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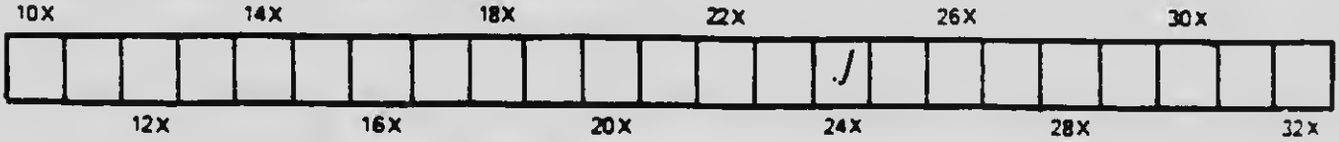

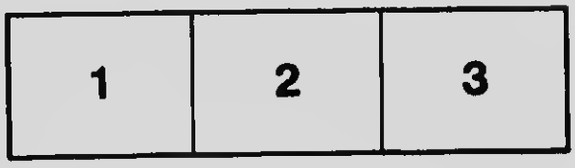

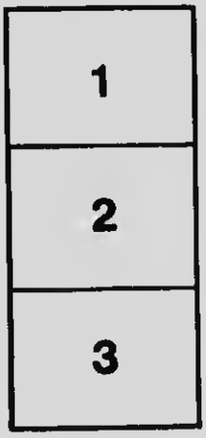

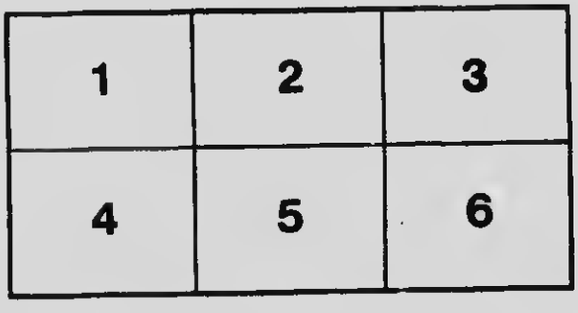

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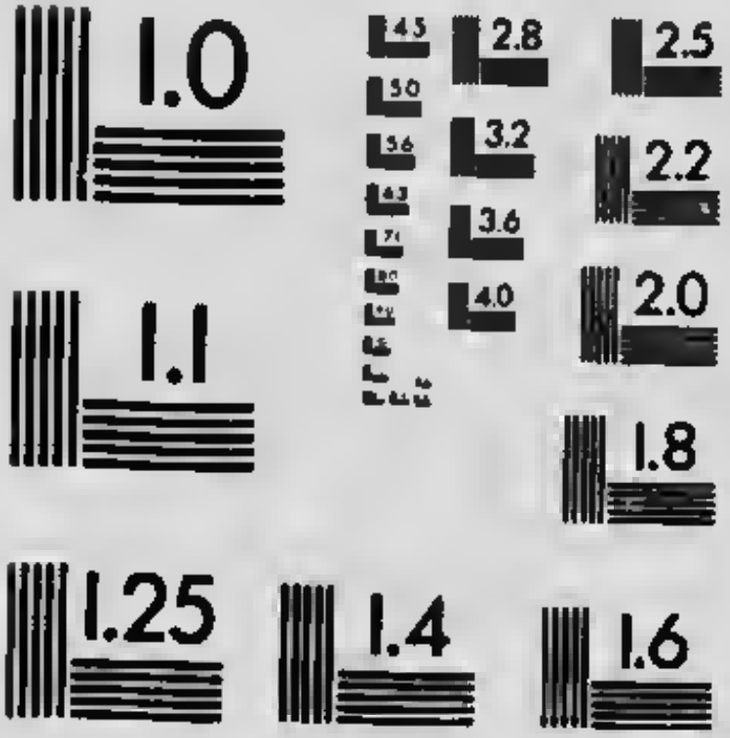

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ESSENTIALS OF Commercial Law

BY

R. E. GALLAGHER

THE ESSENTIALS

OF

COMMERCIAL LAW

WITH

FORMS OF LEGAL AND BUSINESS DOCUMENTS

PREPARED FOR THE USE OF

SCHOOLS AND COLLEGES

AND AS A

BOOK OF REFERENCE

FOR

BUSINESS MEN

BY

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PREFACE.

This work is a revision of THE ESSENTIALS OF BUSINESS LAW, issued by the same author in 1897, and of THE BUSINESS EDUCATORS' COMMERCIAL LAW, by T. H. Luscombe, Barrister, of Osgoode Hall. It is intended as a text-book in Business Colleges, High Schools, Collegiate Institutes, and such other educational institutions as may desire to impart to their pupils a knowledge of the principles of Commercial Law. No attempt has been made to compile a complete compendium of Commercial Law, leading principles and general rules only having been given, but these have been dealt with in such a way that the reader may obtain without difficulty a sufficiently comprehensive and practical knowledge of the subject for every-day business affairs.

As a text-book covering the requirements of the Examinations prescribed by the Institute of Chartered Accountants, as well as those of the Business Educators' Association, and for Commercial Specialists' certificates, it will be found exceedingly valuable.

All of the best features of both of the above-mentioned works having been retained, the present volume is issued with the confident hope that it will be found helpful to teachers, students and business men alike.

HAMILTON, September, 1902.

ESSENTIALS OF

COMMERCIAL LAW.

CHAPTER I.

INTRODUCTORY.

Law in General.—Municipal Law comprises all the rules of conduct prescribed by the supreme powers of the state for the citizens and inhabitants of the state. It is composed of

(a) Statute or Written Law, and
(b) Common or Unwritten Law.

Statute Law.—Statute Law is the expressed written will of the Legislature.

Common Law.—Common Law as distinguished from Statute Law is that great body of law partly arising (as has been supposed) from Statutes which have been forgotten owing to the lapse of time or the destruction or loss of the records containing them, but principally arising from the methods of business and the habits and customs of mankind, greatly solidified by time and approved by judicial decision. The Common Law of England (as Sir Matthew Hale says) is not the product of the wisdom of some one man or society of men in one age, but of the wisdom, counsel, experience and observation of many ages of wise and observing men.

Divisions of Law.—Municipal law is considered under two great heads, one portion dealing with property and civil rights, and another portion dealing with acts that are criminal.

Law of Property and Civil Rights.—The Law of Property and Civil Rights is divided into two branches: The Law of Contracts and the Law of Torts.

Torts.—The Law of Torts deals with those cases in which one party suffers a wrong (not amounting to a criminal act) at the hands of another, or by reason of any action of another not arising out of contract. These wrongs are independent of contract, and do not grow out of contract. Libel, slander, false imprisonment, nuisance, trespass, and similar matters are torts.

Contracts.—Contract Law comprises all that portion of the Statute and Common Law which deals with agreements express or implied. The subsequent pages are intended to deal with those portions of the Law of Contract which are most usually required to be understood by persons engaged in commercial undertakings and pursuits, and have been compiled with special reference to the needs of students in Business Colleges, Collegiate Institutes, and other institutions whose curriculum embraces the subject of Commercial Law.

CHAPTER II.

CONTRACTS.

The Law of Contract.—The Law of Contract not only involves the foundation principles of legal knowledge, but also comes up oftener in ordinary business dealings than any other subject. No question is more frequently propounded to a lawyer than "I said so and so and he said so and so," or "I offered and promised so and so, and he offered or promised so and so. Is he bound? Will he have to carry it out? Am I bound? Will I have to carry it out?" In other words, the client seeking advice relates to his lawyer something that has taken place between himself and another person, and wants to know what is the legal effect of it, whether it is a binding agreement and what are his or what are the other party's rights and remedies in the circumstances.

To enable the student to answer such questions for himself—to enable him to know when there is or is not a binding agreement or

"contract" and what are the requisites for making one, is the chief object of these chapters. Such questions must many times in life present themselves to anyone having business dealings of any kind, no matter what his business or occupation. The benefit and advantage to him of being able to answer them is not so much that he may save lawyers' fees, expended perhaps in ascertaining that he has no case, but that he may be able so to conduct his dealings and make his bargains that he will avoid the annoyance and loss of time, money, and perhaps tedious litigation and expense, which to a greater or less extent are sure to result from loose, improper or illegal methods of doing business.

More or less familiar to us all are the words "promise," "bargain," "agreement," "contract." "Contract" is the technical term. Briefly, a contract is a binding agreement. There may be promises, bargains, or agreements that are not binding at law; but a contract, strictly speaking, must always be binding.

EXAMPLES,—

1. A offers to work for B during the month of April for $40, and B accepts his offer and promises to employ and pay him accordingly.
2. C sells D a suit of clothes for $20.
3. E agrees to work for F to-day in consideration for which F agrees to work for E to-morrow.
4. G offers to pay H $1,000 if he will not sell groceries in St. Catharines.

In each of these cases there is what is called a "contract." There is an agreement by each party to do something of value for something of value. This makes the agreement binding.

Definition of Contract.—A contract is an agreement (enforcible at law) between two or more persons that they or some one of them shall do or forbear to do some specified act or thing.

Requisites.—It is a common saying that it takes two to make a bargain; there must be at least two parties to a contract. These persons must be competent, that is to say, they must have what is called legal capacity. There must further, in order to be a contract, be mutual assent or agreement between these persons, that is, they must mutually agree upon some business transaction. There must

also be a seal or else there must he what is called "consideration." This will he explained later. The agreement furthermore must be free from what is called duress and free from fraud or illegality; all of which will be dealt with hereafter. We may tabulate the essential elements of a contract as follows:

1. Two or more persons having legal capacity to contract.
2. Mutual assent or agreement.
3. Consideration.
4. Freedom from duress, fraud or illegality.

These several elements or requisites can he conveniently dealt with in the order above placed and this will be done in the chapters which follow.

CHAPTER III.

CAPACITY OF PARTIES.

General Rule.—The general rule is that every person is presumed to have legal capacity to bind himself hy contract unless it is shown that he or she comes under one of the several important classes of exceptions. The law deems it right to protect, and does protect, certain classes of persons, wholly or partly, from liability on contract. This is because, on account of immaturity or unsoundness of mind or for some other special reason, it deems them incapahle of holding their own and protecting their rights and interests in dealing with persons of greater discretion and experience. The classes of persons who are so (more or less) under legal incapacity are:

1. Persons under 21 years of age, called infants or minors.
2. Idiots and lunatics.
3. Persons wholly intoxicated.
4. Indians—in so far that judgment cannot he enforced against their property.

Minors.—On the ground that persons do not usually acquire sufficient discretion and experience in the practical affairs of life till they reach the age of 21 (called their majority) the law excepts such persons from liability in business dealings. This is intended for their own good, that they may not improvidently fritter away their pro-

perty or encumber themselves with debts and business liabilities before they have reached an age when they should be competent to take care of their own interests.

A minor, however, is not altogether without legal capacity. Though he cannot bind himself to any contract in the nature of a business enterprise, he can bind himself to a contract for "necessaries," that is, for food, clothing, education, and such other things as may be needful for him in his particular circumstances or station in life. He may insure his life and is liable for the premiums if over 15 years of age. If doing for himself he may hire out and sue for wages in a Division Court up to $100. He may act as agent for other persons and make business contracts which will bind the persons for whom he so acts, though he cannot bind himself on such contracts.

He is liable for any tort (or wrongful act) committed by him; such for instance as destroying or injuring property belonging to another person.

Lastly, even the business contract of a minor is not wholly without effect. It is what is called voidable, not void. It is so far good that if ready to carry out his part of it the minor can enforce it against the other party. And a business contract made by a minor may be ratified (or assented to) after he comes of age, so that it can then be enforced against him, but the ratification must be in writing —a verbal ratification is worthless.

Furthermore a minor will not be allowed to retain any money or property he acquires by a contract unless he performs his part of the contract. Nor can he recover money paid on an executed contract unless he is able to restore what he received for it.

"Pleading the Baby Act" is rather an inelegant expression, sometimes used when a man who is sued for failing to keep an agreement defends the suit on the ground that he was under age. It is not considered manly or honest. The adult person dealing with a minor is bound by the agreement, and cannot back out for the reason that the other is a minor. The minor cannot waive his rights of infancy by any possible form of agreement.

Idiots and Lunatics.—Contracts made by idiots or lunatics are as a rule not enforcible against them. A lunatic however may make binding contracts for necessaries. And it is only during actual lunacy that he is under incapacity. During lucid intervals he can make binding contracts the same as other persons. As distinguished

from lunatics an idiot is a person who has been without understanding from his birth and is without lucid intervals.

Drunkenness.—The law does not favor the excuse of drunkenness as a ground for escaping liability on a contract. If however a person is so far intoxicated as not to know the nature or effect of what he is doing, a contract made by him while in that state cannot be enforced against him. But if he ratifies it after becoming sober he will be bound by it. If the party seeking to enforce the contract is shown to have purposely got the other party drunk in order to obtain the contract the Court will then more readily excuse the drunken person from performance of it.

Indians.—Contracts cannot be enforced against Indians (living under their tribal conditions) because their property cannot be seized or taken in execution to answer the claim. In theory an Indian's contract is legal and binding upon him, but the government protects his property upon the ground that he has not sense or discretion enough to take care of it himself.

Married Women.—Married women used to be under incapacity as to making contracts, but this incapacity has now been almost entirely removed.

CHAPTER IV.

MUTUAL ASSENT OR AGREEMENT.

Offer and Acceptance.—The mutual assent or agreement comes about by one party making an offer or proposal and the other party accepting it. It may be analyzed into the elements of question and answer. For example, A says to B, "Will you buy my horse for $35?" and B answers, "I will." The moment the offer is accepted without qualifications, there is a contract and neither party can afterwards back out.

But if instead of accepting the offer as above, B answers "I will give you $25 for him," there would be no contract. And suppose A then were to say, "Take him at $30," there would be no contract yet; but if A answered, "All right," there would then be a contract.

Suppose, however, B answers, "I will take him at $30 with a new halter thrown in," or "I will take him at $30 if you warrant him sound," there would be no contract, because the parties had not yet agreed to the same thing—they had not passed the stage of mere negotiation, which might never ripen into agreement. But if A in either case were to say "All right," or "I agree," or in any way, either by sign or word, definitely indicate to B his assent, the bargain would then be closed and complete so far as mutual consent was concerned.

Withdrawing Offer.—An offer may be withdrawn at any time before an unconditional acceptance of it is given. For instance in the above illustration A might take back his offer at any moment before B gave an unqualified assent, and after such withdrawal B would not be entitled to say, "Well I am willing to take the horse now at what you offered it and I want it." A would be justified in replying, "I had withdrawn the offer before you accepted it and you can't have the horse now at all."

And the offer may be so withdrawn at any time before acceptance, even though the offerer promised to keep it open, unless he has been given something of value for keeping it open. For instance, a farmer offers to sell a drover a number of sheep for $30. The drover does not accept the offer but asks to be given a week to consider it, and the farmer promises to keep the sheep and leave the offer open for a week accordingly. He may legally sell the sheep the next day to another man and the drover will have no remedy. If, however, the drover were to give the farmer say a dollar to keep the offer open, and the farmer were then to sell them contrary to his promise, the drover could sue him for damages.

An offer will itself lapse after the expiration of a reasonable time without any withdrawal, or if in the circumstances it was not reasonable to suppose it was intended to be left open.

Both the offer and the acceptance must be communicated to the other party. It is not enough for a person merely to have in mind an intention to make a certain offer or to accept a certain offer—the intention must be communicated to the other party.

The parties however need not meet face to face. The offer may be sent by a messenger, or through an agent or by letter, telephone or telegraph, and the answer may be sent back the same way. If,

however, the offerer has stipulated that the answer is to be returned in any particular way the acceptor must comply with such stipulation if he desires to make a contract.

Offer and Acceptance by Post.—Generally an acceptance of an offer is not complete or binding until it reaches or is communicated to the person making the offer. There is an exception however in the case of an offer sent through the post-office without any special stipulation as to the mode of reply. An acceptance of such an offer is complete as soon as the acceptance is posted. Suppose for instance A this morning writes from Sarnia to B at Toronto, offering to sell him a carload of wheat at 65 cents a bushel. Wheat goes up in the afternoon, he writes again withdrawing the offer. The first letter reaches B to-morrow morning and he at once writes and posts a letter of acceptance. After doing so the letter of withdrawal (which as a fact was written and posted before the offer was accepted) reaches him. The contract was complete as soon as the acceptance was posted and the withdrawal was too late to be effective. A's proper course would have been to telegraph B or in some way notify him of withdrawal before he received or before he had time to accept the offer. B could not then bind A by posting an acceptance after he has notice that the offer was withdrawn.

This special rule that an offer made by post is converted into a contract as soon as an acceptance of it is posted (no matter when the letter of acceptance reaches the offerer and even though it may never reach him at all) is necessary as a matter of business expediency. Without such a rule the acceptor could never be sure he had closed the contract by acceptance.

Agreement Implied.—It often happens in every-day affairs that one person becomes liable to another without the terms of the contract having been expressly agreed upon between them. For instance, a person telephones his grocer to send him certain groceries, and the grocer sends them without anything more being said; or a man is taken sick and sends for a doctor, who comes, without anything being said about pay. In each of these cases there is what is called an implied contract. In the first place the person by ordering the groceries and accepting them when they are sent, impliedly promises that he will pay for them at the ordinary price, or what they are reasonably worth; in the second the request for the doctor's services implies a promise to pay the ordinary or reasonable charges for such services.

It is a general rule that a request to have anything done implies a promise to pay for it. And even the acceptance of services or acceptance and use or consumption of goods without any request at all will imply a promise to pay for what is received, if, in the circumstances, it is reasonable to suppose that payment was contemplated. But one person cannot, by performing work or sending goods, or doing any other thing unknown to another, create liability for payment.

Thus, if a laborer comes to a farmer proffering his help and is allowed by the farmer to assist, say in putting in a drain, nothing being said about pay, the laborer can collect wages. But the laborer could not, by digging a drain on the end of the lot unknown to the owner, make the latter liable to pay for it. So if A (even without request) sends goods to B expecting B to pay for them, and B knowing this, uses or consumes them, he must pay for them. But if they came under circumstances causing B reasonably to believe they were a gift, or to believe that payment was not expected, he would not be liable.

One person cannot, however, by sending goods to another with a message, for instance, that if they are not returned by a specified time it will be considered he has agreed to purchase and pay for them, make such person liable for payment, or thrust upon him the burden of having either to return or pay for them. All the law requires is that the person to whom goods are sent shall not use them. Though it might be desirable to notify the sender that the goods are not wanted, the law will not in such cases presume that silence gives consent.

CHAPTER V.

CONSIDERATION.

Consideration is that which induces the parties to bind themselves by the contract. It is defined as the price of a promise. It may be *expressed* or *implied*. A consideration that is distinctly stated in the contract, whether oral or written, is said to be expressed. In all sealed instruments and in negotiable paper, the consideration is implied. Consideration is commonly called valuable, good, sufficient,

legal, insufficient, etc. The money value of a consideration does not determine whether it is sufficient or not; a very slight consideration will support a contract if it is what the law recognizes as valuable.

A Valuable Consideration is shown by the payment of money, the delivery of property, the performance of work, or doing something, or promising to do it on behalf of the other party to the contract.

A Good Consideration is one founded upon affection, friendship, relationship or gratitude. This will support a contract that has been performed, and then only between the parties themselves, but will not answer for an executory contract; that is, one to be performed in the future.

An Insufficient Consideration may be defined as one that is gratuitous, illegal, immoral or impossible. There are exceptions to the gratuitous consideration; for instance, in cases of salvage, and also in case of labor performed for a party with his knowledge, but not his expressed consent. If you work for me, and I, knowing what you are doing, do not interfere and prevent you, it raises an implied promise, on my part, to pay what your services are reasonable worth, even though you may have commenced work without my order.

In every contract there are two considerations as there are two parties. In the sale of a table there is the buyer who agrees to pay so much for the table, and the seller who agrees to sell the table for so much. Each takes part in the contract, the one agreeing to pay money and the other agreeing to deliver the table.

The consideration for the promise of the buyer to pay money is either the delivery of the table to him, or the promise of the seller to deliver it. The consideration for the delivery of the table is the payment of money, or the promise of the payment of money, by the buyer. If, therefore, the case is looked at from the standpoint of the buyer, the consideration (the price of the table or the promise to pay that price) moves from him to the seller, and forms the inducement to the seller to deliver or promise to deliver the table. Looking at it from the standpoint of the seller, the consideration (the delivery of the table or the promise of delivery) moves from him to the buyer and forms the inducement to the buyer to pay or promise to pay the price.

"The loss or abandonment of any right or the forbearance to exercise it for a definite or ascertainable time," (Pollock) will form a consideration. Compromise of doubtful rights or granting leave to use the property of or to cause inconvenience to the promisee are under the same head. The result may or may not be a benefit to the promisor, but that is not material; the inducement is the detriment (slight or great) suffered by the promisee, and which moves the promisor to the making of his promise.

CHAPTER VI.

ILLEGAL CONTRACTS.

Contracts Must be Lawful.—An agreement, as we have already seen, is not enforcible by law, unless it fulfils certain conditions, such as having capable parties, a sufficient consideration, mutual assent, etc. But more than these things are required in a valid agreement. The contracting parties must not agree to do something which the law has forbidden to be done, nor must they agree not to do that which the law has commanded to be done. That contract is not a legal contract, the purpose of which is contrary to law. If the thing to be done is illegal, immoral, impolitic (injurious to, or interfering with the public welfare), in general restraint of trade, in general restraint of marriage, or if the subject-matter operates as a fraud on third persons, obstructs public justice, or if it has infused into it, in any way, the element of fraud, the law will not attempt to enforce the contract.

Contracts Must be Free From Duress. By duress is meant personal restraint used to obtain consent to a contract either by fear or punishment. It is compulsion, and inconsistent with voluntary consent. If a contract be entered into by means of violence, or under undue constraint of any kind, it may be voided upon the plea of duress.

Contracts that are Illegal.—There are three general classes of illegal contracts which are as follows:

(a)	Against public policy	In restraint of trade. In restraint of marriage. In opposition to public justice or government.
(b)	Immoral	Immoral life or publications. Sabbath desecration. Bets or wagers.
(c)	Fraudulent	Fraudulent upon either party. Fraudulent upon third parties.

Contracts against Public Policy.—The policy of a community 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 may be mentioned those in restraint of trade, those in restraint of marriage, and those in opposition to public justice or government.

(a) **Agreements in Restraint of Trade,** if general and unlimited are void. The reasons why agreements in unlimited restraint of trade should not be allowed are that they tend to deprive the public of the services of men in the employment and capacities in which they may be most useful to the community as well as to themselves; they prevent competition and enhance prices, and they expose the public to the evils of monopoly. On the other hand partial restraints of trade, which are usually agreements by the seller of a business not to compete with the buyer, or agreements by a partner or retiring partner not to compete with the firm, or agreements by a servant or agent not to compete with his master or employer after his term of service or employment is over, are distinctly for the benefit of the community; and these partial restraints will be allowed if they are founded upon a valuable consideration, and if the restriction does not go in its extent as to space or otherwise beyond what, in the judgment of the Court, is reasonably necessary for the protection of the other party, regard being had to the nature of the trade or business.

While a verbal agreement, if otherwise satisfactory, would be sufficient, yet since agreements of this kind are usually to cover an extended period, the provisions of the 4th section of the Statute of Frauds as to agreements not to be performed within one year must be remembered.

The restraint, if partial, may be partial only as to either time or space and unlimited as to the other branches of it, provided always

that it keeps within the measure of restraint which the Court may consider necessary; thus an agreement by a traveller unlimited in time but restricted to the district in which the traveller was employed, was held reasonable; and a contract by a traveller unlimited as to space but limited in time to two years after the severance of the relation between the parties was also held reasonable.

When the restriction is in point of distance, the distance is to be measured "as the crow flies," that is, on a straight line on the map, neglecting curves and inequalities of surface. This is the rule of construction adopted by the Court, but it will of course give place to any other standard of measurement which the parties may have contracted for.

(*b*) **Agreements in Restraint of Marriage.** Marriage is held to be in the public good, hence any contract which wholly restrains marriage is void. The condition in a bequest in a will to a child, that he or she does not marry, is void, but, nevertheless, the bequest is good. A partial restraint of marriage, where it is reasonable, may be valid, as where a bequest is left to a child on the 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 would be, say fifty years of age, it would be void, because that would be unreasonable.

A husband's bequest to his wife on the condition that she does not marry again, is legal, because she has once been married, hence not in restraint of marriage. A contract to pay an agent for contracting a desirable marriage is void; and even the money paid upon such a contract may be recovered.

(*c*) **Agreements to Obstruct the Course of Justice** are void. The 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.

Immoral Contracts.—Such contracts are absolutely void. A contract to lead an immoral life is void. But after an immoral course has been begun and an obligation has been given as compensation for damages, the obligation can be enforced. Contracts to publish, sell or forward obscene literature are void. Contracts made on Sun-

day are void, because that day has been set apart as a day of rest, and business pursuits prohibited. All bets, wagers, gambling lotteries, raffles, and promising to pay for votes are void. Contracts to defraud the Government by smuggling, or to give an incorrect invoice, are void, and money promised for such service cannot be collected.

Fraudulent Contracts are voidable. Stating as facts what the party making the statement knows to be false, or a concealment of facts that are known to one and not readily discernible to the other, and yet such as should be revealed, are samples of fraudulent contracts. 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: first, he must not accept any benefit derived from it, or continue to act under it after he has discovered the fraud; secondly, he must give prompt notice of the fraud after he has discovered it. If both parties practice fraud neither one can enforce the contract against the other. A promissory note obtained through fraud cannot be collected by the party who obtained it, but upon coming into the hands of a third party, who did not know of the fraud, before maturity and for value, it would be valid and good against the maker.

An insolvent person representing himself as solvent in order to obtain goods on credit is guilty of a fraudulent act. The seller discovering it may cancel the contract, or recover the goods if they have been shipped. 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.

Underbidders at auction sales, employed secretly to run up prices higher than the real value of the articles, are fraudulent towards third parties. A purchaser whose bid has been forced up by such fictitious bidding immediately preceding his last bid, may void his purchase. If underbidders are employed, and that fact publicly announced before the sale, it is not fraudulent. The owner may also fix a price below which the goods will not be sold, or he may reserve one bid for himself.

A person obtaining goods, or a promissory note, or any other property through fraud, and transferring them to an innocent third party for value, gives them a valid title.

Impossibilities. A contract to do an impossibility is void because it cannot be fulfilled. If a person were to agree to move a farm from

one county to another the contract could not be enforced. The thing to be done, however, must be impossible from the nature of things. Suppose A agrees to build a house for B, and complete it by a certain date. A strike among the mechanics he employs, rendering him unable to finish his work by specified time, would not invalidate the contract, as the circumstances were exceptional, and might have been foreseen or prevented. C agrees to build a boat for D, but is unable from lack of skill; this would not void the contract, nor would the sickness of one of the parties be sufficient excuse to void the contract.

CHAPTER VII.

CLASSIFICATION OF CONTRACTS.

Contracts are divided into three general classes, viz.:

1. Contracts of Record.
2. Specialties.
3. Simple or parol contracts.

Contracts of Record are such obligations as are evidenced by judicial records. This is a form of contract by which one is bound for the payment of a sum of money or the performance of some work which appears to be right by the evidence of a court. This is a contract of the highest nature, being established by the decree of a court of justice.

Specialties. A contract by specialty is any contract under seal, such as a deed, bond, mortgage or a covenant. These are looked upon as the next highest form of a contract, as they are evidenced by seal. At the present day the seal adds very little weight to a contract. In olden times, when men could not read or write, and they put their names to a contract by impressing their seal in melted wax, it had some practical use. Seals, however, are required on certain classes of instruments, like deeds and mortgages, and wherever required they must be affixed. In the absence of seals pieces of paper stuck on after the name, with the word "Seal" written across it, or the initials of the party signing placed upon it, or even a scroll made with a pen, will answer. Contracts under seal

must of necessity be in writing. They do not require a consideration to make them valid. The seal implies consideration. It indicates deliberation in executing such documents, and, as a person is presumed to enter into a sealed contract with full knowledge of its contents, he is debarred from afterwards pleading insufficient consideration.

Simple or Parol Contracts include those agreements which are not comprised in the first two classes, and they may be made either orally or in writing. *Oral* and *parol.* Observe the difference between these two words. Well-educated people sometimes confound them owing to the similarity in the derivation of the two terms. A parol or contract is any agreement not sealed. It may be written or oral.

Express and Implied Contracts. As regards the mode of their creation, contracts are further distinguished as express or implied. If the conditions of a contract, whether verbal or written, be expressly stated or agreed upon, it is then termed an expressed contract. If on the other hand, there are no well defined and specific agreements, regarding the undertaking, or the consideration to be paid for its accomplishment, it is called an implied contract.

The conditions of an expressed contract must be strictly complied with, and the parties to it are bound to faithfully observe the same, however onerous may be the burden, while the conditions of an implied contract not being agreed upon specifically, are such as custom may dictate. An illustration of this: A agrees to pay B $2 per day for labor. This is expressed, so far as the rate of wages is concerned, but the number of hours that shall be taken to constitute a day's work is not agreed upon, and must be supplied by implication. As a result it would be settled by the custom in such matters in the place where the contract was made.

Executed and Executory Contracts.– Contracts are still differently classified in reference to their time of performance, as executed and executory. They are said to be executed when the obligations therein created have been already carried out; executory when their fulfilment is yet to be accomplished. Thus, If I ask the price of your horse, pay the money and take it away, the contract is executed; but if I agree to buy the horse and pay for it in the future, the contract is yet to be fulfilled or conditions complied with, and it is called an executory contract.

CHAPTER VIII.

CONTRACTS—RULES AND STATUTES.

Construction of Contracts.—In the construction of contracts no particular form of words is necessary, but the intention of the parties should he clearly and definitely stated, and it should contain all the elements previously defined. Make your meaning plain, especially if the contract is in writing, as the Courts will presume that the wording expresses all the terms of the agreement. You will not be allowed to say that there was any understanding different from that expressed in the written document.

In the eyes of the law the grammatical construction and mechanical form of the contract are immaterial ; it is material, however, that the intention of the parties he clearly expressed. If this were always done, many a lawsuit would be saved.

Rules of Interpretation.—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 where ambiguity occurs. The following are those of chief importance :

1. **The Intention** of the parties at the time the contract was made is considered, rather than the literal meaning of the words.

2. **The Custom and Usage** of that particular business and place will be regarded where the wording of the contract is douhtful.

3. **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.

5. **Liberal Construction.**—When the wording of a contract is ambiguous, it is a rule of the courts to construe it liherally, so as to give effect to the common sense of the agreement, even sometimes

rejecting objectionable clauses and supplying omissions. But where the Statues fix a definite meaning, 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.**—The law of the place where the contract is made governs its validity, and if it is to be performed there also, it will govern its interpretation. If it is to be performed in another Province or country, it must be in accordance with the laws of that Province or country, otherwise it is void.

8. **Place of Suit.**—In case of trial for breach of contract the place of contract determines where the suit should he held. Contracts made by letter have for their place where the letter of acceptance was signed, hence there the suit should be. The place of contract in regard to real estate is where the real estate is situated.

Statute of Frauds and Perjuries.—This Statute was passed in the reign of Charles II, of England, in 1776, and still exists there. It has been adopted in this country and in the United States, 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 providing that certain contracts had to be in writing to be binding. The following are the six clauses 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 three years or over, must be in writing.

2. Contracts for the sale of lands, or for any interest in lands, must be in writing and under seal.

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 a mutual promise to marry, must be in writing.

6. Contracts made for the sale of personal property, to the value 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, or the sale is by auction.

What is Sufficient Writing. It is not necessary to have a technically prepared legal document. The Statute says that the agreement or contract, "or some note or memorandum thereof," must be in writing and signed by the party to be charged therewith, or his agent lawfully authorized. Hence, a note or memorandum is sufficient. An ordinary business letter is sufficient, provided it expresses the understanding of the parties.

Agreements Not to be Performed Within One Year. This refers to an agreement, which by its terms, is not to be performed within one year from the making of it. If you engage to do some work for a party, and you are not to commence until a year hence, then the contract is not to be performed within a year from the time it is made, and it is voidable. There is nothing illegal about it, but you cannot compel the other party to accept your services, and he cannot compel you to work for him, unless the agreement is put in writing.

Promises to Answer for the Debt of Another. It frequently happens that a creditor has a claim against a person who is not financially responsible, and tries to collect it from a third person, perhaps a relative, who is financially responsible. This gives rise to great hardships. To prevent this wrong the Statute enacts that a promise to pay the debt of another must be in writing. If you are selling goods to A, an irresponsible party, and you desire the promise of B to pay in the event of A failing to pay you, it will be necessary to get B's promise in writing, or instructions from him to charge the goods direct to him (that is to B); in either case you will then be able to collect from B.

Promises in Consideration of Marriage. This does not refer to engagements or "mutual promises to marry." Such promises are excepted by the Statute. It refers to such agreements as are

sometimes made regarding the disposition of property in contemplation of marriage. Marriage settlements come under this class. They are promises by one of the parties about to wed to give the other certain property in consideration of the marriage. All such promises are void unless in writing and signed.

Contracts for the Sale of Personal Property.—This provision will be referred to subsequently under the title, "Sales of Personal Property."

Statute of Limitations. This Statute enacts that after the lapse of a certain period of time no action can be sustained at law for the enforcement of a claim, the period in Ontario and most of the United States being six years, and in the Province of Quebec five years. This Statute does not extinguish the debt or release the debtor from the moral obligation, but it releases him from the legal obligation after the expiration of the time. The time is reckoned from the moment the debt falls due. In a promissory note or a bill of exchange the time begins from the last of the three days of grace, or from the date of the last payment made upon principal or interest.

The time in which a suit must be begun on all special contracts, which includes bonds, leases, agreements under seal, etc., is generally twenty years. Actions on convertible or written contracts not under seal, notes, book debts, etc., must be commenced within the six years after their due date. Contracts under seal are supposed to be entered into with greater deliberation, hence the longer time given for their release by the Statute. After the debt has run six years or twenty years, according to its nature, it is said to be outlawed.

Reasons for this Statute.—Old claims are supposed to be doubtful or ill-founded. The presumption is that if they are good and just they would have been paid or enforced within a reasonable time. The law is said to detest litigation, hence this Statute quieting old claims. It is thought inexpedient and unjust that a person should be troubled with an old account or old note after years of silence as to the collection of it.

Exemptions. The Statute of Limitations does not extend to bank bills or bank notes, and other evidences of debt issued by banks. These are never outlawed by lapse of time. Where there is a disability on the part of a creditor, and he cannot sue the claim when it is due, the time begins to count when the disability ceases. For

instance, persons under 21 years of age, and insane persons, cannot sue, but on the infants coming of age, or the insane person becoming same, the disability ceases. This disability must be in existence when the debt becomes due. Further, when the debtor lives outside of the Province or State at the time when the debt is due, the six or twenty years, as the case may be, begins to count at the time of his return. A debtor leaving the Province or State after the debt is due does not make an exception, as proceedings for collection could have been taken before he left.

Extension of Time. - Any debt barred by the Statute of Limitations may be revived,

(a) By a new promise in writing to pay the debt;

(b) By a partial payment.

A new promise in writing to pay a debt barred by the Statute of Limitations will revive it for six years from date (and in case of negotiable paper from due date) of such promise in writing, or twenty years if the writing is under seal. As noted in a former section, the Statute does not extinguish the debt, but simply suspends the means of collecting it, hence the old debt is a valuable consideration for the new promise to pay it.

CHAPTER IX.

REMEDIES.

Kinds of Remedies. - The fundamental rule of Law is that *every one will do what he promises.* But all men do not always obey this rule, and the law gives a right to have all contracts with others fulfilled. It also supplies means of enforcing this right. These means are called *Remedies* and are classified as Civil and Criminal.

Criminal Remedies. —When a man does an act that no one is allowed to do, such as murder, stealing, etc., he commits an offence against the State, and the State will punish him by imprisonment, fine, or death. This is called a criminal remedy.

Civil Remedies. -A civil remedy is the means of enforcing a personal right or redressing a personal wrong. Civil remedies are divided into two classes, Compensatory and Preventive

Compensatory Remedy.—A compensatory remedy consists of money (called damages) which the court compels the party at fault to pay to the injured party.

Preventive Remedy.—A preventive remedy is the means whereby one is prevented from causing further injury. Thus, when one has agreed not to carry on a certain business in a certain town, in addition to compensating one for loss caused by the breach of this contract, the court may compel the promisor to refrain from carrying on said business. This order or remedy is called in law an injunction. Both of these remedies often fail to repair the loss.

Liquidated or Exemplary Damages.—When the parties to a contract agree that in case either fails to perform it he shall pay the other a certain sum, that is called liquidated damages. The injured party can usually recover in an action no more than the sum which was agreed upon; and again there are some cases in which a man who has been guilty of some wrong-doing is bound to pay more than the actual damages suffered by his opponent. This additional sum is called smart money, or exemplary damages. It is not allowed for a simple breach of contract, but only in cases where there has been some wilful or malicious wrong done.

SPECIMEN FORM OF CONTRACT.

MEMORANDUM OF AGREEMENT made and entered into this first day of September, A.D. 1903, BETWEEN William Foster, of the city of Hamilton, County of Wentworth, and Province of Ontario, merchant, of the first part, and John J. Smith, of the town of Welland, County of Lincoln, Province of Ontario, contractor, of the second part.

1. That, etc. (*Here fill in the particular agreement entered into between the parties*)

As witness the hands and seals of the said parties the day and year first above written.

Signature of Foster. {Seal.}

Signature of Smith. {Seal.}

Signed, sealed and delivered in the presence of .....

FORM OF CONTRACT FOR A BUILDING.

Be it known that on this first day of September, A. D. 1903, it is agreed by and between A, of Sarnia, and B, of the same place, in the manner and form following, viz. :

The said B, for the consideration hereinafter mentioned, doth for himself, his executors and adminstrators, promise and agree to and with the said A, his executors, administrators and assigns, that he, the said B, or his assigns, shall and will, within the space of three months next after the date hereof, in good and workmanlike manner, and according to the best of his art and skill, at Lot No. 204 Bond street, Hamilton, lay and substantially erect, build, set up, and finish one house, according to the draft or scheme hereunto annexed, of the dimensions following, and to compose the same of such stone, brick, timber and other materials as the said A or his assigns shall find and provide for the same, in consideration whereof the said A doth for himself, his executors and administrators, promise and agree to and with the said B, his executors, administrators and assigns, well and truly to pay or cause to be paid unto the said B or his assigns, the sum of $1,200 in manner following—that is to say, the sum of $400 when the stone and brickwork is completed, the sum of $400 when the plastering and carpentering work is completed, and the sum of $400 thirty-one days after the work shall be completely finished; and also that he, the said A, his executors, administrators or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick, tile and timber, and other materials necessary for making and building the said house, and on performance of all the articles and agreements before mentioned. The said A and the said B do hereby bind themselves, their executors, etc., each to the other, in the penal sum of $500, firmly, by these presents in witness whereof the said parties affix their hands and seals.

Signature of A. (Seal.)

Signature of B. (Seal.)

Signed, sealed and delivered in the presence of

POINTS WORTH REMEMBERING.

1. No one is bound to do what is impossible.
2. No injury is done by things long acquiesced in.
3. Outward acts indicate the inward intent.

4. An action is not given to one who is not injured.

5. The act of God does wrong to no one. (That is, no one is responsible in damages for inevitable accidents.)

6. Ignorance of the law is no excuse.

7. An act done by me against my will is not my act.

8. The proof lies upon him who affirms, not him who denies.

9. Let the purchaser beware.

10. That is certain which can be made certain.

11. No one is punished for his thoughts.

12. Confirmation supplies all defects, though that which has been done was not valid at the beginning.

13. When two parties are equally in fault the claimant is always at the disadvantage, and the party in possession has the better cause.

14. Debts follow the person of the debtor.

15. The law helps persons who are deceived, not those deceiving.

16. A man's house is his castle.

17. A gift is not presumed.

18. Equity looks upon that as done which ought to be done.

19. He who comes into court must come with clean hands.

20. Every man is presumed to intend the natural and probable consequences of his own voluntary acts.

21. A right of action cannot arise out of fraud.

22. A contract cannot arise out of an illegal act.

23. The law does not regard the fraction of a day.

24. No one shall be profited by his own wrongs.

25. Public rights are to be preferred to private rights.

26. A right cannot arise from a wrong.

27. Many promises lessen confidence.

28. No one can be punished twice for the same fault.

29. No man can contradict his own deed.

30. Things invalid from the beginning cannot be made valid by subsequent acts.

31. A thing void in the beginning does not become valid by lapse of time.

32. Ratification is equal to command.

33. A wrong is not done to one who knows and wills it.

34. If anything is due to the corporation it is not due to the individual members of it, nor do the members individually owe what the corporation owes.

35. When the law presumes the affirmative the negative is to be proven.

CHAPTER X.

BILLS OF EXCHANGE.

Bills of Exchange which include Drafts, Cheques and Promissory Notes, are simply forms of contract for the payment of money. They are the most important forms of commercial or negotiable paper in use in the conduct of business to-day, and require to be thoroughly understood by the commercial student.

The Bill of Exchange is the oldest form of negotiable paper. It was originally invented among merchants as a security for the more easy remittance of money from one city or country to another. Indeed, it is said to have had its origin, like many of the world's conveniences for the transaction of mercantile business, with the Jew; it is, in fact, the offspring of persecution. Early in the 11th century the Jews were banished from country after country. The Draft or Bill of Exchange formed a convenient means of carrying their property with them. Jews were also largely engaged in trading on the Mediterranean coasts, where they used drafts for transferring property from one country or place to another. The bill of exchange is to-day an important part of the commercial currency of the world; it facilitates the great operations of commerce; it increases the circulation and enlarges the nominal capital in trade.

Negotiable Paper.—By negotiable paper is meant business paper that can be transferred from one person to another for a valuable consideration, either by delivery, or endorsement and delivery. The words which express negotiability are "or order" or "or bearer." Paper which is transferable by delivery is made payable to a certain person or bearer, and that which is transferable by endorsement and delivery is made payable to a certain person or order, and requires to have the payee's name written across the back to be transferable. Among business forms classified under the term negotiable paper, in addition to Bills of Exchange, are the following, which are negotiable by endorsement and delivery; namely, Certificates of Deposit, Letters of Credit, Warehouse Receipts, Bills of Lading, Coupon Bonds, etc.

Requisites of Negotiability.—There are certain essential things which every negotiable bill of exchange must contain, and the

absence of any one of them will destroy its negotiability. They are five in number, as follows:

1st. It must be payable absolutely and without contingencies.

2nd. The bill must contain a certain direction and the note a certain promise to pay.

3rd. A certainty as to amount.

4th. For payment of money only.

5th. It must be delivered.

A bill is negotiated when it is transferred from one person to another, making the transferee the legal holder.

The Bills of Exchange Act. This Act, known as the Bills of Exchange Act of 1890, is modelled upon the English Bills of Exchange Act of 1882, and is to-day the code of law in Canada relating to negotiable instruments.

Definition. A Bill of Exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a certain sum in money to or to the order of a specified person, or to bearer.

An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not, within the Act, a Bill of Exchange.

Drafts. The theory upon which a draft is based, is that the Drawee has funds in his hands belonging to the Drawer equal to the amount for which the draft is drawn. Based upon this theory, the Drawee does not become a party to the paper until he accepts it, and the paper is then called his Acceptance. The theory that the Drawee has funds in his possession belonging to the Drawer is not always true, however, for drafts are sometimes drawn and accepted for accommodation.

When the original theory is followed, the amount of the draft drawn would show so much actual value in circulation, but when it is drawn for accommodation a false credit is established, and we are led to believe the actual wealth of a community greater than it really is, for it no longer represents capital or money invested in business, while if the true theory is followed the value of the bills or drafts in circulation represent just so much actual value.

Foreign and Inland Bills of Exchange. A Foreign bill is one drawn by a person in one country on a person in another country. An Inland bill is one drawn by a person of a country upon another of the same country. To illustrate: A bill drawn by a Toronto merchant upon one in New York would be called a Foreign Bill of Exchange; so also would one drawn by the same party upon a merchant in London, Eng.; while one drawn by him upon a merchant in Ottawa or Hamilton would be called an Inland Bill of Exchange. In the words of the Act, an Inland Bill is a bill which is, or on the face of it purports to be, both drawn and payable in Canada, or drawn within Canada upon some person resident therein. Any other bill is a Foreign Bill. Unless the contrary appears on the face of the paper, the holder may treat it as an Inland bill.

Foreign Bills of Exchange. Foreign Bills of Exchange are frequently drawn in sets of two or three in order to assure safer delivery. This precaution is used only when remitting a long distance. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill, therefore the payment of the one cancels the others.

Where a bill is drawn in one country and payable in another, the due date is determined according to the law of the place where payable, but the validity of a bill as regards requisites in form is determined by the law of the place of issue.

How a Bill may be Made. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

Where the drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or as a promissory note.

The drawee must be named or otherwise indicated in a bill with reasonable certainty.

A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession is not a bill of exchange.

Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

A bill may be made payable to two or more payees jointly, or it

may be made payable in the alternative to one or two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

Negotiability. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable.

A negotiable bill may be payable either to order or to bearer.

A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

Where a bill, either originally or by endorsement, is expressed to be payable to a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. Bills and notes are now negotiable although the words "or order" or "or bearer" do not follow the name of the payee.

The mere endorsement of a bill does not transfer the title to it. It must also be delivered to the endorsee or his agent before the title actually passes to him. An endorsement may, therefore, be with drawn or revoked any time before delivery.

Maturity of a Bill.—Where a bill is not payable on demand the day on which it falls due is determined as follows:

Three days, called days of grace, are in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace, except:

1. When the last day of grace falls on a legal holiday in the Province where any such bill is payable, then the day next following, not being a legal holiday in such Province, shall be the last day of grace.

2. The following are observed as legal holidays in all the Provinces of Canada excepting Quebec:

Sundays;	Easter Monday;
New Year's Day;	Christmas Day;
Good Friday;	Labor Day (the first Monday in September);

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning Sovereign; and if such birthday is on a Sunday, then the following day; the 24th of May (Victoria Day);

The first day of July (Dominion Day), and if that is a Sunday, then the second day of July as the same holiday;

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; and the day next following New Year's Day and Christmas when those days respectively fall on Sunday.

And in the Province of Quebec the said days, and also:

The Epiphany;	St. Peter and St. Paul's Day;
The Annunciation;	All Saints' Day;
The Ascension;	Conception Day;
Corpus Christi;	

And also, in any one of the Provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such Province for a public holiday or for a fast or thanksgiving within the same.

Payment of a Bill. Where a bill is payable at sight or at a fixed period after sight, after date, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

Where a bill is payable at sight or at a fixed period after sight the time begins to run from the date of the acceptance and from the date of noting or protest, if the bill is noted or protested for non-acceptance, or for non-delivery.

The term "Month" in a bill means the calendar month.

Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month with the addition, in all cases, of the days of grace.

Acceptance of Bill.—The nature and form of a Draft or Bill of Exchange calls for its presentation for acceptance to the person upon whom it is drawn.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. An acceptance is invalid unless it complies with the following conditions, namely:

(a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient. Generally the acceptance consists of writing across the face of the bill the word "Accepted," with the date, place of payment and signature of the acceptor.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

A bill may be accepted:

(a) Before it has been signed by the drawer, or while otherwise incomplete;

(b) When it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment.

Qualified Acceptance.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer; a qualified acceptance in express terms varies the effect of the bill as drawn.

In particular, an acceptance is qualified which is conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; but an acceptance to pay at a particular specified place is not conditional or qualified.

Qualified acceptances may be classified as follows:

1st. Conditional;

2nd. Partial (that is, for part of the amount of the bill);

3rd. Qualified as to time;

4th. The acceptance of one or more of the drawees, but not of all.

The following would be an example of a qualified acceptance:

"Accepted June 1st, 1902.
Payable out of Y. M. C. A. Building Fund,
JOHN M. GILMOUR, Treasurer."

Protest for Non-Acceptance.—When a bill has been presented for acceptance or payment, and it has been refused, it is said to have been dishonored, and when the bill has been dishonored by non-acceptance it is the duty of the holder to protest it and have notice of dishonor sent to the drawer, endorsers and all parties to whom he intends to look for payment.

A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify:

(*a*) The person at whose request the bill is protested.

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

The Rights and Powers of a Holder.—The rights and powers of a holder are as follows:

1. He may sue on the bill in his own name.

2. Where he is a holder in due course he holds the bill free from any defect of title of prior parties and may enforce payment against all parties liable on the bill.

3. Where his title is defective, if he negotiates the bill to a holder in due course, the latter obtains a good and complete title to the bill, and if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

Duties of a Holder. Where a bill is payable at sight or after sight the duties of a holder are as follows:

1. Presentment for acceptance is necessary in order to fix the maturity of the paper.

2. It must be presented by him or his agent, to the drawee or some person authorized to accept it, without delay, at a reasonable hour on a business day and before the bill is due.

3. When a bill is duly presented for acceptance and is not accepted on the day of presentment or within two days thereafter the person presenting it must treat it as dishonored. If he does not, the holder shall lose his right of recourse against the drawer and endorsers.

Dishonored Bills. A bill is dishonored by non-acceptance when it is duly presented for acceptance and such is refused or cannot be obtained, or when presentment for acceptance is excused and the bill is not accepted. The holder has an immediate right of recourse against the drawer and endorsers and no presentment for payment is necessary.

The Liabilities of Parties to a Bill. The drawer of a bill by drawing it engages that on due presentation it shall be accepted and

paid according to its tenor, and that if it is dishonored he will compensate the holder or endorser who is compelled to pay it.

The acceptor of a bill by accepting it engages that he will pay it according to the tenor of his acceptance. He is precluded from denying, to a holder in due course, the existence of the drawer, the genuineness of his signature and his capacity or authority to draw the bill.

The endorser of a bill by endorsing it engages that on due presentation, if a draft, it shall be accepted, and that if dishonored, he will compensate the holder or any subsequent endorsers who may be compelled to pay it. Also in the case of a note he undertakes to pay it, if the maker or makers do not, providing that the requisite proceedings on dishonor are duly taken.

An Accommodation Party. An accommodation party is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefor, and for the purpose of lending his name to some other person.

An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in Due Course. A holder in due course is one who has taken a bill complete and regular on the face of it under the following conditions:

(*a*) That he became a holder of it before it was overdue and without it having been dishonored.

(*b*) That he took the bill in good faith and for value, and at the time he took the bill was not aware of any defect in the title held by the person who negotiated it.

In other words, a holder in due course is a person to whom after its completion by the orginal parties a bill or note has been negotiated. The payee is not a holder in due course.

Alteration of a Bill. Any material alteration made upon the face of a bill after it is drawn, except by the maker or acceptor who at the time must initial the alteration, makes the bill void.

The following alterations are material, namely, alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against the party who has himself made, authorized, or assented to the alteration, and subsequent endorsers.

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

Endorsement "Per Pro."—A signature "per pro" means a signature by an agent who has power to use his employer's name by signing it per procuration. He first signs his principal's name and then his own underneath, followed by the words "per pro." This means that he has but limited power to sign, and the principal is bound by such signature only if the agent in so signing acts within the limits of his authority.

If an agent has authority to endorse bills for his principal, his abuse of the authority will not affect a *bona fide* holder for value. Cheques endorsed by an agent without authority may be recovered by the true owner.

Lost Instruments.—Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, the holder giving security to the drawer, if required, to indemnify him against loss, in case someone else should obtain the bill and collect it. If the drawer refuses to give another bill he may be compelled to do so.

The finder of a lost bill does not get a good title to it, but if he transfers it into the hands of an innocent holder for value, before due, such person gets a good title to it, even if it has been stolen.

Possession is *prima facie* evidence of title, and if the rightful owner is dispossessed of negotiable paper, it is difficult for him to collect the debt represented by it; for if the finder sell it to a person, and that person have a valid title to it, then it is plain that the loser should not have the title to it, for that would vest the ownership of the same paper in two different persons. Provision is made whereby a person who has lost a bill may collect it. In regard to this the following rules apply:

1. It must appear that the party endeavoring to secure payment was the rightful owner of the instrument, and that it was lost while belonging to him.

2. He must be able to prove its contents.
3. He must give a bond sufficient to cover the amount of the lost instrument and additional expenses as an indemnity.

Patent Right Bills. All notes, drafts, etc., given in payment for a patent right, or an interest in a patent right, must have the words "Given for a patent right" printed or written across the face thereof, otherwise they are void. Without this precaution every such instrument and any renewal thereof shall be void, except in the hands of a holder in due course, without notice of such consideration. The penalty for every holder who negotiates a note that he knows to have been taken for a patent right and not having the words "Given for a patent right" printed or written on it is imprisonment for any term not exceeding one year, or a fine not exceeding $200.

Negotiation of Overdue Bills. It has been mentioned in a previous section that when a bill passes into the hands of "An innocent holder for value" it passes with a good title whether or not the previous holder had a good title. This applies only to bills before they are due. A bill negotiated after it is due carries all its defects with it. In other words, the "Innocent holder for value" of an overdue bill cannot get a better title than the previous holder had. It is a broken promise after it is due and such breach of faith is supposed to be a warning to any purchaser of it that something may be wrong with it.

CHAPTER XI.

CHEQUES.

Definition.—A cheque is an unconditional order on a bank or banker to pay a specified sum of money to a person named therein, or to his order, on demand. As previously stated the Bills of Exchange Act of 1890 includes cheques within its scope.

Essentials of a Cheque.—

1. The signature; it must be signed.
2. It must authorize the payment of a sum definitely stated.
3. It must be addressed to a bank or banker on whom it is drawn.

4. It must be dated.
5. It must be payable on demand after date.
6. It must be payable to a payee.

Liability of the Parties.—The drawer of a cheque is liable to pay it if the bank does not, provided it has been duly presented for payment. The bank is bound to pay it if the drawer has funds applicable. No one, however, but the drawer can enforce this obligation resting on the bank.

Presentation.—It is the duty of the holder of a cheque to present it within a reasonable time. Failure to present it within a reasonable time may discharge the endorsers and drawer from liability provided the bank does not pay it. The bank may have funds of the drawer to pay the cheque if it is promptly presented, but suppose it is held for an unreasonable length of time, and before it is presented the bank fails, the loss will not fall upon the drawer, for he had funds on deposit to meet it when it was given, and he had every reason to suppose that the holder would perform his duty by presenting it. When payment of a cheque is refused, notice of demand and non-payment must be given the drawer and endorsers at once. Cheques have no days of grace, and may be presented immediately unless post-dated.

In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts in the particular case.

The duty and authority of a bank to pay a cheque drawn on it are terminated by

(*a*) A countermand of payment.

(*b*) Notice of the customer's death.

Certification of Cheques.—The holder has no rights against the bank until the bank has accepted the cheque. It is accepted by certifying it. Certification is to a cheque what acceptance is to a bill. By that act the bank itself becomes responsible for the amount. It makes an agreement with the holder, and with anyone to whom he may transfer the cheque, that the drawer has the necessary funds on deposit, and that it will retain in its hands a sufficient sum to pay the cheque whenever presented; therefore the holder can retain the cheque as long as he pleases before presenting it. He runs no risk except that of the bank's insolvency.

A cheque, when issued, is an order on a bank; when certified it is a bank's obligation to pay; and when returned to the drawer, becomes a voucher of the very best kind.

Crossed Cheques.—The effect of drawing two parallel lines across the face of a cheque is to render the cheque non-collectible in cash; it must be deposited by the holder to his credit. This process is commonly called "crossing" a cheque. Should the payee lose a crossed cheque after he had properly endorsed it the finder could not realize upon it, because a bank is restricted from paying a crossed cheque in cash. It will be seen that by this device successful forgery is almost impossible.

A cheque may be crossed *generally* or *specially*. When a cheque has across its face two parallel lines simply, or two lines between which is written the word "Bank," either with or without the words "Not negotiable," it is crossed *generally*; but where it bears in addition the *name* of a bank it is crossed *specially*, and to that bank.

A cheque may be crossed generally or specially by the drawer; where a cheque is uncrossed the holder may cross it generally or specially. Where a cheque is crossed generally the holder may cross it specially. Where a cheque is crossed generally or specially the holder may add the words "not negotiable." Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another bank for collection. Where an uncrossed cheque or a cheque crossed generally is sent to a bank for collection it may cross it specially to itself. A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialing the same, the words "Pay cash."

A crossing authorized by the Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as provided for above, to add to or alter the crossing.

Hints upon the Use of Cheques.—Present them for payment or have them certified as soon as possible after receiving them.

Draw them "to the order of" unless there is some good reason for drawing them payable to bearer, for if they are made payable to the order of the payee they must bear his endorsement before being paid, and they thus become a voucher.

If an error is discovered after the cheque has been delivered, or for any other reason its recall is desired, stop payment by directing the bank not to pay it. If a cheque has been made payable to

order and is lost or stolen, a duplicate may be issued after directing the bank not to pay the original.

Forged Cheques. — If a bank pays a forged cheque it is the bank's own loss, and the money cannot be charged to the depositor whose name was forged.

Raised Cheques. If a bank pays a cheque which has been fraudulently raised — that is, the holder has increased the amount for which the cheque was made — it can usually charge the drawer with only the original amount. But there are reasonable exceptions to this rule. If the drawer carelessly writes the cheque and leaves it so that it can be altered easily, he must suffer for this carelessness. Thus a drawer may fill out a blank cheque as follows:

THE FEDERATION BANK

No. 1 *Toronto, September 1, 1902*

Pay to the order of

Wm. Brown ——— *$8*

Eight *Dollars,*

H H Goodman

Notice how easily a dishonest man may place "Hundred" after the word "Eight" and two ciphers after the figure "8," and make a cheque for eight hundred dollars when it was intended for eight dollars. In such a case as this the drawer would in all probability lose the seven hundred and ninety-two dollars. He is considered an accessory to the crime, and is punished by the loss of the amount added to the cheque. The same is true also of all negotiable paper. Do not leave a blank space either before, in the middle, or at the end of an amount in negotiable paper.

If there is a discrepancy between the amount in the figures and in the writing on any business form, the writing is presumed to be correct, and is held as such.

Any alteration on the face of a negotiable instrument will vitiate it, unless the alteration is initialed by the maker.

CHAPTER XII.

PROMISSORY NOTES.

Definition.—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. Observe carefully the three points in this definition. In the first place, there must be no conditions expressed; if there be a condition its character as a promissory note is destroyed, and it becomes nothing but a written agreement binding on both parties, but not negotiable. Secondly, it is payable in money; if it is made payable in anything except money its negotiability is destroyed, and it is called a chattel not. Thirdly, it must be paid at some specific time, or on the happening of some certain event; thus: if I promise to pay a note on my next birthday it is valid, but a note made payable upon the day I should sail for England would not be a valid promissory note.

Parties to a Note.—The original parties to a note are the Maker and Payee. The Maker is the person who signs it, and thus becomes primarily responsible for its payment. The Payee is the person to whom or to whose order it is made payable. The subsequent parties to a note are the endorsers, if there be any.

Distinction in Parties.—It is very important to consider clearly the difference between the parties to a note and the parties to a draft. If I make a note payable to you, I promise to pay, and am therefore known as the promisor or maker, and you are the promisee or payee; but if it is payable to you or order, and you endorse it by writing your name across the back, you are then styled "the endorser," and if you write above your signature on the back, "Pay to John Smith or order," the Smith becomes the endorsee. But when a draft is drawn no one promises to pay; it is simply a written order upon a second person to pay a third. In a draft the Drawer and Payee are frequently the same person. For instance, A could make a draft in favor of himself upon B; A would in this case occupy the dual position of Drawer and Payee.

Consideration.—It is presumed that in all negotiable paper there is a valuable consideration. Between the original parties to a note failure of consideration may be shown, but where the note passes into the hands of an innocent third holder ("one not having know-

ledge of any legal defence existing against it") before maturity, and is obtained for value and in good faith, it can be collected. If, however, it is transferred after maturity, the purchaser does not, in that case, obtain any better title to it than the original owner possessed. The purchaser of an overdue note assumes all its infirmities.

Presentment for Payment. The same law applies to the presentment of a note for payment as to that of a draft for acceptance. If the holder of an endorsed note neglects to have it properly presented at maturity and, if refused, properly protested, the endorser will be discharged from further liability.

A Forged Note is void, and cannot be collected under any circumstances.

Kinds of Promissory Notes. — They are of several kinds, known as *Individual, Joint, Joint and Several, and Bank Notes.* In an *individual* note but one person makes the promise to pay. In a *joint* note the promise is made jointly by two or more persons. In a *joint* and *several* note each signer assumes the whole responsibility; but only one collection can be enforced.

When a note reads, "I promise to pay," and is signed by two persons, it is held to be a joint and several note, and in all joint and several notes the holder can sue either party alone or both together, as he chooses, but when the note reads, "We promise to pay," all concerned as makers must be joined in the action, for it is then a joint, but not a joint and several note.

An Accommodation Note is one for which no value has been given by the payee to the maker. In business it is often a matter of convenience or necessity for one man to borrow the name and credit of another. This is done by giving what is called an accommodation note or draft. Between the maker and endorser of such paper there is no consideration, and if the endorser pays the note at maturity he cannot recover of the maker. "The party who accommodates is never bound to the accommodated party."

Between the parties to the transaction the making of such a note, or the accepting of such a bill, is a mere loan of credit, designed to enable the borrower to raise money either in the market, at a bank, or in a particular manner; but when given under no restriction, but merely for the accommodation of the drawer or payee, and

is sent into the world, the holder, if he gave a *bona fide* consideration for it, is entitled to recover the amount, though he had full knowledge of the transaction.

On the other hand, if made for a special purpose, such as for discount at a particular bank, the maker has no right to use it in any other way; if he does so, it is a fraudulent perversion of the paper from its original object and design, and if the person receiving it from him knows of the circumstances and terms of the endorsement, he cannot recover on it against the endorser.

Lien Notes. A lien note is one that is given for some article which is being purchased, but where the ownership of the article does not pass to the person buying until all payments have been made. The purchaser, however, has the use of the article.

Receipts or agreements sometimes take the place of notes. Occasionally both a lien agreement and a lien note are made.

This form of note is in common use among the agents of manufacturers of all kinds of organs, pianos, sewing machines, agricultural implements, machinery, etc.

Interest on Notes. The legal rate of interest in Canada is 5 per cent. We have no usury law. A note made and nothing said in it about interest will not draw interest until maturity, but if not paid at maturity it will then commence to draw interest at 5 per cent. per annum. A note made for a higher rate of interest than 5 per cent., if not paid at maturity, will drop to 5 per cent. thereafter. For instance, if a note is drawn bearing interest at 8 per cent., in order that it shall continue to draw 8 per cent. after maturity, the words "with interest at 8 per cent. per annum before and after maturity until paid," must be written in it. A note drawing a lower rate than 5 per cent., if not paid at maturity, will draw 5 per cent. after maturity, unless otherwise provided in the note. Any rate of interest that a man agrees to pay and has written in the note can be collected. Compound interest cannot be collected unless it is agreed in the contract to pay it.

Book debts differ from notes. A book debt overdue will not draw interest unless the merchant has it printed on the invoices and bills which he gives with the goods that interest will be charged after a certain date. Then it can be only 5 per cent., unless the debtor is willing to pay more. Simply having 8 per cent. or 10 per cent., as the case may be, printed on the invoice does not make the charge legal, and the debtor may refuse to pay anything over 5 per cent.

CHAPTER XIII.

ENDORSEMENTS.

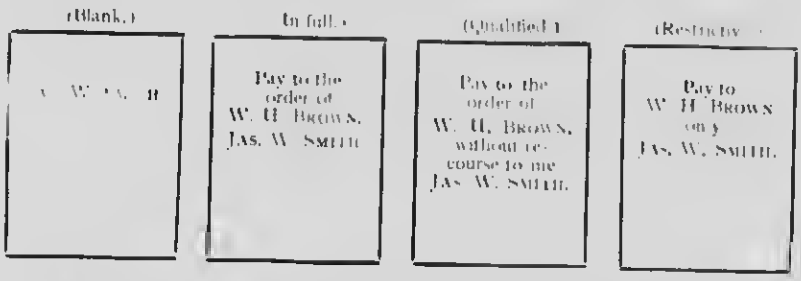
An Endorsement is anything written on the back of a note or other commercial paper having relation to the paper itself.

Effects of Endorsement. There are two distinct effects produced by the endorsement of negotiable paper. First or primary effect is to transfer the paper from the endorser to the endorsee. The second effect is to make the endorser conditionally liable for the payment of the paper. Endorsement is a contract by which the endorser makes himself liable to the endorsee and every subsequent holder. The person in whose favor the endorsement is made is called the endorsee.

Forms of Endorsement. There are several different forms of endorsement, the most important of which are:

1. Blank Endorsement.
2. Full or Special Endorsement.
3. Qualified Endorsement.
4. Restrictive Endorsement.

The proper place to endorse a business paper is on the back about two and a half inches from the end which was attached to the stub, or the end nearest the left hand when reading the form.



A Blank Endorsement is simply the signature of the endorser written upon the back of a negotiable paper, by which it is made payable, without further endorsement, to any person who may subsequently become its holder.

A Full or Special Endorsement is one in which the endorser states, over his signature, to whose order the negotiable paper is payable. This is the safest form of endorsement, and the one gener-

ally used in business. If a note having a full endorsement were lost, no one could collect it but the endorsee.

A Qualified Endorsement is one in which the endorser relieves himself from responsibility for payment by writing over his signature the words "without recourse to me." The purpose of a qualified endorsement is to enable the endorser to transfer or sell his title to the paper without subjecting himself to liability for its payment after maturity.

A Restrictive Endorsement is one which restricts the payment of the negotiable paper to some particular person in such a way that he could not transfer it if he wished, and the bill is no longer negotiable. A restrictive endorsement may be made in two ways. The endorser may write above his signature, "Pay to John W. Smith only," or he may restrict it as to plan of payment as well, by endorsing "Pay to John W. Smith only, at his office and not elsewhere or otherwise."

Specific Endorsements. Below are given some of the endorsements to be written across the back of a bill for specific purposes. The person endorsing a bill may write above his name the words "For collection only." This form is used when sending a bill to a bank for collection. Or he may use the words "For discount only" when discounting. Or "For deposit only," in the case of depositing a cheque.

Another specific form of endorsement is that intended for identification. Example: "*William Smith is hereby indentified*" written above the signature would be an endorsement for identification. It is simply to identify the holder at the bank without making the endorser liable for payment.

The following illustrates some of the specific forms of endorsement:

(For Discount.)

For Discount only.
L. L. HARRIS.

(For Deposit.)

For Deposit only, to the credit of
L. L. HARRIS.

(For Identification)

JOHN BROWN is hereby indentified by
L. L. HARRIS.

To waive Protest)

I hereby waive demand and notice of protest
L. L. HARRIS.

Endorsements Revocable.—The mere endorsement of a bill does not transfer the title to it; it must also be delivered to the endorsee or his agent before the title actually passes to him. An endorsement may therefore be withdrawn or revoked any time before delivery.

The Endorser's Contract.—Every endorser agrees with his endorsee, and all subsequent holders and endorsees, in good faith:

1. That the bill and all its signatures, previous to his own, are genuine.
2. That he has a good title to the bill.
3. That he is competent to contract.
4. That the maker and endorsers previous to himself are competent to contract.
5. That the maker will pay the bill at maturity.
6. That he will pay the bill in case the maker or any endorser previous to himself fails to pay it.

Where two or more endorsements appear on a bill they are presumed to be made in the order in which they appear. It will be noticed where two or more endorsements appear on a bill the last one endorses on the strength of the guarantee of all before him. The first endorser takes the entire responsibility of the guarantee; the second endorser only guarantees in case of failure of maker and the first endorser, and so on with other endorsers. If A makes a bill in favor of B, B endorses to C, and C to D, and D to E. In case of A's failure to pay if E collected it from D, he (D) could collect from C or B; but if E collected it from B in the first place, B could not collect from C or anyone who endorsed after him, as when he guaranteed the payment he assumed all responsibility, not knowing that anyone would endorse after him.

A Protest.—In order to hold the endorsers for payment on a note or draft that has not been paid at maturity, it is necessary to have it properly protested. A protest is a formal notice usually sent by a notary public (who is generally a lawyer) to the endorsers and maker of a note or acceptance that has not been paid at maturity, stating that the note or acceptance was presented for payment and that payment was refused, and that the holder looks to the endorsers for payment. A charge of 50 cents for the protest and 25 cents for each notice he sends may be made, together with the price of postage

paid on them. This notice is usually sent by a notary public, although the holder himself may do it, or an oral notice is also legal; but it is always better that it be put in writing.

If the holder of an endorsed bill, payment of which has been refused at maturity, neglects to have it properly protested and to notify the endorsers, the latter will be discharged from liability. Such notice of protest must be made on the day the bill is due, or the day following. Each endorser is liable to every subsequent endorser, and may look to each preceding endorser for indemnity, but the security of the holder depends entirely upon having the protest made immediately upon dishonor. Many a holder has lost his security by not presenting his paper for payment as the law requires.

May Waive Protest. Every endorser of a bill, or drawer of a cheque, has a right of notice of non-payment or non-acceptance. But a person may give up *or waive* his right if he so desires. It must be done in writing, and on the back of the paper above his signature, as follows: "I hereby waive demand, protest and notice of dishonor."

POINTS WORTH REMEMBERING.

36. A bill is not invalid by reason that it is not dated.

37. The omission of the place where a bill is drawn or where it is payable does not invalidate it.

38. Bills and notes bear interest during currency, only when so stated in them.

39. Compound interest cannot be recovered except when an agreement to pay it is made.

40. An overdue bill or note is outlawed by the Statute of Limitations after six years from the last payment made upon principal or interest.

41. In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonor should be given him.

42. In Escrow means the placing of bills or other documents in the hands of a third party in trust, pending negotiations, to be delivered afterwards to the proper claimant.

43. The Noting of a bill is a legal proceeding which, after dishonor, extends the time for one day longer before protesting.

44. A waiver of notice of dishonor may be given before the time of giving notice, or afterwards.

45. A bill or note for a part or whole interest in a patent is void unless the words "Given for a patent right" are written across the face.

46. An endorsement to a bank for collection gives no right to the bank to sue on the bill.

47. A holder is entitled to know on the very day on which a bill becomes due whether it is paid or dishonored.

48. Endorsers are discharged if the holder of a note accepts a new debtor in the place of the maker.

49. An endorsement written on an attached paper or copy of a bill is deemed to be written on the bill itself.

50. A bill may be accepted for honor if it is so stated in the acceptance.

51. Presentment of a note is necessary in order to render the endorser liable.

52. A thing is deemed to be done in good faith where it is done honestly, whether done negligently or not.

53. Valuable consideration for a bill may be any consideration sufficient to support a simple contract.

54. Every person whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

55. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such.

56. Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.

57. The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

58. Where there is a discrepancy between the sum payable as expressed in words and also in figures, the sum denoted by the words is the amount payable.

59. Collateral paper means security paper given in addition to a principal promise.

60. Days of Grace are allowed in all bills and notes except those payable on demand.

61. The expression "value received" in a bill, although usual, is not legally necessary.

62. A chattel note is one payable in goods or chattels or in anything except money. It is not a negotiable instrument.

CHAPTER XIV.

AGENCY.

Agency Defined.—Agency is a legal relationship founded on a contract, express or implied, by means of which one party gives authority to another to do business for him. He who, being competent to do an act for his own benefit or on his own account, employs another person to do it, is called the principal, and he who is thus employed is called the agent. The relationship thus created is called an agency. The law of agency probably enters into every business enterprise in the world. It is almost impossible to conceive of the idea of a person carrying on his business without some assistance. If assistants be employed to represent the principal there is then established the relation of principal and agent.

Agency a Form of Employment.—Many of our writers on agency seem unwilling to recognize that agency is a form of employment. Yet in dealing with the principal's liability for what is done by the agent they invariably introduce large selections from the law of master and servant. It is true that "employment" is a broader term than "agency," but in dealing with this aspect of the subject we use the term "employment" to mean employment for the purpose of bringing the employer into legal relations with a third party. The business of a corporation is entirely conducted by agents. The rules and principles of agency are not numerous nor in themselves complex, but difficulties often arise in their application which makes the subject quite technical and complicated.

Principal Defined.—A principal is one who gives authority to another to do some act for him, or who adopts the unauthorized acts of another. A employs B as his solicitor. A is a principal and B an agent.

Agent Defined.—An Agent is one duly authorized to act on behalf of another, or one whose unauthorized acts have been duly ratified.

From this definition it will be observed that whenever one person employs another to represent him, or ratifies the unauthorized act of another, the person so employed, or whose unauthorized acts are ratified, is an agent. If A, unknown to B, should buy a carload of wheat for B, and the latter receive and pay for the same, A would be an agent, because B adopted A's unauthorized act.

Who may be a Principal. Anyone of full age and of sound mind may be a principal, unless laboring under some legal disability. A principal must be able to contract. Minors are generally incapable of appointing an agent. It has, however, been decided that an infant or minor may appoint another to do an act which will be beneficial to him, but not to do an act which will be to his prejudice.

Idiots and Lunatics are wholly incapable of appointing an agent, because they have no capacity to contract.

Who may be an Agent. Any person, except a lunatic, idiot or child of very tender years, may be appointed an agent.

A minor may act as an agent, because his act is not his own, but that of his principal. Therefore if the principal have capacity to contract the agent need not have, because the acts performed by the agent are not in his name or on his account, but in the name or on account of his principal.

How Agents may be Appointed. An agent may be appointed by conduct, verbally or by a written instrument, sealed or unsealed.

The relation between principal and agent originates in a contract; therefore, no one can be made the principal of another without his consent. Neither can a person become the agent of another without that other's consent, expressed or implied.

Appointment by Power of Attorney. When the business to be done by the agent is of such a nature that he is required to sign notes, accept drafts, issue cheques, sign deeds, mortgages, etc., or to make any contract for the principal under seal, a formal appointment under seal, called a power of attorney, is necessary. Such power of attorney may be either general or specific. A general power of attorney gives the agent full power to transact all the usual business of the principal. A specific power of attorney gives authority to do one or more particular acts, and no more.

Proving Power of Attorney.—A power of attorney may be proved by being executed in presence of a notary public, who will place on the instrument his attestation of the execution.

FORM OF POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, that I, David Hoskins, of the city of Toronto, County of York, Province of Ontario, gentleman, do nominate, constitute and appoint Jas. W. Westervelt, barrister, of the

same place, my true and lawful attorney for me, in my name and on my behalf, to grant, bargain and sell all my real estate situate in said city of Toronto, and in my name to execute, acknowledge and deliver good and sufficient deeds of conveyance of the same, with or without covenants of warranty; also to collect, demand and receive the several amounts as they fall due upon the coupons of my railway stocks and bonds. And for all and every of the said purposes above mentioned, I do hereby give and grant unto the said Jas. W. Westervelt 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 allow all and whatsoever the said Jas. Westervelt shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 31st day of December, 1902.

DAVID HOSKINS. (Seal)

Signed, sealed and delivered in presence of
WM. BROOKS.

Sub-Agents are those who act under other agents, for example A appoints B his agent to do certain acts, B may appoint C to do some of them for him. The agent is principal to the sub-agent, and is governed by just the same rules of principal and agent as exist between A and B. If the sub-agent acts fraudulently the agent suffers.

An agency is also often implied from the course of business; as for instance, a son who sells goods in his father's store, or receives payment of bills due him with his knowledge and without objection, is the agent of the father, and may bind him in subsequent transactions of the same nature.

Liability of Principal. Under the contract of agency the principal becomes liable in two ways:

1. He is liable to third parties for the acts of the agent.
   - *(a)* Under the contract.
   - *(b)* For the wrongful acts of the agent (called torts).
   - *(c)* By the subsequent ratification of an unauthorized act.
2. He is liable to the agent for the fulfilment of his agreement.

Liability of Principal to Third Parties. When an agent acts within the limits of his authority, the principal is liable to third persons, the same as though he transacted the business himself. If the agent violates the instructions given by the principal, the person with whom he is dealing being ignorant of the fact, or if the agent makes a fraudulent representation, the principal will be held liable. The principle of the law is that "when one of two innocent persons must suffer, the one should sustain the loss who has put it in the power of the wrong-doer to commit the wrong," but in cases of special agency the agent could not bind his principal to exceed his special authority.

In certain cases the principal is liable for the torts committed by his agent. Tort is the law term for wrong doing or injury, or a tort is an act committed wrongfully, and imparting to another some injury either directly or indirectly. If an agent is pursuing the business of his agency and by his negligence or unskilfulness injures another, the principal and not the agent is liable; for instance, suppose you are riding on an express train from Montreal to Toronto, rushing along with a speed that rivals the wind; a careless engineer has his engine standing upon the track of your train, when it ought to have been somewhere else; you go crashing into it, there is a wreck, and you are pulled from the débris only to find yourself a cripple for life. What do you do? Bring action for damages against the engineer, who is the agent of the railroad company, or do you say to the company itself, "I have been injured through the carelessness of your agent, and to you I look for damages?" The company is responsible.

Should the act of the agent be wilful, the agent, and not the principal is liable; to illustrate, I am passing along the street in my carriage and your servant wilfully drives against me, the servant alone is liable. But had the act been one of carelessness, the principal would be liable.

Ratification.—Though the act of an agent be unauthorized, yet it may be ratified by the principal, so as to bind him from the beginning. If an agent report what he has done, with some appearance of authority, the silence of his principal may be considered a ratification when the principal is reasonably bound to speak. The principal may ratify his agent's unauthorized acts by express words, but it more commonly results from his accepting the act by receiving the benefits or proceeds thereof.

The Principal is Liable to the Agent for all advances and expenses lawfully incurred about the agency; and for all commissions or salary agreed upon or according to the usage of trade. He is also liable for damages sustained by the agent without his own default, in following the directions of his principal.

Liability of Agent.—The agent's liabilities arise in two ways:

1. He is liable to his principal for a failure to properly perform his duties.

2. Under certain circumstances he is liable to third parties.

Duties of Agent to Principal.—The first duty of every agent is to obey instructions. In determining the purport or extent of his instructions, custom and usage, in like cases, will often have great influence; because an agent is entitled to all the advantages which a known and established usage would give him, and the principal has also a right to expect that the agent will follow such custom. In cases of extreme necessity the agent may be excused for disobedience of orders; neither is he bound to obey when told to do an illegal or immoral act.

An agent is bound to use in the affairs of his principal all the care and skill which a reasonable man would use in his own, and he is also bound to the utmost good faith, for an agency implies personal confidence in the agent.

Liability of Agent to Third Parties.—An agent must transact all business in the name of his principal, or he will be personally liable; but if he should describe himself as agent for some unnamed principal, he is not liable unless he is proved to be the real principal. When a person has authority, as agent, to draw, accept or endorse a bill for another, he should do it in such a manner as to show that it is the act of his principal; as by signing it A. B. by C. D., his agent. The mere fact that a person acts as clerk to a merchant does not authorize him to sign notes or cheques in the name of his employer. The custom of business men is to sign the name of the principal first, and then immediately under it add "Per C.D., Agent." In other words he should sign so that it will appear to be the act of his principal. Should the agent sign his own name as endorser, drawer or acceptor, he will be personally liable unless he use some restrictive or qualifying words. Again, if an agent deposits in his

own name money belonging to his principal, and the bank should fail, the agent and not the principal must bear the loss. When a person sells to an agent, and knows at the time who is his principal, and prefers to charge the agent alone, he cannot afterwards transfer the account to the principal.

An agent must keep an exact account of all his transactions, and must render the same to his principal.

The agent must not mix his property with that of the principal, so as to make it impossible to distinguish one from the other. If he does so the entire property will belong to the principal; although some of our courts have decided that where the property so mixed was of the same kind and quality, as, for instance, bushels of wheat, etc., each party may take the quantity belonging to him.

Commission Merchants.—A commission merchant is one who sells goods for another, receiving as compensation a certain percentage on the sales, called commission. He has actual possession of the goods to be sold; and is bound to take good and proper care of them, such as he would take of his own property of a similar nature. In the sale of goods, the commission merchant should observe the instructions of his principal; but when he receives no instructions, must use his utmost skill and knowledge, and sell for the best prices.

It is a common practice for commission merchants to advance money upon goods consigned to them. In such cases they have a lien upon them for all cash advanced, and for expenses and commissions. A lien on personal property is a right to hold it against the owner; that is, the owner cannot take away his goods until he has paid the charges against them. The commission merchant may sell the goods in his possession in order to satisfy his claim, but must pay over the surplus to the owner.

Brokers.—The broker differs from the commission merchant, in that he does not have the goods of his principal in his possession. The broker is an agent, and his business is to effect the contract of sale, or purchase; and when this is done his agency ends. There are many kinds of brokers; for instance, real estate, stock, insurance, exchange, merchandise, etc. The broker, not having possession of the goods, has no lien upon them.

Modes in which the Authority May be Terminated.—The contract of agency, like all other contracts, may be dissolved or terminated by the act of one or by the mutual consent of both of the parties to it. It may also be terminated by the performance of it; or it may be terminated by operation of law. These causes of termination may be classified as follows:

(a) By the original agreement, by
1. Performance of the object of the agency, by
2. Efflux of time, or by
3. The operation of any provisions for terminating the contract before complete performance.

(b) By the parties by act subsequent to the original agreement, by
1. The principal—by revocation of authority, or by
2. The agent—by renunciation of the agency, or by
3. Both parties—by mutual consent.

(c) By operation of law on the
1. Death,
2. Bankruptcy, or
3. Insanity

Of either principal or agent; or by
4. The destruction,
5. Illegality, or
6. The taking (by paramount authority)

Of the subject matter of the agency.

Performance of the Object of the Agency.—The agreement when made is executory. When the agent has done the work or carried out the business committed to him the contract is executed so far as he is concerned, and when after that the principal has paid or compensated the agent, nothing more remains to be done on either side and the employment has terminated.

Effluxion of Time.—If a salesman is engaged for one year, the contract is terminated when the year expires. The employment may continue, but it will be then under a new contract express or implied.

Provisions for Terminating the Contract.—If in the contract of hiring it is stipulated that it may be terminated on certain notice,

or in a certain event, the giving of the notice (for the time agreed upon), or the happening of the event, as the case may be, will terminate the agency.

Revocation by Principal.—If the contract contains an agreement by the agent to perform certain duties, and then an agreement by the principal to provide opportunities for the performance of these duties during a certain period, there can of course be no revocation by the principal. But if A agrees to sell goods for B on a commission of ten per cent., here it is obvious that (in the absence of any provision to the contrary) B may at any time revoke the employment; or B may go out of business; or may raise the price of the goods to a prohibitive price; or may sell direct to customers; and in none of these cases could A complain. The principal, however, cannot revoke the contract where there is a stipulation as to its continuance, or where the agent has an authority coupled with an interest, or where the continuance of the authority is necessary to effectuate any security.

Renunciation by Agent.—The agent may renounce his agency at any stage; but if the agency has been undertaken for a valuable consideration, he will be liable in damages to his principal; and the same rule will apply even in the case of gratuitous undertakings which have been performed in part by the agent.

By Mutual Consent.—Where neither the principal can revoke nor the agent renounce, both parties may by consent put an end to the agency.

Death.—The death of either principal or agent will end the contract, if it is one of bare authority. Provisions are usually introduced to modify or avoid this rule.

Bankruptcy.—As to the principal, bankruptcy revokes the power, because all the interest of a bankrupt passes to the assignee. As to the agent, his bankruptcy for the same reason operates as a revocation of his authority, except in cases where the authority is merely to do a formal act which passes no interest, the performance of such an act being incumbent on the agent.

Insanity.—If the insanity is of the principal, it must be of so great a degree that the principal could make no contract and (though

this point is not settled) it must have come to the knowledge of the third person. The insanity of an agent would seem to constitute a natural as well as a necessary revocation of his authority.

Destruction of Subject Matter. If the agent is employed to rent a house and the house is destroyed by fire, there is obviously an end of the agency.

Illegality.—If the employment in which the agent is to engage is illegal, the intended contract of agency is void. If illegality occurs after the making of the contract, it operates as a dissolution of the contract.

Paramount Authority. If the subject matter of the agency is taken by paramount authority out of the power or authority of the principal, there is an end to the authority. Thus a power of attorney from the owner of property to collect rents would be of no effect if the property was sold under power of sale or foreclosed by a mortgagee, or expropriated by authority of some Act of Parliament.

CHAPTER XV.

PARTNERSHIP.

A Partnership is the result of a voluntary contract between two or more competent persons to contribute their money, labor, or skill or all of them in some lawful business, the profits and losses from which are to be divided in certain proportions.

A partnership may exist for a single transaction or enterprise as well as for a continuous business, for instance, A and B may form a partnership to build a bridge, or to buy a certain bankrupt stock and sell it, the partnership ceasing when the particular work is completed; or a partnership may be continued for an unlimited time.

How Created. The partnership relation is the result of a contract which may be verbal, or written, or written and under seal. Sometimes persons have been made liable as partners who have not agreed to become such, but because they have acted as partners

toward third persons the law has implied a partnership relation. When so created it is said to be a partnership by implication. From this it will be seen that the contract creating the partnership may be: 1. Written; 2. Oral; 3. Implied.

Written. Whether the amount invested be large or small, the enterprise be simple or complicated, or the time of continuance be long or short, it is advisable, and probably most advantageous to all concerned, that the agreement be reduced to writing. By so doing there will be less liability of misunderstanding and disputes. When the contract is reduced to writing great care should be exercised to see that all the terms are fully and clearly expressed. The agreement thus written is called Articles of Co-Partnership, or a Partnership Deed.

Verbal. A partnership formed by spoken words is just as binding as if those words were reduced in writing. But the difficulty of proving what the terms of the agreement are, in case of a dispute, is an entirely different question, belonging to the law of evidence, which it is not our purpose to consider.

Implication. Persons often engage in an enterprise without intending to form a partnership, but, nevertheless, are partners and liable to third persons as such, because they led third persons to believe they were jointly interested in the prosecution of the business, and, having secured credit in that manner, they will not be permitted to deny that they are partners. Suppose A and B agree to contribute each a sum of money for the purchase of a lot of goods, which they intend afterwards to divide. After the purchase of the goods, and before the division, they are joint owners thereof, and not partners. But if, instead of dividing, they sell them and divide the gain or profit, they then become partners, because of a participation of the profits.

The True Test.—An agreement to share losses as well as profits is necessarily a partnership, and a party who has made such an agreement cannot be allowed to say that he did not intend a partnership, with its ordinary legal consequences. A, having been a clerk in B's store, entered into a verbal agreement with him for a share of the profits and to bear the losses in the proportion of one-fifth to A and four-fifths to B. A alleged that the agreement was one of partnership, and claimed a dissolution and an account of assets.

B denied the partnership, and alleged that A was only manager. It was held that the agreement created the partnership relation, because there was an agreement to share the losses as well as gains, and that A had a right to demand a dissolution and sale of the assets of the partnership. An agreement to receive as compensation for services a portion of the net profits of a business, or a commission or percentage thereon in lieu of salary, will not make the recipient a partner. Thus, if A made a contract with B, a dry goods merchant, whereby the former was to take charge of the latter's store and to receive one-fourth of the profits as a compensation for his services, it would not constitute A and B partners.

Distribution of Profits. It is not essential that the partners should share profits equally or in proportion to investment. They may share them in any proportion that they agree upon. If no proportion has been fixed, the law requires that they shall be divided equally.

Other Names. A partnership is sometimes referred to as a house, a co-partnership, but more commonly as a firm. Partnership may be general or special.

When the persons composing the partnership are referred to individually each one is called a partner.

Who may be a Competent Partner.—Any person capable of making a legal contract is competent to become a partner.

Kinds of Partners.—According to the nature of their agreement, partners are divided as follows:

1. General partners.
2. Special partners.

A General Partner is one who is known to the public as a partner. He generally appears at the place of business, and takes an active interest in the conduct of its affairs. He is represented in the firm name by having his name appear in it, and in every way advertises himself as a partner. *He is liable to the creditors to the amount of his investment, and to the extent of his private estate as well.*

A Special Partner, also known as a limited partner, is one who limits his liability to a sum not less than the amount of his investment. He must be known as a special partner, and the agreement

as to his limited liability must be written in the articles of co-partnership when the partnership is formed, and he so registered.

He cannot withdraw any part of his investment or do anything which will depreciate his original capital.

The facility with which a limited liability company may now be formed under various Acts has rendered the formation of limited partnerships to a large extent obsolete. There are so many ways in which a limited partner may become liable as a general partner when he would not become liable as a shareholder in a company, that it is obvious that incorporation is a preferable proceeding.

Essentials of a Limited Partnership.—To constitute a limited partnership the following essentials must be observed :

1. There must be a general partner or partners whose liability is unlimited.

2. The special partners must make their contributions to the capital in cash.

3. The name of the partnership must not contain the name of the special partner.

4. A certificate of partnership must be filed in the office of the Clerk of the County Court of the county in which the principal place of business is situated, and the partnership will not be deemed to be formed, so as to limit the liability, until the filing has taken place.

5. The certificate must contain no false statement.

6. The business of the partnership may be for the transaction of any mercantile, mechanical, manufacturing or the like business, but shall not consist of banking, the working of railways, or making insurance.

7. There must be no alterations in the names of the partners, the nature of the business or the capital in shares thereof, without a new certificate being filed.

8. The principal place of business must not be removed out of the original county.

9. The special partners must not transact any business on account of the partnership or intermeddle with or direct (other than by advice) the affairs thereof, nor be employed for that purpose even in the absence of the general partners.

10. The partnership must terminate at the time mentioned in the certificate unless renewed by filing a new certificate.

11. The failure to observe any one of the foregoing will make the special partner liable as a general partner.

CERTIFICATE OF SPECIAL OR LIMITED PARTNERSHIP.

We, the undersigned, do hereby certify that we have entered into co-partnership under the style and firm of T. F. Wright & Co., as Grocers and Commission Merchants, which firm consists of T. F. Wright, residing usually at Hamilton, and Arthur Day, residing usually at the same place, as General Partners; and Wm. Brooks, residing at Toronto, Ont., and W. H. Stapleton residing usually at Sarnia, as Special Partners; the said Wm. Brooks having contributed Four Thousand Dollars and the said W. H. Stapleton Eight Thousand Dollars to the Capital Stock of the said Partnership.

The said Partnership commenced on the first day of September, 1902, and terminates on the first day of September, 1912.

Dated this first day of September, 1902.

(Signed)

Signed in the presence of me,
LAWRENCE MCRRAY,
Notary Public.

T. F. WRIGHT.
ARTHUR DAY,
WM. BROOKS.
W. H. STAPLETON.

Rights and Duties of Partners.—Every partnership is composed of two or more persons, which the law regards as but one. As to each other, their rights and duties are simply a matter of agreement; at the same time, however, they can require of each other sincere devotion and diligence to the business of the firm. Hence, if any partner, by misconduct, negligence, fraud or drunkenness, cause the firm to suffer loss, he will be liable to the other partners to the full extent of the loss. It is the duty of each partner, in making sales and purchases for the firm, to act for its benefit alone. He has no right to put his own interests in antagonism with those of the partnership.

Liabilities of Partners.—One of the important principles of partnership is, that the act of one partner binds all, so long as he keeps within the business of the partnership; outside of that he cannot bind the firm. For instance, one member of a firm carrying on a hardware business could not bind the other partners in the purchase of a number of lots as a speculation in real estate; nor could he bind the firm by contract with a third party, who knows that such a contract would perpetrate a fraud on the firm, or who knows that the partner is acting without authority.

Another equally important principle is that each partner is liable to third persons for the whole of the partnership debts to the full extent of his own property. It makes no difference what private agreement there may be between partners, they cannot limit their responsibility to outside parties, except, of course, as limited partners.

Admission of New Partner.—No person can be admitted into a firm without the free and full consent of every member. Partnership is a contract, and the principal element of every contract is consent.

The Firm Name may be just what the partners choose, and all contracts, notes, cheques, drafts, etc., should be made out in the firm name. The firm must sue or be sued by their firm name.

The Undertaking. The business of the firm may be any honest, lawful business; the manner in which it shall be conducted is a matter of agreement, and may be regulated at the pleasure of the parties.

Articles of Partnership.—A partnership agreement usually contains clauses covering the following points:

1. The description of the parties and the firm name.
2. The nature of the business and the place where it is to be carried on.
3. The investment of each partner, and the mode of dividing profits.
4. The date of commencement and duration of the partnership.
5. Limitations of powers of partners, and their duties to one another.
6. Provisions for keeping accounts, and settlement of partnership affairs.
7. Provisions for dissolution and final adjustment.
8. Provisions for settlement in case of the death or incapacity of a partner.
9. Provisions for signing the firm's name.

Besides these there are various other provisions which might be profitably incorporated into a partnership contract, such as that none of the partners should be a candidate for a municipal office, or an active

political partizan, without the consent of the firm; that no partner should endorse, accept paper, or sign notes for others, or become bail or security for any person without consent of the firm; or that none of them should engage in any other business that would require investment, and thus possibly incur loss.

Partnership Bills and Notes.—A partner in a trading firm has *prima facie* authority to bind the firm by making, drawing, endorsing or accepting commercial paper in the firm name for partnership purposes. But if he gives such paper for his private debt, or in a transaction outside the scope of the partnership business without the authority of his co-partners, the firm is not bound to any holder with notice. In favor of a *bona fide* holder for value, however, the firm is absolutely bound by an acceptance in the name of the firm, although the partner who accepted had no authority to do so, and his doing so was fraudulent. A partner in a non-trading firm has no implied authority to bind the firm by signing commercial paper, and it rests with the holder to show a special authority express or implied. How far this rule applies to cheques may not be certain, but the question of a partner's authority to draw them can seldom arise where the funds of the firm are deposited with the assent of all the partners.

The person who, in good faith, receives a bill or note by endorsement from one of several partners, is not bound to apply to each of the others to ascertain if he assented to such endorsement. In the absence of all fraud on the part of the endorsee, the act will bind the firm; nor is the fact changed because the partner making the endorsement overstepped the authority given him in the articles of co-partnership, unless the endorsee knew that the same was done in fraud of the firm. If he knew this he could not hold the other partners.

Signing as Surety. The rule is general that one member of a partnership cannot bind his co-partners by signing notes or accepting or endorsing bills, in the firm name as surety, or for the accommodation of others. The law does not presume the lending of notes and making accommodation endorsements to be within the scope of ordinary partnership. It is the contract of the partner, not of the firm.

Trading and Non-Trading Firms.—A distinction is generally recognized between trading and non-trading partnerships, particularly

with respect to the power of one partner to bind the firm by borrowing money and issuing commercial paper. All firms engaged in buying and selling as a business, whether at wholesale or retail, are trading partnerships. But solicitors, physicians, farmers, and usually those engaged in a single enterprise, are non-traders. But even in the case of non-traders one partner may be expressly authorized to borrow money, or sign notes, or such power may be conferred by implication from a course of dealing, or there may be a ratification.

Profits Paid as Salary. It is not unusual to give a chief clerk or book-keeper a percentage of the profits of a business as a salary. This is the only instance where a person may share the profits of a business without being liable as a partner, but in order to clearly protect himself from liability for the firm's debts he should have a definite contract to that effect.

Registration of Partnership.—In accordance with the Revised Statutes of Ontario, every partnership must be duly registered at the County Registry office in the county in which the business is conducted. The Statute provides:

1. That a declaration setting forth all the names of the partners, the firm-name, etc., be registered in the County Registry office, where the firm's business is to be carried on.

2. That any individual who wishes to add "& Co." to his name, or to use any special name other than his own, must register a declaration to that effect.

3. Such registration must be made within six months after the formation of the partnership.

4. In case of neglect to register a declaration of partnership the firm will be subject to a fine of $100, half of which will go to the Crown and the other half to the informant.

Form of Registration.—The following is a form of partnership declaration for registering in the County Registry office in compliance with the Revised Statutes of Ontario

Province of Ontario,
County of Wentworth.

We, John H. Brown, Wm. Henderson and Henry Smith, of the City of Hamilton, in the County of Wentworth, Province of Ontario, do hereby certify:

1. That we have carried on and intend to carry on a general wholesale and retail drug business, under the name and firm of Brown, Henderson, & Co.

2. That the partnership has subsisted since the 1st day of September, 1902.

3. That we are and have been since the said date the only members of the said partnership.

Witness our hands this 1st day of October, A. D. 1902.

JOHN H. BROWN,
WILLIAM HENDERSON,
HENRY SMITH.

Authority of each Partner.—The authority that the law gives to each member of a firm is very great. Each member is a general agent of the entire firm and he may bind the firm in any transaction that he makes within the scope of the firm's business. He may borrow, loan, make promissory notes, endorse, make an assignment and may sell the whole stock of the business. He cannot, however, bind the firm to a guarantee, or cannot bind it by giving the firm's note in payment of his own personal debts unless he be given authority to do so, or unless the act is afterwards ratified by the firm.

Partners cannot sue the firm or one another for an adjustment of their partnership affairs. Such an act on the part of a partner would in reality be suing himself, as the firm does not exist without him. It would also have the effect of dissolving the partnership. A partner, however, can sue his co-partner for money advanced before the partnership was formed, although the money was loaned for the purpose of forming the partnership.

Liability in Case of Insolvency.—In case a partnership becomes insolvent, the entire partnership property would be taken first to satisfy the firm's debts. If a portion of the debts remained unsatisfied, the private property of the partners would (subject to the priority of private creditors) be taken until the debts were fully satisfied, if enough could be found to satisfy them; if not it would apply upon them. The exception to this is in the case of a limited or special partner whose liability would be no greater than the capital he invested.

Dissolution.—A partnership may be dissolved in any one of the following ways:

1. At any time by the mutual consent of the partners.

2. By expiration of the time for which the partnership was formed.

3. By completion of the business for which it was formed.
4. By sale of a partner's interest.
5. By death or incapacity of a partner— unless provided for by the articles of co-partnership.
6. The bankruptcy of a partner.
7. By decree of court.

Dissolution by Mutual Consent. Of course the partners can by mutual agreement dissolve the partnership at any time, even though they may have made a contract for a definite period. It must be with the consent of all the partners and if the partnership contract is under seal, the agreement for dissolution should also be under seal.

By Expiration of Time.—When the partnership has been formed for a definite period (such as one year, two years, five years, etc.), and that time has elapsed, the partnership stands dissolved.

By Completion of the Work. If a partnership has been formed for a certain purpose and that end is realized, the partnership ceases, so far as the partners are concerned. Thus where A and B form a partnership to build a bridge, the partnership is completed as soon as the bridge is completed.

Sale of a Partner's Interest. When one partner assigns or sells his interest, it dissolves the partnership, and the purchaser cannot become a member of the partnership. The rule seems to be that a partner may sell his interest in the business at any time. But if he has entered into the partnership for a certain period and that period has not elapsed, he may be held liable to the other partners for selling his interest, which really amounts to a breach of his contract with the partners.

Death of a Partner.—The death of any partner of a firm at once dissolves the partnership, and the heirs of the deceased do not become partners. It is competent, however, for the parties to vary this general result of law by an express agreement that the death of one shall not operate as a dissolution. The same is true in case of insanity, etc., of a partner.

Bankruptcy.—As soon as one of the partners of a firm has been declared a bankrupt, the partnership is dissolved. This is true because all the property of the bankrupt goes at once into the hands of the assignee.

Decree of Court.— There are conditions or circumstances which, within themselves, do not dissolve a partnership, but may be sufficient cause for a court to decree or declare it dissolved when the complaint is made by one or more of the partners who desire it dissolved. This may be done for the benefit of one member and against the desire of the rest. Thus, the insanity of a partner does not in itself dissolve the partnership, but is sufficient ground for dissolution by a court. It may also be dissolved by judicial decree when it appears that the business is impracticable, or that it is founded upon wrong principles; as, where a partnership was for manufacturing steel by a new invention and it was found after trial to be impracticable. If there be gross misconduct of a partner, or abuse of good faith between them, the partnership may be declared dissolved.

Rights and Powers of Partners after Dissolution.— In case of dissolution, occasioned by death, bankruptcy or by law, the power of one partner to bind the firm ceases; he could not now renew a partnership note, nor accept a draft drawn on the firm so as to bind it; he can impose no new obligation; the partnership has ended. But he can collect and receive payments due the firm, and adjust and liquidate accounts. The ordinary rule is that upon the dissolution of a parnership by death, the surviving partners are entitled to close up the affairs of the firm.

Winding up Business.—In settling up the affairs of a firm each partner, unless there is some agreement to the contrary, has the right to collect and receive moneys due the firm, to give receipts for the same and to adjust unsettled accounts. But no partner has a right to any share in the partnership property, until the debts of the business are first settled. Then he can claim his share of the remaining partnership funds.

Notice of Dissolution.—Upon the dissolution of a partnership or the withdrawal of any of the partners, public notice must be given. This notice is necessary to protect the retiring partner or partners from continued responsibility; it should be given to all persons dealing regularly with the firm, either verbally, or by letter or circular sent by mail. Notice should also be given in the newspapers of the locality in which the business has been carried on, as well as in the

Ontario Gazette when the business has been confined to Ontario; in the case of firms whose business has extended to the other Provinces notice should be given in the *Canada Gazette*.

Liabilities of a Retiring Partner. When a partner retires from a firm his liability to outside parties does not necessarily cease. He is still liable for all debts contracted by the firm while he was a member of it. He should therefore see that all the debts are fully paid, unless the creditor agrees to accept the new firm for the debt and thus release him.

Registration of Notice of Dissolution. A retiring partner in order to protect himself from the future liabilities of a firm must in addition to the notices and advertisements already mentioned register a declaration of the dissolution at the County Registry Office.

DECLARATION OF DISSOLUTION OF PARTNERSHIP.

Province of Ontario, }
County of Middlesex. }

I, Charles R. McCullough, formerly a member of the firm carrying on business as Publishers at London, in the County of Middlesex, under the style of Westervelt & McCullough, do hereby certify that the said partnership was on the Thirty-first day of December, 1902, dissolved.

Witness my hand, at London, the Fifth day of January, 1903.

CHARLES R. McCULLOUGH.

CHAPTER XVI.

JOINT STOCK COMPANIES.

Joint Stock Companies are corporations under a general or special act of the legislature, for the purpose of promoting personal or public interests. The object to be secured by these companies is similar to that of a simple partnership. The partners (or shareholders) of a joint stock company, however, are only liable to their creditors to the extent of their subscribed capital, whereas general partners in a business, as already stated, are liable to their creditors to the full extent of their property, whether invested in the business or not.

The incorporation of a joint stock company may be effected either under Dominion or Provincial legislation.

Under Dominion legislation it may be either by special Act of Parliament or by Letters Patent under "The Companies Act." Banking, railway, telegraph, telephone and insurance companies must be incorporated by special act, as the powers they seek are so extensive that special legislation is necessary to determine their limit.

Under Ontario legislation incorporation is secured under "The Ontario Companies Act" or by special act. Those desirous of obtaining a thorough and complete exposition of either or both of these Acts, together with forms for organizing companies and keeping their accounts, should obtain a copy of "Book-keeping for Joint Stock Companies," by David Hoskins, Chartered Accountant, Toronto.

How Created.—Joint stock companies are the creation of a legislative body, and the body that gives them power to do business likewise makes laws for their government. The following is a short summary of such laws as they affect Joint Stock Companies in Canada:

There must be at least five members before they can become incorporated. The officers at the beginning are called provisional directors. When the organization is complete regular officers are appointed.

Officers should be elected once a year at a general meeting of shareholders.

A general statement of the company's affairs should be submitted to the shareholders once a year at least.

The company must report to the Government that incorporated it at least once a year, and oftener if required.

The Advantages of Incorporation are many, the following of which are chief:

1. The business can be conducted on a much more extensive scale, as many more people can be interested in it than could in an ordinary partnership.

2. The liability of shareholders is limited to the amount of stock they hold, an advantage of great consideration when compared with the dangers of partnership.

3. An ownership in the business is more easily transferred than in a partnership. Paid up stock may be sold at any time.

4. A business under corporate powers possesses an element of permanency not found in an individual or partnership business. The death of any of the stockholders does not call for a dissolution, as it would in a partnership, but the heirs succeed to the shares and the business is unchanged.

5. Employees can be more readily interested in the business, and their services thus rendered more valuable and permanent.

How to Form a Company.—The first thing to be done is to open the Stock Book, in which the subscribers enter their names for the number of shares they wish to take.

If the proposed company is of such a nature as to require considerable advertising in order to create interest enough to sell the stock, then a prospectus would be issued first of all, setting forth the name of the company, where it is to be located, amount of capital, the number of shares into which it is to be divided, etc.

Under the Dominion Act, when one-half of the proposed amount of stock has been subscribed, and ten per cent. thereof paid in, application may be made for Letters Patent to the Honorable the Secretary of State, Ottawa. If under Provincial legislation no fixed amount has necessarily to be subscribed or paid in, although ten per cent. of the subscribed capital is expected to be paid in. Application for an Ontario charter should be made to the Honorable the Provincial Secretary, Toronto.

The Petition.—About the first thing done, either by the solicitor or any person who may be doing the official correspondence, is to write to the Provincial or Dominion Secretary concerning the formation of the company, who will forward the necessary instructions and also a blank petition for the signatures of the applicants. This petition is duly filled out according to the instructions and forwarded to the Provincial or Dominion Secretary, as the case may be, accompanied by the necessary fees, affidavits, etc. Notice will be given in the official *Gazette* of the issue of Letters Patent, when the parties named therein and their successors become a body corporate and politic by the name mentioned in the same.

Name.—The name of the company must not be the same, or even similar to that of any other company, whether incorporated or not.

Board of Directors.—The directors are appointed by vote of the stockholders each year, and the directors have the whole management of the business during their term.

Books to be Kept.—The law requires certain books to be kept, giving the names of the stockholders and the shares owned by each, the amounts paid in on stock, the names and addresses of the directors. The books are always to be open for inspection by creditors or shareholders.

Unpaid Stock.—Stock that has been subscribed for but not paid up stands as a contingent resource, and is a security to the public, as it may be called in at any time to meet the liabilities of the company.

Limited Liability.—In stock companies a shareholder is only liable to creditors to the amount of stock he has subscribed for. If this has been paid up he is not liable to creditors for anything in case of bankruptcy of the company.

Double Liability applies only to chartered banks. A stockholder in a chartered bank is liable to creditors for double the amount of stock he subscribes for. If his subscribed stock has all been paid up, and the bank fails, he is liable to be called upon for just that much more. If it has not all been paid up, he will have to pay the balance owing, and then another sum of same amount as the par value of stock subscribed for.

Transfer of Stock.—Shares in a stock company are personal property, and may generally be sold or transferred if they have been fully paid up; if not fully paid up, the consent of the directors is necessary. Occasionally, however, stock is subscribed for on the distinct understanding that it cannot be transferred without the consent of a majority of the directors.

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 in case the company went into liquidation.

The Word "Limited" must be affixed to the company sign on the front of the building, and whenever the name of the company appears in advertisements, contracts, letter heads, accounts, etc. If this is not done the company is liable to a penalty of $20 per day for every day it is neglected. This word "Limited" is intended to indicate to the public that they are dealing with a company whose members are limited in their personal liability to the extent provided for in the Act.

CHAPTER XVII.

LANDLORD AND TENANT

Contract of Tenancy.—The owner of houses and lands is called the Landlord, and the person to whom he grants the use of them, for a specified time for a consideration called Rent, is the Tenant. In law the landlord is known as the Lessor and the tenant as the Lessee. Any person who can make a valid contract, can make a valid Lease, which is the name given to the contract between the landlord and the tenant.

Tenants.—There are three classes. 1st. For life. 2nd. For a definite time. 3rd. At will.

A Lease may be either oral or written, or under seal.

An oral lease will only answer when the period is less than three years.

A lease for three years or over must be in writing and under seal, signed by the parties themselves, or their duly authorized agents, who also have been appointed by writing under seal. A lease for over seven years must be registered, otherwise a person buying the property without notice of this lease, could, by giving six months legal notice, eject the tenant.

The lease should state clearly all the conditions, as verbal promises and agreements do not avail in law when there is a written instrument.

Duplicate copies should always be made of a lease, and each party should retain one. Tenants have the exclusive use of the property while in their possession, and may even eject the landlord should he trespass.

A tenant cannot sub-let the premises without permission from the landlord. If he does the landlord may eject; it also renders his lease voidable.

Short Forms.—In the short forms of lease, now in general use throughout the country, the term "and to repair" has a very broad meaning; so much so, in fact, that unless modified a tenant may be compelled to rebuild in case of fire. Also the clause "to leave the premises in good repair" must be modified in the same manner. This is best done in the following, or similar language: "Ordinary wear and tear, and accidents by fire and tempest excepted."

Landlord's Covenant.—The only covenant the landlord 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.

Landlord's Rights.—If the tenant makes a general assignment for the benefit of creditors, the lien of the landlord for rent shall be restricted to the arrears of rent for one year previous to the assignment and the amount for three months following the assignment, and after this for so long as the assignee retains possession, which he may do by giving the landlord notice in writing of his election to remain tenant. For arrears in excess of one year's rent the landlord ranks only as an ordinary creditor; and in any event his right to preferential payment depends upon the existence of distrainable effects.

As far as distress is concerned, where there are no other creditors, he may distrain for six years' rent. After that he has a further remedy by way of action (or suit), and this action may be brought any time within twenty years on a lease under seal.

Rent cannot be sued or distrained for until it is due, even though the tenant may be leaving the premises. If the tenant were leaving the country, with the intent to defraud, the goods could be attached.

If a tenant removes goods fraudulently and clandestinely the landlord may follow for thirty days and distrain; otherwise he must distrain on the premises.

Taxes.—In all ordinary written or oral leases the landlord must pay the taxes, unless some express provision is made to the contrary.

The fact of a landlord agreeing to pay the taxes does not relieve the goods on the premises, though they belong to the tenant.

If a lease is given prior to a mortgage, the mortgagee takes it subject to the lessee, and *vice versa* if the mortgage is given prior to the lease.

Notice to Vacate.—In case of an overholding yearly tenancy, six clear months' notice must be given to quit, terminating with the end of the year. These must be calendar months, as in all other cases where months are used in contracts. In a yearly lease commencing July 10th, the notice to quit must be given on or before January 10th, so as to leave six clear calendar months before the expiration of the year. In case of a quarterly lease three months' notice must be given; if the tenancy is monthly, then one clear month's notice must be given; if by the week, then a week's notice. There is no half-yearly lease. A person renting, say, for six months, it would simply be six consecutive months, and if he held over that time, one month's notice only need be given to quit.

A notice to quit, given either by the landlord or tenant, should be in writing, to be binding. An oral notice is sufficient, but it is better to give the notice in writing, as it is more easily proved. An ordinary letter containing the facts, handed to the other party, or sent by mail, will answer as well as a formal notice.

Expiration of Lease.—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. The tenant may go out, or the landlord may lease the property to another party. But where this first period has been passed and the tenant still remains in possession, he then becomes a "Tenant at Will," and then, after that, when he wishes to vacate, or the landlord desires him to vacate, due notice must be given.

Doubling the Rent.—If the tenant does not vacate the premises after his lease expires, and demand for rent and notice to quit has been given, the landlord may double the rent by giving the tenant notice in writing to that effect; or the tenant may be evicted by obtaining an order from the county judge.

Distraining for Rent. If a tenant does not pay his rent, the landlord may distrain. In this case any person may act as a bailiff.

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.

The landlord may distrain for rent the day after it is due. It must be done after sunrise and before sunset. The person distraining cannot break outside doors in order to seize, but after he once gains admission to the building he may then break open any inside doors that are not opened for him.

Distress may be made any time within six months after the expiration of the lease if the landlord still holds possession of the premises. If he has sold the property he cannot distrain; neither can the new owner, but it may be recovered by suit. Distress may be for six years' rent if no other creditors are interested.

The Exemptions from a landlord's warrant are now quite numerous, and are the same as those from executions.

The goods belonging to third parties, as visitors, boarders or lodgers, are also exempt. Also any goods that may be on the premises for repairs or for any other purpose, if they are not in use by the tenant. Furniture, sewing machines, musical instruments, etc., purchased on a lien agreement or not, are liable to seizure for rent if there is not enough other goods to satisfy the claim. After the sale of his goods for rent, if the tenant should still remain in possession, the exempt goods also become liable for seizure if there is rent still due.

Resistance.—A tenant may resist the entrance of a bailiff or other person who may come with a landlord's warrant. Any time before the bailiff makes a list of the goods the tenant may retake them from him. After the bailiff makes a list of the goods seized and delivers it to the tenant, then the goods are said to be impounded and resistance must cease. A tenant's goods cannot be seized if they are removed from the premises unless the bailiff saw them being

taken away, or unless they had been removed fraudulently and clandestinely to prevent seizure for rent, that is, taken away in the night or in any other secret way.

Giving up Possession.—The tenant who claims the benefit of the exemptions in case of a landlord distraining for rent, must give up possession 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.

Seizing the Exempt Goods. If the landlord desires to seize the exempt goods as well as the others he must give the tenant a written notice which will inform him of the amount claimed for rent in arrears, and if he neither pays the rent nor gives up possession, his goods and chattels may be sold to pay rent in arrears and costs.

Goods Seized for Other Debts.—If a tenant's goods have been seized for other debts the landlord cannot seize them again, nor sell them, but he may hold them until his claim is paid.

Penalty for Illegal Seizures.—If a landlord distrains for more than the amount due, the tenant can enter an action and recover treble the amount of over-seizure; and in case of distraining before rent is due the tenant may recover double the amount of goods distrained.

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.

Anything that is sunk into the ground, as a well, trees, buildings of stone and 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 fixtures and may be removed without injury to the soil.

The machinery of a manufactory is also a fixture and may be removed.

Where there is doubt as to whether a certain fixture should be regarded as a fixture or be held as part of the freehold, the presumption is always in favor of the freehold.

A tenant claiming anything as a fixture must remove the article promptly and make it known that he claims it, otherwise he waives his right to it.

A creditor can seize and sell immediately anything that has not become freehold, but any fixtures that have become freehold are governed by the same laws as real estate, and therefore cannot be sold until the execution has been in the hands of the sheriff at least one year.

Repairs necessitated by natural decay must be made by the landlord, but all breakages are to be made good by the tenant.

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. Their goods are not liable to seizure for their landlord's rent.

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 or in the lawful possession of such boarder or lodger, and if he should owe the tenant for board or otherwise, he may state this 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 more than that. With this declaration must be given an inventory of the articles referred to.

Any such payment made by a boarder to the superior landlord is a valid payment on account due from him to the tenant.

Every person who serves a distress shall give a copy of all costs and charges of the distress to the person on whose goods and chattels the distress is levied.

CHAPTER XVIII.

INSOLVENCY AND ASSIGNMENTS

Insolvency.—Insolvency and bankruptcy are synonymous terms, used in statutes and legal proceedings to express the inability of a person to pay his debts as they mature in the ordinary course of business. Hence, one's debts may greatly exceed his assets, and yet if his credit enables him to retire or renew his obligations as they fall due, he may not become liable to insolvency or bankruptcy proceedings.

On the other hand, a person's assets may be considerably larger than his liabilities and still he may be in insolvent circumstances and liable to proceedings which may cause him to assign for the benefit of his creditors. It will therefore be seen that an insolvent is not always one who cannot pay a hundred cents on the dollar.

"In insolvent circumstances" and "unable to pay his debts" are co-extensive expressions, and what has to be shown is not a state of insolvency, in the strict legal or commercial acceptation of the term, but the debtor's inability to pay his way and meet the demands of his creditors, and his want of means to pay them in full out of his assets realized upon a sale for cash or its equivalent.

No Insolvent Laws.—Under the British North America Act, the Dominion Parliament has exclusive jurisdiction in respect to the regulation of trade and commerce and in respect to bankruptcy and insolvency, while each Provincial Legislature has exclusive jurisdiction in respect to property and civil rights in the Province, but there is at present no Dominion Insolvency Act in force, and in the absence of such the present Ontario Act respecting Assignments and Preferences by Insolvent Persons governs.

Making an Assignment.—Any debtor may, in accordance with the provisions of the act above referred to, make an assignment for the general benefit of his creditors to a sheriff or any person residing in the Province. The party making the assignment is called an assigning debtor, and the person to whom he assigns is called the assignee. The assignment must be advertised at least for two insertions in a country or city paper circulating in the locality where the insolvent did business, and it must be inserted at least once in

the *Ontario Gazette*. An assignment under the act is voluntary in the sense that it is optional on the part of the assignor whether to make it or not, but once made its effect cannot be controlled.

Registration of Assignment.—A copy of the assignment shall, within five days from the execution thereof, be registered, together with an affidavit of a witness, in the office of the clerk of the County Court of the county in which the assignor has property. Neglect to register and publish an assignment as set forth, within five days from the execution thereof, renders the assignor liable to a fine of $25 for each day which shall pass after the issue of the paper in which the notice should have appeared, and the assignee shall be subject to a like penalty. In case the assignee is a sheriff he shall not be liable for any of the penalties unless he has been paid or payment has been tendered him for this purpose. In case the assignment be not registered or published, an application may be made to the County Judge, or a Judge of the High Court to compel it. The omission, however, shall not invalidate the assignment.

If the assigning debtor owns lands or any interest in lands, the assignment should at once be registered; if not, the debtor may, notwithstanding the assignment, convey the lands or his interest to a bona fide purchaser, who thus may gain priority over the assignee.

Form of Assignment.—Every assignment made under the Act for the general benefit of creditors shall be valid, if it is in the words following, that is to say—"All my personal property, which may be seized and sold under execution and all my real estate, credits and effects," or in words to like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credit and effects belonging at the time to the assignor, except such as by law are exempt from sale and seizure, or sale under execution.

An assignment for the general benefit of the creditors shall take precedence over all attachments, all judgments and all executions not completely executed by payment, subject to the lien of the execution creditor for his costs.

Exemptions.—The exemptions under the Act are stated therein as follows:

"The following chattels are hereby declared exempt from seizure

under any writ, in respect of which this Province has legislative authority, issued out of any Court whatever in this Province, namely:

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 tongs and 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 washboard, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this subdivision enumerated not exceeding in value the sum of $150.

4. All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of $40.

5. One cow, six sheep, four hogs, and twelve hens, in all not exceeding the value of $75, 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.

7. Bees reared and kept in hives to the extent of fifteen hives.

8. The debtor may in lieu of tools and implements of or chattels ordinarily used in his occupation referred to in this Act, elect to receive the proceeds of the sale thereof up to $100, in which case the officer executing the writ shall pay the net proceeds of such sale if the same shall not exceed $100, or, if the same shall exceed $100, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption, and the sum to which a debtor shall be entitled hereunder shall be exempt from attachment or seizure at the instance of a creditor."

Duties of the Assignee.—It shall be the duty of the assignee to immediately inform himself as to the debtor, and his records of accounts, the names and residences of his creditors, and within five days from the date of the assignment to convene a meeting of the creditors for the appointment of inspectors, and the giving of directions with reference to the disposal of the estate. This meeting is called by mailing, prepaid and registered, to every creditor known to him a circular, calling a meeting of creditors to be held in his office or other convenient place, not later than twelve days after the mailing of such notice. Also in the case of a request in writing signed by a majority of the creditors having claims duly proved of $100 and upwards, it shall be the duty of the assignee within two days after receiving such request, to call a meeting of creditors at a time not later than twelve days after the assignee receives the request. In case of default the assignee shall be liable to a penalty of $25 for every day after the two days, until the meeting is called.

In case a sufficient number of creditors do not attend the meeting and fail to give directions with reference to the disposal of the estate, the Judge of the County Court may give all necessary directions.

Notice to Creditors.—If an assignee knows that a creditor has a claim, he cannot ignore it because it is not proved; the proper course is to call upon the creditor to prove it.

The form of notice given below should be sent out by the Assignee for that purpose:

NOTICE TO CREDITORS.

In the matter of

Notice is hereby given that of the of in the county of , carrying on business as at the said of , has made an assignment under R.S.O., 1897, c. 147, and amending Acts, of all his estate, credits and effects to , of the of , for the general benefit of his creditors.

A meeting of his creditors will be held at the office of , in the of on day, the 190 , at the hour of o'clock in the noon, to receive a statement of affairs, to appoint inspectors and fix their remuneration, and for the ordering of the affairs of the estate generally.

Creditors are requested to file their claims with the assignee, with the proofs and particulars thereof required by the said Acts, on or before the day of such meeting.

And notice is further given, that after the day of , 190 , the assignee will proceed to distribute the assets of the debtor amongst the parties entitled thereto, having regard only to the claims of which notice shall then have been given, and that he will not be liable for the assets, or any part thereof, so distributed to any person or persons of whose claim he shall not then have had notice.

Assignee.

Contestation of Claim.—The following form may be used by the assignee for the purpose of disputing claims:

CONTESTATION OF CLAIM

In the matter of the estate of

To

You are hereby notified, pursuant to the provisions of the above Act and under the authority and direction of the creditors and inspectors of this estate, that I dispute your right to rank on the estate of the above named insolvent for $, the amount of your claim filed with me, or for any part thereof.

And you are hereby further notified that unless within thirty days after the receipt by you of this notice, or within such further time as may be allowed on application to the proper judge in that behalf, an action is brought against me to establish said claim, and within the same time a copy of the writ or process is served upon me or my solicitor herein named, your claim to rank upon the estate shall be forever barred.

And you are hereby further notified that service of any writ or process to enforce said claim may be made upon my solicitor, A. B., of etc.

Dated at , the day of

Assignee.

Who may be the Assignee.—No person other than a permanent and *bona fide* resident of the province shall have power to act as an assignee under an assignment, within the provisions of the Act, nor shall any such assignee have power to appoint a deputy or to delegate his duties to any person who is not a permanent resident of the province. The same person cannot act as assignee and solicitor of the estate, and if the assignee has interests diverse to those of the creditors, a new assignee will be appointed. The property and assets of any such estate shall not be removed out of the province without the order of the county judge of the county in which the assignment is registered, and the proceeds of the sale and all moneys received on the account of any estate shall be deposited by the assignee in one of the incorporated banks within the province and

shall not be withdrawn or removed without the order of the judge, except for the payment of dividends and other charges incidental to the winding up of the estate. Any assignee, or other person acting in his stead, who violates the provisions of this section shall be liable to a fine of $500. One-half of the said fine shall go to the person suing therefor, the other half shall belong to the estate of the assignor.

Assignee's Remuneration.—The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose, after the first dividend issued has been prepared, or by the inspector, in case of the creditors failing to provide therefor subject to the review of the county court, or the Judge thereof. In case the remuneration of the assignee has not been fixed under the previous sub-section before the final dividends, the assignee may insert in the final dividend sheet and retain as his remuneration a sum not exceeding 5 per cent. of the cash receipts.

Accounts.—It is the duty of an assignee to at all times have his accounts ready, to afford all reasonable facilities for their inspection and examination and to give full information when required, and if the creditor lives at a distance he should give this information by letter and should also, at the creditor's expense, furnish copies of any accounts that may be asked for.

Creditor's Proof of Claim.—Every creditor who holds security for his claim shall be required to value it. If it is in the form of negotiable paper, which is not due, the present value of the paper will represent his claim.

A creditor should, immediately upon receiving notice of the assignment, furnish satisfactory proofs of his claim. If he fails to do so within a reasonable time, he may be barred from ranking as a creditor on the estate.

How Creditors May Vote.—At any meeting of creditors, the creditors may vote in person or by proxy, authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature of it. This affidavit may be made before any judge, justice of the peace or notary public.

The votes of creditors shall be calculated as follows:

For every claim of over

$100	and not exceeding	$	200	1 vote.
200	"	"	500	2 votes.
500	"	"	1,000	3 votes.

Every additional $1,000, or fraction thereof, 1 vote.

In case of a tie, the assignee appointed by the creditors, or if none has been appointed, the judge, shall have a casting vote.

Priority of Claims.—As soon as a person is declared insolvent, the first thing to be paid is taxes; second, rent; third, chattel mortgages; fourth, wages and salaries; fifth, the claims of the creditors.

As to the priority of creditors to the effects of a partnership firm, the partnership creditors come first for all partnership effects and individual creditors for all individual property; after this, the remainder is ratably divided.

Rent.—The preferential claim for rent is restricted to the arrears of rent due during the period of one year previous to the assignment and for three months following the execution of such assignment and as much longer as the assignee shall retain possession of the premises. The landlord's right to preferential payment depends upon the existence of distrainable effects. If there is nothing upon which a distress can be levied, the landlord ranks only as an ordinary creditor.

Wages.—Preference is given to wage earners for three months' back wages; in excess of that, they have to take the same percentage as other creditors.

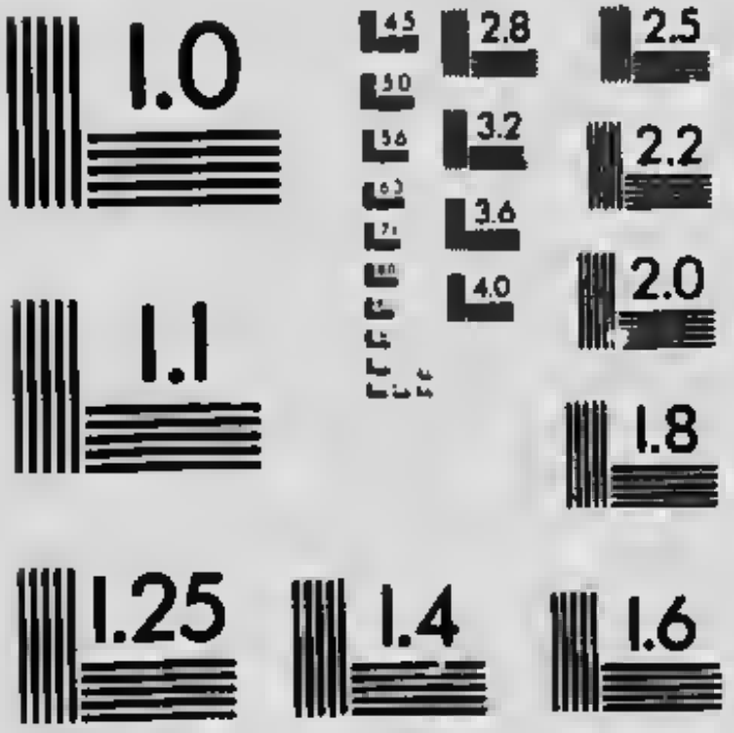
Fraudulent Preferences.—A preference of any kind over the other creditors of an insolvent debtor, given within sixty days previous to the time he makes an assignment, the creditors can set aside as an unjust preference, whether the same be made voluntarily or under pressure.

A chattel mortgage given within sixty days of insolvency is considered a fraudulent preference and is therefore rendered null and void.

Payments of Dividends.—As soon as a dividend sheet is prepared, notice shall be sent to the creditors showing all moneys received and disbursed, with balance on hand; and after the expir-

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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ation of eight days after the mailing of such notice, dividends on all claims not objected to within that period shall he paid. As large a dividend as can with safety be paid shall be paid within twelve months from date of assignment and earlier if required hy the inspectors, and thereafter a further dividend shall be paid every six months and more frequently if required hy the inspectors until the estate is wound up and disposed of. In the ahsence of special difficulties the estate should he wound up within a year. When the dividends do not pay the claim in full, the creditor may sue the debtor for the halance.

Composition Agreements.—An insolvent may, with the consent of his creditors, make a composition deed with them at a percentage upon the dollar and get a release of the balance of the claims, or an extension of time for payment.

In arranging a composition the most important point to be borne in mind is that all creditors must be dealt with on an equality and that any advantage or bonus to any creditor to induce him to assent to the agreement will make it void.

This doctrine is very far-reaching. Any promise made by the debtor or any person on his behalf to pay a creditor more than each of the others cannot be enforced.

CHAPTER XIX.

COLLECTION OF DEBTS

Jurisdiction of Different Courts.—In Ontario proceedings for the recovery of debts can he conducted with great facility. In all cases in the High Court and County Court, actions can he commenced and carried on there, and execution can thereupon issue to any Sheriff in the Province. There are three courts having jurisdiction in such cases, the High Court, the County Court and the Division Court. The jurisdiction of the Division Court is limited to cases where the debt is not over $100, except where it is ascertained by the signature of the defendant, as in the case of an accepted draft or a promissory note, in which case the jurisdiction would be increased to $200; the jurisdiction of the County Court is similarly limited to $200 and $400, and actions for larger demands must be brought in

the High Court. It will be found much more satisfactory to take proceedings in the High Court where that can be done, as in that case the plaintiff is enabled to recover from his debtor the amount of his solicitor's charges as well as the mere disbursements. In the Division Court the jurisdiction is to some extent limited to the residence of the defendant, but if the claim be over $100 and payable by the contract of the parties at a particular place, action may be brought in the court held for the Division in which the place of payment is situated, and the defendant cannot then have it removed to his place of residence or to any other Court without giving notice of his intention to object to the jurisdiction, and showing a *bona fide* defence to the action, within eight days. It should be noted that in case an assignee disputes a creditor's claim to be entitled to recover on an estate, the action for a declaration of the right to rank must be brought in the High Court, as it is an action for equitable relief. In very few cases where the claim is a mere money demand is it found necessary to go down to trial, provided the writ of summons issued be properly endorsed, as the practice gives great facility for obtaining speedy judgment in case of dispute, on serving notice of a motion for that purpose and proving the claim by affidavits; and in case the defendant files an affidavit contradicting that of the plaintiff, the motion may be enlarged for the purpose of cross-examining him upon his affidavit, and the plaintiff may then subsequently move for judgment upon the admissions obtained on such cross-examination.

Enforcing Judgment.—When judgment is obtained, it may be enforced by issuing execution against the goods and lands of the judgment debtor, and, if thought advisable, the creditor may examine the judgment debtor upon oath as to the means which he had at the time of contracting the debt, as to his subsequent disposition of them, and as to what means he now has to enable him to pay the same. Since the recent Statute relating to executions, by which it is provided that they shall remain in force for three years without the expense of renewing them, it is often satisfactory, in view of the small expense of obtaining judgment, to take judgment for the purpose of issuing the execution, and keep it in the Sheriff's hands, so that in case it is at any subsequent time discovered that the defendant is possessed of property which might not have been known to the judgment creditor at the time he obtained his judgment, it may be seized without delay. It often happens that within a few years after a judgment has been obtained the judgment debtor will be found to

have gone into business, thinking that his creditors have abandoned all intention of proceeding further against him, and the creditor who then has an execution can collect his debt. In case the creditor's claim amounts to $100 or more, and the debtor can be shown to be about to leave the Province with intent to defraud his creditors, he may be arrested as an absconding debtor.

Appropriation of Payments—Appropriation of payments may be defined as the application by a debtor or creditor to one of several debts of a sum of money paid by the debtor on account of his indebtedness. The general rule of law is that the party who pays money has a right to apply that payment as he thinks fit.

A debtor may owe a creditor various sums of money for debts contracted at different dates and which may be represented either by mortgage, bond, bill of exchange or open debt. The debtor has the right in making a payment to direct that the payment he makes shall be applied in payment or in part payment, as the case may be, of any of such debts, and his direction or application of the payment prevents the creditor from applying it on any debt other than the one specified by the debtor.

This direction or application must be made either before or at the time of payment and may be either oral or in writing, as by letter enclosing the payment. If the debtor does not specify the debt on which he wishes the payment to be credited, the creditor may then exercise his right of applying the payment as he desires to any of the different debts owing to him. The creditor's right may be exercised by him at any time, but once having credited it to a certain debt and the debtor having been notified of such credit having been made, the creditor cannot afterwards apply it to a different account. The creditor may exercise his right in applying the payment to a debt that has been barred by the Statute of Limitations.

In case neither the debtor nor the creditor apply the payment to a particular debt the law will apply the payment to the discharge of the debt of earliest date standing unpaid at the date of the payment.

CHAPTER XX.

SALES OF PERSONAL PROPERTY.

Property is the produce of labor; it is anything of value which is susceptible of ownership. The word property, however, is used in two different senses; to indicate

1. The thing itself which a person owns, and

2. The right or interest which a person has in a thing to the exclusion of others; as for example, a farm is said to be property, and the right one has in the farm is said to be his property in it. The latter is the legal technical definition of the term, while the former is the popular understanding of it. Property is divided into two general classes, personal and real.

Personal and Real Property.—To give a perfectly logical definition of personal property so as to exactly distinguish between it and real property seems to be difficult. Personal property is generally said to consist of such things as are movable from place to place, as merchandise, live stock, furniture, etc., whereas real property consists of those things that are fixed and immovable, such as lands, houses, etc. Houses, however, are frequently movable, but are nevertheless generally real property. A house may be built merely as a temporary building with the intention of moving it, or any house may be sold by itself and taken off the land on which it is built. In either of these cases it is personal property. Under the common law all vegetable growths such as trees, grass and growing crops, while attached to the soil were considered real property, but the moment they are severed from the soil they become personal property. Crops growing from seed sown or planted may be bought and sold or mortgaged as personal property.

Sales.—A sale of personal property may be regarded in two ways:

1. It may be regarded as the transfer of the title in the thing sold for a price in money; or

2. It may be considered as a contract or agreement for the transfer of the title to the thing sold for a price in money. The consideration on which the agreement is made must be money, since if it is something else than money the transfer is a barter and not a

sale. Sales are divided into two general classes, executory and executed.

Executory Sales are those in which the title to the property has not been transferred from the seller to the buyer; there is simply an agreement to make a transfer of it at some future time. It is because of the importance of this division into executory and executed sales that we define a sale as an agreement to transfer the title rather than the transfer itself. If a sale is the transfer of the title, then there can be no such thing as an executory sale. Executory sales are usually conditional, and consist mainly of

(a) Sales on trial.

(b) Sales by sample or description.

(c) Sales of goods in transit.

In a conditional sale the title of the property does not pass to the purchaser until the conditions are fulfilled.

Executed Sales.—In executed sales there must be a delivery of the property to the purchaser, which may be:

1. An Actual Delivery, where the property is portable and can be easily handled;

2. A Constructive Delivery, where the article cannot be handled and something is handed to the purchaser that takes the place of the goods such as:

(a) A Bill of Lading to represent goods in the hands of a railway or shipping company;

(b) A Warehouse Receipt representing goods stored;

(c) The Key of the Storehouse where the goods are kept.

In case of delivery by bill of lading or warehouse receipt an assignment should be endorsed on it.

Necessary Conditions.—The necessary conditions or elements of a sale of personal property are as follows:

1. There must be parties competent to contract.

2. These parties must mutually assent to the contract in the same sense.

3. There must be a consideration or price.

4. There must be subject matter or thing sold.

5. The sale must conform to the Statute of Frauds.

Parties.—The parties to a contract of sale are the buyer and the seller, or as they are frequently called, the vendor and the vendee. These parties must be competent to make a binding contract. The rule as to the competency of parties is the same in sales of personal property as in any other contract.

Mutual Assent.—This condition is the same as the corresponding condition in an ordinary contract. The parties must assent to the terms of the sale with the same understanding of them. This assent may, of course, be given orally or in writing, and may be either express or implied. In order to make a contract of sale, however, there must be a definite offer to sell on the part of one party, and a definite acceptance of the offer on the part of another. Mere negotiations which do not constitute a distinct offer and acceptance will not be considered a sale.

Price and Payment.—This corresponds to the consideration in an ordinary contract, and differs from it only in that it must be money. It may either be paid at the time of the sale or promised to be paid at some future time. The price may be either express or implied. If the parties distinctly agree upon the amount to be paid, there is an express price. Very frequently, however, it happens that no price is fixed upon at the time of the sale and no express promise to pay is mentioned. Where this is the case, if there is anything from which the price intended can be determined, the law will imply a promise to pay it; for example where the subject matter of the sale consists of articles of merchandise, the law will imply the price to be the reasonable market value of the articles on the day of sale. If there is nothing from which the price intended can be determined there will be no sale.

Subject Matter.—The thing sold, or the subject matter must be legal and in actual or potential existence at the time of sale. There cannot be a valid contract of sale where the subject matter has ceased to exist, either at the time the contract is made or at the time when it is to be executed. If a horse sold be dead, or merchandise sold be destroyed by fire or otherwise when the contract is made, or when it is to be executed, there is no sale, even though the price be paid. But where a thing is in potential existence, that is, may come into existence in the future, as, for example, the wool to grow on a flock of sheep, or a growing crop, a sale may be made of it.

Legality.—The subject matter of the contract must be legal in order to make a binding contract of sale. The legality of the subject matter depends on the same rules here as in any other contract; it is legal unless the law declares it to be illegal, and a sale is always presumed to be legal until its illegality is shown. At common law the sale of articles having an immoral effect, or to be used for an immoral purpose, such as obscene publications, gambling etc., are illegal.

Effect of Illegality.—An illegal sale is absolutely void, hence there can be no ratification of it. If a sale is made of several articles for one price, and part of them legal and the others illegal, the whole contract is tainted with illegality, and no money can be recovered for any of the articles. If an illegal sale has been executed by either or both parties, the law will not relieve either party from its effect. If the subject matter of the sale has not been delivered, the seller may refuse to deliver. This is because of the general rule that in all illegal transactions the law leaves the parties just where it finds them.

Statute of Frauds. Without a statutory provision to that effect a contract of sale of personal property need not be in writing, in order to be valid; but, as we have seen, the Statute of Frauds provides that no contract for the sale of goods, wares or merchandise for the price of $40 or upwards is binding, unless

1. The buyer shall accept part of the goods so sold and actually receive the same, or

2. Pay part of the price at the time the agreement is made, or

3. The agreement be made in writing and signed by the parties to be charged. Wherever this statute has been adopted a sale of personal property amounting to more than $40, which does not conform to one of these conditions, is not binding.

Bill of Sale.—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 recorded.

In important sales it is customary to execute a formal bill of sale like the following, in order that the buyer may have something showing his title to the property, and containing a written guarantee from the seller that he has a good title:

BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS: That I, HENRY STILL, of the city of Ottawa and County of Carleton, Province of Ontario, party of the first part, in consideration of the sum of One Hundred Dollars to me in hand paid by THOS. BOWS, of the city of Ottawa and County of Carleton, party of the second part, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents grant and convey unto the said party of the second part, all of the following described personal property, to wit:

(Then follows a list of the articles of property.)

TO HAVE AND TO HOLD the same unto the said party of the second part and his legal representatives forever.

The said party of the first part hereby covenants and agrees to and with the said party of the second part that he is possessed of the full right and title to the property hereby conveyed and that he will warrant and defend the same in the quiet and peaceful possession of the said party of the second part against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, A.D. 1902.

HENRY STILL.

Stoppage *in Transitu*—Goods or any personal property may be stopped in transit by the seller before there has been a delivery to the buyer. The former has the right to regain possession of goods that have been forwarded to the buyer on credit, and to hold possession of them until the debt has been paid. This right may be exercised by the seller provided the following conditions exist:

(a) The price for which the goods were sold must be wholly or partly unpaid.

(b) They must be in the hands of a third person in transit.

(c) The buyer must be insolvent.

Indebtedness.—The sole use of the right of stoppage in transit is to enforce payment, consequently payment for goods necessarily prevents its exercise; but the mere taking of a note in payment does not affect the right, unless, by agreement between the parties, the note is accepted as absolute payment. Although the price may be partially paid, the goods may be stopped in protection of the part which remains unpaid. The indebtedness must be on the particular goods which are stopped. Any general indebtedness of the seller to the buyer will not allow the stoppage of goods which are paid for.

In Transit. The second condition is that the goods must be in transit from the seller to the buyer. This of course implies that they have left the possession of the seller and have not yet come into the possession of the buyer, so they are necessarily in the possession of a third person for the purpose of being transported to the buyer.

Insolvency of the Buyer. This must have occurred after the sale, or at least the seller must have discovered it subsequently. If the insolvency occurred and is known to the seller before he ships the goods he cannot exercise the right of stoppage in transit.

Exercise of the Right. It is not necessary for the seller to take actual possession of the thing sold when in the hands of a carrier or middleman. It is sufficient for him to give notice to the common carrier to hold the goods subject to his order. The notice should describe the goods, state that the right of stoppage in transit exists, and order the carrier not to deliver them to the consignee.

Notice of Stoppage.—This may be sent by mail, but in that case he may have to prove that it was actually received, and he would find it difficult to do so, consequently it is best to have it delivered personally to the express agent. If the company delivers the case of goods after receiving this notice it is liable for whatever loss the shipper may sustain by such unauthorized delivery.

NOTICE OF STOPPAGE IN TRANSITU.

London, Ont., July 10, 1902.

To the Canadian Express Company, London, Ont.:

GENTLEMEN,—I delivered to you yesterday one case of goods consigned to David Blain & Co., Collingwood, Ont. Circumstances are such that I have the right of stoppage in transit. Do not, therefore, deliver the case of goods, but hold the same subject to my order.

Yours respectfully,

J. W. WESTERVELT.

CHAPTER XXI.

CHATTEL MORTGAGES.

A Chattel Mortgage is a lien on personal property. It is, in reality, a deed or conveyance of personal property as security for a debt, or for money borrowed. It must be registered at the County Clerk's office within five days after execution. It may be written by any person, but must be signed and witnessed and sworn to before a commissioner of the High Court or a notary public or magistrate.

It must contain a full description of the goods and chattels, so that they may be readily distinguished; also explicit information as to where they are located and in whose possession they are at the time.

Besides the affidavit of the witness, it must also contain an affidavit of the mortgagee, or his duly authorized agent, that the mortgagor is justly indebted to him for that much money due, or for that much money paid, and that it was not done to protect the goods of the mortgagor from his creditors.

This instrument, in order to hold the goods against other creditors or subsequent purchasers in good faith, must be registered within five days.

If a mortgage be taken merely as security for a debt previously contracted, it will not be binding against other creditors.

If money is paid it will hold against other creditors, unless done on the eve of bankruptcy, when it would be set aside. Action must be taken within sixty days after date of mortgage.

If all or a portion of the goods covered by a chattel mortgage should be removed to another county, a certified copy of the mortgage must be filed with the County Court clerk where they are removed to within sixty days, otherwise the goods are liable to seizure and sale under execution, and in such case the mortgagee has no recourse against subsequent purchasers and mortgagees for value.

A Chattel Mortgage holds the claim against the debtor for twenty years, because it is an instrument under seal.

The Statute of Limitations enacts that all debts secured by documents under seal, have twenty years to run before becoming outlawed.

It will, however, hold the goods against other creditors for only one year, unless it is renewed within the year. To hold the goods against other creditors for a longer period than one year it must be renewed thirty days before the year expires, and so on from year to year as long as it runs. For this reason most chattel mortgages are drawn for eleven months instead of one year.

Caution to Debtor.—All chattel mortgages have not the same wording in the printed blanks commonly used, and the debtor should be certain that the instrument he signs does not give the creditor the right to foreclose the mortgage at any time he pleases upon some fancied breach of the covenant.

For an illegal seizure damages may be recovered, but the wording of some of the mortgages gives the creditor the right to seize before the debt is due, and to do so without giving any notice to that effect.

Assignment.—A chattel mortgage is not a negotiable instrument, but it may be transferred by assignment. The assignment must be filed also at the County Clerk's office where the mortgage is registered.

Discharge.—When a chattel mortgage has been paid a discharge should be filed also at the office of the County Clerk. This is a document describing the chattel mortgage and stating that the debt has been paid. Many persons think that if they have returned to them the copy that the mortgagee held it is sufficient, entirely forgetting that the duplicate is still on file at the clerk's office. The discharge should be there also, showing to the public that the debt has been paid.

FORM OF CHATTEL MORTGAGE

THIS INDENTURE, made (in duplicate) this 2nd day of July, 1902, between Adam Smith, of the City of Toronto, the Mortgagor, and John Huston, of the same city, in the County of York, Province of Ontario, the Mortgagee;

WITNESSETH, that the mortgagor in consideration of one hundred dollars of lawful money of Canada, to him paid by the said mortgagee, at or before the delivery hereof (the receipt whereof is hereby acknowledged), doth hereby grant, bargain, sell and assign to the said mortgagee, his executors, administrators and assigns, all and singular the following goods and chattels, being one bay mare, 4 years old, one wagon, one set of double harness, and all my household furniture of every des-

cription in my house on St. George Street, in the said city of Toronto; TO HAVE AND TO HOLD the said goods and chattels unto the said mortgagee, his executors, administrators and assigns to his and their only use forever; Provided always that if the mortgagor, his executors or administrators shall pay or cause to be paid to the said mortgagee, his executors, administrators or assigns, one hundred dollars in one year from the date hereof, with interest thereon at eight per cent. per annum, then these presents and everything herein contained shall cease, determine and become utterly void to every intent and purpose. And the said mortgagor for himself, his executors and administrators, shall and will warrant and forever defend by these presents the said goods and chattels unto the said mortgagee, his executors, administrators and assigns.

And the said mortgagor doth hereby for himself, his executors and administrators, covenant with the said mortgagee, his executors, administrators and assigns, that he or they will pay the money hereby secured in the manner above stated, and also that in case default shall be made in payment as aforesaid or any part thereof, or in case the mortgagor shall attempt to sell any part of the said goods or chattels, or to remove the same out of the County of York, or suffer the same to be seized or taken in execution, then it may be lawful for the said mortgagee, his executors, administrators and assigns, his or their servants or agents, at any time during the day to enter into any lands or houses where the said goods may be, and for such person to break or force open any doors, bolts or fastenings, fences or enclosures, for the purpose of taking possession of and removing said goods, and may thereafter sell all or any part thereof at public auction or private sale, and out of the proceeds of such sale to pay such sums of money as may be due him hereunder, and all lawful expenses incurred thereby in consequence of such default as above mentioned, and to pay over to said mortgagor any surplus remaining after such sale and payment; or in case of deficiency, then that the said mortgagor, his executors or administrators will pay the same to the said mortgagee, his executors, administrators or assigns. Provided always that it shall not be incumbent to make such sale as aforesaid, but the said mortgagee, his executors, administrators or assigns, may peaceably hold, use and possess said goods and chattels without the hindrance of any person whomsoever.

IN WITNESS WHEREOF, the parties hereto have hereunto placed their hands and seals.

Sworn before me at the City of Toronto, in the County of York, this 2nd day of July, 1902.

D'ARCY GRIERSON, A Commissioner, &c.

ADAM SMITH (SEAL)

JOHN HUSTON (SEAL)

CHAPTER XXII.

REAL ESTATE MORTGAGES.

A Real Estate Mortgage 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. A mortgage is binding on the property as soon as it is executed, but the first mortgage registered is the one that has first claim. Of three mortgages that might be given on the same property the same week or day, the first one that is recorded is first mortgage, no difference whether it was written first or last.

A Precaution.—Before paying over the money there should be an abstract of title procured; then sign and register the mortgage and have the abstract continued so as to include the mortgage, thus making certain that nothing has been entered in the meantime. At the same time that this is being done the Sheriff's office should be searched to see if there are any judgments, and the Treasurer's office to see if taxes are all paid. With these precautions a safe title would be secured.

There are various clauses in a mortgage that should be noticed. One provides that if interest is not paid it may be compounded; another that if taxes are not paid the lender may pay them and charge the same rate of interest that the mortgage draws; another one provides that if the borrower does not keep the buildings insured for a certain specified sum the lender may insure them and charge the same rate of interest the mortgage draws.

Transfer.—Mortgages are not negotiable by endorsement, 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.

Foreclosure is the name given to the action of the mortgagee when, if the debtor fails to meet the payments, the lender takes possession and sells to satisfy the claim.

Discharge of Mortgage.—When a mortgage has been paid the lender is required to give the borrower a discharge, which is a statutory form of receipt. When this has been filled out and signed in the presence of a witness, duly sworn, it is registered by the debtor or borrower.

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 recover on the other property until his full claim has been satisfied. If the debtor has no other property then, but should acquire it afterwards, the mortgagee may proceed against it at any time within ten years after the maturity of the mortgage.

Prepayment.—Mortgages may be prepaid five years from date, no matter for what length of time they may have been drawn, by simply paying three months advance interest. The mortgagee cannot collect any interest thereafter.

Mortgages on real estate outlaw in ten years after maturity or last payment of either principal or interest, unless re-acknowledged.

FORM OF MORTGAGE.

THIS INDENTURE, made in duplicate, the eighth day of October, one thousand nine hundred and two, in pursuance of the Act respecting short forms of mortgages,

BETWEEN Christopher Black, of the Town of Penetanguishene, in the Province of Ontario, lumberman, an unmarried man, hereinafter called "The Mortgagor," of the first part, and William Dalton of the City of Toronto, in the Province of Ontario, banker; hereinafter called "The Mortgagee," of the second part;

WHEREAS the party of the first part has contracted to purchase from the party of the second part the land hereinafter described, and has agreed to give this mortgage as security for two hundred and fifty dollars, the unpaid balance of the purchase money,

NOW THIS INDENTURE WITNESSETH that in consideration of two hundred and fifty dollars, the unpaid balance of the purchase money, and of one dollar 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 and assigns forever, All and singular that certain parcel or tract of land and premises situate, lying and being in the Township of Tiny, in the County of Simcoe, in the said Province of

Ontario, being composed of the West half of lot number One Hundred and Thirteen on the first concession in the said Township of Tiny, containing, by admeasurement, one hundred acres, be the same more or less.

TO HAVE AND TO HOLD the same, with the appurtenances, unto and to the use of the said mortgagee, his heirs and assigns forever, subject to the proviso for redemption thereof hereinafter contained.

PROVIDED this mortgage to be void on payment of two hundred and fifty dollars in gold, with interest at six per cent., as follows:—the principal sum to be repaid by two equal instalments, payable on the eighth day of October, 1903, and the eighth day of October, 1904, together with interest at the rate aforesaid, payable with each instalment of principal as shall from time to time remain unpaid, 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 above proviso; that the mortgagor hath a good title, in fee simple, to the said lands; and that he hath 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 encumbrance; and that the said mortgagor will execute such further assurances of the said lands as may be requisite.

PROVIDED that the mortgagee, on default of payment for one month, may enter on and lease or sell the said lands without notice.

Provided that the mortgagee may distrain for arrears of interest.

PROVIDED THAT, in default of the payment of any instalment of the principal or the interest hereby secured, the whole principal hereby secured remaining unpaid, shall become payable, but the mortgagee may waive his right to call in the principal, and shall not therefore be debarred from asserting and exercising his right to call in the principal upon the happening of any future default, provided that, until default or payment, the mortgagor shall have quiet possession of said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of JOHN SMITH. } CHRISTOPHER BLACK. {SEAL}

WILLIAM DALTON. {SEAL}

ETC., ETC., ETC.

RECEIVED, on the day of the date of the foregoing indenture, the mortgage money herein mentioned, to be advanced to me.

CHRISTOPHER BLACK.

County of Simcoe, } I, John Smith, of the Town of Penetanguishene, in
TO WIT, } the County of Simcoe, 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 Christopher Black, the party thereto.

2. That the said instrument and duplicate were executed at Penetanguishene.

3. That I know the said party.

4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me, at Penetanguishene, in the County of Simcoe, this eighth day of October, A.D. 1902.

JOHN SMITH.

D'ARCY GRIERSON,
A Commissioner for taking affidavits in H.C.J.

CHAPTER XXIII.

MASTER AND SERVANT.

The Relation between Master and Servant is in many respects the same as that between principal and agent, so that what has been said under the head of agency will in nearly every particular apply here.

The master is the employer and the servant the employee. In order to constitute a contract of hiring and service there must be either an expressed 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.

Contract of Service and Hire. A contract of service and hire need not necessarily be in writing unless the contract is for a longer period than one year.

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. Where it is not specially agreed to the contrary, wages would be payable at the end of the time.

Duties 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. His master pays for his skill as well as for his time, also his diligent forethought in planning or executing his work. He is expected to obey all reasonable orders from the master, to be punctual and courteous. A flagrant violation of the agreement in any of these particulars renders him liable for damages or for discharge as the case may be.

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 by the day, week, month, or year, when either party wishes to terminate the contract the other party is entitled to notice; if paid by the day, a day's notice; if paid by the week, a week's notice; if paid by the month, a month's notice; if paid by the year, three months' notice.

The notice need not be in writing, but where the time is longer than a day it would be much better to give a written notice.

Discharge without Notice.—The employee is presumed 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 damages 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.

Persons employed on a weekly or monthly service may quit by giving a week's or a month's notice, or be discharged by payment of a week's or a month's wages.

Cause for Leaving.—The master's commands are presumed 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.

If the machine, 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 without giving any notice of its danger he cannot claim damages for an accident.

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.

Proceedings in Case of Disagreement.—If any disagreement exists between master and servant, proceedings must be taken before a Justice of the Peace within one month after the engagement has ceased.

If the Justice receives the evidence of the plaintiff he must also receive that of the defendant.

When wages are not paid by the master to the servant, the servant may within one month after the engagement ceased, or within one month after the last instalment of wages was due, go before a Justice for a hearing of the case, and if furnishing a sufficient proof of the cause of his complaint, secure a discharge and obtain an order for payment of wages up to the amount of $40 and costs.

Either party may appeal from the magistrate's decision to the Division Court by giving notice of appeal to the other party within four days after the decision, and at least eight days before the holding of the Division Court; also within the four days to enter into a bond with the opposite party with two sureties, approved by the Clerk of the Court, for $100, as a guarantee to appear and to cover the costs.

Where masters and workmen establish a Board for the settlement of their difficulties that may arise, it has by statute all the powers that arbitrators possess, and its decisions are binding.

CONTRACT FOR HIRE OF LABOR OR SERVICE.

THIS AGREEMENT made this day of 19 , between the party of the first part and the party of the second part

WITNESSETH, That the said party of the first part agrees faithfully and diligently to work for said the party

of the second part, on his farm in the county of Province of Ontario, (or as clerk or salesman in his store) for the period of from and after the day of 19 , for the sum of per month.

In consideration of which services so to be performed the said party of the second part, agrees to pay the said party of the first part, the sum of per month, payable as follows: dollars on the day of and dollars on the first day of each successive month following, until the whole labor shall be performed; and when said labor has been fully performed, then such balance as has not been already paid the said party of the first part.

IN WITNESS whereof the said parties have hereunto set their hand this day of 19 .

Signatures :

CHAPTER XXIV.

THE LAW OF REAL PROPERTY.

Antiquity of Real Property Law.—The law relating to the transfer of personal property differs materially from the law relating to the transfer of real property. In the great majority of instances the law which governs transactions in real estate is the law that has governed them for hundreds of years. Of course there are many statutes of a modern date which have materially aided in simplifying titles and in rendering the transactions between buyer and seller and mortgagor and mortgagee easier and less costly. Notwithstanding all this, it is impossible to gain a thorough knowledge of real estate law without having recourse to the ancient common law doctrines and the statutes of early law history.

The Statute of Frauds.—For example, in the purchase of real property, the sale must be by some written document or it is not, in the absence of part performance, enforcible. This effect is due to the operation of the Statute of Frauds which provides in the 4th Sec. that no action shall be brought upon any agreement for the sale of lands, or any interest in lands, unless the agreement is in writing and signed by the party to be charged. Thus the necessity for and the effect of the initiatory step in the purchase of property (that is, the agree-

ment of purchase) is derived from, and is settled by reference to, a statute passed in the reign of Charles II, as confirmed by the many decisions which have been given upon its terms.

Signature to Contract.—It will be noticed that by the statute the agreement in writing is to be signed by the party to be charged. If, therefore, the agreement is not signed by both parties, it is enforcible or not, at the option of the party who has not signed it. A verbal agreement for the sale of lands is not enforcible by either party. A written agreement for the sale of lands is only enforcible against the parties who have signed it.

Part Performance.—But this rule is subject to an exception. Courts of Equity have decided that where there has been a part performance of the verbal contract it would be inequitable to allow the other party to deny the contract, and he will therefore be held bound by it though it may be oral or by writing not signed by him. For example, if on a verbal contract for the sale of land the purchaser enters into possession, this will be considered such a part performance as to take the case out of the statute, since the person taking possession could only have taken possession *(a)* as a trespasser or *(b)* under some contract, and as the law will not presume that he is a trespasser, it follows that the possession indicates a contract, and the terms of the contract may be shown by evidence, the fact of the existence of a contract having been established by the act of the parties. Such indefinite acts however as the payment of the whole or part of the purchase money will not amount to a part performance, and therefore the payment of money to bind the bargain is inoperative so far as sales of real property are concerned, though useful in respect of sales of personal property falling within the 17th Sec. of the Statute of Frauds.

Part Payment. It is a matter of common supposition that part payment of the price paid on the purchase of land will bind the bargain. This supposition is wholly erroneous and nothing will render such a bargain binding but a written agreement or part performance of a verbal agreement. Of course, many verbal contracts are carried out by the parties without any objection, but if objection is made to the completion of a verbal contract, or, what is the same thing, a written contract not signed by the party who objects, the law will not enforce the contract which undoubtedly may exist, because such allowance is forbidden by the 4th Sec. of the Statute of Frauds.

Examination of Title. There is no presumption in favor of a purchaser that his vendor had a good title to the lands conveyed, and it is therefore necessary that a search should be made in order to ascertain what title the vendor has to the land he proposes to convey.

Under the Lands Titles Act.—If the land has been brought under the provisions of the Land Titles Act, which is similar to what is popularly known as the Torrens system of transfer, the search will be confined to entries made since the vendor purchased. That is to say, under the Land Titles Act a certificate of title given to the owner of the land is conclusive as to his title at that time. No search is necessary as to the state of the title before the certificate, the certificate of the Master, or Local Master, of Titles under the Act being conclusive as to the facts alleged in it. It is then only necessary to search for encumbrances or other matters registered against the land since the certificate was given.

In Other Cases.—But in titles to land not affected by this Act it is necessary to make a search either from the time of the grant from the Crown or from some later period, according to the circumstances of the case and the degree of caution exercised in the matter, in order to see (1) that the vendor is the owner of the land, and (2) that there are no encumbrances existing against the property.

Searches to be Made.—It would be impossible here to indicate the nature of the search which has to be made, the difficulties which have to be contended with, or the method of making the necessary requisitions as between vendor and purchaser. These matters must be left to technical works upon the subject. It may be sufficient here to point out that when land is purchased a careful solicitor will have to make the following searches:

1. In the Abstract Index in the Registry office, for entries affecting the lot in question.

2. In the General Register, to see that there are no general registrations affecting the lands of the vendor or his predecessors (for at least ten years) in title.

3. A search in the Sheriff's office in order to see that there have been no sales of land under execution within the last six months, and that there are no executions in the Sheriff's hands affecting the lands of the vendor or his predecessors (within the last ten years) in title.

The searches in the General Registry and in the Sheriff's office are only required as to previous owners who have held the land within the last ten years.

4. A search will be made in the office of the Treasurer of the city or county in which the lands are situated to ascertain

(a) That there has been no sale for taxes within the past two years, and

(b) That there are no arrears of taxes against the property.

5. A search in the office of the Clerk of the Municipality as to local improvements, drainage tax, or other burdens upon the land outside the regular taxes.

Conveyance.—If the title has been examined and found satisfactory the purchase money can be paid over in return for a conveyance of the property. (It might be well to note here that at the time the conveyance is made and the purchase money paid the insurance policy, if any, should be also transferred and the consent of the insurance company obtained to the transfer). The conveyance is a document under seal by which the land is transferred from the vendor to the purchaser.

Form of Conveyance.—This conveyance may be in any form of words so long as the intention of the parties is clear as to the passing of the property to the purchaser, but as the legislature has appointed a form of words to be used for the purpose of conveyance, and as the form provided has an extended statutory meaning, it is the usual custom to follow the statutory form, not only in order that the conveyances of different parties may be more easily read and perused, but also because the form which the legislature has adopted and authorized conveys with the greatest certainty the land and all the incidental matters which go to make up the property purchased by the vendee, such as houses and outbuildings and rights of way and water and other easements. These statutory forms will be found set out in R. S. O., 1897, Chap. 124.

First will be found the date and the statement that the conveyance is made under the Act, and then will follow the names and descriptions of the parties. The conveyance, of course, is made by the vendor to the purchaser, and if the vendor is married it is necessary that his wife should be made a party to the conveyance and should execute it for the purpose of barring her dower in the land.

If the property is owned by a married women it is customary to make her husband a joint grantor with herself because, although by the various statutes relating to the property of married women, it is not in all cases necessary that the husband should join, yet because there may be some cases in which the wife alone could not convey, it is usually a matter of prudence to join the husband in all cases. If there are any parties having any interest in the land they should be joined in order that they may grant their interest to the purchaser.

After the description of the parties, and after the recitals (if any) are made, comes the statement of the consideration, (that is, the amount of the purchase money), and then the operative words, as they are called, which denote the purpose of the document with regard to the estate conveyed. These words indicate that the vendor (or grantor as he is otherwise called) grants to the purchaser the following lands "in fee simple." Formerly the grant was of the following lands to the purchaser "and his heirs and assigns forever," these words being the words technically used to describe the quality of the estate in fee simple, the highest estate known to the law, but the statutory form now is "grant to the purchaser in fee simple." Next follows a description of the land. This description not only states the number of the lot, whether farm or town or subdivision lot, as it would appear in the books of the Registry office, but if the land described is a portion only of the lot, it should set out some further description as "the north half of the lot," or "the south-west quarter of the lot." If the piece described does not constitute an aliquot part of the lot it is then customary to describe it by metes and bounds, that is by starting at a certain point, usually the corner of the lot or some point otherwise easily identified, and then describe the direction and length of the boundaries of the piece conveyed.

After the description of the parcels conveyed, it was customary to introduce a clause called the "habendum," which read as follows: "to have and to hold unto and to the use of the said party of the second part and his heirs and assigns, to and for his and their sole and only use forever, but subject, nevertheless, to the provisoes, conditions and stipulations contained in the original grant thereof from the crown." This habendum clause, however, has been omitted from the statutory form, and it is not necessary now to use it (except in special cases).

After the description on the statutory form (or after the habendum, if that is used) follow covenants setting forth the right of the

vendor to convey the land described, and for the estate limited, notwithstanding anything done by the vendor; and that the land is conveyed free from encumbrances; and that the vendor will execute any further assurances that may be necessary; and the grantor also releases all his claims in the land to the purchaser. These covenants, as at present used, only refer to the acts of the vendor and those claiming under him; they do not refer to the acts of previous owners.

So far as the acts of the vendor are concerned, and to the extent to which the vendor is financially responsible, these covenants contain a ready answer to any claims which may be set up by those who claim the land (as against the purchaser) by virtue of some act of the vendor, but it is not desirable to rely upon these covenants, since the remedy under these is personal only and the vendor may not be financially responsible. At all events, they are not to be taken as substitutes for a careful search (as above set out) in the Registry Office, and of the various conveyances and mortgages and other documents produced. The bar of dower follows the covenants and release.

Effect of Conveyance.—When the conveyance has been executed and delivered by the vendor, it vests in the purchaser the property described for the estate conveyed.

Registration is not necessary to the validity of the conveyance, which, as between the parties to it, is good though it is never registered. It is also good without registration as against an execution creditor of the vendor, but it is not good without registration as against subsequent purchasers or mortgagees of the land for value without notice. If the subsequent mortgagee or purchaser has notice of the prior conveyance, then of course he will take subject to it. It is not, of course, wise to allow a conveyance to remain unregistered, since it is liable to be defeated by subsequent documents, as shown above.

Mortgages on Real Estate have been fully considered in a separate chapter.

CHAPTER XXV.

WILLS AND EXECUTORS.

Who may make a Will. All persons of sound mind and memory, of lawful age, freely exercising their own will, may dispose of their property by will.

Lawful Age is 21 years, in both male and female.

All wills should be in writing on paper or parchment. No exact form of words is necessary to make a will good at law. The maker of a will if male, is called a testator; if female, testatrix.

Dying Intestate.—Any person who dies without having made a valid will is said to have died intestate. The property will then be distributed according to the laws of the Province in which it is situated by a person appointed by the Surrogate Court, called an Administrator. Though commonly used, a seal is not essential to a will. The last will annuls all former ones.

A Wife's Dower.—A wife cannot be deprived of her dower which is a life-interest in one third of her husband's real estate, by will. A devise or bequest may be made to a wife in lieu of dower, but it must be clearly so expressed or she may become entitled to both.

Subsequent marriage revokes all wills made while single.

The testator's property is primarily liable for the testator's debts and funeral expenses, which must be paid before any part of it can be distributed to legatees

A will is good, though written with a lead pencil.

Witnesses.—A Will must be signed in the presence of at least two witnesses who must sign in the presence of the testator and of each other. An executor is a competent witness.

Executors.—A person who is competent to make a will can appoint his own executors. If the persons so appointed are legally competent to transact business, the Surrogate Court will confirm the appointment. The persons so appointed are not obliged to serve.

It is not necessary that the witnesses should know the contents of the will. It is necessary that the testator acknowledges to them that it is his will, signs it in their presence, or acknowledges the signature already signed to be his, and requests them to sign as witnesses; they should sign as witnesses in the presence of the testator and of each other.

The testator should write his own name in full. If unable to do so, his hand should be guided by another, and his name written, or a mark made near his name.

The following is the usual form of signature when the testator signs by mark:

his
John X Smith.
mark.

The executors must first prove the will and have their appointment confirmed by the Surrogate Court of the County in which the testator resided at the time of his death.

Executors are allowed one year in which to collect the assets and pay the debts before the payment of legacies can be enforced, though it is always well to perform the duties expeditiously.

Executors must keep a strict account of all dealings with the estate, or they will be held personally responsible. A devise or bequest to a witness, or to the husband or wife of such witness is invalid.

An addition to an executed will is called a codicil.

The same essentials apply to a codicil as to a will.

Legacies to subscribing witnesses are generally declared void.

SHORT FORM OF WILL.

I, Andrew Peterson, of the town of Berlin, merchant, being of sound and disposing mind and memory, do make and publish this as my last will and testament, hereby revoking all former wills and testamentary dispositions heretofore at any time by me made.

I hereby appoint my brother, Wm. Peterson, and my son-in-law, John Graham, to be the executors of my will.

I hereby direct my said executors to pay all my just debts, funeral and testamentary expenses as soon as possible after my decease.

I hereby devise my house and premises known as No. 161 Spruce avenue, in the town of Berlin, to my wife, May Peterson, during the term of her natural life, and after her decease to my son, Robert Peterson, absolutely.

I devise and bequeath to my son, William Peterson, and my daughter May, the wife of John Graham, all the rest and residue of my real and personal estate in equal shares absolutely.

In witness whereof, I have hereto set my hand this 1st day of July, 1902.

ANDREW PETERSON.

Signed, executed, published and declared as and for his last will and testament by the said testator, A.B., in the presence of us witnesses present at the same time, who, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

WILLIAM BROWN.
THOMAS BLACK.

CHAPTER XXVI.

SUNDRY IMPORTANT TERMS.

Guaranty.—Guaranty is an agreement whereby one person becomes reponsible for the debt or default of another person. Sometimes the agreement is called guaranty and sometimes it is called suretyship.

The contract of guaranty or suretyship to be valid must be in writing, signed by the person who agrees to become responsible.

There is quite a difference between guaranty of payment and guaranty of collection. Guaranty of payment is an agreement by the surety, that if the amount is not paid when due, the surety will immediately pay it without any effort being made to collect from the principal. Guaranty of collection is an agreement by the surety that he will pay it after due legal proceedings have failed to collect it of the principal. A guaranty or surety for the debts, default or wrongful acts of another, is generally given in the form of a bond. The guarantors are called bondsmen, who are liable only to the extent stated in the bond. A person may endorse a note as a guaranty, or may sign with the maker as surety.

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, viz.: Two persons are at variance and likely to be drawn into court, but the one desires an amicable settlement and is willing to make any reasonable concession to effect it. He may therefore write these two words, "Without Prejudice," across the upper left hand corner of his letter, or in the body of the letter, and then make his proposition, whatever it may be. The effect of these words is, that if the other party should not accept the proposition or terms thus offered, and 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 prejudiced. A convenient form at the beginning of such a letter would be the following:

> DEAR SIR: Without prejudice I hereby make you the following proposition, etc.

Replevin.—A Replevin is a form of action brought to recover the possession of specific goods unlawfully taken by the defendant and belonging to the plaintiff, of which the latter has present right of possession. It is done by obtaining a Judge's order for a Writ of Replevin. In case where the claimant can show that the delay in writing for a Judge's order would materially prejudice his rights to such property, a Writ of Replevin may issue before a Judge's order or rule of the Court is obtained.

Before the Sheriff acts upon a Writ of Replevin the claimant is required to give a bond for treble the amount of the property that he will prosecute the suit without delay, or make a return of the property if a return is adjudged, and pay such damages to the defendant as he may have sustained through the proceedings. If the value of the goods for which the Writ of Replevin is obtained does not exceed $60, the writ may issue from the Division Court, if over $60 and up to $200, the writ may issue from the County Court.

A copy of the writ is not served on the defendant until after the property has been replevined or as much of it as possible.

Arbitration is the submission, by parties who have a controversy or difference, of the matters in dispute to the decision of a third party.

Arbitration is one of the highest courts for the settlement of personal differences, and if people would only learn more of its benefits and advantages, more would avail themselves of it.

When the matters in difference are simply those of fact, it is often more satisfactory to submit them to the decision of mutual friends, each contending party choosing one, and the two arbitrators thus chosen choosing the third, and the three parties thus chosen constituting the court.

The decision of the arbitrators is called an award.

The award should be specific and distinct containing the decision of the arbitrators in as clear and concise language as possible, which should be put into writing and signed by them.

The following oath should be taken by the persons chosen to act as arbitrators or referees before entering upon the examination of the matters in dispute:

> We, the undersigned arbitrators, appointed by and between John Smith and Thomas Brown, do swear fairly and faithfully to hear and examine the matters in controversy between said John Smith and Thomas Brown, and to make a just award, according to the best of our understanding.
>
> T. H. GRANT,
> L. L. HAMILTON,
> S. H. THOMAS.
>
> Sworn to, this 26th day of May, 1902, before me.
>
> D. B. JOHNSON,
> Justice of the Peace.

Oath to be administered to a witness by the arbitrators:

> You do solemnly swear, that the evidence you shall give to the arbitrators here present in a certain controversy submitted to them by and between John Smith and Thomas Brown, shall be the truth, the whole truth, and nothing but the truth, so help you God.

The agreement to refer matters in dispute to the decision of arbitrators is called a submission, and the terms of the agreement should be written out and signed by the disputing parties.

Garnishment.—Sometimes in a suit to recover money, a third party, called a garnishee, is brought in. A garnishee is an outside party supposed to owe the defendant money, who is ordered not to pay the money to the defendant but to pay it into court, or keep it subject to the order of the court. Suppose A sues B to recover money due him, which B refuses to pay. Before or during the pro-

gress of the suit, A learns that C is indebted to B. A then may have a garnishee summons issued for C, ordering him not to pay over any money which he may have belonging to B, and also ordering him to appear in court and answer questions concerning his indebtedness. If on examination it is discovered that he is indebted to B, and the debt is one which by law is subject to garnishment, the money is either ordered to be paid into court or he is ordered to keep it subject to order from the court. Then, if in the suit judgment is rendered against B, the money, or a portion of it, is given to A.

A Certificate of Deposit is a written instrument issued by a bank, and certifies that a person mentioned therein has deposited a certain sum of money, payable to his order upon the surrender of the certificate properly endorsed. In nature it is the same as a certified cheque.

A Bill of Lading is "a memorandum or acknowledgment in writing, signed by the captain or master of a vessel, that he has received in good order on board his vessel therein named, at the place therein mentioned, certain goods therein specified, which he promises to deliver in like good order (the dangers of the seas excepted) at the place therein named for the delivery of the same, to the consignee therein named, or to his assignees, he or they paying freight for the same."

Two or more bills of lading are generally si[illegible]ed by the captain or master of the vessel; one is sent to the person to whom the goods are consigned, one the consignor keeps for himself, and one the captain or master of the vessel retains for his own use.

The bill of lading is [illegible]gotiable instrument; often whole cargoes are sold and delivered, s[illegible]ply by the endorsing and transferring of the bill of lading.

A Letter of Credit is a form given to persons who wish to travel in foreign countries. It is issued by a bank or banking house in the traveller's own country, to another bank or banking house in the countries he wishes to visit, requesting them to give the person named in the letter credit, or to pay him a sum of money.

CHAPTER XXVII.

BUSINESS AND LEGAL FORMS.

PROMISSORY NOTE NON-INTEREST BEARING.

$672. HAMILTON, Ont., Oct. 15, 1902.

Thirty days after date, I promise to pay Wm. H. Bunberry, or order, Six Hundred Seventy-two Dollars, value received.

W. H. GOODMAN.

PROMISSORY NOTE INTEREST BEARING.

$450. TORONTO, Ont., Nov. 1, 1902.

Three months after date, we promise to pay Henry D. Frank, or order, Four Hundred Fifty Dollars, value received, at The Merchants Bank here, with interest at 5%.

BROWN BROS. & Co.

PROMISSORY NOTE JOINT AND SEVERAL.

$1260. LONDON, Ont., Oct. 14, 1902.

Two months after date, we jointly and severally promise to pay William Taylor & Son, or order, Twelve Hundred Sixty Dollars, value received, with interest at 5%.

EDWARD LUMSDEN.
S. G. WOODWORTH.

JOINT PROMISSORY NOTE.

$1260. LONDON, Ont., Oct. 11, 1902.

Two months after date, we jointly promise to pay William Taylor & Son, or order, Twelve Hundred Sixty Dollars, value received, with interest at 5%.

EDWARD LUMSDEN.
S. G. WOODWORTH.

PROMISSORY NOTE—NOT NEGOTIABLE.

$100. BELLEVILLE, Sept. 3, 1902.

Sixty days after date, I promise to pay L. S. Bearman, only, One Hundred Dollars, value received.

FRED. G. HUNT.

PROMISSORY NOTE—ON DEMAND, WITH SURETY.

$750. OTTAWA, Ont., Sept. 27, 1902.

On demand, I promise to pay The E. B. Eddy Company, or order, Seven Hundred Fifty Dollars, value received, with interest at 7% per annum.

JOHN W. JONES.
WM. S. WOODS, Surety.

JUDGMENT NOTE.

$900. STRATFORD, Ont., Nov. 1, 1902.

Three months after date, I promise to pay J. B. Ellis & Co., or order, Nine Hundred Dollars, value received, with interest at 5%.

And I do hereby confess judgment for the above sum, with interest and cost of suit, a release of all errors and waiver of all rights to enquiry and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

T. D. BRADLEY.

CHATTEL NOTE.

$500. WOODSTOCK, Ont., Aug. 1, 1902.

On or before Nov. 1, 1902, for value received, I promise to pay A. R. Bale, Five Hundred Dollars; to be paid said Bale at my warehouse by the delivery to him of flour at current prices, and as he may require it.

BENJ. A. STOREY.

ACCOMMODATION NOTE—WITH ENDORSEMENTS.

$250. MONTREAL, Que., Sept. 12, 1902.

One month after date, I promise to pay to myself, or order, Two Hundred Fifty Dollars, value received, at Merchants Bank.

H. HANNAH.

Written across the back: H. Hannah, Wm. Brown.

PROMISSORY NOTE—BEARING INTEREST UNTIL PAID.

$129. TORONTO, Ont., July 7, 1902.

Thirty days after date, I promise to pay C. E. Ruthven, or order, One Hundred Twenty-nine Dollars, value received, at the Bank of Toronto, with interest at 7 before and after maturity until paid.

W. H. MCMASTER.

SIGHT DRAFT.

$222. CHATHAM, Ont., Oct. 7, 1902.

At sight pay to C. S. Livingstone, or order, Two Hundred Twenty-two Dollars, value received, and charge to the account of.

R. W. LOUDEN.

To Samuel Baker,
Toronto, Ont.

DEMAND DRAFT.

$222. CHATHAM, Ont., Oct. 7, 1902.

On demand pay to C. S. Livingstone, or order, Two Hundred Twenty-two Dollars, value received, and charge to the account of.

R. W. LOUDEN.

To Samuel Baker,
Toronto, Ont.

TIME DRAFT.—ACCEPTED.

$95. HAMILTON, Ont., Nov. 3, 1902.

At sixty days' sight, pay to R. W. Wright, or order, Ninety-five Dollars, value received and charged to the account of.

FREDERICK HUDSON.

To M. S. Griffin,
Guelph, Ont.

Written across the face of the draft: Accepted, Nov. 10, 1902, Payable at The Traders Bank, M. S. Griffin.

BANK DRAFT.

No. 593. TORONTO, Ont., April 11, 1903.

MERCHANTS BANK.

Pay to the order of David Hoskins, $1,558
Fifteen Hundred Fifty-eight Dollars.

J. E. WARREN, Jr., Cashier.

To The Bank of North America,
New York City.

CHEQUE.—CERTIFIED.

No. 315. TORONTO, Ont., Oct. 15, 1902.

THE CANADIAN BANK OF COMMERCE.

Pay to Henry D. Huntingdon or order, $792.
Seven Hundred Ninety-two Dollars.

J. B. WASHBURN.

Stamped or written across the face of the cheque: Accepted, Oct. 15, 1902, J. B. H., Teller.

GUARANTY OF PAYMENT.

For value received, I hereby guarantee the payment of the within note.

D. D. HUXTER.

GUARANTY OF COLLECTION.

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

T. D. BABCOCK.

RECEIPT TO APPLY ON ACCOUNT.

TORONTO, Ont., Oct. 17, 1902.

Received of J. D. Hanna, One Hundred Fifteen Dollars to apply on account.

$115. JOHNSON & FRASER.

RECEIPT IN FULL OF ALL DEMANDS.

HAMILTON, Ont., Nov. 4, 1902.

Received of J. B. Parsons, Seventy-seven Dollars, in full of all demands against him.

$77. JAMES BOWMAN.

RECEIPT TO APPLY ON NOTE.

BURLINGTON, Ont., Sept. 22, 1902.

Received of Armstrong & Eddy, Two Hundred Twenty-five Dollars to apply on their note dated July 1, 1902, given to me, being the same payment which I have endorsed on said note.

$225. W. R. SMITHSON.

DUE BILL—PAYABLE IN MONEY.

$25. GUELPH, Ont., Nov. 10, 1902.

Due Amos R. Jennings, or order, Twenty-five Dollars.

H. R. BROWN.

DUE BILL. PAYABLE IN GOODS.

$200. GALT, Ont., Dec. 3, 1902.

Due William Lee, or bearer, Two Hundred Dollars in goods from my store.

JOHN HAMILTON.

A SET OF FOREIGN EXCHANGE.

£750. TORONTO, Aug. 20, 1902.

1st. At sight of this my FIRST of Exchange, (*Second of same date and tenor unpaid*), pay to the order of James Carter & Sons, Seven Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERTSON & Co.

To The Lloyd Banking Co.,
London, England.

£750. TORONTO, Aug. 20th, 1902.

2nd. At sight of this my SECOND of Exchange, (*First of same date and tenor unpaid*), pay to the order of James Carter & Sons, Seven Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERTSON & Co.

To The Lloyd Banking Co.,
London, England.

CERTIFICATE OF DEPOSIT.

$840. No. 420.

THE BANK OF MONTREAL.

OTTAWA, Ont., Aug. 21, 1902.

Adam Whitworth has deposited in this Bank Eight Hundred and Forty Dollars, payable to the order of himself on the return of this certificate properly endorsed.

J. C. HENDERSON,
Cashier.

LIEN NOTE.—ORDINARY FORM.

$125.00. No. 312.

HAMILTON, Ont., June 24, 1903.

Three months after date I promise to pay H. B. Johnson, or order, at his office, the sum of One Hundred and Twenty-five Dollars, for Value Received, with seven per cent. interest until maturity, and one per cent. monthly after due till actually paid; and if payment is enforced I will not dispute the jurisdiction of the Court at Hamilton, and I further agree that if I offer my goods, chattels or real estate for sale, with the intention of leaving the Province, this Note will forthwith become due and payable.

The title and right to the possession of the property for which this Note is given, one "Remington Typewriter" No. 66729, is, shall be and will continue in H. B. Johnson, the lawful holder of this Note, until it or any renewal thereof is paid, and he or they may resume possession and re-sell or convert to his or their own use, and not be liable to refund any money or valuables that I may have paid, and I will pay all expenses, interest and deficiency, and the said article shall not be removed or secreted, and the lawful holder of this Note can take forcible possession, without recourse to law, and I will give no hindrance. I acknowledge having received a copy of this Lien Note.

Witness, Thomas Fuller. WILLIAM BROWN.

LIEN NOTE IN MONTHLY INSTALMENTS.

$30.00. Due, - No.

Toronto, Ont., Sept. 2nd, 1902.

On the first day of each month hereafter for six months consecutively, I promise to pay to David Hoskins the sum of Five Dollars, the whole amounting to Thirty Dollars, the first of such payments to be made on the first day of October next, interest after maturity until paid, at the rate of ten per cent. per annum.

In the event of sale or other disposal of my land or personal property, or 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. The title and right to the possession of the property for which this Note is given, one "Souvenir Cooking Stove," No. 9, manufactured by The Gurney-Tilden Co., of Hamilton, shall remain in David Hoskins until this Note or any renewal thereof is fully paid.

Witness: Thomas Wilson.

J. J. Parsons.

LETTER OF CREDIT.

No. 9224. Stratford, Ont., Aug. 21, 1902.

To the correspondents of the Canadian Bank of Commerce.

£500.

Gentlemen,—We have the pleasure of introducing to you the bearer, Mr. Samuel Thomson of this place, who purposes visiting England and France, and desires to open a credit with you. Kindly furnish him with such funds as he may require, not to exceed Five Hundred Pounds Sterling, on his sight draft drawn on The Lloyd Banking Co., London, each draft to be marked as drawn on the Canadian Bank of Commerce Letter of Credit, No. 9224. Each draft to be endorsed on the back hereof. Kindly have drafts signed in your presence, and compare carefully with signature below.

A. D. Huntley, Manager.

Alex. Henderson, Accountant.

Samuel Thomson.

ARTICLES OF CO-PARTNERSHIP.

ARTICLES OF CO-PARTNERSHIP made this 1st day of June, 1902, between Daniel Webster and Charles F. Crandall, both of the City of Hamilton, witnesseth:

I. The parties above named have agreed to become co-partners in business, and do hereby agree to be co-partners under the firm name of Webster and Crandall, in the business of manufacturing, buying and selling paints, oils and painters' supplies, and conducting a general paint and oil store in said City of Hamilton.

II. The partnership hereby formed shall commence at the date hereof and continue for the term of five years, unless dissolved sooner by the operation of law.

III. Said Crandall shall contribute to the partnership capital the sum of Twenty-five (25) Thousand Dollars in Cash, and said Webster shall contribute the sum of Five (5) Thousand Dollars in cash, and his skill and knowledge of the business, and the contribution of said Webster as aforesaid is deemed equal to the contribution of said Crandall.

IV. It is agreed that said Webster shall devote his whole time and energy to the conduct of the business and the furtherance of its success, but said Crandall shall not be under obligation to devote more than one-half of his time in attention to the partnership business, and each of said partners may draw out of the business not to exceed $25 weekly for personal expenses.

V. It is agreed that each of said partners shall pay and discharge equally all rents and expenses of conducting the business, and all gains and profits which shall arise from business shall be equally divided after the payment and discharge of all losses by ill commodities, bad debts, or otherwise, and all such losses, and all losses arising from the conduct of the business shall be borne and shared equally between the partners.

VI. It is mutually agreed that true books of account shall be kept wherein each of the said partners shall enter all moneys by them or either of them received, paid, laid out or expended in and about said business, as also all goods, wares and merchandise by them or either of them bought or sold, by reason or on account of said business, and all matters and things whatsoever pertaining to said business, and that either of said partners shall at all times have free and uninterrupted access to said books, and at the end of each

quarter hereafter, each of said partners shall make and render to the other a true and correct account of all profits and increase by them or either of them, and of all losses by them or either of them sustained, and of all payments, receipts and disbursements whatsoever connected with said business.

VII. It is further agreed that neither of said partners, during the conduct of said business, shall endorse any note or become surety for any person without the consent of the other, and neither of said partners shall give the firm note without the knowledge and consent of the other.

VIII. It is mutually agreed that at the end of said partnership each of said partners shall make and render to the other a just and final account of all things relating to the said business, and there shall be an equal division of the partnership capital and the increase thereof, and an equal bearing and sharing of the losses and liabilities.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals in duplicate, the day and year first above written.

DANIEL WEBSTER, [SEAL]

CHARLES F. CRANDALL. [SEAL]

STATUTORY DEED.

THIS INDENTURE made (in duplicate) the first day of April, in the year of our Lord one thousand nine hundred and two, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF CONVEYANCES,

BETWEEN Edward T. Hemming of the Township of Barton, County of Wentworth, and Province of Ontario, merchant, of the first part, and

Ada Hemming, wife of the party of the first part, of the second part, and Walter Jones of the Township of East Flamboro, County of Wentworth and Province aforesaid, yeoman, of the third part.

WITNESSETH that in consideration of two thousand dollars ($2,000) 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 Barton, County of

Wentworth 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 49, in the 9th Concession of the Township of Barton 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, provisoes and conditions expressed in the original GRANT made thereof from the Crown.

(NOTE: The following covenants make a warranty deed of this).

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 land as may be requisite.

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 Ada Hemming, the party of the second part, hereby bars her dower in the said lands.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals.

Signed, sealed and delivered in presence of CHARLES BLACK. | E. T. HEMMING, (SEAL) | ADA HEMMING, (SEAL)

County of Wentworth: TO WIT: | I, Charles Black, of the Township of Barton, County of Wentworth and Province of Ontario, gentleman, 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

Edward T. Hemming and Ada Hemming, two of the parties thereto.

2. That the said Instrument and Duplicate were executed in the County of Wentworth.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me in Barton in the County of Wentworth, this fourth day of April, A.D. 1902

CHARLES BLACK.

JOHN D. WILLSON,

A Commissioner for taking affidavits in the County of Wentworth.

FORM OF STATUTORY LEASE.

THIS INDENTURE, made the Twentieth day of September, one thousand nine hundred and two, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF LEASE.

BETWEEN John Jones, of the City of Brantford, County of Brant, Province of Ontario, merchant, the party of the first part, and William McCormack, of the same place, aforesaid, teacher, the party of the second part.

WITNESSETH, that in consideration of the Rents, Covenants and Agreements hereinafter reserved and contained on the part of the said party of the second part, his executors, adminstrators and assigns to be paid, observed and performed, the said party of the first part hath demised and leased, and by these presents doth demise and lease unto the said party of the second part, his heirs, executors, administrators and assigns.

ALL that certain parcel or tract of land situate, lying and being in the city of Brantford, in the county of Brant, Province of Ontario, and being more particularly described as lot number ninety-one, on the north side of William street, in the aforesaid city, and containing by admeasurement one acre, more or less.

TO HAVE AND TO HOLD, the said demised premises for and during the term of Five years, to be computed from the First day of October, one thousand nine hundred and one, and from thenceforth next ensuing, and fully to be complete and ended, Yield-

ing and Paying therefor yearly and every year during the said term hereby granted, unto the said party of the First Part, his heirs, executors, administrators or assigns, the sum of One Hundred and Twenty Dollars of lawful money of Canada, payable on the following days and times, that is to say: Ten dollars to be paid on the first day of each month, the first of such payments to become due and to be made on the First day of April next.

THAT the said party of the Second Part covenants with the said party of the First Part to pay rent and to pay taxes, and to repair and keep up fences, and not to cut down timber; and that the said party of the First Part may enter and view state of repair, and that the said party of the Second Part will repair according to notice, and will not assign or sub-let without leave, and that he will leave the premises in good repair, and will not carry on on said premises any business or occupation which may be offensive or annoying to the said party of the First Part, or his assigns, and also that if the term hereby granted shall be at any time seized or taken into execution or in attachment by any creditor of the said party of the Second Part, or if the said party of the Second Part shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the then current month's rent shall immediately become due and payable, and the said term shall immediately become forfeited and void, but next current month's rent shall, nevertheless, be at once due and payable.

PROVISO for re-entry by the said party of the First Part, on non-payment of rent, or non-performance of Covenants: The said party of the First Part COVENANTS with the said party of the Second Part 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	J. JONES,	{L.S.}
G. W. GOULD.	WM. MCCORMACK	{L.S.}

WAREHOUSE RECEIPT.

No. 1352. TORONTO, April 3, 1902.

Received into Warehouse, 367 and 369 Spadina Avenue, for account of British American Business College, the following goods, wares and merchandise, viz.: 18 Cases, 6 Desk Tops, 1 Lot of Castings, said goods, wares and merchandise to be delivered only upon the production and surrender of this Warehouse Receipt, duly endorsed by D. Hoskins.

The Lester Storage Company will not be responsible for any loss or damage occasioned by irresistible force or inevitable accident, or caused by fire, thieves, leakage, rats or other vermin, or for loss or depreciation from unknown causes or latent defects, or from want of other than ordinary care. Particulars of the said goods, wares and merchandise, as to weight, quality, contents of packages, or value, are not known to the said Company, except as above set out.

All charges are due and payable before delivery, and each endorser hereon personally guarantees payment of same. Interest 7 per cent. per annum charged on all accounts over three months.

The Lester Storage Company reserves the right to dispose of any storage at the expiration of three months to cover any charges against the above mentioned goods.

JOHN LESTER, Warehouseman.
Per J. G.

CHAPTER XXVIII.

DEFINITIONS.

Abandonment—In marine insurance, the giving up by the owner to the insurer of property partly destroyed.

Abatement of a Nuisance—The remedy which the common law allows a party injured by a nuisance, of destroying or forcibly removing it, so long as he occasions no damage beyond what the abatement necessarily requires.

Abatement Among Legatees—The proportionate reduction of legacies, where the estate bequeathed by a will is not sufficient to pay all legacies in full.

Abjuration of Allegiance—The declaration under oath required of every alien before naturalization, renouncing all allegiance to any other sovereign.

Absolute Conveyance—A transfer of property free of any condition or reservation.

Abutting—Bordering upon. Lands bounded by a highway or fresh water stream abut on the stream or road, and the owners are called abutting owners.

Acceptance—In mercantile law: (1) The act by which the person upon whom a bill of exchange or other order is drawn, engages to pay it. (2) The bill after it has been accepted.

Acceptor—One who accepts an order, draft, or bill of exchange.

Accommodation Paper—Commercial paper for which no consideration passed between the original parties.

Action—The formal means of recovering one's rights in a court of justice a suit.

Act of God Any accident produced by a physical cause which is irresistible, such as lightning, tempest, etc.

Ad Valorem Duties Customs duties imposed upon imported articles according to either the value or the actual cost.

Adjudication The act of a court in giving judgment in suit or controversy.

Admeasurement of Dower The setting apart for the use of the widow of such a portion of land as will amount to her dower or "third;" called also assignment of dower.

Administrator—One who administers on the property or estate of a person dying intestate, and is accountable for the same.

Affidavit—A statement in writing, signed by the person making it, called the affiant, and sworn to before a notary public or officer authorized to take oaths.

Affreightment—The hiring of a ship for the conveyance of goods.

Agency The relation existing between two parties, by which one is authorized to do certain acts for the other.

Agent—Any person who is employed by another to do any act for the employer's benefit or account.

Alien—One born out of the jurisdiction of this country, and owing allegiance to a foreign government.

Alien Enemy—An alien who is the subject of a hostile power.

Ante-Dated—Dated at a time earlier than the actual date.

Annulment—The act of making void.

Appurtenance—In a deed or lease, anything which will go with the land, as a right of way or a yard which has always been used with it.

Arbitration—The investigation and determination of a cause or matter in controversy by an unofficial person, or arbitrator.

Arbitrator—A disinterested person selected by parties in dispute to decide the controversy.

Articles of Copartnership—The written agreement by which a copartnership is formed.

Assent—Act of agreeing to anything; consent.

Assets—Property available for the payment of debts.

Assignee—The person to whom the failing debtor transfers all his remaining property for the purpose of having it distributed among his creditors; one to whom anything is assigned.

Assignment—A transfer by a failing debtor of his property to an assignee. A transfer by one person to another of any property personal or real.

Assignor One who assigns property.

Attachment The seizure of a defendant's property by legal process, in order to satisfy any judgment which may be rendered against him in the suit.

Award—The decision of arbitrators.

Bailment—A delivery of goods in trust upon a contract, express or implied, that the trust shall be faithfully executed on the part of the bailee. The *bailor* is he who delivers; the *bailee*, he to whom delivery is made. The hire of personal property, of services, of custody and of carriage are species of bailment.

Bank Bill or Note—A written promise to pay to the bearer on demand a certain sum of money, issued by a bank and used as money.

Bankruptcy—The condition of one who is unable to pay his debts.

Barter—To trade by exchange of goods, in contra-distinction from trading by the use of money.

Beneficiary—(1) In life insurance, the person to whom a policy is made payable. (2) The person for whose benefit another holds the legal title to real estate.

Betterments—Improvements made to real estate which render it better than mere repairs.

Bill of Exchange—A direction in writing, by the person who signs it, ordering the one to whom it is addressed to pay a third person a definite sum of money at a specified time.

Bill of Lading—A document delivered by a carrier to one sending goods by him, acknowledging that they have been received by him for transportation to a certain place. It is both a receipt and a contract.

Bill of Sale—An agreement in writing by which one person sells his interest in personal property to another.

Blank Endorsement—One in which no particular person is named as the one to whom payment is to be made. It consists of the endorser's name alone.

Bona Fide—In good faith, as distinguished from Mala Fide, in bad faith.

Bond—An interest-bearing debt-certificate issued usually by a corporation, municipality or government.

Bonus—An additional premium paid for the use of money beyond the legal interest.

Bottomry Bond—An obligation given for a loan upon a vessel and accruing freight.

Bought and Sold Note—A written memorandum of sale, delivered by a broker effecting a sale, to the buyer.

Breach—In the law of contracts, the violation of an agreement or obligation.

Bribery—Receiving or offering a reward to improperly influence the conduct of a public officer.

Broker—One engaged in negotiating contracts for the purchase or sale of property in which he has no interest.

Bullion—Any kind of gold or silver in the mass or lump.

By-Bidder—A person employed to bid at auctions in order to raise the price of articles to be sold. (Same as Underbidder.)

By-Laws—The private laws or regulations made by a corporation for its own government.

Cancellation—The manual act of erasing or destroying a writing.

Capita—By the head.

Capital Stock—The fund or property, as a whole, contributed or supposed to have been contributed to a corporation at its organization, as its property.

Caveat Emptor—Latin phrase, meaning "Let the purchaser beware," and applies to a case in which the thing sold is before the buyer and he examines it.

Caveat—In the patent law, a notice from an inventor not to issue a patent of a particular description to another.

Certificate of Deposit—A certificate issued by a bank or banker, showing that a certain sum of money has been deposited there, payable to a certain person, or to his order, or to the bearer.

Certificate of Stock—A certificate given by the proper officers of a corporation, showing that a certain person owns a certain number of shares of the capital stock.

Certification (of cheque)—The signature of the proper officer of the bank written across its face, sometimes with and sometimes without the word "Certified," or "Good." It is a recognition of the cheque by the bank as good in two particulars, viz.: (1) That the drawer's signature is genuine, and (2) that he has that amount of money in the bank.

Charter—(1) A special act of legislature creating a particular corporation. (2) To hire or let a vessel or part of it.

Chartered Ship—One let wholly or in part.

Charter Party—The written instrument by which the owner of a vessel lets it, or part of it, to another.

Chattel Mortgage—A conditional sale of personal property, one which is to become void if a certain thing happens. Chiefly used as a security for payment.

Chattel Real or Real Chattel—An interest connected with real estate, as a lease.

Chattels—Commonly means goods of any kind, or every species of personal property.

Cheque—A written order for money drawn upon a bank or banker, and payable immediately.

Chose in Action—A thing of which one has not the possession, but only a right to demand it by action at law.

Chose in Possession—Personal property of which one has the actual possession.

Civil Law—The system of law which the people of a nation establish for their government as citizens.

Civil Remedy—The method of redressing an injury inflicted by one person upon another.

Clearing House—An office where bankers settle daily with each other the balances of their accounts.

Codicil—Some addition to, or qualification of a will, executed after the will.

Collateral—Property pledged as security for the performance of a contract.

Common Carrier—One who, as a business, undertakes for hire to transport from place to place, passengers or goods of all who choose to employ him.

Common Law—The unwritten law as distinguished from written or statute law. The old law of England that derives its force from long usage and custom.

Common Seal—The seal of a corporation.

Compact—An agreement between parties similar to a contract.

Competency—The legal fitness of a witness to give evidence on the trial of an action.

Composition Deed—An agreement between an insolvent debtor and his creditors by which upon payment to each of some fixed proportion of his claim, they all agree to release the debtor from the balance of their claims.

Compromise—An agreement between a debtor and his creditors, by which they agree to accept a certain proportion of the amounts due, and discharge him from the remainder.

Concurrent—Existing together. A consideration is concurrent when the acts of the parties are to be performed at the same time.

Condition Precedent—An act which must be performed by one person before another is liable, or in order to make him liable.

Consent—A concurrence of the wills of two or more contracting parties.

Consideration—The reason or inducement in a contract upon which the parties consent to be bound.

Consignee—One to whom merchandise, given to a carrier by another person for transportation, is directed.

Consignmen. The goods shipped through a common carrier by the consignor to the consignee.

Consignor One who gives merchandise to a carrier for transportation to another.

Contract An agreement between two or more persons to do or not to do a particular thing.

Conversion An unlawful exercise of ownership over goods or personal property belonging to another.

Conveyance (1) The act of carrying from one place to another. (2) The means of conveyance. A written instrument by which an estate in land is transferred from one to another.

Co-Partnership—Same as partnership.

Corporation An artificial being or person endowed by law with the capacity of perpetual succession, and of acting in certain respects like a natural person. When it consists of one individual it is termed a corporation *sole*, and when composed of a collection of several individuals it is called a corporation *aggregate*.

Copyright—The exclusive privilege secured from a government for printing, publishing and selling copies of writings or drawings.

Counter-claim—Same as *Set-off*.

Course of Exchange—The current price of bills of exchange between two places.

Covenant—Any promise contained in a sealed instrument. The person to whom the promise is made is the *Covenantee*. The person making the promise is the Covenantor.

Coverture—The legal state and condition of a married woman.

Criminal Remedy—The method of punishing a wrong-doer for some crime committed by him against society.

Curtesy—The estate a man has in the lands of his wife upon her death, in case a living child has been born to them during their marriage.

Damages—Compensation in money to be paid by one person to another for an injury inflicted by the former upon the latter, or for the failure to keep a contract.

Day—Twenty-four hours. An entire day.

Days of Grace—Days (usually three) allowed by custom for the payment of bills and notes beyond the day expressed for payment on the face of them.

Declaration of Intention—The act of an alien who goes before a court and formally declares his intention to become a citizen of the country in which he is at the time.

Dedication—An appropriation of land, made by the owner, to some public use, usually for a highway, and accepted for such use by the public.

Default—Omission; neglect or failure.

Defeasance—An instrument which defeats the effect of another instrument. If it is in the same deed it is an addition; if by itself it is a defeasance.

Defense—The answer made by the defendant to the plaintiff's action, by demurrer or plea at law.

Delivery—The transfer of a written instrument from the person executing it, or the grantor, to the person entitled to receive it, or the grantee.

Demand—Presentment for payment.

Demurrage—The allowance to be made by the shipper to the vessel-owner as damages for the detention of the vessel beyond the time specified in the charter party.

Deposit—A bailment or delivery of goods to be kept and returned without recompense.

Deposition—The testimony of a witness reduced to writing to be used in court.

Descent—Inheritance of real property.

Deviation—In the law of marine insurance, a voluntary departure without necessity from the regular course of the specific voyage insured.

Devisee—A person to whom real property is devised or willed.

Disability—Want of qualification; incapacity to do a legal act.

Discount—(1) The taking of interest in advance. (2) A deduction from the account asked, or from an account, debt or demand.

Disfranchisement—Expulsion of a member from a corporation.

Dishonor—The non-payment of negotiable paper when it is due.

Distress—The taking of personal property to enforce the payment of something due, as rent.

Distribution—The division among those entitled, called the next of kin of the personal property of one dying without a will.

Domicile—The place where a man has his permanent home, and to which he intends to return if absent.

Dower—The right of a widow to the use or ownership of some portion of real estate owned by her husband.

Draft—Same as bill of exchange.

Drawee—The person upon whom a bill of exchange is drawn, who is directed to make the payments.

Drawer—The person who draws or makes a bill of exchange.

Duress—Personal restraint or compulsion.

Easement—The right to use another's land.

Effects—All kinds of personal property.

Ejectment—A form of law suit to regain possession of real property.

Embezzlement—The fraudulent removal or secretion of personal property by one who is entrusted with it.

Emblements—Growing crops of any kind produced by expense and labor.

Enact—To make a law or to establish a by-law.

Endorsement (Indorsement)—(1) A name, with or without other words, written on the back of the paper. (2) The agreement implied in one's writing his name on the back of commercial paper, to pay it if the principal debtor does not. The one who makes the endorsement is called the *endorser*. The person in whose favor the endorsement is made is called the *endorsee*.

Equitable Estate—An interest in land not evidenced by a deed, but of which a Court of Equity will take notice.

Equity of Redemption—The right which a mortgagor has to redeem his estate after the mortgage has become due.

Escheat—The reverting of land to the State upon the death of the owner without lawful heirs.

Escrow—A deed or bond delivered to a third party to be held and delivered to the grantee or creditor upon the performance of some condition.

Estate—An interest in real property.

Estate by Curtes—See *Curtesy*.

Estate for Life—An interest in land for life.

Estate in Fee-Simple—The interest which a man or his heirs have in land without end or limit.

Eviction—The forcible removal of a tenant from land leased by him or the doing of any act by the landlord which deprives the tenant of the use of the land.

Executed—Finished.

Execution—(1) A written command issued to a sheriff or constable, after a judgment, directing him to enforce it. (2) The act of signing and sealing a legal instrument, or giving it the form required to make it a valid act.

Executor—One to whom is committed the execution or carrying out of the terms of a will.

Executory—Unfinished.

Exemplary Damages—Damages allowed as a punishment for a wrongful act deliberately or maliciously committed. Such damages are in addition to actual damages.

Extradition—The surrender by one government to another of a person charged with crime.

Factor—An agent employed to sell goods on commission.

Fee Simple—Full ownership in lands.

Firm—All the members of a partnership taken collectively.

Fixtures—Articles of personal property which have become affixed to real property.

Foreclosure—The process of cutting off the right or interest of the mortgagor and his assignees in mortgaged premises.

Forfeiture—A loss of property, right, or office, as a punishment for some illegal act or negligence. Sometimes applied to the thing forfeited.

Forgery—The fraudulently making or altering of a written instrument.

Franchise—A privilege, or right, conferred by grant from government upon individuals.

Fraud—Any cunning, deception, or artifice used to circumvent, cheat, or deceive another.

Freight The compensation to be paid a carrier for the transportation of goods, or the goods themselves while being transported.

General Average A contribution made by the owners of a vessel and cargo toward the loss sustained by one of their number, whose property has been sacrificed for the general safety.

Goods Same as *chattels* and *effects*.

Good Will Benefit arising from the successful conduct of business by a certain person or firm, usually in a certain place; it is a property subject to transfer.

Guaranty A contract whereby one person engages to be answerable for the debt or default of another person. *Guarantor* is he who makes the guaranty.

Guardian—One who is entitled to the custody of the person or property of an infant.

Habeas Corpus A direction signed by a judge or officer of a court directing a person detaining another to produce the prisoner at a certain time and place.

Heir One who inherits land upon the death of the owner.

Highway—A passage, road or street, which every citizen has the right to use.

Hire A bailment in which the compensation is to be given for the use of a thing, or for labor and services performed upon it.

Holding Over—The act of a tenant in remaining in possession of land after the expiration of his lease.

Importation The act of bringing goods and merchandise into this country from a foreign country.

Imposts Duties on imported goods.

Inchoate Incipient; incomplete.

Incompetency Lack of necessary legal qualifications.

Incorporate—To form into a corporation.

Incumbrance—A lien upon land as by judgment or mortgage.

Indemnity—Compensation for damage suffered, or that which is given or promised to a person to prevent his suffering damage.

Infant—In law, is one under the age of twenty-one years.

Injunction—An order or direction of the court compelling a certain person to refrain from doing some particular act or thing.

Insolvency Same as *Bankruptcy*.

Insurable Interest—Such an interest in the thing insured that the person possessing it may be injured by the risk to which the thing insured is exposed.

Insurance—A contract of indemnity against loss for certain causes. The *insurer* is the party agreeing to make the insurance.

Interest—Compensation allowed by the borrower of money to the lender for its use, or compensation paid by a debtor to his creditor as recompense for the detention of the debt.

Invalid—Of no legal force.

Inventory—(1) An account or catalogue of goods or movables. (2) In law a list or schedule in writing of the goods, chattels, and credits (and sometimes of the real estate) of a testator or intestate made by an executor or administrator.

Jettison—(1) The casting out from a vessel of a part of the cargo, in order to avoid a ship-wreck. (2) The cargo thus cast out. If the goods float it is called flotsam.

Joint Stock Company—A company or partnership whose capital is divided into shares (usually transferable), some of which are held by each of the members.

Joint Tenants—Two or more persons to whom land is conveyed by deed or devised by will.

Judgment—The sentence of the law pronounced by the court upon any matter contained in the record, or in any case tried by the court.

Judgment Debtor—Party against whom a judgment is obtained.

Judgment Note—A promissory note in the usual form, and containing in addition a power of attorney on the part of the maker authorizing the holder to take judgment for the amount due, if the note is dishonored.

Judicial Sale—A sale directed by a court; as a sale on the foreclosure of a mortgage.

Landlord—(1) One who owns and rents or leases lands or houses. (2) The host or keeper of a hotel; an inn-keeper.

Law—The rules and methods by which society compels or restrains the action of its members.

Law Merchant—The general body of usages in matters relative to commerce.

Lay Corporation—A corporation composed of lay persons, or for lay purposes, as distinguished from religious or charitable corporations.

Lease—A contract by which one person grants to another for a period the use of certain real estate.

Legacy—A gift by will; commonly applied to money or personal property.

Legal Tender—That kind of money which by law can be offered in payment of a debt.

Lessee—A person to whom a lease is made.

Letter of Attorney—Another name for power of attorney.

Letters of Administration—An instrument issued out of the court having jurisdiction, granting power to settle the estate of one dying without leaving a will.

Letter of Credit—A written direction by some well-known banker authorizing the party to whom it is addressed to draw upon him in a particular manner for any amount he chooses, up to a specified limit.

Letters Testamentary—An instrument of the court having jurisdiction, granting power to the person named as executor in a will to carry out the provisions of the will.

Libel—To defame by published writing, printing, signs or pictures.

License—A permission or right granted to another, by one having authority, to do an act which would be illegal if unauthorized.

Lien—A right which one person has to retain the property of another by way of security for a debt or claim.

Liquidate—To pay; to settle an account.

Liquidated Damages—Damages agreed upon by the parties to a contract, at the time of the making of the contract, to be paid by the party failing to perform it.

Litigation—The act of litigating; judicial contest; a suit at law.

Loan—A bailment of an article for use or consumption without award. If the loan is for consumption, the article is to be returned in time; if the loan is for use, the article is to be returned without compensation for the use.

Log-Book—A ship's journal containing a minute account of the ship's course, and a reference to every occurrence of the voyage.

Lottery—A scheme for the distribution of prizes by chance.

Low Water Mark—That part of the shore of the sea to which the waters recede when the tide is lowest.

Lucid Intervals—Periods from time to time in cases of lunacy in which the person afflicted becomes sane.

Lunatics—Persons who have lost their reason.

Maintenance—Support by means of food, clothing and other necessaries.

Malicious Mischief—The wanton or reckless destruction of property or injury to the person.

Malicious Prosecution—The wilful institution of a law suit or criminal proceeding without probable cause.

Mandate—A bailment of personal property in which the bailee undertakes without compensation to do some act for the bailor in respect to the thing bailed; a judicial command.

Mania—A form of insanity.

Manifesto—A declaration by a nation stating the reasons for its acts toward another nation.

Maritime Law—That branch of the law which relates to the affairs of navigation and shipping.

Marriage Settlement—An agreement made by parties contemplating marriage by which the title to real or personal property is changed.

Martial Law—The military rule existing in time of war.

Material Men—Persons who furnish materials to be used in the construction of ships or buildings.

Maturity—The time at which commercial paper legally becomes due.

Measure of Damages—The rule by which the damages sustained by the plaintiff in a law suit are to be estimated.

Merger—The absorption or extinguishment of one contract in another.

Minor—Same as *Infant*.

Misdemeanor—A lower kind of crime; an indictable offence not amounting to felony.

Misnomer—In contracts a mistake in the name of a party; it does not void the contract if the proper party can be ascertained.

A misnomer of a legatee in a will does not generally void the legacy.

Misrepresentation—A false and fraudulent statement made by a party to a contract relative to a particular fact, knowing that the statement is untrue.

Misuser—The abuse of any liberty or benefit.

Money—The common medium of exchange in civilized nations.

Month—Generally in this country, where used in contracts, means a calendar month.

Monuments—Permanent land-marks indicating the boundaries of land.

Mortgage—A grant or conveyance of an estate or property to a creditor, for the security of a debt, and to become void on payment of such debt. The *mortgagor* is the one who gives the mortgage upon his property; the *mortgagee* the one to whom the mortgage is given.

Municipal—Of or belonging to the city.

Municipal Law—The name given to the system of law of any one nation or state.

Municipal Corporation—A public corporation created by the Government for political purposes, as a county, town or city.

Mutuum—A bailment consisting of a loan of goods for consumption, as coal oil or grain to be returned in property of the same kind and quantity.

Necessaries—Such things as are proper and necessary for the sustenance of man.

Negotiable Paper—An instrument as a bill or note, which may be transferred from one to another by delivery or endorsement completed by delivery.

Negotiation—In mercantile law, the act by which negotiable paper is put into circulation by being passed from one of the orginal parties to another.

Nominal Damages—Those given for the violation of a right from which no actual loss has resulted.

Non-Suit—The name of a judgment given against a plaintiff when he is unable to prove his case.

Non-user—A failure to use rights and privileges.

Notary Public—An officer appointed under the laws of the different Provinces, whose acts are respected by the law merchant and the law of nations, and hence have force out of their own country.

Notice of Protest, also called **Notice of Dishonor**—The notice given to a drawer or endorser of a bill, or an endorser of a negotiable note, by a subsequent party that it has been dishonored either by non-acceptance or non-payment.

Notice to Quit—A req[illegible] of a landlord to his tenant to quit the premises.

Nuisance—Anything that unlawfully injures or damages a person in the enjoyment of life and property.

Oath—A pledge given by the person taking it, that his promise is made under an immediate sense of his responsibility to God.

Open Policy—One in which there is no valuation of the thing insured.

Oral Contract—An agreement by means of spoken words.

Ordinance—A rule, or order, or law. Usually applied to the acts or laws by the common council of a city.

Outlawed—A debt is said to be outlawed that has existed for a certain length of time, after which the law on that ground alone prevents its being enforced.

Par—Equality of value. Bills of exchange and stocks are at par when they sell for their face value. They are above or below par when they are worth more or less than their face value.

Parol Contract—Any agreement not under seal. It is often used as synonymous with oral contract.

Partners—The members of a firm or partnership.

Partnership—The relationship resulting from an agreement between two or more persons to place their money, effects, labor and skill, or some or all of them, in some enterprise or business, and divide the profits and bear the losses in certain proportions.

Party-Wall—A wall common to two adjoining estates.

Pawn—Same as *Pledge.*

Payee—The person to whom the payment of any kind of commercial paper is directed to be made.

Payment—The fulfilment of a promise, or the performance of an agreement, usually by the delivery of a sum of money.

Penalty—Forfeiture, or sum to be forfeited, for non-performance of an agreement.

Per Centum or Per Cent.—By the hundred.

Perils of the Sea—All the dangers naturally incident to navigation.

Perjury—A wilfully false statement by one who is lawfully required to depose the truth, and who is lawfully sworn, made in a judicial proceeding, and in relation to a matter that is material to the point in question.

Personal Property—Consists of such things as are movable, and may be taken by the owner wherever he goes.

Pledge—A bailment of personal property to secure the payment of some debt or the fulfillment of some agreement. The bailor is called the *pledgor*, and the bailee the *pledgee*.

Pledgee—A person in favor of whom some obligation is contracted, whether to pay money or to perform some act.

Pledgor—The person entering into an obligation to pay money or to perform some act.

Policy—The written contract of insurance.

Post-Dated—Having a date subsequent to that at which it is actually made.

Power of Attorney—A written instrument under seal by which one party appoints another to be his attorney, and empowers such attorney to act for him.

Premium—The consideration or price paid for insurance.

Prescription—The right to a thing derived from immemorial usage.

Presumption—An inference of the law, from certain facts, of the existence or truth of some other fact or proposition.

Price—The consideration given in money for the purchase of a thing.

Prima Facie—Literally, at the first appearance. *Prima facie* evidence is that which is sufficient to establish a fact, unless it be rebutted or contracted.

Principal—(1) A party for whom another is authorized to do certain acts with third parties. (2) A sum of money at interest.

Privity of Contract—The relation which exists between two parties who have made a contract.

Probate of a Will—The proof given before a court or judge that an instrument produced as the will of a deceased person, is in fact what it purports to be.

Promissory Note—A written promise, signed by the person promising, to pay a certain sum of money at a certain time to a person named, or to his order, or to the bearer.

Prosecute—To proceed against by legal measure.

Protest—A formal declaration in writing by a notary public of the demand and refusal to pay a note or bill.

Proxy—(1) One who represents another. (2) A writing by which one authorizes another to vote in his place.

Public Enemies—Those who belong to a nation at war with another.

Quasi—As if; As though.

Quasi Corporation—A public body or municipal organization which is not vested with the general powers of corporations, but is recognized by a statute or usage as persons or aggregate corporations, with the power of suing and being sued.

Quit Claim Deed—A form of deed in the nature of a release without covenants of any kind.

Ratification—Giving force to a contract made by the person in question, but not now in force, or by another man as his agent.

Real Covenant—A covenant connected with the conveyance of land, and which runs with the land, and which any owner of the land can enforce, although he be not a party to the instrument in which the covenant is contained.

Real Estate—Same as real property.

Real Property—That which is fixed or immovable, and includes land and whatever is erected or growing upon it, with what is beneath or above the surface.

Realty—Same as real property.

Receipt—A written acknowledgment by one receiving money or other property that it has been received.

Receiver—Usually means a person appointed by a court to take and hold property in dispute, or the property of a bankrupt.

Recoupment—A reduction or diminution of damages in an action on contract for breach of warranty or defects in performance.

Recovery—The amount of the judgment which the party to an action recovers.

Re-enact—To enact anew.

Registry—The entering or recording of real estate conveyances in books of public record.

Reinsurance—Insurance effected by an insurance company to protect itself against insurance risks which it has assumed.

Release—An instrument in the general form of a deed that in distinct terms remits the claim to which it refers; and being under seal, although reciting only a nominal consideration extinguishes the debt.

Remedy—The legal means employed to enforce a right or redress an injury.

Rent—Compensation for the use of real property. When stated in a lease it is called rent reserved.

Rescission—The annulling or dissolution of contracts by mutual consent, or by one party because of a breach of the contract by the other.

Revert—To fall again into the possession of the donor, or of the former proprietor.

Right of Survivorship—This means that the survivor or survivors take the right or interest of their deceased tenant, which in other cases would go to his heirs.

Riparian Owners—Those who own land bounded by a water course.

Salvage—Property saved from wreck or loss at sea; or compensation given for service rendered in saving it.

Satisfaction—Payment of a legal debt or demand; the charging or cancelling of a judgment or a mortgage, by paying the amount of it.

Scrip—Certificate of stock.

Seal—An impression upon any impressible substance; or a piece of paper pasted on with intent to make a seal of it.

Sea-worthiness—The sufficiency of a vessel in materials, construction and equipment for the service in which it is employed. Sea-worthiness is an implied condition of marine insurance; unsea-worthiness defeats insurance.

Set of Exchange—The different parts of a bill of exchange taken together. Each part is a perfect instrument by itself, and the payment of any one avoids the other.

Set-Off—A claim which one party has against another who has a claim against him; a *counter-claim*.

Severalty—A state of separation. An estate in severalty is one held by one person in his own right.

Severance—The removal of fixtures from land.

Shipper—One who gives merchandise to another for transportation.

Shipping Articles—The agreement between the master of a vessel and the seaman determining the nature of the contract.

Slander—Injurious words spoken of another, but not published.

Slander of Title—A statement tending to injure the title of another by minifying or cutting it down.

Smart Money—Damages beyond the thing sued for, allowed on the ground that the offence may be so great that the offender ought to be made an example of.

Specialty—A contract under seal.

Specific Performance—The actual performance of a contract by the party bound to fulfil it.

Statute—An act of the Legislature.

Statute of Frauds—An English statute, generally re-enacted in this country, requiring certain contracts to be made in writing designed to prevent fraud and perjury.

Statute of Limitations—A statute requiring an action to be commenced within a certain time after the demand has arisen. It *limits* the time to sue, hence its name.

Stock—Same as *Capital Stock*. It is also used to denote the shares into which the Capital Stock is divided.

Stockholder—The owner of one or more shares of the stock of a corporation.

Stoppage in Transit—A stoppage, by the seller, of goods sold on credit before reaching their destination upon learning of the buyer's insolvency.

Stranger—In contracts a person who is not one of the parties to the contract.

Sub-Agent—A person appointed by an agent to perform some duty relating to the agency.

Sub-Contract—A contract made by one who has agreed to perform labor or service with a third party for the whole or part performance of that labor or service.

Subject-Matter—The thing to be done or omitted in a contract.

Subornation of Perjury—Inducing or procuring another to commit perjury.

Subrogation—The substitution of one person or thing in the place of another, particularly the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter.

Subsidy—A money grant from government.

Suit—The prosecution of some claim or demand in a court of justice.

Surety—One who has agreed with another to make himself responsible for the debt, default, or misconduct of a third party. Similar to *guarantor*.

Suretyship—The liability or contract of a surety.

Surrender Value—The amount which an insurance company will pay for an unexpired policy.

Tare—An allowance in the purchase and sale of merchandise for the weight of the package in which the goods are contained. It may also be an allowance for the waste or diminution in the quality or quantity of the goods.

Tax Deed—A deed given by the officer of the law charged with the collection of taxes to the purchaser of land sold for taxes at a tax sale.

Tenant—One to whom another has granted for a period, the use of certain real estate.

Tender—An offer of a sum of money in satisfaction of a debt or claim, by producing and offering the amount to the creditor and declaring a willingness to pay it.

Testator—One who has died leaving a will.

Tonnage—The carrying capacity of a vessel.

Tort—A private wrong or injury other than a breach of contract.

Trade Mark—The symbol, emblem or mark which a manufacturer puts upon the goods he manufactures.

Trespass—Any wrongful act of one person whereby another person is injured.

Trustee—One who holds property for the benefit of another.

Ultra Vires—The acts or proceedings of a corporation done beyond the scope of its powers.

Underwriter—Same as *Insurer*.

Usage—In mercantile law the well known uniform practice, or the manner of performance of an act or contract.

Use and Occupation—The liability of a tenant to pay a reasonable rent for the use and occupation of premises in case an agreement has been made for use, but the rent not fixed.

Usury—Illegal interest.

Validity—Legal strength of force; the quality of being good in law.

Valued Policy—One which fixes the value of the property insured.

Vassal—One who held property of a superior or lord.

Vendee—One to whom anything is sold; a purchaser; a buyer.

Vendor—A seller; the person who sells a thing.

Vendor's Lien—The equitable lien allowed the seller of land until the whole purchase money is paid.

Void—Of no force or effect.

Voidable—That may be avoided; not absolutely void.

Wager Policy—A policy of insurance in which the insured person has no insurable interest.

Waiver—The abandonment of a right, or a refusal to accept it.

Ward—A minor under guardianship.

Warranty—An agreement to be held responsible, if a certain thing does not turn out as represented.

Waste—Spoil or destruction done or permitted to land or the buildings by a tenant.

Wharfage—The compensation paid the owner of a wharf for the privilege of landing goods upon it, or loading from it.

Wharfinger—The owner of a wharf who maintains it for the purpose of receiving and shipping merchandise.

CHAPTER XXIX.

EXAMINATION PAPERS—BUSINESS EDUCATORS' ASSOCIATION OF CANADA.

COMMERCIAL LAW AND BUSINESS FORMS.

Time—3 hours. September, 1900.

VALUE

1. (a) What is a contract? (b) What elements are necessary to a valid contract? (c) Classify contracts. 10

2. A makes B an offer by letter and mails it: he then mails a letter revoking his offer: B mails an acceptance before he receives A's letter revoking the offer. Is there a contract? Explain. 10

3. What does the 4th Section of the Statute of Frauds enact? 12

4. If A should say to B, "Let C have what goods he may desire, I will pay you for them," and B lets C have the goods, is A bound by this promise? Explain. 10

5. What does the 17th Section of the Statute of Frauds enact? 12

6. (a) What is meant by Stoppage *in Transitu*. (b) Explain the law of Appropriation of Payments, giving the rights of the debtor, and of the creditor. 9

7. (a) Define a negotiable Promissory Note. (b) What are the essential features of negotiability? (c) Can the finder of a lost note negotiate it. Explain. 12

8. (a) Draw a negotiable promissory note in favor of Jas. Henderson for $52.75, negotiable by indorsement and delivery. (b) Endorse in full, and (c) state the duties of the holder at maturity. 8

9. John Brown wishes accommodation for 60 days. Draw an Accommodation Note for such an amount that when discounted at the bank at 7%, 365 days to the year, the proceeds will amount to $73.75. Accommodate him conditionally. 10

10. Draw a Joint and Several Note for $32.85 at 30 days in favor of Wm. Adams, so that it will draw 8% until paid, dating the note to day. 7

Time—3 hours. October, 1900.

VALUE.

1. (a) What is meant by the consideration for a contract? 10
   (b) In what form does consideration manifest itself?
   (c) From whom and to whom does it move?

2. (a) State the liabilities of the parties to a guaranty. 7
   (b) Is it necessary that a guarantee should be in writing? Explain.

3. State the duties of Principal to Agent. 13

4. (a) Define "Nominal," "Limited," and "Sleeping" partners. 10
   (b) Under what authority are limited partnerships created?

5. What liabilities does an endorser incur, and state how he may be relieved. 10

6. What do you understand by a holder in due course, and state wherein he differs from a holder for value. 10

7. When does a bill or note require endorsing, and state how such a note is negotiated. 10

8. John Smith promises to deliver to Thomas Jones 50 bushels of marketable barley in 30 days from September 10. 10
   (a) Draw the note.
   (b) Is it transferable?
   (c) Does it carry rights, and why?

9. (a) Accommodate Charles Jones conditionally, from August 1, for such an amount that when the note is discounted at 7 for 30 days the proceeds will amount to $68.75. (365 days). 10

10. Purchase from the wholesale house of A. B. Jennings & Co., Winnipeg, the following goods at 10 days draft:— 10

1 pieces Print, 34¼, 35½, 36, 34¾, at 8¾c.

3 pieces Cashmere, 52, 56¼, 54½, at 62½c.

3 pieces Silk, 70, 84, 83½, at 75 less 5 , and take off the total bill.

(a) Make out invoice.

(b) Draw for amount.

Time 3 hours.

November, 1900.

VALUE

1. (a) What is a contract? 10

(b) What is the meaning of the word contract?

(c) Give the elements of a legal contract and define each.

2. (a) Name some persons who are forbidden to enter into certain kinds of contracts. 7

(b) When and how may an infant ratify a contract?

3. What contracts are included within the term "Agreement not to be performed within one year?" 5

4. Define "Principal," "Agent," "Attorney," "Broker," "Factor," "General Agent." 15

5. State ten leading duties of Agent to Principal. 18

6. Define a Warehouse Receipt, a Bill of Exchange, a Bill of Lading, a Promissory Note. 10

7. Under what different circumstances may an endorser to a note be discharged of his liability? 5

8. Buy at Bank of Commerce by cheque a draft on Winnipeg at ¼ exchange; remit to Stovel Bros. in full of account less 3 . Amount of account $125.85. 12

(a) Draw the draft.

(b) Draw the cheque.

9. Draw a Promissory Note negotiable by endorsement and delivery, for $26.75, in favor of John Smith, at 90 days bearing 6 interest. Insert a clause for a higher rate if not paid at maturity. 8

10. Draw a 30 day sight draft, negotiable by endorsement and delivery, in favor of Wm. Jones, on Jno. Brown, for $60.75. 10

(a) Accept payable at College Bank.

(b) Place qualified endorsement.

(c) What effect has endorsing?

Time—3 hours. December, 1900.

VALUE

1. Show form of Discharge of Mortgage. 10

In a dispute submitted to Arbitration, point out briefly the essentials of a proper award.

2. Define Bill of Goods, stating clearly what should be stated in a properly drawn Bill. Make out the following bill:— Toronto, June 20, 1899. John Ewing, of Brampton, bought of George Ritchie & Co., Dealers in Dry Goods, etc., 22-24 King Street East. Terms: 60 days, 10% 30 days. 40 yards Black Broadcloth at $4.25; 100 yards Factory Cotton at 10c.; 150 yards Muslin at 25c.; 200 yards Red Flannel at 40c.; 400 dozen Linen Handkerchiefs at $2.00. Paid freight on same, $12.00. 12

3. Define Corporation. Name the kinds of Corporations and describe each. How may Corporations be dissolved, and under what circumstances may they forfeit their franchise? 12

4. What is the effect of using the words "Without Prejudice" in a proposition leading to a contract? 8

5. If a bank pays a cheque which has been fraudulently raised, under what circumstances and to what intent may the drawer be liable? Give an example. 8

6. What is a Warehouse Receipt? Write out a Warehouse Receipt, also a Delivery Order for 1500 bushels Red Winter Wheat, worth 80c. per bushel. 12

7. What is a Bill of Lading? Draw up a Bill of Lading for the following: McPherson & Davis, 24 Front St., Toronto, ship to Stanley, Mills & Co., 11 King St. East, Hamilton, per Steamer "Macassa," Richard Copp, Purser, the following: 4 hbls. Granulated Sugar, 1200; 20 hf. ch. (75 lbs. each) Blue Ribbon Tea. 12

8. Write a Chattel Note, maturing in three months, in favor of F. G. Hunt, value $500, B. S. Wodehouse, maker. 8

9. Show a diagram, illustrating six kinds of Endorsement, and state fully the effects of each, on the note and on the endorser. 8

Explain the endorser's liability on Negotiable Instruments.

10. What is a Partnership? 10

Name the four kinds of partners and define each.

Name the various Covenant items in a Deed of Co-Partnership.

Give the different ways in which a Partnership may be dissolved.

Time—3 hours.

January, 1901.

VALUE

1. Write out a simple form of contract to contain an agreement made between John Smith and William Jones, for the sale to Jones of 40 sheep at $7 each, delivered at the market in London. Any sheep not weighing 150 lbs. to be allowed for at 10 per cent reduction. 10

2. (a) What is a guaranty (or guarantee). 10

(b) How many parties are there to a contract by way of guaranty?

(c) What are these parties called?

3. State the difference between a general and a special agent. 7

(a) With regard to his duties.

(b) As to the extent to which he may bind his principal.

4. State the usual clauses and agreements found in articles of partnership. 15

5. What do you mean by a holder of the Promissory note? Does it affect his position or his rights if he acquire it before or after maturity? 10

6. What are Patent Right Notes, and how do they differ from ordinary Notes? 8

7. (a) What is meant by protesting a Bill of Exchange? 10

(b) Who may protest it?

(c) What are the essential features of a protest?

8. You have bought merchandise of Robinson & Little, London, for $350.80 on terms of 60 days or 2% in 10 days from 12

June 1. On June 9th you paid the hill by bank draft at one quarter / exchange purchased hy cheque on College Bank.

(a) Draw the requisition
(b) Draw the cheque.
(c) Draw hank draft.
Give proper amounts.

9. Make out a retail hill for a customer where the account has been previously rendered for $18.75 upon which $13.25 has been paid, ten items of groceries having heen purchased since hill was rendered. (Supply dates and purchases). 10

10. Draw a joint and several note in favor of William Taylor, for $115.75, at 90 days from Sept. 17. 8

Time—3 hours. February, 1901.

VALUE

1. In how many ways may a contract of guaranty be put an end to? 5

2. (a) For what purpose was the Statute of Frauds passed? 10

(b) Give the provisions of the fourth section.

3. (a) State the difference between ordinary and limited partnerships as to liahility of partners for indebtedness of firms. 10

(b) Why does this liability of ordinary partnership exist?

4. In what cases may the dissolution of a partnership be effected? State them in the following order :— 25

(a) By act of parties, 1 2 3

(h) By order of a court, 1 2 3

(c) By the operation of law, 1 2 3

5. What is meant by stoppage in transitu, and state under what circumstances can a seller's rights be lost. 6

6. Define the duties of a holder of a bill to a drawer or endorser, and state how he may be relieved. 6

7. (a) What is a general acceptance?
(b) Qualified acceptance?
(c) What is the effect if a qualified acceptance is taken? 8

8. Draw a Foreign Bill of Exchange for £200 sterling, in set of two, on Glenn, Mills & Co., Liverpool, in favor of Adams, Reid & Co., at 60 days sight. 8

9. Hunt & Co. gave to John Burns a note negotiable by endorsement, at one month from January 31st, 1900, for $87.75. 12
(a) Write the note.
(b) Give due date.
(c) Acknowledge payment of $25 on February 10.
(d) Transfer to Wm. Jones by full endorsement.

10. Ship to H. Hamilton 175 boxes Cheese (average weight 70 lbs. per box), to be sold on your account and risk. Hamilton sells one-half for cash, balance on 30 day note to S. Jones for 10¾c. Hamilton pays 5½c. per box freight, cartage 2c. per box, charges 2½% commission. 10
(a) Write shipping invoice.
(b) Make account sales.

Time—3 hours.

March, 1901.

VALUE

1. (a) What are the usual kinds of tenancies? 8
(b) What notice must be given to determine each kind?

2. (a) Explain "lease," "lessor," "lessee." 10
(b) What leases are required to be under seal?

3. (a) What is an "overholding tenant"? 10
(b) What are the remedies which a landlord has against the tenant who has not paid rent?

4. (a) A offers by letter to sell his house to B for $1,000. 8
(b) B replied by letter—I accept, subject to your first putting the house in thorough repair.
Is there, or is there not a contract? Why?

5. A draft was drawn by student on J. H. Little in favor of H. R. McDonald at 30 days sight. 8

What are McDonald's duties as holder? Explain fully.

6. McDonald negotiated the bill to A. E. Nichols, of Fergus, after acceptance. 12

(a) What do you understand by the term "negotiable"?

(b) How is a bill negotiated?

(c) What are Nichols' duties?

(d) State how he may be relieved.

7. J. H. Little accepts a draft drawn upon him at 60 days sight, but changes the time to 90 days. 8

(a) What kind of acceptance is it?

(b) What is the duty of the holder in this case?

8. D. W. Karn & Co. sells Jno. Watt of London one cabinet organ, style "E," No. 2332, price $275, upon which he paid $75, balance in equal monthly instalments of $20 each. 12

How can Karn & Co. protect themselves? Draw such a document.

9. Wm. Henderson, of Glencoe, buys an interest in a patent Hay Fork, to manufacture and sell the same in the Counties of Middlesex and Oxford, paying therefor $1,000—$400 cash, the balance secured by note at 6 months, bearing 7 per cent. interest. 12

(a) Draw the note.

(b) Is such a note negotiable?

(c) What is the liability of the transferee of such a note?

(d) What is the penalty in dealing in such a note if not properly drawn?

10. A secures B's note without consideration and endorses it before maturity, and for value to C, who has knowledge of the lack of consideration. 12

(a) Can C collect it from A? Explain.

(b) Draw a 30 day note for $150.75, negotiable by endorsement and delivery.

Time—3 hours.

April, 1901.

VALUE

1. (a) What is a partnership? 10
(b) What are the duties of partners toward each other?

2. (a) To what extent can a partner bind his firm by his contracts with third parties? 10
(b) In how many ways may partnership be dissolved? Explain.

3. (a) D., the holder of a bill endorsed in blank, converts the last endorsement into a special endorsement. What is D's liability? 10
(b) In settlement of a claim payable by an Insurance Company, a note was given in these words, "I promise to pay," and signed C. H. Smith, Sec. O. M. F. Co. Whose note is it? Why?

4. (a) Is it necessary to protest a bill or note upon dishonor? 10
(b) What is the objecting of protesting it?
(c) What is the effect upon an "Acceptor" or "Maker" if not protested?

5. (a) For whose benefit is the place of payment in a bill or note? Explain. 10
(b) What is the proper place to present a note or bill if not specified?
(c) How will it affect the acceptor or the maker if not properly presented?

6. (a) Ninety days after date I promise to pay B or order $100, in goods from my store. Is this a negotiable note? Explain. 10
(b) Six months after date I promise to pay B or order the entire sum I now owe him. Is this note valid? Explain.

7. (a) A, the holder of a note, sues the endorser, who sets up as his defence that the maker's signature was forged. Is this good defence? Why? 12
(b) What is the difference between the liability of a drawer before and after acceptance?

8. On January 30th Brown gave his promissory note to Jones at 90 days for $75. On March 31st Brown paid $25. 12

Jones gave him a loose receipt not having the note in his possession. Adams buys the note before maturity. What are Adams' rights? Explain.

9. Robinson & Little sells to Wm. Hamilton, of Wingham, on a 60 day note the following: 8

8 pieces Cotton, 49, 53, 52, 51½, 50½, 49, 53, 52, at 6¼c.
4 pieces B Cotton, 52, 56¼, 54½, 57, at 4¾c.
7 " Print, 26, 32, 28½, 34¾, 36½, 26, 32, at 5c.
2 " Silk, 80, 94, at 60c. less 5/.
5 " Linen, 50, 45, 46, 49, 44, at 25c.
Make out invoice for same, taking off 3/.

10. A, who had forged B's signature to a cheque, promises the latter $100 if he would not expose him, relying upon said promise B kept quiet. Is the promise enforcible? Give reasons. 8

Time—3 hours May, 1901.

VALUE

1. (a) How does a Shareholder transfer his interest in a corporation? 8
(b) Explain "Debenture" "Proxy."

2. (a) What are the duties of a Director? 10
(b) How are the Directors appointed?
(c) What are Dividends?

3. (a) Explain "Landlord," "Tenant," "Distress"? 10
(b) What is rent?

4. Define a "Holder in due course," "Bill of Exchange," "Endorsement," "Cheque." 10

5. C. D. & E. are endorsers of a draft. The holder notifies D. of its dishonor. To whom may he look for payment? Why? 8

6. C. forges A's signature as drawer of a draft, which is accepted by B, the drawee. Subsequently B learned that A's signature is a forgery and refuses payment on that ground. Is it a good defence? Explain. 10

7. Draw articles of co-partnership for John Smith and William Jones, of the City of London, who purpose entering into partnership for five years, to carry on a Dry Goods Business. Smith invests $3,000, Jones $7,000, profits to be divided in proportion to investment, Smith to receive a salary of $600 per year, each to receive 6 per cent. interest on investment. (Make whatever stipulations you think necessary.) 12

8. (a) Draw a cheque on College Bank in favor of William Jones to pay one month's rent, $50, make cheque serve as receipt. 10

(b) State four points of difference between a cheque and a draft.

9. C, the payee of a note, endorsed it to D, without "recourse." D endorsed it to E in blank. E. seeks to hold D and C liable as endorsers. Can he succeed? Explain.

10. (a) Charles R. Adams wishes accommodation for $75, for 60 days. Draw the note so as to render yourself the least liable in case it is not paid at maturity. 12

(b) State the difference between an accommodation note and a customer's note.

Time—3 hours.

June, 1901.

		VALUE
1.	(a) To what extent is a Partner liable for the debts of his firm?	10
	(b) What steps should be taken upon retiring from a partnership to avoid incurring any further liability?	
2.	(a) What is a Corporation?	12
	(b) In what respect does a Corporation differ from a Partnership?	
	(c) What liability does a Shareholder incur in respect of the debts of the company.	
3.	(a) Explain how an agency may be terminated.	10
	(b) What are the general liabilities of an agent?	
4.	(a) What is the difference between a negotiable and a non-negotiable note?	10

(h) Can the holder of a lost or stolen note negotiate it? Explain.

5. (a) When is a bill or note discharged? 10

(b) The endorsee of a bill obtained it by fraud. He presents it at maturity to the acceptor, who paid it in good faith. Is the bill discharged? Explain.

6. (a) What is a crossed cheque? 10

(b) Draw a cheque on the College Bank in favor of James Fleming for $68.75, and cross it specially.

(c) Is crossing cheques likely to become general in Canada? Explain.

7. John Smith, who cannot write, gives his promissory note for $83.75 to John Smallman for 60 days from March 20. Draw the note and endorse it in full to James Camphell, who in turn leaves it at the bank for collection. 8

8. Shipped to John Williams, Commission Merchant, Toronto, 50 kegs of Butter, 60 lbs. each, and 1,300 dozen Eggs. The butter sold for 22½c. per lb., and the eggs for 23c. doz. Charges for freight, $38.75; storage, $4.25; commission, 2½ ; proceeds remitted by Bank Draft purchased at ⅛ . 10

Make out Shipping Invoice, Account Sales and Bank Draft.

9. (a) Define a negotiable promissory note.

(b) One month after my return from Toronto I promise to pay "B" or order $100.00. Is this note negotiable? 8

10. (a) Draw short form of lease. "A" leases to "B" for one year from the first prox., his store on 52 Main St., Winnipeg, at the yearly rental of $750.00 per annum, rent to be paid monthly in advance. 12

(b) Is it necessary this lease should be in writing Why?

Time—3 hours. September, 1901.

VALUE

BILLS OF EXCHANGE.

1. How may a bill be endorsed restrictively? Give an example. 10

2. Where a restrictive endorsement authorizes further transfer, how must all subsequent endorsers take the bill? 10

3. Mention the duties of the holder of a bill in regard to its presentment? 10

4. When is a bill said to be dishonored?

GENERAL BUSINESS LAW.

5. What is the Statute of Limitations? 10

6. How does the Statute of Limitations operate in regard to the collection of (a) Promissory notes? (b) Book debts? (c) Debts secured by contracts under seal? 10

7. (a) What is a Chattel Mortgage? (b) For what length of time can it be made? (c) When should it be renewed? (d) How does it affect the application of the Statute of Limitations to the collection of the debt? 15

BUSINESS FORMS.

8. Write a cheque so that when paid it will become a receipt for one month's rent of your store. Cross it "specially." 10

9. Write a Promissory Note so that it may bear the same rate of interest after maturity that it does during currency. 10

10. (a) Write a draft, or inland bill of exchange. 10
(b) Write a foreign bill of exchange.

Time—3 hours.

October, 1901.

1. Write a short paragraph upon the "Bills of Exchange Act of 1890." VALUE 5

2. Define the expressions, "Acceptance," "Action," "Bank," "Bearer," "Delivery," "Holder," "Endorsement," "Issue," "Value," "Defence," as applied to bills of exchange. 15

3. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee. Give an example of each. 10

4. What does the maker of a promissory note engage to do by the making of it? 8

5. What is a limited partnership? 7

6. Draw up in proper form a certificate for registration, of a limited or special partnership, to be known as B, D & Co., Commission Merchants. The Firm to consist of A B, residing at Hamilton, Ont., and C D, of the same place, each to contribute $5,000 cash. The duration of the partnership to be two years. 15

7. What are the elements of a legal contract? 9

8. Who are incompetent parties to make a legal contract? 8

9. Distinguish between (a) Express and Implied Contracts; (b) Executed and Executory Contracts. 8

10. Write a short form of contract to bind a bargain between A., of London, Ont., and B., of Toronto, Manufacturer, for the sale and delivery of a twenty-four horse power Portable Engine to A., completed according to specifications furnished, and delivered f.o.b. cars Toronto, by the 30th prox. 15

Time—3 hours. November, 1901.

VALUE

1. What is an endorsement? For what purpose is it made? How many kinds are there? Name them and give an example of each. 12

2. When and where is commercial paper payable? If the last day of grace falls on a legal holiday, when is the paper due? Is interest computed on days of grace? What commercial forms have no days of grace? 8

3. When is it necessary to protest a note or draft? What is its object and how is a protest made? 9

4. A note reads, "I promise to pay," signed by two persons. Another reads, "We promise to pay," signed by two persons. What is the difference? 8

5. What notices are necessary upon the dissolution of a firm or change in its partners? 8

6. What is a joint stock company? How formed? In what respect does it differ from an ordinary partnership? 9

7. What are the advantages of taking a note for goods sold rather than to allow the account to stand and collect at the end of the term of credit? 10

8. To what extent can a bank be held liable for certifying a fraudulent or raised cheque? Give examples. 10

9. Who is an agent? To what extent can an agent bind the principal to third parties? 10

10. What is a power of attorney and for what purpose may it be given? How is it given? Write a form of general power of attorney. 16

Time 3 hours. December, 1901.

VALUE

1. Define a Bill of Exchange. 5

2. Draw up an Inland Bill of Exchange making the drawer and the drawee the same person. 10

3. What is a crossed cheque and the object in crossing it? What is the difference in crossing a cheque "Generally" and crossing it "Specially"? 10

4. Write a cheque on the Bank of Commerce, Toronto, and cross it Specially. 8

5. If a person obtains by purchase an overdue note, what is the nature of his title to the paper as compared with what it would have been had he obtained the note before maturity? Explain. 10

6. (a) What is a lease? (b) What notice to quit is necessary at the termination of a lease? (c) Who is an over-holding tenant? (d) What notice to quit would an over-holding tenant require to give if he had previously been a yearly tenant? 12

7. (a) What is the advantage of securing a debt by a chattel mortgage? (b) In order to hold the property beyond a certain time, when must the mortgage be renewed? (c) How is the debt afterwards affected by the Statute of Limitations? 15

8. What is the difference between a Vendor's Lien and a Builder's Lien? Also explain a Carrier's Lien upon property transported. 10

9. Name the elements of a legal contract and define each element. 10

10. Henry Smith, of London, buys a house and lot at 112 Queen's Ave., from Henry Jones, for $5,000. Draw up a short form of contract that will bind the parties to each other until the title is searched, deed properly drawn and the property conveyed. 10

Time—3 hours.

January, 1902.

VALUE.

1. What are the general duties of the holder of a Bill of Exchange (a) Where a bill is payable at sight or after sight? (b) Where a bill is payable after date? (c) Where a bill is payable upon demand? 9

2. (a) Write an ordinary promissory note bearing interest at the legal rate. (b) Write a joint and several note bearing interest but not stating the rate. (c) Write a non-negotiable note payable on demand. 9

3. (a) When a bill is duly presented for acceptance and is not accepted on the day of its presentment or within two days thereafter, how must it be treated by the holder? 10

(b) If the holder neglects the legal requirements in this case, what is the result?

4. (a) Write a sight draft. 9

(b) Time drafts in two forms.

(c) Show the proper form of acceptance on each of these.

5. (a) Make out a bill for merchandise sold on account, for which there is received cash and a 10-day draft in part payment. 8

(b) Make out a bill for merchandise sold for cash and properly receipted.

6. State the provisions of the 4th and 7th sections of the Statute of Frauds. 12

7. (a) What is the "Statute of Limitations?" How does it apply to simple contracts? To contracts under seal? 10

(b) Explain fully the operation of the Statute when the debtor removes to a foreign country.

8. (a) What is a Chattel Mortgage? How long will it hold property? 10

(b) When should it be renewed?

(c) When and where registered?

(d) How does it effect the application of the Statute of Limitations to the debt?

9. Write a brief summary of the Law of Agency, defining clearly the relations and liabilities between principals and agents and giving the relation of principal and agent to third parties. 13

10. Write out a Form of Contract for services between William Goodman, merchant, and William Smith, bookkeeper. Smith is to act as bookkeeper and correspondent for 1 year 6 months at a salary of $50 per month, payable monthly. 10

Time—3 hours.

February, 1902.

BILLS OF EXCHANGE ACT. VALUE

1. (a) What kinds of commercial paper have no days of grace? (b) Are days of grace calculated on paper drawn at sight? 8

2. What days of the year are observed by the Act as legal holidays in Canada (excepting the Province of Quebec)? 8

3. (a) What may constitute valuable consideration for a Bill? (b) Define an accommodation note. 8

4. Who is a holder in due course? Under what circumstances may he get a better title to the paper than the original payee? 10

CONTRACTS, ETC.

5. Define a Contract and state the different classes of contracts. 10

6. Define: (a) Consideration; (b) Mutual Assent; (c) Duress; (d) Fraud; (e) Statute of Limitations. 10

7. Draw up a short form of contract between Mr. A. of Hamilton, Gentleman, and Mr. B. of the same place, Contractor, binding Mr. B to erect a building on Lot 1504, Main street east, Hamilton, to be finished within six months from date of 16

contract and to be erected in accordance with drawings and specifications furnished, for which Mr. A agrees to pay the sum of $1200; $300 to be paid when the roof is on the building; $400 when the plastering and carpenter work is done, and the balance 31 days after the whole building is completely finished.

8. If A wishes to engage B to work for him, duties to commence a year from to-morrow, what precaution is necessary in making the contract?

9. John Smith gave Henry Jones a four-months note on June 1st, 1897, for $900, with interest at 7 per cent. This note was not paid at maturity, but had the following payments made and endorsed on it: Sept. 4th, 1897, $200; Oct. 4th, 1897, $100; Nov. 4th, 1897, $200; March 4th, 1898, $200; July 1st, 1898, $30 on account of interest, after which date nothing further has been paid. (A) On what date does this note become outlawed according to the Statute of Limitations? (B) What rates of interest does it draw until paid? (C) Draw the note and show the endorsements made upon it.

10. Name the articles or clauses which an ordinary Co-partnership Contract should contain.

Time—3 hours. March, 1902.

VALUE

1. Define the following forms and give an example of each: 10
   (a) A cheque "crossed specially."
   (b) A Patent Right Note.
   (c) A Chattel Note.
   (d) An Accommodation Note.
   (e) A Joint and Several Note.

2. Define the following forms of endorsement and give an example of each. 10
   (a) An endorsement "Per Pro."
   (b) A Restrictive Endorsement.
   (c) A Qualified Endorsement.
   (d) A Waiver of Notice of Dishonor and Protest.
   (e) For Identification.

3. (a) Under what circumstances is it necessary to protest a bill? (b) What is the object of protesting? (c) Where, when and how should a protest be made? 10

4. (a) What is a limited partnership? (b) How many members are required to form such a partnership? 8

5. What is the law in regard to the registration of a partnership? Is there any difference between the registration of a limited partnership and that of a general partnership? 8

6. In how many ways may a partnership be dissolved? What precautions are necessary at the dissolution of a firm in order to protect the individual members? 10

7. Draw up a short form of articles of co-partnership between A, B and C, to conduct a retail boot and shoe business in the city of Toronto, for five years, each investing $5,000 in cash; profits to be divided equally, A, in consideration of his larger experience, to draw a salary of $2,000 per annum. B and C to draw $1,500 each; A to act as buyer and general manager, B as bookkeeper, and C as salesman. The firm name is A, B, C & Co. B is to sign the firm name. 15

8. What provisions would you insert in the articles of the co-partnership you have just drawn up to prevent dissolution in the event of the death or incapacity of a partner? 8

9. (a) Define a Chattel Mortgage. (b) Distinguish between it and a Bill of Sale. (c) Also state the effect of registering or omitting to register. 12

10. Define Agency. Under what circumstances, in the transaction of business, is an agent liable to third parties? 9

Time—3 hours. April, 1902.

Give Reasons for Answers to the First Four Questions. VALUE

1. A gave his note to B for $500 for money lost at cards. B sues A. Can he recover? 8

2. A, who had forged B's signature to a cheque, promised the latter $100 if he would not expose him. Relying upon said promise, B kept quiet. Is the promise enforceible? 8

3. A horse which A bought of B on Sunday proved to be unsafe. A returned the horse and sued B for a return of the money. Can he succeed? 8

4. A offered B $5,000 if the latter would marry the former's daughter. B accepted the offer, and after marriage sued A to recover. Can he succeed? 8

5. E. P. Evans owes L. H. Young $500, and gives him a 30 days sight draft on J. A. Lyons, who placed upon it a "Qualified Acceptance." What is the effect of that? Is it a genuine acceptance? What is the legal position of the holder? Draw the draft and give an example of the acceptance. 10

6. Buy of the Bank of Commerce, Ottawa, Ont., by cheque, a draft on the Molsons Bank of Hamilton, Ont., at ¼ per cent. exchange, and remit to Lumsden Bros., Hamilton, in full of account, less 3 per cent. cash discount. Amount of account, $375. 10

(a) Draw the draft.

(b) Draw the cheque, showing proper amount.

7. Write a summary of the law limiting the time when the following may be recovered by process of law: (a) a book debt; (b) a promissory note; (c) a contract under seal. How may a debt barred by this law be revived? 12

8. (a) Define a "Holder in due course." Explain his rights fully. (b) What is the rule in reference to a note given for a patent right? 10

9. What persons labor under disabilities (complete or partial) in the matter of contract. State in each case the extent of the disability. 10

10. (a) With regard to form, in what different ways may contracts be made? 16

(b) A, a farmer, agrees to deliver to B, a dairyman, twenty gallons of new milk at 6.30 a.m. every day; also a like quantity of skimmed milk at same time, for $3 per day, payable weekly for a term of six months. Write the contract.

Time—3 hours. May, 1902.

VALUE.

1. $100.00.

Three months after date I promise to pay John Jones, or order, One hundred dollars, value received. 15

GEORGE BROWN.

On the back of this note is the following:

"Pay John Smith, or order. (Signed) John Jones."

"Pay William White. (Signed) John Smith."

In the case of the above note:

(a) What would be considered "material alterations"?

(b) How would the several parties respectively be affected if the note had been altered in a material part?

(c) There is neither "bearer" nor "order" after William White's name in the endorsement. Might he write in either?

(d) How should William White endorse the note so as to escape responsibility for its future payment?

(e) How should George Brown have drawn the note if he had wished it to bear interest at 7 per cent. per annum from date until paid?

2. What may constitute a valuable consideration for a Bill or Note? 8

3. Who is an Accommodation Party to a Bill or Note? 8

4. Who is a "holder in due course"? Under what conditions would his title to the paper be defective? 10

5. (a) What is a Bill of Lading? 10

(b) What is the effect of a Bill of Exchange attached to a Bill of Lading?

(c) Draw each of these forms.

6. To what extent can a minor bind his parents? Can he do it? 6

7. To what extent can a married woman make contracts to bind her husband? Can she do it? 6

8. (a) If A leases a house from B for one year from May 1st, 1902, what notice is necessary to terminate the lease? 10

(b) If A remains over his year, what kind of a tenant is he, and what notice is necessary in order that he may terminate the lease on May 1st, 1904?

(c) Write the notice to quit.

9. (a) What is a Power of Attorney? 12

(b) Draw the form of Power of Attorney, giving your bookkeeper, Mr. A. L. Dean, authority to sign cheques, notes, bonds, mortgages, deeds, and all other business papers or documents for you during your absence from home for a year from present date. Sign your name as William Thompson and date the instrument at London, Ontario.

10. Draw up forms of the following commercial paper : 15

(a) Account of sales. (b) An Invoice of Goods receipted by a note at 60 days. (c) A Certificate of Deposit. (d) A New York Exchange Draft. (d) A Sterling Draft.

Time—3 hours. June, 1902.

VALUE

Give reasons for answers to first four questions.

1. "Ninety days after date I promise to pay 'B,' or order, One Hundred Dollars, in goods from my store." Is this a negotiable instrument? 5

2. "In one month after my return from New York I promise to pay 'B,' or order, one hundred dollars, value received." Is this a negotiable note? 5

3. What is the difference between a cheque and a sight draft? Is there any? 5

4. "A" obtains a sheet of paper from "B" with "B's" signature on it and constructs a note over it. He then endorses to "C," who takes it in good faith for value. 9

(a) Does "C" get a good title to it?

(b) If "C" should sue "B" at maturity, can he succeed?

(c) Has "B" any remedy?

5. What do you mean by the holder of a promissory note? Does it affect his position or his rights if he requires it before or after maturity? 10

6. (a) What is meant by protesting a Bill of Exchange? 9
(b) Who may protest it?
(c) What are the essential features of a protest?

7. Write a summary of the law regarding Limited Partnerships, stating clearly the difference between General and Special Partners as to their rights, restrictions, liabilities, etc. 20

8. You bought merchandise of Thos. C. Watkins, Hamilton, for $350.80 on terms of 60 days or 2 per cent. in 10 days from June 1. On June 9th you paid the bill by bank draft, at one-quarter per cent. exchange purchased by cheque on Merchants Bank. 15

(a) Draw the requisition.
(b) Draw the cheque.
(c) Draw bank draft. Give proper amounts.

9. Make out a retail bill for a customer where the account has been previously rendered for $20.75 upon which $15.75 has been paid, nine items of groceries having been purchased since bill was rendered. (Supply dates and purchases). 12

10. Draw a joint and several note in favor of William Adams, for $96.75, at 60 days from June 10, and state any other forms in which it might be written. 10

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