year.

366 Overholding Tenant—The mere fact of a tenant remaining in possession after his lease expires, does not of itself constitute a new tenancy or bind either party to consent to a new term. There must be rent paid, or something else done by which a new tenancy is implied, or the tenant is only liable to pay for the time actually occupied, which is not called rent, but for "use and occupation." In such cases the tenant may move out at

any time without notice, and will be liable to pay only for "use and occupation" up to the time of vacating, which amount will be fixed by the court, and possibly for damages for retaining possession after his lease expired. And during this time of overholding the landlord cannot distrain for the usual rent, as there is no tenancy, but he can sue for "use and occupation" and recover under execution what would be a "reasonable rent," and if he suffered actual loss by such overholding he may recover damages.

In case a tenant wrongfully remains in possession after his right of occupation has expired, either by the terms of the lease or after a legal notice to quit, the landlord has at least the option of three courses:

1. He may either apply to the Judge of the County Court for an order to evict him under the "Overholding Tenants Act"; it gives justice but costs too much; or,

2. He may bring an action of ejectment by an ordinary writ of summons; or,

3. If a yearly tenant, he may after demand and notice in writing to deliver up possession of the premises, double the rate of rent so long as the tenant unlawfully retains possession of them, and collect the same by suit (R. S. O., Vol. III., Chap. 342, Sec. 20.)

This last section (No. 3), will hold good in all the Provinces where the English common law prevails, and doubtless in Newfoundland also.

367 Notice Claiming Double Rent.

To W. WINTERS, St. Catharines, Ont.

I hereby give you notice that if you do not deliver up possession of the house and premises situate No. 10 Queen Street, in the city of St. Catharines, on the first day of June next, according to my notice to quit, dated the 25th day of April, I shall claim from you double the yearly value of the premises for so long as you keep possession of them after the expiration of the said notice, according to the statute in that case provided.

Dated the 20th day of May, 1906.

Witness: JAMES SMITH,
J. SAUNDERS. (*Landlord*).

368 Quebec's Three Days' Notice to Tenant.—Quebec has a summary way of dealing with a tenant who does not pay his rent, that is effective and fair. When rent is due and unpaid, the landlord may give the tenant not less than three days' notice to vacate the premises, and if he moves out within that time the orevdue rent is remitted him. If, after receiving this notice, he remains in possession without paying the rent, he loses his exemptions. Chap. 55 of 1897.

Or the landlord may take the ordinary course of law, or by summary proceedings provided by the Code of Civil Procedure, and eject the tenant.

369 Increasing the Rent.—The landlord cannot raise the rent merely by giving the tenant a written notice that at such a time the rent will be increased; such notice amounts to nothing. The landlord cannot raise the rent or change the agreement in any other way without the consent of the

tenant, any more than the tenant can lower the rent without the landlord's consent.

The only way a landlord can legally increase the rent while a tenant is in possession, and who will not agree to an advance, is to terminate the tenancy, hence:

1. The notice must be to *vacate*; that is, order the tenant out, thus ending the tenancy. Then, after this is done, he may give the notice for an advance in rent, or the two notices may be given at the same time.

The two notices could also be joined by adding at the end of the "notice to vacate" a clause like the following: "And I hereby further give you notice that should you retain possession of the premises after the day before mentioned the annual (or monthly) rental of the premises now held by you from me will be $——, payable (state how)."

If the tenant then remains in possession after his lease expires he thereby tacitly agrees to pay the higher rent and will be bound to do so.

2. Also where a lease has expired and the tenant remains in possession without a new agreement, thus becoming a "tenant at will," the landlord may, before receiving any rent, give notice of raising the rent, and the tenant in that case must either accept the terms and pay higher rent or move out. In this case the tenant is not entitled to a notice to vacate, because his legal right to occupy the premises has already expired, and he has not as yet acquired a new tenancy by implication. In Quebec the notice must be given within the eight days' limit.

A notice of raising the rent for a future tenancy given previous to, or upon the day of expiry of a lease, need not, of course, be accompanied by a notice to vacate. If the tenant then remains in possession he is bound to pay the price asked.

370 Notice to Quit, may be either verbal or written.

1. Where property is leased for a definite time, the lease expires at that date, and neither party need give the other notice to terminate it or to vacate. The tenant may then go out, or the landlord may lease the property to another party.

If a new agreement, either verbal or written, is made for a further period, then the same thing will hold good at the end of such new lease; no notice will be needed then.

2. But in cases where this first or a subsequent period has been passed without any new agreement being made, and the tenant, instead of moving out, simply remains in possession, paying the same rent which is accepted by the landlord, then a new tenancy has been created by "implication of law." Then after such weekly or monthly or quarterly or yearly tenancy has been created a notice to vacate becomes essential before either one can terminate it without the consent of the other.

3. The notice to vacate should be clear and distinct with no conditions or provisos in it. If any conditions are desired to be stated they may be given in a separate letter, which may accompany the notice, but the notice itself must not contain any conditions.

A verbal notice would be legal, but it is better to be in writing, either as an ordinary letter or a formal printed or written notice, handed to the other party or sent by mail.

4. If there is no agreement as to the time when notice to quit must be given, then the statutory notice is required, but if there is an agreement, that, of course, will hold. If the agreement says, "thirty days," or "three months," that will hold good, and if the agreement is that the notice may be given "at any time" without regard to the date when the month, or quarter, or year would end, then the party giving such notice, whatever it may be, is released from giving the "statutory notice."

The statutory notices, except for Nova Scotia and New Brunswick, are as follows:

1. A yearly tenancy, six clear calendar months, and not a day less.
2. A quarterly tenancy, three clear calendar months, and not a day less.
3. A monthly tenancy, one clear calendar month, and not a day less.
4. A weekly tenancy, one clear week's notice, and not a day less.
5. A tenancy at will, no time.

A tenancy "from year to year, so long as both shall please," may be terminated at the end of first year by giving six months' notice. But where it reads "one year certain and so on from year to year," it will be for two years at least and cannot be terminated at end of first year, except by mutual consent.

In Nova Scotia the yearly tenancy requires only three months' notice; a quarter or month, one month's notice; and a week, one week's notice.

In New Brunswick a yearly or six months' tenancy requires three months' notice, a quarterly or monthly tenancy one month, a weekly tenancy one week.

In Quebec a written lease terminates without notice at expiration of term agreed upon. But when the lease is verbal, or presumed or the term uncertain, three months' notice must be given if the rent is payable at terms of three or more months.

A notice of three months is necessary to terminate a yearly lease.

When a written lease has been continued by tacit renewal the notice to terminate it must be in writing, as such lease is not deemed a verbal lease.

It must be borne in mind that in all the Provinces this notice to quit (except by special agreement) cannot be given at random, but must be given so that the "month," or "quarter," or "six months," as the case may be, will terminate with the termination of the lease. For instance, in case of a monthly tenancy which expires May 1st, the notice to quit should be given not later than March 31st, in order to leave a "clear month." April 1st would be too late. Remember, too, that a "good legal notice" cannot be given two or three months ahead of time, but must be given before the end of the month to terminate with the end of the succeeding month, as in previous sentence. The same caution must be observed in respect to a quarterly or yearly tenancy.

The notice to quit must be received by the other party within the time mentioned, not merely dated within the time. Handed to the person or an inmate of the house, or put under the door would be service.

A valid notice to quit terminates the tenancy, whether given by the landlord or the tenant, and if subsequently withdrawn by consent of the other party, such withdrawal does not revive the tenancy. The parties may agree to a new tenancy on the old terms or by acts create a new tenancy.

An invalid notice to quit does not terminate a tenancy even if verbally accepted by the other party. Hence, if a yearly tenant gave such invalid notice and the landlord did not accept it in writing and the tenant then remained in possession, the tenant would not be liable under the Overholding Tenants' Act, nor to double rent.

371 Form of Notice by Landlord.

Please take notice that you are hereby required to surrender and deliver up possession of the house and lot known as No. 4 James Street, in the village of Merritton, which you now hold of me; and to remove therefore on the first day of June next, pursuant to the provisions of the Statute relating to the rights and duties of landlord and tenant.

Dated this 29th day of April, 1906. Yours truly,

To WALTER WINTERS, JAMES SMITH,
(*Tenant*). (*Landlord*).

372 Notice to Quit by Tenant.

I hereby give you notice that, on the first day of June next, I shall quit and deliver up possession of the premises I now occupy as tenant, known as house and lot No. 4 James Street, in the village of Merritton.

Dated this 29th day of April, 1906. Yours truly,

To JAMES SMITH, WALTER WINTERS,
(*Landlord*). (*Tenant*).

373 Notice to Quit not Acted Upon.—Upon the expiration of a notice to quit duly given by either party the tenancy ceases, and unless a fresh tenancy be afterwards created the landlord cannot distrain for subsequent rent, notwithstanding the tenant continues in possession after the expiration of the notice. See Overholding Tenant, Section 366.

In Ontario and all the Provinces where the English common law prevails, if a tenant, after giving notice of intention to quit the premises, holds over after the time mentioned in such notice, he is liable to double rent which should otherwise have been paid while he continues in possession. It may be recovered by suit, but not by landlord's warrant. (In Ontario it is contained in R. S. O. Vol. III., Chap. 342, Sec. 21.)

374 Distraining for Rent.—The Common Law gives a landlord a right under certain circumstances, to distrain for rent if the tenant does not pay it when due. In such cases any person may act as the bailiff for the landlord, whether a regular bailiff or not, and in such capacity possesses the same authority as the landlord possesses, but no more.

Distress may be levied under following conditions:

1. Rent may be distrained for the day after it is due and earned by occupation, whether payable by the month, quarter or year, or as the case may be: but not until a demand has first been made for payment.

2. Seizure must not, in any of the Provinces, be made before sunrise

nor after sunset, nor on Sunday, nor a legal holiday, except by order from a court.

In Quebec seizure cannot be made on a Sunday, or a public holiday, or before seven o'clock in the morning, or after seven o'clock in the evening, without leave of the judge or prothonotary, except in case of fraudulent removal or if the goods are upon the highway.

3. Rent payable in advance may be *sued* for when due, but cannot be *distrained* for until the time has expired for which the sum is payable, unless a special agreement in the lease gives the landlord the right to distrain for rent payable in advance.

4. A bailiff with a landlord's warrant is not a trespasser, hence must not be assaulted, neither is he acting as a court official, and must not commit a breach of the peace to gain admittance.

He must not break open outside doors, nor open windows to enter, and if he does he commits an illegal act and a distress if levied would be void. Nash *v.* Lucas, L. R., 2 Q. B. 590 (1867.)

If the door is not locked the bailiff may open it, and if the key is in the lock he may unlock it, but he must not take down a key he may discover hanging or placed nearby and unlock the door, as that would be a criminal act, and the seizure would be void. Miller *v.* Curry, 25 N.S., R. 502 (1892.)

He may enter through an open window or transom or sky-light, but must not force any of them open, for to open an unfastened window if closed would be an illegal act, as stated above.

4. In most of the Provinces distress may be made any time within six months after the expiration of the lease if the tenant is still in possession and the landlord still retains his title or interest in the premises. If he has sold the property he cannot distrain; neither can the new owner; but it may be recovered by suit.

Manitoba allows distress for only three months if renting by month or quarter; or for one year, if payable less frequently than quarterly.

5. Distress must be made on the premises only, except under certain circumstances. If a tenant is removing his goods subject to seizure on the day that rent is due and the landlord forbids their removal, he may then seize them on the highway or follow them for 30 days and seize unless in the meantime the goods have been *bona fide* sold for value.

Also in case of live stock, if the bailiff saw them being driven off the premises to escape distress he could seize them off the premises.

6. Goods purchased on a lien agreement are liable to seizure for rent if there is not enough other goods to satisfy the claim, but the landlord must pay the balance of the purchase price.

In British Columbia such goods are liable for three months' arrears of rent. R. S., B.C., Chap. 110, Sec. 2.

7. Taking a promissory note by a landlord from a tenant for the rent will postpone the right of distress until the maturity of the note, and probably would extinguish the right altogether.

8. If the landlord distrains, or any other creditor seizes under an execution the tenant or debtor has the legal right to select and point out the goods and chattels for which he claims exemption. For instance, there are six chairs named among the exemptions; hence the debtor, instead of taking

six common chairs, may select six of the best in the house, and the same all through the list. He must also give up possession immediately or offer to do so in order to save his exemptions.

9. Every person who serves a Distress shall immediately give the person whose goods are seized a notice of the distress, giving the amount of rent distrained for, and an inventory of the articles taken, together with a copy of his charges and cost of seizure. If the tenant, after receiving such notice, neglects for five days from date of seizure to pay the rent or replevy the goods the landlord is at liberty to sell the goods for the best price he can get for them, and after payment of rent and cost of sale if there is any surplus it must be paid to the tenant.

10. When a landlord has issued a distress he loses his right by abandoning it or withdrawing it, and cannot make a second seizure of the same goods for the same debt, unless there has been some mistake in the first seizure; or unless the first one was withdrawn by request of the tenant.

If goods are distrained which are exempt from distress, the seizure will be illegal and the landlord will be liable to an action, and if the bailiff made the mistake he will have to bear the costs.

In case a distress is illegal the purchaser acquires no title against the tenant, or the owner of the goods if the goods belonged to a third party. Harding *v.* Hall, 14 L. T., 410 (1866.)

For an irregular or an excessive distress a tenant may recover full satisfaction for the damages actually sustained, but nothing by way of penalty.

If a landlord enters a house after sunset and interfers to prevent the removal of the goods, the tenant is entitled to recover the full value of the goods distrained. England *v.* Cowley, L. R., 8 Ex. 126 (1873.)

If a landlord distrains for rent before it is in arrears it is illegal, and even if the tenant were to sign a document without consideration and not under seal, giving the landlord the right to seize before the rent was due, it could still be voided if any one were to challenge it. Brayfield *v.* Cardiff, 9 Man., L. R. 302 (1893.)

Distress for rent under a lease that has been surrendered is illegal. If a landlord on account of a breach of covenant on the part of the tenant to pay rent enters an action for re-entry, he cannot distrain after entering such action. But if he distrains first he may subsequently enter action for forfeiture.

An assignee cannot distrain for rent due before the assignment.

A landlord cannot distrain for rent after he has assigned his interest.

A mortgagee can distrain for arrears of interest on the goods of the mortgagor only.

A mortgagee cannot distrain for rent due the mortgagor. Dauphenais *v.* Clark, 3 Man. L. R. 225 (1885.)

In cases where the husband rents a house, but the household goods belong to the wife, the goods are liable for the rent while they are on the premises. But if they decide to move out before the lease expires they can do so if there is no rent due. The husband would be liable for the rent until the termination of the lease, but the goods of the wife would not be liable to seizure for the rent, either under a landlord's warrant or an execution.

In Quebec goods of the lessee may be seized on the premises or within

eight days' after removal, if they have not been *bona fide* sold to a third party before seizure.

Goods cannot be seized before rent is due even though the tenant is intending to move out.

Goods of third parties on the premises by consent of such parties are liable for seizure if the landlord was not notified that they were the property of such third parties.

If the lease prohibits sub-letting the goods of sub-tenant would be liable to seizure.

If the lease permits sub-letting then the goods of sub-tenants are not liable further than their indebtedness to the tenant. C. C. 1621.

Goods of third parties transiently or accidentally left on the premises, or there for repair, are not liable to seizure.

The landlord has a privileged right for his rent upon the movables of the lessee and if they are removed the new landlord has no claim to them to the prejudice of the former landlord if followed within the eight days. C. C. 1619.

375 Goods Fraudulently Removed.—Any time before rent is due a tenant may move out of the premises leased without any color of fraud, even if they are removed with the intent to prevent distress it is not a fraudulent act, if the rent is not due. Whitelock *v.* Cook, 31 Ont., 463 (1900.)

To constitute removal with intent to defraud the rent must be actually due at the time of the removal of the goods, otherwise the right to follow and distrain them does not arise. Rand v. Vaughan, 1 Bing., N.C. 767 (1835.)

There must be a fraudulent intent on the part of the tenant to deprive the landlord of his right of distress, as, for instance, removing the goods on the day that the rent falls due and after the landlord had forbidden their removal until the rent was paid, or moving out during the night of the day the rent falls due to escape distress would give the landlord a right to distrain off the premises wherever they may be found, if in the meantime they have not been sold to a *bona fide* purchaser for value.

Where goods have been fraudulently removed after rent falls due the person so removing or helping to remove them is liable in action by the landlord for double the value.

The goods in such case must be goods liable to seizure if they were not removed, otherwise such removal gives no right to follow, or to recover damages. Gray v. Stait, 11 Q. B., D. 668 (1883.)

A mortgagee may remove goods off the premises by the consent of the tenant.

A creditor may also, by consent of the tenant, remove goods in satisfaction of a debt if done in good faith.

A purchaser for value before actual distress may remove the chattels he has purchased.

The goods of third parties, even relatives, living with the tenant, may remove their goods any time before distress is levied.

376 Form of Distress Warrant.

To Mr. A. B., my Bailiff in this behalf:

I do hereby authorize and require you to destrain the goods and chattels of C. D. (tenant), liable to be destrained for rent, in and upon the....., now or lately in the tenure and occupation of.....situate on..... in the county of....., for the sum of.....dollars.....cents, being the rent for the term of....., due to me for the same on the.....day of....., in the year of our Lord one thousand.....hundred and.....; and for the said purpose distrain within the time, in the manner, and with the forms prescribed by law, all the said goods and chattels of the said ....., wheresoever they shall be found, which have been carried off the said premises, but are nevertheless liable by law to be seized for the rent aforesaid, and to proceed thereon for the recovery of the said rent as the law directs.

Dated the..... day of....., 19... E. F. (*Landlord*).

377 Form of Inventory and Notice.

An Inventory of the several goods and chattels distrained by me, E. F. (or if as Bailiff, say A. B., as Bailiff to Mr. E. F.), this.....day of ....., in the year of our Lord, 19.., in the house, outhouse and lands, (as the case may be) of C. D., situate at....., in the county of....., (and if as bailiff, say by the authority and on behalf of E. F., your Landlord) for the sum of.....dollars, being.....rent due to me (or to the said E. F.) on the.....day of....., 19.., and as yet in arrears and unpaid.

1. In the dwelling house:
   Kitchen (name chief articles, but not exempted articles).
   Dining room (name the articles, but not exempted articles).
   Parlor (name the articles, but not exempted articles).
2. On the premises:
   In barn (name articles).

Describe all the articles seized as nearly as can be, according to the place where they are found. And then at the bottom of the Inventory subscribe the following notice to the tenant, and leave the Inventory and notice with him: Mr. C. D.

Take notice that I have this day distrained (or that I, as bailiff to E. F., your Landlord, have this day distrained) on the premises above-mentioned the several goods and chattels specified in the above Inventory for the sum of.....dollars, being.....rents due to me (or to the said E. F.) on the.....day of....., 19.., for the said premises; and that unless you pay the said rent with charges of distraining for the same, or replevy the said goods and chattels within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

Given under my hand this.....day of....., 19...

Witness: } E. F. (*Landlord*).
} or A. B. (*Bailiff*).

(In distraining on farm stock or growing crops, the Inventory and notice would be varied by giving number of lot, concession, township, etc.,

and the disposition made of the crops, etc.) Notice of sale must be posted up in three public places.

378 Tenant's Request for Delay.

Mr. A. B.,

I hereby desire you will keep possession of my goods which you have this day distrained for rent due, or alleged to be due, from me to you, in the place where they now are, being in the house number.....street (name of town), for the space of.....days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time, to enable me to discharge the said rent, and I will pay the man for keeping the said possession.

Witness my hand this.....day of.....19...

Witness }
E. F. } C.D.

379 Tenant's Set-off Against Rent.—A tenant may set-off against the rent due a debt due to him by the landlord. It may be given either before or after seizure, and may be in the following or similar words:

Take notice that I wish to set-off against rent due by me to you the debt which you owe to me on your promissory note for.....dated.....
(or for eight months' wages at $20 per month, $160, or as the case may be).

Date. Signature.

In case of such notice the landlord can only distrain for the balance due him after deducting any debt justly due by him to the tenant, and if he distrains for more he will be liable for illegal seizure.

380 Resisting Landlord's Bailiff.—Collecting money under a land-landlord's warrant does not belong to a bailiff's official duties, or the official duties of any other court official. A tenant may resist and prevent the entrance of a bailiff or other person who may come with a landlord's warrant.

A bailiff with an execution from a court must not be resisted, but a bailiff with a landlord's warrant has no more authority than the landlord has. It is simply brute force against brute force. A landlord's bailiff, however, is not a trespasser and violence dare not be used in resisting his entrance and seizure.

But after a bailiff lawfully gains admittance resistance should cease, for even if he then were ejected he would have the right to return and even break open the doors to enter again. Bannister *v.* Hyde, 2 E. & E., 627 (1860). After making an inventory of the goods and giving it to the tenant the goods are said to be "impounded," and are then in possession of the law.

381 Goods Seized Under Execution and in the custody of a sheriff or bailiff cannot be distrained; but such goods cannot be sold or removed by said officer without the landlord's preference claim of one year's rent being provided for, or so much of arrears of rent for a less period as is due up to the time of seizure.

The landlord must give such officer a written statement of the terms of the lease and the amount in arrears. If the goods were sold and paid into court before the landlord had notice of the seizure, such written statement would be given to the clerk of the court instead of to the bailiff.

382 Landlord's Priority for Rent.—Where there are other creditors, the landlord can only recover, prior to them, for one year's rent. After that he must take his share ratably with the rest. In case of an insolvent lessee, see "Priority of Claims," in Insolvent Debtors.

383 Expense of Distress for Rent.—The Ontario Statutes allow the following expenses if the amount distrained for does not exceed $80:

1. Levying distress under $80, $1.
2. One man keeping possession per day, 75 cents.
3. Appraisement, whether by one appraiser or more, two cents on the dollar for the value of the goods.
4. If any printed advertisement, not to exceed in all, $1.
5. Catalogue, sale and commission, and delivery of goods, five cents on the dollar on the net proceeds of the sale.

When the sum exceeds $80, $1 per day may be charged for the man left in possession of the goods, and the other expenses allowed are about double those mentioned here.

In case of dispute as to costs either party, by giving two days' notice in writing, may have the bill taxed by the Clerk of the Division Court where the distress takes place, upon payment of a fee of twenty-five cents. Similar procedure in all the Provinces.

The costs are very similar in all the Provinces, and we will, therefore, only give those for Manitoba and other Western provinces.

For Manitoba the costs allowed are as follows for both chattel mortgage and under landlord's warrant:

1. Levying distress, $1.
2. Man in possession per day, $1.50.
3. Appraisement, two cents on the dollar on value of goods up to $1,000 and one cent per dollar all over $1,000.
4. All reasonable and necessary disbursements for advertising.
5. Catalogue, sale, commission and delivery of goods, five per cent. on the net proceeds of the goods up to $1,000, and two and one-half per cent. thereafter.
6. Mileage in going to seize, fifteen cents per mile one way.
7. All necessary and reasonable disbursements for removing and storing goods, and keeping live stock, and any other disbursements which in the opinion of the judge before whom the question of costs might be brought for decision, would be regarded by him as reasonable and necessary.

No other or greater costs or charges shall be taken from tenant, or the proceeds of the sale, and no charge shall be made except for what is actually done. Any violation of this provision incurs a penalty of treble the amount of the overcharge.

The same charges are allowed for seizure under a chatel mortgage.

Goods of boarders and lodgers are exempt.

For British Columbia the costs allowed for seizure are as follows:

1. Levying distress under $100, $1.50; over $100 and under $300, $175; over $300, $2.

2. Man keeping possession per day, $2.

3. Appraisement, two cents on the dollar on value of goods.

4. Catalogue, sale and commission, and delivery of goods, on the net proceeds of sale, if under $100, ten cents on the dollar; if over $100 and under $300, eight cents; and if over $300, six cents on the dollar.

For Alberta, Saskatchewan and North-West Territories, costs allowed for both chattel mortgage and under landlord's warrant are as follows:

1. Levying distress, $1.00.

2. Man in possession, per day, $1.50.

3. Appraisement, 2c. on the dollar, up to $500, and one per cent. for each additional $500 or fraction thereof up to $2,000, and one-half per cent. on all sums thereafter.

4. All reasonable and necessary expenses for advertising.

5. Catalogues, commission, and delivery of goods, 3 per cent. on net proceeds of goods up to $2,000, and one and one-half per cent. thereafter.

For Yukon, both for chattel mortgage and under landlord's warrant:

1. Levying distress, $2.50.

2. Man in possession, per day, $4.00.

3. Appraisement, 2c. on the dollar up to $500, and one cent on the dollar for each additional $500 or fraction thereof up to $2,000, and one-half cent on the dollar on all over that amount.

4. All reasonable disbursements for advertising.

5. Catalogues, sale, commission, and delivery of goods, 3 per cent. up to $1,000, and one and one-half per cent. thereafter.

384 Penalty for Illegal Seizures:

1. If a landlord distrain before rent is in arrears the tenant may recover double the amount of goods distrained with full costs of suit.

2. If the landlord were to enter the house after sunset and prevent the removal of the goods this will be illegal, and the tenant may recover the full value of the goods distrained. The landlord must wait until the next day and then follow the goods if they have been removed. A distress on Sunday is also illegal.

3. The landlord is not liable for any illegal acts committed by the bailiff unless the acts were authorized or subsequently ratified by him. Therefore, if the bailiff is authorized to seize the tenant's goods and he seizes those of a stranger, or to seize on the premises and he seizes off the premises, or if he breaks into the premises, the bailiff only is liable. Also, if he were to seize and sell the exemptions illegally, the bailiff would be liable. But the action would be against the landlord.

385 Boarders and Lodgers.—Lodgers are temporary lessees, and are subject to the same laws and have similar privileges in respect to the rooms they occupy as a regular tenant in all the Provinces. Their goods are not liable to seizure for their landlord's rent. Boarders are not liable for damages they may do to the premises through accident, but they are liable if done through negligence, or maliciously, the same as other tenants are.

In case a boarder's or lodger's goods are distrained for rent due by his landlord, he must serve the superior landlord or bailiff, or other person levying the distress, with a written declaration that the tenant has no right of property or beneficial interest in the goods or chattels distrained, or threatened to be distrained, and that they are the property of, or in the lawful possession of, such boarder or lodger. If he should owe the tenant for board or otherwise, he may state the amount and pay it over to the superior landlord or the bailiff, or enough of it to discharge the landlord's claim, if the boarder should owe that much.

And such payment made by the boarder to the superior landlord is a valid payment on account due from him to the tenant.

If a boarder gets in arrears for board, the boarding-house keeper or hotel keeper has a lien on the baggage and goods of such boarder and may retain them until the bill is settled. If the debt remains unsettled for three months the goods may be sold by public auction after giving one week's notice in a public newspaper. A landlord could not thus hold goods for rent unless he has actually distrained them, but a boarding-house keeper or hotel keeper may.

Official persons occupying premises merely in virtue of their office, when they cease to hold the office their right to possession expires and they are not entitled to notice to quit.

386 Exemptions from Seizure:

1. All the Provinces reserve a reasonable amount of property exempt from seizure under any execution, a landlord's warrant in most cases, and distress by mortgagee for arrears of interest.

2. Where the debtor has more of any kind of property or articles than are exempt, he is entitled to make choice of the part he wishes to retain. The bailiff or officer making the seizure has no legal authority to interfere in the selection.

3. All the chattels so exempt from seizure as against a debtor, after his death, or in case he should abscond, leaving his family behind, the widow, or family, should there be no widow, are entitled to.

CAUTION.—Tenants in signing a lease for property should be careful that it does not contain an agreement to waive their right to the exemptions the Statutes reserve from seizure, for such Shylock printed forms of leases are frequently used.

In Manitoba such agreement would be null and void, but it would be **binding in all** the other Provinces. (For list of exemptions, see Section 590.

387 Monthly Tenancy.—On a monthly tenancy in Ontario, the exemptions only hold against two months' arrears of rent. If the monthly tenant owes for a longer period than two months, the landlord can distrain and sell to recover what is due over the two months, even if it takes all the goods. This "benighted" amendment, Section 32 of the Landlord and Tenants Act, is variously interpreted by the courts, and a landlord would not be safe in touching the exempted goods. The other Provinces have no such discrimination among tenancies.

388 Giving up Possession.—The tenant who claims the benefit of the exemptions in case of a landlord distraining for rent, must give up posses-

sion of the premises forthwith, or be ready and offer to do so. The offer must be made to the landlord or his agent, and the person making the seizure is considered his agent for this purpose.

The surrender of the possession in pursuance of the landlord's notice is a termination of the tenancy, and the tenant has the option of paying the rent and costs and moving out, or to take his exemptions and move out without paying the rent or costs, and leave the remainder of his goods to be advertised and sold under the landlord's warrant. (See Exemptions.)

389 Landlord Re-taking Possession for a violation of covenants. One of the usual "provisos" of a lease is that the landlord shall have the right to re-enter and re-possess the premises on non-payment of rent or non-performance of covenants. The non-payment of the rent or the breach of other covenants does not cancel the lease, but merely gives the landlord the right of re-entry. But this right is not enforceable until the landlord has given the tenant a notice specifying the particular breach complained of, and if the breach is capable of remedy requiring the tenant to remedy the breach. Then if the tenant does not, within a reasonable time, or within the time named in the notice (which must also be reasonable), perform the covenant, the right of re-entry may be enforced.

390 Seizing the Exempted Goods.—If the tenant neither pays the rent nor gives up possession after being legally notified to vacate, the landlord may, both in Ontario and Quebec, give him another written three day notice similar to the following, after which he can seize and sell the exempted goods to recover the amount of rent due and the costs. The notice must be something like the following:

> Take notice, that I claim $..... for rent due to me in respect of the premises which you hold as my tenant, namely: (here briefly describe them, giving the number and street, or lot, concession, etc.): and unless the said rent is paid I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.
>
> Take notice further, that if you neither pay the said rent nor give me up possession of the said premises within three days after the service of this notice, I am by law entitled to seize and sell, and I intend to seize and sell, all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.
>
> This notice is given under the Act of the Legislature of Ontario respecting the Law of Landlord and Tenant.
>
> Dated this ..... day of ..... A.D. 19...
>
> To C. D. (*Tenant*). A. B. (*Landlord*).

After giving the above notice, if the tenant still remain in possession, the landlord can seize and sell the last article on the premises belonging to the tenant to recover the amount due, and costs. If the tenant does not wish to lose his exemptions he must take them and move out within the three days. (For Quebec, see Section 368.)

CHAPTER XVI.

MARRIED WOMEN'S PROPERTY RIGHTS.

393 An Unmarried Woman, either as spinster or a widow, is as free to contract as a man in all the Provinces, Newfoundland and England.

394 Married Women Holding Property.—A married woman in Canada and Newfoundland may hold her own separate property in her own name. She may contract in respect to her separate estate, sue and be sued in her own name; and her own estate only be liable for such debts and contracts. She has the same remedies for the protection of her separate estate against her husband that she has against other parties.

In any proceeding concerning their property, the husband and wife are competent to give evidence against each other.

She now not only holds all her separate estate of both personal and real property free from the control, debts and obligations of her husband, but also entirely free from any estate therein by her husband during her lifetime. Even though she may not possess any separate estate at the time she enters into such contract she may still incur the liability, and bind whatever property she may thereafter acquire except such property as she is "restrained from anticipating." (See next Section for Quebec.)

395 Quebec's Special Laws.—In Quebec there is sufficient variation to make it advisable to give the main features separately. In this Province married women may be either in community of property with their husbands or separate as to property. If in community the husband has the administration of it, but at his death or a dissolution by order of the court she takes half the common property. Husband can only will his own half.

Community of property between husband and wife exists unless there has been a contract or covenant to the contrary; hence, if married without any marriage contract being executed before marriage, the contracting parties are in *community* of property, and in general terms the property of the wife is liable for the debts of the husband, and the property of the husband is liable for the debts of the wife.

When in community of property, the wife cannot hold movable property in her own name, except what may be willed or bequeathed to her by third parties and declared to be her private property.

Immovable property belonging to her before marriage or bequeathed to her by parents or ancestors does not become part of the community, but is hers absolutely. The rents and incomes from such real estate belong to the community.

The consorts may also contract before marriage that they will be separate as to property, or separation as to property may be obtained by an order of court. When thus separate she can administer her separate estate and transact her business in her own name, invest her income in stocks and other property as freely as though not married.

When separate as to property she has the control of, and may dispose of her movable property, but cannot sell or transfer her real estate or bank

stock without the authorization of her husband, or upon his refusal, an order from the court.

Also, when separate as to property, she is required to contribute in proportion to means toward expenses of household and education of the children by her.

If she becames a trader she must register her intention of carrying on such business. And if she is not separate as to property her goods would be liable for her husband's debts; also, if she has no separate estate either by marriage contract or a judgment of the court the husband would be liable for her debts. She cannot bind herself as surety for her husband.

396 Earnings of Married Women.—In all the Provinces and Newfoundland every married woman is now entitled to hold as separate property, and to dispose of as separate property, the wages, earnings or money acquired in any employment or trade in which she is engaged, or any income from any literary or artistic skill or other source of income (in which her husband has no proprietary interest) entirely free from her husband's control and debts.

397 Wife's Investments.—In all the Provinces (except Quebec), Newfoundland and England, any shares or stock in any Bank, Stock or Loan Company, or any debentures standing in the name of a woman married are deemed her own separate property, unless otherwise shown; and she has a right to all dividends and profits arising therefrom, and to transfer the same without the concurrence of her husband.

But if a married woman should purchase such shares or stocks with her husband's money, without his consent, the husband may procure an order from the court to have such investments and dividends thereof transferred to him.

If, also, a married woman made such investments with her husband's money, to defraud his creditors, such investments may be followed by the creditors and taken to satisfy their claims.

398 Disposing of Her Real Estate.—In all the Provinces except Nova Scotia and Quebec, she may not only hold her own real estate entirely free from her husband's control and debts, but she may dispose of it during her lifetime without her husband's consent or signature, and will it at her decease. A married woman may also sell her separate property direct to her husband, or the husband direct to the wife, without making the transfer through a third party.

In Newfoundland and England the law is the same in each particular.

In Nova Scotia the wife cannot deed away real estate or dower in real estate without her husband joining in the deed. She may dispose of her real estate by will if the husband gives his consent in writing.

In Manitoba she cannot will it away from her children, but may make any distribution of it among them she desires, or sell it during her life time.

In New Brunswick she can only sell or will her real estate subject to the husband's right of curtesy.

In Prince Edward Island she can only make a valid conveyance of her real estate by the husband joining in the deed, and if she has had issue

born alive by him she cannot deprive him of his life estate as tenant by the curtesy in the lands of which she may die possessed.

399 What a Wife Cannot Mortgage.—A wife indorsing or signing notes with her husband or entering into any other contract renders liable whatever property she has in possession at the time, or may acquire afterwards, except such property as she is "restrained from anticipating." Property *restrained from anticipation* usually comes to a married woman under the "terms" of a will, and while she gets the income from it, the principal cannot be dealt with by her in any way. Such restraint must be clearly expressed in the instrument. It will not be implied by law. Such property cannot be considered an asset by her; that is to say, she cannot mortgage, or by ordinary contract bind it, nor will the law construe it as an asset or allow it to be seized in execution or otherwise.

In New Brunswick the Supreme Court of Equity may, by her consent, if it believes it for her benefit, give order to bind her interest in any property even though restrained from anticipating.

Newfoundland allows such property to be liable for law costs in suits brought by herself or next friend on her behalf.

400 Wife's Liability.—A married woman is liable to the extent of her property after her marriage for the debts she contracted before marriage, and for all contracts entered into or wrongs committed before marriage, and all sums recovered against her for such contracts or cost incurred therefor are payable out of her separate estate. If she is a trader she is subject to the bankruptcy or insolvency laws the same as a man would be. If she lends money to her husband it becomes an asset of his, and in case of his insolvency, in most of cases, she would only take her dividend after other creditors for valuable consideration had been settled with.

401 The Husband's Liability.—The husband is liable for the debts of his wife contracted and for all contracts entered into and wrongs committed by her before marriage, and for wrongs committed by her after marriage to the extent of the property he has come in possession of through his wife, except in Manitoba, where her own property only is liable.

A husband and wife may be sued jointly in respect of any such debt or liability contracted or incurred by the wife, as mentioned in previous paragraph, but if the plaintiff fails to establish the husband's liability in respect to the property he may have acquired through his wife, the husband will obtain judgment for the costs of defence, whatever may be the result of the action against the wife. If the plaintiff succeeds in establishing the husband's liability, he will obtain joint judgment against the husband personally, and against the wife as to her separate property, and if the husband's liability does not extend to the amount of the claim or damages, the residue will be against the wife's separate estate.

402 Wife not Liable for Family Debt.—For instance, a wife keeping boarders and buying goods on credit for the general family expense does not render her separate estate liable for the debts. The husband and the husband's property only are liable. If the merchant wishes to render the wife liable he must make the contract with her by having her purchase in her own name, or to guarantee the payment.

A married woman, however, engaged in business in her own name, any goods which her husband orders for her and she accepts are chargeable against her, the husband being merely an agent.

403 Mortgage and Wife's Property.—The husband cannot mortgage any goods that belong to the wife, obtained either by purchase with her own money, or gifts from other persons. The wife need not sign a chattel mortgage unless she owns part of the goods, and desires to mortgage them.

404 Dower is a life estate a wife has by law (in those provinces which allow dower) in the lands acquired or held by her husband during coverture in which she has not barred her right to dower. It is, of course, not available until after the husband's death. If marriage has been legally dissolved the right of dower ceases.

A wife is also entitled to dower in the equitable estates of the husband to which he was beneficially entitled and had not parted with in his life time. A legacy in land due but not yet taken possession of, is subject to dower.

A wife need not be twenty-one years old to bar her dower. If a wife sign a *deed* it bars her dower, but a wife barring her dower in a *mortgage* only affects her to the extent of the rights of the mortgagee, and dower is due if the husband is dead on the surplus after payment of mortgage. It is calculated on the basis of the amount realized from the sale of the land. If the land sold for $3,000, and the mortgage was $2,000, she would be entitled to the income from the whole of the surplus, viz., $1,000 as dower.

In Ontario, New Brunswick, Nova Scotia and Prince Edward Island her dower is one-third life interest in the real estate. The husband cannot deprive her of this right during his life time by selling or mortgaging the property he has in his own Province, or in any other Province or State which allows dower, unless she bars her dower by signing a deed or mortgage for such property.

Widow has no dower in lands in which the husband had a life interest only; neither has she in purely mining property, or in lands disposed of by the husband while they were yet in a state of nature (wild lands), or in such state at his death.

If the husband dies possessed of real estate and makes a will, she can either take the portion left to her in lieu of dower by the will, or she can refuse to take under the will and claim her dower. If nothing is stated in the will that the bequest is in lieu of dower, she is entitled to both.

In Ontario, where a husband goes away and is not heard from for seven years, he is *presumed* to be dead, and if the widow wishes to take her dower out of his real estate, she is entitled to claim it. The right to claim dower would commence to outlaw at the end of the seven years.

In Manitoba, Alberta, Saskatchewan and North-West Territories, the wife has no dower in the lands of her deceased husband, but the Statute of Devolution of Estate gives her the same interest in the lands as in the personal property of the husband dying intestate. (See Laws of Inheritance.)

In Quebec the wife has one-half the husband's immovables.

In British Columbia, Newfoundland and England wife has one-third interest as dower, providing husband dies legally entitled to lands without having absolutely disposed of them by deed or will; and a written agreement on the part of the husband not to bar dower is inforceable.

405 Order of Protection.—Any married woman having a decree for alimony against her husband, or being for any legal cause separated from him, either through his cruelty, insanity, imprisonment in the Provincial Penitentiary or in gaol for a criminal offence; or whose husband, through habitual drinking or profligacy neglects or refuses to support her, may obtain an order of protection, entitling her to the earnings of her minor children, entirely free from the debts and obligations of her husband and from under his control.

When the married woman resides in a town or city where there is a Stipendiary or Police Magistrate, the order would be obtained from him, but when there is no such officer where she resides then the order would be given by the County Judge.

Order of Protection may also be procured for her own earnings and for the purpose of engaging in trade in those Provinces where such orders are required.

406 Civil Relationship between Husband and Wife.—The civil relationships are the same between husband and wife as between other persons in community. The one may steal from or defraud the other, or be guilty of criminal acts toward each other. In all cases the injured party has the same redress they would have against other persons for similar acts. The husband cannot sell the wife's property or that of the children which comes to them personally by gift or otherwise. Husband cannot sell or mortgage wife's furniture, silverware, or any other goods or property belonging solely to her by gift or otherwise, unless she signs the mortgage or assents to the sale.

An agreement, or contract entered into by the wife with and for the husband through *duress* (force) or undue influence may be set aside the same as concerning other parties, but she must act promptly in repudiating it as soon as free from the influence.

Where a husband, through drink, violence, abusive language, or other vicious conduct renders it impossible for the wife to live with him in safety and honor she can leave him, and such conduct is sufficient ground to sustain an action for alimony. Wives are foolish to be maltreated by either beating or starving by a drunken, worthless, vicious or vagabond of a husband when our laws and courts have thrown around them such ample protection.

407 Business Relationship between husband and wife.

If a husband makes improvements on wife's property and she dies intestate he has no claim on the estate for their value unless there was a written agreement between them that he was to be paid for such improvements or to have an interest in the property to that extent; and *vice versa* if the wife uses her money in improving husband's property under similar circumstances.

Where husband and wife are living separate, and the husband wishes to mortgage or sell his real estate without the wife's signature, he may obtain an order from the court under following circumstances: (1) If the wife is insane and confined in an asylum. (2) If separate from her husband under such circumstances as disentitle her to alimony. But in both cases while the husband may sell or mortgage his land "freed and discharged from any claim of his wife for dower therein," still the court will also provide a method by which the wife will be secured the *value* of her dower. If the

wife were living separate under circumstances where her conduct disentitle her to dower then no provision would be made by the court to reserve its *value* to her.

Wife having means and the husband none, and being an invalid, she would be compelled to supply him with the necessaries of life.

A husband advertising in a newspaper that he will not be responsible for goods purchased by his wife on his credit after the date of such advertisement (or for her contracts), does not necessarily free from such liability. The wife is presumed to be competent to purchase necessaries for herself and family, and if she has been in the habit of so purchasing from merchants on her husband's credit, the notice in the newspapers will not relieve the husband from liability unless he can show that the merchant had knowledge of such advertisement before the goods were purchased. The courts have ruled that "notice given in a newspaper not to trust his wife (with goods purchased on the credit of her husband) is of no effect in cases where dealers have not had knowledge of it."

A husband deserting his wife if he have means or an income the wife may choose between taking an action for "Alimony" against him, or she may take proceedings before a Police Magistrate or two Justices of the Peace under the "Deserted Wives' Maintenance Act," and procure an order not exceeding $5 per week for support of herself and children.

For a wife to recover a judgment for Alimony three things must be proven to the satisfaction of the court: (1) A legal marriage; (2) the need of the wife; (3) the desertion by the husband or his refusal to support her. Therefore a lawful wife who is in need, not having independent means of support, and where husband deserts her, or refuses to support her, may obtain a decree from the court for alimony which will fix a sum in proportion to the property and means of the husband.

The custody of the younger children when husband and wife separate is entirely in the discretion of the court before whom application may be made. having regard to the welfare of the children. After hearing the facts of the case, if the court or judge is of the opinion that either the mother or the father would be a more suitable custodian of the children they will be given to such parent, without regard to age or sex. The Ontario statute says: "The court may make such order as the court or judge sees fit regarding the custody of the infant and the right of access thereto by either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes of the mother as well as of the father."

As a general rule, however, if the wife is deemed a suitable guardian she will be given the custody of children under seven years of age, and the husband, if he is deemed a proper guardian, those over that age.

CHAPTER XVII.

PRINCIPAL AND AGENT.

409 Agency is where one person transacts business for another. The errand boy, the clerk, the conductor, engineer, switchman, the commission merchant and the farm laborer are all agents as much as those engaged in selling machinery or fruit trees on commission or salary. In all branches of business where one person acts for another there is an agency.

Any person may act as agent that the principal employs, even a minor employed as agent may make any contract that his principal could make.

The powers, rights, duties and liabilities of agents are determined by the rules of the common law, hence are invariable.

410 Agent's Appointment.—An agent may be appointed simply by word of mouth, by writing, or by Power of Attorney, or it may be only gathered from facts and general course of business.

411 Appointment by Power of Attorney.—When the business to be performed by the agent is of such a nature that it requires him to sign notes, accept drafts, issue cheques, sign deeds, mortgages, etc., or to enter into other contracts under seal, a formal document under seal, called a Power of Attorney, is usually given. This Power of Attorney may be general—giving the agent power to transact all the usual business of the principal; or it may be specific—giving authority only to one or more particular acts, and no more. A Power of Attorney may also be proved by being executed in the presence of notary public who places thereon his attestation of its execution.

412 Form of Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that I, James Everingham, of the Town of Strathroy, in the County of Middlesex, and Province of Ontario, merchant, do nominate, constitute and appoint James Marion, of the City of Chatham, County of Kent, my true and lawful attorney, for me, in my name and on my behalf to (give in full the work to be done by Marion for Everingham).

AND for all and every of the said purposes hereinbefore mentioned, I do hereby give and grant unto the said James Marion, full and absolute power and authority to do and execute all acts, matters and things necessary to be done for the full and proper carrying out of all said matters entrusted to him and do hereby ratify and confirm, and agree to ratify and confirm and allow all and whatsoever the said James Marion shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 31st day of August, 1906.

Signed, sealed and delivered in the presence of A. L. JONES. } JAMES EVERINGHAM.

413 Agent's Authority.—General agents are those who have authority to act in all capacities in the place of and for their principal, or act in a certain locality or for a certain work or kind. General agents bind their principals, rendering them liable to third parties even for the fraud or neglect on the part of the agent.

Commission merchants, secretaries and treasurers and managers of stock companies, employees of railroad and steamboat companies, etc., are all general agents.

Special agents are those who are limited to a certain class of action or kind of work and do not bind their principal only in so far as they keep within the scope of their authority. If they pass beyond this, or are guilty of a fraudulent act, they only render themselves liable and not their principal.

But if an agent should do business for the principal which he is not authorized to do, and the principal accepts it, he thereby ratifies it, and thus becomes responsible, not only for that particular transaction, but for all similar acts. Ratification of an act has the same effect as prior authority. Ratification may be effected in two ways: (1) By express words. In case of corporations and stock companies it is usually done by resolution. (2) By accepting the benefits accruing from the act.

By refusing to make the transaction his own, either by express words, or by refusing to accept the benefits accruing from it is disaffirming the act, and frees him from liability.

414 Dealing with Agents.—Third parties should ascertain the authority possessed by special agents if they would protect themselves when contracting with such, if it is important to them that the principal should be held responsible.

An agent should always have the evidence of his authority with him, and if he has it not, no important transaction should be performed with him. It is not enough to bind the company, that an agent *declares* himself to be either a special or general agent, for his misrepresentation would not bind the company. The parties in dealing with him must demand the proof of his authority if they would be safe.

Money paid to an agent who has no authority to receive it cannot be recovered from the principal (or any other person).

Money should never be paid to an agent for a note unless he has the note to deliver over, nor even to the original payee.

A contract made with a special agent who is exceeding his authority cannot be enforced against his principal.

Notice given by the agent to third parties is notice given by the principal; and notice given by third parties to the agent is notice given to the principal at the same time it was given to the agent. Payment tendered to the agent is payment tendered to the principal, and *vice versa*.

415 Liability of Agents to Third Parties.—Where the parties dealt with are aware that they are dealing with an agent, they cannot hold the agent personally liable upon a contract made by him, on behalf of his principal. If, on the other hand, the agent represents himself as the principal, the third party will have the right, either to hold the "agent" responsible personally for the contract, or he may enforce it against the "principal"

when discovered. He cannot, however, sue the agent, and afterwards bring an action against the principal. He must elect which he will hold.

416 Agent's Signature is public notice that the person so signing is acting under a limited authority and the principal is bound by such signature only so far as the agent is acting within the actual limits of his authority, but no further.

An agent may disclose the fact that he is only acting as agent by using in connection with his name any of the following or similar terms: "Per," "pro," "pro con," "for," or "agent for."

If the agent does not disclose the fact of his agency when signing his name to a contract he binds himself.

It is preferable to sign the principal's name first, as:

James Smith,
per W. Winters, Agent.

Dominion Transportation Co., Ltd.,
per W. Winters, Manager.

W. Winters, Manager,
Signed for and on behalf of Dominion Transportation Co., Ltd.

If W. Winters, acting as agent, were to sign a note or accept a draft by signing his name as

W. Winters, Agent,

it would bind himself personally and not the principal, in all cases.

417 Common Carriers.—There are three classes of carriers:

1. Persons who carry goods without charge, merely to accommodate. If loss occurs while goods are in their charge they are only liable for grossest negligence.

2. Those who carry goods privately for hire. That is, those who do not make it a business to carry goods, but do so occasionally and take pay for it when they do. Such persons are liable for only common negligence, if loss occurs.

3. The common carrier is one who holds himself out to the public as a carrier for hire. Such persons are required to exercise the greatest caution and are liable for very slight negligence.

Railways, express companies, steamboats and vessels, draymen, carters, transfer companies, etc., are common carriers.

A carrier is agent for the buyer for receiving delivery of the goods, but not for acceptance.

When the seller ships goods to the purchaser in his name and delivers the way-bill to the common carrier or wharfinger, the purchaser has *possession.*

The carrier or wharfinger is the agent in such case of the purchaser to receive possession.

If, however, the seller ships the goods in his own name, the carrier is then the agent for the seller.

To establish the fact that the goods were damaged while in the hands of the carrier, it is sufficient to show that the company received the goods in apparent good condition and delivered them in bad condition.

Carriers are always liable for negligence, no matter what conditions are contained in the bill of lading.

The condition on the back of a shipping bill freeing the company from liability for delays, or damage of goods after they are delivered to a connecting line is reasonable, and will free them from loss occurring on such other line.

When goods are accepted at the owner's risk of breakage and loss, it does not include damage caused by negligence of the company (Pidgeon *v.* Dominion Ex. Co., R. J. Q., 11 C., Sec. 276.)

The acceptance of the goods and payment of the transportation charges without protest extinguish all right of action against the carrier; unless the loss or damage was of such a nature that it could not be known at the time. The claim, then, must be made without delay after the loss or damage becomes known to the claimant.

418 Real Estate Agency.—The same laws and usages hold good between estate agents and the proprietors of property that rule in other branches of agency. An agency may be created by verbal or written agreement, or it may be by implication, or created by the usual course of such business. As the chief business of an estate broker is the buying and selling, and leasing of real estate, and that fact being well known to property owners, an agency is easily created—either express or implied.

The following features of this branch of agency have been finally settled by cases before the highest courts in the realm, and United States, and they cover the points concerning which litigation is most likely to occur.

The proprietor of the estate should state definitely, when naming the price at which he will sell, whether such price includes the agent's commission, or whether it is the net price; otherwise if the agent effects a sale for the amount named he will be entitled to his commission out of such amount.

If a property owner does not desire an agent to handle an estate he may be offering for sale, when an estate broker offers his services he must refuse them. If he does not definitely refuse to allow such agent to act, and the agent subsequently introduces to such proprietor a prospective purchaser of the property, and a sale subsequently takes place, the agent will be legally entitled to the usual commission.

Delay in Consummating Sale. If an agent approaches a property owner concerning an estate, or if the proprietor, with a view of selling his estate, goes to an agent and requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a *general* employment; and should the estate eventually be sold to a purchaser introduced by the agent, the latter will be entitled to his commission, even though the sale does not take place for some time after, and even though by an agreement with the proprietor such persons take a lease of the property with the option of buying within, say, a year; if the sale is then effected the agent will be entitled to his commission. The negotiations are not broken off, but the time for concluding the sale is by agreement delayed

for a year. It is a continuation of the negotiations, and after the purchase is concluded the agent may claim and recover his commission. Morson *v.* Burnside, 31 O.R., 438 (1900).

Commission not yet Earned. If the owner obtains a purchaser without anything being done in connection therewith by the agent whom he employed for that purpose, the agent cannot recover commission, and could not, even though he had another purchaser ready to buy, but who had not yet become known to the principal. Rimmer *v.* Knowles, 30 L.T., N.S. 496.

Agent Discharged after Purchaser Introduced. "Where there is a *general* employment to sell, and the agent takes the usual course in such matters, of entering the property in his books and advertizes it, and thereafter gives an introduction which results in a sale, he must be held to have earned his commission, although he does not make the contract of sale or adjust its terms; because in that case he fulfils his contract by giving the introduction, and the employer cannot defeat his right to commission by determining his employment before the sale is effected." Lord Watson, in Toulmin *v.* Millar, 58 L.T., N.S. 96.

Engaged to Rent Only. "Again where the employment is *limited*—if for instance, he was simply to let—he would have no right to commission upon a subsequent sale made to the tenant of the property let during the currency of the lease. In that case his employment and his consequent right to commission would, in the absence of any stipulation to the contrary, terminate with the execution of the lease which he was employed to negotiate." Lord Watson, in Toulmin *v.* Millar.

Contract Either to Sell or Let. "On the other hand, suppose a proprietor goes to an agent for the purpose of letting and instructs him to let." The agent says, "I think I can find you a purchaser; will you not sell?" To which he replies, "I will sell for £10,000, not a sixpence less; if you can get that sum, sell; if not, let the property." In this case there is not a *general* employment to sell. "It gives a limited mandate to sell for the price specified instead of letting; and the agency would come to an end when the agent failed to obtain that price and carried out the alternate scheme of letting the estate to the tenant." Lord Watson and Lord Fitzgerald before the House of Lords, in case of Toulmin *v.* Millar.

Stipulated Price and Agent. "The mention of a specific sum which the proprietor is willing to accept for the property prevents the agent from selling at a lower price without the consent of the employer; but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of the negotiations; therefore, if the proprietor concludes a sale to the purchaser introduced by the agent at a price less than the sum named at the time the employment was given, the agent, in the absence of definite stipulations to the contrary, will be entitled to his commission out of the sum obtained." Lord Watson, in Toulmin *v.* Millar.

Breach of Faith by Owner. "If a property owner offers a broker a certain sum to obtain a purchaser for his property and the broker procures a party to enter into negotiations for the purchase, and pending the negotiations the proprietor allows such party a definite time to decide upon terms proposed, and before the expiration of such time sells to a third party, the

broker is entitled to recover the stipulated compensation." Reed's Executors v. Reed, 82 Pa., Lt. 420.

"In case of *Green v. Bartlett*, 14 C. B., N. S. 581 (1863), where an agent had failed up to a certain time to effect a sale, whereupon the owner told him he had concluded not to part with his property; but subsequently the owner privately negotiated a sale to a person who, as it was shown, had been attracted to the office of the broker by the advertisements displayed by him, and had learned from him the name and address of the owner, it was held that the agent was entitled to his stipulated commission."

No Commission Apart from Contract. "If a broker has no employment to sell either express or implied, he can have no claim to be remunerated, even though he can prove that he introduced to the owner the person who afterwards purchased the estate, and that his introduction became the cause of the sale." Lord Watson, in *Toulmin v. Millar*, made this point very clear. In order to found a legal claim for commission there must not only be a causal relation between the purchaser and the ultimate transaction of sale, but there must be a contract of employment as well.

Principal Changing His Mind. If the broker fully performs his contract with the land-owner he cannot be prevented from recovering his commission because the owner subsequently changes his mind about making a sale or trade of the property. Neiderland *v.* Starr, 50 Kan. 770.

Neither can he avoid the contract with the broker on the ground that he has a better offer. He is free to accept the better offer, but he must compensate the broker who has produced a purchaser at the stipulated price before the better offer was accepted. Thornton *v.* Moody, 24 S.W., 331.

Negligence of the Principal. Where a purchaser acceptable to the principal is found within the time specified, but delay in closing the sale caused by the principal's failure to keep appointments with the purchaser, or through other fault, fraud or negligence of the principal, the sale falls through the agent who finds the purchaser is entitled to his commission. Ralts *v.* Shepherd, 37 Kan. 20.

The burden of proof is on the principal to show why he did not keep such appointments.

The question as to whether the principal *wilfully* broke off the sale which the broker worked up is for the jury to decide.

Sale Thwarted by Principal. A broker undertaking to sell property for another for a certain commission who finds and produces a satisfactory purchaser, able, ready and willing to purchase at the price and on the terms stipulated, has earned and can recover his commission, though the sale is never completed, if the failure to complete the same is on the part of the principal, without any fault of the agent or the purchaser. 43 Lawyer's Reports, annoted, page 593.

Neither can the right of the agent to his commission be barred by the fact that the sale is prevented by the principal's attempt to change the terms of sale, or impose additional ones. Hildebrand *v.* Lillis, 10 Colo., App. 522.

Principal Refusing to Enforce Contract. In cases where a broker has effected a bargain and sale by a contract which is mutually obligatory on

vendor and vendee, he is entitled to his commission whether his employee chooses to comply with or enforce the contract or not. Love *v.* Miller, 53 Ind., 294 Am., Rep. 192. Either of the principals to a binding contract for the sale of real estate may enforce it against the other. If neither one does, the agent must look to his employer for his compensation.

The default of the principal in none of the preceding cases will be assumed, but it must be averred and proved.

An Oral Agreement. Although the contract between the broker and the purchaser is merely oral, if it is one that the purchaser is ready and willing to carry out but for the default of the principal, the broker's right to commission will not be affected by the principal's refusal to consummate the sale.

Also in case of an oral agreement made between the principal and a purchaser procured by the broker, if the purchaser is able and willing to carry it out and the principal refuses under the Statute of Frauds to execute it, the agent is entitled to his commission. But if the purchaser refused to execute it, of course, the agent would not be entitled to commission, because the principal would have no power to enforce the oral agreement.

Inability of the Principal to Convey. Where a broker finds a purchaser acceptable to the principal, but the sale falls through because the wife will not sign the deed, barring her right of dower, the agent is entitled to his commission unless the agreement with the agent provided for such contingency. Clapp *v.* Hughes, 1 Phila. 382.

If through any other cause, as, for instance, a defective title, the owner is unable to complete the sale after a purchaser acceptable to him has been found, he is liable for the commission. If, however, the agent knew the defect in the title, he could not then recover commission.

Justifiable Refusal to Sell. In many cases the refusal of the principal to sell is justifiable,—as where a broker refuses to disclose the name of the intending purchaser to his principal, it was held that the latter had a right to assume a private speculation of the property on the part of the broker himself, and might, therefore, refuse to close the transaction without liability for commission. Hayden *v.* Grillo, 35 Mo., App. 647, 654.

Also if the purchaser introduced by the broker would not be financially responsible, in the estimation of the principal, to carry out the undertaking; or if the purposes for which the premises were intended to be used would be objectionable; or for any other justifiable cause of disapproval the proprietor may refuse to sell and not be liable for commission.

To give the agent the right to commission without a sale, the refusal on the part of the owner must be unjustifiable, or against the agreement with the agent.

Broker as Agent for Purchaser. If a person engages a real estate agent to purchase a certain property at a certain price and agreed to pay a specified commission therefor and the broker secures such property at the agreed price, and is ready and able to have the property deeded to him, and then such party refuses to take the property or to pay the stipulated commission, the broker will recover his commission and a judgment to that effect would not be set aside. Ackerman *v.* Bryan, 33 Neb. 515.

Broker as Agent for both Purchaser and Seller. There is nothing in the common law that makes it illegal for a broker to act as agent for both

the buyer and the seller, and receive a stipulated commission from each, so long as he does not use his knowledge in a fraudulent manner against either.

On moral grounds, however, the transaction is not held to be free from taint, because he has already been engaged for a stipulated sum to make such transaction when the second person approaches him.

Revoking Broker's Agency. A real estate agency may be terminated in the same way as are other agencies:

1. If the agreement called for the sale to be made in a specified time, the agency will end at that time, unless extended.

2. Death or insanity, or other incapacity of either the principal or the agent, terminates the agency.

3. The insolvency of the principal dissolves the agency.

4. A legal revocation by the principal terminates the agency.

The revoking, however, must not be in bad faith as a device for escaping payment of commission. McKnight *v.* Thayer, 48 N.Y., S.R. 620, 622.

The principal may withdraw the property from sale or revoke the agent's authority at any time if the agreement with the agent is not for any definite period and no one is ready to purchase; it would not be fraud, although it might not be fair.

He cannot arbitrarily cut off the agent's authority in the midst of what the broker can show would be a successful agency and then refuse compensation. He can at least recover for his time, labor and expenses on a *quantum meruit*—as much as he has earned. Jackel *v.* Caldwell, 156 Pa., 266, 267.

If there is fraud on the part of the principal in the revocation of the broker's authority, and he avails himself of the information procured by the broker in effecting a sale, the agent will still be entitled to his commission. Beale *v.* Creswell, 3 Md., 196, 201.

Action to Recover Commission. The action of the broker against the principal on account of his failure to carry out the contract is for damages and not for commission. The measure of damages would naturally be the amount of commission that would have been payable under the contract.

The contract between the broker and the principal which stipulates that the commissions are to be paid out of the purchase money cannot be taken advantage of by the principal in an action to recover commissions where the sale has been prevented by the fault or refusal of the principal.

It is not necessary for the purchaser who is ready, able and willing to complete the contract in very respect to tender the amount of purchase money before the broker brings an action to recover his commission where the principal refuses to execute the conveyance to the purchaser. Vaughan *v.* McCarthy, 59 Minn., 199.

In an action to recover commission where the sale fails to be made, the broker must show:

1. That he had received authority from the principal to make such sale, and that such authority had not been revoked.

2. That the person furnished by him to make the purchase was willing to accept the offer precisely as made by the principal.

3. That he was able to carry out the agreement.

4. That he was an eligible and such an one that the principal was bound in good faith between him and the broker to accept.

CHAPTER XVIII.

MASTER AND SERVANT.

419 The Relation subsisting between master and servant is in many respects the same as that subsisting between principal and agent.

In order to constitute a contract of hiring and service there must be either an *express* or *implied* mutual engagement binding one party to *hire* and remunerate, and the other to *serve* for some determinate time. In cases where the employer only agrees to pay as long as the servant remains, leaving it optional either with the servant to serve or the master to employ, there is no *contract* of service and hire.

420 Contract of Service and Hire.—Oral as well as written agreements between master and servant, and between master and journeyman or skilled laborer in any trade or calling, are binding unless the term exceeds one year.

If for a longer period than one year it must be in writing and signed by the contracting parties, and if for a shorter period than one year, but which does not commence in time to be completed within the year, it is required to be in writing.

No voluntary contract of service shall be binding on either party for a longer time than nine years from date of contract.

If no *express* contract has been made for hire between the parties a contract will be *presumed* if the service is performed, unless it is with near relatives, as with parent or uncle.

If service has been performed without anything being said about wages *the law presumes* that the parties agreed for the customary wages for that kind of service paid in that community. But the law will not presume either "a contract of hire" or "an agreement to pay wages" where service is rendered with near relatives, as a parent or uncle. In such cases an expressed hiring must be *proved* in order to support a claim for wages. Where it is not specially agreed to the contrary, wages would be payable at the end of the time.

A person agreeing to serve as laborer or clerk cannot be compelled to fulfil his agreement, but damages may be recovered for breach of the contract.

A person agreeing to hire another for a day, week or month cannot be compelled to furnish work, but if the one hired presents himself for service each day he can collect his wages.

421 Contract of Agreement for Hire.

THIS AGREEMENT, made on the 3rd day of April, 1906, between John Smith, of Grantham, yeoman, of the first part, and James Robinson, of St. Catharines, laborer, of the second part.

Witnesseth that the party of the second part agrees with the party of the first part to serve him as a farm laborer and general servant for the period of one year from this date, and in all things to faithfully observe and do all the reasonable wishes and commands of the party of the first part.

And the party of the first part agrees to pay the party of the second part one hundred and fifty dollars and to board and lodge the party of the second part during said period, and to cause all necessary laundry wash to be done for him. Said money to be paid as follows: Fifty dollars in six months from this date, and the balance at the expiration of said service.

Witness our hands the day and year above written.

Witness: } James Robinson.
Charles Summers. } John Smith.

422 Contract of the Employee.—The employee must fulfil the agreement, whatever that may be, and to do this faithfully requires not only diligence, but his careful attention, skill and forethought. The implements, machinery, or other property with which he may be working or which fall under his care, require not only proper use by himself, but also his care that they be not stolen. The live stock that may be entrusted to him, humanity as well as his agreement requires that he sees to it that they have food and water and proper care in general. His master pays for his *skill* as well as he does for his time, also his diligent forethought in planning or executing his work. He is expected to obey all reasonable orders from his master, to be punctual and courteous, and to work every day except Sundays and holidays.

A flagrant violation of the implied agreement in any of these particulars renders him liable for damages or for discharge, as the case may be.

423 Notice to Leave.—A servant hired for a definite period, either for a day, a week, a month or a year, may, on the termination of the time, leave, or the master may discharge him without giving any notice.

Where the hiring is for no definite time and the wages paid so much per day, week, month or year, when either party wishes to terminate the contract the other party is entitled to a "reasonable notice."

If paid by the week ..... A week's notice.
If by the month .....A month's notice.
If by the year ..... Three months' notice.

The notice need not be in writing, but where the time is longer than a week it would be much better to give a written notice.

Discharge may take place without notice by payment of a week's or month's wages, as the case may be.

424 Discharge without Notice.—The employee is persumed to give due diligence to the discharge of the duties assigned to him, to be punctual as to time, to obey all reasonable commands, and to be responsible for all damage caused by his negligence. If, therefore, he violates the agreement by habitually neglecting his duties, by taking absences without permission, or in any of the following ways, he may be discharged without notice by paying him the wages due:

1. Wilful disobedience of any lawful order of the master.
2. Gross moral misconduct.
3. Habitual negligence in business, or conduct calculated seriously to injure the master's business.

4. Incompetence in the higher service where special knowledge or skill is required, or permanent disability through illness. Temporary illness would not be sufficient cause for discharge unless the nature of the work necessitates it.

The wages to be paid in case of a discharge *for cause* are not necessarily in proportion to the time the servant has labored. The wages that are due must be paid, but the wages that may have been earned but not yet due, need not necessarily be paid.

In Alberta, Saskatchewan, the N.-W. Territories, if a servant is guilty of misconduct through drunkenness or absenting himself from his employment without permission, disobeys commands or destroys the master's property, he may, upon summary conviction before a magistrate for one or more of such charges, be liable to a fine of $30, with costs, and in default of payment forthwith to imprisonment not exceeding one month.

425 Wrongful Discharge.—If an employee be wrongfully dismissed his remedy is an action for damages against his master for the breach of agreement or contract, and unless he can show a reasonable excuse for discharging he may be made liable for wages for the whole time, but the employee must not sit down and do nothing and then sue for the wages at the end of the term. It is his duty to try and find employment, and if he succeeds, then whatever wages he earns during the term would be deducted from the amount of damages to be recovered for the breach of contract, that is, the loss he actually sustained could be recovered.

426 Servant Leaving.—The master's commands are persumed at time of contract to be reasonable, legal, and to be within the limit of work the servant was employed to perform. The implements and machinery are supposed to be suitable for that kind of work, and so protected as to be reasonably free from danger. If, therefore, the master gives unreasonable commands and endeavors to enforce them the servant has cause for leaving.

A domestic servant wrongfully quitting his master's service, forfeits that part of his wages due since the last day of payment.

Any employee leaving before the expiration of the week or month or year, as the case may be, for just cause, or who is illegally dismissed, can recover wages for the time he worked. But if he cannot show a valid cause for leaving or was discharged for proper cause he cannot recover wages *pro rata* for the portion of the time worked.

If the master does not pay the wages as per agreement the servant may procure a discharge and wages due by placing the matter in the hands of a Justice of the Peace, who deals summarily with such cases.

427 Master Liable for Servant's Acts.—The master's liability is not boundless, but justice and common sense fix certain well-defined limits. In general terms the master is liable for all those acts which are brought about through his instrumentality, as:

1. He is liable for the acts of his servant performed within the scope of his employment, however wrongful they may be, but he is not responsible for the wrongful act if it is not done in the execution of his authority and in the course of his employment; and,

2. Where a servant is driving a horse, which runs away and does damage, if on the master's business; or,

3. Where in executing his orders with reasonable care and does damage; or,

4. Where he does an injudicious act and does damage; or,

5. When the servant even wantonly does injury if acting within the scope of his employment; or,

6. For injury done by the servant through drunkenness, if acting within the scope of his employment; or,

7. If he orders the servant to commit a trespass, or if the trespass results from the action to be done, the master is liable.

He would not be liable for a wrong done by the servant that was contrary to his orders.

The master is liable for the act of his domestic or menial servant, whether it be one of omission or commission, neglect, fraud, deceit, or even of misconduct; if it be done within the scope of his employment or with the express direction or assent of his master, no matter how much he may abuse his authority.

428 Servant's Liability.—A servant may render himself liable:

1. On contracts made on behalf of his master if he does not disclose the fact of his agency. When contracting in his own name for the employer he should always use words describing his capacity, as "agent for," or "per," "pro," etc.

2. For damages committed on behalf of his master he is liable as well as his master, and to all third parties he stands as a principal.

3. He is also liable for a joint fraud committed with his master; for no contract of service compels a legal obligation to commit a fraud or do a wrong.

4. In *crimes* as well as in *injuries* he is liable, and cannot evade responsibility by saying that he was only a servant and acting under his master's orders.

429 Servant and Holidays.—Whether the servant or employee is compelled to work on Sunday and legal holidays depends altogether on the agreement made, and the nature of the work to be done. Some kinds of work require something to be done every day, for instance, the hired man on a farm would be compelled to feed and care for the stock on Sunday, milking cows, etc., unless there was an express agreement to the contrary. The same would be true as to the servant doing housework.

Unless there is an agreement, expressed or implied, to the contrary employees or apprentices cannot ordinarily be compelled to work on legal holidays, nor can they be discharged for absence, or for not working on such days.

Employees working by the week, month or year are entitled to pay for the legal holidays unless there is an agreement to the contrary.

430 Length of Working Day.—The length of the working day for farm laborers is not fixed by law. In the absence of any agreement between the master and servant as to what work the servant is to do, or as to the length of time he is to work, whatever is customary or reasonable must govern; and the season of the year and nature of the work to be done must be taken into account in settling such matters. If a servant refuses to work when reasonably requested to do so, he may on that ground be discharged by the master.

431 Legal Proceedings.—If any disagreement exists between master and servant, summary proceedings may be taken before a Justice of the Peace.

If the Justice receives the evidence of the plaintiff he must also receive that of the defendant.

If to collect wages due it must be done within one month after the engagement ceased in Ontario, and in most of the provinces it is the same; but in Alberta, Saskatchewan and North-West Territories three months are allowed, and if the master is in arrears for wages, not exceeding two months, and the same has been demanded, or if he is guilty of ill-usage, or if improper dismissal, the servant may lay complaint before a Justice of the Peace or Magistrate, who will investigate and may order the discharge of such servant and order the payment of the amount due not exceeding two months, but such proceedings must be taken within three months after the engagement or employment ceased or three months after the last instalment of wages was due, which ever event happens last. In Alberta, Saskatchewan and North-West Territories laborers have priority over all other claims and liens on growing crops to the extent of $75.

In Alberta, Saskatchewan, and the North-West Territories amendment of 1904 provides that if the Justice finds that the servant has been improperly discharged, he may direct that further wages be paid not exceeding four weeks, besides what are due. If it is shown at the hearing that the employer has a counter claim, and a right to a civil action against the servant, the Justice is required to transmit all the papers to the clerk of the Supreme Court where the civil action shall be tried.

In British Columbia amendment of 1902 provides that where 30 or more workmen employed in any work under a master request in writing such master to deduct from their wages a sum to provide for medical attendance, the master is required to give immediate effect to such request, the amount to be retained being fixed by the workmen and the physician. Each workman may enter in a book the name of the physician he wishes to attend him. The refusal of a master to carry out these provisions incurs a penalty of $50.

432 Employer's Liability for Injuries.—When personal injury is caused workman through some defect in the structure of the building or the condition of the machinery, or through lack of proper protection for such machinery, the workman has a right of action against the employer for damages.

If a workman is accidentally injured through no fault of the employer, he cannot recover damages, nor wages for the time he does not work, nor for doctor's bills.

If any machinery or any particular machine used by the employee is not considered suitably protected, and he gives notice to the employer who still requires work to be done with the dangerous machine, it is a cause for leaving.

If any accident occurs after giving of such notice the employer is liable for damages.

If the servant used the machine knowing it to be unsafe, without giving any notice of its danger, he cannot claim damages for an accident.

433 Alien Labor Act.—According to the Dominion Alien Labor Act of 1897 and subsequent amendments a contract either express or implied, either written, verbal or under seal, by any person or firm and an alien or foreigner to perform service in Canada *previous* to the immigration of such alien is void.

And if such alien, engaged before entering Canada, enters upon his employment, it renders the employer liable to a penalty of not less than $50, nor more than $1,000.

It is also illegal to encourage the immigration of a foreigner by promises of employment through advertisements in such foreign country, and any persons coming into Canada through such advertisements is treated as coming under a contract, and if entering upon the duties of the employment it renders the employing firm liable to the penalties of this Act.

The Act only applies to such countries as have enacted and retain in force similar alien labor laws applying to Canada.

Exemptions.

Foreigners living in Canada temporarily may contract with foreigners to act for them here as private secretaries, servants or domestics.

Also any firm engaged in a new industry not at the time established in Canada, may contract for and bring in skilled labor for that purpose if it cannot be obtained in Canada.

The Act does not apply to professional actors, artists, lecturers, or singers, or to persons employed strictly as personal or domestic servants.

Persons may also assist any member of the family, or relative, or personal friend to come from a foreign country to a position here if the purpose is to become a citizen of Canada.

CHAPTER XIX.

PARTNERSHIP.

435 Partnership is a contract between two or more persons, not an incorporated company, who join together for the purpose of conducting a certain business, with an understanding to participate in certain proportions in the profits or losses. They may join their money, goods, labor and skill, or any or all of them. Firm, Company, House or Co-partnership are all synonymous terms used to represent a partnership business.

They are formed by agreement of the parties, either express or implied. The express may be either oral, writtn or under seal. The test of partnership is a "common fund" and "a community of profits," hence, in any case where parties are associated in business, if it is necessary to prove the existence of a partnership, about all that is needful to do is prove that there is "a common fund" for the parties associated, and "a community of profits," and it would be difficult for such parties to establish the fact that there was not a partnership.

Partnership may be formed for commercial enterprises, manufacturing and mining in all the provinces and Newfoundland, but not for banking, railway construction, or insurance.

In Alberta, Saskatchewan and North-West Territories and British Columbia no general partnership can now be carried on composed of more than twenty persons without registering as a company, but the other Provinces have no restrictions as to number.

In Newfoundland the number is ten.

In Quebec partnership firms have to pay a provincial business tax. A statement according to statutory requirements must be forwarded to the Provincial Treasurer on or before 1st day of May each year, and the tax is payable in advance on the first juridical day in July each year (Chap. 10, 1906).

436 Danger of Partnership.—That laconic expression, "Partnership is a poor ship to sail in," is full of meaning. It does not take long for a dishonest, or incompetent, or stubborn partner to wreck any business. The joint-stock company, the main features of which are given in the following chapter, is far preferable. If a particular name is specially desired, it is wise to register first as a partnership, and then incorporate under same name, as the government would not be likely to refuse it or change the name, it being already registered and in use by the same persons.

As partnerships are so generally falling into disuse, and really should be discouraged, only the most essential features are here given.

437 Partnership Name.—There are no restrictions placed upon the choice of a firm name for a partnership, as in case of a stock company, except in Quebec, where the name must not be the same as that of any other registered firm or so similar as to cause confusion.

Any individual who wishes to add "& Co." to his name, or to use any special name other than his own, may do so by registering such name, the same as though a number of persons were united, and he is liable to the same penalty if he does not register.

438 Partnership Capital.—The capital a partner contributes to the partnership may be in cash, real estate, personal property, or secret process of manufacture, a patent right, copyright, labor, skill, or time in management, good-will of an established business, etc., and in each case be subject to the same liabilities, possess equal privileges, and share profits or losses, according to the agreement.

439 Non-Trading Firms.—Firms that are not trading firms, such as a law firm, do not come under the partnership law, neither can they give a note as a firm. They may all sign it, but it is only as a joint and several note, the same as though they were not associated personally. The same is true in regard to church trustees, and the officers of social and benevolent associations.

440 Three Classes of General Partners.

1. Dormant, silent or sleeping partner is one who has an interest in the business, but whose name does not appear. He is represented in the firm name by "& Co."

2. Ostensible partner is one who lends his name to the firm but who has no financial interest in the business.

3. Actual partner is one who has both an interest and whose name appears in the firm name. They are all equally liable to the public for partnership debts. (For limited partner see Section 443.)

441 Two Classes of Partnership.—There are two distinct classes of commercial partnership—General and Limited—both having the same powers but differing in their formation, registration and the individual liability of the members.

442 General Partnership holds the members not only jointly liable for the debts and liabilities of the firm, but each member is also personally liable for all the debts of the firm, if the partnership assets are not sufficient to pay them in full.

443 Limited Partnership is composed of one or more persons called General partners, who conduct the business, and one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who are called Special or Limited partners. Such Special partners are not liable for the debts of the partnership business beyond the amounts they contributed to the capital.

This Special or Limited partner must not have anything whatever to do with the management of the business, and take no part in the work. He may give counsel to the firm, examine the state and progress of the business, but if he takes any part in its management he makes himself a General partner, and thus personally liable for all the debts of the firm.

His name must not appear in the firm name by his knowledge, or he becomes a General partner.

A continuation of the business beyond the time fixed for the Limited partnership without being filed again as at first, or a removal from the location of the business without being certified to and registered as at first, it becomes a General partnership.

Also, if there is any alteration in the names of the partners, or in the capital, or anything differing from the original certificate, it is deemed a dissolution; and if not filed again as at first, it becomes a General partnership.

Such Special partner cannot withdraw his *stock* in the shape of dividends, profits, interest or otherwise during the continuance of the partnership, and if he does he is bound to replace it so as to keep his stock intact. But any such partner may receive his share of the dividends or lawful interest on the sum contributed by him to the capital, if the payment of such interest does not reduce the original amount of his capital in the business.

There can be no dissolution of such partnership previous to the time mentioned in the certificate until a notice has been filed in the office where the original certificate was recorded, and in Ontario it must also be published once each week for three consecutive weeks in a local newspaper where such business is conducted and for the same time in the *Ontario Gazette*.

In cases of insolvency Special partners do not rank as creditors until the claims of all others have been satisfied, neither are they personally liable for the debts of the firm beyond the amount of capital they invested.

Limited partnership is not deemed to be formed until the certificate is filed. If business is done before filing it is deemed a General partnership and all are individually liable.

Every renewal of a Limited partnership is required to be filed exactly the same as at first, otherwise it becomes General.

444 Partnership Agreement.—Some of the evil effects of a partnership association might be averted by a carefully prepared written agreement covering the following facts:

1. The name in full of each member, and their places of residence.
2. The nature of the business to be conducted.
3. The place where it is to be conducted; that is, the name of the town or village, etc.
4. The amount of capital that each partner invests.
5. What partners are general, and which are Special or Limited, if any.
6. If any partner makes no cash investment, but whose experience, or skill, etc., is investment, that should also be inserted.
7. The date of commencement and duration of the partnership, if it is for a definite period.
8. If a division of work is agreed upon between the partners, such as for one partner only to sign all orders for goods, accept all drafts, issue the notes, etc., it should be clearly stated in the agreement.
9. Provision for settlement in case of the death or retirement of a partner, or for dissolution in case of disagreement and friction should not be omitted.

Besides these, there are various other things which could profitably be embodied in the agreement, such as that neither should be a candidate for a municipal office or an active political partisan without the consent of the firm; also, that neither partner should indorse paper for others, or become bail for any person, without consent of the firm; or to engage in any other business that would require investment, and possibly incur loss.

445 Form of Articles of Partnership.—The following may serve as a guide:

Articles of Agreement made the tenth day of September, in the year of our Lord one thousand nine hundred and six.

BETWEEN George Carlisle, John Adams and Charles Andrews, all of the City of Hamilton, in the County of Wentworth, Province of Ontario.

WHEREAS the said parties hereto, respectively, are desirous of entering into a Copartnership, in the business of the Manufacture and Sale of Furniture, at Hamilton, aforesaid, for the term, and subject to the stipulations hereinafter expressed.

NOW THEREFORE, THESE PRESENTS WITNESS, that each of them the said parties hereto, respectively, for himself, his heirs, executors and administrators, hereby covenants, with the other of them, his executors and administrators, in manner following, that is to say:

1. That the said parties hereto, respectively, shall henceforth be, and continue partners together in the said business of the Manufacture and Sale of Furniture, for the full term of Five Years, to be computed from the tenth day of September, one thousand nine hundred and six, if the said parties shall so long live, subject to the provisions hereinafter contained for determining said partnership.

2. That the said business shall be carried on under the firm name of The Hamilton Furniture Co.

3. That the said parties shall invest capital as follows: George Carlisle, two thousand dollars, cash; John Adams, fifteen hundred dollars, cash; and Charles Andrews, nine hundred dollars and tools and machinery valued at two thousand dollars.

4. That the said partners shall be entitled to a salary in lieu of services, as follows: George Carlisle, as foreman of factory, twenty dollars per week; John

Adams, as book-keeper, twenty dollars per week; and Charles Andrews, as salesman in the store, fifteen dollars per week.

5. That the said parties shall furthermore be entitled to share the profits of the said business in the proportion following, that is to say: According to the respective investment at commencement for the first year, and according to the net credit of each at the beginning of each subsequent year:

AND that all losses in the said business for any year shall be borne by them in the same proportion (unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise).

6. That the said partners shall each be at liberty, from time to time during the said Partnership, to draw out of the said business, for private use, any sum or sums not exceeding for each, the sum of three hundred dollars per annum in excess of salary, such sums to be duly charged to each of them, respectively, and no greater amount to be drawn by either of the said partners except by mutual consent; and interest at five per cent. per annum shall be charged to each partner for such withdrawal from the date of withdrawal until it is repaid, or until next annual settlement.

7. That all rent, taxes, salaries, wages and other outgoing expenses incurred in respect of the said business, shall be paid and borne out of the profits of the said business.

8. That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept, according to the usual and regular course of the said business, which said books shall be open to the inspection of all the partners, or their legal representatives. A general balance or statement of the said accounts, stock in trade and business, and of accounts between the said partners shall be made and taken on the first day of March in each year of the said term, and oftener if required.

9. That the said partners shall be true and just to each other in all matters of the said co-partnership, and shall at all times, during the continuance thereof, diligently and faithfully employ themselves, respectively, in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and neither of them shall transact or be engaged in any other business or trade whatsoever: And the said partners, or either of them, during the continuance of the said co-partnership, shall not, either in the name of the said partnership or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing by which, or by means of which, the said partnership moneys or effects shall be seized, attached or taken in execution; and in case either partner shall fail or make default in the performance of any of the agreements of articles of the said partnership, in so far as the same is or are to be observed by him, then the other partner shall represent in writing to such partner offending, in what he may be so in default; and in case the same shall not be rectified by a time to be specified for that purpose by the partner so representing, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid by the partners offended against, be dissolved and determined accordingly.

10. That in case either of the said partners shall die before the expiration of the term of the said co-partnership, then the surviving partners shall, within the six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner, all accounts, matters and things relating to the said co-partnership, and that the said survivors shall continue to carry on thenceforth, for their sole benefit, the co-partnership business.

IN WITNESS THEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered
In the presence of
W. SWEETMAN.

GEORGE CARLISLE. L.S.
JOHN ADAMS. L.S.
CHARLES ANDREWS. L.S.

446 Registration of Partnership.—Every General partnership must be registered or filed within a definite time, which varies some in the different Provinces, or be liable to a heavy penalty.

Limited partnership is not deemed to be formed until the certificate is filed. If business is done before filing it is deemed a General partnership and the Special partners become liable for debts equally with the General.

In Ontario Limited partnership must be filed at the office of the Clerk of the County Court before commencing business; and a General partnership at the County Registry Office where the business is carried on within six months after the partnership is formed. The penalty for not registering is $100 to each member, one-half to go to the prosecutor and the other to the Crown. The fee for registering Limited partnership is 25c., and 50c. for General.

In Manitoba General partnership must be filed within six months. For the Eastern Judicial District they are filed at the office of the Clerk of the Court of Queen's Bench, and for the Western Judicial District with the Deputy Clerk of the Crown and Pleas. The penalty for not registering within the six months is $100 fine for each member of the firm. The fee for filing is $1. Limited partnership to be filed in the office of the Judicial District in which the principal place of business is situated, and if the principal place of business is not in a Land Titles district then it must also be filed in the office of the Registrar of the registration district in which it is situated. Fee for filing, $1.

In British Columbia General partnership must be registered within three months with the Registrar of the County Court. Fee for filing, $1, if not over 200 words, and 20 cents for every 100 words thereafter. Limited partnership certificate must be signed before a notary public and filed in the office of the Registrar of the County in which the principal place of business is situate. Fee for filing, $2.

In Alberta, Saskatchewan and North-West Territories General partnership must be registered within six months in the office of the Registration Clerk of the registration district for registration of chattel mortgages in which the business is to be conducted. Fee for filing, 50c.

The certificate for Limited partnership must be signed before a notary public, who will certify the same, and then filed in the office of the Deputy Clerk of the Supreme Court where the principal place of business is situate. Fee, 25c.

In Yukon Territory General partnership must be registered in the office of the Registration clerk of the registration district where the business is conducted within two months after formation. Fee for registering, $2. Penalty for not registering within the two months is a fine not exceeding $500, and thereafter, $20 a day while such default continues.

In New Brunswick, both General and Special partnerships must be registered before commencing business, and the certificate must be signed by each member of the firm. Fee for former, 25c.; for latter, 50c. Limited partnerships must be filed in the office of the Registrar of Deeds of the county in which the principal place of business is situate, and when there are places of business in different counties, then a certified copy of the cerftificate must be filed in each such county. A copy of the certificate must be published for three months in a newspaper published in the county where principal place of business is situate, and an affidavit of the publisher of such paper must be made before a Justice of the Peace verifying such advertisement must be filed in same office as the partnership is registered. (See Chap. 144, Sec. 6, R. S., N.B.)

A copy of the certificate must also be published two consecutive weeks in the *Royal Gazette*.

The penalty for failure to file the certificate or to publish it, as directed

above, is a fine of $60, and $10 per day for each day of such neglect after notice so to do from any creditor or interested party, or the Clerk of the Peace where such notice should be filed.

In Nova Scotia the certificate to be filed in the office of the Registrar of Deeds within three months. The fee is 25c. if not over two hundred words.

The penalty for failure to register for each partner is not less than $20, nor more than $100. The certificate for Limited partnership must be acknowledged by the parties signing it before a Judge of the Supreme Court or a Justice of the Peace and then filed, after being certified, in the office of the Registrar of Deeds in the county in which the principal place of business is situate. At the same time and place must be filed an affidavit by one or more of either the General or Limited partners declaring that the sums specified in the certificate had in good faith been paid. As soon as such partnership is registered it shall be published at least six weeks in the *Royal Gazette* and one other newspaper published at Halifax, and by handbills posted up in some public places in the township where the business is carried on.

In Quebec, both General and Limited partnership, the declaration must be signed and certified before a notary public and filed with the Prothonotary of the district and of the Registrar of the County in which the principal place of business is situate within sixty days after formation of the partnership. Failure to comply incurs a penalty of $200. Fee for filing, 50 cents.

In Quebec every married person doing business as a trader, whether alone or in partnership, is required to register within 60 days from date of commencing business or his marriage, whether he is under community or separate as to property, in the office of the Prothonotary of the Superior Court of the district in which the business is carried on.

In Newfoundland the certificate must be acknowledged before a Notary Public who shall certify whether it was made in Newfoundland or abroad. The certificate is then filed in the office of the Colonial Secretary. When there are places of business in different districts a copy of the certificate certified by the Colonial Secretary must be recorded in the office of the Registrar of Deeds for such districts. At the time of filing the certificate an affidavit of one or more of the partners must be made that the sums specified in the certificate had been in good faith actually paid. The terms of the partnership must also be published at least in six consecutive issues of the *Royal Gazette* after registration, and in one or two other papers as the Colonial Secretary shall designate. If not so registered and so published the partnership shall be deemed a General partnership. The form of certificate is similar to the one shown in this book for Limited partnerships. For affidavit of newspaper publishers as to publication and other forms, see Consolidated Statutes, Chap. 88.

447 Form for Registration, for General partnership.

PROVINCE OF ONTARIO, } We, James Smith and James Robinson, of the
County of Wellington. } City of Guelph, County of Wellington, Province of Ontario, hereby certify:

1. That we have carried on and intend to carry on the trade and business of Carriage Building and General Blacksmithing at Guelph, in partnership, under the name and firm of Smith & Robinson.

2. That the said partnership has subsisted since the 15th day of May, 1906.

3. That we are and have been since the said day the only members of the said partnership.

Witness our hands at Guelph, this 2nd day of June, 1906.

JAMES SMITH.
JAMES ROBINSON.

The above form of declaration is identical in all the Provinces, as provided by statute. Simply change the name of Province when used in other provinces.

448 Form for Registration of Limited partnership.

Province of..... } We, the undersigned, do hereby certify that we
County of..... } have entered into co-partnership under the style or firm of (B. D. & Co.), as (Grocers and Commission Merchants), which firm consists of (A. B.), usually residing at ....., and (C. D.), residing usually at ....., as General partners; and (E. F.), residing usually at ....., and (G. H.), residing usually at ....., as Special partners, the said (E. F.) having contributed $4,000, and the said (G. H.) $8,000, capital stock of the said partnership.

The said partnership commenced on the ..... day of ....., 19.., and terminates on the ..... day of ....., 19...

Dated this ..... day of ....., 19...

Signed in the presence of T. M., *Notary Public.* } A. B. C. D. E. F. G. H.

The certificate for a Limited partnership must be signed before a notary public, who shall duly certify the same. If any false statement is made in such certificate all the members shall become liable as General partners.

449 Powers and Limitations of Partners.—Each general partner, unless prohibited in the articles of co-partnership, becomes a general agent of the firm and has power to act for the firm.

He may bind the firm in all matters that come within the limits of the business undertaken by the firm. For instance: If a firm were engaged in the grocery business a partner could bind the firm in such transactions as would properly belong to the grocery trade; but he could not for anything pertaining to a coal business, or in real estate, etc., or in matters for himself.

Each partner can act for the firm unless he is prohibited in the partnership agreement. He may receive payments of bills and accounts, compromise with a debtor, or represent the firm in a suit at court, or borrow money necessary to carry on the firm's business.

He may make a note or accept a draft for the firm in the regular course of business, if the partnership agreement does not prohibit him, or do any other act he deems necessary in the interest of the firm.

If a bill or note is signed by one of the firm the firm can be held liable,

providing that two things can be proved, viz., that it was for the firm purposes, and that the person signing it had proper authority to do so.

A promissory note or acceptance bearing the firm name signed by a partner, although not given for firm purposes, will be collected if it passes before maturity into the hands of an innocent holder for value, but the original payee could not hold the firm.

A partner not invested with the right, and binding his co-partners, renders himself liable to them.

One partner cannot bind the firm by an instrument under seal unless he has been empowered by an instrument under seal to do so, for instance, in the Articles of Partnership which should be under seal.

One member of a firm has no right to sign the firm name for purposes of suretyship or on private account. He must not employ the property of the firm for his own private use. He must not pledge the credit of the firm for his own personal benefit. He must not give a firm note in payment of a private debt.

One partner cannot legally give a partnership cheque in paymnet of a private debt without the assent of the firm, and a person receiving such cheque would be liable to the firm or the firm's creditors for the amount if such partner concealed the transactions from his partners and did not account to them for the amount. Such party takes such a cheque with the knowledge that a partner cannot use partnership property to pay individual debts and consequently imposes on him the obligation to make inquiries whether the partner had authority from the firm to issue such cheque.

450 Partner Selling His Interest.—A partner should not sell his interest without the consent of his associates. If he should sell without such consent it voids the partnership agreement, and a dissolution must take place. The remaining partners may accept the new member, but it makes a new partnership and must be registered again, even though no other change may be made in the articles of agreement, than substituting the new name for the old.

451 Retiring Partner.—Where no fixed time has been agreed upon, a partner may dissolve the partnership at any time by giving a reasonable notice of his intention so to do to all the other partners. Where the partnership was formed by Deed, a notice in writing, signed by the partner giving it, is sufficient for the purpose.

A retiring partner from a partnership firm, in order to protect himself from the future liabilities of the firm, must, in addition to the advertisements already mentioned, register a declaration of the dissolution at the office where the partnership is registered. (See Section 458 for form.)

This, of course, does not free him from previous liabilities thus incurred while he was a member. Nothing but a release from the individual creditors can free him from the past liabilities, and from the landlord to protect him from payment of rent and the covenants in the lease.

452 Insolvent Partnership.—A partnership firm becoming insolvent, the entire partnership property would be taken first to satisfy the firm debts. If this did not satisfy the claims, then the private property of all or any of the general partners would, subject to priority of the partner's private creditors, be taken to satisfy the debts.

The Special or Limited partner in such case would only be liable to the amount of interest he has in the business. If he had previously withdrawn part of his capital, and had not effected a new registration, he would still be liable for the amount withdrawn.

433 Suits Against Partners.—Actions against the business of a partnership, both General and Limited, must be brought against the General partners in the same manner as if there were no Special partner.

The partnership property cannot be seized for the private debt of a partner contracted either before or after the partnership was formed. The court, or judge in chambers may order that such partner's interest may be charged for the payment of the debt, and may also appoint a receiver to receive such partner's share of the profits to apply on the debt. But such receiver cannot interfere in the management of the business, and cannot compel the partners to show him the books. The other partners are at liberty to redeem such partner's interest that is charged, and in case a sale of the interest is ordered they may purchase it.

A Partner Cannot Sue the Firm, as that would be in reality suing himself, for the firm does not exist without him. If, however, he has a private debt or claim against the firm which the firm will not pay he may assign it to a third party and they may sue.

434 Dissolution of Partnership.—The following are among the things that call for a dissolution of partnership:

1. Insolvency of one of the partners in his private business.
2. Insanity of one of the partners.
3. Death of one of the partners.
4. Mutual consent.
5. Marriage of a female partner in some of the provinces.

The above events do not necessitate a dissolution, but they are a sufficient cause, and if any of the firm should demand a dissolution it must be complied with.

In Quebec the death of a partner terminates the partnership, and also the right of the remaining partners to act for the firm in the absence of a special agreement to the contrary. (C. C. 1892, 1897.)

They are also dissolved by expiration of time, by the completion of the work for which they were formed, or by a decree of the court.

In the case of a dissolution, notice must be given to the public as per following section:

435 Advertising the Dissolution.—For firms whose business is confined to any one Province, notice of dissolution would be given in the *Official Gazette.*

For firms whose business extends to other provinces, notice must be given in the *Canada Gazette.*

It is also customary to give notice in the local press and to send circulars to each individual firm with whom business has been done.

In all cases it is also necessary when dissolution takes place, before the term of partnership expires, that a declaration of dissolution be filed in the office where the certificate of partnership was filed at its formation. (See Section 458.)

In New Brunswick any change that takes place in the firm, or a dissolution, a certificate of such change or dissolution must be filed within thirty days and published the same as at first or to be subject to the same penalty.

In Nova Scotia, besides the filing of the declaration of dissolution as here stated, it is necessary to advertise it in four weeks' issue of the *Royal Gazette* and four weeks in a newspaper where the business is located.

Newfoundland also requires the publication in the *Gazette*, and one other paper for four weeks, besides filing the declaration of dissolution in office of Colonial Secretary.

456 Dissolution by Decree of Court.—Sometimes partners fail to agree and by continual quarrelling and pulling in opposite directions the business of the partnership suffers. If they cannot agree on a dissolution they may apply to a competent court and obtain an order for dissolution. The following would be grounds upon which such an order may be obtained:

1. Fraudulent conduct by a partner.
2. Violation of the articles of partnership.
3. Unreasonable exclusion of partner from sharing in the management of the business.
4. Quarrelling to an extent to render it impossible to properly and successfully carry on the business of the firm.
5. Inability of the partner to act, on account of permanent illness, or being otherwise disabled.
6. Intemperance, or immorality of a partner that would have the effect of injuring the business, or impairing the credit of the firm.

457 Form of Dissolution by Agreement that may be indorsed on back of the partnership deed or agreement.

We, the undersigned, do hereby mutually agree that the partnership heretofore subsisting between us, as Furniture Manufacturers, under the within Articles of Co-Partnership, be and the same is hereby dissolved, except for the purposes of the final liquidation and settlement of the business thereof; and upon such settlement wholly to cease and determine.

In witness whereof, we have hereunto set our hands and seals this..... day of ....., A.D., 1906.

Signed, Sealed and Delivered in the presence of LEONARD SPEDDING. — GEORGE CARLISLE. JOHN ADAMS. CHARLES ANDREWS.

458 Registration of Dissolution.

A notice of a dissolution of a partnership is required to be recorded in the same office in which the certificate of Partnership was filed at its formation and the same fee charged. The following is a statutory form provided by the various Provinces:

PROVINCE OF ONTARIO, County of Lincoln. } I, James Robinson, formerly a member of the firm carrying on the business of Carriage Building and General Blacksmithing at Guelph, County of Wellington, under the style of Smith & Robinson, do hereby certify that the said partnership was, on the 2nd day of September, dissolved.

Witness my hand at Guelph, this the third day of September, 1906.

JAMES ROBINSON.

The pronoun "we" may be used instead of "I" at the beginning of above declaration and all partners sign it, if desired to do so, or as many of them as wish. The above form would be suitable for a retiring partner to register if the other members of the firm did not file a declaration of dissolution.

459 Form of Notice of Dissolution in newspaper or *Gazette*:

Notice is hereby given that the co-partnership heretofore subsisting between the undersigned as General Merchants, under the firm name of Dell, Austin & Co., at Brantford, Ont., has been this day dissolved by mutual consent. All debts due to the said partnership are to be paid to W. A. Dell at his office, 106 Main Street, and all partnership debts to be paid by him.

WM. A. DELL.
Brantford, June 20th, 1906. E. AUSTIN.
P. DEWITT.

If the business were intended to be continuel, and merely a change of some of the partners taking place, the following addition to the notice would answer:

Notice is hereby given that the co-partnership heretofore subsisting between the undersigned as General Merchants, under the firm name of Dell, Austin & Co., at Brantford, Ont., has been this day dissolved by mutual consent. The business will hereafter be carried on by W. A. Dell and E. Austin, by whom all debts of the old firm will be paid and to whom all outstanding accounts due the old firm are to be paid.

WM. A. DELL.
Brantford, June 20, 1906. E. AUSTIN.
P. DEWITT.

460 Business after Dissolution.—After dissolution no partner has a right to sign the firm's name without a power of attorney. If a note has to be given the only alternative is for each partner to sign his name separately.

A partner, after dissolution, has power to demand that the assets be used exclusively to pay off the firm's liabilities before anything can be appropriated by the partners.

CHAPTER XX.

JOINT STOCK COMPANIES.

463 A joint stock company is an association of individuals possessing corporate powers, enabling them to transact business as a single individual.

There are two methods by which corporations are constituted in Canada: (1) By special Act of Parliament, either of the Parliament of Canada, or of the Legislature of the Province in which the business is to be conducted; (2) by Letters Patent issued under the Companies Act. It is the latter only that comes within the scope of this work.

The incorporation of a Stock Company may be effected either under Dominion or Provincial authority. Banking, railway, telegraph, telephone, insurance companies, cannot obtain a charter under the Companies Act, but must be incorporated by Special Act, as the powers they seek are so extensive that special legislation is necessary to determine their limit and safeguard public interest.

In Alberta, Saskatchewan, North-West Territories, British Columbia, Nova Scotia and Newfoundland joint stock companies are formed by Registration instead of Letters Patent. That method of forming a company will be treated at the close of the chapter, beginning at Section 495.

464 Advantages of Incorporation.—Among the advantages of incorporation the three following are of chief importance: (1) A larger number of persons, including employees, may become financially interested in the business than would be possible in any other way. (2) Ample capital may be secured and, if desired, largely from small investors. (3) And, lastly, the limited liability of shareholders. If the business does not prove successful no one need lose more money than the stock he subscribed for, thus differing entirely from an individual business or a general partnership.

465 Prospectus.—In cases where capital is desired from the public outside the parties immediately interested in the formation of the company a Prospectus is usually issued. This, however, is only a business circular to solicit shareholders and may take any form the judgment of the promoters suggest. It should contain for its heading the name of the company, and set forth the prospective advantages and gains truthfully, as there is stringent legislation and heavy penalties against misrepresentation in the "Prospectus."

In all the Western Provinces the prospectus must state the date upon which it was issued, and it must be signed by every director or his duly authorized agent, and be filed with the Registrar on or before the date of its issue. The prospectus must also state on its face that it has been so filed. In default of these requirements every officer and agent who is a party to its issue shall be liable to a penalty of $25 or every day during which such default continues.

Promoters of a company are not partners and any one who contracts a debt in connection with the formation of a company is the one to be held liable.

After incorporation, if the company in effect adopt the Prospectus by allotting the shares subscribed for on the strength of the Prospectus, then in all the Provinces the remedy for deceit in the Prospectus would be against the company as well as against the promoters.

After a company has been formed and the stock previously subscribed for has been issued, the purposes of the Prospectus are ended, and a person who subsequently purchases stock in the market cannot sustain an action against the company for his loss on account of misrepresentation in the Prospectus.

When a person has subscribed for shares through fraudulent statements or claims in the Prospectus, the action would be for cancellation of the contract to take shares or it may be for damages.

466 How to Form a Company.—About the first step taken, either by the solicitor, or any person doing the official correspondence, is to communicate with the Secretary of State, Ottawa, or with the Provincial Secretary, as the case may be, concerning the formation of the company, who will forward a copy of the Act together with the necessary instructions, and also a blank petition for the signatures of the applicants. This is always necessary, as the regulations are liable to be changed by Order-in-Council, and it saves time to get the information direct from the Government at the time, and also because the blank forms cannot be obtained from any other source.

If the business of the company is intended to extend to more than one Province, as, for instance, a steamship line between Toronto and Montreal, then the charter should be taken from the Dominion Government and the application should be addressed to

The Honorable
The Secretary of State,
Ottawa, Canada.

But if the business would be confined to the one Province, as a mercantile firm or manufactory, then the charter would be obtained from the Provincial Government and the application addressed to

The Honorable
The Provincial Secretary,
Toronto, Ont.

Or Winnipeg, or Halifax, or as the case may be.

For the Yukon, address

The Honorable
The Commissioner of Joint Stock Companies,
Office of Territorial Secretary, Yukon.

The next thing to be done is to open a stock book, which gives the name of the company, the amount of capital, the number of shares and the amount of each share. In this book the subscribers enter their names and the number of shares they wish to take; when the proportional amount of stock has been taken, the required amount paid in, and the notice given in the *Official Gazette*, where that is required, application may be made for Letters Patent.

In Ontario the stock book must be made in duplicate, and forwarded to the Provincial Secretary along with the petition and the memorandum of agreement.

467 Advertising in the Official Gazette.—Before the application can be made for incorporation under the Dominion Act, the applicants must give at least one month's previous notice in the *Canada Gazette* of their intention to apply for the same.

Ontario, Nova Scotia and British Columbia do not require the notice in the *Gazette* except in special cases where the department directs that it be given.

Quebec, one month's notice in the *Official Gazette*; New Brunswick, two weeks notice in *Royal Gazette*, if the capital exceeds $5,000; P. E. Island two issues in the *Official Gazette*; in Alberta, Saskatchewan, North-West Territories and the Yukon, one notice in the *Official Gazette*, and in three consecutive weekly issues of a newspaper published at or nearest to the chief place of business for the company.

468 Form of Stock Book.

THE ..... COMPANY OF ....., LIMITED.

MEMORANDUM OF AGREEMENT AND STOCK-BOOK.

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company, under the provisions of *The Companies Act, 1902*, under the name of The ..... Company of ....., (Limited), or such other name as the Secretary of State may give to the company, with a capital of ..... dollars, divided into ..... shares of ..... dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such Company to the said amounts.

In witness whereof we have signed.

Name of Subscriber	Seal	Date and Place of Subscription			Residence of Subscriber	Name of Witness
		Amount of Subscription	Date	Place		

The above is the model for the stock-book if taking letters patent from the Dominion Government.

Only two changes are necessary to use it for any of the Provinces. For instance, instead of saying the companies act of 1902, use *The Ontario Companies Act.*, etc. Instead of saying Secretary of State, use Lieutenant-Governor-in-Council.

Two signatures at least must be on the page containing the agreement to take stock (as above).

For Ontario the stock-book must be in duplicate and both duplicates forwarded with the petition.

If the subscriptions are to be subject to any conditions, such conditions must be mentioned in this agreement.

If preference stock is issued, the conditions must be mentioned also.

If a signature is by power of attorney, such power must be filed along with the stock-book.

Witnesses must by affidavit prove each signature.

The stock-book must show that the requisite proportion of the nominal capital has been subscribed.

469 The Petition.—The Government furnishes the blank printed forms of Petition and full instructions for signatures. After being filled out according to instructions it is forwarded to the Secretary of State, or the Provincial Secretary, as the case may be, accompanied by the government fee, affidavits and copy of advertisement, where advertisement is required.

The Petition for all the Provinces is nearly identical.

In Quebec, Alberta, Saskatchewan and N.-W. Territories the Government does not furnish the blank forms for the Petition and affidavit, etc., but the forms used in the other Provinces are suitable and will serve as guides, especially those under the Dominion Act.

The Dominion Act requires that the Petition must be signed by at least five persons of the full age of 21 years.

Ontario, Quebec, New Brunswick and British Columbia also require not less than five signatures, while Alberta, Saskatchewan, N.-W. Territories, Yukon, Nova Scotia and Newfoundland require not less than three.

Upon receipt of the Petition, with the fees, if charter is granted, notice will be given by the Department in the official *Gazette* of the issue of the Letters Patent, when the parties therein named and their successors become a body corporate and politic by the name mentioned in the same.

The Dominion Act requires that as soon as the notice from the Secretary of State appears in the *Canada Gazette* the company must publish a copy of it in four separate issues of at least one newspaper published in the county or city or place where the head office or chief agency of the company is established. The penalty for failure to publish such copy on summary conviction before two Justices of the Peace, is a sum not exceeding $20 for each day that such neglect continues.

470 The Name of the company must not be the same or even similar to that of any other company, whether incorporated or not, and must not be objectionable in any other way. The word "Royal" cannot be used as part of the name without a special license from the Home Office.

If there is doubt as to whether the Provincial Government would grant the charter under the name desired in most cases, the object would be accomplished by registering first as a partnership under the same name. (See Partnership.)

471 Registered Place of Business.—All the Provinces and Newfoundland require every Limited company, whether by Letters Patent or by Registration, to have a registered place of business within the Province or Territory to which all communications may be addressed. A heavy penalty is attached for not having such registered office. In all the Western Provinces and Territories the penalty is a sum not exceeding $25 for every day that business is carried on without such head office.

Extra.—Provincial companies must also have a registered place of business within the Province when obtaining a Provincial license.

472 The Government Fee in all the Provinces may vary at different times. It runs from $10 to $500, according to the nature of the company and the amount of capital stock. As the government fee is liable to be changed by Order-in-Council at any time, we will here only give those for Dominion charter as an approximation of the cost.

The Dominion Act requires following fees:

1.	When proposed capital is	$1,000,000 or upwards	.....	$500
2.	" " "	500,000 but less than	$1,000,000	300
3.	" " "	200,000 " "	500,000	250
4.	" " "	100,000 " "	200,000	200
5.	" " "	40,000 " "	100,000	150
6.	" " "	40,000 or less	.....	100

In Ontario the fees have been changed, so that the lowest fee now is $100, where the capital is $40,000 or less, except for cheese and butter companies, which are $10; educational and cemetery companies, not having gain for their object, $10, and athletic associations, $50.

In Alberta, Saskatchewan, North-West Territories and the Yukon for registration of a company divided into shares whose nominal capital does not exceed $10,000, the fee is $10, and for companies not divided into shares where the number of members does not exceed ten, the fee is $10.

Where the number of members is stated in the articles of association to be unlimited, the fee is $100.

In the Yukon the fee ranges from $100 when capital stock is less than $10,000, to $500 when capital stock is $400,000 and upwards.

In all the Provinces associations not having gain for their object, as educational, athletic associations, etc., the fees are nominal.

473 Extra Provincial Companies, that is, those incorporated in any other Province of the Dominion or in another country, need not obtain fresh Letters Patent, but must secure a license, or register, in the Provinces in which they wish to establish branch places of business. They must also make the required government returns annually. If they undertake to sell shares or transact business without a license they are liable to severe penalties and are debarred from entering any of the courts to enforce their claims. They must also have a registered place of business within such Province.

The fees for such Provincial license is the same as for letters patent or for registration for local companies.

474 Supplementary Letters Patent are required whenever:

1. The company would desire to change its corporate name.
2. To obtain further or additional powers.
3. To either increase or to decrease its capital stock.
4. To subdivide its existing shares.

Government fees are about half the fees charged in each Province for Letters Patent.

The directors by resolution may provide for any of the above changes but it must have the sanction of the shareholders, representing at least two-thirds in value of all the subscribed capital, at a special general meeting of the company duly called for consideration of such change, and afterwards be confirmed by supplementary letters patent.

In those Provinces where companies are formed by Registration the company may by spcial resolution change the name of the company, or subdivide the shares, or increase or diminish the amount of its capital, or increase or diminish the number of its members, as the case may be, but all

such changes must have the approval of the Registrar; and to reduce its capital it is necessary to obtain an order from the Supreme Court.

475 Provisional Directors.—The provisional directors named in the Letters Patent manage the affairs of the company until the first general meeting of its members, when permanent directors are elected by vote of the shareholders, but the provisional or first directors hold office and manage the affairs of the company until their successors are duly elected.

The directors must be petitioners, and shareholders in their own name.

The Dominion Act requires that the board of provisional directors be not less than three nor more than fifteen, and a majority to be residents of Canada.

Ontario, New Brunswick, and Manitoba, not less than three.

Alberta, Saskatchewan, N.-W. Territories and Yukon, not less than three nor more than nine.

Nova Scotia not less than three nor more than fifteen.

Yukon requires a majority of the first directors to be residents in Canada, and in Quebec the majority are to be British subjects as well as residents in Canada.

As soon as convenient after the incorporation of the company and notice of the granting of the letters patent appears in the official *Gazette*, the provisional directors are required by registered letter addressed to each shareholder to call at some convenient place a general meeting of the company for the commencement of business, election of permanent directors, enactment of by-laws, etc. In Ontario if the directors do not call such general meeting within two months of the date of the letters patent, any three or more of the shareholders have power to call such meeting and to proceed to the organization of the company.

476 Commencement of Business.—In all the Provinces and Newfoundland if the newly chartered company does not commence its operations within a reasonable time fixed by each province, it forfeits its charter.

Under the Dominion Act, if the company does not go into actual operations within three years' after the charter is granted, or if it does not use its charter for three consecutive years any time thereafter, it forfeits its charter.

Also under the Dominion Act if a company commences business or incurs any liability before ten per cent. of its authorized capital has been subscribed and paid for, every director who expressly or impliedly authorizes such operations shall be jointly and severally liable as well as the company for such liabilities.

477 Capital Stock of a company is that which is named in the charter as the maximum limit of stock that can be taken up, and usually designated Authorized Capital or nominal capital.

Subscribed capital is that portion of the authorized capital that has been issued to subscribers. It may be all paid up or only partially paid. The part of the subscribed capital that is unpaid is an asset to which either the company or creditors may have recourse.

The common stock entitles its holders to share *pro rata* in the profits of the business.

Preference stock is that which is issued entitling its holder to a certain rate of dividend out of the net profits in priority to the holders of common stock.

Watered stock is that which is issued, generally to previous stockholders, as fully paid up, when only a part or none of it has been paid. Such stock is nearly always issued to defraud the public in some way. It may be only to conceal the actual rate of dividends, or to give the original stockholders a bonus before placing stock on the market, etc., by which some profit at the expense of the many.

Debenture stock is held to be a debt of the company within the meaning of the Act, and shall be payable with accrued interest out of the assets of a company being wound-up.

478 Unpaid Stock.—Stock that has been subscribed for but not paid up stands as a resource to the company and new calls may be made as necessities or interests require.

The unpaid stock is an asset and a security to the public. In case of insolvency of the company each shareholder would have to pay up the balance of his shares but no more. Creditors cannot sue the shareholders until they have failed by execution to recover from the company property.

In case a shareholder is sued by a creditor on his unpaid stock, he has the same right of set-off against such creditor that he would have against the company, except a claim for unpaid dividends or salary, or other official allowance.

479 Transfer of Stock.—Shares in a stock company are personal property. Fully paid-up stock may be transferred almost as freely as a promissory note, except where the "certificate of stock" places some restriction on its transfer, which, of course, must be complied with. Shares not fully paid up can only be transferred where the directors are willing to accept the transferee, and a record of the transaction is made in the company's books.

Shares of a stockholder may be taken in execution, or order from a competent court the same as other personal property and the purchaser's name will be entered in the company's books.

In Quebec, by amendment of 1905, when shares in any stock company, or bonds, debentures or debenture stock are transferred, a tax of two cents on every $100 of par value must be paid in stamps, affixed to the transfer book.

480 Rights and Liabilities of Shareholders.—Shareholders in a stock company may contract with the company the same as any other person, sue and execute their judgments against the company's goods, and in case of winding up they rank with the other creditors.

They have, however, no right to the property of the company nor to the profits until a dividend has been declared. In conducting company business they can only work through the company. They cannot be expelled from the company nor deprived of their right to vote by either the officers or directors and the other shareholders combined.

They are not responsible for any act or default of the company, nor for any engagement, debt or loss or injury in connection with the company, beyond the unpaid portion of their respective shares in the stock of the company.

The number of shareholders, however, must not be less than the number required by statute in each Province, hence if the business of the company is carried on with less than that number, for a period of six months, the members individually become liable for company debts if they know the number has been so reduced. They may free themselves from personal liability by serving a written protest upon the company, and by registered letter notifying the Provincial Secretary or Registrar of such protest and the facts upon which it is based. If company refuses to increase the number of members to the required number its charter may be revoked.

481 Limited Liabilty of Shareholders.—In stock companies a shareholder is only liable to creditors to the amount of stock he has subscribed for. This is the great distinctive feature of joint stock companies. The company may be wrecked by bad management and subscribers lose the amount of the stock they purchased, but their loss stops there. Creditors cannot touch their private business nor enter their homes to seize and sell. If their stock has been paid up in full no more can be claimed from them. If their shares have not been paid up in full they are liable to creditors for the unpaid portion, but not even then until an execution against the company has been returned unsatisfied in whole or in part.

The law in this respect is the same in all the Provinces and Newfoundland for companies whose capital stock is divided into shares.

482 Double Liability applies only to chartered banks. A stockholder in a chartered bank is liable to creditors for double the amount of stock he subscribed for. That is, in case the bank fails he is required to pay the whole of the stock he subscribed for and then another sum of the same amount, if necessary, to pay the bank's liabilities. This is Dominion legislation and applies to all the banks in Canada, except the Bank of British North America.

It is the same in Newfoundland.

483 Use of Word "Limited."—The Dominion Act and also that of the Yukon require that every incorporated company shall keep painted or affixed its name with the word "Limited" after the name on the outside of their office or place of business in legible letters, also on its seal, and invoices, receipts, notes, drafts, cheques, indorsements, advertisements, letter heads, and wherever the name appears. The penalty for not attaching it to the outside of the building with its name is $20 a day for each day of such neglect, and every officer or director of the company who authorizes or knowingly permits such neglect is liable to a like penalty.

And every director, or officer of such company who authorizes or permits the use of a company seal without the word "limited" engraved on it, or who authorizes the issue of any notice, advertisement, or other official publication, or signs or authorizes the signature of any bill of exchange, note, cheque, invoice, receipt, etc., without using the word "limited" with its name incurs a penalty of $200, and also become personally liable to the holder of any such paper for the amount unless the same is duly paid by the company.

In Alberta, Saskatchewan, North-West Territories, British Columbia and Nova Scotia, every limited company, whether limited by shares or by

guarantee, shall have its name painted or affixed to the outside of the building with the word "Limited," or "Limited by Guarantee," as the case may be. Penalty for neglect is $25 per day during the default, and every director or officer who knowingly permits such neglect is liable to a like penalty.

And the penalty for using a seal without such words being engraved on it, or signing negotiable paper, issuing invoices, advertisements, or signing contracts, etc., without using the word "Limited" or "Limited by Guarantee," as the case may be, is $250, and such officers become personally liable for the amounts if such obligations are not discharged by the company.

The Ontario Act as now amended does not require the name to be on the outside of the place of business, but if it is used the name must be in legible characters and the word "Limited" in its unabbreviated form as the last word. "Limited" as the last word of the name must also be on its seal, appear in all advertisements, on invoices, written contracts, in the signature to cheques, notes, drafts, indorsements, leases, money orders, and wherever the name of the company appears. In cases where the words "Company," "Club," "Association," or similar words, form part of the name the word "Limited" may be abbreviated, as "Ltd," but where such words do not form part of the corporate name, then the word "Limited" must appear in full and in same size of letters as the rest of the name. Marking packing boxes, etc., the word "Limited" need not be used, as that is not deemed an advertisement or contract.

For neglect to so use the word every company, director, manager and employee responsible for the default shall incur a penalty not exceeding $10 for each offence, and for a second conviction of this offence, a penalty not exceeding $100. Prosecutions must be commenced within six months.

Companies not having gain for their object may in their charter of incorporation be exempted from such conditions as above.

In Newfoundland the penalty is $25 per day for neglect to place the company name with the word "Limited" on the front of their place of business, as well as on the invoices, advertisements, etc.

484 Voting.—The person whose name is on the register for shares has a vote for each share he holds. An absent person may vote by proxy, and a person holding shares in trust for another person may vote on them if his name stands on the register as holding such shares in trust.

The personal representative of a deceased shareholder may represent such deceased person and vote at the meetings.

A chairman may vote on his own shares, and also has a casting vote in case of a tie.

There would be fewer disasters among the great stock companies if more of the shareholders would take interest enough in the welfare of the company to attend the annual meetings and do their own voting, instead of allowing some scheming director to obtain their "proxies" and use them to further some selfish purpose.

485 Dividends can only be paid out of the profits. If there has not been a profit over the running expenses, no dividend can be declared, for if the officers were to declare a dividend out of the capital, they would make themselves personally liable for the amount of dividend in case the company went into liquidation. Dividends that might be declared by the directors

after the transfer of any shares are payable to the purchaser, whether the transfer has been registered or not, and no matter when the dividend was earned. It is a matter wholly in the hands of the directors whether to declare a dividend or not, or to use the profits for an extension of business, and the courts will not interfere in such matters unless it is evident they have acted in bad faith or positive neglect of duty.

486 Annual Statement.—The Government each year furnishes the company with blank forms to be filled in by the officers of the company, giving detailed information on company affairs, the stockholders, transfers, etc., one copy of which to be forwarded to the Government and the other to be posted up in the head office of the company before a certain day named.

If this is not done by the proper date the company, in nearly all the Provinces, incurs a penalty of $20 a day for every day during which the default continues. In Alberta, Saskatchewan and North-West Territories the penalty is $25 per day. And every director, manager or secretary of the company who knowingly or wilfully permits such default incurs the like penalty.

In Ontario a fee is now required to be sent with the annual statement to Provincial Secretary, ranging from $2.00 to $5.00, according to amount of capital; and also with every by-law of the company required to be filed in the Provincial Secretary's office. The annual fee for Nova Scotia has been abolished by amendment of 1904.

487 Books to be Kept.—The Companies Act, both of the Dominion and of each Province, requires certain books to be kept by the Secretary or some other officer, wherein shall be recorded for the information of shareholders and creditors a copy of the letters patent and a classified record of the company's status and doings.

They are as follows:

1. A book containing a copy of Letters Patent, and of any supplementary letters patent, and of the preliminary memorandums of agreement and of all by-laws thereof.

2. A register of shareholders present and past, alphabetically arranged, giving the address and calling as far as can be ascertained of every such person while such shareholder.

3. The stock ledger, giving number of shares held by each stockholder, the amount paid in, and the amount unpaid.

4. A register of transfers of stock, in which shall be entered the particulars of every transfer of shares in the capital stock of the company.

5. A register of directors, giving the names, addresses and calling of all persons who are or who have been directors, with the dates at which each one became or ceased to be a director of the company.

All these books or books containing the above information are to be at the head office of the company, and open for inspection by shareholders and creditors at all reasonable hours on business days, and such persons or their representatives may make extracts from them.

Any director or officer or servant of the company who knowingly makes or assists in making any untrue entry in any of such books or wilfully neglects or refuses to make any proper entry therein or to exhibit the same

or to allow the same to be inspected and extracts to be taken therefrom, is guilty of an indictable offence. In Ontario is liable to a penalty of $100.

Every company which neglects to keep such books shall be liable under summary conviction before two justices of the peace to a penalty not exceeding $20 for each and every day while such neglect continues.

488 Board of Directors.—The affairs of stock companies are managed by a board of directors elected by ballot by the shareholders in a general meeting of the company. For the number of directors allowed in each Province, see Section 475.

In the absence of other provisions in the charter of incorporation or in the by-laws of the company, directors hold office for one year, but are eligible for re-election indefinitely.

To be eligible for election or appointment as director, a person must be a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the company, and not in arrears in respect to any call thereon.

Every election of directors must be by ballot.

Vacancies in the Board may be filled for the remainder of the term by the directors from among the qualified shareholders.

The directors elect from among themselves the president and other officers of the company. Directors cannot vote by proxy. They can only legally vote at the meeting and cannot elsewhere give separate assent to the proceedings of the board.

Th board of directors hold office until their successors are duly elected.

The directors have the entire management of the company and its operations, and have exclusive authority as to the appointments, duties and removal of all agents, officers, and employees of the company, the security given by them to the company and their remuneration.

But in respect to all other by-laws they may make or repeal, or amend or re-enact, unless confirmed at a general meeting of the company called for that purpose, they only have authority until the next annual meeting if they then fail to receive the confirmation of the shareholders.

489 Liability of Directors.—The Dominion Act, and all the provinces and Newfoundland make the directors of companies of "limited" liability personally liable if they refuse or knowingly permit the neglect to use the word "limited" on their company seals, or with the name of the company as stated in Section 482.

Also if they pay dividends when there have been no profits earned, thus impairing the capital. If the company went into liquidation they would be personally liable to creditors for the amount of such dividend.

If they make loans to shareholders contrary to the charter of incorporation they will be personally liable if loss occurs.

In case of insolvency they become personally liable to clerks, laborers and apprentices for wages performed while they were directors; in Alberta, Saskatchewan, N.-W. Territories and Yukon for six months' wages, and in Ontario, Quebec and Manitoba for one year. In each case a director is not liable unless the labor was performed while he was a director, and unless the company has been sued for the amount within one year after the debt became due, and within one year from the time he ceased to be a

director, nor unless an execution against the company has been returned unsatisfied.

They are also held liable for malfeasance in office, for false reports of the business and for false returns to the government, or if they wilfully permit neglect to make such returns.

Directors act in the double capacity of agents and trustees for the company, and must therefore act within their authority to bind the company. The public have opportunity to know, and the law presumes them to know the powers of companies, so that acts of the directors where they exceed their authority are voidable and may be repudiated by the company, in which case the directors will be held personally in such contracts.

They must not purchase the company property even under execution, or foreclosure sale. If they do they are deemed trustees for the company and must turn it over to the company, when repaid the price. Every director in justice to himself should obtain a copy of the Act under which the company is incorporated and ascertain his personal responsibilities, as the statutes of the different provinces are not entirely the same.

490 Calls.—All the Provinces require for companies divided into shares that not less than ten per cent. be called in and made payable within one year from the incorporation of the company, and the residue as the letters patent or the by-laws of the company direct.

If any shareholder does not pay the calls on or before the date of payment he is liable to pay interest until payment is made.

If any call duly made upon a share is not paid within the time fixed for payment, the directors may by resolution declare such share forfeited, and it shall become the property of the company. Notwithstanding such forfeiture, the holder of the share remains liable to the then creditors of the company for the full amount unpaid on such shares.

The directors may, instead of declaring a share forfeited for non-payment of a call, enforce payment of the call and interest theron in any court of competent jurisdiction.

491 Taxation of Companies.—Municipalities do not assess the capital stock of incorporated companies, but their plant, real estate and goods are liable to assessment, and in some of the Provinces a business license is also required.

In the Provinces where a "business assessment" is levied on mercantile manufacturing or other business firms, it does not include the real estate occupied.

A person liable to assessment in respect to the business is not liable to assessment for income or dividend derived from such business.

Although shares in a company are not assessable, the dividends from such shares are assessable in the municipality in which the head office or chief place of business is situate.

Shareholders are liable to an income tax on dividends derived from their stock in a company having its chief place of business within that municipality, if such dividends amount to more than the income the statutes of such province exempt from taxation.

492 When Company is Insolvent.—A company is deemed insolvent:

1. If it is unable to pay its debts as they become due.

2. If it calls a meeting of its creditors for the purpose of compounding with them.

3. If it exhibits a statement showing its inability to meet its liabilities or otherwise acknowledges its insolvency.

4. If it assigns, removes or disposes of any of its property with the intent to defraud its creditors.

5. If with such intent it has had its lands or property seized under execution or other process.

6. If it has made an assignment for the general benefit of its creditors.

7. If a creditor to whom the company is indebted in a sum exceeding $200 serves on the company a demand in writing requiring payment of the sum so due, and the company does not pay or otherwise satisfy such creditor within 90 days in case of a Bank, or 60 days for all other companies, such company is deemed to be insolvent.

493 Winding-Up Act.—When a company becomes insolvent a creditor for the sum of not less than $200, may after four days' notice to the company of his intention to do so apply to the court in the Province where the head office of the company is situate for a winding-up order.

If the company's head office is not in Canada, then the application would be made in the Province in which its chief place of business is situate.

The proper court for the different Provinces is as follows: Ontario, the High Court; Quebec, the Superior Court; in New Brunswick, Nova Scotia, P. E. Island, Alberta, Saskatchewan, British Columbia and North-West Territories, the Supreme Court; Manitoba, the King's Bench.

If the company opposes the application on the ground that it is not insolvent, the court will cause the necessary investigation to be made before the order is granted or refused.

After an application for a winding-up order has been made, but before it is granted any further proceedings in any suit or action against the company, may, on application by the company or any of the creditors, be restrained upon such terms as the court thinks fit.

The court, in making the winding-up order, may appoint one or more liquidators of the effects of the company. Such liquidator may be the assignee or receiver of such company, or an incorporated company or any person the court may appoint.

From the time of the making of the winding-up order the company must cease from carrying on its business except as the liquidator allows in the interest of the creditors. Any transfers of shares or alteration in the status of members made without the assent of the liquidator are void.

Every attachment, execution, or distress put in force against the effects of the company after the winding-up order is granted is void, and no action or suit can be commenced against the company except on such terms as the court imposes.

A liquidator may resign or may be removed by the court on due cause shown, and any vacancy in the office of liquidator shall be filled by the court.

Broadly, the liquidators and the insolvent estate are in the hands of the court, and shareholders and creditors may be heard, the proceedings stayed, or delayed, or any change made that the court deems best.

494 Liquidators.—Upon the appointment of the liquidator all the powers of the directors cease, except in so far as the liquidator or court sanctions the continuance of such powers.

Upon his appointment he takes into his custody all the property effects and choses in action to which the company appears to be entitled.

Under the approval of the court he may carry on the business of the company as far as is necessary to its beneficial winding up, bring or defend any action or suit in his own name as liquidator or in the name of the company, sell the personal and real property, execute in the name and on behalf of the company deeds, receipts, etc., and if necessary use the company seal.

But the money which he has in his hands belonging to such company must not be retained or deposited in a Bank in his own name individually, but must be deposited at interest in a chartered Bank, or a post office or other government savings bank designated by the court, and a separate account must be kept for such company in the name of the liquidator as liquidator, and not otherwise, on pain of dismissal.

In realizing on the assets of the company the laws concerning fraudulent preferences, fraudulent transfers or conveyances of property enacted by the province in which the company is being wound up must be observed; and in distributing the proceeds of the company regard must be had to the priority of claims, and the balance, of course, will go to the members and shareholders of the company according to their individual and relative interests in the company.

COMPANIES FORMED BY REGISTRATION.

495 In British Columbia, Alberta, Saskatchewan, N.-W. Territories, Nova Scotia and Newfoundland stock companies are formed by Registration instead of by Letters Patent, as in the other provinces.

In British Columbia, Alberta, Saskatchewan, N.-W. Terirtories and Nova Scotia no company consisting of more than twenty persons, and in Newfoundland ten persons, can carry on business within the scope of the Stock Companies' Act for the purpose of gain unless registered as a stock company, or unless working under some other Act or Letters Patent.

The following sections will give the method of incorporation by registration:

496 Memorandum of Association.—In British Columbia to form a company any five or more persons, twenty-one years of age, may subscribe their names to the Memorandum of Association, and forward the same with the necessary affidavits, Government fee, etc., to the Registrar of Joint Stock Companies, and thus become an incorporated company either with or without limited liability, according to the articles of association.

If any incorporated company carries on business when the number of members is less than five, for a period of six months thereafter, every member that is cognizant of that fact becomes personally liable for debts contracted during such period, the same as in a General partnership.

In Alberta, Saskatchewan and N.-W. Territories, any three or more persons twenty-one years of age may sign the Memorandum of Association addressed to the Registrar of joint stock companies. After registration if the company carries on business when the number is less than three for six months, every member who knows that fact becomes personally liable for the debts contracted during such period.

In Newfoundland any three or more persons may subscribe their names to a memorandum of association and register as a company. Fee for registering when capital does not exceed $10,000 is $10, and when it is $25,000 a fee of $25.

In Newfoundland correspondence is addressed to

The Honorable The Colonial Secretary,
St. John's.

There are three classes of companies under this system, described in the three following sections:

497 Liability Limited to Unpaid Shares.—Where the liability is to be limited to the amount unpaid on the shares, the Memorandum of Association must contain:

1. The name of the proposed company, with the addition of the word "Limited" as the last word of the name.
2. The place where the registered office of the company is to be located.
3. The objects for which the company is to be established.
4. The time for its continuance, if for a fixed time.
5. A declaration that the liability of the members is to be limited.
6. The amount of capital, divided into shares of fixed amount.

No subscriber can take less than one share.

Mining companies may have their liabilities restricted to the amount paid on their shares if such provision is made in their memorandum of association.

498 Liability Limited by Guarantee.—Where the liability of members is to be limited to the amount they respectively undertake to contribute to the assets in the event of the company being wound up, the memorandum of association must contain:

(1) The name of the proposed company, with the addition of the words "Limited by Guarantee" as the last words of the name.

(2) Object for which the company is to be formed.

(3) Place in which the registered office is to be situated.

(4) A declaration that each member undertakes to contribute to the assets of the company a sum not exceeding a specified amount in case the company is wound up while he is a member, or within one year afterwards,

in settlement of liabilities contracted before the time at which he ceased to be a member.

499 Unlimited Liability.—In companies where there is no limit placed on the liability of members (general partnership) the memorandum of association, besides giving the proposed name of the company, place of business, and object, must also be signed by each subscriber in the presence of, and be attested by, at least one witness. This, when registered, binds the company and the members, their heirs, executors and administrators, to observe all its conditions, as though it were an instrument under seal. This is the same for the other forms of company as well.

500 Articles of Association.—The Memorandum of Association *may* in case of companies limited by *shares,* and *shall* in case of a company "limited by guarantee," or an unlimited company be accompanied by Articles of Association prescribing the regulations by which the company is to be conducted. The Articles of Association are to be printed and signed by each subscriber in the presence of, and attested by, at least one witness, and when registered bind the company, the members, their heirs, executors and administrators to the conditions.

It is generally required that the articles of association be written in separate paragraphs numbered arithmetically. In case of a company with the capital divided into shares it must state the amount of capital with which the company proposed to be registered; and in case of a company whose capital is not divided into shares it must state the number of members with which the company proposes to be registered.

CHAPTER XXI.

MECHANICS' AND WAGE-EARNERS' LIEN ACT.

502 Nature of Lien.—According to the provisions of the Mechanics' and Wage-Earners' Lien Act, unless he signs an express agreement to the contrary, every mechanic, machinist, builder, miner, laborer, contractor or other person doing work upon or furnishing material to be used in the construction or repair of any building or erection or mine, or supplying machinery of any kind in connection therewith for any owner, contractor or sub-contractor, has a lien upon such building, erection or mine and upon the land occupied thereby for the sum justly due or such labor, or material or machinery.

In case property upon which a lien is given burns down covered by insurance the insurance money takes the place of the property and shall be subject to the liens the same as though the property were sold to enforce a lien. Quebec is given separately at the end of the Chapter.

In British Columbia for contracts of over $500 the owner must file in the nearest County Court Registry the particulars of the improvements to

be done or building erected, the nature of his interest in the land, name and residence of the contractor and the contract price.

503 Limit of Lien—The lien whether claimed by the contractor, sub-contractor or other person, cannot make the owner liable for more than the sum justly owing by the owner to the contractor. In Manitoba and British Columbia the claim or combined claim must not be less than $20 to be a first lien on the property.

In Ontario and Manitoba the Act states that for wages up to thirty days it is not necessary to register the lien, and third parties must inquire concerning wages due if they would be safe.

In Nova Scotia laborers in connection with mining operations have a lien for two months' wages, registration to be in the office of the Commissioner of Public Works and Mines at Halifax.

In Ontario, by amendment of 1906, every miner, mechanic, laborer or other person who performs labor for wages in connection with any mine, has a lien for 30 days' wages, to be enforced in same way as other mechanics' liens, and no agreement to deprive mine workers of benefit of their lien shall effect the right of lien.

Also an Ontario amendment of 1906 provided that every mechanic, laborer or other person who performs labor for wages upon the construction or maintenance of a railway or the works connected therewith has a lien upon the railway and other property connected therewith for 30 days' wages or a balance equal to 30 days to be enforced the same as other mechanics' liens.

In the Yukon a lien is a charge upon the works up to 10 per cent. for 10 days after works are completed or the delivery of materials, but no longer unless notice in writing is given to owner, or the lien registered.

In Newfoundland wages for twelve days have a lien on buildings, etc., and for railways and mines for thirty days.

Wages up to 30 days or a balance due equal to 30 days have right to lien in all the Provinces.

504 Landlord and Lien.—In case where work is done for a tenant the building is holding for the lien, but the real estate itself cannot be held liable except by consent of the owner of the freehold, given in writing at the time of registering the lien.

The British Columbia Statutes state that the owner of the land is deemed to have authorized the erection of the building unless within three days after he has knowledge of the construction of the building or repairs he posts up a notice in some conspicuous place upon the premises that he will not be responsible for the same.

505 Mortgage and Lien.—In case where the land upon which the work is done or material furnished is encumbered by a prior mortgage or other charge, and the selling value of such land is increased by such work or placing of material, the lien shall rank upon such increased value in priority to the mortgage.

506 Combining of Claims—A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein. Each lien must, however, be verified by affidavit.

507 Owners' Protection.—Each of the Provinces requires the owner as the work progresses to retain a certain percentage of the money due the contractor for thirty days after completion or abandonment of the work with which to satisfy lien claims. He is not liable for any greater sum than this for any liens of which he has not, before making payment, received notice in writing.

In Ontario and Manitoba, when contract does not exceed $15,000, the percentage is 20 per cent.; when it exceeds that sum, 15 per cent.

In New Brunswick and Nova Scotia, 15 per cent. if contract does not exceed $1,000; 12½ per cent. if over $1,000 and under $5,000; and 10 per cent. on all other sums.

In British Columbia on contracts of over $500 the owner is required to be furnished with the receipted pay-roll, giving names of laborers, amount due and paid. He must retain amounts due laborers, and no payment made in the absence of such pay-roll is valid against lienholders. Owners are liable for six weeks' wages to laborers, even if there is not that much yet due the contractor. A copy of the pay-roll must also be posted up in the works on the first legal day after pay day from twelve noon to one o'clock p.m.

In Newfoundland owner may retain 10 per cent. for thirty days.

In Alberta, Saskatchewan, N.-W. Territories and the Yukon the owner may retain 10 per cent. for thirty days unless there is an agreement to the contrary. All payments to the contractor up to 90 per cent. are valid if no notice of liens has been given, and as in British Columbia, no contractor is entitled to demand or receive payment in respect to any contract where the contract price exceeds $500, until he or some person in charge of the works furnish a receipted pay-roll, giving names of laborers, amounts due and paid, and the owner must retain the amount due laborers. No payments in the absence of such pay-roll are valid against lienholders.

508 Registration of Liens.—A claim for a lien may be recorded in the Registry Office, or Land Titles Office for the district in which the land is situated, and in British Columbia in office of the nearest county court registry in the county where the work is done. It shall state:

1. The name and residence (1) of the person claiming lien, (2) of the owner of the property to be charged, (3) of the person for whom the work was performed, or material furnished; also, the time within which the work was to be done, or materials furnished.

2. A short description of the work done, or materials furnished.

3. The sum claimed to be due, or to become due.

4. A description of the land (number of lot, etc.), to be charged sufficient for the purpose of registration.

5. The date of expiry of the period of credit (if any) agreed for payment of work or material.

Every claim must be verified by affidavit.

A lien when registered, becomes an encumbrance against the property. The fee for registering a lien for wages is about twenty-five cents. If several persons join in one claim, a further fee of ten cents is charged for every person after the first. In Newfoundland twenty-five cents for each person after the first.

509 Time for Registering Liens.—A claim for a lien by a contractor or sub-contractor may be registered before or during the contract, or within thirty days after its completion.

A claim for lien for materials may be registered before or during the furnishing thereof, or within thirty days after furnishing or placing the last of the material.

A claim for lien for services, wages or work may be registered any time during the performance of the service or work, or within thirty days after the completion of the service or the last day's work for which the lien is claimed; thirty-one days for British Columbia.

Every lien not registered within the time mentioned here ceases at the expiration of that time, unless action has been brought to realize the claim and a certificate thereof duly registered.

In Ontario, where a building is under the supervision of an architect or engineer, upon whose certificate payments are to be made, the claim for a lien may be registered as stated in this section, or within seven days after said architect, engineer or other person has given his final certificate, or has, upon application by the contractor, refused a final certificate.

510 When Liens Cease.—Every lien which has been duly registered absolutely ceases to exist after ninety days from the time when the work or service ended, or the materials were furnished, or the expiry of the period of credit, unless in the meantime an action to realize the claim under the provisions of this Act has been instituted and a certificate thereof duly registered.

511 Lienholders' Priority.—Liens have priority over all judgments, executions, assignments, or garnishments issued after such lien arises, and over all payments made on account of the sale of the property or a mortgage thereon after notice in writing of such lien to the person making such payments, or after the registration of the lien.

Among the lienholders themselves each *class* shall share the proceeds recovered *pro rata*, according to their several classes and rights.

In all the Provinces persons having claims for labor or material against a lienholder may notify the owner within 30 days after the material was furnished or the labor performed and rank *pro rata* upon any amount paid to such lienholder.

512 Priority for Wages.—Every mechanic or laborer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other classes of liens to the extent of the amount of the percentage reserved from the contract price in each Province except British Columbia, where the priority is for six weeks' wages. All such mechanics or laborers share *pro rata* in the sum recovered. Wage-earners may also enforce a lien before the contract is completed.

In case of a contractor or sub-contractor making default in finishing his contract, the percentage due such contractor or sub-contractor for work done or materials furnished at the time when the lien is claimed by wage-earners cannot be used for any other purpose, or for payment of damages for the non-fulfilment of the contract to the prejudice of the wage-earners.

Every device by any owner, contractor or sub-contractor to defeat the priority thus given to wage-earners for their wages is null and void.

513 Transfer of Lien.—A lienholder may assign his right of a lien by an instrument in writing. A lienholder dying, his right of lien passes to his personal representative.

514 Discharge of Lien.—A lien may be discharged by a receipt signed by the claimant or his agent, duly authorized in writing acknowledging payment and verified by affidavit and registered. The fee for registering the discharge is the same as for registering the claim.

515 Vacating a Lien.—Upon payment into Court or receiving sufficient security, or upon other grounds, the Court or Judge way vacate the registration of the lien.

516 Lienholders Demanding Terms of Contract, etc.—If the owner or his agent refuse to give information concerning the terms of the contract, or knowingly falsely state the terms, or the amount due and unpaid thereon when demanded by a lienholder who suffers any loss thereby shall be liable to him in an action to the amount of such loss.

517 Mode of Enforcing a Lien.—It is not necessary to issue a writ of summons, but merely to file in the proper office a statement of the claim verified by affidavit.

Any number of lienholders having a claim on the same property may join in the action.

An action brought by any lienholder is deemed to be brought on behalf of all the other lienholders on the property in question.

In Ontario an action to enforce a lien may be tried by a Judge of the High Court, or by the Master in Ordinary, a Local Master of the High Court, or Official Referee, or a Judge of the County Court.

In British Columbia the proceedings are in the County Court Registry in which the lien was filed.

In Manitoba, in King's Bench.

In Alberta, Saskatchewan and North-West Territories, in Supreme Court, and Territorial Court for the Yukon.

In New Brunswick, County Court.

In Nova Scotia, under $200 may be in County Court, over that in Supreme Court.

518 Cost of Entering Action.—In Ontario and most of the Provinces, wage-earners have nothing to pay, and the cost to others is only nominal.

519 Payments to Defeat Lien Claims.—No payments made for the purpose of defeating a claim for a lien are legal.

520 Contracts to Waive Remedies Void.—Every agreement, verbal or written, expressed or implied, by which any workman, laborer, servant, mechanic, or other person employed in any kind of manual labor waives the application of the various Acts which provides remedies for the recovery of wages by such employee is void.

This section in Ontario, Manitoba, and most of the other Provinces would not apply to any foreman, manager, officer or other person whose wages are more than $3 a day.

521 Removing Property Affected by Lien.—During the continuance of a lien none of the property affected by a lien can be removed to the prejudice of the lien; and the attempt at such removal may be restrained on application to the High Court, or to a judge or other officer having power to try an action to realize a lien, the amount of costs to be at the discretion of the Court or Judge.

522 Form for Lien Claim.—A.B. (name of claimant), of (residence of claimant), under the Merchants' and Wage-earners' Lien Act, claims a lien upon the state of (name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect to the following work (service or materials); that is to say (give a short description of the work done or materials furnished), which work (or service) was (or is to be) done (or materials were furnished) for (name and residence of person upon whose credit the work was done or materials furnished), on or before the ..... day of .....

The amount claimed as due (or to become due) is the sum of $....

The following is the description of the land to be charged: (give number of lot, street, or concession, etc., sufficient for the purpose of registration).

When credit has been given, insert: The said work was done (or materials furnished), on credit, and the period of credit agreed to expired (or will expire) on the ..... day of ....., 19..

(Signature of claimant.)

If several join all should sign.

524 Laborers on Public Works.—In Ontario in case any contractor or sub-contractor for any public work makes default in payment of wages of any foreman, workman, or laborer, or for a team employed on the work, the claim for wages must be filed in the office of the member of the Executive Council who let the contract not later than two months after the claim became due, and payment will be made to the extent of any securities or moneys for securing performance of the contract in the hands of the Crown at the time of filing the claim. Similar provision is made in all the Provinces.

525 Lien on Articles Repaired.—Every mechanic or other person who has bestowed labor, money or material upon any chattel, as a wagon, organ, etc., has a lien upon it for the amount of his claim, and may hold it until it is paid. He must keep the article in his possession to retain the lien. The property must also be cared for as though it were in a warehouse. In Ontario, if the amount due is not paid within three months from the time it should have been paid, he may sell it by auction on giving one week's notice in a local newspaper, stating the name of the person indebted, the amount of the debt, a description of the article to be sold, time and place of sale, name of auctioneer. A like notice in writing must be left at the last known place of residence of the owner, if a resident of that municipality. After payment of debt, costs, etc., the balance of proceeds of sale must be paid over to the debtor if applied for.

In British Columbia, two weeks' notice must be given in the newspaper, and a notice of the results of the sale sent to the debtor.

In New Brunswick, the advertising is to be done by posters put up in three or four public places instead of by the newspapers.

In Alberta, Saskatchewan, N.-W. Territories and the Yukon one month's advertisement in a local newspaper is required and if there is no paper published within ten miles where the work was done, then five notices may be posted up in the most public places for one month, giving the facts stated above.

A mechanic repairing an article covered by chattel mortgage or a conditional sales lien has first claim while he retains the article in his possession, and if the article should not sell for more than enough to cover his bill and costs of sale he takes it all.

526 Thresher's Lien in North-West Territories.—Any person threshing grain has a lien upon such grain to the amount due, and may take enough of the grain, at the market value at the nearest market available, to cover the debt after deducting 2½ cents a bushed for each ten miles for drawing same to the nearest market. The grain must be taken at the time the threshing is done or within sixty days thereafter, otherwise the lien is lost.

Any person who threshes grain shall, whenever required by the Commissioners of Agriculture, send returns to the department, and in default of so doing is liable to a penalty of $25.

527 Woodman's Lien for Wages.—This Act applies to the Districts of Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay, Rainy River and Provisional County of Haliburton in the Province of Ontario.

Workmen includes cooks, blacksmiths, and other artisans, as well as other workmen.

Laborers in connection with logs or timber, whether for domestic use or for export, have a first lien for the amount due over all other claims except those due the Crown.

And all contracts made by any workman, mechanic, or any person performing manual labor to waive the application of this Act are void. This, however, does not apply to managers and foremen receiving more than $3.00 per day.

528 Statement of Claim.—The statement of claim must be in writing and verified by affidavits, and then filed in the office of the Clerk of the District Court of the District in which the labor was performed.

In cases where the timber or logs got out are run down the streams into the Georgian Bay, Lake Huron, Lake Superior, Lake of the Woods, Rainy Lake, Rainy River or Nepigon River the claim may either be filed in the office of the District Court where the labor was performed, or in the office of the Clerk of the District Court of the District where the drive terminates or reaches the waters of the said lakes and bays. For the District of Muskoka the statement of lien would be filed at Bracebridge, for Haliburton with the the Clerk of the County Court of the County of Victoria, for Manitoulin filed in the office of the Deputy Clerk of the District Court at Gore Bay.

Any number of lienholders may join in proceedings, or may assign their claims to other persons. Only one claim might be filed, but such claim must include particular statements of the several claims with affidavit of each claimant, or several claims may be filed and only one attachment be issued on behalf of all the persons so joining.

529 When Lien should be filed.—In cases of a contractor cutting or taking out logs or timber for export under a license of the Crown the claim must be filed on or before September 1st next following the performance of the labor.

In all other cases if the labor is performed between October 1st and April 1st next thereafter the statement must be filed not later than the 20th of April. For labor performed after April 1st and before October 1st the claim must be filed within twenty days after the last day of such service.

The lien expires unless suit to enforce it is commenced within thirty days after filing the statement, or thirty days after expiry of the time of credit, if credit be given.

530 Court to Enforce Lien.—A lien to the amount of $200 may be enforced by suit in the Division Court, and if over $200, then in the proper District Court where the statement of lien is filed.

If no dispute note is filed within fourteen days after service of the writ judgment may be given by default.

In cases where the logs or timber are about to be removed from the Province, or the person indebted for the amount is about to abscond from the Province, or the logs are about to be sawn with other timber, so that the same could not be identified, the lienholder may, if the claim is not less than $10, have attachment issued immediately against such logs or timber. If claim is not over $200, the writ would issue from the Division Court, but if over $200, then from the District Court. Unlawful or malicious detention of logs or timber would incur a liability for whatever loss or damage was occasioned through such proceedings.

531 Illegal Payments.—Payments made or offered to any person for wages by cheque, order, I.O.U., bill of exchange or promissory note, drawn upon or payable in any place outside of Ontario are illegal, and the person violating this provision is liable upon summary conviction before a stipendiary magistrate or Justice of the Peace to a penalty of not less than $5 nor more than $20.

532 Form of Statement of Claim.

I, A. B. (name of claimant), of (state residence of claimant), (if claim made as assignee then say "as assignee of," giving name and address of assignor), under the Woodman's Lien for Wages Act claim a lien upon certain logs or timber of (here state the name and residence of the owner of the logs or timber upon which the lien is claimed if known), upon the logs and timber composed of (state the kind of logs and timber, such as pine, sawlogs, cedar or other posts, or railway ties, shingles, bolts or staves, etc., also where situate at time of filing the statement), in respect of the following work, that is to say (here a short description of the work done for which the lien is claimed), which work was done for (here state the name and address of the person upon whose credit the work was done) between the ..... day of ..... and the ..... day of ..... at ..... (per month or day as the case may be).

The amount claimed as due (or to become due) is the sum of ..... (when credit has been given, "the said work was done on credit and the period of credit will expire on the ..... day of .....").

Dated at ..... this ..... day of ..... A.D. 19...

.... Signature of Claimant.

533 Quebec's Mechanics' Lien Act, as contained in the Civil Code, article 2013, and amendments.

Laborers, workmen, architects, and builders have a preference claim over a vendor and other creditors on the immovables to the extent of the additional value given to the property by the work; and the privileges rank as follows:

1. Laborers; 2, Workmen; 3, Architects; 4, Builders.

The right of preference exists without registration during the whole time the work is being performed. To preserve the preference the laborer and workman must give notice in writing, or verbally before a witness, to the proprietor of the immovable that they have not been paid for their work at each term of payment due to them. Such notice may be given by one of the employees in the name of all the other laborers or workmen who are not paid, but in such case the notice must be in writing.

When the workmen give the proprietor notice of the amount due them, such sum is then deemed to be seized in the hands of the proprietor, *pro rata*, up to the amount due. If the claims are not paid within five days after such notice, the workmen may commence judicial proceedings against the contractor, making the proprietor a party to the suit.

But after the work has been finished in order to preserve the privilege the claim must be registered within 30 days in the registry office of the division in which the property is situate.

The right of preference exists only one year from date of registration unless suit is commenced in the meantime, or unless a longer period for payment has been stipulated in the contract.

To meet the privileges of the laborer and workman, the proprietor of the immovable may retain out of the contract price an amount equal to that which he has paid, or will be called upon to pay, mentioned in the notices he has received, so long as such claims remain unpaid.

If a difference of opinion exists between the debtor and the creditor as to the amount due, the creditor shall, without delay, give the proprietor a written notice, stating the name of both the debtor and creditor, the amount claimed, and the nature of the claim. The proprietor then is required to retain the amount in dispute until notified of an amicable settlement or a judicial decision.

The architect and builder shall likewise inform the proprietor or his agent in writing of the contracts which they have made with the chief contractor within eight days of the signing of the same.

The supplier of materials shall, before the delivery of the materials, give notice in writing to the proprietor of the immovable of the contracts made by him for the delivery of the materials, the cost of the same, and the immovable for which they are intended.

The preceding notice has the effect of an attachment by garnishment on the contract price.

Action must be taken within three months after giving such notice if the debt is not settled, otherwise the preference lapses.

In case a proprietor builds the structure himself without the intervention of a contractor, and borrows money for the same, the notices previously

mentioned are to be given to the party advancing the money and he becomes subject to the same provisions as the proprietor would in other cases.

No assignment or transfer of any portion of the contract price, or the money borrowed, as the case may be, either before or during the execution of the work, can be set up against the said suppliers of material; nor any payments exceeding the cost of the work done according to a certificate of the architect or superintendent of the works affect their rights.

After notice and registration, the suppliers of material rank after the laborers and workmen.

In case the proceeds are insufficient to pay the laborers, workmen, architect and builder; or in case of contestation the aforesaid privileged claims over the vendor and other creditors are paid only upon the increased value given to the immovable by the work done, which estimated relative value is ascertained in manner prescribed by the code of Civil Procedure.

Every builder or contractor who employs workmen by the day or by piece-work must keep a list showing the names and wages, or price of the work of such workmen; and every payment must be attested by the signature or cross of such workmen affixed thereto who also signs it. C. C. 1627a.

534 Form of Notice.

I, A. B. (name and residence of claimant), do hereby declare that I have worked upon the immovable of (name of proprietor) at the following work (state nature of work),—(or, I have supplied, *if he be a supplier,* etc., as the case may be, since (give the date); that the amount due me is (amount of claim); that the immovable on which I have worked is described as follows: (No. of house, street, etc., or describe by metes and bounds as much as possible).

Sworn before me at ....., this ..... day of ....., 19...

Signature.
C. D.
J. P., or
Commissioner of S. C.

Signature,
A. B.

This notice must be made out in duplicate and sworn to before a Justice of the Peace or a Commissioner of the Superior Court, one copy to be retained by the Registrar and the other sent to the claimant with the Registrar's certificate thereon.

The creditor must also within three days from the registration of the memorial or notice give a written notice of such registration to the proprietor of the immovable, or to his agent if he cannot be found.

CHAPTER XXII.

WILLS—LAWS OF INHERITANCE—SUCCESSION DUTIES.

536 A Will is a written instrument left by a person in which he gives directions for the disposal of his property after his death. A person to make a valid will must be of the age of twenty-one years (except in Newfoundland), of sound mind and free from constraint or any undue influence.

In Newfoudnland a person seventeen years of age may make a valid will.

Wills cannot be made conjointly by two or more persons.

Married women may dispose of their own estates by will as freely as though not married, except in a couple of the Provinces, where the husband's consent is still imagined to be essential. "Old wrongs die hard."

The lawyer's toast, "Here's to the man who writes his own will," should not be forgotten by laymen. Not everyone is fit to write a will; some lawyers are not fit. A will should not be the last act of a man's life. No wonder that so many of them are broken in the courts—dictated under intense excitement and drawn in haste, they do not represent the deliberate judgment of the testator, nor meet the requirements of natural justice.

Soldiers in service and sailors at sea may dispose of their effects by simply signing a written statement of how they wish their personal property to be disposed of. But soldiers in barracks are not included in this special provision.

A person can only leave *one* valid will, but may leave several codicils to it, hence every will and codicil should be dated. If two or more wills were left by the testator and neither one dated, neither one would have any effect and there would be an intestacy. If all were dated, then the one bearing the latest date must be accepted, unless the heirs could unanimously agree to accept and probate one of earlier date in preference.

In the interpretation of Wills regard will always be had to the circumstances existing at the time the will is made, and to the evident intention of the testator. If there is any discrepancy between the various clauses of the Will, what was written last will hold over the first written.

A father is not compelled to leave any portion of his property to the children, but in Ontario and the other Provinces which give the wife a right of dower, he cannot deprive her of her life interest in one-third his real estate.

537 Changing of Wills.—Alterations in a will would not affect its validity, but to take effect as part of the will they must be initialed on the margin of the will by both the testator and the witnesses as evidence that they were made before the will was signed; or they might be referred to in a separate memorandum in another part of the will.

A person living several years after making a will, if circumstances require many alterations, it is better to make a new will and burn the old one, instead of making a codicil.

A will is revoked by the testator afterwards marrying, unless the will

states that it was made in anticipation of marriage; or where the husband or wife elects by instrument in writing to take under the will; or where it is made in the exercise of a power of appointment, and the property would not in the absence of such appointment pass to the testator's heir, executor, or next of kin.

538 Codicil.—When only a few minor changes might be desired to be made in a will, sometimes, instead of making a new will, it is as well simply to make a codicil to the will. Such a codicil should set forth clearly:

1. That it is a codicil, and describe accurately the Will that it belongs to.
2. It should be signed and witnessed the same as a will, but using the word "codicil" in place where "will" is used.
3. If it gives a legacy to one who already had a bequest, it should state whether this is a second bequest or merely a confirmation of the one already given.
4. If advances had been made during lifetime to a child on account of legacy, such fact should be noted in the codicil.
5. If there has been a change in the property either by the acquisition of more, or the disposal of any part of the former, the codicil should regulate the bequests accordingly.

539 Preventing Litigation.—Sometimes in making a will the testator adds a clause that in the event of any person commencing proceedings to break the will, such person shall not receive any portion whatever, even though they had been mentioned in the will to receive a legacy.

540 Who may Draw a Will.—The testator may write his own will if he desires to do so, and every man should be able to write his will. In all the Provinces except Quebec any person who can write clearly the desires of the testator may be employed, but prudence would dictate that none but a person of experience and ability should be entrusted with so important a matter.

In Quebec there are three forms of wills:

1. The notarial will, called "authentic form," is made before two notaries, or one notary and two witnesses of the male sex and of full age. It need not be probated, but the notary grants authentic copies.
2. The English form, which any person can write, but must be signed in the presence of at least two witnesses of either sex. It must be probated.
3. The holograph will, which is one wholly written and signed by the testator. It needs no witness, but must be probated.

541 Requisites of a Valid Will.—It should contain:

1. The name in full of the testator, his occupation and residence.
2. The plainest of language should be used and a separate paragraph for each bequest.
3. It should plainly state that this is his last will and testament.
4. That it revokes all former wills and bequests.
5. It should provide how debts and expenses are to be paid.
6. A clear and definite statement of how the property is to be divided, and full particulars of each bequest. Where all the property of the testator is left to one person it is not necessary to specify the property in detail.
7. It should give the Christian names in full of all the legatees, and if

there are more than one person of the same name, the occupation and residence should be given so a mistake would be impossible.

8. Executors should be appointed who have been previously consulted.

9. It should be properly dated, and the signature of testator witnessed by *at least two* persons. If only one witness signed, the will would be void, and there would be an intestacy.

10. The testator should sign at the foot of the will in the presence of the two witnesses. If the testator is unable to write his name it may be signed by some other person for him, but in his presence or by his direction. Or he may sign by making his mark or having his hand guided while making his mark, providing he understands the meaning of what is being done and assents to it.

11. A devise or bequest to a wife should state clearly whether it is in lieu of dower or not in those Provinces where dower is allowed, or she may be entitled to claim both.

12. No seal is necessary to a will, though sometimes a seal is attached.

542 The Two Witnesess to a will must not only be both present together and see the testator sign the will, but they must sign it themselves as witnesses in the presence of each other, as well as in presence of the testator.

The witnesses may be minors, except in Quebec, if old enough to understand what they are doing, and to give evidence in court, if necessary. An executor or a creditor could also be a witness.

If a legatee or devise were to sign a will as witness, it would not invalidate the will, but the bequest to such person would be void. Also a bequest to the wife or husband of the person signing as witness to a will is void.

The death or subsequent incapacity of either or both the witnesses before the death of the testator would not invalidate the will.

Witnesses should take notice of the mental and physical condition of the testator, so as to satisfy themselves that he understands what he is doing and is competent to make a will.

Holograph wills, that is those wholly written and signed by the testator himself, do not require witnesses in Manitoba and Quebec.

543 In Quebec the clerks and servants of the notaries cannot be witnesses. The notaries must not be related to the testator in the direct line, or to each other, or in the degree of brothers, uncles or nephews. The witnesses may be related to the testator, or the notaries, or to each other. Legacies in favor of the notaries or witnesses, or to wife or husband of the notaries or witnesses, or to any relation in the first degree are void.

Ministers of religion may be witnesses but cannot act as notaries and write Wills in Authentic Form.

Wills in the English form may be written by any person and females may serve as witnesses the same as in the other provinces.

544 Residuary Clause.—Where there is a residuary clause in a will every lapsed legacy or bequest, and every other legacy which on any ground fails to take effect, will fall under the control of that clause and pass to the residuary legatee.

545 When Wills Take Effect.—Wills do not take effect until after testator's death, and all gifts and legacies become "vested" at the same time, whatever the interest may be. If such person should die after the testator, but before obtaining possession of the bequest or legacy he could dispose of it by will, or if no will were left it would go to his heirs, and if such person were married the husband or wife would take same interest as though the property were actually in possession.

In buying property that has descended by will its wording must be carefully noted. For instance, a farm left to a son with a clause in the will stating that in the event of the son dying childless, or before the mother, the property shall revert to the mother, or go to other members of the family, such persons might live many years and marry, but dying without leaving children, or before the mother, as the case may be, the wife would have no dower in such lands, and if he had sold the property his deed would be invalid.

546 Probating Wills.—After the decease of the testator, as soon as convenient or becoming, the will should be read in the presence of the parties interested, and then proved in the Surrogate Court.

Executors may perform the duties imposed upon them by the will without probating it, except in Prince Edward Island and Quebec, but in large estates it is better to probate them, as that secures an authorative declaration from the Surrogate Court that the will is valid. It also clothes the executor with the legal authority to administer the affairs of the estate and enter the courts, if necessary.

In Prince Edward Island the will must be probated within thirty days after death of the testator.

For Quebec, see Section 540.

In Ontario probate with Will annexed will not issue until seven days after death of deceased and no administration until fourteen days after death of deceased unless under the direction of the judge.

Wills bequeathing real estate should be registered as well as probated, so that the titles of the devises may be more easily traced. The will, of course, carries the title to the property without registering, but by registering the title is completed in the Registry Office and also guards against inconvenience from a possible loss of the will. They must be probated first before they can be registered. With lands under the Torrens System registration is essential.

Probating and registering wills furnish evidence of their validity, but neither one can prevent an action from being taken to cancel them.

547 Devisee or Legatee is the one who recieves property under the will. Devisee is used when the bequest is in land.

A legacy to a friend who dies before the testator, lapses.

A legacy to the testator's child, who dies before the testator, will go to the children of such legatee, *i.e.*, to the grandchildren.

A legacy to a witness is void; and in Ontario and New Brunswick a legacy to the wife or husband of a witness is also void.

Legacies not paid at maturity can be sued for the same as any other debt, and interest collected from time when legacy was payable.

An annuity or rent charge payable out of land should be registered.

A pecuniary legatee, who is also a debtor to the testator, must account for

the debt on payment of his legacy. If the debt has been outlawed it would be optional with the executor, unless the Will directed otherwise, whether to deduct it from the legacy or not, except in Quebec, where the debt would be cancelled as well as the right of action barred.

Legacies in Ontario outlaw in ten years from the time when the right to receive the same accrued, unless in the meantime part has veen paid, or a written acknowledgment has been given, by the party liable for payment. (For other Provinces, see Section 209.) Interest on legacies outlaw in six years from the time it was due; Quebec, five years.

Money or property left in trust with a trustee or executor, for the legatee, never outlaws.

Money left under a will may be attached for debts unless it is left in trust to an executor, guardian, or trustee, to be paid the legatee only, for his maintenance, when it cannot be touched except upon a special order from the court. Nor can money left to a married woman, under " restraint from anticipation," be attached.

548 Executor, or Executrix if a woman, is the person named in the will as the one who is to carry out its provisions, and look after the property until its distribution among the heirs is accomplished.

A minor could be appointed, but he would not be allowed to enter upon his office until he was twenty-one years of age, and during that time the estate would be administered by the minor's guardian, or by one appointed by the Surrogate Court.

An executor may be a legatee, or a creditor, or a debtor. It was formerly the rule if a debtor were appointed executor his debt was forgiven, but that is no longer the case.

An executor may enter at once upon the work of carrying out the provisions of the will, as soon as it has been publicly read, before being proved. There is no law, however, compelling the executors to read the will to the heirs. If they do not do so, a copy of the will may be obtained from the Surrogate office; and if they have not probated it they may be compelled to produce it by some of the heirs applying to the Surrogate Court for letters of administration.

An executor may be appointed guardian as well, and if not so appointed by the will and there are minor children who have no guardian he may apply to the Surrogate Court to be appointed guardian.

An executor appointed by will dying, his executor may continue to administer the estate; but if the deceased executor had been appointed by the Surrogate Court, then another executor would have to be appointed to take his place, either by the Surrogate, or High Court.

Executors who cannot agree as to the management of the estate, either one or all may apply to the court for instruction. The court may then either direct what shall be done or may itself assume the administration of the estate, in which case the executors are freed from future liability. In all cases where executors need advice they may apply to the court.

Executors cannot act by proxy except in merely clerical work, neither can they employ solicitors to do what they should do themselves, and charge the cost against the estate.

In Quebec a married woman cannot act as executrix without consent of the husband or judicial authority.

In New Brunswick an executor who does not file an inventory with the registrar within three months may be served with a notice in writing by any interested person to file such inventory within ten days, and if not filed within the ten days from receipt of such notice application may be made to the judge to demand inventory. If no such inventory is filed and no person applies to the judge for its filing, the judge, after thirty days from the time when the inventory should be returned, may on his own motion make an order for the return of such inventory.

549 Executor's Notice to Creditors.—The following form of notice executors may use in a local newspaper or the official *Gazette*:

Re estate of ....., deceased.

Notice is hereby given, pursuant to Chapter 129, Section 38, R.S.O. (or similar for other provinces), that all persons having claims against the estate of ....., late of the Township of ....., County of ..... (yeoman, or as the case may be), who died on or about the ..... of ....., 19.., are required to deliver their claims and full particulars of such claims to ....., of the town of ....., Executor, on or before the ..... day of ....., 19... And that after the said ..... day of ....., 19.., I will distribute the assets of the said deceased among the parties entitled thereto, having regard only to the claims of which I shall have received notice.

A. D., *Executor.*

550 Powers and Liabilities of Executors and Administrators.—They represent the deceased in settling the affairs of the estate, and distributing the proceeds among the beneficiaries according to instructions in the will, but if no will, then according to statute.

They may pay debts or claims upon any evidence that they deem sufficient, may compromise or submit to arbitration any debt or claim as they think best, may give and execute such agreements, releases, etc., as they deem expedient without becoming responsible for any loss occasioned thereby, unless forbidden by the instrument appointing them.

They may complete whatever contracts the deceased was bound to complete if he had not died.

They may maintain an action for all torts or injuries to the person or estate of the deceased, except in cases of libel and slander, that have not been barred by statute. Third parties may also bring action against the executors or administrator for torts or injuries, as well as debt that they could have brought against the deceased if he had not died.

An executor of a deceased executor may draw deceased executor's trust funds from a bank.

The statutes allow an executor or administrator to withdraw money deposited in a bank, in the name of the deceased testator, but if money is desited by co-executors the bank must be governed by the contract as to whether either one could withdraw it.

Executor may mortgage an estate for necessary improvements, but not to himself. He could subsequently buy the mortgage and have it assigned to him, and hold it as security for the principal money and interest.

Executors may provide for the education of the minor children and pay necessary expenses out of the estate.

They may also erect a suitable monument to deceased according to his station in life, and pay for the same out of the estate.

Creditors not yet having judgment may sue the acting executor or administrator if their claims are not paid, whether the will has been probated or not.

Executors of a deceased member of a partnership firm do not become partners, and cannot interfere with the partnership business. The deceased partner's interest must be ascertained and paid over by the surviving partners, and if this cannot be done satisfactorily to the executors, the executors may enter action for the partnership business to be wound-up and the assets converted into cash and divided as per partnership agreement.

551 Discharge of Executors.—An executor, who is believed by the heirs to be acting unwisely or unjustly, may be compelled to show his books before the County Judge by any of the heirs who is twenty-one years of age.

An executor that is found to be wasting the estate or committing acts of injustice against the heirs, may be removed by proceedings in the Surrogate Court.

Also, where an executor, or one having a life estate in property, becomes insane the heirs or any person interested in the estate as "reversionist" may apply to the court for an order for the administration of the estate and the court will take the property out of the hands of the executor or such tenant for life.

552 Remuneration of Executors.—The expenses of executors are a charge upon the estate, and they are entitled to an equitable percentage of the proceeds of estate or trust funds to recompense them for their time and labor. There is no fixed tariff of fees for executors, but if the beneficiaries object to the amount charged, the executors should put in an itemized bill of their expenses and the percentage they deem they are entitled to, usually five per cent., before the Judge of the Surrogate Court, who, in passing the accounts, has power to either increase or diminish the amount charged as seems to him to be equitable in each particular case.

553 Executors Release.—When an estate has been distributed among the beneficiaries, debts of deceased of which the executors have had notice been paid, and their own remuneration been received, it is not necessary to present an itemized statement of the dealings with the estate to a Judge and receive a discharge. The following form of release, giving the name and address of each person receiving a bequest or a distributive share of the estate signed by them with a witness to their signature, as shown below, is a legal discharge of the executors from future personal liabilities therewith, and does not take from the estate the heavy court fees that the other method involves:

Know all Men by these Presents that we, A.B., of the..... County of ..... (occupation); C. D., of the ..... County of ..... (spinster, married woman, or as case may be); E. F., of the ..... County of....., etc., hereby acknowledge that we have received from ....., executors of the estate and effects of ....., late of the said (place), in

the County of ....., deceased, the sum hereinafter set opposite our signatures in full satisfaction and payment of all sum or sums of money due to us, the children (grandchildren, if any), of the said ....., deceased, as our distributive shares of the said estate of ....., deceased.

And we therefore do by these presents remiss, release, quit claim and forever discharge the aforesaid executors, their heirs and administrators of and from any claim for said distributive shares.

In witness whereof we have hereunto set our hands and seals this .....day of.....19.....

Signed, Sealed and Delivered in the presence of:

	Signature.	Seal.	Amount.
As to signature of..... A.B.	A.X.	✹	$
As to signature of..... B.C.	X.Y.	✹	$
As to signature of..... C.D.	R.A.	✹	$

It would add to the appearance if the above form would be written on a typewriter, as it would be if prepared in a law office, but the names of recipients of the witness must be in the handwriting of the persons themselves.

554 Intestacy is where a person dies without leaving a will. In such case if property is left, unless the heirs can agree among themselves as to the division of the property, it must be distributed according to the Statutes of the Province in which the property is situate. (See "Inheritance, Section 564.) Also, if the intestate left money in a bank, or other debts due, it is necessary for some person to be appointed administrator to draw the money from the bank, or to sue in collecting the debts. (See following Section.)

555 Administrator is the one appointed by the Surrogate Court or Court of Probate to settle the affiairs of the estate of a person who dies without leaving a will, or neglects to name an executor in his will, or names one who refuses to act.

In Newfoundland the Supreme Court and in Yukon the Territorial Court grants letters of administration and probate.

The regulations in each of the Provinces concerning the settlement of estates vary considerably, as also do the succession duties; hence, it is advisable for a person acting as an executor or administrator to either consult a lawyer or take full instructions from the office where wills are probated.

But a person dying intestate and leaving real and personal property, it is not legally compulsory for any of the heirs to take out letters of administration. If the heirs can all agree as to the distribution of the property among themselves, they can draw up an agreement to that effect, which, being signed by all, and sealed, will bind all to abide by it. And if land is to be sold the widow and heirs all joining in the deed give a good title.

An administrator's duties are exactly the same as those of an executor, so are his liabilities. An administrator must, however, give a bond for the due performance of his trust, while an executor usually need not do so.

In case a will is made, but no executor appointed in it, the administrator must carry out its provisions the same as an executor would do.

As soon as an administrator is duly appointed he will take possession of the property and divide it according to the Statutes, or Will, if there is a will. A child, husband, wife, or any other person who may chance to be in possession, has no more authority over the property than others, unless they have a valid lease, in which case they may hold it until the lease expires, unless sooner terminated by mutual consent.

Where an intestate dies leaving property and there are no known heirs, a creditor (if any) may apply for letters of administration. The Attorney-General is the proper person to take charge of such estates, who will attempt to discover heirs.

In cases where no will is found, or persons claiming to have the will and refuse to read it, any of the heirs or next of kin may apply to the Surrogate Court for letters of administration, and to secure an order for the production of any supposed will, and to examine witnesses therewith.

560 Distributing the Estate.—Executors must remember that legatees are not required to demand payment, but it is the executor's duty to pay the legacies to the rightful persons. Moneys due legatees who cannot be found must either be retained, or safely invested, or paid into court in order to free themselves from personal liability.

Executors must also remember that they are to pay the legacies and the debts of the testator only. If the same person were executor for both husband and wife he must not mix the money of the two estates; for debts, funeral expenses, and legacies of each must be paid out of the proper estate.

Personal property of the deceased is the proper fund out of which debts are to be paid and not out of real estate. If that is not sufficient then any other property that has not been "specifically bequeathed" to any person should be resorted to, then after that the property "specially bequeathed" is available.

Money from an insurance policy is payable according to its terms, and does not become part of the estate unless it has been included in the will. If not mentioned in the will the executors have nothing to do with it. Whether mentioned in the will or not, it is free from all claims of creditors if payable to wife or children or other preferred beneficiaries.

Where a will is made and any portion of the property of deceased was not disposed of in the will, it falls to the heirs as though no will had been made, and the executors must divide it among them according to law and without regard to the bequests in the will.

Property bequeathed in trust to executors to pay over the income to a certain person for a term of years or for life is a separate trust, and must be kept separate from the rest of the estate, and must not be used for payment of debts except in the event that there is not sufficient other property.

Where there is a deficiency of assets to pay debts it shall be distributed *pro rata*, without preference, among them all. A debt due an executor has no preference over others, neither has a judgment.

Property in another province or country must be managed according to the laws of that province or country, no matter where the testator lived. Where there is doubt as to certain legacies to whom to pay, the executors may pay the money into court and in that way free themselves from liability.

Executors are to endeavor to collect in all debts within a reasonable time or they become personally liable for any loss that occurs, especially those debts standing out upon personal security. To allow a debt to outlaw would be deemed culpable neglect, and the executors would by law be required to make it good.

Executors must not pay a debt of the testator that has been barred by statute unless the will so directs.

561 Widow's Dower.—For the widow's right of dower in the different Provinces see Section 404.

562 Form of Will.—The following form of will covering various kinds of bequests may be found useful as a guide to those not accustomed to writing wills.

I, William Smith, of the City of Toronto, in the County of York, merchant, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

1st. I hereby appoint my wife, Harriet Amelia, my son Clarence, and William King, all of the City of Toronto, in the County of York, to be my co-executors of this my last will, directing my said executors to pay all my debts, funeral and testamentary expenses out of my estate as soon as conveniently may be after my decease.

2nd. After the payment of my said debts, funeral and testamentary expenses, I give, devise and bequeath all my real and personal estate which I may now or hereafter be possessed of or interested in, in the manner following; that is to say:

3rd. I give, devise and bequeath to my beloved wife, Harriet Amelia (in lieu of dower), all that my freehold with buildings and appurtenances thereto belonging, known as lot No. 6, in the second concession of the Township of Ancaster, County of Wentworth, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, for her sole use during her natural life, and upon her decease to my children and their heirs, respectively, share and share alike.

4th. I also devise and bequeath to my said wife all that freehold messuage or tenements in which I now reside, known as Lot No. 36 Howland Avenue, in the City of Toronto, with the garden, outbuildings and appurtenances thereto belonging, together with all my household furniture, plate, china, and chattels of every description being in and on the premises, for her own use absolutely; also I bequeath unto my said wife the sum of two thousand dollars now deposited in my name in the Traders' Bank at Toronto.

5th. I give, devise and bequeath to my son, Harry Edmund, the farm known as the Walnut Grove Place, being Lot No. 8, in the First Concession

of the Township of York, in the County of York, together with all the crops, stock and utensils which may be thereon at the time of my decease; and also the property in the City of Toronto, Ont., known as the Arlington Block, being lot No. 18, on the north side of King Street, subject to a legacy of five hundred dollars to be paid to my nephew, John Alexander Smith, in two equal annual instalments of two hundred and fifty dollars each without interest, the first payment to become due and payable when he becomes twenty-one years of age, said legacy to be the first charge on the said property.

6th. I give and bequeath to my daughter Grace, wife of James D. Allan, fifty shares in the capital stock of the Provincial Natural Gas Company, which stand in my name on the books of said company; also two thousand dollars in cash, payable out of my funds in the Traders' Bank.

7th. I give and bequeath my gold watch, with chain guard and appendage, to my brother, James Edwin, for his own use.

8th. I give and bequeath to my niece, Alice Matilda Krafft, as a specific legacy, my fifty shares, numbered 101 to 150, both inclusive, in the Toronto Street Railway Company.

9th. I give and bequeath to my nephew, John Alexander Smith, aforesaid, a legacy of five hundred dollars hereinbefore provided for. But in case my said nephew, John Alexander Smith, shall die under the age of twenty-one years, then I direct that the said $500 shall go to my sister Abigail Jane for her absolute use and benefit.

All the residue of my estate both personal and real not hereinbefore disposed of I give, devise and bequeath unto my son Clarence, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal this tenth day of June, in the year of our Lord one thousand nine hundred and six.

Signed, Published and Declared by the said William Smith, the testator, as and for his *Last Will and Testament,* in the presence of us, both present together at the same time, and in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution thereof.

CHARLES SUMMERS.
F. W. WILLIAMS.

WILLIAM SMITH. (L.S.)

Some might prefer the following beginning for the will:

In the name of God. Amen.

I, ..., of the Township of ....., in the County of ..... farmer, (or, as the occupation may be), considering the uncertainty of human life and having property, both real and personal, do make, publish and declare this Instrument of Writing my last Will and Testament, in words following:

Referring to a life of three score years and ten, the stated life of man, and with it health, peace and a large portion of comfort and its attendant blessings, the Lord of all the earth hath permitted me to enjoy, I would here render thanks to Almighty God for His kind dealings and extended mercy

to me, trusting and ever praying that the residue of my days may be an entire submission to His Divine will, and for the future, hoping and believing in salvation through the merits and mediation of Christ my Redeemer, the Saviour of the world; my worldly possessions I would also at this time arrange, and will and order as follows: 1st. I hereby appoint, etc.

563 Trustees and Trust Funds.—No technical words are needed for the creation of an express trust. A will that devises or grants real estate unto it in trust for B, or which directs A to sell such property and pay the proceeds to B, or to apply the proceeds for the benefit of B extending over a number of years creates a trust in favor of B, and places upon A the responsibility of a trustee if he accepts the trust.

The statutes of all the Provinces hold trustees rigidly to their obligations. The trustee, whether a trust company or an executor or other person, must carry out the instructions of the instrument appointing him.

He also has a discretionary power outside of such provisions in the administration of the trust. If he errs in judgment, the court may correct him, but if he acts in bad faith he will be held liable for any loss resulting therefrom.

They have power to compound and settle disputes, may accept such security for debts as to them, or a majority of the trustees or executors or administrators seem best, or give time for payment, and will not be responsible for loss if done in good faith.

They have power to administer the estate, receive incomes from it, make necessary repairs, but have no authority to make merely ornamental improvements, as that would be speculative.

All the Provinces and Newfoundland absolutely prohibit speculation with trust funds, and the desire to secure larger revenue from such funds in speculative projects is no palliation for the crime of gambling with other people's money.

The Trustees' Act of each province and Newfoundland enumerate various investments that are safe, and any trustee is unwise if he goes outside of those lists and thus incur personal liability unless he knows absolutely that there can be no loss, or unless he is prepared to make good any loss that may occur.

Trustees or executors are authorized by statute to invest trust money in any stock, debentures or securities of the Dominion or Provincial Governments, and on first mortgage on land held in fee simple, providing such investments are reasonable and proper.

They may also invest in public securities of the United Kingdom or of the United States, and also in municipal bonds and debentures.

There are also various mortgage and other financial corporations in whose stocks and debentures trustees are permitted to invest trust funds, which should be ascertained by persons acting as trustee in any province or in Newfoundland.

If a trustee improperly lend money on a mortgage security beyond the amount that would be reasonable he is personally liable to make good the sum advanced in excess of what should have been loaned, and interest on the same.

A trustee or guardian who invests trust funds in his own name, or deposits such money in a bank in his own name without in some way designating his representative capacity, becomes personally liable if loss occurs. It is the same if they lend trust money on a promissory note made payable to themselves personally, if loss they will be required to make it good. To free themselves they must in every case designate that it is trust money.

A trustee's powers may be suspended by a decree of a court granting an injunction, or a receiver for the estate, or placing the execution of the trust in the hands of the court.

A trustee may also, if he wishes to be discharged from the duties, apply to the court for relief, or he may by writing appoint another trustee and all the rights, powers, and responsibilities of the first trustee will apply to the second, and the estate also vests in him as though he had been appointed by the will. If the deed or will named any person or persons for that purpose, then they would appoint the new trustee.

The trustees are individually liable and accountable for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker or other person with whom trust funds may be deposited, or for any other loss unless the same shall happen through their own wilful neglect.

564 The Laws of Inheritance.—In case the owner of property dies without leaving a Will the property will be distributed according to the Devolution of Estates Act in each Province where the property is situate, no matter where the deceased lived. The laws of inheritance are very similar in all the Provinces, but where there are variations they will be specially mentioned in the following *résumé*:

If there are children from two husbands or two wives they share equally.

A posthumous child inherits equally with the others.

A posthumous child for whom no provision is made in a will takes a like share with the others as though there were no will made, and each of the others must abate enough to make up the amount.

Children of half blood share equally with children of whole blood.

Heirs of deceased children take their parents' share, but children of a deceased nephew or niece are excluded. No collaterals are admitted after brothers' and sisters' children, if there are nearer kin.

Illegitimate children, that is, those borne before marriage, do not inherit from the father.

An adopted child does not share with children of deceased.

Second or third wife surviving her husband takes the same share that the first wife would have taken.

A devise to widow in bar of dower has priority over other legacies.

(1) Where a married man dies leaving a will, then in Newfoundland and all the Provinces the wife may choose between taking what the husband leaves her in the will or her dower in his real estate in those Provinces where dower is allowed. (Manitoba, Alberta, Saskatchewan and N.-W. Territories have no dower, but wife takes her share absolutely.)

(2) If the husband die without leaving a will, then in Newfoundland and all the Provinces that allow dower, the wife is entitled to her life interest in one-third of the real estate of which her husband was possessed

at his decease in which she had not previously barred her right by signing a deed or mortgage.

She may also, in case the husband dies without leaving a will, elect by an instrument in writing attested by at least one witness whether she will take dower or a distributive share.

The husband also entitled to curtesy may by deed elect whether he will take curtesy or a distributive share. In Ontario he must do so within six months from the wife's death.

If there are children, then the wife is entitled to one-third of the personal estate and the remaining two-thirds go to the children in equal degree. If any of the children are dead their descendants take what would have come to them.

In Quebec if there is community of property the surviving consort has the one-half absolutely, and also the enjoyment of the children's half until they are eighteen years of age, but must support and educate them, etc.

If there are no children nor descendants of deceased children, then in Newfoundland, New Brunswick, Nova Scotia, Quebec, and British Columbia wife takes half and remainder goes to heirs of deceased husband.

In Manitoba, Alberta, Saskatchewan, and North-West Territories wife takes all.

In Ontario wife receives $1,000 out of the estate, and then one-half the remainder, the balance going to the natural heirs of deceased. If the estate, after paying expenses, does not exceed $1,000, the widow takes all.

(3) *If a wife dies leaving a will* the husband may elect whether he will take under the will or to claim his right of tenant by the curtesy except in Ontario, Manitoba, Alberta, Saskatchewan and North-West Territories.

(4) A wife having separate property in her own name and dying without leaving a will, the husband takes a one-third interest in the real estate as tenant by the curtesy in all the Provinces except Alberta, Saskatchewan, and North-West Territories.

In Quebec the husband has the use of the property of the community coming to the children from the deceased until each child comes of 18 years of age or until he is emancipated. C.C. 1323.

If there are children the husband is entitled to one-third the personal property, the other two-thirds going to the children, except in New Brunswick, where if a wife die leaving children by a former husband, the surviving husband takes one-third and the other two-thirds go to the children of both husbands equally; but if there are children of the surviving husband only, then he takes one-half and the other goes to the children, and if no children the husband takes all the personal property.

In P. E. Island the whole goes to the husband for life, then to the children.

If there are no children, then in Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia and Newfoundland, the husband takes half and the remainder goes to the natural heirs of deceased. In Manitoba, Alberta, Saskatchewan, North-West Territories and P. E. Island the husband takes all.

(5) *A married person dying without a will* leaving children, but no surviving consort, the children take all the property sharing equally. If

there are children of deceased from two or more consorts they all share alike.

(6) *If an unmarried person, or one who has been married but leaves no issue or husband or wife, die* without leaving a will, in Ontario, the father, mother and surviving brothers and sisters share equally, children of deceased brothers or sisters taking their parents share. If the parents are dead, then the brothers and sisters and children of deceased brothers and sisters take all; if there are no parents, or brothers or sisters, then the grandparents, if living, get all; if there are no grandparents, then to uncles and aunts equally and to children of deceased uncles and aunts.

In Nova Scotia, New Brunswick and Prince Edward Island the whole amount would go to the father, if living; if no father, then to the mother, brothers and sisters equally, and to descendants of deceased brothers and sisters. If no parents, then to brothers or sisters and children of deceased brothers and sisters. If neither parents or brothers or sisters then to next of kin.

In Alberta, Saskatchewan and North-West Territories the father would be entitled to the whole estate, and if the father is dead then the mother takes all. If the mother is also dead the brothers and sisters and children of deceased brothers and sisters inherit.

In British Columbia, also, it would go to the father, unless the inheritance came to deceased from the mother, then it would go to her if living. If she were dead it would go to the father during life, and then revert to the heirs of the mother. If no father, mother, brother or sister, then to the brothers and sisters of the father; if none, or no descendants, then to the brothers and sisters of the mother and their descendants.

In Manitoba the father, if living, would take the whole. If father is dead then the mother, brothers and sisters share equally, children of deceased brothers and sisters taking parents share.

In Quebec the succession would be divided into two equal portions; one half goes to the father and mother, who share it equally, the other half to brothers and sisters and children of deceased brothers and sisters. If either father or mother is dead the survivor takes the whole half. If both parents are dead the brothers and sisters and children of deceased brothers and sisters take all.

If there are neither parents or brothers or sisters or children of deceased brothers and sisters, it goes to the ascendants equally between the paternal and maternal line. The ascendant nearest in degree takes the half that falls to his line to the exclusion of all others. If either line becomes extinct the relatives in the other line inherit the whole.

The brothers and sisters share equally if they are all of the one marriage, but if of different marriages then each line takes an equal share which is divided equally among those of that line.

565 Succession Duties.—In Ontario, the Legislature of 1905 passed a new Succession Duties Act, chap. 6, of which the following is a summary:

I. Duties shall not apply to any property which, after deducting the just debts of the deceased, funeral expenses and Surrogate Court fees,

(*a*) Does not exceed $10,000; or,

(*b*) To property devised or bequeathed to religious, charitable, or edu-

cational purposes, to be carried on by a corporation or a person domiciled within the Province of Ontario; or,

(*c*) To property passing to parents, husband, wife, child, daughter-in-law, or son-in-law of deceased, where the aggregate of property so passing does not exceed $50,000.

II. The scale of duty where the property passes to such near relatives as mentioned in previous sub-section, and exceeds $50,000:

(*a*) Where it exceeds $50,000 and does not exceed $75,000, 1 per cent.
(*b*) Where it exceeds $75,000 but does not exceed $100,000, 2 per cent.
(*c*) Exceeding $100,000 but not exceeding $150,000, 3 per cent.
(*d*) Exceeding $150,000 but not exceeding $200,000, 4 per cent.
(*e*) Exceeding $200,000, 5 per cent.

III. Where the aggregate amount of dutiable property exceeds $100,000 and passes to any one person of the relatives named above, a further duty shall be paid:

(*a*) Exceeding $100,000 and not exceeding $200,000, 1 per cent.
(*b*) Exceeding $200,000 and not exceeding $400,000, 1½ per cent.
(*c*) Exceeding $400,000 and not exceeding $600,000, 2 per cent.
(*d*) Exceeding $600,000 and not exceeding $800,000, 2½ per cent.
(*e*) Exceeding $800,000, 3 per cent.

IV. Where the aggregate of dutiable property exceeds $10,000, so much of it as passes to grandfather or grandmother, or to any other lineal ancestor of deceased (except to the father or mother), or to any brother or sister of deceased, or to a descendant of a brother or sister, or to an uncle or aunt of the deceased, or to a descendant of such uncle or aunt, shall be subject to a duty of $5 for every $100 of the value.

V. Where the value of the property exceeds $50,000 and passes to such persons as mentioned in previous sub-section, a further duty shall be paid as follows:

(*a*) Where the whole amount so passing to one person exceeds $50,000 and does not exceed $100,000, 1 per cent.
(*b*) Exceeding $100,000 and not exceeding $150,000, 1½ per cent.
(*c*) Exceeding $150,000 and not exceeding $200,000, 2 per cent.
(*d*) Exceeding $200,000 and not exceeding $250,000, 2½ per cent.
(*e*) Exceeding $250,000 and not exceeding $300,000, 3 per cent.
(*f*) Exceeding $300,000 and not exceeding $350,000, 3½ per cent.
(*g*) Exceeding $350,000 and not exceeding $400,000, 4 per cent.
(*h*) Exceeding $400,000 and not exceeding $450,000, 4½ per cent.
(*i*) Exceeding $450,000, 5 per cent.

VI. Where the aggregate of dutiable property exceeds $10,000 and passes to any other relations than those previously named, or to any strangers in the blood to the deceased, except as previously provided for, a duty of $10 for every $100 of value shall be paid.

VII. Where the value of property passing to any one person does not exceed $200 it is exempt from duty.

In Quebec, if the estate passing to husband or wife, or to the father or mother, or to father or mother-in-law, or to son or daughter-in-law, and does not exceed $5,000, it is exempt. If it exceeds $5,000 then it is one per

cent. on the excess up to $10,000, and if it exceeds $10,000 it is 1¼ per cent. on all over $5,000 up to $50,000, exceeding $50,000 but not over $75,000 1½ per cent. on all over $5,000, and thus increases until it is 5 per cent. for $200,000 and over.

When the whole amount passing to one such person exceeds $100,000 a further duty of 1 per cent is added up to $800,000, when it is 3 per cent. additional.

If the property passes to brother or sister, or to nieces or nephews, if it is over $5,000, but not over $10,000, it is 5 per cent. If it exceeds $10,000 it is 5½ per cent.

If it passes to uncles or aunts or their descendants and does not exceed $10,000, it is 6 per cent., over $10,000 it is 6½ per cent.

If to brother or sister of grandparents or their descendants and does not exceed $10,000 it is 7 per cent., and if over $10,000 it is 7½ per cent. If to any other collateral it is 8 per cent. up to $10,000, and 9 per cent. if over $10,000. If to strangers it is 10 per cent.

When the amount of dutiable property exceeds $50,000 and passes to any one person in a collateral line or to strangers, the following further duties are imposed:

Exceeding $50,000, but under $100,000, 1 per cent.

Exceeding $100,000, but under $150,000, it is 2 per cent.

And thereafter adding ½ per cent. for each additional $50,000 up to $450,000, when it is 5 per cent.

Life insurance policies are dutiable the same as other property.

Bequests for religious, charitable or educational purposes when carried on by a corporation or person domiciled within the Province not exceeding $1,000, in each case are exempt from duty. Chap. 11, 1906.

In New Brunswick the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $5,000, or the property bequeathed to religious, charitable or educational institutions, or to property passing to father, mother, husband, wife, child, daughter-in-law, or son-in-law, which does not exceed $50,000.

Where it exceeds $50,000 and passes to near relatives named in preceding paragraph, the duty is 1¼ per cent. up to $50,000, and 2½ per cent. on all over $50,000 up to $200,000, and 5 per cent. on all over $200,000.

Exceeding $10,000 and passing to grandparents and other lineal ascendants, except parents, 5 per cent.

Exceeding $5,000 and passing to other collaterals or to strangers, 10 per cent.

Legacies passing to any one person not exceeding $200 are exempt from duty.

In Nova Scotia the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $5,000, or to property passing to father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of deceased where the property value does not exceed $25,000.

In Prince Edward Island the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $3,000, nor to property passing to father, mother, husband, wife, child,

grandchild, daughter-in-law, or son-in-law of deceased where the property does not exceed $10,000.

In British Columbia the Act does not apply to any estate not exceeding $5,000, nor to property passing to husband, wife, father, mother, child, grandchild, daughter-in-law, or son-in-law of the deceased which does not exceed $25,000.

Alberta, Saskatchewan and North-West Territories Succession Duties Act does not apply to any estate that does not exceed $5,000, nor to property passing to husband or wife, child, or grandchild, daughter-in-law, or son-in-law, or to parents where the estate does not exceed $25,000.

Property exceeding $25,000 and passing to persons named above, 1½ per cent. on all over $25,000 up to $100,000.

Exceeding $100,000, but not over $200,000, 2½ per cent. on all over $25,000.

Exceeding $200,000, 5 per cent. on all over $25,000.

Where it exceeds $5,000, and passes to grandparents or other lineal ancestors, or to uncles and aunts, 5 per cent. on all over $5,000.

When passing to other collaterals or to strangers, 10 per cent. on all over $5,000.

When the whole amount passing to any one person mentioned in the first paragraph does not exceed $5,000, or to any other one person and does not exceed $200, there is no duty.

CHAPTER XXIII.

INSOLVENT DEBTORS—ASSIGNMENTS.

566 Insolvent Debtors.—We have no bankruptcy Act in Canada by which an insolvent debtor can be forced to make assignment for the benefit of his creditors, and which will give him a release from further prosecution. But all the Provinces and Newfoundland have enacted very fair and equitable insolvency laws, which prevent insolvent traders from either fraudulently disposing of their assets, or settling with certain creditors to the prejudice of others. They all force the debtor, however, either to leave the country or to do business in future in his wife's or some othes person's name, except in Newfoundland.

There are two ways in which the effects, both personal property and real estate, of an insolvent debtor may be converted into cash and ratably distributed among the creditors, viz. : under the Creditors' Relief Act, or by assignment.

567 Voluntary Assignment.—A trader who finds himself in insolvent circumstances may voluntarily make an assignment of his estate for the general benefit of his creditors.

The assignment need not be in any precise form. It is sufficient to say, "All my personal property, real estate, credits and effects which

may be seized and sold under execution " or similar words. The statutory exemptions from seizure under an execution or landlord's warrant are also reserved to the debtor who makes an assignment of his other property for the benefit of his creditors.

568 Forced Assignment.—In case a trader who is practically insolvent and yet refuses to make an assignment for the general benefit of creditors, and does not pay them or satisfactorily secure them, cannot be forced to make an assignment, except in Quebec and Newfoundland.

In Quebec any creditor having an unsecured claim overdue for $200 or upwards may demand the debtor to file with the court judicial abandonment of his estate for the benefit of his creditors, and if this is not done within two days, (or the debt paid) and the abandonment actually made within four days the debtor may be arrested and goods seized.

If the assignment is made the liquidation will be effected by a curator appointed by the court.

In Newfoundland either a debtor or a creditor may, by petition addressed to the Supreme Court or to a Supreme Court Judge, secure a judicial finding as to the debtor's real financial status, simply stating that the debtor is unable to pay his creditors 100 cents in the dollar. If the debtor is the petitioner he must attach to the petition a schedule of all his assets and liabilities. If it is by a creditor, he must also attach such schedule, if he is able, and if not he must give a statement of facts sufficient to satisfy the court or judge that an order for hearing should be made, After the hearing, if the debtor is declared insolvent, the estate may be vested in a trustee for distribution among the creditors, and after the estate is thus wound up the court or judge may give the debtor a certificate of discharge.

Two-thirds of the creditors in number and value may also agree, and upon confirmation by the judge, give the debtor a final discharge.

All the other Provinces have laws which regulate the form of assignments, but there is no power to make a person become an involvent. But where a debtor is manifestly insolvent and yet refuses to make a general assignment, the same result is attained under The Creditors' Relief Act outlined in following section.

569 Creditors' Relief Act.—In the small debts courts in all the Provinces and Newfoundland, such as the Division Court in Ontario, executions from them may be executed, and the money realized by the bailiff paid over to the creditor at once without regard to other creditors.

In Quebec on executions from any of the courts the officer may pay over the money secured at once, unless some other creditor raises an objection, alleging that the defendant is insolvent, in which case the money must be distributed as described in following portion of this section.

Under the provisions of the Creditors' Relief Act priority among execution creditors when the execution issues from any of the higher

courts has been abolished, and the insolvent's assets are distributed as per two following sub-sections :

1. If an insolvent trader refuses to make an assignment, an action may be brought by one creditor on behalf of himself and all other creditors of same class, when both the real and personal property may be sold under execution and the proceeds ratably distributed among the execution creditors and those who prove and file their claims within the time provided in each Province. The law cost of a person suing in such case would be paid in full before any distribution would be made among the creditors.

2. The provisions of the Creditors' Relief Act being nearly *verbatim* in all the Provinces, the following will give the necessary steps to take under it :

In Ontario when the sheriff levies money on an execution from a County or High Court he is required to retain it for thirty days and to enter the particulars of the execution in a book kept for that purpose, which is open for public inspection. All other creditors whose writs or certificates of execution are in his hands at that time, or are placed with him within one month from such entry, share ratably in the distribution of the money realized.

A creditor having a judgment from the Division Court may file with the sheriff a memorandum of his judgment and costs under the seal of the clerk of said court, which will entitle him to a share in the distribution.

Creditors who have not obtained judgment may file their claims according to the provisions of the Act and share in the distribution.

In British Columbia the procedure is the same for money realized on writs from the Supreme and County Courts.

In Alberta, Saskatchewan and North-West Territories on executions from the Supreme Court, and **in the Yukon** on executions from the Territorial Court, the money must be retained by the sheriff for two months, and then ratably distributed among the creditors who have delivered their writs to him, unless the Judge orders a different time.

In Manitoba the sheriff holds the money three months, and then ratably distributes it among the execution creditors.

In New Brunswick, where the sheriff levies under an execution for $200.00, or upwards, it must be ratably divided as stated above.

In Nova Scotia, in both the Supreme and County Courts, if the sum levied by the sheriff is $100.00, or upwards, it must be retained as stated in this section and ratably distributed.

In Quebec, where another creditor opposes the payment of money under an execution on the ground that the defendant is insolvent, the court holds the money levied and distributes it *pro rata* on all claims filed within fifteen days after notice is given in the official *Gazette*.

In all the Provinces, if the one seizure made by the sheriff is not sufficient to liquidate the claims proved against the insolvent estate, he

may continue to seize and sell until the whole estate is distributed if need be to satisfy the legal claims and costs.

570 The Assignee.—The instruction given in this chapter is for the guidance of the debtor and the creditors rather than for the assignee, who must in all cases be guided by the laws of the Province under which the estate is being distributed.

The assignment may be made to the sheriff of the county, or to an official assignee, or to any other resident of the Province which a majority of the creditors having a claim ol $100 and upwards assent to. The creditors may also make as many subsequent changes as they find necessary. An assignee may resign, so may an inspector, but a sheriff cannot refuse to complete the work of assignee of an insolvent, for that is part of his official duties, and in case of his death there would be no change, as his deputy or successor would complete the winding-up of the estate.

571 Advertising and Registering the Assignment.—In all the Provinces when an assignment is made it must be advertised in the official *Gazette* and in some local newspaper. The assignment must also be registered. If these public notices are not given within the time required, both the assignor and the assignee are liable to heavy penalties, and for that reason it is safer to make the assignment to the official assignee or to a sheriff, or consult a solicitor.

The time required for advertising and registration at present is as follows:

In Ontario the notice of the assignment must be published at least once in the *Ontario Gazette* and not less than twice in a newspaper having a general circulation in the county in which the property is situate, and if it does not appear in the first number of the *Gazette* and in such other local newspaper issued after five days from the execution of the assignment, the assignor shall be liable for a penalty ol $25.00 for each day that shall pass after the issue of such papers in which the notice should have appeared until it is published; and the assignee shall be liable to a similar penalty for each day that shall pass after the expiration of five days from the delivery of the assignment to him or of his assent thereto.

A copy of the assignment together with an affidavit of a witness must be registered within five days after the execution of the assignment in the office of the Clerk of the County Court where the assignor resides, if a resident of the county, and if not a resident of the Province, then in the county where the property so assigned is situate.

In Manitoba.—Once in *Manitoba Gazette*, twice in a local newspaper; registered in the office of County Court Clerk within ten days; penalty for default, $20.00 per day.

In British Columbia.—Once in *B. C. Gazette*, once in a local newspaper; registered within 21 days in County Court Register; penalty for default, $10.00 per day.

In Nova Scotia and New Brunswick.—Once in *Royal Gazette*, twice in local newspaper; registered within five days in office for registry of deeds; penalty for default, $25.00 per day.

In Prince Edward Island.—Twice in *Royal Gazette*, once in local newspaper; registered within five days; penalty for default, $5.00 per day.

572 Form of Notice to be published, or one similar.

NOTICE TO CREDITORS.

Notice is hereby given that....., of the town of..... in the County of..... (hardware merchant, or as the case may be), has made an assignment to me in trust for his creditors.

A meeting of the said creditors will be held at my office at the Town of....., on (Wednesday) the..... day of....., 19....., at 2 o'clock, p.m. (or as the case may be), to receive statement of affairs, appointment of inspectors, and for giving direction for the disposal of the assets, etc.

Creditors are requested to file their claims, duly verified, with me on or before the day of such meeting, after which date I shall proceed to distribute the assets of the estate, having regard only to those claims of which I shall then have received notice.

A. B., *Assignee.*

573 Filing Claims with Assignee.—Any person claiming to rank as a creditor in the estate assigned must furnish to the assignee particulars of his claims proved by affidavit and such vouchers as the nature of the claim admits of, and within the time named in the assignee's public notice.

A claim not yet due will also be included if proved.

A wife who advances money to her husband that was used in the business would rank as a creditor if he assigned. The husband, also, if he advanced money to his wife, who was engaged in business in her own name and on her own account separate from him, would rank as a creditor if she assigned.

574 Priority of Claims.—In distributing the assets of an insolvent the first thing to be paid is taxes, next a certain number of months' arrears of wages and one year's rent due the landlord, then mortgages, and lastly general creditors.

In Ontario, Manitoba, British Columbia, New Brunswick and Nova Scotia, clerks and other employees have priority over other creditors for three months; Alberta, Saskatchewan, Yukon, North-West Territories and P. E. Is,and, one month; Quebec, wages for servants one year, clerks three months. After receiving the amounts for which they have priority they then share *pro rata* with the general creditors for any balance that may be due.

In case the assignment is that of the lessee the landlord has a preference claim for rent for one year last previous to, and three months following the execution of such assignment, and thereafter as long as the assignee shall retain possession of the premises.

575 Fraud by Insolvent Persons.—Our Statutes do not discourage a trader deeply in debt from continuing in business, or from making a supreme effort to extricate himself in any just way. Self-

respect, as well as business interests, requires that his pecuniary circumstances be not published to the world. An insolvent person need not disclose that fact to a creditor from whom he is purchasing goods, unless he is questioned as to his financial standing. If questioned he must either state the facts, or he must refuse to give information, thus leaving the other party free to either fill his order or reject it.

But if the insolvent person represents himself as solvent in order to obtain goods on credit, he is guilty of a fraudulent act. The seller, discovering it, may cancel the contract, or stop the goods if they have been shipped. Penalty for false replies that amount to fraud—three years' imprisonment.

576 Fraudulent Conveyances and Transfers.—Every gift or gratuitous contract, whether by deed or otherwise, made by a person at a time when he is unable to pay his debts in full or knows that he is on the eve of insolvency, is deemed to be made with the intent to defraud his creditors, and may be set aside. A deed of gift with natural love and affection for the consideration would be void.

Every conveyance or transfer of either personal or real property by a person who knows he is on the eve of insolvency with the intent to delay or defraud his creditors shall be void against such creditors, providing the other party knows his intention and acts in collusion with him. (Que. C. C. 1040.)

Every debtor in insolvent circumstances, or on the eve of insolvency, who voluntarily, or through force gives a confession of judgment that has the effect of defeating or defrauding his creditors, or to give one or more a preference over others, is void and cannot be executed.

A large payment of money or a transfer of property by an insolvent to a creditor knowing his insolvency, is deemed to be made with the intent to defraud creditors, and such creditor may be compelled to restore the amount or thing received, or the value thereof, for the benefit of all the creditors. (C. C. 1036.)

A sale on credit to a person who knows of the vendor's insolvency is in general held as fraudulent against creditors, as the necessary effect is to hinder and delay them.

All transfers of property, or purchases on credit by relatives, at a time when the insolvency is notorious, furnishes evidence of fraud and collusion.

A son, or daughter, or wife of insolvent who purchases the estate or property must have some apparent means, or the transfer would be regarded as fraudulent. If the money is actually paid the transaction is regular.

A chattel mortgage to secure a creditor, or in settlement of a debt previously contracted, or to secure a surety, if given within sixty days of making an assignment, is void towards other creditors.

577 Fraudulent Intention is a material element in an action to set aside a transfer or conveyance as being fraudulent against creditors, and where this element does not exist the action cannot succeed, (Carr v. Corfield 20, O. R. 218.) It must be shown that the debtor intended to defraud his creditors or some one of them, also that the vendee or transferee knew his intention, and also that such transfer

actually produced injury to the creditors, otherwise the action to set aside cannot succeed.

A suit to set aside a payment, or sale, or transfer, or conveyance of property must be taken within sixty days of such alleged fraudulent transaction. After an assignment has been made for the general benefit of creditors, no one but the assignee can bring such action, unless the assignee refuses to do so in a particular case. A creditor may then obtain permission from the court to bring action in his own name and at his own risk.

In Quebec an action to set aside may be brought within one year from the time when the creditor obtains the knowledge of the fraudulent transaction.

578 Valid Conveyances and Transfers.—All sales in the regular course of business, whether on credit or for cash, by an insolvent before an assignment is actually made, are valid.

All *bona-fide* payments made in the ordinary course of trade or calling to innocent parties for value are valid. Even a large payment to a creditor just previous to making an assignment cannot be set aside unless it can be shown that such creditor had a knowledge of the insolvent's affairs and was acting in collusion with him.

A conveyance of real estate by a person who is insolvent cannot be set aside where the purchaser in good faith bought and paid a fair consideration for the same. A purchaser cannot be held for what the vendor does with the money.

A chattel mortgage given before assignment by way of security for an actual *bona-fide* advance of money given at the time is valid, providing the money advanced bears a fair and reasonable relative value to the consideration given.

Purchase by a partner of a co-partner's interest, although he knows such partner to be embarrassed, is valid, if he had no knowledge that such partner intended to defraud his creditors by such sale.

Even though a purchaser knows that the vendor is insolvent a sale cannot be set aside unless it can be shown that the purchaser knew that the sale was made with the intent to defraud creditors. There is no legitimate way a debtor can pay debts except through sales.

The fact that a man is liable upon notes or has a judgment against him or owes debts to any amount, does not in any case debar him from selling his property to a *bona-fide* purchaser without notice. Even where a person sells his property with the intention of preventing his creditors from seizing it or from getting a lien or claim upon it, to a purchaser who pays the full price, the sale cannot be set aside, unless it can be clearly shown that the sale was a fraudulent device entered into by both parties for the purpose of defeating the creditors in general of the vendor, or the complainant in particular.

579 The Unpaid Vendor's Privileges.—In all the Provinces, and Newfoundland, if the seller should learn that the purchaser is insolvent he may refuse to deliver any goods that have been purchased on credit. If the goods have been shipped they may be stopped *in transitu* if the bill of lading has not yet been delivered to the purchaser.

Even if the bill of lading has been delivered to the purchaser the delivery of the goods may still be prevented if they are still in the hands of the carrier or warehouseman, providing the bill of lading has not been transferred to an innocent purchaser for value, or pledged as security for a *bona-fide* advance of money from an innocent party. Such valid transfer of the bill of lading to an innocent third party for value extinguishes the unpaid vendor's lien on them, unless they were sold under a lien that did not permit the title to pass until payment had been made. See section 434.

After both the goods and the bill of lading have been delivered to the purchaser, then, in Newfoundland and all the Provinces except Quebec, the goods become a part of the estate of the insolvent, and the unpaid vendor can only rank with other creditors.

If, however, the seller discovers that the goods have been fraudulently purchased, with no intention of being paid for, he may then enter suit for their recovery even after they are in the debtor's warerooms, and if the fraud is proved the goods will then not become part of the estate.

In case of foreign shipments, as soon as the debtor receives the bill of lading and pays the duties they become part of the estate, even though they are placed by him in a bonded warehouse.

In Quebec the unpaid vendor has a lien for thirty days on the goods, whether they are in the hands of the carrier or in the store or warerooms of the purchaser, unless they have actually been sold to a *bona-fide* purchaser, or pledged as security for money actually advanced by an innocent third party. Therefore, goods that have recently been brought into the premises of an insolvent and not yet paid for, and being yet in bulk or in a form to be certainly identified, would not be held by the assignee as part of the estate of insolvent.

580 Absconding Debtors.—The goods of a debtor moving out of the place, but not out of the country, cannot be stopped by a creditor unless under an execution.

In case of a person being indebted to a sufficient sum, which varies in the different Provinces, and absconds from the Province, leaving effects liable to seizure under an execution, or attempts to remove such personal property either out of the Province or from one county to another, or keeps concealed to avoid service of process, the creditor, by making affidavit to that effect, may procure a warrant to attach such of the goods as are liable to seizure for debt. Care must be taken, however, not to seize the exemptions or to stop their removal or there would be a case for damages.

In Ontario, if the debt is not less than $4.00 nor more than $100.00, the writ of attachment may be obtained from the Clerk of the Division Court, but over that amount from the Judge of the County Court. In Quebec attachment is allowed if the debt is $5.00 or upward.

In British Columbia, if the debt exceeds $100.00, the writ may issue from the County Court if within its jurisdiction, if not, then from the Supreme Court.

In Manitoba, if the debt is not less than $10.00 nor more than $250.00, the writ may issue from the County Court; over that from King's Bench. In case of absconding from the Province the debtor loses his exemptions unless the family has been left and are in need of such goods. Then the exemptions will be in the option of the Judge.

In Alberta, Saskatchewan, Yukon and the North-West Territories, if the amount of debt exceeds $50.00, a writ may issue, and if absconding debtor leaves no wife or family no property is exempt.

In New Brunswick, for a sum of $40.00 and upwards, the writ may issue by a Judge of the Supreme Court, and also from County Court when the debt is within its jurisdiction.

In Nova Scotia, if the sum is $80.00 and upwards, the writ may issue from the Supreme Court, or the County Court if debt is from $20.00 to $400.00.

In Prince Edward Island, if debt is $33.00, and **Newfoundland,** if $20.00, the goods may be attached before judgment.

A debtor leaving Canada and going into the United States may be followed and suit brought in the American court. *The Canadian law prevails in the case,* but the "homestead exemptions" over there are so numerous that in the majority of cases nothing could be recovered.

Also, a judgment obtained in any of the courts in any of the Provinces of the Dominion of Canada may be sued upon in any of the States. It would be necessary to obtain an exemplification of the judgment from the court where the same is entered, under the seal of that court, and then sue upon it in the proper court of the State where the debtor resides or is domiciled.

581 Arrest of Debtors.—The *fiction* is that no one in Canada can be arrested for debt, but it is only true because other names are used for the cause of arrest—fraud, absconding debtor, contempt of court, etc.

All the Provinces allow an absconding debtor to be arrested upon a capias and held for bail, also imprisonment for fraudulent assignments, obtaining goods under false pretences, and for contempt of court.

In Ontario, British Columbia and the Yukon, absconding debtor can only be arrested and held for bail by a person having a claim against him for $100.00 or upwards. In all cases an order may be made as soon as the suit is commenced and before judgment.

In Manitoba, Alberta, Saskatchewan and North-West Territories, arrest is not allowed except the debtor is guilty of contempt of court. The goods may be attached.

In Quebec, if absconding from Quebec and Ontario and debt is $50.00 or upward.

Persons who cannot be arrested for debt are clergymen, persons seventy years of age or over, and women, whether traders or not.

In New Brunswick, in liquidated claims, if over $20.00, writ for arrest may be obtained from the Supreme and County Courts before judgment, but for a sum not certain an order from a Judge must be

obtained. No arrest after judgment except in the petty courts having jurisdiction under $80.00.

Nova Scotia's lowest sum allowing arrest is $20.00, when writ may issue from County Court, and from Supreme Court if debt is $80.00 and upwards.

In Prince Edward Island, if debt is $32.00, writ may issue from the Supreme Court.

In Newfoundland, if debt is $50.00, absconding debtor may be arrested.

CHAPTER XXIV.

COLLECTION OF ACCOUNTS.

582 Entering Cases in Court. — Merchants and others who have accounts they find it necessary to sue, can enter their own cases in the Small Debts Courts of the different Provinces, or the Division Court of Ontario, as well as any solicitor would do for them.

The plaintiff, when entering action, must leave with the clerk, by post or otherwise, a simple statement in writing (with as many copies as there are defendants) of the cause of action. If an account, it may be in the usual form of an account ; in the case of a note, a copy ; and of any other written instrument, a concise statement of it giving its purport. Must also give his post-office address, and full name and post-office address of the defendant, and state if he is unmarried. Where a layman is thus entering the cases for suit, the Clerk of the Court will always give the information that may be needed. As a matter of fact, there is nothing to do but to put in the accounts as above stated and pay the fee for the summons.

In Ontario, if the account is under $10.00, the cost right through to judgment will be only $1.25 for clerk's fees, or $1.65 including the bailiff's fees for service of summons, exclusive of his mileage.

When the amount exceeds $10.00, the cost increases according to the amount of the bill, but in no case will it much exceed $2.50.

Actions may be taken in the Division Court in following cases :

1. All personal actions where the amount claimed does not exceed $60.00 ; and in personal actions up to $100.00, if the parties consent thereto in writing.

2. In liquidated money claims, that is, notes and written instruments, up to $200.00 and interest in addition to that amount.

3. In unliquidated claims and demands of debt as accounts, and for breach of contract, up to $100.00.

4. Absconding debtors, where claim is not less than $4.00 nor more than $200.00.

5. For replevin if value does not exceed $60.00.

583 Small Debts Courts. — The fees for the inferior or Small Debts Courts in all the Provinces are about the same as those given above for Ontario, and the process for entering cases and for defence similar, therefore the following two sections, together with the preceding one, will give the general information desired.

If the debtor puts in a defence and the case comes to trial it would be better in the most of cases to employ a lawyer to conduct the case at court, but up to that point there is nothing in these petty cases for a lawyer to do. If the case goes to court, however, it is better to have a lawyer, for judges do not like clients to handle their own case.

584 Defences.—When any person is served with a summons they should not let the few Latin words in it scare them. The summons will always state the number of days in which a defence must be entered or judgment may be given by default. If the defendant has anything to gain by defending the suit, he has the right to set up any one or more of several pleas against the claim made against him.

In cases where the debt is outlawed and the defendant intends to take the benefit of the Statute of Limitations, he must state in his dispute note that the claim is barred by Statute, as it is over six years old (or as the case may be), otherwise judgment will be given against him by some judges.

585 Statement of Defence.—The statement of defence is called a "Dispute note," of which the following will serve as a guide to those unfamiliar with the forms. The name of the court and Province, of course, may be changed to suit. It may be sent by post or delivered personally to the clerk.

No.....
In the (No.) Division Court of the County of.....
Between (give name), Plaintiff,
and (give name), Defendant.
Take notice, I dispute the Plaintiff's claim in this case. (Here specify the grounds of defence, statutory or otherwise.)
Dated this ..... day of ....., A.D. 19.....
(Signature.)
To the Clerk of the said court,
and to the said Plaintiff.

In setting out the grounds of defence state them shortly and distinctly, using a separate paragraph for each separate defence you intend to make, if more than one, as follows:

1. That the plaintiff owes you a debt, which you claim should be set off against it; or,
2. That you have performed your part of the contract; or,
3. That you have offered to perform it, but that the other party refused to accept it; or,
4. That you have a counter-claim as an offset to part or to the whole claim of the other; or,
5. That the claim had become outlawed, as it was more than six years old; or,

6. That you were under twenty-one years of age when the debt claimed was contracted ; or,

7. That you do not owe the debt claimed ; or,

8. That performance was impossible : (1) Through the acts of God, as lightning, tornadoes, inundations, or death ; (2) By public enemies, as an invading army.

586 Garnishment. — All the Provinces, and Newfoundland, allow money due a debtor while yet in the hands of a third party to be attached or garnisheed.

Garnishment attaches to *money* due (not to property, as promissory notes, etc.) and the money must be presently due ; that is, it cannot be garnisheed in advance.

The following salaries, emoluments and moneys are exempt from garnishment :

Salaries of officials under Dominion Government, salaries of judges, pensions, and teachers' superannuation allowances, and money deposited in Post-office Savings Bank are exempt from garnishment by creditors, or seizure in case of insolvency ; so are pensions, alimony, superannuation allowances, etc.

According to a judgment delivered by Judge Morson, April 28th, 1903, in Toronto, the salary of an alderman cannot be garnisheed for debt because it is not a debt by the city due the alderman within the meaning of the Act, but merely a statutory obligation arising out of the city by-laws to pay the remuneration, hence not garnishable. No doubt the same will hold good in all the Provinces, for such interpretation is manifestly in the public interest.

All the Provinces, and Newfoundland also, exempt a certain amount due wage-earners, unless the debt is for board and lodging.

Money due a mechanic as contract price of work done instead of for wages is not exempt.

In Ontario, garnishee order may issue either before or after judgment from Clerk of the Division Court, but money in the hands of a third party due a mechanic, workman, laborer, servant, clerk, or employee for wages, which includes the permanent employees of the Provincial Government, cannot be garnisheed unless the sum due the mechanic, etc., exceeds $25.00, and then only to the extent of the excess. In case, however, where the debt was contracted for board or lodging, and in the opinion of the Judge the exemption of $25.00 is not necessary for the maintenance of the debtor's family, then the amount to be secured by the garnishee will be in the option of the Judge.

A single man with no one depending on him for support has no amount reserved to him by law against garnishment. Neither have other classes of people who are not wage-earners.

The garnishee summons costs $2.00 on sums up to $10.00, right through to judgment ; from $10.00 to $20.00 it will run up to $4.00, and similar amounts in the other Provinces.

In Manitoba, summons may issue either before or after judgment Amount reserved wage-earners, except Provincial civil servants, is $25.00.

In Saskatchewan, Alberta and the Territories garnishee order may issue from Clerk of the Supreme Court, either before or after judgment. Amount reserved ware-earners, including permanent employees of the Government, is $25.00.

In the Yukon the wages due a mechanic, workman, clerk or other employee, including permanent employes of the Government, to the amount of $100, is exempt, except for board and lodging.

In Nova Scotia order may issue after judgment. Amount reserved wage-earners, whether married or single, is $40.00.

In New Brunswick order issues after judgment. Amount reserved wage-earners is $20.00.

In P. E. Island order may issue either before or after judgment. Amount reserved wage-earners is one-half of the wages due.

In British Columbia garnishee order may issue both before and after judgment from either the County or Supreme Court or Small Debts Courts, according to jurisdiction.

Amount reserved from the Small Debts Courts to wage-earners is $30.00 per month for a married man or one on whom others are depending, and $20.00 for a single man with no one depending on him. Chap. 55, Sec. 34, R. S. of B. C.

When garnishee order issues from the County or Supreme Court, the amount reserved wage-earners is $40.00 per month. Chap. 52, Sec. 107, R. S. of B. C.

The exemption does not apply if the debt is for board or lodging and the Judge or Magistrate does not deem such sum necessary for the support of the debtor and his family.

In Quebec, if the amount claimed exceeds $5.00, may be attached before or after judgment. For wages and salaries exempt from attachment see list of exemptions for Quebec in Section 590, Sub-sections 13 to 19.

587 Judgment is the decree of a court delivered after a case has been decided. In Ontario and nearly all the Provinces executions may issue any time after judgment within six years without an order from the court, but after that an order from a Judge is necessary. (For time when judgments outlaw, see Section 233.

Execution.— If the judgment or amount of damage is not paid within the time specified in the judgment, an execution may be obtained to seize and sell the debtor's property to recover the amount of the judgment and costs. The laws of each Province, however, exempt from seizure under an execution sufficient property to enable the debtor to continue his regular avocation. (See Exemptions.)

Priority among execution creditors has been abolished in all the Provinces except as to executions from the Small Debts courts.

In Ontario executions from the Division Court do not issue until fifteen days after judgment unless the Judge orders differently, and do not bind goods until after actual seizure.

In the County and High Courts executions may issue immediately upon judgment, and bind both goods and lands from the date of de-

livery of execution to the sheriff, and any transfer or mortgage made thereafter and before seizure would be void ; but

Executions require to be renewed every three years. If not kept in force by renewals, after six years an order from the court is necessary to issue a new execution.

In Alberta, Saskatchewan and the North-West Territories they may issue immediately after judgment, and expire in two years unless renewed. They bind the goods from the time the writ is delivered to the sheriff, except those transferred to a bona-fide purchaser for value without notice.

In Manitoba, in the King's Bench, may issue forthwith after judgment, or any time within six years, without an order from a Judge, but after six years leave must be obtained. They bind goods from the date of receipt by the sheriff as against the debtor or purchaser with notice, and from date of seizure as against a purchaser for value without notice, and must be renewed every two years.

In County Court executions may issue six days after judgment, or forthwith on Judge's order. They remain in force twelve months and bind goods only and only after seizure. They may be renewed, and also may be exchanged for a King's Bench execution after being returned as uncollectable by a County Court bailiff.

Priority among execution creditors is abolished if the execution is $50.00 or over.

In British Columbia executions against goods issue forthwith after judgment in the Supreme Court, and have priority from the time they are delivered to the sheriff.

In the County Court, when judgment has been entered upon an ordinary summons, execution only issues after fourteen days from entry of judgment. In cases of default judgment, execution may issue forthwith after judgment.

In Quebec executions both against goods and lands cannot issue sooner than fifteen days after judgment, except in cases where attachment is permitted.

Executions against movables are under the control of Court bailiffs, while those against immovables are under the control of sheriffs.

In New Brunswick, Nova Scotia and Prince Edward Island executions from the County Court may issue ten days after judgment, and in the Supreme Court, may issue forthwith, unless an appeal is pending, and any time thereafter for twenty years. They bind goods and chattels of the debtor from the time they are given to the sheriff against all persons except bona-fide purchasers, and remain in force one year, but may be renewed before the year expires.

In Newfoundland in the District Courts executions may issue immediately after judgment ; in Supreme Court, in cases for payment of money or recovery of land, may issue forthwith, but in all other cases in 14 days. Must be renewed every year.

588 Executions Binding Land.—In all the Provinces executions may bind the lands of the judgment debtor. Executions from the lower courts issued against goods only cannot be filed against lands until an

attempt to recover against the goods has failed, and the execution been returned marked "No goods."

Executions from the higher courts in all the Provinces bind both goods and lands, but the sheriff cannot proceed against the lands until the delay fixed by statute in each Province has expired; but if the debt is not paid by that time he may then commence proceedings to sell the land. If there be a mortgage on the land he can sell the mortgagor's equity in the lands; but if there are two or more mortgages registered against the lands, he cannot then sell the mortgagor's equity until he has obtained an order from the Court of Chancery.

In Ontario all executions issued from the County and High Courts bind both goods and lands from the date of delivery of execution to the Sheriff. Land, however, cannot be sold before one year from time the writ is delivered to the Sheriff. In the Division Court, executions of $40.00 and upward may issue directed to the Sheriff, in which case they also bind lands of the debtor the same as those from the High and County Courts. Division Court judgments of $40.00 and upwards in cases where the execution has been returned marked "No goods," and all issuing from the County and High Courts, may be recorded in the Land Titles Office, the same as other instruments affecting land.

The Act says the Sheriff shall not send certificates of execution to the Land Titles Office unless upon written request of the plaintiff or his solicitor. Lands against which an execution has been recorded cannot be sold until one year after the writ of execution has been filed, and then only by giving three months' notice of sale. These entries in the Land Titles Office must be renewed every four years in order to continue to bind the land.

In British Columbia judgments registered in any Registration District, that Registrar is required to forward notice in writing to all other Registrars in the Province, and from the delivery of such notice the judgment binds all the property of the judgment debtor in the Province. Priority of registration creates priority of claim. To be kept good they must be renewed every two years.

When an assignment or cancellation of a judgment is registered, notice is also sent by the Registrar to all the other Registrars of the Province. Fee for registering a certificate of judgment is $2.00, and for a cancellation, 50c.

In Manitoba lands are bound by the registration of a certificate of judgment from the King's Bench Court, in the registration district in which the land is situate. A certificate of judgment may be registered in all the Registry Offices and Land Titles Offices in the Province, and bind all the lands of the debtor from the time of such registration except those exempt from seizure. Certificates not registered in a Land Titles Office do not bind the lands registered under the Real Property Act. They must be renewed every two years.

Executions issued from the County Court for a sum exceeding $40.00 may be recorded in the Land Titles Office. They must be renewed every two years.

Executions from the County Court may be exchanged for a King's

Bench execution after being returned as uncollectable by the County Court Bailiff, and then may be registered against the land.

In Alberta, Saskatchewan, Yukon and the North-West Territories, if not less than $50.00 remain unpaid on the judgment, a writ may be issued against the lands of the debtor. They bind from the time of the receipt of the writ by the Sheriff, but the land cannot be sold within less than twelve months thereafter.

The writ against lands must not be executed before the execution against lands has been returned marked *nulla bona* in whole or in part.

Both Sheriff sales and tax sales must be confirmed by a Judge.

In Nova Scotia judgments from the Supreme and County Court may be recorded against lands, and execution may issue any time within six years without an order from the court.

In New Brunswick a memorial of judgment issued from the Supreme or County Court when registered binds the lands of the debtor in that county. They must be renewed every five years to be kept in force.

In Prince Edward Island judgments issuing from the Supreme Court bind lands of the judgment debtor from time of entry of judgment, providing a minute of judgment has been filed with the Prothonatory, but lands cannot be sold until six months' notice of sale has been advertised by the Sheriff. Supreme Court executions may issue any time within ten years, but after ten years or the death of either party, judgment must be revived.

589 Judgment Summons.—In case there is not property found with which to satisfy the judgment claim, most of the Provinces permit the creditor in suits before the small debts or inferior courts to have the debtor summoned before the court to be examined on oath as to the disposition he may have made of his property. Every such summons should be obeyed, for the person not making his appearance, at such time as directed in his summons, before the court, to be examined on oath as to the disposition he may have made of his property, may be imprisoned for contempt of court.

After such hearing before the Judge, the latter may order a weekly or monthly payment, and if the sum is not paid the debtor may be imprisoned for contempt of court. If circumstances should arise afterwards by which this amount cannot be paid, the debtor should go to a lawyer and have a statement prepared to bring the matter before the Judge to have his first order set aside or changed.

Generally no other judgment will be enforced against a debtor while he is paying off in this way one judgment.

The debtor may also be imprisoned if he refuses to answer the questions, or to produce papers and books required by the court, or for a fraudulent disposition of his goods.

The judgment debtor being summoned to appear before the Judge to be examined is like any other witness, and if he demands it, must be paid both mileage and his day's fees.

In Ontario the Division Court Act provides that in case of mortgages where the principal or interest is sued for separately in the

Division Court the Judge cannot commit the debtor to gaol on a judgment summons in any case where it could not be done on a judgment recovered in a higher court ; that is, for fraud only. The same would hold in all the Provinces only for fraud.

The Ontario Act is further amended by taking from the Judge the authority to commit to gaol for non-payment of the sum ordered to be paid altogether, or by instalments, if it can be shown that such payments would have deprived the debtor or his family of the means of living. The Act now virtually allows commitment to gaol only in cases where there is some element of fraud. Commitment may then be for 40 days, instead of 30, as previously limited.

In Ontario judgment summons only issue out of the Division Court ; cost of summons and hearing the case is $2.50.

Quebec, Prince Edward Island, Alberta, Saskatchewan, Yukon and North-West Territories do not use the judgment summons process except for examination.

In Manitoba the limit of imprisonment is 40 days.

590 Exemptions.—All the Provinces reserve a reasonable amount of property exempt from seizure under any execution, a landlord's warrant in most cases, and distress by mortgagee for arrears of interest.

Where the debtor has more of any kind of property or articles than are exempt he is entitled to make choice of the part he wishes to retain. The bailiff or officer making the seizure has no legal authority to interfere in the selection.

All the chattels so exempt from seizure as against a debtor, after his death, or in case he should abscond, leaving his family behind, the widow, or family, should there be no widow, are entitled to.

Tenants in signing a lease for property should be careful that it does not contain an agreement to waive their right to the exemptions the Statutes reserve from seizure, for such Shylock forms of leases are frequently used.

In Manitoba such agreement would be null and void, but it would be binding in all the other Provinces, and in such cases the landlord would seize and sell all the exemptions.

In Ontario the following chattels are exempt from seizure under any writ or for distress by landlord or mortgagee for arrears of interest or for landlord's tax :

1. The bed, bedding and bedsteads, including a cradle, in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

3. One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, one shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve teacups,

twelve saucers, one sugar basin, one milk jug, one teapot, twelve spoons, two pails, one washtub, one scrubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels, one weaving loom in domestic use, one sewing machine and attachments, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets as are in common use. The articles in this subdivision not exceeding in value $150.00.

4. All necessary fuel, meat, fish flour and vegetables actually provided for family use, not more than sufficient for the debtor and his family for thirty days and not exceeding in value the sum of $40.00.

5. One cow, six sheep, four hogs and twelve hens, in all not exceeding in value $75.00, and food therefor for thirty days, and one dog.

6. Tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $100.00.

7. Bees reared and kept in hives to the extent of fifteen hives.

The debtor may, in lieu of keeping the tools and implements mentioned in Section 6, elect to receive the proceeds of their sale in cash up to $100.00, in which case the officer executing the writ would pay over to the debtor $100.00 if those goods sold for that much, and this amount the creditor could not seize.

None of the articles enumerated in sub-sections 3, 4, 5, 6 and 7 are exempt from seizures in satisfaction of a debt contracted for that identical article.

For tenants renting by the month see Section 387.

In Manitoba.—(*a*) The bed and bedding in common use for the debtor and his family, and also his household furnishings, not exceeding in value $500.00.

(*b*) The necessary and ordinary wearing apparel of the debtor and his family.

(*c*) Twelve volumes of books, the books of a professional man, one axe, one saw, one gun, six traps.

(*d*) The necessary food for the debtor and his family for nine months if such food is in possession at time of seizure.

(*e*) Six cows, three oxen or three horses or mules over four years of age, ten sheep, ten pigs, fifty fowls, and food for the same for eleven months. The horses to be exempt must be such as are used by the debtor in earning his living.

(*f*) The tools, agricultural implements and necessaries used by the debtor in the practice of his trade, profession or occupation to the value of $500.00.

(*g*) The articles and furniture necessary to the performance of religious service.

(*h*) The land upon which the debtor or his family actually resides or cultivates, either wholly or in part, or which he uses for grazing or other purposes, to the extent of 160 acres.

(*i*) The house, barns, stables and fences on the debtor's farm.

(*j*) All the necessary seeds of various varieties, or roots, for the proper seeding and cultivation of eighty acres.

(*k*) The actual residence or home of any person other than a farmer, providing the same does not exceed the value of $1,500.00. If it

is worth more it may be sold providing $1,500.00 out of the proceeds is paid over to the debtor.

None of the property in this list is exempt if the debt is for the same article.

The exemptions do not hold against debts due municipalities for seed grain.

Every agreement, even in writing and under seal, whereby a person waives or abandons his right or privilege of exemption, is absolutely null and void by Statute.

Growing crops cannot be seized and sold until they are harvested.

In British Columbia.—No exemptions against sale for tax or distress for rent, except lodgers' goods, and a limit of three months' rent against goods sold to the tenant under the Conditional Sales Act.

The homestead so registered, according to the laws of the Province, if not exceeding in value $2,500.00, is absolutely exempt from seizure or sale by any process at law or equity.

If it exceeds in value $2,500.00, then the excess only is subject to seizure and sale.

Personal property to the value of $500.00 is exempt. None of such property is exempt if the debt was contracted for that identical article.

The fee for the registration of land as a "homestead" is $5.00. This does not include the registering of the title, but simply the homestead.

In Alberta, Saskatchewan and the North-West Territories the following property is exempt from seizure under writs of execution, or for arrears of interest or principal due upon mortgages:

1. The necessary and ordinary clothing of the debtor and his family.

2. The furniture and household furnishings belonging to the debtor and his family to the value of $500.00.

3. The necessary food for the defendant's family during six months, which may include grain and flour, or vegetables and meat, either prepared for use or on foot.

4. Six cows, three oxen, horses or mules, or any three of them, six sheep, three pigs, and fifty domestic fowls, besides the animals the defendant may have chosen to keep for food purposes, and food for the same for the months of November, December, January, February, March and April, or for such of those months as may follow the date of seizure, providing such seizure be made between the 1st of August and the 30th day of April next ensuing.

5. The harness necessary for three animals, one wagon or two carts, one mower or cradle and scythe, one breaking plow, one cross plow, one set harrows, one horse rake, one sewing machine, one reaper or binder, one set sleighs and one seed drill.

6. The books of a professional man.

7. The tools and necessary instruments used by the defendant in the practice of his trade or profession to the value of $200.00.

8. Seed grain sufficient to seed all his land under cultivation, not

exceeding 80 acres at the rate of two bushels per acre, defendant to have choice of seed, and fourteen bushels of potatoes.

9. The homestead of the defendant, provided the same be not more than 160 acres; in case it be more, the surplus may be sold subject to any lien or encumbrance thereon.

10. The house and buildings occupied by the defendant and also the lot or lots on which the same are situate to the extent of $1,500.00.

No article is exempt from seizure, except for the food, clothing and bedding of the defendant and his family, if the debt is for that specific article.

In the Yukon Territory the following goods are exempt from seizure under an execution, or for arrears of interest or principal upon a mortgage, notwithstanding any agreement in the mortgage to the contrary:

1. The necessary and ordinary clothing of the debtor and his family.

2. Furniture, household furnishings, dairy utensils, swine and poultry to the extent of $500.

3. The necessary food for the family of the debtor during six months, which may include grain and flour, or vegetables, and meat, either prepared for food or on foot.

4. The books of a professional man.

5. The tools and necessary implements to the extent of $500, used by the debtor in the practice of his trade or profession.

6. The house and buildings occupied by the debtor, and also the lot or lots on which the same are situate, to the extent of $1,500.00.

No article mentioned above (except food, clothing and bedding) shall be exempt from seizure if the judgment is for such article.

The exemptions do not hold good if the debtor has absconded from the Territory, leaving no wife or family behind.

In New Brunswick the exemptions from seizure under execution are the following:

The wearing apparel, bedding, kitchen utensils, and tools of trade or calling to the value of $100.00.

In Nova Scotia the following articles are exempt from seizure under any writ of execution:

1. The necessary wearing apparel, beds, bedding and bedsteads of the debtor and his family.

2. One stove and pipes therefor, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six teacups, six saucers, one shovel, one table, six chairs, one milk jug, one teapot, six spoons, one spinning wheel and one weaving loom, if in ordinary domestic use, 10 volumes of religious books, one water bucket, one axe, one saw, and such fishing nets as are in common use, the value of such not to exceed $20.00.

3. All necessary fuel, meat, fish, flour and vegetables actually provided for family use and not more than sufficient for the ordinary consumption of the debtor and his family for thirty days and not exceeding in value $40.00.

4. One cow, two sheep and one hog, and food therefor for thirty days.

5. Tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $30.00.

None of the articles enumerated in sections 2, 3, 4 and 5 are exempt from seizure in satisfaction of a debt contracted for that identical article.

In Prince Edward Island the following articles are exempt from seizure under an execution :

1. The necessary wearing apparel and bedding for the debtor and his family.

2. The tools and implements of trade of the debtor.

3. One cook stove, one cow, not exceeding in all $50.00.

4. $16.00 in money.

In Quebec the following articles are exempt from seizure under an execution :

1. The bed, bedding and bedsteads in use by the debtor and family.

2. The ordinary wearing apparel of the debtor and his fami,y.

3. Two stoves and their pipes, one pot-hook and its accessories, one pair ol andirons, one pair tongs and one shovel.

4. All cooking utensils, knives, forks, spoons and crockery in use by the family, two tables, two cupboards or dressers, one lamp, one mirror, one washing stand with its toilet accessories, two trunks or valises, two carpets or matting covering the floors, one clock, one sofa and twelve chairs, total not to exceed $50.00.

5. All spinning wheels and weaving looms intended for domestic use, one axe, one saw, one gun, six traps, such fishing nets, lines and seines as are in common use, one tub, one washing machine, two pails, three flat-irons, one blacking brush, one scrubbing brush, one broom.

6. Fifty volumes of books, and all drawings and paintings executed by the debtor or the members of his family for their use.

7. Fuel and food sufficient for the debtor and his family for three months.

8. One span of plow horses, or one yoke of oxen ; one horse, one summer vehicle and one winter vehicle, and the harness used by a carter or driver for earning his livelihood ; one cow, two pigs, four sheep and the wool from such sheep, the cloth manufactured from such wool, and hay and other fodder for food for such animals, and the following agricultural implements : One plow, one harrow, one working sleigh, one tumbril, one hay-cart with its wheels, and the harness necessary for farming purposes.

9. Books relating to the profession, art or trade of the debtor to the value of $200.00.

10. Tools and implements used in trade to the value of $200.00.

11. Bees to the extent of fifteen hives.

Things mentioned in paragraphs 4, 5, 6, 7, 8, 9 and 10 are not exempt if the suit is to recover their price, or when they have been given in pawn.

12. The following are also exempt from seizure under executions or attachment for debt :

(1) Consecrated vessels and things used in religious worship.

(2) Family portraits.

(3) Immovables declared by the donor or testator or by law to be exempt, and sums of money and objects given or bequeathed upon the condition of being exempt from seizure.

(5) All boats, nets and fishing tackle belonging to a fisherman, except for their purchase price, but cannot be seized even for that between 1st May and 1st November.

13. Also the following salaries and allowances are exempt from garnishment or seizure for debt :

(1) Alimony allowances granted by court or given as alimony are exempt, except for alimentary debts.

(2) Pay and pensions of persons in army and navy.

(3) Enrolments and salaries of ecclesiastics and ministers of worship.

(4) Salary of professors, tutors and school teachers.

14. Salaries of public officers, except those employed under provincial government, which are seizable for :

(1) One-fifth of every monthly salary not exceeding $1,000.00 per annum.

(2) One-fourth where the salary exceeds $1,000.00 but does not exceed $2,000.00.

(3) One-third where it exceeds $2,000.00 per year.

15. Salaries of city and town clerks, assessors and other municipal employees in same proportion as preceding sub-section 14.

16. All other salaries and wages are exempt in following proportions :

(1) Four-fifths when salary does not exceed $3.00 per day.

(2) Three-fourths when exceeding $3.00, but do not exceed $6.00.

(3) Two-thirds when they exceed $6.00 per day.

17. Books of account, titles of debts, and other papers when in the possession of the debtor, except debentures, promissory notes, bank notes, shares in corporations and other instruments payable to bearer or order.

18. All pensions granted by financial or other institutions, as retiring funds or pensions established among the employees.

19. Four-fifths of the salary or earnings of members of the corporations of pilots for and below the harbor of Quebec.

In Newfoundland the exemptions from attachment or execution are :

1. Goods of lodgers and boarders.

2. The common law exemptions, as fixtures, wild animals, goods delivered to a person in the way of trade, things in actual use, and goods in the custody of the law.

3. The tools and implements of trade, fishing skiff or punt, the necessary cooking apparatus, bedding and wearing apparel of himself and family.

CHAPTER XXV.

COPYRIGHT—TRADE MARK—PATENT RIGHT—SUMMARY OF VALUABLE LEGAL POINTS.

591 Copyright.—In Canada a copyright may be obtained by the author or publisher of any book, picture, drawing, map, chart, etc., which holds for 28 years from the date of copyright, and renewal for 14 years by author, the widow or children. The fee is $1 for registration and 50 cents for a certificate of registration, which is forwarned to the author. Three copies of the work must be forwarded to the Department of Agriculture, except in case of a painting, sculpture, etc., in which case a written description will do instead of three copies.

Every article copyrighted must contain a notice of the copyright. Any person who inserts such notice without having a copyright is liable to a penalty of $300. An infringement of a copyright incurs a heavy penalty and the confiscation of the works. To secure a copyright write to

The Honorable the Minister of Agriculture
(Copyright Branch), Ottawa,

who will forward a copy of the Copyright Act and full information so that any person of ordinary intelligence may do all the correspondence. No postage is required, as the letters go free.

In Newfoundland only two copies are required, and correspondence is with the Colonial Secretary, St. John's. Fee, $1.

592 Trade Marks.—A *general* trade mark, such as "Pure Gold," which a merchant or manufacturer uses to distinguish his goods of various kinds from those of others, may be registered for $30. There is no limit to its duration.

A *specific* trade mark, which is only used for one kind of goods, as "B.B.B." (Burdock Blood Bitters), may be registered for $25, and stands for 25 years, and renewable.

Industrial designs, as letter heads, labels, etc., may be registered for $5, which secures it exclusively for 5 years, and an extension of 5 years, $2. A copy of the Act may be obtained from the Minister of Agriculture (Trade Mark Branch).

In Newfoundland the fee is $20.

593 Patent Right.—Nearly any article or machine that is new and useful may be patented. For full information write to *The Commissioner of Patents, Ottawa, Canada,* who will forward a copy of the Act.

The fees for the various periods are as follows: 18 years, $60; 12 years, $40; 6 years, $20; fee for a further term of 12 years, $40; for 6 years, $20. Fees for lodging a *caveat*, $5; to register a judgment, $4; to register an assignment, $2; attaching a disclaimer to a patent, $2.

In Newfoundland the fee is $25 and the period 14 years. Address *The Colonial Secretary.*

594 Summary of Valuable Legal Points:

Law does not regard the fraction of a day.

A covenant is any promise in a sealed instrument.

Equity requires that to be done which *ought* to be done under the circumstances.

A will to be valid must absolutely have at least two witnesses.

A thing is deemed to be done in good faith when it is done honestly, whether it is done negligently or not.

Foreign Bills of Exchange require to be protested both for non-acceptance and non-payment. So do Quebec bills.

A person signing a note or any contract in an assumed name is as liable as though he used his own proper signature.

A valid agreement to buy real estate can only be made in writing. It needs no seal or payment in money.

A verbal agreement to buy real estate accompanied by the payment of money on the purchase price is not binding.

To place a seal on a promissory note makes it hold good for twenty years, but it destroys its negotiability. It may, however, be transferred by assignment.

Giving permission to the mortgagor to dispose of any article covered by a chattel mortgage (except those mortgages covering goods intended for sale) destroys the priority of the mortgagee's claim over other creditors.

In a General Partnership each member of the firm is liable to the creditors for the whole debts of the firm if the partnership assets fail to pay them; but a Special Partner in a Limited Partnership is only liable to creditors or the public to the amount of the capital he invested in it, or the interest he took in the business.

In a joint stock company each shareholder is only liable to creditors to the amount of the shares he purchases. When they are paid his liability ceases.

The shareholders in a chartered bank are liable to creditors not only for the full amount of shares they purchase, but for twice the amount if the bank fails and the debts require that much to cancel them. Their liability is double the amount of investment.

A corporation note payable to one of its officers is a danger signal that the public or a bank must not disregard.

An officer of an incorporated company buying goods which are delivered at his own private residence, but making payment by giving a company cheque for the amount, is sufficient notice to put the payee on inquiry as to the right of such officer to pay his personal debt out of the funds of the corporation. Such money may be recovered back from the payee if the agent does not properly account to the company for it.

When a debt is said to be barred by Statute of Limitations, it simply means that the creditor has lost his right to recover it by suit; but it does not, except in Quebec, cancel the debt nor preclude the creditor from collecting it himself if a legal opportunity occurs. For instance, if the debtor were to place real estate in the hands of the creditor to sell for him on commission, and after effecting a sale the creditor were to pay over all the proceeds except the stipulated commission, and such further sum as would cover the amount of the debt due such creditor, he would be acting within his legal rights. It would not be a "misappropriation" of funds, neither could the debtor recover the amount by suit, for such debt would be a valid set-off.

An executor may retain a debt due by a legatee, the remedy for which has been barred by statute, as a set-off against a legacy. Courtney *v.* Williams, 3 Ha. 539. An executor may also retain money out of the estate of the deceased to pay a debt due him. Stahlschmidt *v.* Lett, 1 Sm.

GLOSSARY.

Abatement.—A reduction. To abate a nuisance is to discontinue it.

Acceptance.—Name given to a draft after it has been accpted.

Accommodation Paper.—A promissory note or bill given without value.

Acquittance.—A release.

Ad valorem.—According to value.

Alias.—(1) Otherwise. (2) Assumed name. (3) A second or further writ after a first writ has expired.

Alibi.—In another place.

Alimony.—Allowance made by court to a wife out of the husband's estate.

Annulment.—Cancellation; the act of making void.

Anno Domini.—In the year of our Lord.

Appraise.—To set a price upon; arbitration and award.

Assets.—Available means for the payment of debt.

Assignee.—One to whom property is assigned.

Attachment.—Seizure of goods by a judge's order or other legal process.

Attorney.—A person appointed to act in place of another.

Bailment.—The receiving and keeping of goods for a time by one person from another.

Barter.—Traffic by exchange of commodities.

Bequest.—A gift by will of personal property.

Bill.—A general name for negotiable paper.

Bill of Exchange.—A draft.

Bill of Lading.—A receipt from the master of a ship acknowledging the shipment of goods.

Bona-fide.—In good faith.

Capias.—A writ authorizing the arrest of a person.

Causa mortis.—On account of death.

Caveat.—Meaning "to take care"; a warning.

Certiorari.—A writ from a superior court commanding the records of a cause pending in a lower court to be brought before such higher court.

Chattels.—Every species of personal property.

Cheque.—A demand draft on a bank.

Chose in Action.—Personal property not in actual possession, but which the owner has a right of action to recover, as a debt, etc.

Codicil.—A supplement under seal to a will for the purpose of altering or adding to its contents.

Collateral.—Additional security by depositing stocks, mortgages, etc.

Consignee.—One to whom goods are consigned.

Contra.—Opposite.

Contra bonos mores.—Inconsistent with good morals.

Coverture.—The legal state of a married woman.

Curtesy.—A husband's life interest in the estate of his deceased wife.

Debenture.—A bond on which incorporated companies and municipalities borrow money.

De acto.—In fact; actually existing or done.

De jure.—By right; by law.

De novo.—Anew; from the beginning.

Deposition.—Written testimony given under oath.

Detinet.—Action at law to recover possession of specific property; replevin.

Devise.—A gift by will of real estate.

Dies non.—A court holiday; a day on which the judges do not sit.

Domicile.—The place where a person permanently resides.

Donatio mortis causa.—A gift of personal property made in contemplation of death.

Duplicate.—A copy; twofold.

Easement.—A privilege which the owner of one adjacent tenement has over another.

Effects.—Money and personal property of every kind.

Entail.—Property limited in descent to a particular heir or heirs.

Escheat.—Property reverting to the original owner or the Crown through failure of heirs.

Escrow.—A deed signed and left with a third party to be delivered to the grantee when he has performed some stipulated act.

Estoppel.—A bar to an action arising from a party's own action or neglect.

Equity of Redemption.—A right allowed the mortgagor for a certain time in which to redeem lands mortgaged.

Ex officio.—By virtue of the office.

Ex parte.—By one part.

Ex post facto.—After the act has been performed.

Ex tempore.—Without premeditation; offhand.

Fac Simile.—An exact copy.

Fee simple.—Title to property without any restrictions or conditions.

Feme covert.—A married woman.

Feme sole.—An unmarried woman.

Feræ naturæ.—Wild animals or birds in which no person can claim property.

Fiat.—An imperative command; decree.

Fieri facias.—A writ of execution.

Flotsam.—Goods found floating in the sea.

Foreclosure.—Suit brought on a mortgage to compel the mortgagor to either pay the debt or lose his equity of redemption.

Franchise.—A privilege; freedom; exemption.

Garnishment.—A process of attachment securing money due a debtor in the hands of a third party.

Habeas corpus.—You may have the body; a writ whereby the legality of any imprisonment may be judicially inquired into.
Hypothecate.—To pledge as security.
In esse.—In being; actually existing.
In posse.—Within possibility.
In propria persona.—In one's own person.
Insolvent.—Unable to pay debts in full.
In transitu.—On the passage.
Invalid.—Of no legal force.
Ipse dixit.—He himself said it; mere assertion.
Ipso facto.—By the fact.
Ipso jure.—By the law itself.
Judicial sale.—Sale ordered by a court.
Jure gentium.—By the law of nations.
Laches.—Negligence in prosecuting legal rights.
Lease.—A contract for the use of property.
Legacy.—A gift by will of personal property.
Legal Tender.—(See sections 97 and 99.)
Letter of Credit.—(See Section 207.)
Levari facias.—A writ of execution against goods and chattels.
Lex loci.—The law of the place.
Lex talionis.—The law of retaliation in kind.
Liquidation.—Winding up a business and adjusting the debts.
Liquidated Damages.—Damages agreed upon at the time of making the contract if a breach occur.
Loco parentis.—In the place of the parent.
L.S. (locus sigilli).—The place of the seal.
Mala fides.—Bad faith.
Malfeasance.—A wrongful act.
Malpractice.—Bad or unskilful practice.
Mala in se.—Evils in themselves, as murder, perjury, etc.
Malum prohibitum.—Bad, because forbidden, as trespass, etc.
Mandamus.—We command; a peremptory writ from a superior court to perform a duty.
Manu forti.—With strong hand; a term used with reference to forcible entry.
Mesne.—Intervening; middle.
Merging Securities.—(See Section 98.)
Messuage.—An old legal term for a residence.
Misfeasance.—The doing of a lawful act in an unlawful manner.
Misnomer.—A wrong name; mistaking the true name.
Ne exeat provincia.—A writ to arrest a debtor absconding from the province.
Nemine contradicente (nem. con.).—None dissenting.
Nisi Prius.—A court where actions are tried before a judge and jury.
Non compos mentis.—Of unsound mind.
Nudum pactum.—Naked contract, one invalid at law.
Onus probandi.—The burden of proof.
Overt.—Open; public.
Par of Exchange.—The intrinsic value of money when compared in weight and fineness with that of other countries.
Parole.—By word of mouth.
Party Wall.—A wall used jointly by two tenements which it separates.
Per capita.—Per head.
Per se.—By himself or itself.
Pluries.—Very often; used for the third or further writ against same defendant.
Prescription.—In law a right acquired by long use.
Prima facie.—At first appearance.
Probate.—The proof of a will before a surrogate court or judge.
Pro tanto.—For so much.
Proxy.—The person who is substituted to act for another.
Puisne.—Inferior judges of the Supreme Court.
Quantum meruit.—As much as he has deserved.
Quash.—To set aside.
Quo animo.—By what intention.
Realty.—Lands and houses.
Remedy.—Legal means to enforce a claim or to redress an injury.
Remission.—In civil law a release of a debt or claim.
Renunciation.—Giving up a right.
Replication.—The plaintiff's answer to a defendant's plea.
Respondent.—One who answers; a defendant.
Res integra.—An entire matter.
Reversion.—The right to future possession.
Scire facias.—That you declare; a writ commanding a party to show cause why a certain thing should not be done.
Seisin.—Possession of land.
Sequestration.—In courts of equity a process depriving a delinquent party of his entire estate.
Set-off.—A counter-claim.
Severally.—Individually.
Sine die.—Without day; adjournment without a day fixed for reassembling.
Ss. (scilicet).—To wit; namely.
Solvent.—Able to pay all just debts in full.
Specialty.—A contract under seal.
Subpœna.—Writ to compel witnesses to attend a trial or court.
Summons.—A writ by which action is commenced, the defendant being thereby summoned to appear in court.
Supersedeas.—A writ to stay proceedings.
Surety.—(See Section 116.)
Tender.—An offer of money or other property for acceptance.
Tenement.—A dwelling-house.
Terse tenant.—The person in actual possession.
Tort.—A wrongful act or injury, as slander libel, false imprisonment, trespass, etc.
Transcript.—A copy.
Transitu.—In the act of passage.
Trover.—Action at law to recover goods or their value.
Usury.—Interest in excess of the legal rate.
Vendee.—The buyer.
Vendor.—The seller.
Vendue.—Sale by auction.
Venue.—The county in which the action is to be tried.
Veto.—I forbid.
Vice versa.—On the contrary.
Viva voce.—With the living voice; orally.
Void.—That which has no legal effect.
Waiver.—The abandonment of or the omission to exercise a legal right.
Warrant.—A written authority from a court or justice to make an arrest or search for stolen goods, etc.
Warranty.—A guarantee.
Way Bill.—A list of goods transported by railway or other common carrier.

INDEX.