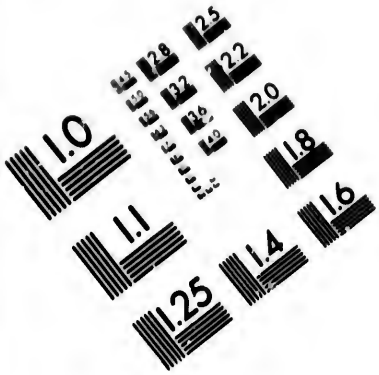

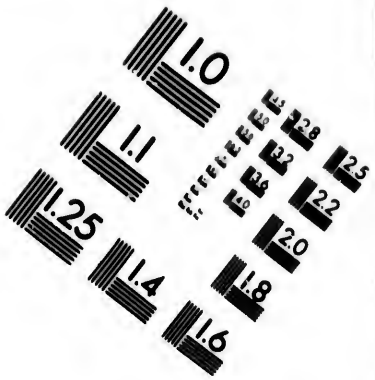

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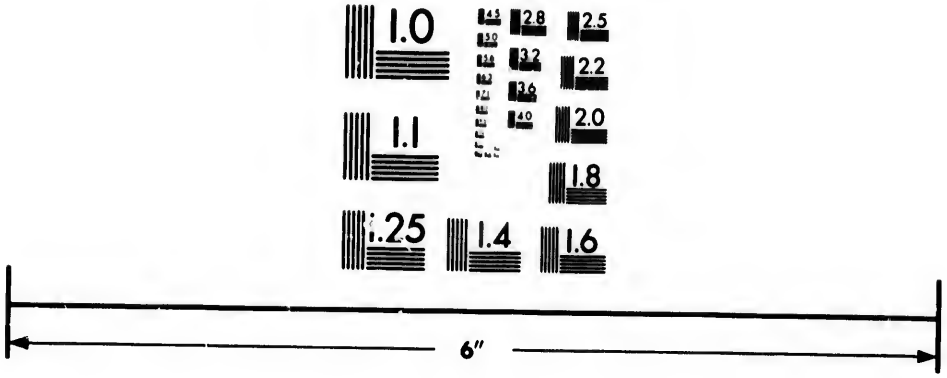

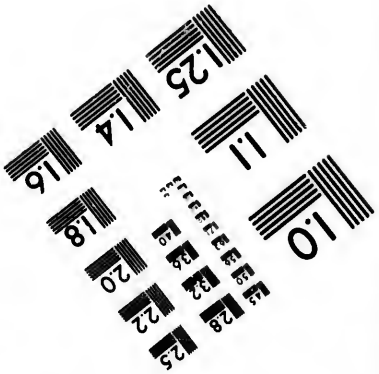

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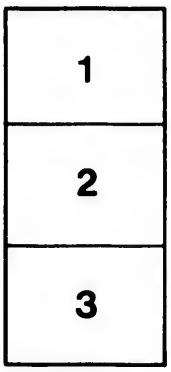

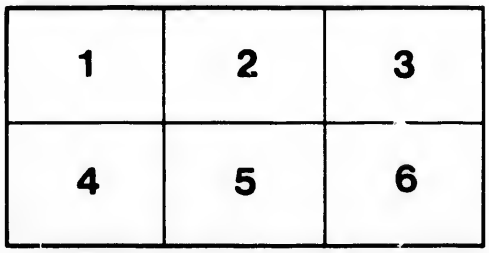

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The Laws of Business:

With Forms of Common Legal and Business Documents.

For use of Students in Business Colleges, Collegiate Institutes and High Schools, and as a book of reference for Business Men, Farmers, Mechanics and Professional Men.

BY

C. A. FLEMING,

Principal of the Northern Business College.

Author of "Practical Mensuration;" "How to Write a Business Letter"; "Thirty Lessons in Punctuation"; "Self Instruction in Penmanship"; &c

OWEN SOUND

Printed at the Northern Business College Steam Press.

1891.

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PREFACE.

In the compilation of the following pages the writer has endeavored to present to the reader in a concise and practical manner, the leading principles of law as it relates to business, avoiding as much as possible the technical terms with which the subject is usually invested. The primary idea in writing this work was to supply students in Business Colleges, Collegiate Institutes and High Schools, with a suitable text book on the important subject of commercial law, and to place in their hands the forms of legal commercial papers more generally used by business men daily in their transactions. It will be found a useful book of reference for business men, farmers, mechanics and others both as to the laws of trade and in furnishing suitable legal forms and directions for drawing and using the same in almost any case that may arise.

It is neither the desire nor the expectation of the author to make "every man his own lawyer," but it is his aim to give him directions, and enough of them so that he may be able to protect his own interests and to enable him to transact business in an intelligent manner. The author does not claim originality in his subject: the principles of law are old, and scattered through the law books and the Acts of Parliaments of ages. He does claim originality in many cases in his methods of arrangement, resulting principally from many years of class room work in this subject. The author asked an intimate acquaintance in business circles who had looked over advance sheets of the work, "To which chapter especially shall I refer my readers in the preface to the work?" His reply was, "Refer them to Chapter No. 18, on Indorsements." This and all the other chapters are commended to the reader for more than a perusal for a study, that they may prove valuable to him as a part of his mental stock-in trade always ready to be drawn upon in case of need but neither reduced nor expended by usage.

The author desires to acknowledge his indebtedness to Judge Creasor, of Owen Sound, for the many useful and valuable hints gathered from his course of lectures delivered before the Students of the Northern Business College during several sessions, and to John Armstrong, B. A., Solicitor, of Owen Sound, for revising the "copy" and "proof" of this volume.

NORTHERN BUSINESS COLLEGE,
Owen Sound, Ont., March 12, 1891.

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CONTENTS.

To Teachers Using this Book in Class-Room :

The subject of Law has been said by some one to be a dry one. The author has found the contrary to be true in his class room experience. In no subject has he found his students take such a lively and practical interest. Ladies and gentlemen alike evince a keen appreciation of the principles of law as they apply to the affairs of every day life. If the teacher will familiarize himself with the subject sufficiently to be able to go into the class-room without his text book, or with a closed book, and illustrate where he can by an example, and if possible by several examples the principles he wishes to impress, he will find it an easy matter to retain the attention of his students. Examples have been given in the book, of the application of many of the principles enunciated, but to illustrate every principle by *numerous* examples (as it should be in class) would so enlarge the book as to make it cumbersome. The intelligent teacher will prefer to furnish his own examples. When forms of lengthy legal papers such as Deeds, Mortgages, Bills of Sale, Assignments, Discharges, Wills, etc., are being studied it has been found advisable to require each student to draw up the papers on ordinary blank forms, using the names of persons in the class, and property known to them.

Particular attention should be given to the subject of Contracts, in chapters 1 to 10. Lay a good foundation here. If you cannot get through with a chapter in a lesson, take two lessons to it. If the student is well drilled on these principles he will experience little difficulty with what follows, as the remainder might be said to be, simply special cases of contracts.

The chapters, Nos. 13 23, treating on Negotiable Paper should receive careful attention. Require the students to draw up all forms carefully, and put indorsements on them where necessary. Connect them with business transactions when possible. Give full prominence to a business like and convenient arrangement and neat penmanship in the forms.

Other chapters following will commend themselves to both teacher and pupil, after the above mentioned have been duly considered. Several short chapters may be taken at a lesson towards the end of the book. It will be found that the work can be easily studied in about sixty lessons.

NOTE.—A package of Blank Forms in common use such as the author uses constantly in his classes, can be had from him for 30c. post paid. Following are the forms: Deed, Quit Claim Deed, Mortgage, Assignment of Mortgage, Discharge of Mortgage, Agreement for Sale of Land, Chattel Mortgage, Renewal of Chattel Mortgage, Discharge of Chattel Mortgage, Statutory Lease, Articles of Partnership and Will.

INTRODUCTORY.

LAW AND PROPERTY.

- MUNICIPAL LAW.
- SOURCES OF LAW.
- COMMON LAW.
- STATUTE LAW.
- OFFICE DIVISIONS.
- THE LAW MERCHANT.
- UNIFORMITY OF LAW.
- PROPERTY.
- REAL PROPERTY.
- PERSONAL PROPERTY.

1 Municipal Law, in its widest sense, comprises all those rules, written or traditionary, which have been laid down for the guidance of the community, and to which its members must, if they would avoid penal consequences or civil liabilities, necessarily conform.

2 Sources of Law. In the British Empire the theory is that the Sovereign is the source of all law. The practice is, however, quite different. The people themselves are really the source of the laws as they are made by the representatives of the people in Parliament. It is true, however, that final assent has to be given by the Sovereign either personally or by a representative, such as a Governor of a Colony, before these laws, made by the people's representatives, really become authority. This assent has not been withheld for hundreds of years by the Sovereign except on advice of the people's representatives, the Prime Minister for the time being, who is responsible. It is generally understood that it is now beyond the power of the Sovereign to exercise a personal veto power against any law demanded by the people through their representatives.

In the United States the law is made by the people both in theory and practice, as they elect not only the houses of representatives but the President as well. These laws are enacted by

(1) Congress.

(2) State Legislatures.

The bodies of representatives in the British Empire are:

(1) Imperial Parliament.

(2) Colonial Parliament such as that of the Dominion of Canada.

(3) Provincial Legislatures such as that of the Province of Ontario.

3 Common Law includes those principles, usages and rules of action applicable to the Government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the Legislature. It consists mainly of *customs*, which date from remote antiquity, have become gradually adopted and have received from time to time the sanction of the courts of justice without any act of the legislature.

4 Statute Law is such as has been actually put into the form of written law by act of Parliament, Congress or Legislature. These acts of Parliament are called Written Law in contradistinction to the Common or Unwritten Law.

The duty of interpreting the Statute Law devolves upon the courts of justice in accordance with certain recognized rules.

5 Other Divisions. The Common and Statute Law is divided according to what it applies to, into

MERCANTILE LAW.
MARINE LAW.
CRIMINAL LAW.
CONSTITUTIONAL LAW, &c.

6 The Law Merchant is a Branch of the Common Law. It consists of the law *deduced* from the practice and customs of merchants subsequently aided and regulated by decisions of the Courts and by legislative enactments.

7 Uniformity of Laws. The laws of all English speaking people agree substantially, hence those of England, Canada, United States, Australia, &c., agree very largely, the Common Law of England being the basis of all these.

8 Property—Rights of Property consist in the free use, enjoyment and disposal of a person's *acquisitions* without any control or diminution, save only by the laws of the land.

The objects of such rights of property are

1. THINGS REAL, *i.e.*, such as are permanent, fixed and immoveable, called *Real Property* or *Realty*, *e.g.*, lands, houses, &c.

2. THINGS PERSONAL, *i.e.*, goods, money and all other moveables which may attend the owner's person—called *Personal Property* or *Personalty*.

9 Real Property, sometimes called Real Estate, consists of lands together with all trees, buildings, &c., thereon, or mines, &c., under the surface.

10 Personal Property consists of moveable articles of all kinds, such as goods, furniture, live stock, implements, machinery, &c. This belongs to the class of things in possession. The second class is such as accounts, debts, claims, &c., the amount or value of what we have to receive from some other person.

CHAPTER I.

CONTRACTS.

(1) Definition.
(2) Void.
(3) Voidable.
(4) Joint.
(5) Several.
(6) Severable.
(7) Executed.
(8) Executory.
(9) Mutual Promises.
(10) Seven Requisites.
(11) Possibility.

1 Definition. A Contract is an agreement or bargain entered into between two or more parties to do or not to do some particular thing for a consideration, and enforceable by law. The Contract is the basis of all commercial transactions and the laws governing Contracts are the laws governing all classes of business. From the business of the day laborer to that of the railway magnate, all are governed by the principles of Contracts.

CONTRACTS ARE:
1. EXPRESS. In which the terms are at the time of making it defined in writing or openly stated and avowed.
2. IMPLIED. In which the law presumes that every man undertakes to perform.

2 Void Contract.—Is one which has from the beginning no legal effect at all except in so far as a party to it may incur a penalty.

3 Voidable Contract. Is one which takes its full and proper legal effect unless and until it is set aside by some one entitled to do so.

4 Joint Contracts. Are those where persons agree to do certain work jointly.

5 Joint and Several Contracts.—Are those where persons bind themselves jointly to perform the work, also each one binds himself to do all the work if necessary.

6 Severable. A Contract is said to be severable or divisable where the consideration on either side may be divided so that it can be apportioned to corresponding parts on the other side. For example X agrees to purchase all the wheat X can furnish him, like a certain sample at a certain price per bushel. This wheat might be delivered one bushel per day or a thousand bushels per day and the consideration would be paid in such proportion.

7 Executed Contracts. An Executed Contract is one that is completed both as to what is to be done and to the consideration. For example you go into Mr. Brown's shop and ask for a hat. He shows you a suitable one: he says the price of it is four dollars; you pay him and take the hat. The transaction is complete and therefore executed.

8 Executory Contracts. An Executory Contract is one that is to be completed by one or both parties at some future time. In case of a sale the ownership of the property remains in the seller for the time being. Example (1) A agrees with B to build a house for him by a certain date for which B is to pay him $400. Example (2) X agrees to purchase from Y a certain horse two weeks hence for which he agrees to pay $150. The title still remains in Y and should the horse die in the intervening time Y would be the loser.

A contract may be *executed* as regards one of the parties: and *executory* as regards the other: *e. g.* X and B agree to exchange horses. A actually delivers his horse over and B thereupon promises to deliver his horse in one week, this contract is executed as to A and executory as to B.

9 Mutual Promises. It will be noticed from the above that in Executory contracts there must be promises by both parties. In the above example A promises to build a house for B and B promises to pay A $400 for doing it. The promises therefore are mutual, each depending on the other and being the consideration for the other in the meantime.

10 Requisites.—The following are the requisites to a valid contract.

(1) It must be possible.
(2) It must be legal.
(3) It must be made by competent parties.
(4) It must be assented to by each party.
(5) It requires a consideration, (generally).
(6) It must be without fraud.
(7) In many cases it must be in writing, signed by the parties chargeable therewith, and some written contracts must be sealed.

Possibility. 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, this would not be counted a void contract as the circumstances were external and might have been foreseen or prevented. A agrees to build a a boat for B but is unable from lack of skill. This would not void the contract nor would the sickness of one of the parties be excuse to void the contract.

CHAPTER 2.

CONTRACTS,

Legal and Illegal.

- Legal.
- Illegal.
- Made on Sunday.
- Illegal an Immoral Act.
- Against Revenue Laws.
- Against Common Laws.
- Compounding a Felony.
- In Restraint of Trade.

1 Legal Contracts. Are those where neither the thing to be done nor the consideration for it are forbidden by law. If either is forbidden by law it is considered hurtful to the general public, hence neither parties can enforce it. Even if one party has performed his part or paid his money the law will not help him, as the contract is considered wholly vicious.

2 Illegal Contracts. Any contract which has for its purpose the furtherance of any object contrary to justice or common morality is void. This is the general principle. This subject may perhaps be best presented by taking up a number of specific cases.

3 Contracts to do any Immoral Act are Void. Among these may be mentioned Contracts

(1) To lead an immoral life.

(2) To publish, sell or transmit by mail, &c., immoral and obscene pictures or publications.

(3) Of bribery in case of elections.

(4) Sunday desecration either for purposes of business or pleasure.

(5) Bets and wagers.
(6) Gambling and selling.
(7) Lotteries and raffles.
(8) Buying stocks on margins.

4 Contracts Made on Sunday. According to our laws Sunday is a day of rest and not for work except works of necessity or mercy, hence business done on that day is done contrary to statute and on that account illegal.

5 Contracts Against Revenue Laws. A few of these cases may be mentioned. Contracts in violation of these defraud the public of the revenue due which is used for the support and maintenance of government. A contract to smuggle dutiable articles into a country or to make incorrect returns of liquor or tobacco manufactured, neither a contract to do such acts could be enforced nor could pay for doing them be collected.

6 Contracts against other Laws. Among these we might mention contracts to sell liquor without license, to burn buildings, to destroy property, &c.

7 Compounding a Felony. If a person were guilty of some crime any agreement to pay another or to do anything for his benefit for not prosecuting cannot be enforced. Suppose A has embezzled B's funds and either he or his friends agree to pay B a sum of money to forbear prosecution the payment cannot be enforced. Even though a promissory note be given it cannot be collected by B. The promise not to prosecute is itself a crime that is punishable.

8 Contracts in Restraint of Trade. A contract whereby a person agrees not to carry on a certain trade or business or profession is illegal. This of course is general and not limited to a community. An agreement not to carry on a particular business is valid upon the following conditions.

1. It must be founded on a valuable consideration.

2. The restriction must not go as to its extent in space or otherwise beyond what in the judgement of the court is reasonably necessary for the protection of the other party. A contract made by A, selling out his trade to B, agreeing not to start the same business in that community is not in restraint of trade as A may go to another place and begin again. A contract by which A would engage not to carry on a business in any place would be illegal. Combines that limit the quantity to be manufactured of any goods or commodity and in this way do away with ordinary competition and fix values on the goods to suit themselves are illegal.

CHAPTER 3.

THE PARTIES TO A CONTRACT.

1 Competent Parties. Every contract requires two or more competent parties. Competent parties must be

(1) Of legal age.
(2) Of sound mind.
(3) If women, unmarried, except in certain cases.
(4) *If aliens, they must be friends.*
(5) If Corporations, the contract must be such as is allowed in their charter, or from the nature and operations of the Corporation.

2 Incompetent Parties. Others than those possessing the foregoing qualifications are, generally speaking, incapable of binding themselves in contract, hence they are called incompetent parties. Exceptions to this are mentioned under their appropriate headings. Those incompetent to contract may be classified as follows:

By Reason of Natural Inability.
(1) Idiots.
(2) Lunatics.
(3) Intoxicated Persons.

By Reason of Legal Inability.
(1) Infants.
(2) Indians.
(3) Married Women.
(4) Alien Enemies.
(5) Corporations limited partially by their Charter.

3 Incompetent Bind Competent Parties. A Contract is made between an incompetent person and a competent person. The competent person can generally be compelled to carry out his part, but the incompetent person's

part cannot be enforced against him. He really has a choice as to whether he will or will not carry out his part. He cannot enforce a contract against a competent party to his own advantage and refuse to carry out his part. He can not use the law that protects him for the purpose of defrauding others.

4 Necessaries for Incompetent Parties. The general exception to the rule that infants, lunaties, &c., are unable to make contracts is in the case where they bind themselves for the necessaries of life,

(1) Food,
(2) Clothing,
(3) Medical attendance,
(4) In case of Infants, for Education.

Each of the foregoing items must be suitable to the person's station in life. For example, a young man under twenty one years of age in circumstances of an ordinary mechanic could not bind himself for expensive luxuries of living or dress, only such as are necessary for ordinary comfort and protection. A contract for necessaries supplied to such persons, charged at exorbitant prices could not be enforced. Only the intrinsic value of the articles could be collected.

5 Idiots. An idiot is a person that never had reason or intellect. He is therefore incapable of understanding the nature and effect of any contract. He is therefore incapable of doing the business pertaining to the ordinary affairs of life. If he is the owner of property by inheritance it must be managed by others for him.

6 Lunatics. A lunatic is a person who had reason and intellect but has lost them. Some lunatics sometimes have lucid intervals when they are sane enough and are during that time perfectly capable of contracting. Contracts with or by a lunatic are voidable at his choice, if at the time of making the contract it can be shown that he was absolutely incapable of understanding what he was doing and *that the other party knew of his condition.*

7 Intoxicated Persons An intoxicated person at law may be considered in the same way as a lunatic having lucid intervals. Intoxication by liquor or drugs must be so complete that the person is deprived of his capacity to act and think. The same rule applies to the contract of an intoxicated person as to that of a lunatic But if the contract be subsequently confirmed it is binding on him.

8 Infants. A person under twenty-one years of age is called an infant or minor. A person becomes legally of age the day before his twenty-first birthday. The laws are very carefully framed to protect the rights of those incapable of caring for themselves. The theory of the law is, "That before the age of twenty-one the human faculties are immature, undisciplined and incompetent to guard against artifice or subtlety and it therefore extends to

them its protection and guardianship." The infant who is living with a parent or guardian has not power to make contracts and bind even for the necessaries of life. The parent or guardian is liable for such supplied to the child under his protection. If the child is separated entirely from parent or guardian he has power to contract for necessaries. Although infants are, generally speaking, not amenable to law on contracts they are, however, answerable to law for all criminal offences, trespass, assault, &c.

Exceptions. An infant becoming owner of shares in a Stock Company is liable during minority for all calls accruing due on the same unless there was an express agreement to the contrary at the time of purchase. An infant that is a partner may rescind his partnership at his majority. He cannot, however, rid himself of the liabilities of the business, contracted during his continuance as a partner.

Ratification. An infant making an executory contract may ratify it on coming of age,

(1) By doing so in express words or writing.

(2) By performance or part performance of it.

(3) By retaining the benefits accruing to him from it.

It will be noticed that the first is really a new contract and the second and third are new contracts by implication, if not really expressed in words. If not rescinded within reasonable time they may be considered as ratified.

Disaffirmance. An infant may, on becoming of age, disaffirm his contracts that are executory. This must be done within reasonable time. It will not do to wait six months or a year and then rescind them. If he disaffirms a contract on becoming of age he must restore to the other party whatever property or consideration he may have received, as far as lies in his power.

Agency and Infants. An infant may not appoint another person as agent as he could not bind the infant. An infant may, however, act as agent for another and bind him in contracts made on his behalf.

Indians. "The Noble Red Man" is a ward of the Government, is cared for and maintained by the Government, and is considered incapable of caring for himself or protecting his own interests. He is a sort of permanent infant and is incapable of binding himself in a contract even for necessaries.

Married Women. A woman unmarried a spinster or widow may make contracts as freely as a man. At common law a contract made by a married woman was void, the theory being that the husband and wife were one person, her legal personality being merged into that of her husband at marriage. This has, however, been modified, in Ontario very materially, and also in other places. (see Revised Statutes of Ontario, 1887, Chapter 132.)

In Ontario, now, a married woman may contract as freely as before marriage in reference to her OWN PROPERTY, or Separate Estate, as it is called. She may also engage in business or trade on her own account. A married woman's property is all that she owned before marriage, all gifts, legacies, property received as heir at law of intestate estates, also all her earnings, profits in trade on her own account, &c. This does not include gifts from her husband. She may also take and enjoy all the earnings of her children by getting an order from the judge when separated from her husband or deserted by him or if he is confined in prison as a criminal.

Alien Enemies. Under ordinary circumstances contracts made with or by citizens of other countries are as binding as those made by natural-born subjects in our own country. An alien enemy cannot, during time of war, make a fresh contract or enforce any existing contract without a license from the Crown. As to contracts made before war commenced his rights are only suspended, and the contract can be enforced upon peace being declared. It is, however, a well recognized law of nations that whenever war is declared between two countries they are enemies and all contracts existing between their citizens are suspended, and all contracts made after declaration of war are likewise void. Commerce is suspended as the manufacturers of a country might be supplying their enemies with arms and other articles that were needed at home.

Corporations. A Corporation is an artificial person created by law and really composed of a number of persons joined together and endowed with the capacity of perpetual succession. For the present purposes we will divide them into

(1) Trading Corporations.
(2) Non Trading Corporations.

The former are Joint Stock Companies formed for the purpose of carrying on some particular trade or business. Their charter only allows them to make contracts in their own line of trade. Those made relative to other matters would be void. Non trading Corporations are such as Towns, Cities, Townships, &c., formed for carrying on business. If a corporation were to engage in manufacturing implements it could not make a binding contract as it exceeds the privileges granted in its charter.

The general rules as to Corporation contracts is that a Corporation can only be bound by contracts under the seal of the Corporation.

The exceptions to this rule are

1. **Trading Corporations** may by their agents enter into simple contracts without seal relating to the objects and purposes of the Corporation,

2. **Non-Trading Corporations** may enter into simple contracts (without seal.)

(a) In matters of trifling importance or daily necessity, e. g., the hire of a servant or supply of coal.

(b) In matters of urgent necessity admitting no delay.

CHAPTER 4.

CONSENT.

- Mutual Consent—Definition.
- Offer.
- Acceptance.
- Acceptance by an Act.
- Duress.
- Time.
- Proposal by Mail.
- Acceptance by Mail.
- Mistakes.
- Custom or Usage.

Mutual Consent may be defined as a meeting of minds. They must meet or be a unit on the same thing, else there can be no contract. The parties to every contract, however extensive or trivial, shew their willingness to make a contract by what we might term the elements of a contract, viz.,

(1) Offer by one party.

(2) Acceptance by the other party.

Example. If A, a merchant, offers a coat to B for $10 and B says "I will accept your offer," or other words of similar effect, we have a contract This may be done

(1) Orally, by speaking to one another.

(2) By writing (informal) letters to one another.

(3) Formal or Specialty, by writing out and signing and adding a seal to each signature.

Offer. The beginning of every contract is made by one person making an offer of some kind to another. This is sometimes called making a proposal. For example, A says to B, I will sell you this horse for $100. This is an offer. B says, I will not do that but I will offer you my cow and $50 for your horse. Here we have a second offer. There was no contract in the first case as the parties failed *to agree*. The second will be continued under the next heading.

Acceptance. The agreement or willingness of a party to take the offer of the other, expressed or written to the person making the offer, is acceptance. In the example above B has offered his cow and $50 for A's horse. If A says I will accept your offer, there is a contract.

Rules respecting Proposal and Acceptance.

1. The acceptance must be unconditional and identical with the terms of the proposal.

2. A proposal may be revoked before acceptance, but not after.—An acceptance cannot be revoked.

If the parties are contracting orally in each other's presence a proposal may be revoked without notice.

If the parties communicate by correspondence notice of revocation of proposal must reach the party to whom proposal is made before he has accepted it.

Acceptance by an Act. Proposal and Acceptance need not always be made in words, but may be given by an act. A goes into a shop and says to the proprietor, I will give you $1 for this hat. The proprietor hands him the hat, thus accepting by an action. A sends goods to B's house, and B uses the goods. B will be liable on an implied contract for their price. A requests B, a wholesale merchant, to send him certain goods. It is understood or implied, though not expressed, that A will pay a fair market price for the goods to B.

A proposal need not be made to a specified individual, but no contract can be formed until it has been accepted by a specified individual: *e. g.*, A advertises a reward of $10 for the recovery of his lost dog—the offer is not to any particular person but to every person. If B finds and restores the dog the contract is formed and he can demand the reward.

Duress. It is the theory of the law that all competent persons are free to make as many contracts as they may see proper and of whatever kind they may desire, so long as within the limits of the law, hence it is illegal to restrain a person from making a contract, and likewise illegal to compel in any way a person to make a contract. Any contract, made because of any threat or constraint, may be avoided at the option of the party who has entered into it under Duress.

Time. An offer made orally, unless otherwise specified, is supposed to be accepted immediately and in this case may be revoked or withdrawn any time before it is accepted. An offer may be made, however, giving time for acceptance, if there be a specified sum paid by the second party as a consideration for the privilege of extended time.

EXAMPLE 6.—X offers to sell to Y [illegible] for $1,000, payable half cash and half in 12 months time. Y pays £5 to X for the privilege of considering X's offer and [illegible] to accept it in time within a week. The £5 are paid and a memorandum signed and receipt accordingly given by X. Here is a case of a contract without consideration for the £5 being that Y has the exclusive right to purchase the business in time within a week at he chooses to do so.

7 Proposal by Mail. A proposal may be made by mail or telegraph. Such offer continues valid until it is revoked unless the time prescribed for acceptance has lapsed, or there is lapse of reasonable time before acceptance. The acceptance of an offer is the consummation of a contract, hence a letter or telegram revoking it is of no avail unless received by the second party before acceptance.

8 Acceptance by Mail, &c. An offer is accepted by mail when the letter containing it is placed in the post office, or by telegraph when the telegraphic despatch is delivered to the Company, hence any revocations of an offer must be received before the letter of acceptance is mailed or the telegram of acceptance is sent, or the offer will be enforceable.

EXAMPLE. A writes to B Aug. 12, offering him 1,000 bushels of wheat at $1.25 per bushel. A writes to B Aug. 13 revoking the offer. B received the letter on the 14th Aug. and posted acceptance on the 16th and received the revocation on the 17th. B can enforce the contract.

9 Mistake. Where the parties may not have meant the same thing or one or both may have formed untrue conclusions as to the subject matter of the agreement.

Where there is a mistake in the terms of agreement and one of the parties being aware of the error seeks to take advantage of it the contract is void.

EXAMPLE. Every person making a contract is supposed to understand the meaning of the words he uses. If I intend to order 20 chests of tea and by mistake write 220 chests in my letter, the party I order from may, if he chooses, compel me to accept and pay for the 220 chests.

10 Custom or Usage The custom at the time and place where a contract is made has great weight in determining the meaning of the contract.

EXAMPLE. A agrees to build a stone house for B at the rate of 50 cents per perch. In some places a perch of stone work is considered as 16½ cubic feet of wall; in other places 24¾ cubic feet. If any dispute arose the custom of the locality would have to be ascertained to settle the disputed point.

CONSIDERATION.

1 Definition Consideration is some gain to the party making the promise arising from the act or forbearance given or promised of the promisee, or Consideration is the price of the promise or the cause that moves the parties to enter into a contract. It is something

(1) Given,

(2) Done, or

(3) Promised to be given or done by the person to whom a promise is made.

For this consideration the person to whom the promise is given either

(1) Gives something (in case of a sale),

(2) Does something (in case of service rendered), or

(3) Promises to give or do something in the future.

A promises to build a stable for B and B promises to pay A, as consideration for his work, the sum of One Hundred Dollars. It will be noticed

(1) That one promise is a consideration for another promise.

(2) That if one party does not carry out his promise the other party is not bound to carry out his part.

In the above example, if A fails or neglects to build the stable B will not be required to pay the hundred Dollars.

2 Promises without Consideration It was stated in a previous chapter that a contract without a consideration is void. The consideration is the inducement upon which the party agrees to be bound. If there is no consideration there is no reason for the contract, it is not enforceable. There is nothing to support it. Honor and morality require the fulfilment of promises. The object of the law is to prevent injury, not to make people faithful. A person to whom a bare promise is made cannot claim injury for non-fulfilment as he has not rendered any equivalent for it to the promisor. There has neither been benefit to the promisor nor detriment to the promisee.

3 Exceptions (1) All contracts made under seal are valid, whether there is consideration or not. The placing of a seal on a contract makes it final. The seal itself is said to be consideration.

(2) The second exception is a very common one, as well as an important one, that is negotiable paper, Notes, Cheques and Bills of Exchange. Accommodation paper is perhaps the most notable example of this kind.

In Bills of Exchange and Promissory Notes, consideration is *presumed* to exist. The burden of proving want of consideration is thrown upon the defendant.

4 Division Considerations may be divided or treated as follows:

1. Good.
2. Valuable { A benefit to the promisor.
   { A detriment or inconvenience to the promisee.
3. Insufficient.
4. Illegal.
5. Impossible.
6. Executed.

5 A Good Consideration is "natural love and affection" that exists between near relations. It is good

(1) As between the parties themselves to support an executed contract.

(2) But not good as against outside parties.

On the first point a good consideration in a deed of land already made from father to son will support it. A consideration will not support a promise to make a deed sometime in the future.

On the second point suppose the father in consideration of natural "love and affection" conveys to his son a piece of property when he is insolvent in order to keep it from his creditors, the consideration will not support it as against the creditors who really ought to have the property to help satisfy their claim.

6 Valuable Consideration The first division is that of a benefit to the promisor. X promises to dig a drain for Y and Y agrees, in return for this work, to pay X ten Dollars. Here the Ten Dollars is a benefit to X, the promisor. Any other thing or service that is of value would answer as a valuable consideration instead of the Ten Dollars, such as goods, professional services of a lawyer, doctor, &c.

The second division, "A detriment, loss or inconvenience to the promisee." A promises to give B his horse if he will find him. The trouble and expense of finding the horse, on B's part, would be a valuable consideration for the

horse and he could become possessed of him and hold him for such consideration.

7 Insufficient Consideration Every person making a contract is left to judge for himself as to whether or not he gets sufficient consideration. If A gives B a $100 horse for $50 the law will not interfere as A must have considered $50 sufficient. The Courts say that "the law detests litigation," and therefore will consider anything a sufficient consideration which arrests or suspends litigation. If I sell you an article too low or agree to do work for you at a price that will not pay me I must abide by my bargain. The only case where insufficient consideration can be used as a plea is in a case where there is fraud, where the party has been deceived, and the insufficiency is caused by the fraud.

8 Illegal Consideration renders a contract void. It is no consideration. When the consideration is forbidden by law the party promising the work or goods is relieved from his part.

9 Impossible Considerations will not support contracts. Suppose M offers to drain Lake Huron in consideration for some contract, the contract would not be enforceable as no person is compelled at law to do an impossibility.

10 Assignment of Chose in Action is a valuable consideration for a contract. A Chose in Action is a Book debt, claim or right to receive money for breach of contract or a personal wrong (a tort). All such claims are transferable by assignment except those for personal injuries, &c. A tort is not assignable.

11 Moral Obligations An honorable man will fulfil his promises in all cases whether the law require him to or not. As stated before, the law is to prevent injury not to make men good citizens. The man that simply lives within the law is not what we would call a good citizen. To live so as just to keep clear of the clutches of justice is to live on a very low plane indeed. If the law were to make moral motives a sufficient consideration for a contract it would annihilate the necessity for valuable consideration entirely as the mere giving of a bare promise creates a moral obligation to perform it.

12 Executed Consideration Where one person, A, has already given goods, services or other value to another person, B, this is a sufficient consideration to sustain a promise from B to repay money or return goods or services for what A has given him. A debt barred by the statute of limitations, or by composition deed in case of insolvency, is sufficient consideration to support a promise to pay such debt.

13 Failure of Consideration—If the consideration of a contract entirely fails the contract is void. If the consideration only partially fails the contract is still valid and the other party may claim damages only for the part that failed.

EXAMPLE.—A sells a patent right for a fence to B for the County of Grey. The patent is found to be void. A cannot collect the amount due him on the contract or enforce payment of any note he has received as payment for such patent right.

CHAPTER 6.

FRAUDULENT CONTRACTS.

- DEFINITION.
- VOIDABLE—NOT VOID.
- THE DISHONEST PARTY.
- MIS-STATEMENT OF FACT.
- CONCEALMENT OF FACT.
- FRAUDULENT ON THIRD PARTIES.
- STATUTE OF FRAUDS.

1 Definition—It is impossible to give a definition wide enough to cover fraud in all its various forms. Any cunning, deception, artifice or device used to circumvent, deceive, cheat or mislead any person in making a contract is fraud.

In general terms: fraud is a *false* representation of *fact*, made with a knowledge of its falsehood, or a *disregard* of whether true or false, with the *intention* that it should be acted upon by the injured party. The representation must *actually deceive*. It may be practised in two ways,

(1) By stating facts known to be false.

(2) By concealment of facts known to be true that should be known.

With reference to the parties upon whom fraud is practised there are two classes,

(1) By one party to another to induce him to make a contract.

(2) By two parties to defraud a third person.

2 Voidable Not Void—The party upon whom fraud has been committed is not bound to carry out his part of the contract. He may avoid it. If he choose to affirm it he can have the representations made good. He cannot however, disaffirm the contract altogether if in the meantime

(1) If he has accepted some benefit or continued to act under it after he had become aware of the fraud:

(2) If he did not give notice of the fraud within reasonable time after discovery of it.

(3) If innocent third parties have acquired valuable interests in the contract.

3 The Dishonest Party in all cases is bound to carry out his contract. He cannot disaffirm it. If both parties have acted dishonestly there is no relief for either of them. Neither one can force the other to carry out his contract.

4 Mis-statement of Fact This is the more common example of fraud. A sells a horse to B for $80 and represents him to be quiet in harness and true to draw when he is not. This would be fraud. It will be noticed that mis-statement of *fact* is what is dealt with here, not of *opinion, conclusion* or *inference*. Assent to a false statement would be equivalent to a mis statement.

5 Concealment of Fact This applies to facts that are known to one party and not easily discovered by the other party. Facts that the second party could easily have knowledge of by exercise of ordinary diligence. Silence on any point may amount to concealment of fact.

6 Fraudulent on Third Parties This may be accomplished by

(1) Legal means.

(2) Illegal means.

The former class keep out of the clutches of justice, the latter is criminal though no worse than the former. The following are a few common cases:

(1) Puffers at auction sales.

(2) Putting property in the names of other parties to save it from creditors in case a person is insolvent.

(3) Selling goods without bill of sale and retaining possession of them.

(4) Fictitious sales of property at an enhanced price so as to influence others to pay high figures, &c.

7 Statute of Frauds The statute bearing the foregoing name was passed in the 29th year of the reign of Charles II. of England. Parts of it have been incorporated into the laws of almost every civilized country. These provisions relate to the making of certain contracts in writing signed by the parties chargeable therewith. These points will be fully considered in the following chapter. The Statute of Frauds does not make anything a fraud that was not previously a fraud, it simply states that in order to make certain contracts valid there must be some tangible evidence of the intention of the parties making the agreement.

CHAPTER 7.

CONTRACTS. Oral, Written and Specialty. THE STATUTE OF FRAUDS.

1 Division. Contracts are divided into
(1) Oral.
(2) Written (informal).
(3) Written (formal).
(4) Specialty Contracts.
In this chapter we will look at them as thus divided.

2 Writing, Printing, &c. Written contracts may be written with ink or pencil or printed or written with a typewriter, or by any other process for the production of words on paper, parchment, &c., or may be partly written and partly printed. In case of a contract partly written and partly printed if there be writing and certain printing in the same contract that disagree, the writing will be regarded as authority.

3 The Statute of Frauds. The famous statute of the above title, passed in the 29th year of the reign of King Charles II., has been re-enacted to a great extent into the laws of all more mercantile countries. In Ontario some sections of it are brought into effect with a few minor variations in Revised Statutes 1887, Chapter 123. The statute is not for the purpose of defending fraud but for preventing it by enacting that certain important contracts should be in writing and signed by the person or persons chargeable therewith. It does not provide that all such contracts should be written out in legal phraseology but that "some memorandum" of the contract must be signed by the party chargeable therewith or by some other person duly authorized by him to sign his name. Hence poor spelling, indifferent grammar do not operate

against a contract. All that is necessary is that it be a clear expression of the intention of the parties. The following are the provisions of the act that are important as bearing on this subject:

(1) No action shall be brought whereby to charge an executor or administrator promises to answer for damages out of his own estate unless the same be in writing signed by him.

(2) Where a man undertakes to answer for a debt, default or miscarriage of another it must be in writing (guarantee or surety ship).

(3) Where a contract is made upon consideration of marriage (not engagement) it must be written.

(4) Where any contract is made respecting Real Estate or any interest in Real Estate it must be in writing and under seal.

(5) Where an agreement is made that is not to be performed within one year it should be in writing.

(6) An executory contract of sale of personal estate of more than $40.00 must be evidenced in one of the following ways in order to be binding.

1. By being in writing,
2. By partial payment (earnest money), or
3. By partial delivery of goods.

The law is the same in all the Canadian provinces except that in Prince Edward Island, the limit of a purely verbal contract is $30 instead of $40.

4 Oral Contracts Those made by the parties speaking to one another are limited as to time to one year, and in amount to $40.

The value of the contract may be extended

1. By a small payment, usually called "earnest money," or as some say, "something paid down to bind the bargain."

It does not matter how small the sum so long as it was paid with that intention; one cent might be earnest money for a $1000 contract so long as paid for that purpose.

2. By a partial delivery of the goods. A might sell to B a million bushels of wheat and bind the contract by delivering to B a handful of wheat for that purpose.

Oral contracts are valueless so far as transactions in Real Estate are concerned, likewise in any contract to guarantee or be surety for another.

5 Written Contracts, (Informal), are such as are contained in letters, etc. They are very common and are just as binding as the formally written

contracts. It is obvious that it is of great importance that all such letters should be copied so that each person to such contract may know just what the terms of offer and acceptance are. A copy written off with pen or lead pencil before such letter is mailed would answer the purpose, but a letter press copy is of much greater legal value as there can be no variation between the letter and copy.

6 Written Contracts (Formal) are such as have been carefully reduced to writing, usually in legal phraseology and contain the whole contract both as to what is to be done, how it is to be done and the consideration therefor.

7 Specialty Contracts are those in writing and under seal, otherwise called **"Contracts by Deed."** A deed, therefore, does not simply mean a transfer of land by deed, but in its fullest sense embraces all sealed contracts. They are binding without consideration being expressed, the seal being the consideration. The contract by deed is looked upon as a much more solemn contract than others. Any contract may be made under seal.

8 The Seal is a relic of "ye olden time," when the business of a man was said to be war, when in England the Lords, Dukes, &c., could not write but gave their assent to their contracts by making an impress of their seal in hot wax on the contract. The seal usually had the family crest engraved on it. Now anything stuck on after the name may be called a seal. When any device is printed or written after the name or the letters "L. S." the seals may be put on any time afterwards. The seal should be touched by the person signing and acknowledged to be his seal. Many put their initials on the seal with pen and ink after signing their names, thus practically identifying their seal.

All Corporations, Joint Stock Companies, &c., must have a corporate seal which the officers must attach or impress on all contracts in order that they may be binding on the Corporation or Company.

9 Guaranty and Suretyship This is one of the most common transactions that come under the Statute of Frauds. All such contracts should be in writing or they are void. As under the statute of frauds mentioned before, the person to be charged with

(1) The debt of another person,
(2) The default of another person,
(3) The miscarriage (lack of full performance) of another person,)

must sign some memorandum of the same in writing. (See Revised Statutes of Ontario, chapter 123, ss. 7, 8 and 9.)

When a person guarantees another or becomes his surety he is not the principal debtor, only a collateral debtor to be called on only on the default of the principal original debtor. An illustration will best explain this point. A goes with B to the merchant C and says to him, Give B ten Dollars' worth of goods: if he does not pay for them I will. Here B gets the goods and is principal debtor. A is only surety or collateral debtor and his oral promise is not legally sufficient to bind him. We will now just change one circumstance and A will be principal debtor and not surety. Suppose A says to C, Give ten Dollars' worth of goods to B and charge them to me (A). If he does not pay for them I will. The authority of A to charge the goods to him makes him principal or original debtor and not surety. The debt is his, not B's. Though it is intended that B pay for the goods it makes no difference. A's verbal authority to charge the goods to him is sufficient to bind him, but his verbal guarantee is not.

10 Promises in Consideration of Marriage Promises of marriage differ from those where the consideration is marriage. Two persons, A and B, are "engaged," in other words, have each promised to marry the other. The promise of one is the consideration for the promise of the other. If, however, A promised that when they were married he would give certain property to B in consideration of that event, then such promise must be in writing, signed by the person A, who is chargeable with it, while the mutual promise to marry would be binding if simply verbal. If C promised to give to A or B, or to both of them, certain property in consideration of their marriage it must be in writing, signed by C or he will not be legally bound by his promise.

11 Real Estate, &c. The application of the statute of frauds to sales of Real Estate, Personal Property, to executors, administrators, will be dealt with under their appropriate headings in other parts of this book.

12 Time All contracts that are not to be completed within one year should be in writing. If A agrees with B to purchase all the wheat grown by B during the next three years, such contract should be in writing. The reason why such enactment is made is that the memory is to a certain extent uncertain and the longer the time that elapses, the more indistinct will be the recollection of the terms of the contract.

13 Partly Written, Partly Oral Contracts written out formally usually contain all the provisions and conditions of the agreement. If, however, either formal or informal, contracts are partly written and partly oral and those parts disagree, the writing will carry the most weight.

CHAPTER 8.

INTERPRETATION OF CONTRACTS.

1 The Presumption Where parties enter into a written contract the presumption is that they have written just exactly what they intended to do and to pay, and how it is to be done and paid. Sometimes, however, it is difficult for a person to say just what he desires to say, and nothing else, and to make his meaning clear and convey no other meaning. On this account it has been found necessary to establish general rules of interpretation of contracts, a few of which will be touched upon in the following items.

2 The Intention of the Parties The general rule, and the one to which all others are subservient, is ***to ascertain the intention of the parties.*** The law will not allow either the grammatical or the literal meaning of the contract to set aside the ***original intention.***

3 Technical Terms In every contract there is almost sure to be one or more technical words such as apply to the particular business that the contract refers to. All such will be interpreted in the sense in which they are used in that particular trade. The sense may be proved by oral evidence given by persons skilled in that trade. No person can ascertain too carefully the meaning of technical words, phrases, &c., not only in connection with their own business but with others so that they may understand the true nature of all contracts they may enter into.

4 Custom and Usage Anything that relates to the usage or custom of a trade in general or in any particular locality which gives special meaning to any term or attaches particular value or number apart from the general usage, the custom may be proved by oral evidence. Suppose A agreed to work for

B at $2 per day and worked 12 hours per day. If he could prove that it was the custom for 9 hours to constitute a day's work he would be entitled to be paid at the rate of $2.66⅔ per day of 12 hours. An Englishman once agreed to leave 10,000 rabbits on a certain rabbit warren. The other party was allowed to prove that in trade a thousand rabbits meant a hundred dozen, or twelve hundred rabbits.

5 Doubtful Terms When an agreement admits of being understood in different ways it will be construed according to the sense in which the promisor understood his promise at the time of making it.

6 Writings to be Construed Together Where a contract is contained in several writings, the general sense of all will be taken together to establish the meaning of the contract. If in letters, all letters relating to the bargain are to be read together. If in two or more documents written at the same time between the same parties and relating to the same transaction, they must be read together as one contract. If A gives B the goods in his store for a house and lot, the bill of sale that conveyed the goods and the deed that conveyed the land would be construed together to determine the intent of the parties.

7 Variations between Writing, Printing, &c. Where a contract is partly oral, partly printed or partly written, and acknowledged to be so, the writing takes precedence over the printing and the printing over the oral in case there is any variation as to the terms or conditions of the same.

8 Outside Evidence When extrinsic evidence is allowed in reference to a written contract it must not prove anything at variance with the terms of the written contract. It is simply allowed to prove anything explanatory or such as the usage of trade in a locality, &c.

9 Dependent and Independent Covenants—Where a person agrees to do all his part before the other party does his, the second party is not compelled to do any of his part until the other person has first completed his. A is to build a house for B, B is to pay for it when it is completed. The promise of B to pay for it is dependent on the performance of A's promise to build. X agrees to deliver to Y on demand 30 cords of wood; Y agrees to pay for same when it is convenient for him. The promises are independent of each other Y has the affair entirely in his own hands.

10 Conditions Precedent If A agrees to give to B an extension of time for the payment of a debt on condition that C will give B a like extension

of time. A is not bound unless C gives the extension. A conditional promise of this kind is called a *condition precedent*.

11 Entire and Severable Contracts A contract entire is one in which one party must perform all before the other party does anything. A agrees to cut ten cords of wood for B, after which B is to pay A five Dollars. A could not make any claim when he had cut six cords. If, however, X makes a contract with Y and agrees to cut for him sixty cords of wood and Y agrees to pay him a dollar a cord each Saturday night for all cut during the week, this contract is collectable weekly. The payment is not contingent on the entire performance of the work.

12 Liberal Construction If a contract is so indifferently worded that it may mean either something or nothing, the common sense construction will be placed on it to give effect to the original intention of the parties. The Court will even supply words and expunge inconsistent clauses to give effect to the intention of the parties at the time of making the agreement.

13 Construction as to Time When an agreement states that certain things are to be done in a certain time the conditions must be complied with. There is one exception. If the last day of performance is on Sunday or a legal holiday, the time is extended to the day following. The day on which a document is dated is not counted in reckoning the time, but the last day of performance is counted. If the running time is in days, as "thirty days after date," the exact days must be counted. If the running time is in months, Calendar months will be counted. If there is no time mentioned in the contract it is always presumed that it is to be executed forthwith or within a reasonable time.

In case it is work that cannot from the nature of it be performed at once, reasonable time would be determined by the Court and would depend entirely on the nature of the work to be done not on a particular person's capabilities or incapabilities for doing such work.

14 Construction as to Place Contracts are usually to be performed where they are made unless

(1) The contract itself states that the performance is to be in another place.

(2) In case of Real Estate. It is immovable and has to take place where the property is situated.

Contracts made at any place to be performed there must be in compliance with the laws existing in that place. If they are contrary to the laws of the province, state or country where they are to performed they cannot be enforced

though the parties live in other provinces or countries where the contract would be legal.

A contract is not complete until both parties sign it, hence the place where it is assented to is the place of performance unless otherwise specified. If a contract is made by letter the place of that contract is the place where the letter is signed that completed the contract. It is of importance in case of breach of contract where the contract is made as that determines the place where the suit will be tried if it is settled in the courts.

CHAPTER 9.

CONTRACTS PAYMENT, SETTLEMENT, &c.

1 Payment The consideration in every contract, unless otherwise provided, is money. Every debt or obligation is payable in money unless otherwise agreed upon.

2 Counterfeit Money will not discharge any debt even if paid in good faith by one party and received in good faith by the other party, not knowing it to be counterfeit. The person receiving it must return it to the person who paid it to him within reasonable time. The claim or debt for which it was paid remains as before and may be sued or collected as if such payment had not been made.

3 Forged Notes, Drafts, Cheques, &c. When these are given in payment, even in good faith, they do not discharge the obligation any more than counterfeit money. Such paper must be returned within reasonable time.

4 Payment in Property When it is so agreed a contract or debt may be paid in property of any kind either real or chattel. When a particular kind of property is stipulated as payment and that kind is not given as agreed upon any other kind may be refused, and the debt collected in money. If a debt is payable in money and a mortgage or lien is also taken as collateral security, such mortgage or lien does not cancel the debt, but in case of default of payment, if the mortgage or lien be enforced and property of sufficient value sold to pay the debt it is discharged.

5 Payment by Note or Draft does not usually discharge the debt. It simply defers the time of payment to some future time. If, however, A would pay to B a note he held against C for goods or a debt, the note of the third party would pay the debt. B would become an innocent holder for value of C's note and could enforce payment against C regardless of any claims of C against A.

6 Manner of Making Payments Payments must be made in the way and manner provided for in the agreement. If a place of payment is stipulated it must be made at that place. Restrictions are often placed as to manner of payment, such as "Payable only at A's office in gold coin to A personally and not elsewhere or otherwise."

If X directs Y to pay a debt due him by sending the money by mail, and if Y follows his directions exactly, he discharges the debt even if the money is lost on the way and X never receives it, the creditor's directions having been complied with. If no place of payment is mentioned it is the duty of the debtor to find the residence of the creditor and pay it there. Payment to a creditor's attorney, or agent, in case of a suit at law, is sufficient to discharge the debt, if the attorney or agent is specifically authorized to receive payment and give a discharge.

7 Presumption of Payment Payment may be presumed to have been made under some circumstances unless there is evidence to the contrary.

(1) If the document creating the liability is in the hands of the debtor. A promissory note is made by X in favor of Y but is now in X's possession. It is presumed that X has paid it.

(2) If an order or draft drawn on M is in his possession, it is presumed that he has paid it or delivered the goods it called for.

(3) If a debtor has a receipt from the creditor the presumption is that he has paid the debt.

(4) If there has been a great lapse of time without any demand, the presumption is that the debt has been paid. Twenty years cancels any debt even if under seal.

(5) Subsequent dealings between parties running accounts with one another after a previous settlement by note, the presumption is that the accounts were adjusted when the note was given.

8 Application of Payments Where several debts are owing by the same person to one creditor, if all are due the debtor may direct how the money is to be applied. If, however, it is not sufficient to discharge one debt and is sufficient for another, the creditor may require one fully discharged.

Where no directions are given by the debtor as to how the money is to be applied he may apply it to any debt he pleases, even to one barred by the Statute of Limitations. In case a payment is made where there are principal and interest, the interest must first be paid. If any balance remains it should be applied to reduce principal.

9 Partial Payment The payment of a smaller sum of money in satisfaction of a larger does not usually discharge a debt that is undisputed. A mere agreement is not sufficient to release such a person as the smaller sum was not enough for satisfaction of the larger, hence there is nothing left for a consideration for a new contract.

10 Composition Deed Any debt may be paid by a smaller sum if there is an agreement under seal to that effect. The most common case is that of an insolvent who pays his creditors at a certain rate on the dollar. The release is called a Composition Deed.

11 Releases Any debt, liability or obligation may be discharged by a release under seal. In cases of this kind there may be a nominal consideration of one dollar or some such sum. It often occurs that if two parties have been running accounts for some time and they come to settlement, though not agreeing with either of their books, they give one another a mutual release each giving a nominal consideration.

12 Accord and Satisfaction A disputed claim may be settled by accepting a less sum in satisfaction of the debt. Accord and satisfaction simply means agreement to accept a certain sum, article, service or benefit in satisfaction for a disputed claim.

13 Merger is the extinction of a lesser in a higher security, *e. g.*, where two parties have entered into a *simple* contract (not under seal) and afterwards enter into the same contract under *seal*, the simple contract merges in the formal contract. When a security under seal, such as a mortgage, is taken in payment of a debt it is called a Merger, because the lower form of security,

such as note or book account, is merged into a higher form of security. A mortgage taken as a *collateral security* does not merge the debt. A judgment is a higher form of security, and a note or bond that judgment has been given on is merged into a judgment and is no longer binding as a note or bond.

14 Arbitration and Award In cases where there is a dispute as to the amount due on a contract the settlement is left to persons chosen by the parties for that purpose. The disputants usually choose one each. If these fail to agree they choose a third party to help them. The decision of the arbitrators is called an *Award* and is binding on the parties so long as the arbitrators have kept within the limits prescribed for them. In large contracts of building and other work it is usual to specify that the value of any extras is to be settled by arbitration.

15 Legal Tender is an *attempted* performance of a contract. It is of two kinds,

(1) An attempted performance of a promise *to do* something.

(2) An attempted performance of a promise *to pay* something.

16 Tender is an offer of money, services, property or goods in satisfaction of a debt. In case of goods, property, &c., it must be the goods or property specified in the contract. If the contract is not payable in money and does not call for goods, &c., it is payable in money, and money legal tender must be offered without condition except that of discharge of the debt. If money or goods be tendered it must not be withdrawn but be delivered when required or paid into court if necessary.

Tender operates

(1) To stop interest at the time of tender, and

(2) To prevent the person tendering from being held liable for law costs, &c., in case of suit on the debt.

CHAPTER 10.

CONTRACTS RIGHTS, DEFENCES, &c.

1 Rights. Whenever a contract has been made each of the parties has acquired some right under it. A agrees to cut twenty cords of wood for B. In return B promises to allow A to live in a house of his for a year. B has a right to require the wood to be cut for him and A has acquired a right to live in B's house. If either party refuses to perform his part the other may sustain loss on that account, hence one would have a right to damage from the other. Such rights, when enforced at law, are called remedies, of which there are two classes.

(1) Penal.
(2) Civil.

The first is dealt with by government, the latter kind, only, is dealt with here.

2 Judgment. When a contract is broken the value of the injury to the party willing to fulfil may be proven in court. The decree of the court, ordering the party in default to pay a sum of money to the other party, is called a *Judgment*, sometimes called a *Contract of Record*. The certain sum ordered to be paid is called Damages and is estimated by jury in view of all the facts of the case. Damages are of various kinds.

(1) Compensatory Damages, being the actual loss sustained by the person injured by the breach of contract.
(2) Nominal damages, where the breach of contract resulted not from unwillingness to perform but from inability.
(3) Liquidated Damages, where the amount is agreed upon beforehand by the parties should damages be awarded.

(4) Speculative Damages, where the profits in a certain business or trade expected to result from goods bought under a contract can be estimated they may be recovered as speculative damages.

(5) Exemplary Damages. When a person has wilfully and maliciously committed a wrong, damages much greater than the monetary value are sometimes granted by way of punishment. This is sometimes called "smart money."

3 Execution If the amount of damages is not satisfied within the time set in the judgment, written order is given to the sheriff by the court to seize and sell the property of the person against whom the judgment has been given. If property cannot be found to satisfy the debt, the debtor is himself brought before the court and examined as to his property. (If he has none he is ordered to pay a sum monthly, or weekly, according to his earning power.) This power, however, is limited to certain courts.

4 Injunction In case a person is doing something he has agreed not to do, or is infringing on rights, an order may be given by the court restraining such a person from continuing such a course of action. This order is called an Injunction.

5 Defences In any suit for breach of contract it very seldom happens that the wrong is all on one side. The person against whom the action is brought - the defendant - usually has some plea to set up against the claims made against him.

6 Performance The defendant may set up a defence that he has performed his part and that the other party refused to accept it. In order that such performance be a valid defence it must have been completed according to the terms of the contract in style of workmanship, materials and time, and in case of personal skill, performance by a substitute would not fulfil the contract.

7 Non-Performance may be excused when it is caused

(1) By the act of God, that is such as lightning, earthquake, inundation, fire, or any accident from physical causes or the death of the person.

(2) By public enemies, that is foreign enemies, armies, &c., of a hostile country in case of war. This does not apply to robbers, thieves, &c., resident within the country.

8 Statute of Limitations The law allows certain time in which to collect debts—six years in most cases for notes and book accounts, ten and twenty years for contracts by deed. If a debt is barred by this statute limiting the time in which it may be collected it may be a good defence in such a suit. More, however, about Statute of Limitations, beginning on this page.

9 Set Off—Where a person is sued for some debt or claim it very often happens that he has some claim against the person instituting the suit against him. Such counter claim, or contra account, loss or damage may be entered by the defendant, and if found correct by the court will be deducted from any damage proved by the one entering the suit.

10 Recession of Contracts When one party is bound to do some act or thing before the other party performs his part, if the other party utterly fails or refuses to perform his part, which is a condition precedent to what is to be done by the second party, the second party may rescind the contract as the purpose of the contract has utterly failed. He cannot rescind part and consider part binding. In case of rescinding a contract on account of fraud, the party rescinding must be without fault.

CHAPTER II.

STATUTE OF LIMITATIONS.

1 Limitation.—In the section on Presumption of Payment, one of the presumptions that a debt was paid was a long lapse of time without a demand of payment. The statute limiting the time when an action at law may be commenced for the collection of a debt or claim is called the Statute of Limitations. It does not cancel the claim but it takes away the remedy for the recovery of the debt at law. The obligation to pay remains the same, but the power to collect is removed.

2 Exception The limitation does not extend to Bank Bills or Bank Notes and other evidences of debt issued by banks. They are never outlawed by lapse of time.

3 Reasons (1) Old claims are supposed to be doubtful or ill founded. The presumption is that if they were good and just they would be paid or enforced within reasonable time.

(2) The law is said to detest litigation and hence the law quieting old claims. It is thought inexpedient and unjust that a person should be troubled with an old stale claim after years of silence as to the collection of it.

4 The Time—The time within which a suit must be begun on all specialty contracts, which includes bonds, leases, agreements under seal, &c., is generally twenty years. Actions on verbal or written contracts not under seal, notes, book accounts, &c., must be commenced within six years after due date. The contracts under seal are considered much more solemn and are supposed to be entered into with deliberation, hence the longer time given for the release by the statute. After the debt has run six, or twenty years, according to its nature, it is said to be *outlawed.*

5 Time Begins to Run when a debt is due. A suit may be entered for the collection of a claim, note, debt or demand the next day after it is due, hence the time of limitation begins to count the day following the due date, in promissory notes, bills of exchange the next day after the last day of grace, in accounts the day following the due date of the last transaction, either purchase or payment.

6 Exceptions—(1) Where there is a disability on the part of the creditor and he cannot sue the claim when it is due, the time begins to count when the disability ceases. Examples: persons under 21 years, insane, &c., on the infant's coming of age or the insane person's becoming sane, the disability ceases. This disability must be in existence at the time when the debt becomes due.

(2) 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. Leaving the province or state after the debt is due does not make an exception as the proceedings might have been taken before he left.

7 Change of Ownership—A change in the ownership of the claim does not extend the time. If X has a claim on a note against Y four years overdue, and transfers it to Z, it will be outlawed two years after Z becomes owner just the same as if X was still the owner.

8 Extension of Time A debt barred by the Statute of Limitations may be revived

(1) By a new promise in writing to pay it.
(2) By partial payment.

In some of the States a verbal promise to pay the debt is sufficient to revive it. Such is not the case in Canadian Provinces. In no case will a simple acknowledgement of a debt operate. There must be a direct promise to pay it.

9 New Promise in Writing A new promise in writing to pay a debt barred by the Statute of Limitations will revive it for six years from date (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.

10 Partial Payment A voluntary payment on account of either principal or interest, or both, of a debt barred by the Statute of Limitations revives it for six years from date of such payment. Such payment must

(1) Be understood to be on account of the debt, or
(2) Be applied by the creditor on such debt when received from the debtor without instructions as to how it is to be applied.

This voluntary payment on account of the debt is an acknowledgement of the correctness and validity of the claim by the debtor and of his willingness to pay it.

CHAPTER 12.

DRAWING AND EXECUTION OF CONTRACTS.

1 Definition The drawing of a contract is the composition and writing of the terms and conditions to be contained in it. The execution includes the signing, sealing and delivery of the document. The principles stated in this chapter apply not only to simple written contracts but to all formal specialty contracts, such as deeds, mortgages, discharges, &c.

2 Drawing of Contracts In drawing up contracts of all kinds it is necessary to be very specific not only in all the terms and conditions of the agreement, but to have a proper description of the parties to the contract.

3 Description of Parties A proper description will comply with the following points:

(1) The full name of the person. If he has half-a-dozen names before the surname include all of them.

(2) The smallest corporation or municipality in which he is resident, which will be

(*a*) A Township, or

(*b*) A Village, or

(*c*) A Town, or

(*d*) A City.

(3) The county in which the municipality is situate.

(4) The Province or State containing the county.

(5) The person's occupation or calling.

In case he has no particular trade or business he is usually called a gentleman.

(6) The *part* he takes in the agreement.

The person agreeing to do work or to sell an article is usually the party of the first part, and the party paying, the party of the second part.

4 The Signature to every contract should be in presence of a witness who is not interested in the contract, and the witness should sign immediately using such words as "Signed, Sealed and Delivered in the presence of W. J. Wilson." If the document is already signed the person may acknowledge his signature before the witness. This will do as well as seeing it signed.

5 The Sealing—All contracts of importance should be under seal. After signing, the person should place on the document after his signature a seal, or if the seal is already there he should touch the seal and in either case repeat some such words as "This is my act and deed," or "I acknowledge this to be my hand and seal." It is proper for the person signing to identify his seal permanently by putting his initials on it with pen and ink.

6 The Witness The witness should be

(1) A disinterested person

(2) Of sufficient age to understand what he is doing.

He should exercise great care especially where the persons executing the document cannot read or write. In all documents to be registered, such as Deeds, Mortgages, Bills of Sale, &c., it is necessary for the witness to verify

his witnessing and signature by an affidavit which may be written on or attached to the document. If two or more witnesses are for different signatures, an affidavit for each must be attached.

7 Signing by a Mark If a party cannot sign his name he should *request* some one else to do it for him. The first name should be separated from the surname sufficiently to allow a mark to be placed between them, thus:

his
JOHN X WILSON.
mark

The person signing must make the X mark himself, or at least touch the pen when it is being guided for him to do it. No matter how simple the agreement signed by a X mark there should be a witness to it.

8 Reading and Explaining When a person who cannot read is executing an instrument it must be read over and explained to him in presence of the witness so that he fully understands what he is doing. The witness in signing such an instrument should write such words as the following over his signature: "Signed, sealed and delivered, after having first been read over and explained, in the presence of John F. McBride." This furnishes evidence that the maker of the contract was given an understanding of what he was signing before it was done.

9 Erasures and Corrections should be made before execution of the document. If it is necessary to make any erasures or corrections in an instrument do not use a knife or rubber or anything that will disturb the surface of the paper; draw a line through it with pen and ink. If one or more words have to be interlined between either print or writing use a caret to show where they should be read in.

The witness should put his initials on the margin opposite every such erasure, correction or interlineation to indicate that all corrections and changes were made before the execution of the document.

10 Various Sheets—When a document is written on two or more detached sheets they should be fastened together and paged before they are signed. Sometimes the fastening is done with a ribbon and a seal put over the tie of the ribbon. Sometimes the witness places his initials on each sheet and mentions the number of sheets with his signature.

11 Various Documents—If an agreement is composed of two or more documents they may be marked *A. B. C. D.* etc., and referred to as Schedule marked A., Schedule marked B., etc. Example—A contract for building a house might be a short form with plans marked A. and specifications marked B. attached and really forming a part of the agreement.

GENERAL FORM OF CONTRACT.

MEMORANDUM OF AGREEMENT made and entered into this 22nd day of January, A.D. 1891, BETWEEN John J. Cooper, of the Town of Listowel, County of Perth and Province of Ontario, Student, of the first part, AND James Coghill, of the said Town of Listowel, County of Perth and Province of Ontario, Tailor,

WITNESSETH that the said parties hereto do hereby mutually covenant, promise and agree to and with each other in manner and form following, that is to say: —

1. That, &c., *(here add 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.

Signed, Sealed and Delivered in the presence of

CONTRACT TO BUILD A HOUSE.

BE IT REMEMBERED, that on this 16th day of January, A.D. 1891, it is agreed by and between A. B., of Allenford, and C. D., of Hepworth, in manner and form following, viz.:

The said C. D., for the considerations hereinafter mentioned, doth for himself, his executors and administrators, promise and agree to and with the said A. B., his executors, administrators and assigns, that he, the said C. D., or his assigns, shall and will, within the space of two months next after the date hereof, in good and workmanlike manner, and according to the best of his art and skill, at Lot 4, Scrope Street, in the town of Owen Sound, well and substantially erect, build, set up, and finish one house or messuage, according to the draught or scheme hereunto annexed, of the dimensions following, viz., &c., and to compose the same with such stone, brick, timber and other materials as the said A. B., or his assigns, shall find and provide for the same: in consideration whereof, the said A. B. doth for himself, his executors and administrators, promise and agree to and with the said C. D., his executors, administrators, and assigns, well and truly to pay or cause to be paid, unto the said C. D., or his assigns, the sum of $900.00 in manner following, that is to say, the sum of $300 when stone and brick work are completed; the sum of $300 when plastering and carpenter work is complete, and the sum of $300 31 days after the work shall be completely finished: and also that he, the said A. B., his executors, administrators, or assigns, shall and will, at his and their own proper expense, find and provide all the stone, brick, tile, timber, and other materials necessary for making and building the said house. And for the performance of all and every the articles and agreements above mentioned, the said A. B. and C. D. do hereby bind themselves, their executors, &c., each to the other, in the penal sum of $400, firmly by these presents.

In witness whereof, &c.

CHAPTER 13.

NEGOTIABLE PAPER.

1 Definition Negotiable Paper consists of written requests or promises to pay certain sums of money, at specified time, to some certain person, or to the bearer. The term *Negotiable* indicates that the ownership of the document may be freely transferred from one person to another. Those drawn payable to *bearer*, or to a certain person or bearer, are transferable by *de-delivery*.

EXAMPLE. A Bank Note. It is payable to bearer (the one who possesses it). It is transferable by delivery.

Those drawn payable to a person or order are transferable by endorsement and delivery.

2 Classes of Negotiable Paper The following are the principal classes of negotiable instruments:

(1) Promissory Notes.
(2) Bills of Exchange, which include { Foreign Drafts, Inland Drafts, Cheques.
(3) Bank Notes,
(4) Deposit Receipts,
(5) Coupon Bonds,
(6) Letters of Credit,
(7) Warehouse Receipts,
(8) Bills of Lading,

And generally all bills, notes or cheques are negotiable, unless they contain words prohibiting transfer or indicating an intention that they should not be transferred.

3 The Parties liable to pay negotiable paper are of two kinds, viz.:—

(1) Principal Debtor.
(2) Surety.

4 The Principal Debtor is the one who is primarily liable and the one who (if he is able) must pay the debt. Example—the person signing a promissory note.

5 The Surety is any person who agrees to pay in case of failure on the part of the principal debtor. Example—An indorser of a note or draft.

6 Days of Grace It is an established custom to allow three days in addition to the time specified in the instrument for the payment of bills, notes and drafts (unless otherwise provided in the bill, note, etc.)

EXAMPLE—A note dated October 4th, at ten days after date, would not be finally payable for 10 + 3 = 13 days after the 4th of October, that is, October 17th.

The number of these days varies in different countries. Six days of grace are allowed in Venice; at Genoa, 30 days. Days of grace are allowed on all notes and personal drafts drawn payable after date, and at or after sight. No days of grace are allowed on negotiable instruments payable on *demand*.

7 Maturity A note, draft, etc., matures or is due on the third day of grace. It may be paid anytime during business hours on that day. If payable at a bank it must be paid within bank hours.

8 Computation of Time When the time to run is expressed in days, the actual number of days must be counted exclusive of the day the note is drawn on.

If the running time is expressed in months, actual calendar months are counted, that is from the given date in one month to the corresponding date in the other. Three months from May 12th would be August 12th. Days of grace should be added in each case to find the date of maturity of the note.

EXAMPLE—A note is dated July 7th, drawn at 60 days, when will it mature? It will run 60 + 3 = 63 days.

In July after the 7th there are	24	days.
In August	31	"
In September there are required	8	"
	63	days.

The note matures on September 8th.

A note drawn June 14th at three months will mature September 17th, computed as follows:—

Counting ahead from June 14th three months, we come to the corresponding day of September, that is the 14th. Add three days of grace — September 17th.

Special attention is necessary when notes are dated at or near the end of a month. A note dated July 31st at two months would mature the same day as one drawn July 30th at two months. The corresponding day two months ahead from July 31 is September 30, that is the last day of the month. Add 3 days grace in each case and the date of maturity is October 3rd.

Suppose four notes are drawn respectively on the 28th, 29th, 30th and 31st of December, at 2 months, (any year not a leap year), they will all mature the same day, viz., March 3rd.

Dec. 28, at 2 months to *corresponding day*, Feb. 28th,
" 29, " " " " " 28th,
" 30, " " " " " 28th,
" 31, " " " " " 28th,
add three days of grace March 3rd.

9 Maturity on Sunday In Canada and many of the States a note or draft that falls due on Sunday is payable on the Monday following.

10 Maturity on a Legal Holiday Like those maturing on Sunday they are payable the day following. If a note or draft matured on a Saturday that was a legal holiday, it would not be payable until the Monday following. If a note or draft fell due on a Sunday and the Monday following is a legal holiday it is not payable until the following Tuesday.

11 The Title When ordinary debts are transferred from one person to another, the right of action against the original payee or owner of the debt, by the debtor, is also transferred with the debt. The contrary is, however, true with negotiable paper. . When a negotiable instrument is transferred before it is due, to a second party, by the original holder, it does not carry with it any right of action, or set off on account of debt, fraud, misrepresentation, etc., that could be charged against the first holder. Although the first holder might not be able to collect it at law, the second generally can. The property in negotiable paper is the only kind where a purchaser can have a better title than the seller. "A bona fide holder for value without notice of negotiable paper before due can collect regardless of any fraud, theft, deceit, loss, etc., on the part of a previous holder."

Non-negotiable instruments carry with them all defects and infirmities of title.

After a bill or note is due the endorsee, or purchaser, takes it on the credit of the endorser and subject to all the equities with which it may be encumbered.

CHAPTER 14.

PROMISSORY NOTES.

1 Definition — A promissory note is an unconditional written promise by a person to pay a certain sum of money, at a specified time, to a certain person or bearer. The student is asked to note specially the points in this definition.

(1) There must be an absolute promise.
(2) The promise must be unconditional, *i.e.*, it must not depend on any uncertain circumstance.
(3) It must be in writing.
(4) It must be payable in money.
(5) The time of payment must be stated definitely, or so stated that it may be easily calculated.
(6) There must be a certain sum either named definitely or easily computed, as in case of interest.
(7) It must be payable to some person, either a person named or any person that *bears* it.

2 The Maker — The person who signs the note is called the Maker; he is the principal debtor. He may or may not write out the note, that is immaterial, so long as he *signs* the note. The note may be written with pen and

ink or with pencil. It is not, however, a wise thing to sign a note written in pencil as it is easily erased and changed.

3 The Payee is the person to whom it is payable, or to whom it has been made payable.

4 The Innocent Holder for value of a note "without notice" is a person who has bought the note and given value for it, not knowing any fraud, or infirmity in the note. He can collect the money from the parties before it is due if the parties are worth so, in spite of fraud, or contra accounts to him that would exist between the original payee.

5 Negotiability of promissory notes. We give the following:

6 Negotiable Note

$60.25. TORONTO, ONT., JAN. 13, 1891.

SIX months after date, for value received,

I promise to pay JAMES SMITH, or *bearer*,

Sixty $\frac{25}{100}$ Dollars.

WILLIAM BROWN.

The above note is negotiable by delivery. The word that renders it so is "*bearer*."

7 Note Negotiable by Endorsement

$85.40. BRANTFORD, JAN. 10, 1891.

Three months after date I promise to pay

JAMES HENDERSON, or *order*,

Eighty Five $\frac{40}{100}$ Dollars.

Value Received.

ROBERT THOMPSON.

The above note is negotiable by James Henderson writing his name across the back of it, that is, indorsing it, or giving his order for the payment of it to another person. The word to be specially noted is "*order*."

8 Non-Negotiable Note

$42.50.

TRENTON, JAN. 10, 1891.

Three months after date I promise to pay to W. H. COOPER, *only*, the sum of

Forty Two $\frac{50}{100}$ Dollars.

Value received.

SAMUEL PAYMASTER.

The above note contains the word "*only*." By its face it shows that the original intention between the parties was that it should not be transferred, hence, if it should be transferred the new holder would not get any better title than the original holder.

9 Time of Payment by Computation It will be noticed that in the foregoing three forms the time of payment is found by computation. The following form is rapidly coming into use. In it the date of payment is definitely named.

10 Time of Payment stated with Form

$75.00.

HAMILTON, JAN. 24, 1891.

On or before the tenth day of March, 1891,

I promise to pay to the order of A. BENSON,

Seventy Five ..... Dollars.

Value received.

F. A. WOODS.

11 Individual Note —A note made by *one* person is called an individual note. A partnership note, though filled up "*we promise to pay*," is an individual note, as the firm or company acts as one person. The foregoing forms are all individual notes.

12 Joint Note A joint note is one in which two or more parties promise jointly to pay a sum of money. In a suit at law to enforce payment it is necessary to sue the parties jointly.

(FORM)

$135.50. ST. CATHERINES, JAN. 18, 1891.

Sixty days after date we jointly promise to pay WILLIAM ROBERTSON, or order,

One Hundred, Thirty Five $\frac{50}{100}$ Dollars.

Value received.

THOMAS WILSON,
HENRY MANDERS.

13 Joint and Several Note is one in which the makers agree to pay it jointly, and each one severally promises to pay the whole note himself if necessary. A suit at law to recover payment may be entered against any one of the parties or against each one separately or against all jointly.

The following is a common form:

$165.25. COLLINGWOOD, JAN. 26, 1891.

Sixty days after date we jointly and severally promise to pay GEORGE ROGERS, or order,

One Hundred, Sixty Five $\frac{25}{100}$ Dollars.

Value received.

H. J. HILL,
J. J. WITHROW.

14 Various Forms of Joint and Several Notes The same thing is accomplished by using the words "we and each for himself promise to pay, etc."

A joint and several note may also be made by drawing the note "I promise to pay." When two or more persons sign a note of this kind each one becomes a principal debtor for the whole amount.

15 Interest-bearing Notes If nothing is said in a note regarding interest, no interest can be collected on it for the time it runs from its date to maturity. If it is not paid when due, Six per cent interest is collectable for the time elapsing between the due date and the date of payment.

A note may be drawn,

(1) To bear a certain rate of interest from date till paid. To effect this a clause similar to the following should be inserted: "With interest at Eight per cent. per annum, from date as well after as before maturity and until paid."

(2) To bear different rates before and after maturity, the interest clause should read as follows: "With interest from date till maturity at Eight per cent. per annum, and twelve per cent. per annum after maturity till paid."

(3) To bear a higher rate after it is due than six per cent., insert a clause as follows: "With interest after maturity until paid at one per cent. per month."

16 Legal Interest In many places there are laws prohibiting lenders from charging a rate higher than that fixed by law. In Canada, the legal rate is ***Six per cent.*** This is only a provision enabling any person to collect six per cent. on a debt or note ***after it is due*** where no agreement has been made regarding interest. This is only chargeable on negotiable paper from its due date and on accounts from the date on which they are rendered. The law does not provide that no higher rate can be agreed upon. On the contrary, two persons may agree as to any rate between themselves and the law will not interfere. The price of the use of money (Interest) fluctuates according to supply and demand. Higher rates of interest depend on the following:—

(1) The value of the use of money.

(2) The value of the risk of losing it on account of poor security.

CHAPTER 15.

SPECIAL NOTES.

1 Accommodation Notes—When one person lends his name to another to enable the second party to borrow money on the strength of the financia

standing of the first party, the note thus made is called an accommodation note.

If Alex. Wilson is going to lend his name to Thos. Woolfe, Thos. Woolfe makes a note in favor of Wilson, and Wilson writes his name across the back of it (indorses it) thus:

2 Form of Accommodation Note

$200.00.

ORANGEVILLE, JAN. 27, 1891.

Three months after date I promise to pay to the order of ALEXANDER WILSON, at Merchants Bank, Orangeville, the sum of Two Hundred..... Dollars.

Value received.

THOMAS WOOLFE.

(Back of Note.)

Alexander Wilson.

It will be noticed that the above form does not differ from the ordinary note. It is easy for Mr. Wilson to write his name there but not so easy to pay it should Mr. Woolfe fail to put up the necessary amount. The accommodated party is the principal debtor, hence he should pay the note at maturity. The holder may enforce payment by the indorser but the accommodated person cannot enforce payment from the person lending him his name.

3 Customers' Notes, vs. Accommodation Notes — The indorsement of customers' paper is a very different thing from indorsing accommodation paper. When you indorse your customer's paper, you get the value of it from the bank, and you are really not running any additional risk – you have already incurred the risk of losing when you made the sale to your customer.

When you lend your name to another on accommodation paper, 1st, you get no value, and, 2nd, you incur a liability to pay it. Hundreds of men are ruined financially every year by this simple process.

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

These forms of notes are in common use; the agents of manufacturers of all kinds of organs, pianos, sewing machines, agricultural implements, machinery, etc.

5 Forms of Lien Notes. Form of ordinary Lien Note:

$100.00.

MOUNT FOREST, ONT., JAN. 29, 1891.

Three months after date I promise to pay H. B. HARRISON, or order, at his Office, the sum of One Hundred ..... 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 Mount Forest, and I further agree that if I offer my goods, Chattel 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 "Bell" Organ, Style D, No. 3729, is, shall be and continue in H. B. HARRISON, the lawful holder of this Note, until it or any renewal thereof is paid, and he or they may resume possession and resell 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 SWORD. Signature, WILLIAM MANDERS.

Form payable in weekly or monthly instalments:

$30.00. Due. No.

LISTOWEL ONT., JAN. 28, 1891.

On the 28th day of each month hereafter for Six Months consecutively, I promise to pay to MESSRS. BONNETT & BOWYER the sum of Five Dollars, the whole amounting to Thirty Dollars, the first of such payments to be made on the 28th day of February 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 said 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 "Forest King" Cooking Stove, No. 9, manufactured by Wm. Copp, of Hamilton, shall remain in BONNETT & BOWYER until this Note or any renewal thereof is fully paid.

Witness, D. BARBER. THOMAS WILSON.

6 Authority for Liens—On the first day of January, 1889, an Act passed in the session of the Ontario Legislature for 1888 came into force; we give a few of the principal provisions:

Sec. 1 provides that the note, receipt or agreement in writing will hold the property in the case of manufactured goods and chattels, even if sold or mortgaged by the purchaser to other parties, if the name and address of the seller is painted, printed, engraved on or attached to the article.

Sec. 2 provides that the purchaser is entitled to full information as to his claims within five days of his asking for it.

Sec. 4 provides that goods re-taken by the seller may be redeemed by the purchaser paying arrears, interest and costs within twenty days from the time possession was retaken.

Sec. 5 provides that if goods worth $30 or more are retaken, five days' notice must be given the purchaser before they are sold.

Sec. 6 and 7 provide that this Act shall not apply to ordinary household furniture; it will apply to organs, pianos, sewing machines, implements, &c.; and that a copy of the lien may be fyled, at a cost of ten cents, with the Clerk of the County Court.

Sec. 8 requires the seller to leave a copy of the lien with the purchaser of the article.

CHAPTER 16.

BILLS OF EXCHANGE.

1 Definition—"A Bill of Exchange is an unconditional order in writing addressed by one party 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 time in the future, a sum certain in money to, or to the order of a specified person, or to bearer." Bills of exchange have been divided into three classes:—

Inland Bills, commonly known as Drafts;
Foreign Bills, commonly known as Bills of Exchange;
Cheques on Banks or bankers.

2 **An Inland Bill or Draft** is one that is drawn and payable within one country: for example, X of Chicago draws on Y of New York for $600, or A of Toronto draws on B of Hamilton for $125.

3 **A Foreign Bill** is one drawn in one country and payable in another: A in Toronto draws on B of Paris, (France,) for 6500 francs.

Bills of Exchange, (Foreign Bills,) are usually drawn up in sets of two or three.

4 **A Cheque** is a Bill of Exchange in form and effect drawn on a bank or banker, and is drawn without mention of time of payment, and consequently payable immediately.

5 **Division as to Time** Drafts may be divided into four kinds, according to the way in which the time they have to run is counted, as follows:

(1) Demand draft:
(2) Sight draft:
(3) Drafts payable a specified time after sight:
(4) Drafts payable a specified time after date.

6 **The Demand Draft** is one drawn payable on demand, that is, whenever it is presented.

FORM.

$62.24 DOVER, Ont. Jan. 15, 1891.

On demand pay to the order of J. W. Masson, at the Traders Bank, the sum of Sixty Two $\frac{24}{100}$ dollars, value received, and charge to the account of

FROST & FROST.

To HENRY SWIFTFOOT, Colborne, Ont.

The above draft is payable on presentation. There is no time for it to run It does not require acceptance.

7 **The Drawer** is the name given to the person who "makes" or "draws" the draft. The party who signs his name at the bottom in the above draft, Messrs. Frost & Frost, are the drawers.

8 **The Drawee** is the party on whom a draft is drawn, or to whom it is addressed—that is the person who pays it. In the above demand draft Henry Swiftfoot is the drawee.

9 **The Payee** is the person in whose favor the draft is made. The person that receives the payment, J. W. Masson in the above demand draft, is the payee.

A Bill is said to be accepted generally when the drawee agrees to all the conditions in the bill; an acceptance that changes the place of payment is not conditional, but general. A bill is partially accepted when the acceptor only agrees to pay a part of the amount. A qualified acceptance is one in which the acceptor does not agree to all the conditions in the bill, but varies them.

Example of partial acceptance.

Accepted for Thirty dollars payable at Farmers Bank.

J. H. LITTLE.

This placed on the above draft for $84.40 would be a partial acceptance.

Example of conditional acceptance.

Accepted payable in thirty days from NOV. 20, 1890.

J. H. LITTLE.

The above conditional acceptance varies the time of payment.

10 The Sight Draft is one that is drawn payable at sight. It is not payable immediately as is the demand draft. There are three days of grace after acceptance before it matures.

FORM.

(To be written or stamped in Red across face of Draft.)

Accepted payable at Niol sons Bank, Meaford, Feb 4. 1891. JAS. LITTLE.

$86.40. BARRIE, Jan. 30, 1891.

At sight pay to the order of Joseph Lang at the Merchants Bank, the sum of Eighty Six $\frac{40}{100}$ Dollars, value received, and charge to the account of

JOHN RUTHERFORD.

To JAS. LITTLE, Esq., Meaford, Ont.

11 Foreign Bills in Sets—Foreign Bills are currently called "Bills of Exchange," though the title really includes Inland Bills as well. The Foreign Bills are usually drawn up in sets of two or three. This is done by making two or three copies of the same bill, and indicating in each that there are other copies. The payment of one copy cancels the others. The reason bills were drawn in duplicate and triplicate was to make provision in case of one getting lost when sent a long distance. It is customary to send one by one boat or line, and another by another boat or line.

FORMS.

£650. TORONTO, Dec. 20, 1890.

At sight of this my *first* of Exchange, *(second and third of the same date and tenor unpaid,)* pay to the order of W. E. Gladstone, Six Hundred and Fifty Pounds Sterling, and charge to the account of

ROBERT BENTLY.

To GLEN MILLS & Co., London, England.

2nd Form. Same as 1st, except read *second, first* and *third.*

3rd Form. Same as 1st, except to read *third, first* and *second.*

CHAPTER 17.

Bills of Exchange Acceptance.

- THE ACCEPTANCE.
- DATING OF BILLS AND ACCEPTANCES.
- NEGLECT TO DATE ACCEPTANCE.
- PLACE OF PAYMENT.
- PRINCIPAL AND SURETY.
- TIME DRAFT DRAWN AFTER SIGHT.
- TIME DRAFT DRAWN AFTER DATE.
- DIFFERENT DUE DATES.
- QUALIFIED ACCEPTANCES.
  - Conditional.
  - Qualified as to Time.
  - Partial.

1 The Acceptance The foregoing draft is drawn by John Rutherford in favor of Joseph Lang. It is not binding on James Little in any way, until he has signified his willingness to pay it by writing the word "accepted" across it, and his signature. Any other word or words that convey the same meaning will do just as well, but the above is the customary form. The date in this acceptance is necessary as the time does not begin to count until the draft has been "seen" by J. H. Little. The evidence of this sight of the draft is the acceptance. The above draft matures Feb. 7, 1891. When a draft is accepted it is said to be "honored," and when acceptance is refused it is "dishonored."

An acceptance may be

(1) General, as described above;

(2) Qualified
- Conditional.
- Partial.
- Qualified as to time.
- Acceptance by one or more drawers but not of all.

2 Dating of Bills and Acceptances—A bill is valid though dated back, or forward, or on a legal holiday, or on a Sunday.

3 Neglect to date Acceptance—If by neglect the date be left out of an acceptance where it is required, the holder of the draft may insert the date on which the acceptance was made, or any subsequent date to carry out the intention of the parties and give effect to the document.

4 Place of Payment—In the acceptance above by Jas. H. Little, he has mentioned a place where he desires it made payable. This is a general acceptance, unless it expressly state "and not elsewhere," viz. The Molsons Bank, Meaford. Business men for convenience usually make their drafts payable at the bank where they do business, or at their own office. This saves the remitting to different banks to retire their drafts when due.

5 Principal and Surety—In the foregoing draft john Rutherford is the principal debtor until it is accepted by Mr. Little, then J. H. Little becomes principal debtor, and Jno. Rutherford becomes surety.

6 Time Draft Drawn after Sight—In this draft the time begins to count from the date of the acceptance. There are three days of grace after the sixty days mentioned in the draft have expired.

FORM.

(To be written or stamped in Red across face of Draft.)
Accepted payable at the Merchants' Bank, Kincardine, Ont., Nov. 9, 1890.
Jno. Tolmie.

$47.25. Milton, Nov. 4, 1890.

Sixty days after sight pay to the order of W. A McLean & Co. Forty-seven $\frac{25}{100}$ Dollars, value received, and charge to the account of

D. Melville & Co.

To John Tolmie, Esq., Kincardine, Ont.

7 Time Draft Drawn after Date—In the following draft time begins to count from its date regardless of the time of acceptance, hence an acceptance on this draft does not require a date.

FORM

(To be written or stamped in Red across face of Draft.)
Accepted payable at the Federal Bank here.
J. W. Simpson.

$92.80. Flesherton, Nov. 4, 1890.

Sixty days after date pay to John Dickson or order Ninety Two $\frac{80}{100}$ Dollars, value received, and charge to the account of

Joseph Milligan.

To J. W. Simpson, Markdale, Ont.

8 Different Due Dates The foregoing time drafts are drawn Nov. 4th at 60 days, both drawn the same day, and have the same running time, yet there will be five days of difference in their due date, because the last one begins to count the sixty days immediately, whereas the former one is five days before it is accepted, and time only begins to count from the time of acceptance.

9 Qualified Acceptances —When an acceptance in express terms varies the effect of the draft as originally drawn, it is called a qualified acceptance.

Qualified acceptances may be

(1) Conditional;
(2) Partial;
(3) Qualified as to time;
(4) The acceptance of one or more of the drawee, but not of all.

Conditional Acceptance is one in which the acceptor makes payment dependent upon the fulfillment of some condition contained therein.

FORM.

Accepted payable out of the United Presbyterian Church Building Fund.
J. HARRIS, Treasurer.

Partial Acceptance is one in which the acceptor agrees to pay part only of the amount for which the draft is drawn.

FORM.

Accepted Feb. 14, 1891, for Sixty Dollars. H. MANDERS.

Acceptance Qualified as to Time is one in which the date of maturity is changed, as where a draft is drawn payable at sixty days' sight and is accepted payable at ninety days' sight. Notice, however, that such an acceptance varies from the original conditions of the draft, and that the drawer and all previous indorsers are discharged, unless their assent, either expressed or implied, is obtained either before or after the acceptance. Where a drawer or indorser receives notice of a qualified acceptance, and does not within reasonable time express his dissent, he shall be deemed to have assented thereto.

FORM.

Accepted Feb. 4, 1891, payable at sixty days sight. ROBT. MARR.

These remarks do not apply to partial acceptances. It is not necessary in their case to obtain the drawer's and indorser's consent, but they must be notified.

The holder may, if he likes, refuse a qualified acceptance and treat the bill as dishonored, in which case he must protest the bill.

Acceptances containing a local qualification are not considered qualified acceptances, and the foregoing rules do not apply to them.

CHAPTER 18.

NEGOTIATION OF BILLS, NOTES, &c.

1 Definition The negotiation of a note, draft, cheque, or bill of exchange consists in transferring from one to another, so as to make the transferee the holder thereof.

(1) A bill payable to *bearer* is negotiable by simple delivery as it is payable to whoever carries it.

(2) A bill payable to *order* is negotiable by indorsement of the holder and completed by delivery.

2 Requisites of Indorsement for negotiation:

(1) It must be made on the bill itself and signed by the indorser. A signature alone is sufficient.

(2) It must be an indorsement of the entire bill and not of a part of it.

(3) If payable to two or more persons not partners all must indorse, unless one has authority to indorse for all.

(4) It is usually written across the back of the instrument.

3 Purposes of Indorsement Indorsements are made

(1) For the purpose of negotiation.

(2) For additional security, as in case of accommodation paper.

(3) For the purpose of acknowledging a partial payment of the instrument.

4 Methods of Indorsement The following are common ways of indorsing:

(1) Blank Indorsement.

(2) Full Indorsement.

(3) Restrictive Indorsement.
(4) Qualified Indorsement.
(5) Full Qualified Indorsement.
(6) Indorsement for Specific Purposes.
(7) Indorsement for Guarantee.

(In Blank.)	*(In Full.)*	*(Restrictive.)*	*(Qualified.)*	*(Full Qualified.)*
John Bayne.	Pay to W. H. Dunn, or order. John Bayne.	Pay to W. H. Dunn only. John Bayne.	Without recourse to me. John Bayne.	Pay to W. H. Dunn, or order, without recourse. John Bayne.

5 Blank Indorsement is simply signing the name unconditionally in blank across the back of a note, draft, etc.

Effect on Note It is afterwards a negotiable instrument just as if it were payable to bearer.

Effect on Indorser The indorser is held responsible for the payment in case the maker fails to pay it.

(NOTE.) By the Dominion Act of 1890, 53 Vic., cap. 33, s. 34, s.s. 4, respecting bills of exchange and promissory notes, any holder of a note, etc., indorsed in blank, may write above the blank indorsement any words to make a special indorsement of it so as to make the bill payable to himself or to any other person specially.

6 Full Indorsement The form.

(Form 1) Pay W. J. Smith, or order.
WILLIAM BROWN.

(Form 2) Pay W. J. Smith.
WILLIAM BROWN.

Effect on Note The above indorsement only passes the title of the bill to W. J. Smith. In order for Smith to pass a title to some other person he must indorse it.

Effect on Indorser Mr. Smith would be held responsible for payment of the above bill in case of the failure of the maker

7 Restrictive Indorsement

(Form 1) Pay W. J. Smith only.
WILLIAM BROWN.

(Form 2) Pay W. J. Smith only at Henry Thompson's office, and not elsewhere or otherwise.

WILLIAM BROWN.

Effect on Note—Such indorsements as the above pass the title of the bill from Brown to Smith but restricts the negotiation of it. It gives Smith no power to transfer. If it were afterwards negotiated the subsequent holders would have to take it subject to all defects in its title and to all offsets, etc., between the parties to such indorsement, as on its face it shows evidence that some other transactions may be depending on it.

Effect on Indorser—He is held responsible for payment in case of failure of maker.

8 Qualified Indorsement

(Form) Without recourse to me.

WILLIAM BROWN.

The above indorsement is only for the purpose of negotiation as it does not hold the indorser responsible for payment and it makes the bill negotiable as if it were payable to bearer.

9 Full Qualified Indorsement

(Form) Pay W. J. Smith, or order, without recourse to me.

WILLIAM BROWN.

Effect on Note—By this form of indorsement the note is transferred from Brown to Smith.

Effect on Indorser—It does not hold him responsible for payment in case the maker fails.

10 Summary of Indorsements, Forms, Liabilities, &c.

NAME.	FORM.	EFFECT ON BILL.	EFFECT ON INDORSER.
Blank.	William Brown.	Makes it negotiable.	Holds him responsible if maker fails.
Full.	Pay W. J. Smith, or order. Wm. Brown.	Transfers title of bill from Wm. Brown to W. J. Smith, subject to transfer by him again.	Holds him responsible if maker fails.
Restrictive.	Pay W. J. Smith only. Wm. Brown.	Transfers title of bill to W. J. Smith only—not intended for further transfer.	Holds him responsible if maker fails.
Qualified.	Without recourse to me. Wm. Brown.	Makes it negotiable.	Does not incur any liability on him.
Full Qualified.	Pay W. J. Smith, or order, without recourse to me. Wm. Brown.	Transfers title of bill to W. J. Smith, subject to transfer again by him.	Does not incur any liability on him.

CHAPTER 19.

11 Indorsements for Specific Purposes. (called Restrictive Indorsement.) The following are a few useful forms.

Form of indorsement for a bill sent for collection:

(Form 1.) For collection and remittance to Bank of Montreal, Toronto.
D. Brought, Manager.

(Form 2.) For collection only on account of
Miller & Thompson.

Form for indorsement on bill sent for discount:
For discount only to credit of
Miller & Evans.

Form for Cheques, Bank Drafts, etc., sent for deposit:
For deposit only to the credit of
J. H. Little.

Form for identifying the payee of a bill:
John Brown is hereby identified by
Thomas Thompson & Sons.

If an indorsement in blank were put on the bill in place of the above, the endorser would guarantee

(1) The payment of the bill,
(2) The identity of the payee,

whereas in most cases of identification only the identity of the payee is requested.

12 Indorsements of Guarantee When bills are subject to protest this may be saved by the endorser writing a form of guarantee over his signature waiving protest.

(Form 1) I hereby guarantee payment of within note, and waive protest and notice of protest.

William Brown.

The above is open to objection, as there is a contract made without a consideration.

The following is a better form.

(Form 2) In consideration of one dollar I hereby guarantee payment of within note, and waive protest and notice of protest.

William Brown.

13 Restricting Negotiable Bills Where a bill is negotiable in its origin, it continues to be so during its currency unless indorsed with restrictive indorsement.

14 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" 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 warning to any purchaser of it that something may be wrong with it. The expression "bona fide," or holder for value before due without notice, is sometimes called "A holder in due course."

15 The Indorser's Contract Every indorser agrees with his indorsee, and all subsequent holders and indorsees, in good faith:

(1) That the bill and all its signature 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 indorsers 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 indorser previous to himself fails to pay it.

Where two or more indorsements 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 indorsements appear on a bill, the last one indorses on the strength of the guarantee of all before him. The first indorser takes the entire responsibility of the guarantee: the second indorser only guarantees in case of failure of maker and first indorser, and so on with other indorsers. If A makes a bill in favor of B, B indorses 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 any one who indorsed after him, as when he guaranteed the payment he assumed all responsibility, not knowing that any one would indorse after him.

16 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 patent right" printed or written across the face thereof, otherwise they are void. The penalty for every holder who knowingly transfers a note he knows was taken for such a "patent right," is one year imprisonment, or not exceeding $200 fine. All notes given for "patent right" carry with them all their infirmities "the innocent holder for value" receives no better title than the first holder.

CHAPTER 20.

Cheques.

1 Definition A Cheque is a Bill of Exchange drawn on a bank payable on demand. See Dom. Act, Sec. 72.

In Canadian and American banking it is an order for the payment of a sum of money from funds of the drawer in the hands of the banker on deposit.

2 Form

No. 626. STRATFORD, March 4, 1891.

Merchants Bank of Canada.

Pay James Sutherland or order Three hundred and Twenty dollars.

($320.) D. MORRISON.

It will be noticed that the cheques do not differ in form from an ordinary draft, but is always drawn on a bank or banker.

3 Use of Cheques—The practice of making payment by cheque is daily growing—the giving of a cheque instead of cash

(1) Saves time in counting.

(2) Saves any risk in mis-counting.

(3) Saves from liability of loss of money by theft or robbery.

(4) When a cheque is returned to drawer after it is paid, it is the best voucher or receipt or evidence of payment a man can have.

Hundreds of thousands of dollars change hands daily in the cities without the cash being handled and without risk.

4 Usage by Stock Companies, etc. Many Stock Companies, Corporations, Associations, Manufactures, etc., lay down the rule that every payment be made by cheque. They deposit all their receipts of Cash, Cheques, Bank drafts, Post-office orders, etc., daily. A much closer watch can be put on

the cashier or confidential clerk when no payments are made except by the bank. The officers of the company always have the cancelled cheque as a receipt for their payment.

5 Negotiability Cheques, like Bills of Exchange, are subject to the same laws and conditions of indorsement and transfer as Bills of Exchange. Banks usually have their blank forms printed payable *to bearer*, as they wish to avoid the responsibility of paying to the wrong payee.

Most business men change the word bearer to order, before signing. In making this change in the form, it is proper for the person signing to put his initials beside the change. It is not safe to do business with cheques payable to bearer, as should one be dropped or mislaid it is as negotiable as a bank note, and may pass into the hands of an innocent holder for value, and be paid by the bank and lost to the proper holder.

6 Forged Cheques If a bank pay a forged cheque it must stand the loss, unless it can be shown that the drawer of the cheque is so indifferent, careless and variable in his signature and methods of drawing, that it was impossible to tell the forged from genuine cheques by exercise of due diligence on the part of the bank. Then the erratic and versatile drawer would be at the loss.

7 Local Payments Cheques are generally used for making local payments, and not for sending by mail or otherwise to distant parts in payment of debts. Occasionally banks grant large corporations whose business transactions cover a large section of country, the right to have their cheques paid at par, at any branch of their bank without any charge for cashing them.

8 Presentment within Reasonable Time—When a cheque is given in payment of a debt, it is not intended by the drawer that the payee keep it six months or a year before collecting it. It should be presented within a reasonable time. In determining reasonable time, regard must be had to the custom at the place, and to special circumstances of the case. In some places reasonable time has been decided to be 24 hours.

9 Certification or Marking "Good"—A cheque is not commonly "accepted" as a draft is, as it is payable immediately on presentation at the bank. It sometimes happens that a person wishes to send one to a distance, or that the payee does not know, or is doubtful of the financial standing of the drawee, then the drawer may get the cheque "accepted," or as it is usually called certified or marked good by the ledger keeper of the bank. The bank then undertakes to pay the cheque, and it is charged at once against the drawer's account in the bank, and the following, or its equivalent, written across the face of the cheque, the same as an acceptance.

(Form 1.) "Certified."

Merchants Bank of Canada, Stratford.

J. E. McGEE,
Ledger Keeper.

(Form 2.) "Good."

Merchants Bank of Canada, Stratford.

J. E. McGEE,
Ledger Keeper.

10 Payment "Raised" Cheques If a banker pays a cheque that has been raised from a smaller sum to a larger sum, he is responsible, and cannot charge the drawer of the cheque with the increased amount, unless it can be shown that the drawer's carelessness in drawing the cheque facilitated the forgery. For instance: If you write a cheque for five dollars thus

Five Dollars,

leaving a blank between five and dollars, and some person writes in a hundred or thousand between them, the banker who paid such a cheque would not be held accountable, the careless maker would lose it because he put a premium on the raising forgery by leaving a space that it could readily be done—he is an accessory to the crime. His punishment is the loss of the amount of the raising of the cheque. The same is true also of all negotiable paper. Do not leave any blank spaces either before, in the middle, or at the end of an amount in negotiable paper.

CHAPTER 21.

MISCELLANEOUS HINTS.

- COLLECTION OF ACCOUNTS.
- ACCEPTANCE BY MAIL.
- HONOR AND DISHONOR.
- ACCOMMODATION DRAFTS.
- "KITE FLYING."
- PLACE OF PAYMENT.
- NECESSARY CONDITIONS.
- VALUE RECEIVED.
- RESPECTIVE LIABILITY OF PARTIES.
- BANK DRAFTS.
- POST OFFICE ORDERS.
- BANK NOTES.
- DEPOSIT RECEIPTS.
- COUPON BOND.
- LETTER OF CREDIT.
- WAREHOUSE RECEIPT.
- BILL OF LADING.

1 Collection of Accounts Almost all houses now draw drafts on their customers for the collection of accounts and debts due them. The drawer may make a draft on the drawee—

(1) In favor of a third party, or

(2) In favor of himself.

The wholesale merchant or manufacturer may either draw in favor of his banker or draw in his own favor, being drawer and payee on the one draft.

2 Acceptance by Mail A draft should not be sent by mail to the drawee for acceptance. It is not like a promissory note unsigned. It is an order, and should the drawee choose to keep the draft, he would have the equivalent of a receipt for the payment– hence drafts are drawn and handed to a bank or banker to procure the acceptance. If persons live at a distance from a bank, a form may be sent them containing a copy of the draft. He accepts on the copy and returns it to be attached to the original.

THE MERCHANTS BANK OF CANADA.

BROCKVILLE, Dec. 24, 1890.

To JOHN JONES, Chatsworth.

The Bank has received for acceptance and collection the undermentioned Draft drawn on you. If it is your desire to accept the draft, kindly sign the Power of Attorney hereon; if not, please state your reason for declining.

No. 4568 drawn by Wm. Richmond of Brockville for $800, dated Dec. 24, 1890, payable 60 days after date.

Due Feb. 25, 1891. W. J. PATERSON.

(The following to be written across or underneath the above by John Jones if he wishes to accept.)

I hereby appoint Joel Forbes my Attorney to accept the above described Bill, (with full power to appoint a substitute for that purpose,) payable at the Merchants Bank of Canada. JOHN JONES.

Witness, Peter Lathrop.

3 Honor and Dishonor A draft is said to be honored when it is accepted, and dishonored if acceptance is refused.

An accepted time draft is often known simply as an "Acceptance."

4 Accommodation Drafts Where one person lends his name to another for the purpose of becoming his security, he "accommodates" the second party.

When an accommodation draft is drawn, the acceptor lends his name to the drawer. Suppose Smith draws a draft on Brown in favor of Johnston, and Brown accepts when he really does not owe Smith anything—this is an accommodation draft. If Brown does not pay, Smith could not enforce payment, as he has given no value. Johnston could enforce payment as an innocent holder for value.

5 "Kite Flying." The drawing and discounting of accommodation drafts is often called "Kite Flying," and it often brings scores of houses down unexpectedly. A wholesale house, we will suppose, is hard up. They represent to a customer that they have to make large advances on European purchases, and ask the liberty of drawing on the retail customer, on the strength of ordered goods that they are importing. The customer has had extensions of time perhaps from the house, and cannot very well refuse them. The draft is taken up by the wholesale house at maturity. After a while another larger sum is drawn, accepted and paid, and so on till the retail customer is ostensible security, but really as principal debtor on many bills. This goes on, not with one customer, but with many. In due time the bank finds out that what purports to be customers' bona fide paper is only accommodation paper, and quit making discounts, and down comes the wholesale house, carrying in its train many of its "accommodating" but unsuspecting customers. Never fly another man's kite.

6 Place of Payment It is not legally necessary that a place of payment be mentioned in a note or bill. It is however a great convenience that a place be mentioned—a bank, an office, a residence, etc.: then the holder knows where to go with the note, and the maker has nothing to do but leave the money and receive his note in return.

7 Necessary Conditions It will be noted from the foregoing chapters on negotiable paper, that it is not necessary to have a particular form of words, but that it must comply with the following conditions:

(1) It must be in writing.
(2) The promise or acceptance must be unconditional.
(3) It must be signed by a competent person.
(4) It must be payable to a certain person or his order, or bearer.
(5) It must be payable in money.
(6) It must be negotiable in form.
(7) It must be payable at a fixed or determinable time.
(8) It must be a fixed or determinable amount.

8 Value Received. These words are usually inserted in negotiable paper, though not legally necessary. The negotiable paper is not generally given at the beginning of an executory contract, but at the completion: hence it is presumed that value has been given before the paper is given.

9 Respective Liability of Parties The following plan shows in short the order in which responsibility for payment falls on the parties to notes, drafts, or cheques.

In a note.	In an unaccepted draft or uncertified cheque.	In an accepted draft	In a certified cheque.
(1) Maker.	(1) Drawer.	(1) Acceptor.	(1) The Bank.
(2) 1st indorser.	(2) 1st indorser.	(2) Drawer.	(2) 1st indorser.
(3) 2nd indorser	(3) 2nd indorser.	(3) 1st indorser.	(3) 2nd indorser.
(4) 3rd indorser.	(4) 3rd indorser.	(4) 2nd indorser	(4) 3rd indorser.
etc.	etc.	etc.	etc.

10 Bank Drafts are drafts in the ordinary form drawn by one bank or banker on another bank or banker payable to third parties. If you desire to remit money to Winnipeg you may send the bills or gold by express or registered letter, or you may buy a draft pay your money to your banker and something extra for his trouble, ($\frac{1}{2}$, $\frac{1}{4}$, or $\frac{3}{4}$ per cent.,) and he will give you a draft on the Winnipeg banker in favor of your creditor. You remit the draft, without the risk attending the transmission of the current funds. The bankers usually settle every three months with one another.

11 Post Office Orders - A post office order is really a Government draft drawn by one post office on another and payable to a third party. The amount paid the post master for his trouble is called commission.

12 Bank Notes are promises to pay issued by Governments and Banks. They are used instead of gold and silver, being lighter to carry. They are not subject to the statute of limitations. They are never outlawed as to time.

13 Deposit Receipt - A "deposit receipt" or "certificate of deposit" is a receipt given by a bank for money deposited in the bank. It is usually payable to the order of the depositor and bears interest. It is, when drawn to a person or his order, negotiable by indorsement. It is equivalent to a certified cheque. If part of the money or interest is wanted, the money must be drawn and the balance deposited; or in other words, the receipt surrendered, and another issued for part, and cash returned for the remainder.

FORM OF DEPOSIT RECEIPT.

DEPOSIT RECEIPT.

$200. No. 693.

THE HOMESTEAD BANKING AND SAVINGS SOCIETY.

Incorporated 1889. Authorized Cap. $1,000,000 in 5000 Shares of $200 each.

KINGSTON, Jan. 15, 1891.

RECEIVED from Johnston Parker, Esq., the sum of Two Hundred ..... $\frac{00}{100}$ Dollars, which sum will be accounted for by the Society to the said Johnston Parker or his order upon the surrender of this Certificate only, and will bear interest from the 15th day of Jan., 1891 until within fifteen days of time of withdrawal, at the rate of five per cent. per annum. No interest will be paid on this deposit unless it remains three months.

GEORGE MUIR,
Mgr. Homestead Banking and Savings Society.

14 A Coupon Bond, sometimes simply a "bond," sometimes a "debenture," is the written promise to pay a corporation or company, with small promises to pay for each half-yearly payment of interest attached. They are used

(1) By corporations to borrow money and create a debt for some public work or improvement. The money to repay the principal of the debt is collected in equal yearly sums, and invested so that the bond may be returned at maturity. These annual investments to meet principal are called a "sinking fund."

(2) By companies, such as banks and loan companies, when they borrow at home or abroad, at a low rate of interest for a long term, and loan out at a higher rate of interest. The interest in each case is paid half yearly, on presentation of proper coupon.

Registered Bonds Bonds are sometimes issued without coupons attached. They are known as Registered Bonds because they are made payable to a certain person, and the payee's name is recorded in the office of the corporation or company that issues the bonds. The interest is paid in cash or by cheque to the person whose name is recorded as the owner or to his legal representative. A registered bond is the same in form as a coupon bond without the coupons.

Bonds when considered from an investor's stand-point are known as First Mortgage Bonds, Second Mortgage Bonds, Third Mortgage Bonds, &c., according to their priority of lien on the assets of the corporation or company. The bonds of a company may be a safe investment when the stock is not, as you might be safe in lending a firm money on their paper when you would not care to incur the liability of being a partner. The stock of a prosperous company frequently sells higher than its bonds because of its high rate of dividend and large reserve fund when the bonds only pay a nominal rate of interest.

FORM OF COUPON BOND.

£50.

THE ONTARIO LOAN AND DEBENTURE COMPANY, LONDON, ONT.

ISSUED UNDER AUTHORITY OF THE ACT OF THE PROVINCE OF ONTARIO,

DEBENTURE NO. 2365. **TRANSFERABLE.**

The President and Directors of the Ontario Loan and Debenture Company acting for and on behalf of the said Corporation, promise to pay to Timothy Jones or bearer the sum of Fifty Pounds Sterling on the first day of March, in the year of our Lord 1901, at the Counting House of Messrs. Borthwick, Wark & Co., Bartholomew House, Bartholomew Lane, London, E. C., with interest at the rate of five and one half per centum, to be paid half yearly, on presentation of the proper coupons for the same as hereunto annexed, on the first day of April, and the first day of October, in each year at the said office.

SEAL Dated at London, Ont., first day of March, 1891.

For the President and Directors of the Ontario Loan and Debenture Co.

THOS. SYMES, Manager. J. W. SMITH, President.

COUPON

(20 of these would be attached to the above debenture, one for each half year's interest.)

THE ONTARIO LOAN AND DEBENTURE COMPANY, LONDON, ONT.

£1. 7s. 6d., Stg.

Half yearly interest due October 1, 1891, for £50 Stg. at five and one half per cent. per annum, payable at the Counting House of Messrs. Borthwick, Wark & Co., Bartholomew House, London, E. C.

For the President and Directors.

DEBENTURE NO 2365.

THOMAS SYMES, Manager.

15 **Letter of Credit** is really a draft upon which sums may be drawn by the holder from time to time as he requires them, the whole sum not exceeding the amount mentioned in the letter. They are used by parties travelling in foreign countries, usually to save carrying much cash on the person.

FORM OF GENERAL OR CIRCULAR LETTER of CREDIT.

LETTER OF CREDIT.

No. 2364. WOODSTOCK, ONT. Dec. 2, 1890.

To the Correspondents of the Merchants Bank of Canada.

£800.

GENTLEMEN. We have the pleasure of introducing to you Mr. A. L. McIntyre of this place, who purposes visiting England, Scotland and Ireland, and desires to open a credit with you. You will please furnish him with such funds as he may require, in the aggregate not more than Eight Hundred Pounds Sterling, on his sight draft drawn on Glen Mills & Co., Bankers, London, each draft to be plainly marked as drawn on the Merchants Bank, Letter of Credit No. 2364.

We guarantee such draft shall meet with due honor in London within six months from this date, and you are requested to buy them at current rates of exchange, deducting your commission, if any. The amount of each draft must be indorsed on the back of this letter, and the letter itself taken up and attached to the last draft. Kindly have all drafts signed in your presence and compare carefully with the signature below.

P. W. D. BRODERICK, Manag.
J. EGAN MAGEE, Accountant.

A. L. McINTYRE.

FORM OF INDORSEMENTS OF DRAFTS ON LETTER OF CREDIT.

Bankers paying drafts on the within Letter of Credit will carefully indorse such payments in the order made hereon.

Date of payment.	By whom paid.	Place paid.	Amount in words.	Amount in figures.
Jan. 15, 91.	Stuckey, Woods & Co.	Dublin.	One Hundred P'ds.	£100.
Feb 6.	Glen Mills & Co.	Edinboro'	Three Hundred P'ds	£300.
March 24.	London & Provincial Banking Co.	Manch'st'r	One Hundred P'ds	£100.
April 4.	Alliance Bank.	Leeds.	Eighty Pounds.	£80.

Letter No. 2364 of Merchants Bank of Canada, Woodstock, Ont.

16 Warehouse Receipts are receipts given by the owners of warehouses, storehouses, elevators, yards, etc., acknowledging the possession of chattel property stored or kept for the owners of such chattel property. The ownership of the property may be changed on purchase by the indorsement and delivery of the warehouse receipt. These receipts are used largely as collateral security. They are given by grain buyers and others along with their notes as security for further advances.

17 Bill of Lading is the receipt of a boat, or master of a boat or the agent of a railway station, that goods mentioned therein are in possession for transit from one place to another. The bill of lading may be indorsed the same as a warehouse receipt.

CHAPTER 22

DISCHARGE, DISHONOR, ETC.

1 Discharge A bill or note is discharged by payment of it by the maker or acceptor, or any person in their behalf, at maturity.

Where a bill is payable to the order of a third party, and the drawer pays it instead of the drawee, the drawer may enforce payment of the bill, but not re-issue it.

Where a bill is paid by an endorser, he may enforce it against former endorsers, but not against those who endorsed after him.

If an accommodation bill is paid by the party accommodated, it is discharged, as he is the party who got the value for it in the first place.

When the acceptor of a bill, or the maker, becomes the owner of his bill payable for value, it is discharged. For example: A might owe a bill for $100; he may exchange a horse for it, and thus become the holder for value.

If the holder of a bill or note absolutely and unconditionally renounces his rights against the acceptor or maker in writing, the bill is discharged.

2 Cancellation of a Bill or Note If a holder or his agent intentionally cancels a bill or note, it is discharged. If a holder unintentionally cancels a bill or note, it is not discharged.

3 Altered Bills and Notes If a bill or note is materially altered, it is voided, except as against—

(1) The person assenting to such changes;

(2) Subsequent endorsers.

Bills and notes that have been altered are good in the hands of "an innocent holder for value," unless the alteration is apparent. The following are the material alterations:

(1) Of the date;
(2) Of the sum payable;
(3) Of the time of payment;
(4) Of the place of payment;
(5) Of the addition of a place of payment without consent, when no such place was mentioned in the acceptance.

4 Dishonor Bills are dishonored by:
(1) Non-acceptance;
(2) Non-payment.

Promissory notes are dishonored by non payment.

Before a bill can be said to be dishonored, it must have been presented for acceptance or payment; presentment must be made by the holder on his behalf within reasonable hours. If a bill is not presented for payment, the drawer and the endorsers are released.

5 Presentment for Acceptance A bill must be presented:
(1) To the person on whom the bill is drawn;
(2) To his representative, if the person is dead;
(3) If there are two more drawees not partners—present to each.

6 Presentment for Payment—Bills or notes must be presented for payment:

(1) At the place specified in them for payment;

(2) If no place of payment is mentioned, but the address of the drawer or acceptor is given—present at the address given;

(3) If neither place of payment, nor acceptor's or maker's address is given—present for payment at business office, or residence of maker or acceptor.

(4) If there are two or more drawers or acceptors, and no place of payment is mentioned—present to each at his office or residence.

(5) If a bill or note is payable at a village, or town, or city, and no particular place mentioned, it may be presented at the post office, if:

(*a*) Authorized by custom or usage;
(*b*) If the maker's or acceptor's place of business cannot be found.

7 Presentment Delayed or Dispensed with When circumstances beyond the control of the holder prevent presentation, it is excused, but it must be presented as soon as the hindrance ceases. Presentment is dispensed with

(1) When after the exercise of due diligence it cannot be done;

(2) When presentment has been waived by the parties liable on the instrument. Failure of presentment does not in any way relieve the maker of a note or the acceptor of a draft, of the liability to pay it.

8 The Indorser's Contract An indorser of a note or draft, and the drawer of an accepted draft, only becomes responsible for the time the bill has to run. For example: A indorses a note drawn payable in three months. His contract does not call for him to guarantee the debt for three years only for the time it has to run that is three months, and three days of grace. If a note or draft is not paid when due, the holder has an *immediate right* against the drawer and indorsers not a right a year or three years afterwards. The drawer or indorser's contract ceases, unless he has notice that the bill has been dishonored, and such notice must be given by, or on behalf of the holder. Notice of dishonor may be given verbally or in writing, and must be given on the day of dishonor, or the next business day thereafter.

9 Protest A protest is a legal notice given to the drawer and indorsers of a bill or note by a notary public, or in his absence by a magistrate, that a note or bill has not been paid when due.

The *purpose of a protest* is to hold the maker and indorsers of a bill or note responsible for payment after maturity, when it has been dishonored.

The protest may be attached either to the note or bill or a copy of it, and a notice of such protest should be sent to each drawer or indorser of the instrument the day of dishonor, or the next business day thereafter.

Such notice may be effectually given:

(1) By delivering to them personally:

(2) By placing them in the post office, post paid, addressed to the drawers, makers and indorsers at their known addresses; if they are not known, addressed to the post office where the bill is dated.

10 Damages on Dishonored Instruments are called "liquidated damages," as they are fixed or determinable from the instrument, and are as follows:—

(1) The amount of the bill;

(2) Interest thereon from time of presentment to time of payment;

(3) Expense of protest.

11 Form of Protest for Promissory Note

$60.00 MILTON, Ont., Oct. 3, 1890.

Two months after date, for value received, I promise to pay to the order of JOHN SMITH, SIXTY Dollars, at the Merchants' Bank, Milton. W. J. PATTERSON.

COPY OF INDORSEMENT ON NOTE.

Pay to the order of Jas. McLaren.

JOHN SMITH

PROTEST.

On this 9th day of January, in the year 1891, I John Logie, in the Province of Ontario, at the request of Jas. McLaren, did exhibit the original promissory note, whereof a true copy is above written, unto the teller of the Merchants' Bank, Milton, and speaking to himself, did demand payment thereof: unto which demand he answered, No funds.

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer, and indorsers, (or drawer and indorsers,) of the said bill, and other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of payment of the said promissory note.

All of which I attest by my signature.

JOHN LOGIE, Notary Public.

12 Notice of Protest

MILTON, Ont., Jan. 6, 1890.

JOHN SMITH, Milton, Ont.

Sir, Mr. W. J. Patterson's promissory note for $60, dated at Milton, Oct. 3, 1890, payable two months after date, to John Smith or order, and indorsed by you, was this day at the request of Jas. McLaren duly protested by me for non-payment.

JOHN LOGIE, Notary Public.

CHAPTER 23.

VARIOUS SPECIAL FORMS.

- DUE BILL AND I. O. U.
- FORMS OF ABOVE PAYABLE IN CASH AND GOODS, ORDERS.
- FORMS OF ORDERS PAYABLE IN CASH AND GOODS, CHATTEL NOTES.
- FORMS OF SAME.

1 Due Bill and I. O. U. A Due Bill is a written acknowledgement of a debt. It is not a promise to pay, hence not payable at a definite time. A debt that is acknowledged in this way is not liable to dispute. It is an acknowledged debt. It should comply with the following points:

(1) It must be dated

(2) There must be words acknowledging the indebtedness.

(3) The amount payable or the articles payable should be specified.

2 **Form** (1) Payable in cash.

BRAMPTON Jan. 15, 1891.

Due W. J. Patterson Fifty Dollars.

J. W. SMITH.

Form (2) Payable in cash.

ORILLIA, Jan. 30, 1891.

Good to Thos. Masson & Co. for Forty Two Dollars.

ARTHUR B. COLE.

Form (3) Of what is commonly called an I. O. U. payable in cash.

WESTON, Feb. 13, 1891.

I. O. U. Six Dollars.

MILTON J. DAVIS.

Form (4) Payable in goods.

BERLIN, March 26, 1891.

Due J. S. Williams Fourteen Dollars in goods from our store.

W. R. IRELAND & Co.

Form (5) Payable in specific articles.

BARRIE, April 30, 1890.

Due W. H. Cooper sixty bushels of No. 1 spring wheat.

FRED W. BALE.

3 **Orders** An order is a written request made by one person asking a second person to deliver to a third person certain goods or money, and charge the same to the person signing the order. It is the same in form as a draft, but usually payable in goods or chattels.

4 **Form** (1)

DETROIT, Mich. May 17, 1890.

E. J. MORRISON & Co.

GENTLEMEN. Please deliver to Jas. J. Reith or order, Fifteen Dollars worth of goods such as he may select, and charge the same to the account of C. CULBERTSON.

Form (2) Payable in cash.

99 York Street, Hamilton, Jan. 14, 1891.

J. S. Brett, Esq.,

Dear Sir, Please pay the bearer, Mr. S. J. Howes, Sixteen Dollars from the funds left with you this morning.

John Gibson.

5 Chattel Notes A promissory note is payable in money. A chattel note is not payable in money. A chattel note is

(1) Payable in some specified goods or personal property.
(2) It is not negotiable paper.
(3) It must be sued in the name of the payee.
(4) No days of grace are allowed.

It is the duty of the maker of such a note to deliver the specific articles mentioned in the note at the time and in the manner directed in the note, or at the place directed by the payee. If he neglect to pay the goods at the time and in the manner as agreed upon, the payee may demand payment in money. He may tender the articles if they are portable. If cumbersome he may offer to deliver. If the payee refuses or neglects to receive them, the debt is discharged by the tender of the articles. If they are refused and left in the hands of the maker of the note, he may hold them as a bailee for the other party, giving them ordinary care at the expense and risk of the payee. If afterwards the payee requests delivery of the goods, they must be given up to him if he pays the expenses incurred on them in the meantime.

FORM 1.

$40 Manilla, July 20, 1890.

On or before the 1st day of December next, I promise to pay to Samuel J. Ferrell, at his store, one hundred bushels of good White Elephant Potatoes, at forty cents per bushel. W. J. Hammill.

FORM 2.

Preston, March 15, 1891.

Six months after date I promise to deliver to Thomas Gilson, at his storehouse, 45 packages of first-class Lake Trout, and 55 packages of No. 1 White Fish. J. J. Ball.

CHAPTER 24.

SALES OF PERSONAL PROPERTY.

1 Definition A sale of personal property is a transfer of ownership for a price payable in money. The money paid is the consideration. Since the law of contracts is largely the foundation of all commercial law, frequent references will be made to the foregoing chapters on contracts.

2 The Vendor is the name often given to the seller of property.

3 The Vendee is the corresponding name for the purchaser or buyer of any property.

4 Sale versus Barter The consideration for the property transferred in case of a sale is money. If A exchanges five cords of wood with B for a suit of clothes, it is a barter not a sale.

5 Necessary Points The seven requisites to a contract may be recalled. Chapter 1, Section 10, as applying to sales, as follows:

(1) It must be possible by existence of the property.
(2) It must be legal.
(3) The parties must be competent.
(4) It must be assented to by both parties.
(5) There must be a consideration or price.
(6) There must be no fraud.
(7) It must conform to the statute of frauds as to being in writing in some cases.

6 The Property Must Exist A sale of property can not take place unless the property actually exists. If it is *destroyed*, and the parties not knowing anything of its destruction, sell and buy it, the sale is void. A sells B a certain piano. If the piano has been burned the sale is an impossibility.

7 The Property Must be Legally Saleable Any sale of property prohibited by statute [illegible] A [illegible] goods smuggled into the country, or manufactured in the [illegible] without payment of excise to which they are subject, is void. Stolen goods are [illegible] the seller is not the owner, and cannot give a bett[illegible] title himself. The lawful owner can claim them wherever he finds them.

8 Competent Parties The goods must be the property of the seller, and he must be of legal age and sound mind, or the sale would be voidable.

9 Mutual Assent Both parties must be willing to transfer the property, and agreed as to the price. This is usually accomplished by an offer and an acceptance.

10 The Price is the consideration that moves the seller to part with his property. It must be payable in money.

11 Without Fraud As in any contract so in a sale of property, fraud by misrepresentation or concealment, renders the sale voidable.

12 The Statute of Frauds provides that all sales of personal property under Forty Dollars in value may be made verbally. Over that amount they must be evidenced by some one of the following ways, by

(1) A partial payment, (earnest money,) or

(2) A partial delivery of the goods, or

(3) Some memorandum of the bargain to be signed by the parties chargeable therewith.

The memorandum may be of the simplest, yet if signed by the parties it will comply with the statute. The following is a simple form:

KILSYTH, Jan. 15, 1890.

D. Hilts buys from James Agnew sixty colonies of Italian bees at six dollars per colony.

D. HILTS.

JAS. AGNEW.

13 Evidence of a Sale Every sale of personal property should be evidenced in two ways:

(1) By an actual, immediate and continued change of possession, or

(2) The registration of a bill of sale within five days of the execution of bill of sale in the office of the Clerk of the County Court of the district.

Suppose A sells to B a horse for $50. It is expected that the horse would be removed forthwith from A's stable to B's stable, every person may then know of the change of ownership. If however the horse is to remain in A's stable people generally [illegible] of the sale. If in any other way the sale is not apparent it is necessary to register a bill of sale so that interested

persons may be able to find out any change of ownership. This is especially necessary in case of a person selling out a stock of goods in a shop to another and still remaining in the shop and carrying on the business as usual. If the seller retain possession of an article after the sale of it, unless a bill of sale were registered, the statutory law presumes that there is fraud in the sale.

14 Sale Must be Bona Fide There have been so many cases of attempt at fraud before the courts on account of persons transferring their property to their friends to save it from creditors, that Canadian legislation has been made very stringent to prevent all pretended transfers.

(1) The purchaser must make affidavit that the sale is bona fide for a consideration that is named in the affidavit, and not for the purpose of securing the property against the creditors of the seller.

(2) The witness to the execution of the bill of sale must make affidavit as to the proper signing, etc., of the document.

15 Form of Bill of Sale

THIS INDENTURE made the 24th day of January, in the year of our Lord one thousand eight hundred and ninety one

BETWEEN William Kyle Ireland of the Town of Meaford, in the County of Grey and Province of Ontario, Bookseller and Stationer, the vendor of the First Part, and Henry Peter Adair, of the Town of Meaford aforesaid, salesman, the vendee of the Second Part.

WHEREAS the said party of the First Part is possessed of the Stock of Books and Stationery and shop fixtures herein set forth described and enumerated, and hath contracted and agreed with the said party of the Second Part for the absolute Sale to him of the same, for the sum of Nine Hundred Dollars.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said Agreement, and in consideration of the sum of Nine Hundred Dollars of lawful money of Canada, paid by the said party of the Second Part to the party of the First Part, at or before the sealing and delivery of these Presents; (the receipt whereof is hereby acknowledged,) he, the said party of the First Part, HATH BARGAINED, sold, assigned, transferred, and set over, and by these Presents DOTH BARGAIN, sell, assign, transfer, and set over unto the said party of the Second Part, his executors, administrators and assigns,

ALL THOSE the said Stock of Books and Stationery and shop fixtures as per inventory hereto attached and marked "A."

AND all the right, title, interest, property, claim and demand whatsoever, both at Law and in Equity, or otherwise howsoever, of him the said party of the First Part, of, in, to, and out of the same, and every part thereof:

TO HAVE AND TO HOLD the said hereinbefore assigned Books, Stationery, and shop fixtures, and every of them, and every part thereof, with the appurtenances, and all the right, title, and interest of the said party of the First Part thereto and therein, as aforesaid, unto and to the use of the said party of the Second Part, his executors, administrators, and assigns, to and for his and their sole and only use FOREVER:

AND the said party of the First Part, DOTH hereby, for his heirs, executors, and administrators, COVENANT, PROMISE and agree with the said party of the Second Part, his executors and administrators, in manner following, that is to say: THAT he, the said party of the First Part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned Books and Stationery, and shop fixtures, and every of them, and every part thereof: AND that the said party of the First Part, now hath in himself good right to assign the same unto the said party of the Second Party, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: AND that the said party hereto, of the Second Part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess, and enjoy the said hereby assigned property, and every of them, and every part thereof, to and for his own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him the said party of the First Part, or any person or persons whomsoever: AND that free and clear, and freely and absolutely released and discharged, or otherwise, at the cost of the said party of the First Part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and incumbrances whatsoever:

AND moreover, that he the said party of the First Part, and all persons rightfully claiming, or to claim any estate, right, title or interest of, in, or to the said hereby assigned goods and fixtures, and every of them, and every part thereof, shall and will from time to time, and at all times hereafter upon every reasonable request of the said party of the Second Part, his executors, administrators or assigns, but at the cost and charges of the said party of the Second Part, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and fixtures unto the said party of the Second Part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these Presents, as by the said party of the Second Part, his executors, administrators or assigns, or his Counsel shall be reasonably advised or required.

IN WITNESS WHEREOF, the said parties to these Presents have hereunto set their hands and seals, the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF W. J. GRAY. | W. K. IRELAND. (L.S.)
H. P. ADAIR. (L.S.)

Affidavit of the purchaser as to the sale being bona fide for value:

COUNTY OF GREY, TO WIT. | I, Henry Peter Adair, of the Town of Meaford, in the County of Grey, the vendee in the foregoing Bill of Sale, make oath and say:

THAT the sale therein made is *bona fide*, and for good consideration, namely: The sum of Nine Hundred Dollars, and not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors of the said bargainor.

SWORN before me at Meaford, in the County of Grey, this 24th day of January, A. D. 1890. | H. P. ADAIR.

C. R. SING, *a Commissioner for taking affidavits in H. C. J.*

Affidavit of Witness All Bills of Sale, Chattel and Real Estate Mortgages, deeds of land, &c., require an affidavit of the person who witnessed the signatures, covering the following points, proof of the proper and regular execution of the document:

(1) That the witness was present and saw the signing, sealing, &c.
(2) The place where such execution was done.
(3) That he knows the parties to the contract.
(4) That he is the witness to the document.

Affidavit of witness proving signing, sealing and delivery of the Bill of Sale.

ONTARIO: | I, William James Gray, of the Town of Meaford, in
COUNTY OF GREY. | the County of Grey, [illegible], make oath and say:
TO WIT: | THAT I was personally present, and did see the within Bill of Sale duly signed, sealed and executed by Wm. Kyle Ireland and Henry Peter Adair the parties thereto: AND that I, this deponent am a subscribing witness to the same: AND that the name W. J. Gray, set and subscribed as a witness to the execution thereof is of the proper handwriting of me this deponent: and that the same was executed at the Town of Meaford.

SWORN before me, at Meaford, in the County of Grey, this 26th day of January, A. D. 1890. | W. J. GRAY.

C. R. SING, *a Commissioner for taking affidavits in H. C. J.*

NOTE.—*A full inventory of the stock of goods would be attached to the Bill of Sale. If only a few articles are sold then they would be fully described in the Bill of Sale itself.*

CHAPTER 25.

SALES OF PERSONAL PROPERTY.

1 TIME OF PERFORMANCE.
EXECUTED SALES.
EXECUTORY SALES.
2 SALES ON TRIAL.
SALES BY SAMPLE OR DESCRIPTION.
SALES OF GOODS IN TRANSIT.
3 CREDIT.
4 CONDITIONAL SALES.
WARRANTY—DEFINITION.
WARRANTY AS TO TITLE.
WARRANTY AS TO QUALITY.
IMPLIED WARRANTY.
STOPPAGE IN TRANSITU.
ANNULMENT OF SALES.

1 Time of Performance A sale of property may be
(1) Executed, if the articles sold are immediately transferred to the purchaser, or,

(2) *Executory*, if the property is to be delivered or transferred at some future time. An executory sale is simply an agreement to sell. It is completed by the delivery of the goods. Its time of completion depends on the terms of the bargain. It may depend on the happening of some event such as the payment of the goods.

2 Executed Sales In executed sales there must be a delivery of the property 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. The following are examples:

(1) A Bill of Lading to represent goods in the hands of a Railway or Shipping Company.

(2) A Warehouse Receipt representing goods stored.

(3) 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.

3 Executory Sales are those not performed at time of making an agreement to sell. It was noted in the previous chapter that the property must *exist* when the contract is made. I might agree to sell you a mowing machine to be delivered on the 10th of June, next. If that machine is now in existence it is an agreement to sell. If I agree to make you a machine, and deliver it to you on the 10th of June, next, you have made a contract with me for *labor* and *material* and not a sale. In an executory sale, the seller runs all risk until he has transferred the title to the buyer. If the mowing machine above referred to were destroyed by fire before I delivered it to you, it would be my loss.

Executory sales are usually *conditional*. Of these we might mention,

(1) Sales on trial,

(2) Sales by sample or description,

(3) 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.

4 Sales on Trial—Very frequently sales are made conditioned on the article suiting the purchaser or doing some specified kind of work. There should be a specified time for trial mentioned in the agreement. The loss by wear or consumption during the period of trial falls upon the seller as he is

still the owner. Though the prospective purchaser has *possession* he has not any title. If he does not approve of the article he must return it to the seller or notify the seller to remove it. If he does not return it or give notice that it does not suit, within the specified time the sale is completed. A offers to sell to B a sewing maching for $30, but to give it to him on trial for a month. B must reject the machine within the month or he is bound to keep it.

5 Sales by Sample or Description Sales are often made by sample. X shows Y a sample bushel of apples and sells him 1000 bushels of such apples. There is an express warranty that the 1000 bushels of apples when delivered will be just such apples as shown, in kind and quality. This expressed or implied warranty is the *condition* of the sale. If X tries to deliver another kind or quality of fruit, Y may refuse it or give notice to the seller to that effect. Sales by description, written or verbal, goods must correspond to this description.

6 Sale of Goods in Transit Goods in transit by boat or rail may be sold, the condition being that the goods arrive as expected. If the title of the goods has been transferred by indorsement of a bill of lading, the sale is not a conditional sale but a sale absolute.

7 Credit Unless otherwise provided the price in any sale is payable in cash immediately. If credit is given it must be a condition of the bargain. In an ordinary sale on credit, such as M selling N a suit of clothes at $20. to be paid in a month, the ownership passes from M to N immediately, M receiving in return the right to charge N on his books. M has no further claim or lien upon the clothes. They become N's property. M could not recover the clothes from N for non-payment.

8 Conditional Sales There are a great many sales of machines, etc., by manufacturers and their agents on the "instalment plan." The seller gives the purchaser possession but not ownership; he retains the title until the property is all paid for. Such payments or instalments to be considered a rental until the whole purchase money is paid, then the owner relinquishes his lien, and the article becomes the property of the purchaser. The note form in Chap. 14, Sec. 5, is an example of the note usually taken in such a case.

By Ontario Statute,

(1) The seller must leave a copy of such note with the purchaser.

(2) The manufacturer's name must be on the article.

(3) The holder of such lien must furnish a statement of claim when asked for it. See Chap. 19, Statutes of Ontario, 1888.

The above provisions are for the purpose of preventing fraud on the part of the purchaser, who has possession of the article, by selling the article to some person who does not know that he has no title.

9 Warranty Definition—Warranty is the undertaking of the seller of the goods sold,

(1) As to Title.
(2) As to Quality.

10 Warranty as to Title It is implied that when a person attempts to dispose of goods that he has a good title to them; if he has not, the rightful owner can take them even if sold a hundred times. A right of action, however, lies against the person who fraudulently disposed of another's property. If the seller has not the article in possession and does not expressly say that he is the owner, the purchaser takes the risk of title. The lack of possession should be warning enough to him that the title may be defective.

11 Warranty as to Quality may be

(1) Express.
(2) Implied.

Express Warranty is such statements as have been made as to the quality of goods. These statements must be made at the time of making the sale. Statements made a day before, or an hour before, if negotiations were discontinued in the meantime, would not apply as warranties. If the purchaser examines an article before purchasing he is supposed to see manifest defects in the article. When he examines it himself he takes the risk on himself unless he has an express warranty besides. It is well to remember the maxim, *Caveat Emptor*, meaning, "Let the purchaser beware."

12 Implied Warranty In sales by sample there is an implied warranty that the articles are as good as the sample. If articles are ordered for a *purpose*, the goods, by implied warranty, should be suitable to such purpose. If I ask a dealer for ink suitable for marking clothing and he supplies me with ink, there is an implied warranty that the ink is indellible and otherwise suitable for the purpose. I trust to his judgment, not to my own; he takes the responsibility.

13 Stoppage in Transitu is the right of a person selling chattels or goods on *credit* to stop them while in transit by boats, railroad, etc. Goods cannot be stopped in transit unless the seller has found out since the goods were shipped that the purchaser is insolvent.

EXAMPLE X sells a quantity of goods to Y but finds out after shipment

that Y is insolvent. If these goods are in the hands of the common carrier, they may be stopped before they are delivered, by giving notice to the company in whose possession they are, not to deliver them. The conditions to such a stoppage are,

(1) The goods sold being actually in transit not delivered to the buyer in fact or by bill of lading.

(2) The buyer must be indebted to the seller for the purchase price.

(3) The buyer must be insolvent

If the seller stops the goods unlawfully while in transit he may be required

(1) To deliver the goods.

(2) To indemnify the purchaser for loss.

(3) To indemnify the purchaser for damages caused by delay of delivery.

14 Annulment of Sale A sale may be annulled on the following grounds:

(1) Mutual mistake, as where both parties fail to understand one another, they perhaps being thinking of different articles when making the contract.

(2) Fraud by either party, by misrepresentation or concealment of fact.

(3) Breach of warranty. A sells a horse to B warranted to be sound and quiet. If he does not fill the bill B may refuse to take him.

(4) Failure of consideration, either by a failure in title or in quality.

(5) Illegal. If the sale is illegal

(1) As to the articles bought or sold.

(2) As to the purpose.

CHAPTER 26.

ACCOUNTS, INVOICES, &c.

1 A Book Account is a collection of business transactions with one person consisting of either debits or credits or both debits and credits. These

transactions may be sales of goods, payments, services rendered, etc., all or any of them. These are usually gathered together in a book called the *Ledger*.

2 A Book of Original Entry is the one in which the entries are first made and is the one that is really evidence at law.

3 Entries of Transactions -It is important that the first entry of the transaction be clear, definite and complete. It should state

(1) The date on or about which the transaction was made.

(2) The person with whom the business was done and his residence and any special circumstances as to whether it was done with him personally or with his agent.

(3) The particulars of the transactions, such as stating whether it be a purchase, or sale, or payment, and the items of charge or credit and the value of same.

(4) The terms of payment.

(5) Any items of special interest, such as the person to whom the delivery was made, etc.

4 Entries -How Made It is necessary that the entry of the transaction be made

(1) As near the time of its occurrence as possible so that there may be no slip of memory.

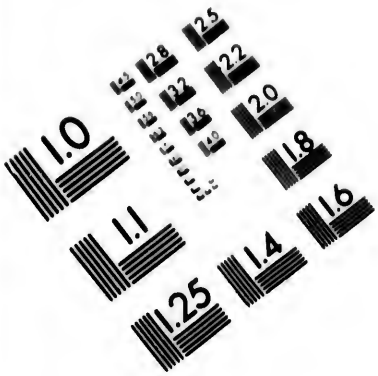
(2) In the case of sales of goods entries should be made when goods are ready for delivery.

(3) The particulars should be of a specific nature, not general, as a general charge would be lacking in evidence to support it.

(4) Entries should not be a mere memoranda, but should be made for the purpose of charging the debtor.

(5) Entries should be made by the person who made the bargain, whether he be a principal or an agent.

5 Mistakes and Corrections The entries in the book of original entry should never be scraped or rubbed out, nor should anything be interlined between them. A person may scrape or rub as he pleases in the books he carries the transactions to without invalidating or injuring the books as evidence but he must leave the original entries as they were made. If a mistake has been made simply rule out the transaction with red ink, leaving it that it can still be read, or write "Void," or some such word, before it or across it. To correct the mistake, write out the transaction afresh correctly in the book.



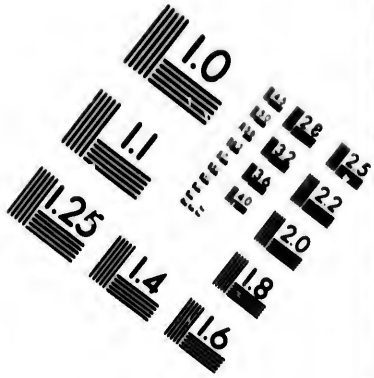
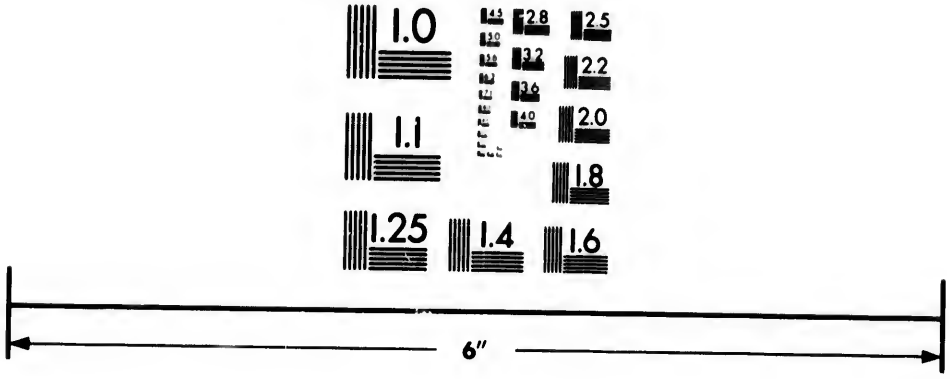
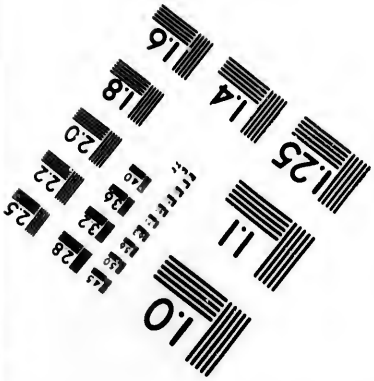
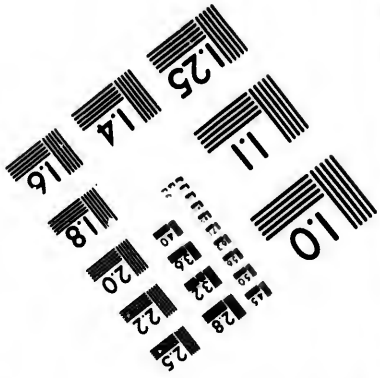


IMAGE EVALUATION
TEST TARGET (MT-3)







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Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

6 Invoices Sales of goods are usually accompanied by a detailed statement of the goods. Such statement should be very explicit, giving

(1) Date of purchase and name of purchaser.
(2) The terms upon which the property was sold.
(3) A full list of the goods, giving numbers, marks, brands, quantity, such as right measurement or number, the price of each and the total price.
(4) The number of cases in which it is packed, the marks or address and the particulars of transportation. The invoice heading should contain such words as "Bought of," or "Sold to."

The following is an ordinary form of invoice:

FORM OF INVOICE.

MONTREAL, Mar. 1, 1891.

MESSRS. J. R. BOYD & Co.,
Bowmanville, Ont.

Bought of WILSON BROS. & CO.,
Wholesale Dealers in Groceries, &c.

Terms: 30 days or 2/ off for cash.

A O	3	Chests Y. H. Tea,		210lbs.	50c.	105 00
25	1	Bag ^{25} Rio Coffee,		100lbs.	24c.	24 25
D. S.	2	Boxes P. G. Starch,		150lbs.	24c.	60 00
— ×	3	Bbls. W. G. Sugar, 120 – 20	360			
		117 – 19	59			
		123 – 20		301lbs.	8½c.	25 59
						214 84

Form of Invoice of a shipment of goods for sale on account and risk of shipper:

FORM OF INVOICE OF SHIPMENT.

WALKERTON, Jan. 5, 1891.

Invoice of Shipment of Wheat sent to JOHN WILSON, Toronto, Ont., to be sold on account and risk of WM. STEARNS, Consignor.

bush.	400	Red Wheat No. 1 Hard,	@ 1 05	$420 00
"	500	White " "	@ 1 10	550 00
		Paid freight on same, 900 bu.	@ 05	45 00
				$1015 00

7 A Bill is a list of goods purchased or services rendered, giving the particulars, etc. It is usually made out at the time of the transaction and contains only debits or credits, not usually both. The particulars are not usually as full as in an Invoice. The heading is usually in the form "John Smith to J. W. Jones Dr."

FORM OF BILL.

OWEN SOUND, Jan. 19, 1891.

MR. I. C. MCDOWALL,

To J. H. NOTTER, Dr.

Dealer in Groceries, Crockery, Glassware, &c.

3	lbs. Cheese,	@ 16c.	48
4	" Bacon,	12½c.	50
2	" Raisins,	10c.	20
2	Cans Salmon,	18c.	36
1	Broom,		30
2	Lamp Chimneys,	08c.	16
			$2 00

Received payment.
J. H. Notter.

8 An Account is a detailed statement of all the transactions with a person, either debits or credits, or both, during a certain time. It will include all kinds of transactions, sales, purchases, returns, payments, allowances, labor services, etc., etc. The heading should have such words in it as "In account with," and a balance due one person or another is usually written on it.

FORM OF ACCOUNT.

DURHAM, Feb. 21, 1891.

MR. WM. B. HILL,

Town.

In Account with CHRISTIE & AGAR.

Jan.	2	To 1 Coal Stove, 20 00 Pipes, 5 00		25 00	
	"	" 1 Platform,		1 00	
	"	" Putting up Stove,		75	
Mar.	3	" Repairs to Water Pipes, 4 hours of man,		1 00	
"	3	" 13 feet half-inch pipe, @ 5c.		65	
Sept.	19	" 1 Bath and fittings per contract,		14 50	
"	19	" 2 hours of man and helper repairing furnace,		1 20	44 10
			Cr.		
July	2	By Cash		8 00	
Aug.	3	" Note at 3 months,		20 00	28 00
			Balance due,		$16 10

9 A Monthly Statement is a synopsis of an account, a brief enumeration of the different purchases during the month, that is sent out monthly to persons who purchase on credit, so that any necessary correction may be made before settlement. The *average* due date of the purchases in the statement is usually found by equation and a draft drawn for the balance dated at the equated due date.

FORM OF STATEMENT.

HAMILTON, Jan. 31, 1891.

MR. CHAS. T. FERGUSON,
Hanover, Ont.
In account with W. M. WILSON & Co.

Jan.	3	To Invoice 30 days,	140 00	
"	10	" " 60 days,	208 60	
"	20	" " 10 days,	185 80	534 40
		— *Cr.* —		
Jan.	8	By Cash,	100 00	
"	15	" Note 90 days,	200 00	300 00
		Balance, our favor,		234 40
		Due by equation Jan. 19, 1891.		
		We have drawn on you for balance at 30 days from January 19. Kindly honor on presentation and oblige, W. M. WILSON & Co.		

10 The Terms When sales of goods are made on credit the terms are usually named and mentioned in the invoice or bill of goods sent at the time of shipment. It frequently happens that accounts are allowed to run, consisting of numerous small charges for goods, services, etc. In the absence of other agreement these are usually considered due when an account of them is rendered. Many tradesmen and merchants have special statements of terms printed on their account-forms, such as "*Accounts due when rendered*" or "*Interest charged at the rate of one per cent. per month after the date of this account.*" Such terms when printed or written on the account are binding on the debtor unless he objects to them. In that case special terms would be agreed upon

11 An Account of Purchase is a statement of goods purchased by one person for another, giving a full list of the articles purchased, who purchased from, the terms of purchase, the manner of shipment and the total cost, including commission expenses, etc.

FORM OF ACCOUNT OF PURCHASE.

COLLINGWOOD, Jan. 7, 1891.

Account of Purchase of Wheat made by JOHN WILSON, Commission Merchant, Collingwood, for account and risk of A. F. GLEN, Toronto, Ont.

bush.	600	White Wheat,	@	1.15	690 00	
"	300	Red "		1.00	300 00	990 00
		Charges.				
		Cartage,			1 25	
		Commission 2			19 80	21 05
		Charged to your account.				$1011 05

12 An Account of Sales is a statement made by a commission merchant of goods sold by him on account and risk of another. It should give a list of the sales, to whom sold, the price and terms of sale, also all charges paid on the goods, also charges for commission, storage, advertising, etc., and the nett proceeds shown as the difference between the sales and expenses, also how nett proceeds are sent or credited.

FORM OF ACCOUNT SALES.

HAMILTON, Jan. 25, 1891.

Account of Sales of 900 bushels of Wheat received Jan. 9, 1891, to be sold by JOHN WILSON, Commission Merchant, Hamilton, on account and risk of WILLIAM STEARNS, Walkerton, Consignor.

Jan.	8	Sold 200 bu. W. Wheat,	@	1.25	250 00	
"	15	" 400 " R. Wheat,		1.25	500 00	
"	24	" 300 " W. Wheat,		1.30	390 00	1140 00
		Charges.				
Jan.	7	Paid Cartage, 900 bu.	@	½	5 50	
		Storage, 900 bu.		1½	13 50	
		Commission, 2½ of sales,			28 50	47 50
		Nett proceeds placed to your credit,				1092 50
		E. & O. E.				
		JOHN WILSON, Consignee.				

13 Enforcing Collection of a Debt on the evidence of a book account is usually accomplished by suing in a court of competent jurisdiction and placing in court a statement duly sworn to before a magistrate or commissioner on the following points:

(1) That the foregoing copy of account is taken correctly from the book of original entry.

(2) That the charges were made at or about the time of their respective dates.

(3) That the goods were sold and delivered, or the services rendered at or about the time the charges were made.

(4) That the charges are correct and the account just.

CHAPTER 27.

CHATTEL MORTGAGES.

1 Definition A chattel mortgage is a conditional grant or conveyance of goods, chattels or personal property, by a debtor to a creditor, as security for the payment of a debt. By derivation the word mortgage signifies a death grip. (*Mors*, death - *gage*, a grip, or grasp.)

(1) The debtor is called the mortgagor.

(2) The creditor is called the mortgagee.

2 The Effect of a mortgage is practically the same as a bill of sale. It is a conveyance of the title, though not of the possession of the property—the mortgagor still retains possession of the property. The mortgagee may take possession of the property on breach of any of the covenants.

3 Description of Property In a chattel mortgage, the animals or articles mortgaged, should be carefully described, so that any bailiff or officer could identify them from the description. In describing an animal, give age, color, sex, name, strain of breed, and any particular marks or spots. In describing a machine or implement give manufacturer's name, and number, color, condition.

Example (1) One grey Percheron horse, 16½ hands high, 5 years old, with both hind feet white, and small white spot on forehead, named Bob.

Example (2) One self binder, Harvest Queen, manufactured 1890, by Massey Manufacturing Company, painted brown and grey with red stripes, in first-class condition, numbered 2037.

4 Must be Bona Fide Transaction Every chattel must be proved to be *bona fide*, and not for the purpose of defrauding creditors, by the mortgagee taking an affidavit, relative to it covering the following points.

(1) That the mortgagor is truly indebted to the mortgagee in the whole sum mentioned in the mortgage.

(2) That it is made in good faith, for the express purpose of securing the debt due.

(3) That it is not for the purpose of securing the goods against the creditors of the mortgagor.

5 Registration Every chattel mortgage must be registered in the Office of the Clerk of the County Court, where the property is, within five days after its execution, or it will be ineffectual to hold the property against any subsequent purchaser, &c. It would be good only as evidence of a debt.

6 Limitation as to Place Chattel mortgages only hold the property in one county, viz., the county where they are registered; and every chattel mortgage contains a covenant that the property will not be removed from the county where it is situate. If it is agreeable to both parties that the property be removed to another county, then the mortgage should be transferred to the office of the Clerk of the County Court where the property has been taken to. If property is removed without consent, it may be seized and sold to satisfy the mortgage.

7 Limitation as to Time A chattel mortgage holds the property for one year only. At the end of that time the property is free, unless a new mortgage is made, or a renewal of the old one registered by the mortgagee.

8 Limitation as to a Debt Though the chattel mortgage holds the property for one year only, yet it is good as evidence of a debt for twenty years, because it is under seal. Great care should be exercised in drawing a chattel mortgage, as very slight mistakes render it inoperative in holding the property.

9 Form of Chattel Mortgage

THIS INDENTURE made (in duplicate) the twenty seventh day of February, one thousand eight hundred and ninety one.

BETWEEN Richard Kirby of the Township of Normanby, in the County of Grey, and Province of Ontario, student, hereinafter called the MORTGAGOR, of the First Part, and John Henry Moore, of the Township of Normanby aforesaid, gentleman, hereinafter called the MORTGAGEE, of the Second Part.

WITNESSETH that the Mortgagor for and in consideration of One Hundred Dollars of lawful money of Canada, to him in hand well and truly paid by the Mortgagee at or before the sealing and delivery of these Presents, (the receipt whereof is hereby acknowledged,) HATH granted, bargained, sold and assigned, and by these Presents DOTH grant, bargain, sell, and assign unto the Mortgagee, his executors, administrators, and assigns, ALL AND SINGULAR the goods, chattels, furniture, and household stuff hereinafter particularly mentioned and described:

One black horse with small white spot on forehead, four years old, fifteen hands high, named Ben.

One lumber wagon in good condition with running gear painted red and box green, with spring seat, shelving, whippletrees, and neck yoke, manufactured by the Speight Manufacturing Company of Markham, and numbered 4027, all of which said goods and chattels are now lying and being on the premises situate in the Township of Normanby aforesaid, on lot number seven, in the Fourth concession of the said township.

TO HAVE AND TO HOLD, all and singular, the said goods and chattels, furniture and household stuff, unto the Mortgagee, his executors, administrators and assigns, TO THE ONLY PROPER USE AND BEHOOF of the Mortgagee, his executors, administrators and assigns, FOR EVER:

PROVIDED ALWAYS, and these Presents are upon this express condition, that if the Mortgagor, his executors or administrators, do and shall well and truly pay or cause to be paid unto the Mortgagee, his executors, administrators or assigns, the full sum of One Hundred Dollars, with interest for the same at the rate of eight per centum per annum, on the thirty-first day of October, 1891.

THEN THESE PRESENTS, and every matter and thing herein contained, shall cease, determine, and be utterly void to all intents and purposes, anything herein contained to the contrary thereof in anywise notwithstanding.

AND the Mortgagor for himself, his executors and administrators, shall and will warrant and for ever defend by these Presents, ALL AND SINGULAR the said goods, chattels and property, unto the Mortgagee, executors, administrators and assigns, against him the Mortgagor, his executors and administrators, and against all and every other person or persons whomsoever.

AND the Mortgagor doth hereby for himself, his executors and administrators, COVENANT, PROMISE and AGREE to and with the Mortgagee, his executors, administrators and assigns, that the Mortgagor, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid unto the Mortgagee, his executors, administrators or assigns, the said sum of money in the said proviso mentioned, with interest for the same aforesaid, on the day and time and in the manner above limited for the payment thereof: AND ALSO IN CASE DEFAULT SHALL BE MADE IN THE PAYMENT of the said sum of money in the said proviso mentioned, or of the interest thereon, or any part thereof, or in case the Mortgagor shall attempt to sell or dispose of or in any way part with the possession of the said goods and chattels or any of them, or to remove the same or any part thereof out of the County of Grey, or suffer or permit the same to be seized or taken in execution without the consent of the Mortgagee, his executors, administrators or assigns to such sale, removal or disposal thereof first had and obtained in writing, THEN and in such case it shall and may be lawful for the Mortgagee, his executors, administrators or assigns, with his or their servant or servants, and with such other assistant or assistants as he or they may require at any time during the day, to enter into and upon any lands, tenements, houses and premises wheresoever and whatsoever where the said goods and chattels, or any part thereof may be, and for such persons to break and force open any doors, locks, bars, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures and place for the purpose of taking possession of and removing the said goods and chattels: AND upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the Mortgagee, his executors, administrators or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels, or any of them or

any part thereof, at public auction or private sale, as he [illegible]

AND from and out of the proceeds of such sale, in the first [illegible] himself or themselves, all such sums and sum of money for principal and costs and expenses as may then be due by virtue of these Presents, and [illegible] may have been incurred by the Mortgagee, his executors, [illegible] consequence of the default, neglect or failure of the Mortgagor, [illegible] assigns, in payment of the said sum of money, with interest [illegible] in consequence of such sale or removal as above mentioned, [illegible] to pay unto the Mortgagor, his executors, administrators and assigns [illegible] main after such sale, and after payment of all such sum or sums [illegible] on as may be due by virtue of these Presents at the time of [illegible] payment of the costs, charges and expenses incurred by such seizure [illegible]

PROVIDED ALWAYS nevertheless that it shall not be incumbent on the Mortgagee, his executors, administrators or assigns, to sell and dispose of the [illegible] but that in case of default of payment of the said sum of money [illegible] it shall and may be lawful for the Mortgagee, his executors, [illegible] peaceably and quietly to have, hold, use, occupy, possess and enjoy [illegible] without the let, molestation, eviction, hindrance or interruption of the Mortgagor, his executors, administrators or assigns, or any other person or persons whomsoever. AND the Mortgagor doth hereby further COVENANT, CONDITION and AGREE to and with the Mortgagee, his executors, administrators and assigns, that in the sum of money realized under any such sale as above mentioned, shall not be sufficient to pay the whole amount due at the time of such sale, that the Mortgagor, his executors, administrators shall and will forthwith pay or cause to be paid unto the Mortgagee, his executors, administrators and assigns, all such sum or sums of money with interest thereon as may then be remaining due:

AND the Mortgagor doth put the Mortgagee into the full possession of the said goods and chattels by delivering to him, this Mortgage, in the name of all the said goods and chattels at the sealing and delivery hereof:

AND the Mortgagor COVENANTS with the Mortgagee that he, the Mortgagor, will during the continuance of this mortgage, and any and every renewal thereof, INSURE ALL THE CHATTELS hereinbefore mentioned against loss or damage by fire in some insurance office duly authorized to transact business in Canada, in the sum of not less than One Hundred Dollars, and will pay all premiums and moneys necessary for that purpose as the same become payable, and will on demand assign and deliver over to the said Mortgagee, his executors, administrators and assigns the policy or policies of insurance and receipts thereto appertaining. PROVIDED that upon default of payment of said premium or sums of money by the Mortgagor, the Mortgagee, his executors or administrators may pay the same, and such sums of money shall be added to the debt hereby secured, and shall bear interest at the same rate from the day of such payment) and shall be repayable with the principal sum hereby secured.

IN WITNESS WHEREOF the parties to these Presents have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED In the Presence of

R. B. COCHRANE. | RICHARD KIRBY. (L. S.)

J. H. MOORE. (L. S.)

Affidavit of Mortgagee that the transaction is a bona fide one.

ONTARIO: COUNTY OF GREY. TO WIT:

I, John Henry Moore, of the Township of Normanby, in the County of Grey, gentleman, the Mortgagee in the foregoing Bill of Sale by way of Mortgage named, make oath and say: That Richard Kirby, the Mortgagor in the foregoing Bill of Sale by way of Mortgage named, is justly and truly indebted to me, this deponent, John Henry Moore the Mortgagee therein named, in the sum of One Hundred Dollars mentioned therein. That the said Bill of Sale by way of Mortgage was executed in good faith, and for the express purpose of securing the payment of the money so justly due or accruing due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the Bill of Sale by way of Mortgage against the creditors of the said Richard Kirby, the Mortgagor therein named, or preventing the creditors of such Mortgagor from obtaining payment of any claim against Him.

SWORN before me at Normanby, in the County of Grey, this 27th day of February, in the year of our Lord, 1891.

J. H. MOORE.

DALTON McCARTHY, *a Commissioner for taking affidavits in H. C. J.*

*NOTE. If this word is incorrectly filled in or left out entirely, the mortgage will not hold the property.

Affidavit of witness to the execution of the mortgage.

ONTARIO, COUNTY OF GREY, TO WIT: I, Richard Bernard Cochrane, of the Township of Normanby, in the County of Grey, farmer, make oath and say: That I was personally present, and did see the within Bill of Sale by way of Mortgage duly signed, sealed and delivered by Richard Kirby and John Henry Moore, the parties thereto, and that the name R. B. Cochrane set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at the Township of Normanby, in the said County of Grey.

SWORN before me at Normanby, in the County of Grey, this 27th day of February, A. D. 1891. R. B. COCHRANE.

DALTON McCARTHY, *a Commissioner for taking affidavits in H. C. J.*

RECEIVED on the day of the date of this Indenture, from the Mortgagee, the sum of One Hundred Dollars mentioned.

WITNESS, R. B. COCHRANE. RICHARD KIRBY.

10 Mortgage to Secure an Indorser There is a form of a chattel mortgage in common use to be taken by a person who indorses or becomes security for another. The indorsing of the note is the consideration. The form differs very little from the ordinary form, and any one who can fill up one, can fill up the other.

(1) The mortgage must state its purpose to secure the indorser.

(2) It must be sworn to by the mortgagee and the witness, the same as the ordinary form.

(3) The note on which the indorsement is, must be copied out in full on the mortgage.

11 Renewal of Chattel Mortgage As intimated in a previous section, a chattel mortgage may be renewed by the mortgagee without the consent of the mortgagor, by the mortgagee registering in the office of the Clerk of the County Court a sworn statement of the amount still due on the mortgage, for principal and interest. This statement should show,

(1) The principal.

(2) The interest.

(3) The payments.

(4) The balance due still.

The affidavit should verify the following points:

(1) That the statement showing such a balance is true.

(2) That the mortgage is not kept on foot for any fraudulent purpose.

12 When and Where Registered The renewal should be registered where the mortgage was, within five days of its execution. It should be made out before the expiration of the mortgage.

13 Time of Extension—A renewal extends the time of holding the property for one year. The time may be extended from year to year by registering yearly a sworn statement of claim, as above described.

14 Form of Renewal

STATEMENT exhibiting the interest of John Henry Moore in the property mentioned in a Chattel Mortgage, dated the 27th day of February, 1891, made between Richard Kirby of the Township of Normanby, County of Grey, of the one part, and John Henry Moore of the Township of Normanby aforesaid, of the other part, and filed in the office of the Clerk of the County Court of the County of Grey, on the first day of March, 1891, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

THE said John Henry Moore is still the Mortgagee of the said property, and has not assigned the said Mortgage. One payment has been made on account of the Mortgage.

THE amount still due for principal and interest on the said Mortgage is the sum of Seventy Dollars, computed as follows:

Principal	$100.00
Interest 1 year, to February 27th, 1891	8.00
	108.00
—Cr.—	
By cash, February 27th, 1892	38.00
Balance	$ 70.00

Affidavit of Mortgagee as to correctness of statement and the balance.

COUNTY OF GREY, TO WIT: I, John Henry Moore, of the Township of Normanby, in the County of Grey, the Mortgagee named in the Chattel Mortgage mentioned in the annexed statement, make oath and say:

1. That the annexed statement is true.

2. That the Chattel Mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

SWORN before me at the Township of Normanby, in the County of Grey, this 27th day of February, A. D., 1892. J. H. MOORE.

J. W. FROST, *a Commissioner for taking affidavits in H. C. J.*

15 Assignment of Chattel Mortgage If a chattel mortgage is sold by the mortgagee to another party, it is done by an assignment, as it is not a negotiable instrument. The assignment should be registered where the mortgage is.

16 Discharge of Chattel Mortgage The proper receipt for the payment of a chattel mortgage is a Discharge of Chattel Mortgage, an instrument under seal that releases the property and cancels the debt. It requires a sealed instrument to cancel a sealed instrument. Many persons do not take the trouble to have their chattel mortgages legally discharged but simply get the mortgage returned. This creates a *presumption* that the debt has been paid. A release in fact is much better.

17 Affidavit of Witness The witness to the signature on the discharge must make a similar affidavit to the execution of the discharge before it can be registered.

18 Registration The registered mortgage is a thing of public record. The discharge of it should be just as much a thing of public record to cancel the debt, hence the discharge should be registered in the office of the Clerk of the County Court where the mortgage is.

19 Form of Discharge of Chattel Mortgage

CANADA.

To the Clerk of the County Court of the County of Grey.

I, John Henry Moore, of the Township of Normanby, in the County of Grey, Gentleman,

Do Certify that Richard Kirby, of the Township of Normanby, County of Grey, Province of Ontario, student, has satisfied all money due on or to grow due on a certain Chattel Mortgage made by Richard Kirby aforesaid, to John Henry Moore of the Township of Normanby aforesaid, which Mortgage bears date the twenty-seventh day of February, A. D. 1891, and was registered in the Office of the Clerk of the County Court of the County of Grey on the first day of March, A. D. 1891, as No. 2743, and that such Mortgage has not been assigned.

That I am the person entitled to receive the moneys, and that such Mortgage is therefore discharged.

Witness my hand this twenty fifth day of May, A.D. 1892.

Witness, Andrew Greer. J. H. Moore.

Affidavit of witness as to execution of Discharge.

County of Grey, } I, Andrew Greer, of the Township of Normanby, County of Grey, Province of Ontario, Student at Law, make oath and say:

1. That I was personally present, and did see the within Instrument duly signed, sealed and executed by John Henry Moore, one of the parties thereto.
2. That the said Instrument was executed at the Township of Normanby.
3. That I know the said parties.
4. That I am the subscribing Witness to the said Instrument.

Sworn before me at Normanby, in the County of Grey, this twenty fifth day of May, A. D. 1892. } Andrew Greer.

S. Blake,

A Commissioner for taking Affidavits in H. C. J.

CHAPTER 28.

REAL ESTATE.

1 Definition Real Estate is such property as is permanent, fixed and immoveable, comprising lands, tenements and corporeal hereditaments thereon. The word *land* comprises all substantial and permanent objects, including not only all soil or earth, but all houses, castles, &c., and also all things which grow naturally and without cultivation in soil, as well as water covering the soil. Growing crops, such as wheat, corn, potatoes, and all crops or fruit, the result of annual labor, are chattels. Trees sold to be removed forthwith, such as trees sold to lumbermen, etc., are chattels. If trees are sold to be removed any time at the purchaser's option, they are real estate. Coal in a mine in its natural condition is real estate, but coal that has been mined is a chattel.

2 Various Ownerships There is no absolute ownership of land under the English law. There are various ways in which a person may have an ownership in real estate, several of which should receive attention, as follows:

(1) Fee simple.
(2) Joint ownership.
(3) Dower interest.
(4) Life ownership.
(5) Future ownership.
(6) Rights of way, etc.
(7) Restrictive rights.
(8) In trust.

3 Rights to Real Estate are of two kinds:

(1) Those the owner has over his own land. See 1, 2, 3, 4, above.
(2) Those he has over the land of others. See Nos. 5, 6, 7, 8.

4 Owners' Rights The right over one's own property includes not only the land itself, but everything built or growing thereon, or firmly fixed thereon, as a fence, etc., the right of the owner to use them and all their appurtenances, such as keys, windows &c. It also includes his right to enjoy them for himself, and to expel any other person from them, and to use force, if necessary, to put them off.

5 Rights over other Persons' Property This includes such as the right of way over another's property for use as a road, lane, etc., the right to cut wood, draw water from a spring, fish in a stream, etc.

6 Fee Simple is where a man holds lands, tenements, &c., to himself and his *heirs* without condition. He can sell it, or give it away by deed, or give it away by will, or allow his heirs to enjoy it after him. He can destroy or pull down the buildings so long as he does not interfere with the rights or injure the property of his neighbors.

7 Joint Ownership Where two or more parties own a piece of property, jointly, there is a joint ownership, and all persons owning jointly have a right to it at the same time. This class ownership occurs:

(1) Where a syndicate of persons combine to purchase and hold, speculatively, a portion of land.

(2) Where a person dies without a will his heirs have a joint interest.

The several persons who are joint owners have equal shares unless provided for otherwise in the document creating the joint ownership.

Joint walls built by two parties on the dividing line between two properties is another example of joint ownership. Neither can take down even the part on his own land, without the consent of the other party.

8 Dower Where the husband dies possessed of an estate of inheritance, his widow shall have the $\frac{1}{3}$ of said lands and tenements, to hold during the term of her natural life. This is called *Dower*. A dower is only available after the death of a husband, and is not subject to will before the husband's decease.

9 Life Ownership is one where he person has the use of property during his natural life. An ownership of this kind is usually acquired by gift or will, which provides for the disposal of the property at the death of the owner of the life interest.

(1) He cannot sell or mortgage the property.

(2) He cannot destroy or decrease the value of it by removal of buildings, etc.

(3) He cannot control the disposing of it at death.

He may, during his life-time:

(1) Use and enjoy it himself.

(2) Rent it to others, and enjoy the rents and profits and emoluments derivable therefrom.

(3) Sell the use of the property for his life-time only. At the death of such a holder the property passes on to the next holder.

10 Future Ownership is one where the possession and enjoyment of property depends on some event in the future. Suppose a person has a life interest in the property, as outlined in the next preceding section, and that at his death the property is passed to F. W. Bale, Mr. Bale would have a future ownership until the event happened. He could only convey such an interest, as he had not a full title. This is called an Estate in remainder, or reversion.

11 Rights of Way—A person has a piece of property removed from roads or streets, and he pays a neighbor a sum for the use of a part of his property to use as a lane for ingress and egress to his property. He acquires rights over the other's property that are valuable. They are restrictive over the other person, as he cannot build on or obstruct the passage over such land.

12 Restrictive Rights—Property is sometimes conveyed with rights over neighboring property, such as that houses built on the adjacent property must be placed a certain distance from the street, or built of certain materials, or of certain value, etc. This is a restrictive ownership that is exercised over the property of others.

13 In Trust—Property is frequently conveyed to a person in trust, for the use and benefit of another person. Such a person is called a trustee. He is only holding power for others, and his wife, if he has one, does not acquire any power in the lands. The trustee may have power to collect rents, sell the property, invest such rents or purchase money. He does nothing with the property for his own personal benefit. The person for whose benefit the trust is held cannot exercise any power of conveyance over it, not even to sell the right to receive the income from it.

CHAPTER 29.

REAL ESTATE.

Sales of Real Estate.

1 Definition A sale of Real Estate cannot, like a sale of a chattel, such as a coat or a spade, be completed by the actual delivery of the article, by the immediate, actual and continued change of possession. Therefore, like the sale of personal property not delivered, it must be evidenced by a written agreement. The transaction must be completed by a document commonly known as a deed.

Sales are of two kinds:

(1) Executory, when possession is passed by agreement for sale, but title is not passed until full payment has been made.

(2) Executed, where the sale has been completed by the execution and delivery of deed. By deed we mean what is popularly understood as a deed, an absolute conveyance, not the legal use of the word which would include all documents under seal.

2 Evidence of Contract No verbal or ordinary written agreement is binding when made respecting Real Estate or any interest in Real Estate. Every such contract must be evidenced by a *contract in writing and under seal*. A verbal agreement where earnest money is paid will not hold real property.

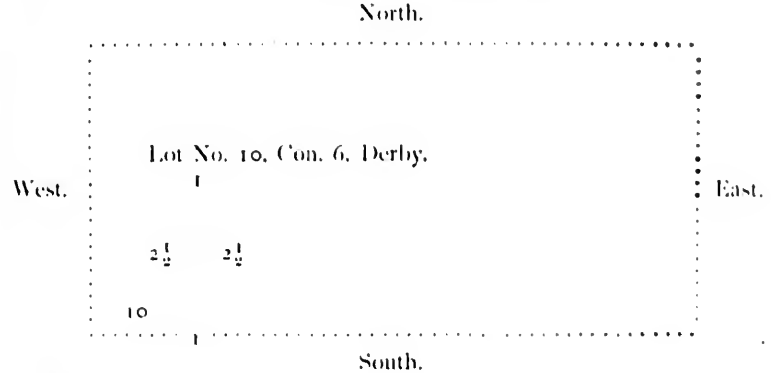
3 Description of the Land An essential part of a deed is the description of the land. If the piece of land is a whole lot in a town or township, very little trouble will be experienced in making a clear description.

EXAMPLE "All and singular that certain parcel or tract of land and

premises situate lying and being in the Township of Derby, in the County of Grey, containing by admeasurement Two Hundred acres more or less, and composed of lot number ten on the sixth concession of the Township of Derby aforesaid."

If a half or a quarter of a lot is to be described, the foregoing can be easily arranged to suit by writing "the North half of, etc.," or "the South half of, etc.," or "the North-West quarter, etc. If the piece of land is somewhere *in* a lot a surveyor's description should be procured that will give the meets and bounds and magnetic bearing, etc.

If a surveyor's description cannot be had, a piece, the boundaries of which run parallel to the boundaries of the lot from which they are taken, may be described thus: "All and singular, that certain tract or parcel of land situate lying and being in the Township of Derby, in the County of Grey, Province of Ontario, containing by admeasurement one quarter of an acre more or less, and described as follows: Beginning at a point in the southern boundary of lot number ten on the sixth concession of the Township of Derby, ten chains from the south-west corner of said lot, thence proceeding in a northerly direction two chains fifty links, parallel to the western boundary of said lot, thence in an easterly direction parallel to the southern boundary one chain, thence in a southerly direction, parallel to the western boundary two chains fifty links to the southern boundary of said lot, thence along the southern boundary one chain to the place of beginning."



4 Parties The parties to a deed are usually called the Grantor and Grantee. The grantor is the seller and the grantee the purchaser. The grantor's wife, if he has one, must be a party to the deed, for the purpose of barring her dower. It is only necessary to suggest that great care should be had in properly describing the parties.

The first party is the seller.
The second party, the wife of the seller,
The third party the purchaser.

If the seller, or grantor, is a single person, bachelor, widow, spinster, or widower, the purchaser becomes the party of the second part.

5 In Duplicate All documents respecting a sale of Real Estate or any interest therein should be in duplicate, so that when the contract is recorded in a registry office there may be one copy left in the registry and one kept by the purchaser. The two copies must be alike word for word, except that the copy retained by the purchaser is legal without the affidavit of the witness. It is customary for both copies to have the witnesses' affidavit on them. The commissioner's charge for taking the affidavit in duplicate is the same as for one copy.

6 Executory Sale When a bargain is made respecting a sale of Real Estate that cannot be immediately completed, a memorandum of it should be written out and signed and sealed by the parties. This is done,

(1) When on account of some defect in title or some other such contingency the title cannot be given until some future time.

(2) Where the party purchasing is to have credit for the payment of the purchase money.

Such a document is called an Agreement for sale of land. It need not be very formal in its character so long as it is under seal. It does not convey the title, it is simply an evidence of the *intention* of the parties to complete the transfer by deed at some future time.

7 Form of Agreement for Sale The following is the ordinary form for agreement for sale of land. It may be proved by affidavit of witness and registered by the purchaser.

ARTICLES OF AGREEMENT, made this Fifth day of January, in the year of our Lord one thousand eight hundred and ninety-one.

BETWEEN William James Gray, of the Township of Oro, in the County of Simcoe, Province of Ontario, carpenter, of the first part,

AND Franklin Cullis, of the Township of Oro aforesaid, farmer, of the second part,

WHEREAS, the said party of the First Part has agreed to sell to the party of the Second Part, and the party of the Second Part has agreed to purchase of and from the said party of the First Part, the lands, hereditaments and premises hereinafter mentioned, that is to say:

ALL AND SINGULAR that certain parcel or tract of Land, being composed of Lot Number Six on the Fourth Concession of the Township of Oro, aforesaid, containing by admeasurement One Hundred acres more or less,

TOGETHER with all the privileges and appurtenances thereto belonging

at or for the price or sum of One Thousand Dollars of lawful money of Canada, payable in manner and on the days and times hereinafter mentioned, that is to say: The sum of Five Hundred Dollars to be paid at or before the sealing of this agreement; the remaining Five Hundred Dollars to be due and payable in five equal annual instalments of One Hundred Dollars each with interest on the unpaid principal at six per cent. per annum payable with each instalment. The first of such instalments of principal and interest to be due and payable one year from the date of this agreement.

NOW IT IS HEREBY AGREED between the parties aforesaid, in manner following, that is to say: The said party of the Second Part, for himself, his heirs, executors and administrators, *Doth Covenant, Promise and Agree* to and with the said party of the First Part, his heirs, executors, administrators and assigns, that he or they shall and will well and truly pay or cause to be paid to the said party of the First Part, his heirs, executors, administrators and assigns, the said sum of money above mentioned together with the interest thereon, at the rate of six per cent. per annum on the days and times and in manner above mentioned: AND also shall and will pay and discharge all taxes, rates and assessments wherewith the said land may be rated or charged from and after this date.

IN CONSIDERATION WHEREOF, and on payment of the said sum of money, with interest thereon as aforesaid, the said party of the First Part, *doth* for himself, his heirs, executors, administrators and assigns, *Covenant, Promise and Agree*, to and with the said party of the Second Part, his heirs, executors, administrators or assigns, to convey and assure or cause to be conveyed and assured to the party of the Second Part, his heirs or assigns, by a good and sufficient deed in fee simple,

ALL THAT the said piece or parcel of land above described, together with the appurtenances thereto belonging or appertaining, freed and discharged from all dower or other encumbrances but subject to the conditions and reservations expressed in the original grant thereof from the Crown, and such Deed shall be prepared at the expense of the said party of the First Part, and shall contain the usual statutory covenants for perfect title and quiet enjoyment.

AND ALSO shall and will suffer and permit the said party of the Second Part, his heirs and assigns, to occupy and enjoy the same until default be made in payment of the said sum of money, or the interest thereof, or any part thereof, on the day and time, and in the manner hereinbefore mentioned, SUBJECT, NEVERTHELESS, to impeachment for voluntary or permissive waste.

AND it is expressly understood that *time* is to be considered the essence of this agreement, and unless the payments are punctually made at the time and in the manner hereinbefore mentioned, the said party of the First Part shall be at liberty to re-sell the said land.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals the day and year first above mentioned.

SIGNED AND SEALED	W. J. GRAY,	[SEAL.]
In the presence of	F. CELLIS,	[SEAL.]
J. J. REITH.		

ONTARIO,
COUNTY OF SIMCOE,
TO WIT:

I, James John Reith, of the Township of Oro in the County of Simcoe, make oath and say:

1. That I was personally present, and did see the within Instrument and Duplicate duly signed, sealed and delivered by William James Gray and Franklin Cullis, the parties thereto.

2. That the said Instrument and Duplicate were executed at the Township of Oro.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate

SWORN before me at the Township of Oro, in the said County of Simcoe, this Fifth day of January, in the year of our Lord one thousand eight hundred and ninety-one,

J. J. REITH.

LEWIS LUDLOW,
A Commissioner, &c.

8 Sealing, Etc. The sealing of a document consists in affixing after the signature a small piece of paper, usually a round wafer of paper, or some sealing wax, or some material different from the document, and acknowledging it to be your seal.

9 Corporation Deeds, Etc., do not need the affidavit of the witness; the affixing of the corporate seal of the Company or the Corporation is sufficient attestation for all purposes, when signed by their chief officers. When land is conveyed to a corporation, it should be made to their successors instead of their heirs, and successors in office where a conveyance is made to trustees.

10 Delivery An agreement or deed may be signed and sealed but still kept in the possession of the maker. It is of no effect until it has been delivered to another person. The delivery is usually accompanied by such words as "I deliver this as my act and deed." It requires the delivery of such document into the hands of the parties in whose favor they are drawn to give them binding effect on the maker.

11 Affidavit of Execution Every document that is to be registered or recorded should be attested to by affidavit of the witness who saw it signed as to the following particulars:

(1) That he saw them signed, sealed and delivered.
(2) That the act was done at a certain place.
(3) That he knows the parties to the document.
(4) That he is witness to the document.

Such affidavit should be on the contract, or firmly attached to it. The

only exception to the above is that of corporations mentioned above, where the corporate seal is sufficient attestation. The affidavit may be taken before a Registrar, Deputy Registrar, Supreme or County Court Judge, a Commissioner for taking affidavits, or a Magistrate.

12 Registration All documents respecting titles of Real Estate should be registered in the Registry Office of the County in which the property is situated. The contract is then a matter of public record. It is recognized at law, and all documents take precedence according to priority of registration.

Should a deed, mortgage, etc., be lost or destroyed, a certified copy can be had any time from the Registrar which is just as good as the original.

The Registry Offices are established for the prevention of fraud, so that any person buying Real Estate may find all the history of the title of the property and know if it is clear. For 25 cents the title of any property may be examined, and every deed, mortgage or agreement respecting the lot read over and copies made from them. If the Registrar makes a certified copy of any document he charges a reasonable fee for it. The fees for registering are $1.40 for the first 700 words or under, and 15 cents per 100 for all from 700 to 1400 and 10 cents per 100 for all over 1400.

13 Order of Registrations Documents take effect in the order of the registration. Suppose two mortgages were made on a property, one dated January 10, 1890, and not registered till May 30, 1890, and a second mortgage made April 6, and registered April 10; the mortgage registered first, although made second, would have the first claim on the property and would have to be satisfied before the other drawn Jan. 10 and not registered until May 30. It is desirable that documents be registered as soon as possible after their execution.

14 Abstracts Every Registrar is required to keep books known as "abstract books," with a special space devoted to each lot of land in the registration district. Every transaction respecting a lot must be put in the proper place. The abstract book must have the following information:

(1) Number of instrument (Registration No.)
(2) Name of instrument, such as Patent Deed, Mortgage, &c.
(3) Date of instrument.
(4) Date of registry.
(5) Grantor's name.
(6) Grantee's name.
(7) Quantity of land.
(8) Consideration, price or amount of mortgage

The Registrar for a small fee will furnish a copy of the abstract book that

refers to any lot or part of lot so that the title may be looked up hundreds of miles away from the registry office.

15 Searching a Title There are three kinds of clouds on title that must be looked after, when searching the title to a piece of property:

(1) Has the seller a proper ownership of the land and the right to convey it? Are there any mortgages or liens against it? Search the County Registry Office or get an abstract from the Registrar and look it up.

(2) Are there any judgments against the owner? Make a search in the office of the Sheriff for the County.

(3) Are there any taxes unpaid on the lot? Search the town or city treasurer's office, if in a town or city, or the County Treasurer's office if the land is in a township or village.

CHAPTER 30.

REAL ESTATE

DEEDS.

1 Definition A deed is a formal document in writing on paper or parchment, signed, sealed and delivered between the parties.

(1) The form in the previous chapter, the agreement for sale of land was simply a contract to convey land after certain payments had been made. It did not convey a title. It was simply a promise to convey. A deed of land must be under seal, and should be drawn up in sets of two, or if there be a mutual contribution of land for the common use of both, the deed should be in triplicate—one for each of the parties, and one for the registry office.

It is the most solemn and binding act that a man can perform in the disposal of his property.

(2) If made between two or more parties having different interests, it is called an "Indenture." If made by one person it is called a "Deed-Poll."

2 Varieties of Deeds There are very many different kinds of deeds in common use, varying according to the circumstances of the case. The following are in common use:

(1) Warranty deeds with full covenants.
(2) Warranty deeds with abbreviated covenants.
(3) Quit claim deed.
(4) A deed poll.
(5) Trust deed.

A deed of land is frequently called in law a bargain or sale, and in the abstract books in the Registry Office is denoted by B. & S.

3 A Warranty Deed Full Covenant, is one that guarantees a perfect title and quiet enjoyment of the property to the purchaser and his heirs and assigns after him.

The covenants are written out at great length. But on account of the length of time required for writing them out, and the extra expense of registering, the covenants have been shortened down by statute.

4 Warranty Deed Abbreviated Covenants, is one that guarantees a perfect title and quiet possession. It is the same in effect as the Full Covenant Deed, but much shorter in words. It has been legally "boiled down" from the Full Covenant Deed. It contains all of the covenants, but in few words. The forms given on pages 113–116 contain the abbreviated covenants.

5 Quit Claim Deed is made by a person that does not hold a perfect title to a property in favor of some one that has a claim to the property. For example: Smith has mortgaged his premises to Brown. He afterwards wishes to sell to Brown who holds the mortgage, and has already a claim. He will use a Quit Claim Deed. It is very much like an ordinary deed without the covenants. It conveys only the party's *interest* in the property, be the interest great or small.

6 A Deed-Poll, is a deed made by one person such as a Sheriff Deed.

7 A Trust Deed, is one made to a person called a trustee, for the benefit of some other person. It does not give the person who is trustee any claim, nor his wife any dower in the property.

8 Form (1) The following is the ordinary short form of Statutory Deed with abbreviated covenants.

THIS INDENTURE made (in duplicate) the first day of December, in the year of our Lord One Thousand Eight Hundred and Ninety. IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES.

BETWEEN John James Reith of the Township of Luther, County of Dufferin, Province of Ontario, merchant, of the first part, and

Maria Jane Reith, wife of the party of the first part, of the second part, and William James Gray of the Township of Oro, County of Simcoe, Province of Ontario, merchant, of the third part.

WITNESSETH that in consideration of the sum of Five Hundred Dollars ($500) of 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 Town of Barrie, in the County of Simcoe, Province of Ontario, containing by admeasurement one quarter (¼) of an acre, be the same more or less, being composed of lot No. four (4) on west side of Scrope Street, in the Town of Barrie 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 FOR EVER, SUBJECT NEVERTHELESS, to the reservations, limitations, provisos and conditions expressed in the original GRANT thereof from the Crown.

(NOTE. *The five following items are the covenants that 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 incumbrances.

AND the said party of the first part, COVENANTS with the said party of the third part, that he will execute such further assurances of the said lands as may be requisite.

AND the said party of the first part, COVENANTS with the said party of the third part, that he has done no act to incumber 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 Maria Jane Reith, the party of the second part, hereby bars her dower to the said lands.

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

SIGNED, SEALED AND DELIVERED in the presence of JOHN S. HOWES.	JOHN REITH.	(L. S.)
	MARIA JANE REITH.	(L. S.)

COUNTY OF SIMCOE, TO WIT: I, John Samuel Howes of the Township of Minto, County of Wellington, Province of Ontario, manufacturer, make oath and say:

1. THAT I was personally present and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by John James Reith and Maria Jane Reith, two of the parties thereto.

2. THAT the said Instrument and Duplicate were executed at the Town of Barrie.

3. THAT I know the said parties.

4. THAT I am a subscribing Witness to the said Instrument and Duplicate.

SWORN before me at Barrie, in the County of Simcoe, this first day of December, A. D. 1890.

JOHN S. HOWES.

JOHN JAMES GIBSON,
A Commissioner for taking affidavits in Co. of Simcoe.

Form (2) The following is a still shorter form of deed, made possible in Ontario by the "Devolution of Estates Act of 1886." It will be noticed that the five covenants in the foregoing deed when "boiled down," are equivalent to the two in this.

THIS INDENTURE made (in duplicate) the first day of December, in the year of our Lord, One Thousand Eight Hundred and Ninety, IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES, AND OF THE CONVEYANCING AND LAW OF PROPERTY ACT, 1886:

BETWEEN John James Reith of the Township of Luther, County of Dufferin, Province of Ontario, merchant, of the first part, and

Maria Jane Reith, wife of the party of the first part, of the second part, and

William James Gray of the Township of Oro, County of Simcoe, Province of Ontario, merchant, of the third part.

WITNESSETH that in consideration of the sum of Five Hundred Dollars ($500) of 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 by him acknowledged,) he, the said party of the first part who conveys as beneficial owner, 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 Town of Barrie, in the County of Simcoe, Province of Ontario, containing by admeasurement one quarter (¼) of an acre, be the same more or less, being composed of lot No. four (4) on the west side of Scrope Street, in the Town of Barrie aforesaid.

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 said lands.

And Maria Jane Reith, the said party of the second part, hereby bars her dower to the said lands.

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

SIGNED, SEALED AND DELIVERED in the presence of JOHN J. GIBSON. — JOHN J. REITH. (L. S.) — MARIA JANE REITH. (L. S.)

COUNTY OF SIMCOE: TO WIT: I, John James Gibson of the Village of Wroxeter, County of Huron, Province of Ontario, miller, 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 John James Reith and Maria Jane Reith, two of the parties thereto.

2. THAT the said Instrument and Duplicate were executed at Barrie.

3. That I know the said parties.
4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me at Barrie, in the County of Simcoe, this first day of December, A. D. 1890.

JOHN J. GIBSON.

F. C. McDOWALL,
A Commissioner for taking affidavits in H. C. J.

10 Who Should Sign The answer is, every party who has anything yet to do. In the foregoing cases the party of the third part does not sign. He has paid his money, and he has nothing further to do. If, however, there is any covenant that binds him in the future to pay off the mortgage, or claim, or to allow a part of the property to be used as a lane, he must sign to bind himself.

11 Deed by a Single Person In a deed by an unmarried person, such as a spinster, bachelor, widow or widower, it is proper to mention the fact in the description, and if possible have the witness make affidavit to the fact in section three, which should read as follows: "I know the said party, that he is an unmarried man, being a bachelor." This often saves the trouble and expense of proving this afterwards when a title is being looked up.

12 A Deed Subject to a Mortgage Property is often sold subject to an existing mortgage, the purchaser agreeing to pay off the mortgage as part of his purchase money. To accomplish this, the following clause, or some words of similar effect should be written in, either after the description of the land, or after the clause that ends up with the words, "subject to the reservations, limitations, provisos and conditions expressed in the original grant from the Crown."

13 Additions to Ordinary Form

(1) Form of clause for deed subject to mortgage. "Subject, however, to a certain mortgage made by the parties of the first and second parts to Henry Swinton, dated January 20, 1890, securing the payment of five hundred dollars, with interest at 7 per cent. per annum, which mortgage the party of the first part agrees to pay, satisfy and discharge, and save harmless therefrom the party of the first part."

(2) Add to three of the clauses requiring it, the modifying words, "except as aforesaid," so as to make them harmonize with the encumbrance of the mortgage provided for in the foregoing clause.

14 A Deed of Gift A Deed of Gift of property from father to son, etc., is usually drawn as follows in the parts that relate to the consideration, "Witnesseth that in consideration of the natural love and affection, and the sum of one dollar," thus giving both a good and a valuable consideration.

15 The Quit Claim Deed As mentioned in a previous section, the Quit Claim Deed is one that does not give any guarantee of title. The words conveying the title are different, as the seller is only parting with his interest in the property.

It is given (1) When a person's title is defective and he only wants to convey such title as they really possess.

(2) Where a mortgagee purchases the land mortgaged to him, he having the covenants of guarantee already in his mortgage in his favor.

(3) When heirs in common of an estate, quit their claim to one another.

16 Form of Quit Claim Deed

THIS INDENTURE, made in duplicate the first day of December, in the year of our Lord one thousand eight hundred and ninety

BETWEEN John James Reith of the Township of Luther, County of Dufferin, Province of Ontario, yeoman, of the first part, and

Maria Jane Reith, wife of the party of the first part, of the second part, and

William James Gray of the Township of Oro, County of Simcoe, Province of Ontario, merchant, of the third part.

WITNESSETH that the said party of the first part, for and in consideration of the sum of Five Hundred Dollars ($500) of lawful money of Canada, to him in hand paid by the said party of the third part, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HAS granted, released and quitted claim, and by these presents DOTH GRANT, RELEASE AND QUIT CLAIM unto the said party of the third part, his heirs and assigns, ALL estate, right, title, interest, claim and demand whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or expectancy of him the said party of the first part, of, in, to, or out of

ALL AND SINGULAR, that certain parcel or tract of land and premises, situate, lying and being in the Town of Barrie, in the County of Simcoe, Province of Ontario, containing by admeasurement one quarter (¼) of an acre, be the same more or less, being composed of lot No. four (4) on the west side of Scrope Street, in the Town of Barrie aforesaid, TOGETHER with the appurtenances thereto belonging or appertaining.

TO HAVE AND TO HOLD the aforesaid land and premises, with all and singular the appurtenances thereto belonging or appertaining unto and to the use of the said party of the third part, his heirs and assigns for ever.

SUBJECT NEVERTHELESS to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

And Maria Jane Reith, the said party of the second part, hereby bars her dower in the said lands.

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

SIGNED, SEALED AND DELIVERED in the presence of JOHN S. HOWES. | JOHN J. REITH. (L. S.)

MARIA JANE REITH. (L. S.)

RECEIVED on the day of the date of this Indenture the sum of Five Hundred Dollars ($500.)

WITNESS: JOHN S. HOWES. JOHN J. REITH.

Affidavit of witness to the execution.

COUNTY OF SIMCOE: TO WIT: I, John Samuel Howes of the Town of Harriston, County of Wellington, Province of Ontario, manufacturer, make oath and say:

1. That I was personally present, and did see the within Instrument and the Duplicate thereof duly signed, sealed and executed by John James Reith and Maria Jane Reith, two of the parties thereto.

2. That the said Instrument and Duplicate were executed at the Town of Barrie.

3. That I personally know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at Barrie in the County of Simcoe, this first day of December, A. D. 1890. JOHN S. HOWES.

F. C. McDOWALL, *a Commissioner for taking affidavits.*

CHAPTER 31.

REAL ESTATE.

MORTGAGES, ETC.

1 Definition A Mortgage is a grant or conveyance of Real Estate by a borrower or debtor to a lender or creditor to secure the repayment of a loan or debt. The property is pledged, in fact really conveyed, such conveyance

being, however, conditioned on the failure to repay a certain sum. The person giving the mortgage is called the Mortgagor. The person in whose favor it is made is called the Mortgagee. It will be noticed that in form a mortgage is very like a deed with a "proviso" for repayment added.

2 Form of Mortgage

THIS INDENTURE, made in duplicate, the First day of February, one thousand eight hundred and ninety-one, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF MORTGAGES,

BETWEEN Henry Richard Manders, of the Township of Smith, in the County of Peterboro', Province of Ontario, Farmer, of the First Part, hereinafter called the Mortgagor,

Mary Ann Manders, wife of the party of the First Part, of the Second Part,

AND William James Clark, of the Township of Smith aforesaid, Gentleman, of the Third Part, hereinafter called the Mortgagee,

WITNESSETH that in consideration of Six Hundred ($600.00) Dollars of lawful money of Canada, now paid by the said Mortgagee to the said Mortgagor, (the receipt whereof is hereby acknowledged) The said Mortgagor DOTH GRANT and Mortgage unto the said Mortgagee, his heirs and assigns FOREVER, ALL AND SINGULAR, that certain parcel or tract of land and premises situate, lying and being in the Township of Smith aforesaid, containing by admeasurement Two Hundred Acres more or less, being composed of Lot Number Eight (8) on the tenth (10) Concession of the Township of Smith aforesaid; and Mary Ann Manders of the Second Part hereby bars her dower in said lands.

PROVIDED this Mortgage to be void on payment of Six Hundred Dollars of lawful money of Canada, with interest at Seven per cent. per annum, as follows: The said principal sum of Six Hundred Dollars to be due and payable five years from the date hereof with interest thereon at Seven per cent. per annum payable yearly. The first of such payments of interest to be due and payable on the first day of February, 1892, 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 has a good title in fee simple to the said lands.

AND THAT he has the right to convey the said lands to the said Mortgagee.

AND THAT on default or non-observance of any of the provisions or stipulations herein contained, the Mortgagee shall have quiet possession of the said lands, free from all incumbrances.

AND THAT the said Mortgagor will execute such further assurances of the said lands as may be requisite.

AND THAT the said Mortgagor has done no act to encumber the said lands.

AND THAT the said Mortgagor will insure the buildings on the said lands to the amount of not less than Five Hundred Dollars currency; Provided that the Mortgagee may insure the same without reference to the Mortgagor and charge any moneys, with interest at the rate aforesaid, paid by him in respect thereof on the said lands.

AND the said Mortgagor doth RELEASE to the said Mortgagee all his claims upon the said lands, subject to the said proviso.

PROVIDED that the said Mortgagee on default of payment for one month may, on giving 3 months' notice in writing, enter on and lease or sell the said lands.

PROVIDED that the Mortgagee may distrain for arrears of Interest.

PROVIDED that in default of payment of the Interest or of any portion of the moneys hereby secured the principal hereby secured shall become payable.

PROVIDED THAT until default of payment the Mortgagor shall have quiet possession of the said lands.

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

SIGNED, SEALED AND DELIVERED In the presence of R. B. COCHRANE. | HENRY R. MANDERS. [SEAL] MARY ANN MANDERS. [SEAL]

RECEIVED on the day of the date of this Indenture the sum of Five Hundred ($500.00) Dollars mentioned as consideration.

WITNESS: R. B. COCHRANE. | HENRY R. MANDERS.

COUNTY OF SMITH, TO WIT: I, Richard Bernard Cochrane, of the Township of Smith, in the County of Peterboro', Gentleman, make oath and say:

1. That I was personally present and did see the within Instrument and the Duplicate thereof duly signed, sealed and executed by Henry Richard Manders and Mary Ann Manders, two of the parties thereto.

2. That the said Instrument and Duplicate were executed at the Township of Smith.

3. That I know the said parties.

4. That I am a subscribing Witness to the said Instrument and Duplicate.

SWORN before me at the Township of Smith in the County of Peterboro' this First day of February, A.D. 1891. W. J. GRAY, *A Commissioner for taking affidavits in H. C. J.* | R. B. COCHRANE.

3 The Re-payment Clause of a mortgage is that clause that provides when and how the loan or debt is to be repaid. The clause in the foregoing form takes the principal payable at the end of a term of years and the interest payable annually. Great care should be taken in the composition of these clauses so that they may be made so explicit that there cannot be a doubt or quibble as to the time and manner of repayment. Many persons desire to have the principal of their mortgages payable in annual instalments and the interest on all the principal paid up to date. The following is a form:—

"Provided this mortgage be void on the payment of Six Hundred Dollars of lawful money of Canada with interest thereon at the rate of Six per cent,

as follows: that is to say, the said principal sum of Six Hundred Dollars to be due and payable in six equal annual instalments of One Hundred Dollars each with interest at the rate of six per cent. per annum on the unpaid principal payable annually with each instalment of principal. The first of such payments of principal and interest to be due and payable on the first day of February, A. D. 18—, over taxes and performance of statute labor."

In case the instalments are irregular either as to amount or dates of payment, it is better to give the amount of each instalment and its exact due date. Very little trouble will be experienced in varying the foregoing to suit half-yearly interest.

4 Sinking Fund Mortgages A Sinking Fund Mortgage is one in which the principal and interest together are divided into a number of equal yearly or half-yearly or monthly payments. This form of repayment clause was used very extensively in Canada until recent legislation abolished them to a great extent by making them illegal, unless they gave the following particulars in the repayment clause.

(1) The amount of the loan.
(2) The rate of interest.
(3) The part of each annual payment that is for interest.
(4) The part of each annual payment that is for principal.

Formerly these mortgages were used to cover up exorbitant rates of interest charged by grasping or unscrupulous loan companies and private lenders. Everything has now to be plain and above board. That borrower who *thought* he was paying six per cent., and who nevertheless really was paying somewhere between twelve and twenty per cent., according to the terms, can no longer be deceived or left in the dark as to the obligation he incurs when he gives a lien on his property. Building societies are about the only institutions that now use the old sinking fund form of mortgage.

5 Additional Clauses Joint Stock Loan Companies and some private individuals put various extra clauses in for better securing themselves.

6 Special Insurance Clause And that the said mortgagor will insure the buildings on the said lands to the amount of not less than One Thousand Dollars, currency, provided that the company may insure the same without reference to the mortgagor, and charge any money with interest at the rate aforesaid paid by them in respect thereof on the said lands; and to enable the company to effect insurance in any Mutual Fire Insurance Company, the mortgagor hereby appoints the President and Manager his joint agents, to sign on his behalf, all necessary insurance applications, premium notes or un

dertakings for payment of the insurance premium moneys; and provided also, that in the event of any loss by fire happening, either before or after default shall have been made in payment of the moneys in the above proviso, or herein elsewhere mentioned, or in doing or keeping of any of the covenants or agreements herein contained, on the part of the mortgagor, the company may apply the money to be derived from said insurance, either towards reconstructing the destroyed buildings or toward payment of the said money hereby secured, as they may deem best.

7 Tenant-at-Will Clause And the said mortgagor doth RELEASE to the said company all his claims upon the said lands, and doth attorn to and become Tenant-at-Will to the said company, subject to the said proviso at the rent equal to the interest hereinbefore mentioned.

8 Provision for Foreclosure Provided that such notice may be effectually given either by leaving the same with a grown up person on the mortgaged premises, if occupied, or by posting the same on the door of the dwelling-house or other conspicuous parts of the premises, if unoccupied, or at the option of the company or their assigns, by publishing the same for four consecutive times in some newspaper published in the county in which the lands are situated, and provided that the said lands may be sold, either by public auction or by private sale, and either for cash or credit; and that the company or their assigns may vary or rescind any contract or sale by virtue of said power, and may buy in and re-sell the said lands, or any part thereof, either by private sale or public auction, without being responsible for any loss or deficiency for, or on account of such estate; and that no purchaser under such power of sale, shall be bound to inquire into the legality or regularity of any sale under the said power, or to see to the application of the purchase money.

9 Provision for Payment of Taxes, &c. And it is hereby agreed between the parties hereto, that the company may pay all taxes and rates which shall from time to time fall due and be unpaid in respect of the mortgaged premises; and charge such payment, with interest at the rate aforesaid, on the mortgaged premises, and that in case the company satisfy any charge on the said lands, the amount paid in respect thereof shall be payable forthwith with interest at the rate aforesaid, and in default the power of sale hereby given may be exercised. And that neither the execution nor registration of this mortgage shall bind the company to advance the money.

10 Provision for Compounding Unpaid Interest And that all interest in the arrear upon this mortgage shall bear interest at the rate of eight per cent. per annum, from the time of its accruing due and payable, and that the principal money secured shall bear interest at the said rate until said principal moneys and interest are paid.

11 Power of Sale Every mortgage contains a clause to the following effect: "Provided that the mortgagee on default of payment for three months, may on one month's notice, enter on and lease or sell the said lands," &c. This clause enables the mortgagee, after strictly complying with the terms of the notice, to sell the mortgaged lands.

12 Registration of Mortgages The registration of a mortgage is very essential. If two mortgages are given, the one registered first will be satisfied first, in case the property has to be sold. Suppose Smith makes a mortgage to Jones, January 15th. It is registered July 10th. Another to Moore on May 20th, which is registered May 22nd. A judgment is given against him July 1st, and taxes become due, say, October 1st.

(1) Taxes are first claim, and come ahead of everything else.

(2) The second mortgage comes next for a share, because registered earliest.

(3) The judgment comes in for what is left.

(4) If there is anything left, the first mortgage takes it. It might have been first after the taxes if only registered promptly.

13 Making Sure of the Title Before advancing any money on a mortgage the loan companies are very careful to search the title as indicated in a previous section. They get an abstract of title first of all, then draw the mortgage, have it signed and registered, and the abstract or title continued so as to show the mortgage on it. They, by this means, see that there are no others ahead of theirs. After all this they search the Sheriff's office for judgments, and the Treasurer's for back taxes. If there are any claims in either office, they pay them and deduct their expenses, and hand the balance to the mortgagee. This is about the only safe way for all cases, and private individuals would do well to take a leaf out of their book of precaution.

14 Foreclosure If a mortgagor fails to pay his mortgage and interest, the process of enforcing the claim by appropriating or selling the land, is called Foreclosure. The mortgagor is deprived of his ownership. Though the mortgagee may legally appropriate the land under his mortgage; in practice that is not done. A sale is always held so as to make the title surer.

15 Transfer of a Mortgage -A mortgage is not negotiable paper transferable by indorsement. It is a sealed and registered contract, and requires a sealed and registered contract to change the ownership. This document is called an Assignment of Mortgage It should be drawn in duplicate, and registered where the mortgage is registered.

16 Form of Assignment

THIS INDENTURE, made in duplicate the First day of August in the year of our Lord one thousand eight hundred and ninety-three,

BETWEEN William James Clark, of the Town of Peterboro', in the County of Peterboro', Province of Ontario, Student, of the First Part, hereinafter called the Assignor, AND James John Reith, of the Township of Luther, in the County of Wellington, Province of Ontario, Merchant, of the Second Part, hereinafter called the Assignee,

WHEREAS by a mortgage dated on the First day of February, in the year of our Lord one thousand eight hundred and ninety-one, Henry Richard Manders, of the Township of Smith, County of Peterboro', Province of Ontario, farmer, and wife, did grant and Mortgage the land and premises therein and hereinafter described to William James Clark aforesaid, his heirs and assigns for securing the payment of Six Hundred Dollars of lawful money of Canada, and there is now owing upon the said Mortgage the sum of Six Hundred and Twenty-one Dollars.

NOW THIS INDENTURE WITNESSETH, that in consideration of Six Hundred and Ten Dollars of lawful money of Canada now paid by the said Assignee to the said Assignor (the receipt whereof is hereby acknowledged), the said Assignor DOTH HEREBY ASSIGN and set over unto the said Assignee, his executors, administrators and assigns ALL that the said before in part recited Mortgage, and also the said sum of Six Hundred and Twenty-one Dollars now owing as aforesaid together with all moneys that may hereafter become due or owing in respect of said Mortgage and the full benefit of all powers and of all covenants and provisos contained in said Mortgage. And also full power and authority to use the name or names of the Assignor, his heirs, executors, administrators or assigns for enforcing the performance of the covenants and other matters and things contained in the said Mortgage. AND the said Assignor DOTH HEREBY GRANT and CONVEY unto the said Assignee, his heirs and assigns, ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the Township of Smith in the County of Peterboro', Province of Ontario, containing by admeasurement Two Hundred Acres, be the same more or less, being composed of Lot Number Eight (8) on the Tenth Concession of the Township of Smith aforesaid.

TO HAVE AND TO HOLD the said Mortgage and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged TO THE USE of the said Assignee, his heirs, executors, administrators and assigns, absolutely and for ever; but subject to the terms contained in such Mortgage.

AND THE SAID ASSIGNOR for himself, his heirs, executors, administrators and assigns doth hereby covenant with the said Assignee, his heirs, executors, administrators and assigns, THAT the said Mortgage hereby assigned is a good

and valid Security and that the said sum of Six Hundred and Twenty-one Dollars is now owing and unpaid. And that he hath not done or permitted any act matter or thing whereby the said Mortgage has been released or discharged either partly or in entirety: And that he will upon request do perform and execute every act necessary to enforce the full performance of the covenants and other matters contained therein.

In Witness Whereof, the said parties hereto have hereunto set their hands and seals

Signed, Sealed and Delivered
In the presence of
Wm. Notter.

William J. Clark. [L.S.]

County of Peterboro',
to wit:

I, William Notter, of the Town of Peterboro', in the County of Peterboro', 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 William James Clark, one of the parties thereto.

2. That the said Instrument and Duplicate were executed at the Town of Peterboro'.

3. That I know the said party to be of the full age of twenty-one years.

4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me at Peterboro', in the County of Peterboro', this first day of August, in the year of our Lord 1793.
John Creasor,

Wm. Notter.

A Commissioner for taking affidavits in H. C. J.

17 Discharge of Mortgage is the legal and statutory form of receipt showing that a mortgage has been paid. It requires to be a registered instrument to cancel a registered mortgage. It must be signed in presence of a witness by

(1) The Mortgagee or his representatives, or

(2) The Assignee of the mortgage in case it has been sold.

The Mortgagee must not refuse to sign a discharge after a mortgage has been paid. If the mortgage has been assigned the assignment should be as accurately described in the discharge as the mortgage itself. All the particulars as to date, registration, etc., should be taken from the Registrar's certificate on the assignment.

A discharge operates as a re-conveyance of the lands of the Mortgagor or his representatives.

18 Form of Discharge of Mortgage

PROVINCE OF ONTARIO,
COUNTY OF PETERBORO', } DOMINION OF CANADA.
TO WIT.

To the Registrar of the North Riding of the County of Peterboro'.

I, William James Clark, of the Township of Smith, in the County of Peterboro', Province of Ontario, DO CERTIFY that Henry Richard Manders, of the Township of Smith aforesaid, hath satisfied all money due on or to grow due on a certain Mortgage made by Henry Richard Manders and wife, of the Township of Smith aforesaid, to William James Clark aforesaid, which Mortgage bears date the First day of February, A.D. 1891, and was registered in the Registry Office for the North Riding of Peterboro', on the third day of February, A.D. 1891, at twenty minutes past One o'clock in the afternoon in Liber 37 for the Town of Peterboro' as No. 5755.

THAT such Mortgage has not been assigned.

AND that I am the person entitled by law to receive the money and that such Mortgage is therefore discharged.

WITNESS my hand this first day of February, A.D. 1896.

WM. NOTTER } Signed,
W. J. CLARK.

ONTARIO,
COUNTY OF PERERBORO', } I, William Notter, of the Town of Peterboro', in the County of Peterboro', Province of Ontario, Student, make oath and say: —
TO WIT.

1. That I was personally present and did see the within Certificate of Discharge of Mortgage duly signed and executed by William James Clark, one of the parties thereto.
2. That the said Instrument was executed at the Town of Peterboro'.
3. That I know the said party.
4. That I am a subscribing witness to the said Instrument.

SWORN before me at Peterboro' in the County of Peterboro', this First day of February, A.D. 1896.
JOHN CREASOR,
A Commissioner for taking affidavits in H. C. J.
} WM. NOTTER.

19 Unsatisfied Mortgages—Suppose Smith mortgages his farm to Jones as security for the payment of One Thousand Dollars. If the mortgage is foreclosed and sold, and only brings say, $800 over the expenses, the mortgage is still good as an evidence of a debt for 20 years being under seal. If the Mortgagor is ever worth the $200 lacking in the mortgage the Mortgagee may sue him and recover the amount with interest and costs.

Mortgages Can be Repaid Five Years From Date.—When a Mortgage is drawn for a longer time than five years the Mortgagor may retire the mortgage when it has run five years by paying

(1) All principal and interest due on the mortgage, and

(2) Three months' interest in advance.

If the Mortgagee refuses to take the money for the above two items he cannot collect any more interest from the Mortgagor.

CHAPTER 32.

INTEREST.

1 Definition The popular definition of Interest is "*Money paid for the use of money.*" To be a little critical, we might observe that the money paid is *cash* from a Book-keeper's view point, and this cash is paid for *something* just the same as cash is paid for merchandise or anything else. It would be incorrect to call cash *bread*, because it was paid for a loaf of bread. We pay cash *for* interest for the use of money.

The use of money is interest, strictly speaking. It is usually calculated at a certain rate per cent. per year.

2 The Elements of Cost The elements that regulate the price of interest at any particular time or place are,

(1) The real worth of the use of the money at the time.

(2) The risk attending the lending of it. If there is any risk of losing it, the lender who runs the risk would expect pay for the risk, over and above ordinary rates.

(3) The supply and demand. Plenty of money and no person wishing to borrow will produce a low rate. Scarcity of money and many persons wanting it will produce a high rate.

3 On What Allowed There are three classes of cases where interest is allowed, as follows:

(1) Where it has been especially agreed upon. Example a note drawn with interest payable on it.

(2) Where money is borrowed or a debt is contracted or money detained, although there is no expressed agreement, it is customary to pay interest in such cases, and interest would be chargeable.

(3) Where a debt is not paid when it becomes due it will bear interest after maturity at 6 per cent.

4 Legal Rate The legal rate in Canada is six per cent. The meaning of this is,

(1) That in case interest is provided for, and no rate mentioned, the rate will be six per cent.

(2) If a debt is not paid when due, interest will be collectible at six per cent. from the due date till paid. If a promissory note, etc., is not paid when due, and there is no interest stipulated in it, six per cent. is collectible after maturity.

(3) If a note or bill of exchange stipulates for interest without naming a rate it will bear interest from its date at six per cent. until it is paid. If it shows an agreement for a higher rate than six per cent. by such words, "with interest from date at ten per cent. per annum," this will bring interest at ten per cent. till due, but only six per cent. till after maturity.

(4) If a note or bill is to draw interest from its date until it is paid at a higher rate that six per cent., the agreement for such must be evidenced by such words as "with interest from date until it is paid at ten per cent. per annum."

5 Any Rate May be Agreed Upon between the parties, and such an agreement is enforceable at law. There are no restrictions as to what persons may agree upon in the way of interest. If I agree to pay you two per cent. per month, that is 24 per cent. per annum, you can collect this amount as there are no usury laws in Canada.

6 Compound Interest On Mortgages or Real Estate, interest may be collected *on interest* in arrear, but not at any higher rate than what the mortgage itself bears. This must be agreed upon in the mortgage.

7 Discount is interest allowed for the payment of a debt before it is due. Though known by the name of "Discount," there is no difference between it and Interest, and the majority of book keepers put both into one account. If Smith holds a note against Jones for $100, due a year hence, and he sells it to Jones or any other person now for $90, he simply gets the use of the money for a year and pays for it with $10 of the note. It is the use of the money he pays for, the same as in interest. There are two kinds of Discount differing according to the mode of calculation.

(1) Bank Discount, which is the simple interest taken off the face of the debt for payment before it is due; the amount remaining is called the *Present Worth*.

(2) True Discount, where Interest on the present worth only is taken off the debt for payment before it is due.

CHAPTER 33.

AGENCY.

1 Definition Agency is that condition of affairs where one person attends to business for another person. It is difficult to get a full view of this comprehensive department of Commercial Law. If you send a boy to purchase a postage stamp for you, he is your special agent to attend to that business. You have a man employed in your workshop to do work for you: he is your agent for that work. You engage a clerk to sell and buy, to pay and receive payments, etc., for you in your grocery store: he is your agent. You appoint a person to sign notes, drafts, cheques, deeds, mortgages, etc., for you: he is your agent. How very small would be the business houses, and how meagre the commerce without agency. How would our great lines of railway, or our steamboats be worked without it? Every engineer, brakeman, fireman, conductor, etc., is an agent in his own department for the railway, or steamboat company.

2 The Principal is the name given to the person that gets another to do business for him. He may be any person capable of making ordinary contracts, and he can employ another to do for him anything that he may do himself.

3 The Agent is the person who does business for another. He may be any person who has sufficient understanding to do as he is directed by his principal. Though a minor cannot usually bind himself in a contract, he can, as agent, bind his principal: so may a married woman, in cases where she could not do business on her own account. Examples of agents are: commission merchants, brokers, auctioneers, lawyers, etc.

4 Third Parties are those persons with whom the agent does business on account of the principal. He and the principal are the persons concerned in the business transacted.

5 Appointment Orally For ordinary business, agents are frequently appointed orally by speaking to the agent or employee, and giving him directions.

6 Appointment by Letter, etc. When the agent lives at a distance, or is going away some distance to do the business, a letter of authority is usually given to him. Such letter will usually

(1) Grant authority to do business.

(2) Specify the business to be done.

(3) Give full directions as to how it shall be carried out.

7 Appointmeut by Power of Attorney When the business is of such a nature that the agent is required to sign notes, drafts, cheques, deeds, mortgages, etc., or to enter into contracts under seal, a formal document under seal is usually given him, called a Power of Attorney. Such Powers of Attorney may be

(1) General—giving the agent full power to transact all the usual business of the principal, or

(2) Specific—giving authority to do one or more particular acts, and no more.

8 Form of Power of Attorney

KNOW all men by these Presents, that I, Thomas Denton, of the Town of Barrie, County of Simcoe, and Province of Ontario, gentleman, do nominate, constitute, and appoint John Smith, of the City of Stratford, in the County of Perth, my true and lawful attorney, for me, in my name and on my behalf to

(Here give full detail of the work to be done by John Smith for Denton.)

AND for all and every of the said purposes hereinbefore mentioned, I do hereby give and grant unto the said John Smith, full and absolute power and authority to do and execute all acts, matters, and things necessary to be done for the full and proper carrying out of all said matters entrusted to him, and do hereby ratify and confirm, and agree to ratify and confirm and allow all and whatsoever the said John Smith shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 30th day of Jan. 1891.

SIGNED, SEALED, AND DELIVERED in the presence of A. L. MCINTYRE. | FRANK DENTON. (L. S.)

9 Proving Authority A Power of Attorney may be proved by being executed in presence of a Notary Public, and the Notary Public placing thereon his attestation of the execution.

10 Who may be Principal Any person can do an act by an agent that he can do personally. Hence any person in his right mind, and of age qualified to do business himself, may also do it by an agent.

11 Who may act as Agent Any person having understanding enough to do as he is directed, may act as an agent. Hence a minor who cannot bind himself in a contract, may bind his principal when he acts as agent.

12 Extent of Authority An agent has authority to do all acts necessary for the carrying out of the business intrusted to him. The instructions usually cannot specify every act, but in many cases the instructions are general, leaving very much to the discretion of the agent. If a person were appointed manager of an insurance company, he is an agent, but his every action could not be specifically ordered. Very much would be necessarily left for him to deal with according to the circumstances existing in each particular case.

13 Termination of Agency Agency may be terminated in a number of ways.

(1) *By lapse of time.* If A appoints B his agent for one year, at the end of the time the agency is ended. It may be continued by re-appointment.

(2) *By completion of the work.* If an agent is appointed to do a certain work or to do a particular act, when the work or act is done, his authority terminates.

(3) *By revocation by the principal.* The person giving powers to an agent, can also take those powers away. If, however, the agent has been appointed by a Power of Attorney under seal, it will require a document under seal to cancel it.

(4) *By change of condition of the parties.* If the principal dies, becomes bankrupt or incompetent through insanity, or where the agent becomes incompetent through insanity, or by any other cause where either principal or agent dies, the agency is dissolved.

14 Sub-Agents are those who act under other agents. A appoints B his agent to do certain acts. B may appoint C to do some of them or all 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 exists between the original principal and him. If the sub-agent acts fraudulently the agent suffers.

15 General Agents are such as are entrusted with all his principal business in a certain line or for a certain district. Their authority is usually of a general nature, and not generally restricted except by territorial or departmental lines.

16 Special Agents are those appointed to do certain acts. Their authority limits them. If A gives B authority to sign a note payable in three months, and he signs one payable in two months, he exceeds his authority, and he only binds his principal as far as the authority goes.

CHAPTER 34.

AGENCY.

1 Principal's Liability to Agent The Principal is liable to his agent for

(1) All advances and expenses lawfully incurred about the agency.

(2) For all commissions or salary agreed upon according to the usage of trade.

(3) For all damages sustained by the agent when following his principal's directions.

2 Duties of Agent to Principal —An agent is bound

(1) To use reasonable care, skill and forethought for his principal in the discharge of his business, just such as he would use if it were his own.

(2) To obey his principal's orders except in cases of extreme necessity, or where the orders are to do some unlawful act.

(3) To transact the business in the name of his principal.

(4) To keep an exact and true account of the business entrusted to him.

(5) To keep his principal's property separate from his own, or from that of others. If he allows it to be mixed so that it cannot be distinguished the principal can claim all.

(6) To deposit the principal's money to the credit of the principal in the bank and not to the credit of his own private account.

3 The Principal's Liability to Third Parties—The principal is liable to third parties for the acts of his general agents even for the neglect or fraud of such agents. For example—If you are hurt by any accident on a railroad you do not sue the engineer, or conductor, or operator whose carelessness caused the accident, but you come on the company, that is, his principal. In case a special agent makes a fraudulent contract exceeding his special authority, the principal is not liable as it was the duty of the third party to enquire into the special authority given the special agent.

There is a general principle at law that operates in cases of general agency "*When one of two innocent parties must suffer, the one should sustain the loss who put it in the power of the wrongdoer to commit the wrong.*" By this legal doctrine the principal is frequently charged with the acts of his general agent because he gives him the power though he does not give the instructions.

4 Agent's Liability—The agent is liable to his principal for loss occasioned by neglecting or refusing to carry out the principal's instructions. If he made a profit by disobeying instructions the profit would, however, belong to the principal and not to the agent.

(2) He is liable to third parties when he exceeds his instructions and incurs liabilities that were not provided for in his instructions, or necessary for the carrying on of his employer's business either by law, custom or usage of trade.

(3) For *wilful injuries* committed on third parties he is liable to third parties, and his principal is not liable. If your servant wilfully drove your waggon into another person's carriage and caused loss or damage he is liable.

(4) He is liable to third parties when he signs obligations in his own name to contracts or negotiable paper. If he signs "*John Smith, Agent*," he is personally liable. He should sign "William Jones, per John Smith, Agent," or "William Jones, per procuration of John Smith." The latter form implies only limited powers as agent.

The Secretaries, Treasurers, Managers, etc., of Stock Companies, Corporations, etc., are simply chief or general agents for the companies or corporations, and should be careful in signing negotiable paper, etc. If they sign simply *W. B. Stevens, Manager*, he is personally liable. He should sign "Credit Valley Quarrying Company (Limited), per W. B. Stephens, Manager," unless he is authorized by the Company to sign his name.

5 Extent of Agent's Authority—When instructions are given he must follow them. If he is to receive cash in payment of debts he has no authority to take notes or merchandise in payment.

General authority to do business or to collect debts, and give discharges for the debts, does not give authority to accept bills and sign notes. Special authority is necessary to incur such liability. The usual employment of the agent sometimes gives him power to charge his principal with goods. If I sometimes send my servant for goods with instructions to have them charged, and should at another time give him the money to pay for some goods, and he puts the money in his pocket and has the goods charged to me, I am liable, because it has been done before on my order. If my servant should buy goods for himself from the same man, and have them charged to me, the seller, not knowing but that they are for me, I am liable to the third party. The servant is, however, liable to me.

6 Effect of Notices, Tenders, Etc.—Notice given to my agent is deemed to be given to me at the time it is given to the agent, and payment tendered to my agent is payment tendered to me. Notice or tender made by my agent to third parties is made to me.

7 Ratification and Disaffirmance—If an agent does business for his principal that he is not authorized to do, his principal ratifies it if he accepts it, and disaffirms it if he refuses to make the transactions his transactions Ratification of an act is equivalent to prior authority. Ratification may be made in two ways,—

(1) By express words, in case of Stock Companies, Corporations, it is usually done by resolution of Directors, etc.

(2) By accepting the benefits accruing from the act.

8 Commission Merchant or Factor is an agent employed to sell goods for a principal.

(1) The goods are in his possession.

(2) He may sell for cash, but on credit only when so instructed by his principal.

(3) If he sells the goods in the name of his principal a purchaser cannot set off a personal debt against the factor as payment for the goods.

(4) He has a lien on the goods for advances made on them, and for storage and all legitimate expenses in connection with them.

(5) He has not a lien on the goods when they are in transit for bills accepted as advance on them, unless the goods have been constructively delivered to him by assignment of the bill of lading.

9 A Broker is a person who does business, or buys or sells for another. A broker differs from a factor or commission merchant, in this, that he does not have the goods in his possession. He is simply a sort of middle man who makes bargains for people who are

(1) Ignorant to a greater or less extent of the business they intend to have done and they find that the broker can do it better than they can, or

(2) The broker has better business connections than they have and can procure better rates or prices for them, or

(3) They do not wish to be known personally in the business until the transaction is complete.

He cannot act for both buyer and seller at once. He can only act for one, as, if he acted for both, he would be placed in a position to perpetrate fraud.

Brokers differ in name according to the kind of business they do. A Stock Broker buys and sells stocks, bonds and securities. A Real Estate Broker deals in houses, lands, etc. An Insurance Broker effects insurances at best rates for his customers, &c. Their relations and liabilities to principals and third parties are the same as agents under similar circumstances, and their pay, a commission on the value of the transaction.

CHAPTER 35.

PARTNERSHIP.

- DEFINITION.
- VARIOUS NAMES.
- COMMUNITY OF PROFIT.
- DEFINITION OF TERMS.
- WHO MAY BE A PARTNER.
- GENERAL PARTNERS.
- SILENT PARTNERS.
- LIMITED PARTNER.
- NOMINAL PARTNER.
- HOW FORMED.
- PARTNER BY IMPLICATION.
- PARTNER BY ORAL CONTRACT.
- PARTNER BY WRITTEN CONTRACT.
- CONTRIBUTION OF CAPITAL, &C.
- DIVISION OF PROFITS.
- FORM OF ARTICLES OF PARTNERSHIP.

1 Definition—Partnership is a voluntary contract between two or more persons to contribute their property, labor, skill, knowledge or credit or some or all of them into some lawful business enterprise for the purpose of making profit and to divide any profit or bear any loss they may make in course of the business in such proportions as has been agreed upon.

2 Various Names—A Partnership is also known as a Co-partnership, a Firm, a House, a Company, these several names are synonymous and refer to

the Partnership collectively. When the persons composing the partnership are referred to individually each one is called a *Partner*.

3 Community of Profit The central idea in all partnerships is to make profit, and the test of any partnership is "*a community of profit*," that is, all the profits made by the firm go into one common fund, and are divided after the losses have been deducted. In case it is desirable to prove the existence of a partnership at law, all that is necessary is to show that there is a community of profit, that is, a common profit fund for the parties concerned.

4 Definition of Terms

Capital is the property, real or personal, invested in the business. This is sometimes called *the investment*.

Resources, sometimes called *assets*, are all property, money, &c., held by the firm, and all debts due them either on negotiable paper or book account.

Liabilities are all debts owing by the firm either on negotiable papers or book account.

Net Capital is the balance of resources over the liabilities at any time. Such a balance at the beginning of a business is called the *Net Investment*.

Net Insolvency is the excess of the liabilities over the resources.

Gross Gain or profit, is the total gains without deducting any losses or expenses.

Net Gain or profit, is the balance remaining when the losses and expenses are deducted from the profits.

Gross Loss is the total loss without deducting any gains.

Net Loss is the excess of loss over the profits in any business.

5 Who May be a Partner Any person capable of doing business, that is, any person of age and able to make ordinary contracts. According to the nature of their agreements partners may be divided into

(1) General partners.
(2) Silent partners.
(3) Limited partners.
(4) Nominal partners.

6 A General Partner, sometimes called an ostensible partner, is one that is known to the public as a partner.

(1) He generally appears at the place of business and takes an active interest in the conduct of its affairs.

(2) He is represented in the firm name either by having his name appear in it or by the term "Co." (company).

7 A Silent Partner, sometimes called a sleeping or dormant partner, is one who contributes capital and has an interest in the business.

(1) He is not known to the public generally as a partner.

(2) He does not take any active interest in the affairs of the firm. If you wanted to do business with the firm you would not find him in the office to attend to your wants.

(3) He is not represented in the firm name by anything more definite than Co. (company).

8 A Limited Partner, sometimes called a special partner, is a *silent* partner, who, at the making of the partnership contract, stipulates that he will not agree to be liable for losses beyond a certain amount. This sum must not be less than his capital invested. It should be noticed in this connection:

(1) That a general partner cannot limit his liability to a fixed sum because he has the working of the business and knows all about it and might take this way of defrauding creditors.

(2) That any agreement as to limited liability must be in the articles of agreement when the partnership is formed.

9 A Nominal Partner is one who has no interest in the business but who lends his name and credit to the business. He is liable for the firm debts though he gets no profit.

EXAMPLE. Jones is a member of the firm of Jones & Brown. He sells his interest in the business to Smith but allows his name to remain in the firm name so as not to make known to the public generally that the popular and wealthy Mr. Jones has severed his connection with the firm. Jones is held out to the public as a partner. Any person giving credit to the firm in good faith, believing Jones to be a partner, can hold him responsible for the debt in case of failure to pay by the firm.

10 How Formed—Partnership contracts are formed as all other contracts—by *agreement* of the parties. It may be in express words or by persons simply engaging in business together without any definite stipulations. The agreement is, therefore either,

(1) Implied,

(2) Express, (*a*) Oral Contract, (*b*) Written simple Contract, (*c*) Written sealed Contract.

11 Partner by Implication—It was mentioned in a preceding section (No. 3) that sharing in a common profit fund is the primary element of a partnership. If persons do business together without any agreement they may

be proved partners. A, in Ontario, might buy horses and ship to B, in Winnipeg; B sells the horses, they divide the profit made on the transaction—they are partners by implication.

12 Partners by Oral Contract Many partnerships are formed by the parties simply meeting and agreeing among themselves the terms are not always stipulated in full. Such contracts are not desirable, as many disputes arise out of an imperfect understanding of the terms of the contract. Oral contracts should not be depended on when the business of the firm is of any consequence, and, besides, Oral Contracts, under the Statute of Frauds, are only good for one year.

13 Partners by Written Contract When any large amount is involved the articles of agreement, should always be in writing. A seal added to make it a specialty contract makes it better and more binding. Such written agreements are called "Partnership Contracts," "Articles of Partnership," "Partnership Deed," &c. They should contain,

(1) The description of the parties and firm name.

(2) The nature of the business and the place where it is to be carried on. This is called the undertaking.

(3) The investment of each partner and the mode of division of profits and losses.

(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 of partnership affairs.

(8) Provisions for settlement in case of death of a partner.

(9) It is very proper to make provision for the signing of the firm name, who shall do it and who shall not.

(10) It is very proper to include a provision binding all partners not to indorse paper for any other firms personally, or become surety or bail for any one without consent of the others, as a sudden withdrawal of a partner's interest might cause the firm to collapse if it occurred at a critical period.

14 Contribution of Capital Each partner contributes in some way to the capital or maintenance of the firm. He may contribute,

(1) A capital of cash, real estate or personal property;

(2) A secret of some process of manufacture, patent right or something of use to the firm;

(3) Labor, or skill, or in work, or experience, knowledge and time, &c., in management;

(4) Good will of an established business;

(5) Credit the use of his name in indorsements, &c., for the firm.

A partner may contribute any one or all of the foregoing to the Partnership and draw the profits on account of the benefits the firm derives from him.

15 Division of Profits Profits are frequently divided,

(1) According to a fixed proportion, say one-third to each partner, or a half to one, a third to another and a sixth to the third;

(2) According to capital invested in the business;

(3) By allowing each a salary and dividing profits remaining according to a fixed proportion or according to capital invested;

(4) By giving each partner interest on his capital and dividing the remainder according to some fixed proportion;

(5) By a salary to each for services, interest to each on capital invested, and remainder to be divided according to some fixed proportion, say equally, or two thirds to one and a third to the other.

In many firms it is necessary to adopt the fifth method of a three-fold division that gives

(1) Pay for personal services, skill, &c.

(2) Pay for capital invested,

(3) A general sharing up of the remaining profits to every member of the firm, whether active, silent or limited partner.

16 Form of Articles of Partnership

ARTICLES OF AGREEMENT made the first day of March, in the year of our Lord one thousand eight hundred and ninety-one,

BETWEEN John Henry Christie, James Christie and Andrew Agar, all of the Town of Owen Sound in the County of Grey, Province of Ontario,

WHEREAS the said parties hereto respectively are desirous of entering into a Co-partnership, in the business of Hardware, Tinsmithing, Steam Fitting, Plumbing, &c., at Owen Sound aforesaid, for the term, and subject to the stipulations hereinafter expressed.

NOW, THEREFORE, THESE PRESENTS WITNESS, that each of them the said parties hereto respectively, for himself, his heirs, executors and administrators, hereby covenants with the other of them, his executors and administrators, in manner following, that is to say:

FIRST.—That the said parties hereto respectively shall henceforth be, and continue partners together in the said business of Hardware, Tinsmithing, Steam Fitting, Plumbing, &c., for the full term of Five Years, to be computed from the first day of March, one thousand eight hundred and ninety-one, if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

SECOND.—That the said business shall be carried on under the firm name of Christie & Agar.

THIRD.—That the said partners shall invest capital as follows:—John Henry Christie Six Hundred Dollars, cash, James Christie Four Hundred Dollars, cash, and Andrew Agar Five Hundred Dollars, and Tools valued at One Hundred Dollars.

FOURTH.—That the said partners shall be entitled to salary in lieu of services, as follows: John Henry Christie, as foreman of Steam Fitting and Plumbing, Nine Dollars per week; James Christie, as manager of Hardware business and book-keeper,

Twelve Dollars per week, and Andrew Agar, as foreman in Tin shop, Nine Dollars per week.

Fifth.—That the said partners shall be entitled to the profits of the said business in the proportions following, that is to say: According to investment the first year and according to the net credit of each at the beginning of each subsequent year:

And that all losses in the said business shall be borne by them in the same proportions (unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise).

Sixth.—That the said partners shall each be at liberty, from time to time during the said Partnership to draw out of the said business, for private use, any sum or sums not exceeding for each, the sum of Two Hundred Dollars per annum, such sums to be duly charged to each of them respectively, and no greater amount to be drawn by either of the said partners except by mutual consent: and interest at Six per cent. per annum shall be charged to each partner for such withdrawal from the date of withdrawal until it is repaid, or until next annual settlement.

Seventh. That all rent, taxes, salaries, wages and other outgoing expenses incurred in respect of the said business, shall be paid and borne out of the profits of the said business.

Eighth.—That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept, according to the usual and regular course of the said business, which said books shall be open to the inspection of all the partners, or their legal representatives. A general balance or statement of the said accounts, stock in trade and business, and of accounts between the said partners, shall be made and taken on the first day of March in each year of the said term, and oftener if required.

Ninth.—That the said partners shall be true and just to each other in all matters of the said co-partnership, and shall at all times, during the continuance thereof, diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and neither of them shall transact or be engaged in any other business or trade whatsoever: And the said partners, or either of them, during the continuance of the said co-partnership, shall not either in the name of the said partnership, or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing by which, or by means of which, the said partnership moneys or effects shall be seized, attached or taken in execution: and in case either partner shall fail or make default in the performances of any of the agreements of articles of said partnership, in so far as the same is or are to be observed by him, then the other partner shall represent in writing to such partner offending, in what he may be so in default; and in case the same shall not be rectified by a time to be specified for that purpose by the partner so representing, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid by the partners offended against, be dissolved and determined accordingly.

Tenth. That in case either of the said partners shall die before the expiration of the term of the said co-partnership, then the surviving partners shall, within the six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner all accounts, matters and things relating to the said co partnership, and that the said survivors shall continue to carry on thenceforth, for their sole benefit, the co-partnership business.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered In the presence of W. B. Robb.	J. H. Christie,	[seal]
	Jas. Christie,	[seal]
	Andrew Agar,	[seal]

CHAPTER 36.

PARTNERSHIP.

1 Registration of Agreement It is not sufficient to draw up a partnership deed to comply with the laws of Ontario, and almost all Canadian Provinces and American States. It is necessary to register a declaration of the formation of such partnership, so that a person who desires to do business with such partnership may be able to find out readily and surely who are to be financially responsible to him for contracts he may make. It is also necessary to be able to know the members of a firm in case a suit at law is to be brought against them. The Revised Statutes of Ontario, Cap. 130, provides:

(1) That a declaration setting forth the names of all of the partners, the firm-name, etc., be registered in the County Registry Office where the firm 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 this 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 may, by Ontario Statute, be fined one hundred dollars. One half of the fines go to the Crown, and the other half to the informant.

Form for Registration:

The following is a form of partnership declaration for registering in the County Registry Office, in compliance with Cap. 130, R. S. O.

PROVINCE OF ONTARIO, COUNTY OF GREY, }

We, John Henry Christie, James Christie, and Andrew Agar, of Owen Sound, in the County of Grey, in the Province of Ontario, hereby certify:

1. That we have carried on and intend to carry on trade and business of Hardware, Tinsmithing, Steam Fitting, Plumbing, &c., at Owen Sound, in partnership, under the name and firm of Christie & Agar.

2. That the said partnership has subsisted since the 1st day of March, 1891.

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

Witness our hands at Owen Sound this 21st day of March, A. D. 1892. | JOHN HENRY CHRISTIE. JAMES CHRISTIE. ANDREW AGAR.

2 Salary Based on Profits In many firms it is customary to give a chief clerk a percentage of the net profits of the firm as salary, such salary operating to make the employee more faithful and diligent in pushing business, and careful as to expenses. This is the only case where a person may share profit without being liable as a partner. There must be a definite contract to this effect in order that such employee may be free from liability for the firm's debts.

3 Ownership of Invested Capital As soon as property of a partner is invested in a partnership, it becomes the joint property of all the partners. This is always the case where all have contributed; however in case one contributes capital, and another skill or labor only, and takes his profit yearly, he does not acquire any ownership in the property of his partners.

4 Powers of Partners Each general partner, unless prohibited in the articles of partnership, is the general agent of the firm, and it is within his power to act for the firm.

(1) He may bind the firm in all matters that come within the limits of the undertaking of the firm. For example: A firm is in the grocery business; a member of the firm could properly bind the firm in such transactions as properly belong to the grocery business he could not in the real estate or hardware business.

(2) He may receive payment of debts due the firm, or compromise them, or represent the firm in a suit at law.

(3) He may make, sign and accept negotiable paper for the firm in the regular course of its business.

(4) He may borrow money necessary for the carrying on of the firms' trade.

5 Acts a Partner Must Not Do

(1) Generally speaking he must not do anything contrary to the agreements in the articles of co-partnership, nor do anything prejudicial to the best interests of the firm for his own personal advantage.

(2) He must not use the property of the firm for his own use.

(3) He must not use the credit of the firm for his own personal benefit.

(4) He cannot bind the firm by giving the firm's note in payment of his personal debt.

The consent of the firm to any of the foregoing prohibitions, makes the act the act of the firm, and not of the individual.

6 Effect of Agreement between Partners Partners may make such agreements among themselves as they see proper, and all of them are bound by such agreements as among themselves. These promises cannot be imposed on outside parties.

7 Partners Cannot Sue the Firm or One Another If one partner sued the firm, he would in reality be suing himself, as the firm does not exist without him. Should he bring an action against one of the partners, it would have the effect of dissolving the partnership.

8 Liabilities 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 that they had not put into the concern, would, subject to priority of the partner's private creditors, be taken until the debts were fully satisfied, in case enough could be found to satisfy them.

The only exception to this is in the case of a limited or special partner his liability is not greater than the capital invested. In case he had withdrawn part of his capital, he would be liable for the amount withdrawn.

9 Dissolution of Partnership is the separating of partners and the ending of their business relations together. This may be accomplished in various ways.

(1) By expiration of time.
(2) By completion of work for which it was formed.
(3) By mutual consent.
(4) By sale of partner's interest.
(5) By death or incapacity of a partner.
(6) Bankruptcy of partner.
(7) Decree of the court.

10 Dissolution by Expiration of Time The majority of partnerships are made for a definite length of time one year, two years, five years, etc. Immediately upon the completion of the time, the concern is dissolved. It may, however, continue by a new agreement. If no stated period is mentioned in the written agreement, the partners may have an agreement among themselves as to the time the contract is to end.

11 Dissolution on Completion of Work It is not uncommon for persons to become partners for one simple contract. A. & B. might become partners to build six miles of railroad. At the completion of the work the partnership would be dissolved, because the purpose for which it was formed was accomplished, though they may not specify agreement terminating the contract. A dissolution, on completion of the work, is implied.

12 Dissolution by Mutual Consent This is the common method of ending a partnership contract. The partners entered into the partnership contract of their own free will and accord for their mutual benefit, and they can, by another new agreement, just as freely cancel the old contract and be separated. It must be with the consent of all the parties, and if the partnership contract is under seal, the agreement for dissolution should also be under seal.

13 Dissolution by Sale of Partner's Interest A partner may with the consent of his associate partners, sell his interest or share in the business. It would not be proper for him to be able to sell without consent, as he might put a partner in his place who would not be agreeable or congenial to the remaining partners. Just as soon as a partner sells his interest, the agreement is voided, the new man cannot simply take the place. There must be a new agreement between the old remaining partners and the new one, which means new articles of partnership. It may be in identical terms with the old. It is however new because of the new partner.

14 Dissolution by Death or Incapacity of Partners A partner dies, there is no agreement between his heirs and the remaining partners, and the partnership is dissolved. By a new agreement one or more of the personal representatives of the deceased partner may take his place, but it is a new partnership by a new contract. The same is true in case of insanity, etc. of a partner.

15 Dissolution by Bankruptcy of a Partner—When a partner in a firm becomes bankrupt personally, the partnership is dissolved, his share in the business passes to his creditors, and they of course are not partners.

16 Dissolution by Decree of the Court If partners are continually quarrelling or disagreeing and pulling in different directions, and they cannot agree to dissolve, application may be made to a competent court, and an order obtained dissolving it.

The following are common grounds for granting an order of dissolution.

(1) Improper or fraudulent conduct by a partner.

(2) Violation of articles of partnership.

(3) Exclusion of partner from sharing in the carrying on of the business.

(4) Continued quarrelling so so as to render it impossible to carry on properly the business of the firm.

(5) Inability of partner to act on account of permanent illness, or by being disabled.

(6) Intemperance, immorality or dissipation of a partner that will tend to impair the credit or business of the firm.

17 Division of Assets In case of dissolution the business is very frequently carried on by a new partnership formed from the remaining part of the firm, or perhaps a new partner may be taken in, in place of the retiring one. In such a case, a part of the assets of the firm, such as cash, bills receivable, real estate, etc., are handed to the retiring partner as his portion, or notes are given by the new partnership to the retiring partner for his interest.

If a new partner takes the place of an old one, he frequently pays him a sum and takes his place.

In some cases the liabilities of the firm are paid off, and the remaining assets divided among the partners. Sometimes these are all converted into cash before a division is made.

18 Liabilities of Retiring Partner —A partner retiring from a firm is personally liable to outside parties for all debts contracted while he was in the firm. Credit was given the firm partly on the strength of his name, and he continues to be liable until that debt is paid, unless the creditor agrees to accept the new firm for the debt, thus discharging the one retiring.

19 Advertising Dissolution When a partner retires from a firm it is customary to give public notice by advertisement in the local papers, and by sending a circular letter announcing the dissolution to all persons who give credit to the firm. If this is not done, any person giving the firm credit, not knowing of such dissolution, may hold the retired partner liable for debts contracted by the new firm, they not knowing of the dissolution may have given credit to the firm in good faith on the standing of the very partner that claims to have retired.

20 Registration of Notice of Dissolution In Ontario not only must the firm register the Articles of Partnership in the County Registry Office, but a retiring partner must also register a declaration of dissolution of partnership if he wishes to free himself from being responsible for the debts that the firm continuing the business may contract after he leaves them.

The following is a form suitable for placing in the Registry Office:

PROVINCE OF ONTARIO, COUNTY OF GREY. } I, John Henry Christie, formerly a member of the firm carrying on the business of Hardware, Tinsmithing, Steam Fitting, Plumbing, &c., at Owen Sound, in the County of Grey, under the style of Christie & Agar, do hereby certify that the said partnership was on the first day of March dissolved.

Witness my hand, at Owen Sound, the third day of March, 1896.

JOHN HENRY CHRISTIE.

21 Power of Partners after Dissolution If the partnership is dissolved, and the business is to be wound up, a partner may demand that partnership assets be first used to pay off all liabilities before any is appropriated by partners.

If the assets are vested in one party as trustee for the others, that trustee has no power to go on with new business, but only to do such business as is required to wind up the affairs of the dissolved firm.

CHAPTER 34.

CORPORATIONS AND JOINT STOCK COMPANIES.

1 Definition — A Corporation is an association of individuals formed and authorized by law to act as a single person. So far as business is concerned a corporation has all the qualifications that an individual has, except that it cannot be punished by imprisonment. A corporation is really an artificial person. It has the following legal capabilities, one of which, (i.e., the first,) is not possessed by a partnership.

(1) Perpetual succession, that is, it is not dissolved by one of the members retiring, or a new member coming in.

(2) It can sue and be sued at law.

(3) It can purchase or sell real or personal property under Statutory provisions relating thereto.

(4) It can enter into all the contracts that a natural person can, if within the limits of its charter, or act of incorporation.

(5) It may make by-laws, rules, etc., for its own government.

(6) It should have a corporate seal under which it transacts its business.

(7) It may appoint officers who are the agents for the carrying on of its business.

2 Distinguished from Partnership In a Corporation, the law sees only the body corporate and does not know the individuals composing it; they are not liable as individuals on the contracts of the corporation. In Partnership, the individual members are liable for the firm debts to the full extent of their assets.

3 Kinds of Corporations -Corporations in America may be divided as follows:

- Non-trading
  - Public
    - Incorporated.
    - Recognized by usage.
  - Ecclesiastical.
  - Eleemosynary.
- Trading
  - Joint Stock Companies.
  - Associations.

A Non-trading Corporation is one that is not authorized to carry on business for the profit or emolument of its members.

A Trading Corporation is formed for the purpose of carrying on trade or business for the profit of its Stockholders or members. The trading corporations concern us more particularly in Business Law.

4 Public and Municipal Corporations are those created by Government for the purpose of carrying on business that belongs to the people of a district. Examples

A Township or County, —the Township of Sydenham.

A Town, Village or City, —the Town of Collingwood.

A Province, State or Country, —the Province of Ontario.

All such are formed by Act of Parliament and are governed by Statutes giving authority to conduct the business and regulate the conduct of the citizens within a certain district.

5 Ecclesiastical Corporations are those formed by Act of Parliament giving certain churches corporate powers.

(1) For the purpose of holding the real estate and other property belonging to the church, and managing it.

(2) For the purpose of church government, to enable them to constitute church courts, assemblies, etc., for the controlling of its members and the regulation of its standard doctrines, etc.

As examples of this we might mention the Methodist Church of Canada, and the Presbyterian Church of Canada.

6 Eleemosynary Corporations are those formed for charitable purposes for the perpetual distribution of free alms or bounty of the founder.

As examples, we have Hospitals, Homes for the Aged, Infirm, etc., certain schools—in fact, all such as have for their object the care, assistance and help of the poor and needy.

7 Joint Stock Companies are formed by private enterprise for the purpose of carrying on some business such as manufacturing, banking, railroading, insurance, etc., with the express intention of making profit for the members who are called Stockholders or Shareholders. These companies are created by the Statutes of the Country or Province where organized, and derive their powers froum such country or province, and are responsible, and, in most cases, are compelled to report annually at least to such country or province, the status of their capital stock. They are created in two ways,

(1) By Act of Parliament or Legislature,

(2) Under the provisions of a General Statute.

The document issued under the Great Seal of the country or province which sets forth the powers and privileges granted, is called a Charter, or Letters Patent, whether issued by special Act of Parliament or under the general statute, it forms a contract between the country or province and the corporations.

8 Incorporated by Act of Parliament—When a number of persons desire to enter into such a business as banking, railroading and other enterprises in which the public are largely and specially interested, it is necessary to apply directly to Parliament for an incorporation. A special act is passed and a charter is granted. The charter will refer to the Joint Stock Co.'s Clauses Act for the general principles of organization and government, making such an act a part of the contract between the power that grants the charter and the Company.

9 Incorporated under General Statute—The organizing of Joint Stock Companies has become so common that it has been found beneficial by

the Federal Parliament, as well as the Provincial Legislatures, to allow of the formation of companies for mercantile manufacturing and other purposes at any time, subject only to the sanction of the Governor in Council.

The principles of organization and government of all such concerns are so much alike that a Joint Stock Companies' Act has been passed by not only Federal but Provincial Legislatures, which gives the general powers and privileges of such companies as have received their charters direct from the Governor in Council. There is now no delay caused by waiting from one session of Parliament until another, to get an act passed.

10 Federal or Provincial Charter The Dominion Parliament reserves the right to legislate on all matters that have to do with the general interests of all Canadian people, -Commerce, for instance, therefore only the Dominion Parliament grants charters to banks.

If the business is one for which branch offices or agencies are only to be established in the Province where the head office is, then it is only necessary to apply to the Provincial Legislatures for incorporation.

If the Corporation will have agencies or offices in more than one Province a charter should be obtained from the Dominion. For example

An Insurance Company, that only intends doing business in Ontario, need only apply to the Provincial Legislature of Ontario for a charter. If, however, they desire to do business in other provinces, their charter should be from the Dominion Parliament.

11 Associations, Societies, &c. —Provisions have been made by general acts of Parliament for the forming of Associations for mutual insurance, co-operative associations for carrying on mercantile business, manufacturing, building and loan associations, etc., by registering in the County Registry Office a statement of the business intended to be carried on together with the name and the rules and by-laws of government, duly sworn to before a Notary or Magistrate, also sending to the Government, at the same time, a copy of the document so registered.

12 Laws for Government All corporations are the creation of some 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:

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

(2) Officers should be elected once a year at a general meeting of Stockholders.

(3) A general statement of the affairs should be submitted to the Shareholders once a year at least.

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

(6) Proper books of Account shall be kept for the ordinary business transactions of the Company.

(7) Special books shall be kept for the capital of the Stockholders, showing clearly all transactions, transfers, etc.

(8) When a dividend is paid it must be paid out of profits and not out of capital.

(9) To have a chief office and to keep a sign board with the name of the Company painted thereon at such head office.

CHAPTER 38.

JOINT STOCK COMPANIES.

- Internal Management—Form of Proxy.
- General Powers of Stockholders.
- Corporations Act through their Officers.
- Power to Contract.
- Limited Liability.
- Double Liability.
- The Organization.
- Shares.
- Authorized Capital.
- Subscribed Capital.
- Paid up Capital.
- Preference Stock.
- Guaranteed Stock.
- Calls.
- Issue of Stock.
  - Form of Application for Shares.
  - " " Instalment Script.
  - " " Stock Certificate.
- Stock Book and Form of Stock Book.
- Signature by Attorney and Form of Power of Attorney.
- Transfer of Stock and Form of Transfer Certificate.
- Dividends.
- Cancellation of Stock.
- Dissolution.
- Liabilities.

1 **Internal Management**—The management of any company is very much the same as an ordinary society. Officers are chosen under powers given in the charter. The acts of the whole body corporate, as well as the acts of the managing officers, are in the form of resolutions, by-laws, etc., and

are recorded in a minute book. The officers of a Company are called Directors, and the Directors appoint officers among themselves, such as President, Vice President, Secretary, Treasurer, Manager, etc. The by-laws of the company will specify the duties of each officer. The directors are usually elected by ballot. Each share-holder has one vote for each share he holds in his own name. If he cannot attend the meeting he may appoint another person to vote for him by giving him a short form of Power of Attorney, usually called a Proxy. The following is about the usual form.

Form of Proxy :

KNOW all men by these presents that I, George Rogers, being the holder of ten shares in the capital stock of the Mono Quarrying Company, limited, do hereby nominate, constitute and appoint Fred Arthur Bale, my attorney for me in my place and stead, to vote as my Proxy at the election of the Directors, and on all other business that shall come before the annual meeting of the said Company to be held at Orangeville on the 20th day of March, 1891, and at every adjournment of said meeting.

Signed, Sealed and Delivered in the presence of V. VANDUSEN. | GEORGE ROGERS. (L. S.)

2 General Powers of Stockholders The Stockholders have power to elect officers to act as the agents of the Company, and to make by-laws for their direction. They also give general directions to officers what to do, and how to do it. All of these acts must of course, be in accordance with the laws of the land, and consistent with the charter.

3 Corporations Act through their Officers - When such officers are appointed, the powers of the stockholders to do business is really exhausted. It is placed in the hands of the officers who are the agents of the company and bind such company by their acts.

If officers are guilty of fraud, misapplication of funds, etc., these officers are liable to the stockholders and amenable to the laws of the land.

If they are guilty of negligence, they are liable to the shareholders.

If they are incompetent, others can be elected in their place at the close of their term of office.

4 Power to Contract A corporation may contract as freely as any individual so long as the contract is legal and within the powers granted them by government in their charter.

A gas company would not be justified in supplying electric light, nor a banking company in running a steamboat.

The business is done by its officers, and the assent is given to a contract by the signature of the officers, and the affixing of the corporate seal.

5 Limited Liability In many companies the word "limited" appears as part of the corporate name. The Trust and Loan Company (limited,) the National Produce Company (limited). The presence of this word shows that the stockholders are only liable for the amount of stock that they subscribe for. That is: if John Smith subscribes for $1000 of stock, he is liable to the company and its creditors for this amount until it is paid. If it is all paid up, he could not be called on to pay any more, even if the company were insolvent.

6 Double Liability All chartered banks in Canada have a clause in their charter by which each shareholder is held liable for all the stock he subscribes for, and in case of insolvency as much more. If Mr. Smith subscribes for $500 of bank stock and pays it all up, he is still liable for $500 more in case the bank goes into liquidation.

7 The Organization—The first steps to be taken in the organization of a company are

(1) To advertise in the *Gazette* or *Hansard* that it is the intention to apply to the Provincial or Dominion Government for Letters Patent of incorporation.

(2) To issue a prospectus, which should give full particulars regarding the company to be organized.

(a) The name of the company.

(b) The amount of capital, and the number and value of the shares into which it is to be divided.

(c) The names of the provisional officers.

(d) The nature of the undertaking of the company, that is, what business the company will do.

(e) The advantages to be gained by stockholders.

(f) The conditions on which the stock is sold, including terms of payment of same.

(3) To get a number of signatures to the stock book (not less than five persons.)

(4) To apply to the Provincial or Dominion Government for a charter. There must not be less than five applicants.

(5) On the issue of the Letters Patent by the Government, call a meeting of the provisional directors and proceed to allot stock and otherwise push the organization of the company.

(6) Get out by-laws, rules, etc., for the government and management of the company.

(7) When sufficient stock is subscribed, and calls paid on it, so that there is working capital enough to begin business, the provisional directors should call a *general meeting* of the stockholders, and have regular officers elected to carry on the work of the company. The company is then ready to carry on their regular business, which is sometimes called their undertaking.

8 Shares The capital stock of every company is divided into a number of equal portions called "shares," and every stockholder must have one or more of these shares. A partner's capital in an ordinary partnership may be any sum. In a stock company each shareholder must hold an even amount and no cents or fractions of shares.

The amount of the shares into which the capital of the larger companies are divided is $100 each. The capital of smaller undertakings, and those of a local nature, is divided into smaller shares $50, $25, $20, $10, and even $1 shares.

9 Authorized Capital This is the amount allowed by the charter of the company as the maximum limit of the stock that can be taken up. Authorized Capital, $5000, means that the stockholders may subscribe to the extent of $5000. This may be increased any time by obtaining a supplementary charter.

10 Subscribed Capital This is the amount of the authorized capital that the stockholders have signed their names for the amount of the stock taken. This might be all the Authorized Capital, or it might be a very small portion of it.

11 Paid up Capital This is the actual working capital of the company, sometimes called "cash capital." This may be all the authorized capital if it is all subscribed, or it may be all the subscribed capital, or it might be only 10 per cent. of the subscribed capital. A company might have authorized capital $5000, subscribed capital $5000, (if all signed for), and paid up capital $5000, (if all paid up), or the authorized capital $5000, the subscribed capital $100, and the paid up or working capital $10.

12 Preference Stock Is such as is issued to procure additional working capital, and is given (by agreement with the original stockholders,) a right to the first division of profits every year. Each subsequent issue of stock has a preference to profits over all previous issues; a fourth preference stock would get dividends before a third; a third before a second, etc., and all the preference stock before the original stock holders get any.

13 Guaranteed Stock Is such that dividends at a certain rate must be paid every year, even out of the stock of the previous stockholders who stand as guarantors.

14 Calls- When the management of a company asks the stockholders to pay up a certain per cent. of their subscribed stock, it is denominated "making a call."

15 Issue of Stock When a person desires to become a stockholder in a company, he usually makes application for a number of shares as follows :

Application for Shares :

TORONTO, Feb. 4, 1891.

The Directors of the Homestead Loan & Savings Company will please allot to me ten shares in the capital stock of the said company.

W. H. COOPER.

At a meeting of the directors of the company this application would be considered, and if Mr. Cooper is considered a desirable person to become a shareholder, the directors by a by-law, will set apart ten shares for him. He will then pay in a sum of money on them, being such sum as is agreed upon, and an instalment script will be issued to him similar to the following :—

Instalment Script :

No. 75. $50.

The Homestead Loan & Savings Company (Ltd.) -Instalment Script.

LONDON, Feb. 4, 1891.

Received from W. H. Cooper the sum of $50, being for first call of ten per cent. on ten shares in the capital stock of this company, being Nos. 72 to 81 inclusive.

W. ROY, *President.* W. P. TELFORD, *Manager.*

When the stock is fully paid up, or when all is collected on it that the company deems desirable, a stock certificate is issued.

Form of Stock Certificate :

No. 45. $500.

The Homestead Loan & Savings Company (Ltd.)—Stock Certificate.

This is to certify that W. H. Cooper of London is the holder of ten shares in the capital stock of this company fully paid up, in the sum of $500., said shares being numbered 72 to 81 inclusive, and are transferable on the books of the company by him or his attorney duly constituted. Dated at London this 4th day of Feb., 1891.

W. ROY, *President.* W. P. TELFORD, *Manager.*

16 The Stock Book The book first in importance in a stock company, is called the "Stock Book," or "Stock Subscription Book." It is the basis of the company's organization. It is the subscription list to which each person becoming a shareholder, signs his name, and binds himself to pay up his stock, and be bound by the rules and by-laws that may be made for the government and management of the concern. From it the liabilities of the shareholder are determined in case of insolvency of the company.

Form of Stock Book:

THE HOMESTEAD LOAN & SAVINGS COMPANY (Limited.)

Incorporated under the Ontario Joint Stock Company's Letters Patent Act.

Capital $500,000. Divided into 10,000 Shares of $50 each.

WE, the undersigned, do hereby severally subscribe for and agree to take the number of shares in the capital stock of the Homestead Loan & Savings Co. (limited,) set opposite our respective names and seals, as hereafter and hereunder written, each share being of the amount of $50; and we do covenant and agree each with the other, to pay the amount so subscribed as the same may be called in by the Directors of the Company; and we do further covenant and agree to abide by and observe the provisions of the Letters Patent Act of said incorporation, and the by-laws, rules and regulations of the said Company, made in pursuance of its charter and of the said Joint Stock Company Letter Patents Act.

Signature.	Seal.	Date.	Residence.	No. of shares.	Amount	Witness.
John A. McDonald	X	Feb. 4, 1891.	Ottawa.	Twenty.	$1000.	C. Tupper.
Edward Blake.	X	Feb. 5, 1891.	Toronto.	Twenty.	$1000.	C. Tupper.
Jean Gibson.	X	Feb. 4, 1891.	Wroxeter.	Ten.	$500.	C. Maguire.
Bessie Ferguson.	X	Feb. 4, 1891.	Owen Sound.	Ten.	$500.	W. B. Robb
S. Dorland.	X	May 1, 1891.	Owen Sound.	Fifteen.	$750.	W. Clegg.
Geo. Davy.	X	May 15, 1891.	Whitby.	Ten.	$500.	H. Roper.

17 Signature by Attorney In case a shareholder cannot go to the place where the stock book is, he can empower another to sign for him by granting a Power of Attorney under seal to the person he wishes to sign for him. The signature would be made

OLIVER TWIST,
per his attorney DAVID COPPERFIELD.

Form of Power of Attorney to subscribe for Stock:

KNOW all men by these Presents that I, Oliver Twist, of the City of Guelph, County of Wellington and Province of Ontario, gentleman, do nominate, constitute and appoint David Copperfield, of the City of Ottawa, in the said Province of Ontario, broker, my true and lawful attorney for me, in my name, and on my behalf, to subscribe for twenty shares of fifty dollars each in the capital stock of the Homestead Loan & Savings Company (limited), and to do al

other acts necessary for the proper carrying out of the same, and I hereby ratify and confirm all the acts of my attorney hereby appointed in reference to the same.

In witness whereof I have set my hand and seal this 5th day of March, 1891.

Witness }
NICHOLAS NICKLEBY. } OLIVER TWIST. (L. S.)

18 Transfer of Stock—Shares in the capital of a company are personal property transferable from one to another at pleasure, subject, however, to the approval of the directors of the company. The retiring stockholder must surrender his stock certificate and sign a certificate or short form of Power of Attorney, either on the back of a stock certificate, or on an accompanying paper authorizing the transfer of his shares. In the foregoing stock certificate, W. H. Cooper is the holder of the stock in the foregoing certificate on page 154 If he desired to sell it to Robert Watson, he would write out and sign a certificate like the one subjoined. It will be noticed that these transfers are always completed by sanction of the directors of the company, otherwise persons might get into the company who are not responsible financially for the payment of their stock, or who were repugnant to the officers and stockholders of the company, and whose desire in getting such shares might be to subvert or ruin the undertaking of the company or play into the hands of rival institutions.

Form of Transfer Certificate:

BE it known that I, Wm. Henry Cooper, the holder of ten shares in the capital stock of the Homestead Loan & Savings Company, numbered 72 to 81 inclusive, represented by the within certificate, do hereby irrevocably nominate, constitute and appoint Henry Baker my true and lawful attorney to transfer the said ten shares of stock to Robert Watson, hereby ratifying that all that my attorney shall do for the proper carrying out of the said transfer.

Signed, sealed and witnessed this 30th day of June, A. D. 1891.

Witness }
JOHN W. SMITH. } W. H. COOPER. (L. S.)

19 Dividends—The profits of a company are divided among the stockholders according to their interest in the capital stock—usually a certain per cent. on the paid up stock.

All such dividends must be paid out of profits and not out of capital, nor in such a way as to impair the capital of the company. Any officer paying dividends out of the capital, is personally responsible for the amount of such dividend, in case the company goes into liquidation.

20 Cancellation of Stock—The cancellation of stock is the taking of it back from a stockholder.

(1) In case he will not pay up his calls, nor abide by and obey the rules, by-laws, etc., of the company.

(2) The capital of the company has been impaired by losses, and the shareholders desire to put back the amount of such impairment into the company, and sell it to new stockholders, and so leave the part they retained fully paid up.

21 Dissolution—A company may be dissolved in several ways:

(1) By forfeiture of charter. A company may forfeit its charter by failure to use it within two years of the time it was granted, called "Non-user," and by exceeding the rights and privileges granted in the charter, called "Misuser." These are settled in court.

(2) By voluntary surrender of charter. A company may voluntarily give up the charter granted them by the government. When this is accepted by the government it is dissolved.

(3) By Act of Parliament. A parliament that granted powers may revoke these powers. This is sometimes the case with charters granted to public corporations, such as towns, cities, etc.

(4) By General Act. When a stock company becomes insolvent, it goes into liquidation under the "Joint Stock Companies Winding Up Act." A receiver is appointed whose duty it shall be to settle up the affairs of the company. He shall not, however, enter into new undertakings; only close up old business.

22 Liabilities of Companies—There is an old saying that a corporation has "no soul to be saved, no body to be kicked, nor any personality to be imprisoned." Hence the punishment inflicted on a corporation will not be of a criminal nature. It cannot be punished by confinement. It must be—

(1) By imposition of a fine.

(2) By assessment of damages.

It is punishable by fine for misappropriation of property, etc., and by assessment of damages for negligence, failure of performance, etc. Just the same way as an ordinary person. The property of the corporation is liable for taxation just the same as that held by private parties.

CHAPTER 39.

GUARANTEE AND SURETYSHIP

1 Definition—Guaranty or Suretyship is a promise to a person to answer for the payment of a debt or the performance of a duty by another person in case he should fail to perform his duty, or it is a contract whereby one person agrees to answer for the debt, default, or miscarriage (failure of full performance) of another.

Under the term "debts," we include all ordinary debts on note or book account, due bill, etc., in the ordinary course of trade or business.

Under the term "default," we include all forms of bonds whereby one person, a number of persons, or a Company agrees in a bond to make good any loss through the dishonesty of an employee. A bond of this kind guaranteeing the honesty of a clerk, bookkeeper or other employee, is usually called a "fidelity bond."

Under the term "miscarriage," we include all such contracts as where one person agrees and binds himself in a certain sum to assure another person that a third person will complete a job by a certain date or in a certain manner. The failure to complete a contract in the time or in the manner agreed upon is termed "miscarriage."

2 Statute of Frauds—It will be noticed that one of the sections in the Statute of Frauds, (page 27), imposes a restriction on contracts of guarantee, that is, that they must be in writing, signed by the party chargeable therewith, hence a contract of guarantee made orally is legally no use. (See R. S. O. Cap. 123, as to written promises).

3 The Parties—It will be noticed that there are at least three persons concerned in a contract of guarantee,

(1) The Debtor, sometimes called the principal debtor.

(2) The Creditor.

(3) The Guarantor, sometimes known as the surety.

The principal contract is made between the debtor and creditor, and an additional contract between the guarantor and the creditor.

4 Discrimination of Guarantee - Suppose, for example, Smith goes with Wilson into Brown's store and says to Brown, "Give Mr. Wilson all the goods he wants up to sixty dollars. I will guarantee him all right. If he does not pay them I will." This would be legally void because spoken. If written and signed by Smith, he would be required to pay the goods in case Wilson failed to pay them.

Another example very similar requires a nice discrimination. If Mr. Smith had said "Give Mr. Wilson what goods he desires, not exceeding sixty dollars *and charge them to my account.* If he does not pay them I will." The authority to charge them to Smith's account changes him from *surety* to *principal debtor*, hence he would be principal debtor because goods were charged to him. It would not be necessary to have the last example in writing, as Smith would not be answering for another's debt but for his own debt, charged to him by his own authority. The goods were sold to Smith but delivered to Wilson.

5 The Consideration - Guarantee is a contract, and, like all other contracts, requires a consideration to support it, and such consideration should be expressed.

(1) When the guarantee is a collateral contract, the consideration in the principal contract is the consideration for the collateral contract of guarantee and it should be so stated.

(2) The consideration for the contract of guarantee is often a nominal sum of money, such as one dollar.

(3) Contracts of guarantee are often made with consideration acknowledged by some such words as, "value received." The first and second are better than this third form.

6 Extent of Contract - The terms of a contract determines the liabilities of the parties. The sum named in the contract is the greatest sum the guarantor is liable for. If the amount of the debt, default or miscarriage of the person guaranteed is less than the specified amount, the liability would be limited by the extent of the debt. For example -

A has his house insured for $1000; the insurance is one form of guarantee. If the house were worth $3000, no more than $1000 could be claimed if it were completely destroyed. If, however, it were only damaged to the extent of $200, no more than $200 could be collected from the Company.

7 Guarantee of Payment The contract of the indorser of negotiable paper has been fully discussed under "Negotiable Paper." The guarantee of an indorser is for a limited time. The following are common forms of guarantee on negotiable paper placed on them to avoid the necessity of protesting:

Form 1. *Nominal Consideration*

In consideration of One Dollar I hereby guarantee payment of the within note and waive protest and Notice of Protest.

J. W. SMITHSON.

Form 2. *Expressed Consideration*

For value received I hereby guarantee payment of the within note.

J. W. SMITHSON.

It is proper to mention that notes, etc., are frequently guaranteed without consideration being mentioned, a proceeding that is, to say the least, slipshod and unsatisfactory.

8 Guarantee of Collection differs very little in form from a guarantee of payment, but it is widely different in its effect.

Form

For value received I hereby guarantee the collection of the within note.

J. W. SMITHSON.

(1) When the form of guarantee of payment is used the guarantor is liable as soon as there is a default of payment: that is, if the obligation is not paid when *due*.

(2) In the guarantee of *collection* the guarantor is not liable until a process of collection at law has been had, and that has failed. The inability to *collect* must be proved.

9 Guarantee of Fidelity, sometimes called "Guarantee Insurance," is a very common form of guarantee. One or more persons, or a Company guarantees the honesty and fidelity of a clerk, bookkeeper or other employee. The following is an example:—

Form of Fidelity Bond:

KNOW ALL MEN BY THESE PRESENTS, that we, Robert A. Kells, of the Town of Listowel, in the County of Perth, Province of Ontario, Book-keeper, James Grieves, of the Township of Elma, in the said County, Farmer, and George Fallis, of the Township of Wallace, in the said County of Perth, Farmer,

ARE held and firmly bound to the Homestead Loan & Savings Company (Limited), hereinafter called the Company, in the sum of Two Thousand Dollars to be paid to the said Homestead Loan & Savings Company (Limited) and their assigns, for which payment well and truly to be made we bind ourselves and every of us and every two of us and every of our heirs, executors and administrators, and the heirs, executors and administrators of every two of us jointly, and severally, by these presents, sealed with our respective seals.

Dated this ninth day of May, A.D. one thousand eight hundred and ninety two.

WHEREAS, the said Company have agreed to take said Robert A. Kells into their service as clerk, or to act in any such other capacity for the Company as John C. Hay, of the said Town of Listowel, Manager of the said Company, or the Board of Directors of the said Company may from time to time require or appoint or as may be from time to time agreed upon with the said Robert A. Kells upon the said Robert A. Kells and the said James Grieves and George Fallis as sureties for him entering into the above written Bond or Obligation for the fidelity of the said Robert A. Kells while in such employment as aforesaid;

AND WHEREAS, it is intended and agreed that this security shall be in force during the whole of the time during which the said Robert A. Kells shall be in the service of or employed by the said Company in such capacity or in any other capacity.

NOW, the condition of the above written Bond or Obligation is such that if the said Robert A. Kells shall at all times hereafter so long as he shall be in the service of or employment of the said Company, as clerk or in any other capacity, faithfully, honestly and diligently perform and discharge the said service and all the duties which may devolve upon him the said Robert A. Kells as such clerk or otherwise as aforesaid, and shall whenever required, duly account to the said John C. Hay or other person or persons for the time being acting as Manager of the said Company, or to the said Board of Directors of the said Company, for all money, goods and property whatsoever for or with which the said Robert A. Kells may be in anywise accountable or chargeable to or by him or them as such clerk or otherwise as aforesaid, and shall, whenever required, duly pay or deliver all such moneys, goods and property to him or them, or in case the said Robert A. Kells, James Grieves or George Fallis or any of them, their or any of them, their or any of their heirs, executors or administrators shall, when required, make satisfaction to the said John C. Hay or such other person or persons for the time acting as Manager of the said Company, or the Board of Directors of the said Company for all such moneys, goods or property which may be lost, misplaced or unlawfully disposed of by the said Robert A. Kells or shall not be duly accounted for or paid or delivered as aforesaid, and shall keep the said John C. Hay or such other person or persons aforesaid and the said Company indemnified against all losses, damages and expenses whatsoever by reason or in consequence of any such act or default of the said Robert A. Kells;

AND so that any forgiveness or forbearance on the part of the said John C. Hay, or the person or persons aforesaid or the said Company towards the said Robert A. Kells in respect of his failure or neglect to perform such services or duties or make such payments as aforesaid shall not in any way release or exonerate the said James Grieves or George Fallis, either of them, their or either of their respective heirs, executors or administrators, in respect of their or his liability under the above written Bond, and so also that the said James Grieves or George Fallis or their respective heirs, executors or administrators shall not separately or individually be liable to pay more than One Thousand Dollars each by virtue of the above written Bond.

THEN the above written Bond or Obligation shall be void and of no effect or otherwise shall be and remain in full force and virtue.

SIGNED, SEALED AND DELIVERED	ROBT. A. KELLS.	[SEAL]
In the presence of	JAS. GRIEVES,	[SEAL]
ROBERT MCMILLAN.	GEO. FALLIS.	[SEAL]

10 A Continuing Guarantee is not an uncommon form of contract. The guarantor becomes security for several successive acts.

(Form.)

In consideration of One Dollar I hereby guarantee the payment of all goods purchased during the year 1891 by A. G. McKay, of Sydenham, from Alfred Frost, of Meaford, said purchases not to exceed in the aggregate seven thousand five hundred dollars.

W. J. CREIGHTON.

This guarantee might be exhausted by one purchase of the entire amount or by numerous purchases, or might only be partially exhausted during the year of its currency.

11 Guarantor's Rights The Guarantor, or Surety, has rights against both the debtor and the creditor. From the creditor he has a right

(1) To receive notice of default within reasonable time after it is known to the debtor.

(2) To receive from the creditor all his rights against the debtor when he has made good the default, so that he (the guarantor) can go on and recover.

(3) To receive from the creditor all property pledged to the creditor by the debtor for the payment of such debt, and any other property of the debtor that the creditor has.

From the debtor he has a right to recover, if he can, the entire amount of the default made good by him together with all costs and expenses connected therewith that he has paid. In a word, to be placed in the Creditor's position as to the Debtor.

12 Creditor's Rights The creditor has no rights against the surety until default has been made by the debtor, and even then he may not have such rights until some condition has been fulfilled. For example—the attempt at collection in the "Guarantee of Collection." He has a claim both against the principal debtor and the surety after default, until the surety has paid him, then his rights shall pass to the surety.

13 Rights between Sureties Very often there are two or more persons that are co-sureties for the one debt. For example—the Fidelity Bond on page 160 in such a case. In case of default they would all contribute their proportions of the amount of the default and would be entitled to a similar proportion of the effects of the defaulter, and in case one of them paid all, he could recover from his co-sureties their proportion of the loss.

There are many cases where there are two or more sureties for the same debt, and they are not co-sureties. If Z, being the last name, were to add to his signature, "surety for above persons," he would only be liable in case of failure on the part of all that guaranteed before him. As an example of this we might cite that of indorsers. If the amount of a note were recovered from the last indorser he could collect the entire amount he paid from any one that indorsed before him. He guaranteed on the strength of their guarantee. If however, the amount of the default were collected from the first indorser, he would not have any rights against those that indorsed after him, as when he endorsed, he did so absolutely and not on the strength of those who would follow him.

14 Discharge of Surety—The sureties may be discharged from liability in various ways.

(1) *By Expiration of Time.* If a guarantee is given for a definite

time,—for example, the year 1891 in the "Continuing guarantee," page 161 the surety is released at the end of the year from liability from purchases made afterwards but not from the guarantee of any of the purchases made within the period.

(2) ***By Notice to the Guarantor.*** The surety may terminate a contract of guarantee by giving notice to the creditor that he will not be surety after a certain date. He is not released from liability from default before that date, but he is from any that may occur after that date.

(3) ***By Change of Agreement.*** When an agreement has been altered so as to change the liability, the surety is relieved. Suppose that Smith guarantees the fidelity of Adam Wier, an employee of J. H. Little, as salesman,—if Mr. Little makes Mr. Wier his cashier, Mr. Smith would be relieved from liability in case of default because the contract has been changed and the liability increased.

(4) ***Extension of time by the Creditors.*** If a creditor agrees to give a debtor an extension of time for the payment of a guaranteed debt, he releases the guarantor unless the said extention is given with his consent.

If X indorsed Y's note payable to Z, and Z gives Y a month's extention of time after the note matures without consent of X, then X would be free.

(5) ***Fraud*** upon the surety in contracts of guarantee will make this contract voidable just as any other contract tainted with fraud is voidable.

CHAPTER 40.

RECEIPTS AND RELEASES.

1 **A Receipt** is an acknowledgment in writing that the person by whom it was signed has received from a party named in the receipt something of value, such as money, negotiable paper, goods, services, etc. As a rule a receipt is a strong evidence that such money, goods, services, etc., have been given. It is not conclusive evidence, however, as the receipt might have been obtained by fraud, or misrepresentation, or mistake. The receipt may be contradicted by other evidence, and thus rendered invalid.

2 Explicitness Necessary—The carelessness that many evince in the drawing out of receipts is simply surprising. They are frequently nothing more than a simple acknowledgment of money paid without regard to the purpose or reason for which it was paid, or to the application of such payment.

Every receipt should state explicitly the intention of the parties respecting the application of the payment, and should give all reasonable particulars regarding it. For example: Smith pays $10 to Jones for rent. Now the receipt given by Jones should not only state that the $10 was for rent, but should state what particular month the rent was for; also the property on which the rent was paid. Too much care cannot be exercised in drawing this class of business paper.

3 Preservation of Stubs of Receipts—Every careful business man will get his receipts printed and bound in book form, with a stub attached on which to write particulars of the receipts given, such as:

(1) The date and number.
(2) The name and address.
(3) The amount of money or description of goods.
(4) The purpose for which the money was paid.

It is not uncommon for a person to claim that they have a receipt for money that they never paid. A claim of that kind can easily be silenced if you can refer to the stubs of your receipts. If you are in the habit of giving receipts on all kinds of scraps, do not be surprised if you get "left" sometime.

4 Forms of Receipts—The following are a few of the forms in common use. The form of a deposit receipt will be found on page 73.

Receipt for rent:

No. 62. WINNIPEG, Feb. 1, 1891.

Received from M. D. McKinnon, the sum of Thirty Five Dollars, ($35,) being payment of rent of house No. 638, Main street, for the month of Jan. last.

$35. JAMES ROBERTSON.

Receipt for payment on account:

No. 721. LATONA, Feb. 28, 1891.

Received from Alex. P. Ledingham the sum of Fifty Dollars on account.

$50. JNO. K. MCGILLIVRAY.

Receipt in full of account:

No. 97. SULLIVAN, March 1, 1891.

Received from John Halliday the sum of Fifteen $\frac{42}{100}$ Dollars, being payment in full of account to date.

$15.42 CHRISTOPHER ROBERTSON,

Receipt in full of all demands:

No. 246. HOLLAND, March 15, 1891.

Received from James Robertson, Forty One $\frac{28}{100}$ Dollars, being payment in full of all demands to date.

$41 28 W. B. BRENNAN.

Receipt for taxes:

No. 427. KILSYTH, Feb. 28, 1891.

Received from James Cochrane the sum of Twenty Nine $\frac{13}{100}$ Dollars, being payment of taxes on lot No. 7, on the 7th concession of the township of Derby, for the year 1890.

$29.13 B. WILKINSON, *Collector.*

Receipt for promissory note:

No. 29. KEADY, May 1, 1891.

Received from Alex. Garvie his promissory note in my favor, dated March 15th, for Sixty Two $\frac{40}{100}$ Dollars, payable three months after date at the Merchants Bank, Owen Sound, in full of account.

$62.40 WM. BEATON.

(Endorsement receipt for money paid on above note. To be written across the back of the note.)

Keady, Aug. 1, 1891.

Received on the within note Thirty Dollars.

$30. WM. BEATON.

Receipt for title deeds:

DESBORO, Jan. 30, 1891.

Received from Alex. Sinclair the following title deeds of lot No. 10, concession 7, in the township of Derby, for safe keeping, said deeds to be returned to him on demand:

Deed, John Smith to Alex. Leslie, dated March 4, 1878.
" Alex. Leslie to Thomas Sloan, dated July 9, 1882.
" Thomas Sloan to Paul Wardell, dated Feb. 4, 1886.
" Paul Wardell to Alex. Sinclair, dated March 4, 1890.

WM. DOUGLAS.

5 Releases—A release is a written discharge of a claim debt or demand held against one person by another. It is given under seal, and will cancel any debt, whether acknowledged or not.

No special form of words is necessary, all that is necessary is that the words convey the intention to release, acquit and discharge the person from the debt.

Releases are made (1) *Individual*—By one person releasing another from a debt or demand.

(2) *Mutual* Where two persons have been trading with one another, and have contra accounts. When a settlement is made they frequently release one another from all demands.

6 Form of General Release given Mutually

THIS INDENTURE, made the 15th day of March, A. D. 1891, BETWEEN Henry Ballard of the first part; and James Fairfield of the second part.

WHEREAS, there have been divers accounts, dealings and transactions between the said parties hereto respectively, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have respectively agreed to give to each other the mutual releases and discharges hereinafter contained in manner hereinafter expressed.

NOW THEREFORE THESE PRESENTS WITNESS, that in consideration of the premises and of the sum of one dollar, of lawful money of Canada to each of them, the said parties hereto respectively paid by each of them at or before the sealing and delivery hereof (the receipt whereof is hereby acknowledged), each of them the said parties hereto respectively, doth hereby for himself and herself respectively, his and her respective heirs, executors, administrators and assigns, remise, release and forever acquit and discharge the other of them, his and her heirs, executors, administrators and assigns, and all his, her and their lands and tenements, goods, chattels, estate and effects respectively whatsoever and wheresoever, of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have, or has, or ever had, or might or could have against the other of them, on any account whatsoever, of and concerning any matter, cause or thing whatsoever between them, the said parties hereto respectively, from the beginning of the world down to the day of the date of these presents.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in the presence of JOEL KRIBBS. — HENRY BALLARD. (L. S.) — JAMES FAIRFIELD. (L. S.)

7 Composition Deed When a person who is insolvent settles with his creditors for smaller sums than his debts to each one, the creditors grant him a release from such debts under seal. This release is called a Composition Deed. The following is a common form.

TO ALL PERSONS to whom these Presents may come, we who have hereunto set our hands and seals, creditors of John Shriver of the town of Brockville, send greeting. Whereas the said John Shriver is indebted to us his said creditors, in several sums of money, which he is not able fully to satisfy and discharge: we therefore have agreed, and do hereby agree, to accept of the sum of Two Hundred Dollars in full payment and satisfaction of all the debts, owing to us respectively at the date hereof, by and from the said John Shriver, which is paid by or for the said John Shriver to Andrew Storms, Sidney Warner and Billa Flint, for the use of, and to the intent that the same may be shared and divided amongst us his said creditors, in proportion and according to the debts to us severally due and owing:

Now therefore know ye, that for the consideration aforesaid, each of us, the said creditors who have hereunto set our hands and seals, for him and herself, his and her heirs, executors and co-partners, doth by these presents, remise, release, and forever discharge the said John Shriver, his heirs, executors and administrators, of and from our said several debts, and all, and all manner of action and actions, claim or demand, which against the said John Shriver, each and every of us the said creditors now hath, or which each and every of our heirs, executors or administrators, respectively, hereafter may, can, or ought to have, claim, or demand for, upon, or by reason of the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause, or thing whatsoever from the beginning of the world.

In witness whereof the said parties hereto have hereunto set their hands and seals this 15th day of March, A. D. 1891.

Signed, Sealed and Delivered in the presence of MOSES FRY. — ANDREW STORMS. (L. S.) — SIDNEY WARNER. (L. S.) — BILLA FLINT. (L. S.)

CHAPTER 41.

INSURANCE.

1 Definition Insurance is a contract by which one party engages, for a certain sum, to assume a certain risk which another would otherwise bear. For example

John W. McCulloch owns a house, and an Insurance Company, for a certain sum, agrees to pay any loss that may happen to the house by fire. This business is almost all done by incorporated Companies. The Company that agrees to pay the loss is called the *Insurer* or *Underwriter*, and the person owning the property, the *Insured* or *Assured*.

2 The Application—The person desiring insurance usually makes out an application for it addressed to the Company, giving full particulars about the person, premises or articles to be insured.

3 The Policy is the contract of the Company by which they agree to make good the loss or damage that may happen to the insured property. It is based upon the statements made in the application for the insurance.

4 The Premium is the amount paid for the insurance either by cash or note. It is usually a certain rate per cent. on the value of the property.

5 The Rate or price of insurance is based upon the risk the Company assumes in the property. For example, the rate on a stone or brick house separated from others would be low, as there is very little risk of fire; perhaps 1 per cent. of the face of the policy for three years. A frame planing mill would be high, as the risk is great; perhaps seven per cent. for each year.

6 Varieties of Insurance There are many kinds of insurance. We may mention the following: —

(1) Fire Insurance,
(2) Marine Insurance,

(3) Life Insurance.
(4) Accident Insurance.
(5) Fidelity Insurance.
(6) Various lesser kinds, such as Live Stock, Plate Glass Boiler Insurances, &c.

7 Stock Companies are such joint stock companies as enter into the business for the purpose of making a profit. They do business on what is known as the *cash principle*, that is, you pay them a certain sum down at time of insurance and no more during the currency of the policy.

8 Mutual Companies are such as are formed by the insurers among themselves. The idea is for all that enter such companies to pay losses and expenses in proportion to the amount of their insurance. Some mutual companies do part of their business on the cash principle. Such a company is called a "mixed company." In a purely mutual company, the company takes from each member at the time of insurance a *premium note* or *undertaking*, that is, a promise to help to pay the losses up to a certain amount. A small sum is paid at the time. If more is required for the fires and expenses on the policies than has been paid in as a deposit at the time of insurance, then an assessment is made on all the policies for the amount required. It is a case where all the members help to bear the loss of any one member who is unfortunate enough to lose his property. This gives the members their insurance at the net cost.

9 Who may Insure Property. The contract of insurance is between two parties—the *owner* of the property, and the Company. A person must have some ownership in property or he cannot insure it, as he would not be at any loss if it were destroyed. Property, therefore, must be insured

(1) By the owner for his own benefit;

(2) By the owner in favor of a mortgagee, in case either real estate or chattel property is mortgaged;

(3) By the mortgagee; in case the mortgagor fails to insure it the mortgagee may insure it for his own benefit and charge the premium to the mortgagor. The mortgagee has an interest in the property and therefore has a right to have it protected.

In case the mortgagor insures the property, the policy may be made out directly in the mortgagee's favor or in favor of the mortgagor and a clause written as follows across the face:—"*Loss, if any, payable to the Mortgagee, Thomas Brown, as his interest may appear.*"

10 The Time—Fire insurance always begins to run at twelve o'clock, noon, and expires at twelve o'clock, noon,—usually for one, two or three years

from the date when it began. On farm property and other isolated buildings, separated a reasonable distance from any hazardous property, the policies usually run three years. On mercantile and manufacturing risks, generally one year. Short term policies are also issued, such as three and six month policies. The rate is much higher for a short term than a long term policy—there is just as much cost for book-keeping, management, etc., as on a yearly policy. If the rate on a yearly policy were 90 cents, the half-yearly would not be less than 60 cents, and the three-month rate would be 45 cents per $100.

CHAPTER 42.

FIRE INSURANCE.

1 **Fire Insurance** is a contract whereby the insurance company agrees to make good to the owner of property any loss or damage to a certain amount occasioned by fire or lightning. This includes

(1) Actual destruction of the property by fire or lightning.
(2) Damage to the property by smoke from the fire.
(3) Damage to the property by the water used in quenching the fire.
(4) Damage to property occasioned by removal to save it from fire.
(5) Loss of property by theft, etc., when being removed to save from fire.

2 **The Provisional Receipt**, or interim receipt, is the receipt given by the agent of the company to the person insuring.

(1) It acknowledges the receipt of the premium, and
(2) It grants insurance on the property for thirty days until such times

as the directors of the company can have time to examine the application, accept it, and issue the policy, or else reject the application.

Form:

No. 24,570.

NORWICH UNION FIRE INSURANCE SOCIETY.

Head Offices: Norwich and London, England.
Chief Office for Canada: Toronto.

Owen Sound Agency, Mar. 19, 1891.

RECEIVED FROM W. B. Robb the sum of Two $\frac{55}{100}$ Dollars, being a Deposit for an Insurance against Fire for $300.00, subject to the Society's printed Conditions, on Household Furniture, in house on Lot 7, Patterson Street, for which (if approved of, on further particulars being received,) a Policy will be issued in terms of Assured's Proposal of March 19, 1891. This protection not to extend beyond Thirty Days from the date hereof, and previous to the issue of a Policy may be cancelled by notice from the Agent, and a proportionate part of the premium (if any is due) returned to the Assured.

Premium @ 85 ½ $2.55. R. CHRISTIE, Agent.

Unless specially allowed by the Office in writing hereon, the use is strictly prohibited of any Steam Engine Mill-work, Apparatus for producing heat, as also the Storage of any Hazardous Goods; and the Proposer must declare if there are any Hazardous Risks in or on the adjoining Premises.

4 The Policy is the written obligation of the company agreeing to pay the insured person a sum of money in case of loss of the insured property. Policies may be divided into two kinds:

(1) ***Closed,*** or ***Valued Policy,*** where certain definite property is insured for a fixed sum;

(2) ***An Open Policy,*** such as would be put on a warehouse where goods are constantly being received and given out. All goods coming in are entered in the policy at the time they come in and a slight premium paid on all goods entered.

Policies may be divided according to the contract into

(1) ***Specific Policies,*** where particular articles are insured in particular places only. In such a policy as this, if the horse happened to be burned in the cow stable or in the barn, no insurance would be paid because he was not burned in the horse stable.

(2) ***A Blanket Policy*** is one that insures the contents of a building as such and makes a contract to pay the loss of the insured property wherever it is destroyed.

Form of Policy:

No. 1,491,007. SUM INSURED, $300.00.

NORWICH UNION FIRE INSURANCE SOCIETY.

Hon. G. W. ALLAN, President. T. C. PATTESON, Esq., Vice-President.

ALEXANDER DIXON, General Agent.

IN CONSIDERATION of the Sum of Two $\frac{00}{100}$ Dollars, and of the representations, conditions, and warranties hereinafter mentioned or referred to, THE NORWICH UNION FIRE INSURANCE SOCIETY, of Norwich and London, England, HEREBY INSURES in manner hereafter appearing William B. Robb, Esq., Parry Sound, Ont., (hereinafter called "the assured") against loss or damage by Fire to the property hereinafter described (but subject to the conditions and stipulations contained in this Policy) to the amount of Three Hundred Dollars, namely: On Household Furniture, $300.00, all owned by the Assured and contained in house on Lot No. 7, Patterson Street, Parry Sound, Ontario. And it is hereby agreed and declared between and by the said Norwich Union Fire Insurance Society, (hereinafter called "the Society" or "the Company") and the Assured (subject, nevertheless, to all the said conditions and stipulations) that if the property above described, or any part thereof, shall be destroyed or damaged by fire at any time between Twelve o'clock at noon of the Nineteenth day of March, 1891, and Twelve o'clock at Noon of the Nineteenth day of March, 1892, the Capital Stock, Funds, and Property of the said Society shall, according to the Laws, Regulations, and Provisions of the Society, alone be liable to pay or make good unto the Assured, his executors, administrators, or assigns, all such immediate loss or damage, to an amount not exceeding in respect of each of the several matters above specified the sum set opposite thereto, or the interest of the Assured therein, and not exceeding in the whole the sum of Three Hundred Dollars, subject to the conditions and stipulations of Assurance printed on the back of this Policy.

IN WITNESS WHEREOF, I, the undersigned General Agent, being duly authorized by the Directors of the said Society, have hereunto set my hand this Thirty-first day of March, 1891.

ALEXANDER DIXON, General Agent.

Countersigned, T. C. PATTESON.

This Policy will not be valid unless countersigned by one of the Society's Local Board of Management for Canada.

N.B.—For all future payments upon this Policy, printed receipts, bearing the Embossed Stamp of the Society, will be given.

4 Statutory and Other Conditions In the foregoing form of Policy the contract only is given. There are always a lot of conditions in the policy made necessary by law at the place where the business is done. There are also various stipulations and conditions that the Company make and print in red as part of their policy. It is not necessary to insert any of these here as they vary considerably in different places and in different companies.

5 Extra Risks Buildings are frequently insured during their construction. For a payment of a small extra premium the company will take the extra risk caused by the mechanics, carpenters, etc., that are working on them. These are variously termed "Mechanic's Risks," "Carpenter's Risks," etc.

6 Changes on Buildings If insured buildings are to be changed, refitted, remodelled, etc., and mechanics are to be put at work on it,

(1) Give the Insurance Company notice before you begin, or your policy will be void.

(2) Pay a small extra sum and secure a mechanic's risk on it.

7 Cancellation of Policies If a person disposes of the property insured, or for any other reason desires to discontinue his policy, he may have the company cancel the policy and return part of the premium to him. The part of the money refunded is called the *unearned premium*, because the company has not earned it all by carrying the risk to the end of the term of contract. The amount retained by the company is called the *earned premium*. On a policy cancelled at the request of the insured, the company would charge the short term rate and refund the balance. If, however, the Insurance Company wished to cancel the policy the Company would refund a proportionate part of the premium. If the insurance had run half its time, half the premium would be returned.

8 Two or More Insurances on the same property without consent of all the companies concerned, is *literally no insurance, as not one cent of insurance would be paid in case of loss.* If consent of all parties is obtained, the same property might be insured in a dozen different companies so long as the total sum of all the insurances together did not exceed the insurable value of the property. The insurable value of property is usually about two-thirds of the cash value.

9 Re-insurance Every company sets a limit as to the amount of risk it will carry on any one property. Suppose a company sets such a limit at $5,000, and they are offered a risk on a building of $12,000. They would take the risk and immediately re-insure at least $7,000 with other companies so that the loss from any one particular fire would not be so large as to cripple a company either for the time being or permanently.

10 Assignment of Policy A policy may be assigned from one person to another by writing across it some such clause as the following:—

"For value received, I hereby assign, transfer and set over unto John Smith all my right, title, and interest in the within policy.

(Signed) HENRY BROWN.

The policy is then forwarded to the office of the Company, [illegible] by a fee and the consent of the Company obtained and the [illegible] the books. Such assignment of policy is made

(1) When the property is sold.

(2) When property is mortgaged

11 Renewal Insurance Companies frequently continue a policy from year to year by simply giving a renewal receipt for the yearly premium each year when it is paid. This continues the original contract between the company and the insured with all its conditions. If the premises are changed to any great extent, or the buildings or businesses near it are changed so as to increase the risk, a new policy would have to be issued. The following is a form of Renewal Receipt:

No. 11,824.

NORWICH UNION FIRE INSURANCE SOCIETY

Head Offices: Norwich and London, England
Chief Office for Canada: Toronto. Parry Sound Agency, Mar. 10, 1890

Policy No. 1,275,170.

Received of William B. Robb, Esq., the Sum of Three [illegible] Dollars for the Renewal Premium on this Policy, from 19th March, 1890, to 19th March, 1891.

Amount Insured, $300.00
Premium, 3.40. R. CHRISTIE, Agent

When any alteration takes place in the Property Insured, or in the Buildings in which the Property is contained, or if the nature of the risk be in other respects changed; or the Property be removed to other Premises, or the interest of the Policy been transferred; the same must be made known to the Office and allowed by Indorsement on the Policy, and an additional Premium, if required be paid, otherwise the Policy will be void.

12 Transfer from One Place to Another If chattel property is moved from one building to another, the consent of the company must be obtained and the property will be held insured in its new place. If the new place is more dangerous than the old place an additional premium may have to be paid besides a fee for the transfer.

13 Misrepresentation If the insured party makes any misrepresentations regarding the property, either in regard to the character of the property or the risk to which it is exposed, the policy will be voidable, as it is tainted with fraud.

14 Negligence on the part of the person insuring property or on the part of his servants is just what he desires to provide against; hence, the company is called on to pay, even if there has been carelessness. If the insured wilfully sets fire to his own building he gets no insurance and is punishable

for arson besides. If insured property is on fire, or in imminent danger from fire, the owner must do his best to save it or his policy would be void.

15 Adjustment of Losses—Generally the full amount of the loss is paid on the insured property so long as that amount does not exceed the amount of the insurance. Some policies contain "*an average clause*," and in such only such proportion of the loss is paid as the insurance bears to the value of the property. For example

A insures his house worth $1500 for $1000. If the policy contained an "average clause," and the property were damaged $600, only two-thirds of loss would be paid as in this "average clause" policy the company is supposed to carry two-thirds of the risk and the owner one-third: hence he would only get $400 for his $600 loss.

The profits on goods are not insured unless specially provided for, nor is the loss or inconvenience resulting from the interruption of business by the fire made up by the Insurance Company. The loss of property only is dealt with.

In case of loss by fire, notice should be given the company at once and the company will send an Adjuster, or Agent to inspect the loss. The value of the articles destroyed must be verified on oath, and false or fraudulent statements nullify the claim against the company. The company always reserves the right to pay the money for the loss, or have the article or building repaired, as they choose.

CHAPTER 43.

MARINE INSURANCE.

1 Definition—Marine Insurance is a contract made between the Insurance Company and the owner of a vessel or cargo of merchandise, whereby the Company agrees to indemnify the owner for the whole or a certain portion of any loss or damage at sea to vessel or cargo.

2 The Time for which such insurance is made varies very much:

(1) It might be for a year, or a month, or six months, or any specified time. This is the way in which vessels are usually insured.

(2) For a certain number of voyages between certain places. This class of policy is frequently taken out by owners of vessels on the lakes, as the season of navigation only lasts a few months of the year.

(3) For one particular voyage. Vessels are sometimes insured in this way, and cargoes are almost always insured in this way from the time they are taken aboard until they are safely delivered on the dock at the end of the voyage.

3 The Risks In Marine Insurance the property is not only insured against loss by fire, but against losses from the extraordinary perils of the sea voyage. This does not include natural decay, breakage or leakage of liquids, as they are ordinary losses. The risks assumed are against:—

(1) Loss or damage by fire, or the water used in putting out the fire, or the smoke, etc. from the fire.

(2) The Sea. Damage from water, etc., caused by rough or stormy passages.

(3) Piracy. There is very little risk from piracy now. There are some pirates (sea robbers) in existence, but the danger is slight.

(4) Theft. This includes theft by persons belonging to the ship, such as passengers, sailors, or by others.

(5) Capture, arrest and detention. This refers particularly to the taking of a vessel or cargo by the men of war of a nation at war with the nation the insured belongs to.

(6) Barratry—that is loss occasioned by any fraud or wrongful acts of captain or sailors, such as sailing out of port without papers or without paying dues, engaging in smuggling, deserting or sinking the ship, etc.

(7) General average. If a vessel and cargo are in danger, and goods or parts of the ship are thrown overboard or sacrificed to save other parts for the general good, then all the cargo and ship share the loss equally, because the loss was made for the good of all, to save what now remains. Marine Insurance would provide for the portion lost by the assured in this case.

(8) Salvage is compensation made to those by whose exertions a ship or cargo has been saved from impending peril, or recovered after loss.

4 Policies and Premium The policies in Marine Insurance are either open or closed. The closed policy is sometimes called a valued policy, because the amount of the policy is determined at the time of issue. The open policy is such as is taken out for a season for goods being shipped. The in-

sured notifies the company of all shipments; they are entered on the policy or in the Company's books, and a premium is collected on all goods so insured. Such premium may be paid in cash or notes. The premium is said to be "earned" when the goods are safely deposited on the dock or in the warehouse at the end of the voyage. If the shipper decides not to ship his goods after an insurance has been effected, he may get his insurance cancelled if the voyage has not been begun. In such a case the premium is said to be "unearned," and is returned to the one who paid it.

5 The Amount—All Marine Insurance policies contain an average clause which provides for the payment, in case of loss, only in the proportion that the insurance bears to the value of the property. Thus if goods worth $800 were insured for $500, the company would only pay five-eighth of the loss, it being held that the insured carried three eighth of the risk himself. If the loss were $200, then the company would only pay five-eighth of $200—or $125. It will be noticed that if the insurer wishes to get full value for the slightest or greatest loss that may occur, he must insure the goods for full value. He may also insure the estimated profits that may arise from the goods.

6 Insurance in Several Companies—Goods may be insured in several companies in either of two ways:—

(1) *Successively.* That is one to come after the other. The second company pays only the loss that remains after the first has paid to the full extent of its policy.

(2) *Concurrently.* That is the policies all take the risk proportionately to their policies. If A insures property worth $600 in Company M, for $300, and in Company N, for $200, it is evident that the owner A, carries one-sixth of the risk himself; that Company M, carries half the risk, and Company N, carries one-third of the risk. If a loss of $240 happened, N would pay $80, and M $120, leaving $40 of a loss to the owner.

7 Assignment of Insured Property—Goods are sometimes sold during the voyage, and transferred by indorsing the bill of lading. If the policy is payable specifically to the first owner, he could have the policy transferred to the purchaser. Many such policies are drawn payable "to whom it may concern," and may be transferred by delivery.

8 Abandonment—Property may be entirely lost, or only partially lost or damaged. If the loss is less than half the value, the company pays the proportionate part of the insurance. If the loss is more than half the value, the insured may, if he wishes, abandon the property entirely—that is, turn it

over to the insurance company and collect the full amount of the policy. The company in such a case, may sell the remaining property for what it will bring. The insured need not abandon the property unless he wishes. He may keep the property and obtain payment for a proportionate part of the loss under the ordinary average clause.

9 Lost or Not Lost - This phrase occurs in policies where the insurance is effected when the ship is at sea, and it is not known whether the ship is safe or not. Though the ship were lost days or weeks before, if unknown to the parties, the insurance is valid and binding.

CHAPTER 44.

LIFE INSURANCE.

DEFINITION.
INSURABLE INTEREST.
THE BENEFICIARY.
FRAUD AND CONCEALMENT.
CONDITIONS OF POLICY.
THE INDEMNITY.
ACCIDENT INSURANCE.
NOTICE OF DEATH OR ACCIDENT.
CLAIMS FOR INDEMNITY.

1 Definition - Life insurance is a contract between two parties - the insurer (usually a company) and the insured. The contract, in consideration of the payment of an annual premium, provides for the payment of a certain sum at the death of the insured, or when he arrives at a certain age. The person to whom a policy is payable is called a beneficiary. The companies that undertake life insurance are divided into two kinds:

(1) ***Mutual***, where all the members contribute to the funds of the company, either by assessments on the death of members or a fixed sum monthly or yearly, sufficient to pay death rates and expenses of management.

(2) ***The Stock Company*** system, where persons go into the business of life insurance for the purpose of making profits.

With regard to the time of payment, life insurance is divisible as follows:

(1) ***Straight Life***, or whole life, where the payment is to be made at the death of the insured.

(2) ***Endowment***, where the payment is to be made in a certain number of years,—or at death, should it happen before the close of the endowment period.

With regard to the way in which the premium is paid, they are divided:

(1) ***Level Premium***, where the insured pays the same amount of premium every year.

(2) ***Natural Premium.*** where the insured pays a premium that is increased every year as he grows older: as the risk of his demise is naturally, greater.

(3) ***The Assessment System.*** where each member contributes, say $1.00, on the death of a member, and so the claim is paid: or where regular monthly assessments are made, and the death claims and expenses are paid and the balances invested to meet future losses.

The level premiums are also payable in a variety of ways, to suit various circumstances :

(1) ***Annual Premium.*** where a sum is paid every year during life.

(2) ***Premium for a term of Years.*** where the insured pays a certain sum each year for a fixed number of years and then pays no more. For example, a ten payment life policy is one where one payment is made each year for ten years and the policy is paid up.

(3) ***Single Premium.*** Where one large premium is paid down at the time of insurance and no other premium is ever asked for, the policy is paid up in one premium.

2 Insurable Interest (1) The owner of an article is always a competent party to insure it: therefore, a person may always insure his own life, and, unlike fire or marine insurance, he may insure in as many companies as he pleases without consent of the others, and for just as large a sum as he likes to pay a premium on.

(2) Any person who has a financial interest in the life of another may insure that person's life. Of these we might mention the following :

(a) A creditor may insure the life of a debtor, because his death might leave the claim unpaid.

(b) A person may insure his partner's life.

(c) A husband may insure a wife's life, or a wife a husband's life: a father a son's or daughter's life, or a child a parent's life, because the removal of such a relative by death might be a very serious pecuniary loss.

(d) A young woman engaged to be married has an insurable interest in the life of the man who is to be her husband, etc.

The conditions of good health existing at the time of the insurance need not continue, it being sufficient that these conditions existed when the contract is made. In the case of a marine or a fire insurance, a change in the conditions would prevent a continuance of the insurance.

3 The Beneficiary is the person to whom a policy is payable—he may be either the insured person or any other person.

(1) When a person insures his life in his own favor he may give his policies as collateral security for money he may borrow by assigning them to his creditor.

(2) When the policies are payable to the insured he can dispose of his insurance by will the same as any other property.

(3) When a person insures in his own favor, the policies may be taken by creditors in case of insolvency, the same as other assets.

(4) If a person insures in favor of another person, say a wife or child, the policy belongs to such wife or child and cannot be touched by creditors in case of insolvency.

4 Fraud and Concealment The application of the person to the company should be true in fact, and should state all the facts. Fraud in making such representations, as are not true, or failure to furnish information that the company should know, will taint the contract with fraud and render it voidable.

In many policies now issued there is a clause to the effect that no misstatement or concealment of fact will be operative against the insured after the policy has run over three years. In other words, the policy is said to be incontestible after three years.

5 Conditions of Policy Premiums are usually based on the risk carried, and persons in a hazardous occupation are charged a higher rate; and, under many policies, a journey on the sea or into the Southern States would vitiate a policy for the time being. Persons who commit suicide vitiate their policy, as they kill themselves willingly. If, however, the insured's suicide is the result of temporary or permanent insanity the suicide is not criminal, and, therefore, does not vitiate the policy.

6 The Indemnity is the sum paid to the insured, or his heirs,

(1) A fixed sum at his death, or at a certain period during life, or

(2) A weekly, monthly or yearly indemnity.

7 Accident Insurance insures a person against injury by accident of any kind. It does not insure against sickness, but provides for (1) the payment of a fixed sum when the insured is kiled by accident, or (2) the payment of a certain sum weekly during illness that is the result of accident. In case of death afterwards resulting from such accident, any sums that have been paid weekly will be deducted from the total amount of the insurance. In some cases an accident policy provides for the payment of a fixed sum if the accident disables the insured, or if he lose a limb.

8 Notice of Death or Accident should be given as soon after such event happens as possible. It must be within reasonable time—the usage at the place and the special circumstance of the case will decide what is reasonable time.

9 Claims for Indemnity If the insured under a policy die, it is necessary to give such proof to the insurance company as will show them

(1) That deceased was the person insured under a certain policy;

(2) Certificates showing when he died, and from what disease.

CHAPTER 45.

MASTER AND SERVANT.

DEFINITION.
CONTRACT OF THE EMPLOYER.
CONTRACT OF THE EMPLOYEE.
CARE.
SKILL.
DILIGENCE AND FORETHOUGHT.
LIEN OF SERVANT.
LOSS OF ARTICLES BEING BUILT OR REPAIRED.
TIME OF EMPLOYMENT.
DISCHARGE.
LEAVING.

1 Definition If one person agrees to do work for another for a consideration or recompense, we find in that contract for services to be rendered the relation of Master and Servant. The Master is the employer, the Servant the employee. Contracts for personal services are of two kinds:

(1) *Particular* where the employee is hired to do some particular kind of work—say, build a boat or draw plans for a house. The work is special and the agreement calls a certain amount of this work.

(2) *General* where one person takes another into his employ to do general work—example, a clerk, a carpenter, a baker, a farm laborer, or a domestic servant.

(N.B.—The greater part of what has been said under the head of Principal and Agent will be applicable under the head of Master and Servant.)

2 The Contract of the Employer In every contract for personal services there is something to be done and something to be paid for it. In every properly made contract there is an agreement in advance regarding the compensation for the services, (the consideration), and in absence of any agreement it is presumed that the person accepting services is prepared to pay for such services what they are usually worth. If there is no specific agreement to the contrary it is implied that payment is to be made at the end of the time.

3 The Contract of the Employee—It is necessary for the employee to do all that his agreement calls for, and *it is always implied that such services will be rendered and work performed honestly and with proper care, skill, diligence and forethought.*

4 Care applies usually to those who have the property of others in their hands, such as tradesmen when articles are left with them for repair, and warehousemen who receive property for storage. Care embraces not only the safe keeping or custody of the articles but the protection of them from robbery, theft; and in case of live animals that require food, water, etc., to give them such attention as the owner would give.

5 Skill.—Where a man is engaged in any trade or business it is presumed that his workmen or clerks have ordinary skill required for that particular trade or business. He is not expected to possess all possible skill, but is expected to possess an ordinary amount.

6 Diligence and Forethought apply particularly to the exercise of the mind in looking after articles placed in custody and the getting them shipped when necessary, or, in case of work to be done, to do it at the proper time so nothing will waste or suffer from neglect. They are the opposite of neglect and carelessness.

7 Lien. A person employed to do work for another, such as to repair an article or build a house, etc., has a right to keep the property until it is paid; in other words, he has a lien on the property for his pay. If a blacksmith repairs my carriage he has a right to keep the carriage till I pay him for his work. A warehouseman may keep goods until freight, storage and other charges are paid. If he lets the goods go his lien is at an end. He cannot go and take the articles back, he only holds a personal debt against the owner.

8 Loss of Articles being Built, Repaired, etc. (1) Suppose Brown hires Smith to build a boat for him, and he (Brown) furnishes the materials the work to be paid for when completed. If the boat were accidentally destroyed by fire, Brown would lose his material and Smith his work, because Smith had agreed to do a certain job complete: he may have a profit out of it besides wages, therefore he has the risk.

(2) If Brown had engaged Smith to work by the day on the boat then the whole risk would fall upon Brown. If the boat were destroyed Brown would lose both materials and labor because Smith did not promise any definite result or finished work. He could have no profit out of it save the pay for his ordinary day labor.

(3) Suppose Thompson agreed to build a carriage for Henderson and furnish all materials himself for a specific sum, say, $100. If the carriage were destroyed any time before completion and delivery to Henderson, then the entire loss would happen to the workman, Mr. Thompson.

9 Time of Employment—All contracts of hiring where services are not to be rendered within one year, should be in writing. Suppose X agrees on the 10th of January, 1891, to work for one year for Y, said year to begin on the 1st of May 1892. There should be some memorandum of the same in writing, signed by the parties, because it is not to be performed within one year, which would be 10th of January, 1892.

If I engage a man for a day, a week or a month, at the termination of this period I may discharge him or he may leave me without notice. At the end of the time there is no further contract; it is dissolved by lapse of time. If a person is hired for no particular time and is paid so much a day, a week, a month or a year, he is entitled to notice from his employer before being discharged, and his employer is entitled to notice before the employee leaves him.

If paid by day a day's notice.
If paid by week a week's notice.
If paid by the month a month's notice.
If paid by the year three months' notice.

If there is good reason for discharge or leaving, such as careless work, etc., notice is not required by either party.

If a person agrees to work say three months, and works only two months, he is not entitled to anything, because he does not fulfil his part of the contract. If it is the fault of the employer he can collect wages for the full time.

10 Discharge—A servant is expected to serve his master honestly, cheerfully and faithfully, to enter upon his duties at proper time, to obey all lawful commands, to be responsible for loss or damage occurring to his master's property on account of his negligence; therefore, wilful disobedience and habitual neglect, absence without leave, refusal to perform work requested by the employer (unless such work is illegal) are good causes for discharge. If a servant is discharged for good and sufficient cause, he cannot claim wages previously earned and not due at time of discharge.

11 Leaving—The master is expected to give reasonable commands, and commands that are not illegal and that are within the limits of the work the employee agreed to perform. If the master gives commands contrary to the foregoing, and endeavors to enforce such commands, the servant has just cause for leaving.

The employer is expected to furnish suitable tools, machines, etc., and such machines, engines, etc., should be reasonably protected so as not to subject the employee to unnecessary danger or accident. If the employer required the employee to work with such dangerous machines after due notice of the danger, the employee has just cause for leaving; and should any accident happen to the employee after his giving of such notice, the employer is responsible for such damage resulting from such unsafe machines. If, however, the servant accepts such risks voluntarily he, and not the employer, is responsible for accident.

For Ontario legislation respecting Masters and Servants and Workmen, see R.S.O., Caps. 139, 140, &208.

CHAPTER 46.

LANDLORD AND TENANT.

1 Definition When the owner of real estate in consideration of certain payments to be made to him, lends or hires this real estate to another, we have the relation of landlord and tenant subsisting between the parties. This relation exists in all such transactions, from the letting of a single room to the letting of factories, farms, railroads, etc. The amount paid to the owner for the use of such premises is usually called *Rent*.

2 The Landlord The owner of the property is called the *Landlord* or *Lessor*. The landlord gives the tenant full use of the premises, and, unless otherwise agreed upon, has no more right on the premises than any other person. Usually there is a provision in the agreement that the landlord may enter and view the state of repair at stated periods. The landlord, unless otherwise agreed upon, is liable for all taxes, rates, and assessments collectible from the premises, likewise all interest on mortgages, etc.

3 The Tenant The person who hires the property for his own use is called the *Tenant* or *Lessee*. He pays his rent and obtains full control of the premises. He has a right to eject the owner or any other person from them the same as if he were absolute owner. He exercises all the rights of an owner for the time being. The Rent is the consideration or price of such powers and privileges. He is not liable, unless specially provided for in his contract, for the payment of

(1) Taxes, assessments, interest, etc.,

(2) For ordinary depreciation on the property by natural wear and tear, decay, etc.,

(3) For loss of the property by fire, etc.

He is liable, however, for the following:

(1) For the payment of rent agreed upon.

(2) For voluntary or permissive waste or destruction of the property.

(3) For performance of special provisions and agreements in his contract.

The tenant has a right

(1) To reasonable notice to quit from the landlord if his tenancy is for an uncertain time,

(2) To possess and enjoy all crops grown on the ground and all that are on the ground if his lease is terminated.

(3) To necessary wood for fuel, if on a farm where there is timber standing, but not for wood to sell.

(4) To sub-let the premises or part of them to others, unless his contract provides to the contrary.

4 The Lease is the name given to the contract between the landlord and tenant. If it is for a year or more it should be in writing, if for three years or over it must be in writing and under seal. If for more than seven years the lease must be registered. When a lease for over seven years is registered it gives the Lessee a right to vote on financial questions the same as an owner.

Leases should be made in duplicate, one copy for each person and all the provisions for the agreement should be carefully written down and signed by the parties so as to prevent litigaton. The following is the ordinary form of lease usually called a "Statutory Lease." It will do for either farm or town property. A lease may be made to commence from any day in the past or future, as well as from the date of the lease.

Form of Statutory Lease:

THIS INDENTURE, made the Twentieth day of February, in the year of our Lord one thousand eight hundred and ninety-one, IN PURSUANCE OF AN ACT RESPECTING SHORT FORMS OF LEASES:

BETWEEN John Henry Jones, of the town of Barrie, County of Simcoe, Province of Ontario, Butcher, the party of the First Part, AND William McTavish, of the town of Barrie, aforesaid, Barber, 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, administrators 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 town of Barrie, in the County of Simcoe, Province of Ontario, and being more particularly described as Lot number Thirty-three, on the North side of Victoria Street in the aforesaid town, and containing by admeasurement one-quarter of an acre, be the same 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 March, one thousand eight hundred and ninety-one, and from thenceforth next ensuing, and fully to be complete and ended, YIELDING AND PAYING therefor yearly and every year during the said term hereby granted, unto the said party of the First Part, his heirs, executors, administators or assigns, the sum of One Hundred and Twenty Dollars of lawful money of Canada, pay-

able 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 the 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 G. W. DONALD.	J. H. JONES. WM. MCFARLANE.	(L. S.) (L. S.)

5 Farm Lease When a farm is leased by one person to another it is customary to make the agreement or lease very specific as to how the lessee is to manage the farm, so as to preserve it in a reasonably good condition. The following provisions may be inserted in the tenancy lease, and it will be a very good form of farm lease:

(1) AND THAT the said Lessee will, during the term, cultivate, till, manure and employ such part of said demised premises as is now, or shall hereafter, be brought under cultivation, in a good husband-like and proper manner. (2) AND will crop the same during the said term, by a regular rotation of crops, in a proper, farmer-like manner, so as not to impoverish, depreciate or injure the soil of the said land. (3) AND will use his best and earnest endeavors to rid said land of all docks, rag roots and Canadian thistles. (4) AND will preserve all orchard and fruit trees (if any) on the said premises from waste, damage or destruction: (5) And will spend, use and employ, in a husband-like manner, upon the said premises all the straw and dung which shall grow, arise, renew or be made thereupon: (6) AND will allow any incoming tenant to plow the said land after harvest in the last year of the said term; and to have the use of stabling for two horses and bedroom for one man. (7) AND shall not nor will durin, the said term cut any standing timber or trees upon the said lands, except for rails or for buildings upon the said demised premises, or for firewood upon the premises, and shall not allow any timber to be removed from off the premises: (8) AND ALSO shall and will, at the cost and charges of the said Lessee, well and sufficiently repair, and keep repaired, the erections and buildings, fences and gates erected or to be erected upon the said premises, the said Lessee finding or allowing on the said premises all rough timber for the same, or allowing the said Lessee to cut and fell so many timber trees upon the said premises as shall be requisite, and