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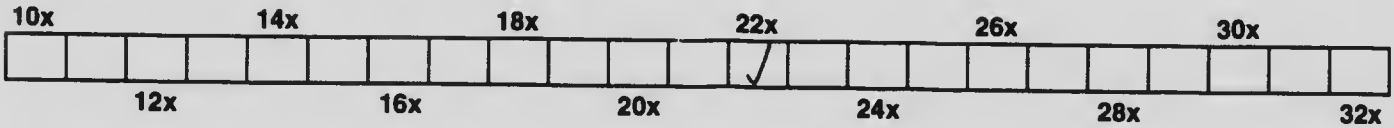

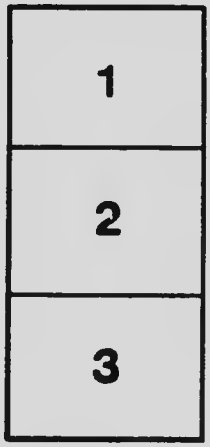

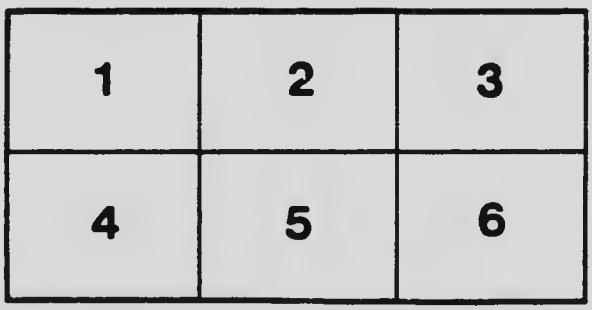

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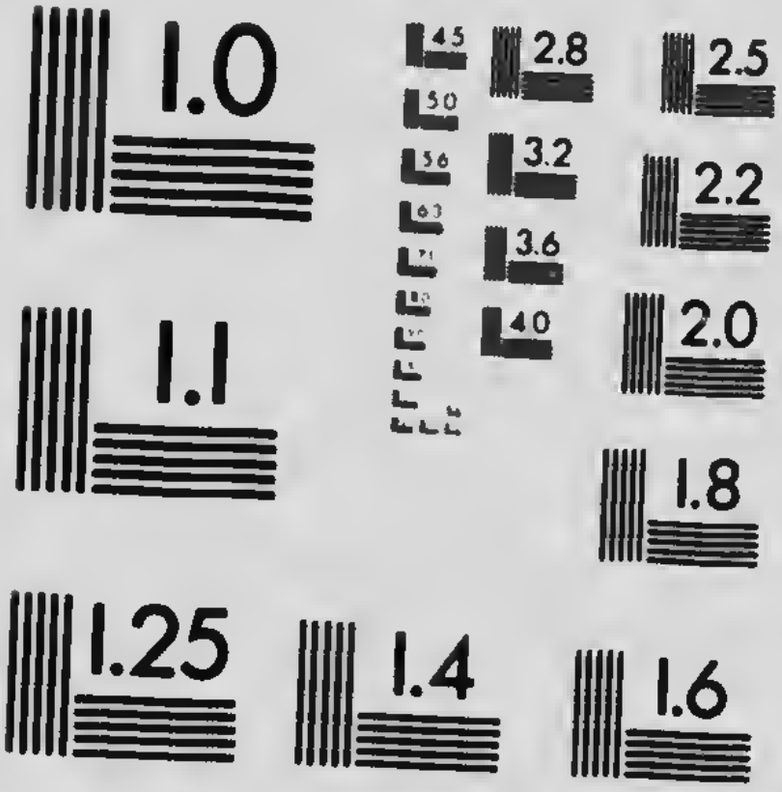

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BILLS, NOTES AND CHEQUES

THE

BILLS OF EXCHANGE ACT

Revised Statutes of Canada, Chapter 119

WITH

NOTES AND ILLUSTRATIONS

From Canadian, English and American Decisions, and References to Ancient and Modern French Law

BY

THE HONORABLE

J. J. MACLAREN, D.C.L., LL.D.,

Justice of Appeal, Ontario;

Author of Banks and Banking, etc., etc.

FIFTH EDITION

TORONTO:

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PREFACE TO THE FIFTH EDITION.

The fourth edition of this work has been now out of print for two years, and there has been an increasing call for a new edition.

The decisions upon our own Act and upon the Imperial Act up to the beginning of the present year have been embodied, as well as a number of decisions upon the American Negotiable Instruments Law. The number of new cases is two hundred.

In the preparation of the Index, List of Cases Cited, verification of references, etc., I have had the assistance of Kenneth B. Maclaren, B.A., barrister; for the text of the work and the comments I alone am responsible.

Toronto, January, 1916. J. J. M.

PREFACE TO THE FIRST EDITION

IN the course of his work upon the Act of 1890 the writer found that in a number of instances where our Parliament had not followed the Imperial Act, the changes had not been carried into other sections where this was necessary in order to make the Act consistent with itself. The absence of any general rule for unprovided for cases, it was also thought, would interfere with the uniformity of the law in the different provinces, which was one of the main objects of the Act. The Minister of Justice signified his approval of these changes, and the amending Act of 1891 was introduced and passed.

The present work was delayed in order that these amendments might be embodied in their proper places. Meantime the notes and illustrations were extended beyond the limits originally contemplated. The references to cases, statutes and other authorities in the work number nearly four thousand. The number of separate decisions cited is two thousand three hundred, and the number of illustrations nearly a thousand. The decisions are brought down to January, 1892.

Where a summary of the law is given for any country it is taken as a rule from the latest edition of one of the leading text writers. Thus, for a summary of the law in England reference is usually made to Bl[illegible] on Bills, 15th ed., 1891, or to Chalmers, 4th ed., 1891. For the United States, Daniel on Negotiable Instruments, 4th ed., 1891, and Randolph on Commercial Paper have been [illegible]. For the old French law, Pothier, Contrat de Chan[illegible]y cited: and for the modern French law, the Code [illegible]erce, and Nougnier, Lettres de Change, 4th ed., 18[illegible].

The Canadian cases cited number nine hundred and fifty, the English about the same number, and the American nearly four hundred. It will be observed that the illustrations have been arranged in three classes in the foregoing order. The Canadian cases have been subdivided by provinces observing the order in which the provinces are usually named. The date of each decision has been given, as far as in each

class arranged in chronological order, beginning with the oldest. The principal English and Canadian Statutes have also been given for convenience of reference and for comparison with the dates of the cases.

The Canadian cases comprise nearly all the decisions of the Supreme Court and of the provincial Courts on the subject, except those based on repealed statutes, such as the Stamp Act, and the old laws regulating pleading and procedure, and those which depend upon the facts of the particular case. A large proportion of the Canadian cases will be found in the illustrations, where they are given with considerable fullness.

Special attention has also been paid to the decisions upon the Imperial Act of 188 . Not only those in the regular English Law Reports have been cited, but also the Scotch and Irish cases, and those in the other English Reports, including twenty-five cases from the London Times Law Reports. These decisions are of special value on account of the great similarity of the two Acts, especially in view of the provision in section 8 of the amending Act of 1891, that the rules of the common law of England, including the law merchant, shall apply to Canada, save in so far as they are inconsistent with the express provisions of the Canadian Act.

The decisions selected from the great mass of American cases have been chiefly from the reports of the Supreme Court of the United States, and of the higher Courts of those States which follow most closely the common law and the law merchant. They are, as a rule, upon points that are not affected by local statutes or usages. Preference has also been given to decisions of these Courts in the leading commercial centres with which Canada has most intercourse.

* * * * * * * *

In order to facilitate reference, in addition to the alphabetical index at the end of the volume, a full table of contents is given at the beginning.

The list of overruled cases is, of course, only a partial one, but it is hoped that it may be found useful. It will be observed that a number of cases are there referred to that are not to be found in the body of the work.

Toronto, April, 1892.

J. J. M.

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CASES OVERRULED, QUESTIONED OR DISTINGUISHED

Where a case is in whole or in part in conflict with a provision of the Bills of Exchange Act, the section of the Act alone is given, even when the case may have been previously overruled or overridden by legislation prior to the Act.

Agricultural Association v. Federal Bank, 6 Ont. A. R. 192 (1881), overruled in part by Bank of England v. Vagliano [1891], A. C. 107.

Allen v. Kemble, 6 Moore P. C. 314 (1848), qualified in Rouquette v. Overmann, L. R. 10 Q. B. 540 (1875).

Armstrong v. Henstreet, 22 O. R. 336 (1892), overruled by Davidson v. Fraser, 28 S. C. Can. 272 (1897).

Arthur v. Clarkson, 35 Beav. 458 (1865), disapproved in Re Whitaker, 42 Ch. D. at p. 125 (1889).

Bacon v. Searles, 1 H. Bl. 88 (1788), overruled by Jones v. Broadhurst, 9 C. B. at p. 185 (1850).

Balloch v. Binney, 5 N. B. (3 Kerr) 440 (1847). *Contra*, s. 104.

Banbury v. Lisset, 2 Stra. 1211 (1774), overruled by Griffin v. Weatherby, L. R. 3 Q. B. at p. 759 (1868).

Bank of Bengal v. Fagan [illegible] Moore Ind. App. 40 (1849), distinguished in Jonmenjoy v. Watson, 9 App. Cas. at p. 568 (1884).

Bank of Bengal v. McLeod, [illegible]ore P. C. 35 (1849), distinguished in Jonmenjoy v. Watson, 9 App. Cas. at p. 567 (1884).

Bank of Michigan v. Gray, 1 U. C. Q. B. 422 (1841). *Contra*, s. 97 (*d*).

Bank of Montreal v. Langlois, 3 Rev. de Lég. 88 (1847). *Contra*, s. 62.

Bank of U. C. v. Parsons, 3 U. C. Q. B. 383 (1846). *Contra*, s. 88 (*a*).

Banque du Peuple v. Ethier, 1 R. L. 47 (1869). *Contra*, s. 22 (1).

Bartrum v. Caddy, 9 A. & E. 275 (1838), distinguished in Glasscock v. Balls, 24 Q. B. D. 13 (1889).

Baxter v. Bruneau, 17 R. L. 359 (1889). *Contra*, s. 57.

Bell v. Moffat, 20 N. B. (4 P. & B.) 121 (1880). *Contra*, s. 131.

Berton v. Central Bank, 10 N. B. (5 Allen) 493 (1863). *Contra*, s. 36.

Bettis v. Weller, 30 U. C. Q. B. 23 (1870), overruled by Third Nat. Bank v. Cosby, 40 U. C. Q. B. 69 (1878).

Biekerdike v. Bollman, 1 T. R. 405 (1786), criticized in Carter v. Flower, 16 M. & W. at p. 748 (1847).

Black v. Gesner, 33 N. S. (2 Thomson) 157. *Contra*, Kinzie v. Harper, 15 O. L. R. 582 (1908); Jones v. Jones, 6 M. & W. 84 (1840).

Boulton v. Welsh, 3 Bing. N. C. 688 (1837), overruled by Lewis v. Gompertz, 6 M. & W. at p. 403 (1840).

Boutin, In re, Q. B. 12 S. C. 186 (1897), overruled by Denenberg v. Mendelssohn, Q. R. 23 S. C. 128 (1903).

Brook v. Hook, L. R. 6 Ex. 89 (1871), said to be overruled in part by McKenzie v. British Linen Co., 6 App. Cas. 82 (1881), per Strong, C.J., in Scott v. Bank of N. B., 23 S. C. Can. at p. 283.

Brown v. Davies, 3 T. R. 80 (1789), overruled by Ex parte Swan, L. R. 6 Eq. 358 (1868).

Brown v. Nat. Bank of India, 18 T. L. R. 669 (1902), criticized in Capital & Counties Bank v. Gordon [1903] A. C. 240.

Brown v. Philpot, 2 M. & Rob. 285 (1840), overruled by Smith v. Braine, 16 Q. B. at p. 254 (1851).

Brunet v. Lalonde, 16 L. C. R. 347 (1866). *Contra*, Aurèle v. Durocher, 5 R. L. 165 (1873).

Callaghan v. Aylett, 2 Camp. 549 (1810), overruled by Fenton v. Goundry, 13 East, 459 (1811).

Camidge v. Allenby, 6 B. & C. 373 (1827), distinguished in Leeds Bank v. Walker, 11 Q. B. D. at p. 88 (1883).

Canadian Investment Co. v. Brown, 19 R. L. 364 (1890). *Contra*, s. 146.

Castrique v. Buttigieg, 10 Moore P. C. 94 (1855), explained in Abrey v. Crux, L. R. 5 C. P. 42 (1869).

Catton v. Simpson, 8 A. & E. 136 (1838), overruled in Aldous v. Cornwell, L. R. 3 Q. B. at p. 578 (1868).

Coles v. Bank of England, 10 A. & E. 437 (1839), questioned in Baxendale v. Bennett, 3 Q. B. D. at p. 534 (1878).

Colville v. Flanagan, 8 L. C. J. 225 (1864). *Contra*, 167 (*b*).

Commercial Bank v. Johnston, 2 U. C. Q. B. 126 (1845). *Contra*, s. 88 (*a*).

Coutu v. Rafferty, M. L. R. 7 S. C. 146 (1891). *Contra*, s. 131.

Cowie v. Stirling, 6 E. & B. 333 (1856). *Contra*, s. 19.

Cox v. Adams, 35 S. C. Can. 393 (1904), disapproved in Bank of Montreal v. Stuart, [1910] A. C. 120.

Crevier v. Samriole, 6 L. C. J. 257 (1862), overruled. See p. 367.

Crouch v. Credit Foncier, L. R. 8 Q. B. 374 (1873), discussed in London & County Bank v. River Plate Bank, 20 Q. B. D. p. 240 (1887); held to have been overruled by Goodwin v. Robarts, 1 App. Cas. 476 (1876), in Bechuanaland Co. v. London Trading Bank [1898], 2 Q. B. 658.

DeBerdt v. Atkinson, 2 H. Bl. 336 (1794), overruled by Maltass v. Siddle, 6 C. B. N. S. 494 (1859).

Decelles v. Samoisette, M. L. R. 4 S. C. 361 (1888), overruled by Hébert v. Poirier, Q. R. 40 S. C. 405 (1).

Dechantal v. Pominville, 6 L. C. J. 88 (1860), overruled. See Cleroux v. Pigeon, 32 L. C. J. 236 (1888).

Delaney v. Hall, 3 N. S. (2 Thom.) 401 (1858). *Contra*, s. 98.

Dingwall v. Dunster, 1 Dougl. 247 (1779). *Contra*, s. 142.

Dorwin v. Thomson, 13 L. C. J. (1869), overruled by Scholfield v. Lond ough, [1896] A. C. 514.

Down v. Halling, 4 B. & C. 330 (1825), dissented from in Bank of Bengal v. McLeod, 5 Moore, Indian Appeals, 1 (1849); distinguished in London & County Bank v. Groome, 8 Q. B. D. 288 (1881).

Dupuis v. Marsan, 17 L. C. J. 42 (1872). *Contra*, s. 61.

Exchange Bank v. Quebec Bank, M. L. R. 6 S. C. 10 (1890). *Contra*, s. 69.

Fahnestock v. Palmer, 20 U. C. Q. B. 307 (1860). *Contra*, s. 28 (*d*).

Fisken v. Meeban, 40 U. C. Q. B. 146 (1876), overruled by Macdonald v. Whitfield, 8 App. Cas. 733 (1883).

Foster v. Dawber, 6 Ex. 839 (1851). *Contra*, s. 142.

Frith v. Forbes, 4 De G. F. & J. 409 (1863), overruled in Brown v. Kough, 29 Ch. D. 848 (1885).

Fyfe v. Boyce, 21 R. L. 4 (1891). *Contra*, s. 131.

Gill v. Cubitt, 3 B. & C. 466 (1824), dissented from in Bank of Bengal v. Macleod, 5 Moore, Ind. App. 1 (1849); held overruled in London and County Bank v. Groome, 8 Q. B. D. 288 (1881).

Girvin v. Burke, 19 O. R. 204 (1890). *Contra*, s. 14.

Goodwin v. Roharts, 10 Ex. 337 (1875), and 1 App. Cas. 476 (1876), distinguished in London and County Bank v. River Plate Bank, 20 Q. B. D. 241 (1887); criticized in Easton v. London Joint Stock Bank, 34 Ch. D. 95 (1886); discussed in Sheffield v. London Joint Stock Bank, 13 App. Cas. at p. 342 (1888).

Graham, Ex parte, 5 De G. M. & G. 356 (1856), overruled by Oriental Corporation v. Overend, L. R. 7 Ch. at p. 152 (1871).

Grant v. Young, 23 U. C. Q. B. 307 (1860). *Contra*, s. 28 (*d*).

Hall v. Smith, 1 B. & C. 407 (1823), overruled by Ex parte Buckley, 14 M. & W. 469 (1845).

Hansard v. Robinson, 7 B. & C. 90 (1827), not followed in Wright v. Lord Maidstone, 1 K. & J. 701 (1855).

Harris v. Benson, 2 Str. 910 (1713), overruled by Lumley v. Palmer, 2 Str. 1000 (1734); Windle v. Andrews, 2 B. & A. 699, 700 (1819).

Harvey v. Bank of Hamilton, 16 S. C. Can. 714 (1888). *Contra*, s. 22 (1).

Harvey v. Cane, 34 L. T. N. S. 64 (1876), questioned in Hogarth v. Latham, 3 Q. B. D. 651 (1878).

Heath v. Sanson, 2 B. & Ad. 291 (1831), questioned in Smith v. Braine, 16 Q. B. 244 (1851).

Herdman v. Wheeler, [1902] 1 K. B. 361, questioned in Lloyds Bank v. Cooke, [1907] 1 K. B. 800.

Hindhaugh v. Blakey, 3 C. P. D. 136 (1878), overruled by Steele v. McKinlay, 5 App. Cas. 785 (1880). See s. 36.

Howland v. Jennings, 11 U. C. C. P. 272 (1861), overruled by St. John v. Rykert, 10 S. C. Can. 278 (1884).

Ianson v. Paxton, 23 U. C. C. P. 439 (1874), overruled by Macdonald v. Whitfield, 8 App. Cas. 733 (1883).

Ingham v. Primrose, 7 C. B. N. S. 82 (1859), dissented from in Baxendale v. Bennett, 3 Q. B. D. 532 (1878); held to be "no longer law" Smith v. Prosser, [1907] 2 K. B. at p. 746.

Jenks v. Doran, 5 Ont. A. R. 558 (1880). *Contra*, s. 40 (2).

Jennings v. Napanee Brush Co., 8 C. L. T. 595 (1884), overruled by Union Investment Co. v. Wells, 39 S. C. Can 625 (1908).

Jones v. Broadhurst, 9 C. B. 173 (1850), qualified in Cook v. Lister, 13 C. B. N. S. 543 (1863); discussed in Thornton v. Maynard, L. R. 10 C. P. 698 (1875); questioned in Solomon v. Davis, 1 C. & E. 83 (1883).

Jones v. Gondie, 2 Rev. de Lég. 334 (1820). *Contra*, s. 36 (*a*).

Jones v. Hart, 2 Rev. de Lég. 58 (1819), overruled. See p. 49.

Jones v. Lane, 3 Y. & C. 281 (1839), overruled by Denters v. Townsend, 5 B. & S. 613 (1864).

Jones v. Whitty, 6 L. C. R. 191 (1859). *Contra*, s. 22 (1).
Kearney v. Gervais, Q. R. 3 S. C. 496 (1893), overruled by Maclean v. O'Brien, Q. R. 12 S. C. 110 (1896).
Keates v. Whieldon, 8 B. & C. 7 (1828), overruled by Cheetham v. Butler, 5 B. & Ad. 837 (1833).
Keene v. Beard, 8 C. B. N. S. 372 (1860), qualified in Hopkinson v. Forster, L. R. 19 Eq. 76 (1871).
King v. Kemp, 8 L. T. 255 (1863), overruled by Moulis v. Owen, [1907] 1 K. B. 746.
Kirk v. Blurton, 9 M. & W. 284 (1841), questioned in Forbes v. Marshall, 11 Ex. at p. 180 (1855); distinguished in Odell v. Cormack, 19 Q. B. D. 223 (1887).
Kirkwood v. Smith, [1896] 1 Q. B. 582, overruled by Kirkwood v. Carroll, [1903] 1 K. B. 531.
Laguenx v. Casault, 2 Rev. de Lég. 28 (1813), overruled. See p. 49.
Laguenx v. Everett, 1 Rev. de Lég. 510 (1817). *Contra*, s. 36 (*a*).
Lambert, Ex parte, 13 Ves. 179 (1794), overruled in Ex parte Swan, L. R. 6 Eq. 358 (1868).
Latour v. Ganthier, 2 L. C. L. J. 109 (1866). *Contra*, s. 131.
Lebel v. Tucker, L. R. 3 Q. B. 77 (1867), questioned in Alcock v. Smith, [1892] 1 Ch. at p. 257.
Lewis v. Clay, 67 L. J. Q. B. 224 (1897), questioned in Herdman v. Wheeler, [1902] 1 K. B. at p. 371.
Lloyd v. Chune, 2 Giffard, 441 (1860), criticized in Re Whitaker, 42 Ch. D. 125 (1889).
Lock v. Reid, 6 U. C. O. S. 295 (1842). *Contra*, s. 131; Lehigh C. S. C. Co. v. Heckler, 18 O. L. R. 615 (1908).
London and R. P. Bank v. Bank of Liverpool, [1896] 1 Q. B. 7. *Contra*, ss. 49 and 50.
McCorkill v. Barrabé, M. L. R. 1 S. C. 319 (1885). *Contra*, s. 22 (1).
McDonell v. Holgate, 2 Rev. de Lég. 29 (1818). See p. 51.
McPhee v. McPhee, 19 O. R. 603 (1890), overruled by Robertson v. Lonsdale, 21 O. R. 600 (1892).
Marenssen v. Birkbeck Bank, 57 L. R. 646 (1889), overruled by Scholfield v. Londesborough, [1896] A. C. 514.
Marler v. Molsons Bank, 23 L. C. J. 293 (1879). *Contra*, s. 127.
Merchants' Bank v. Spinney, 13 N. S. (1 R. & G. 87 (1879). *Contra*, s. 122 and Schedule.
Merchants' Bank v. Stirling, 13 N. S. (1 R. & G.) 439 (1880). *Contra*, s. 146.
Merritt v. Maxwell, 14 U. C. Q. B. 50 (1886). *Contra*, s. 5.
Montgomery v. Boucher, 14 U. C. C. P. 45 (1864), overruled by St. John v. Rykert, 10 S. C. Can. 278 (1884).
Moore v. Scott, 16 Man. 492 (1907), overruled by Union Investment Co. v. Wells, 39 S. C. Can. 615 (1908).
Musgrave v. Drake, 5 Q. B. 185 (1843), dissented from in Hogg v. Skeen, 18 C. B. N. S. 426 (1865).
Napier v. Schneider, 12 East, 420 (1810), held overruled in Re General South American Co., 7 Ch. D. 644 (1877).
Narbonne v. Tetreau, 9 L. C. J. 80 (1863). *Contra*, s. 131.
Nash v. Gibbon, 9 N. B. (4 Allen), 479 (1860). *Contra*, s. 28.
O'Connor v. Clarke, 18 Grant, 422 (1871), overruled by St. John v. Rykert, 10 S. C. Can. 278 (1884).
Owen v. Van Uster, 10 C. B. 318 (1850), distinguished in Re Barnard, 32 Ch. D. 452 (1886).

Palmer v. Fahnestock, 9 U. C. C. P. 172 (1859). *Contra*, s. 28 (*d*).
Pariseau v. Ouellet, M. C. R. 69 (1850). *Contra*, s. 131.
Parry v. Nicholson, 13 M. & W. 778 (1845), doubted in Hirschmann v. Budd, L. R. 8 Ex. 172 (1873).
Partridge v. Bank of England, 9 Q. B. 396 (1846), criticized in Goodwin v. Robarts, L. R. 10 Ex. 354 (1875).
Paterson v. Hardacre, 4 Taunt. 114 (1811), overruled by Bailey v. Bidwell, 13 M. & W. 73 (1844).
Paterson v. Pain, 1 L. C. R. 210 (1851). *Contra*, s. 131.
Piers v. Hall, 18 N. B. (2 P. & B.) 31 (1878). *Contra*, s. 131.
Pike v. Street, Moo. & M. 226 (1828), dissented from in Smith v. Squires, 13 Man. 360 (1901).
Powell v. Ford, 2 Stark. 164 (1817), disapproved of in Lewis v. Sapio, M. & M. 39 (1827).
Pratt v. Macdougall, 12 L. C. J. 243 (1868). *Contra*, s. 131.
Rea v. Meggott, Cas. temp. Hardw. 77 (1730), overruled by Lumley v. Palmer, 2 Str. 1000 (1734); Windle v. Andrews, 2 B. & A. at pp. 699, 701 (1819).
Regina v. Hawkes, 2 Moody C. C. 60 (1840), overruled by Peto v. Reynolds, 9 Ex. 415 (1854).
Richards, Re, Shenstone v. Brock, 36 Ch. D. 541 (1887), criticized in Re Whitaker, 42 Ch. D. at p. 125 (1889).
Richardson v. Daniels, 5 U. C. O. S. 671 (1838). *Contra*, s. 75 (2).
Rivet v. Leonard, 1 L. C. J. 172 (1848). *Contra*, Badeau v. Brault, 1 L. C. J. 171 (1857); Danziger v. Ritchie, 8 L. C. J. 103 (1864).
Robarts v. Tucker, 16 Q. B. 560 (1851), distinguished in Bank of England v. Vagliano, [1891] A. C. at p. 117.
Robertson v. Kensington, 4 Taunt. 30 (1811). *Contra*, s. 75 (2).
Rothschild v. Corney, 9 B. & C. 388 (1829), distinguished in London and County Bank v. Groome, 8 Q. B. D. 288 (1881).
Rothschild v. Currie, 1 Q. B. 43 (1841), questioned in Allen v. Kemble, 6 Moore P. C. 323 (1848); explained and qualified in Horne v. Rouquette, 3 Q. B. D. 521, 523 (1878).
Rowe v. Young, 2 B. & B. 165 (1820). *Contra*, 1 & 2 Geo. IV. c. 78 (Imp.) and s. 38 (4).
Savage v. Aldren, 2 Stark. 232 (1817). *Contra*, s. 75 (2).
Saxton v. Stevenson, 23 U. C. C. P. 503 (1874). *Contra*, s. 28 (*d*).
Scholey v. Walsby, Peake N. P. C. 34 (1797), doubted in Phillips v. Warren, 14 M. & W. 380 (1845).
Seymour v. Wright, 3 L. C. R. 454 (1852), overruled by Mitchell v. Browne, 9 L. C. J. 168 (1865).
Shellard, Ex parte, L. R. 17 Eq. 109 (1873), disapproved of in Buck v. Robson, 3 Q. B. D. 689 (1878).
Shepherd v. Harrison, L. R. 5 H. L. 116 (1871), distinguished in Ex parte Banner, 2 Ch. D. 278 (1875).
Sibree v. Tripp, 15 M. & W. 23 (1846), distinguished in Foakes v. Beer, 9 App. Cas. at p. 613 (1884).
Singer v. Elliott, 4 T. L. R. 524 (1888), disapproved of in Robinson v. Mann, 31 S. C. Can. 484 (1901).
Solarte v. Palmer, 1 Bing. N. C. 194 (1834), criticized in Everard v. Watson, 1 E. & B. 804 (1853); qualified in Paul v. Joel, 3 H. & N. at p. 459 (1858).
Steele v. McKinlay, 5 App. Cas. 754 (1880), distinguished in Wilkinson v. Unwin, 7 Q. B. D. 636 (1881); in Holmes v. Durkee, 1 C. & E. 25 (1883); and in Macdonald v. Whitfield, 8 App. Cas. 733 (1888).

Stoessiger v. South Eastern Railway, 3 E. & B. 549 (1854), distinguished in Reg. v. Bowerman, [1891] 1 Q. B. 112, 115.

Strange v. Price, 10 A. & E. 125 (1839), overruled by Paul v. Joel, 3 H. & N. 459 (1858).

Strathy v. Nicholls, 1 U. C. Q. B. 32 (1844), overruled by Muir v. Cameron, 10 Ibid. 356 (1852).

Strong v. Foster, 17 C. B. 201 (1855), dissented from in Ewin v. Lancaster, 6 B. & S. at p. 576 (1865).

Swinyard v. Bowles, 5 M. & S. 62 (1816), distinguished in Camidge v. Allenby, 6 B. & C. 383 (1827).

Tindal v. Brown, 1 T. R. 167 (1786), overruled in Chapman v. Keane, 3 A. & E. 197 (1835).

Tinson v. Francis, 1 Camp. 19 (1807), held overruled in Ex parte Swan, L. R. 6 Eq. 358 (1868).

Trimbey v. Vignier, 1 Bing. N. C. 151 (1834), not followed in Bradlaugh v. De Rin, L. R. 5 C. P. 473 (1870).

Trimingham v. Mund, L. R. 7 Eq. 201 (1868), disapproved in Ex parte Gomez, L. R. 10 Ch. at p. 647 (1875).

Walker v. Barnes, 5 Taunt. 240 (1813), dissented from in Siggers v. Lewis, 1 Cr. M. & R. 370 (1834).

Walwyn v. St. Quintin, 1 B. & P. 652 (1797), overruled in Cory v. Scott, 3 B. & Ald. 622 (1820).

Warrington v. Furber, 8 East, 242 (1807), distinguished in Camidge v. Allenby, 6 B. & C. 373 (1827).

West v. Bowen, 3 U. C. Q. B. 290 (1846). *Contra*, s. 22 (1).

Whatley v. Tricker, 1 Camp. 35 (1807). *Contra*, s. 142.

Wood v. Young, 14 U. C. C. P. 250 (1864). *Contra*, s. 28 (*d*).

Woolsey v. Crawford, 2 Camp. 445 (1810), held overruled in Re General South American Co., 7 Ch. D. 644 (1877).

Young v. Grote, 4 Bing. 253 (1827), questioned in Baxendale v. Bennett, 3 Q. B. D. at p. 534 (1878); overruled by Scholfield v. Londesborough, [1896] A. C. 514, and Imperial Bank v. Bank of Hamilton, [1903] A. C. 49. See Halsbury's Laws of England, vol. 3, p. 556, note (*n*).

CONCORDANCE

Shewing where the various sections of the Bills of Exchange Act, 1890, and of amending Acts, are to be found in R. S. C. c. 119.

Act of 1890, c. 33, sec.	R. S. C. c. 119, sec.
1	1.
2	2.
3	17, 27.
4	25.
5	19, 26.
6	18, 20.
7	19, 21.
8	21.
9	24.
10	30.
11	27, 29.
12	43, 44, 45.
13	46.
14	33.
15	34.
16	35, 36.
17	37.
18	31, 32.
19	39, 40, 41.
20	47, 48.
21	131, 132.
22	49.
23	51.
24	52.
25	53, 54.
26	55.
27	56, 57.
28	14, 15, 16, 58.
29	59.
30	60, 61.
31	62, 63, 64, 65.
32	67, 68.
33	66.
34	67.
35	68.
36	69, 70, 71, 72.
37	73.
38	74.
39	75, 76.
40	77.
41	78, 79.
42	80.
43	81, 82.
44	83, 84, 112.
45	85, 86, 87, 88, 89, 90.
46	91, 92.
47	93.
48	96.
49	97, 98, 99, 100, 101, 102, 103, 104, 126.
50	105, 106, 107, 108.
51	13, 110, 111, 112, 113, 114, 115, 116, 119, 120, 121, 122.
52	93, 96, 109.
53	127.
54	128, 129.
55	130, 133.
56	131.
57	134, 135, 136.
58	137, 138.
59	139, 140.
60	141.
61	142.
62	143, 144.
63	145, 146.
64	147, 148, 149, 150, 151.
65	152.
66	94, 117.
67	153, 154, 155.
68	156.
69	157.
70	158, 159.
71	12, 160, 161, 162, 163, 164.
72	165.
73	166.
74	167.
75	168.
76	169.
77	170.
78	171, 172.
79	173.
80	174.
81	175.
82	176, 177.
83	178.
84	179.
85	180, 181, 182.
86	183, 184.
87	185.
88	186, 187.
89	3.
90	4, 5.
91	2, 6.
92	118, 119.
93	11, 123, 124, 125.
94	7.
95	8, 9.

1891, c. 17, sec.	
8	10.

The other amendments are covered by the references to the sections of the Act of 1890, to which they were amendmen

ABBREVIATIONS

A. & E. ..... Adolphus and Ellis' Reports, King's Bench.
Alta. ..... Alberta Law Reports, 1908-15.
Am. Rep. ..... American Reports, State Courts.
App. Cas. ..... Appeal Cases, Law Reports, 1875-90.
Atk. ..... Atkyns' Reports, Chancery.
B. C. R. ..... British Columbia Reports.
B. N. A. Act ..... British North America Act, 1867.
B. & Ald. ..... Barnewall and Alderson's Reports, King's Bench.
B. & Ad. ..... Barnewall and Adolphus' Reports, King's Bench.
B. & B. ..... Broderip and Bingham's Reports, Common Pleas.
B. & S. ..... Best and Smith's Reports, Queen's Bench.
Barb. ..... Barbour's New York Reports.
Beav. ..... Beavan's Rolls Reports.
Bing. N. C. ..... Bingham's New Cases, Common Pleas.
Brown C. C. ..... Brown's Chancery Cases.
Burge ..... Commentaries on Colonial and Foreign Laws, 1838.
Burr. ..... Burrow's Reports, King's Bench.
Byles ..... Byles on Bills, 17th ed., 1911.
C. B. ..... Common Bench Rpts. Manning, Granger & Scott.
C. B. N. S. ..... Common Bench Reports, New Series, Scott.
C. C. ..... Civil Code of Lower Canada.
C. J. ..... Corpus Juris, Amer. Law Book Co., 1914 —
C. L. T. ..... Canadian Law Times, Occasional Notes.
C. P. D. ..... Common Pleas Division, Law Reports, 1875-90.
C. S. C. ..... Consolidated Statutes, Canada, 1859.
C. S. L. C. ..... Consolidated Statutes, Lower Canada, 1861.
C. S. N. B. ..... Consolidated Statutes, New Brunswick, 1903.
C. S. U. C. ..... Consolidated Statutes, Upper Canada, 1859.
C. & E. ..... Cababé and Ellis' Reports, Nisi Prius.
C. & J. ..... Crompton and Jervis' Reports, Exchequer.
C. & K. ..... Crompton and Kirwan's Reports, Nisi Prius.
C. & M. ..... Crompton and Meeson's Reports, Exchequer.
C. M. & R. ..... Crompton, Meeson and Roscoe's Rpts., Exchequer.
C. & P. ..... Carrington and Payne's Reports, Nisi Prius.
Camp. ..... Campbell's Reports, Nisi Prius.
Cass. ..... Court of Cassation, France.
Ch. D. ..... Chancery Division, Law Reports, 1875-90.
Chalmers ..... Bills of Exchange, 7th ed., 1909.
Car. & M. ..... Carrington and Marshman's Reports, Nisi Prius.
Cl. & F. ..... Clark and Finnelly's Reports, House of Lords.
Code de Com. .... Code de Commerce, France.
Cow. ..... Cowper's Reports, King's Bench.
Cons. Ord. N.W.T. Consolidated Ordinances, N.W. Territories, 1905.
Cranch C. C. .... Cranch's Circuit Court Reports, U.S.
Cushing ..... Cushing's Reports, Mass.
D. & L. ..... Dowling and Lowndes' Practice Reports.
D. & R. N. P. C. . Dowling and Ryland's Nisi Prius Cases.
Daniel ..... Daniel on Negot'able Instruments, 6th ed., 1913.
DeG. F. & J. .... De Gex, Fisher and Jones' Reports, Chancery.
DeG. & J. ..... De Gex and Jones' Reports, Chancery.
DeG. M. & G. ... De Gex, Macnaghten and Gordon's Reports Chancery.
DeG. & Sm. ..... De Gex and Smale's Reports, Vice-Chancellor's.
Dorion ..... Dorion's Queen's Bench Reports, Montreal.
Dougl. ..... Douglas' Reports, King's Bench.
Dra. ..... Draper's Upper Canada Reports.
E. & B. ..... Ellis and Blackburn's Reports, Queen's Bench.
E. B. & E. ..... Ellis, Blackburn and Ellis' Reports, Queen's Bench.

E. & E. ..... Ellis and Ellis' Reports, Queen's Bench.
E. L. R. ..... Eastern Law Reporter, 1905-15.
Esp. ..... Espinasse's Reports, Nisi Prius.
Ex. ..... Exchequer Reports, Wel-by, Hurlstone and Gordon.
Ex. D. ..... Exchequer Division, Law Reports, 1875-90.
F. & F. ..... Foster and Finlayson's Reports, Nisi Prius.
Fed. Rep. ..... Federal Reporter, U. S. Circuit and District.
Forsyth ..... Forsyth's Constitutional Law, 1869.
G. & O. ..... Geldert and Oxley's Reports, Nova Scotia.
Grant ..... Chancery Reports U. C. and Ontario.
H. Bl. ..... Henry Blackstone's Reports, Common Pleas.
H. L. Cas. ..... House of Lords Cases, by Clark.
H. & C. ..... Hurlstone and Coltman's Reports, Exchequer.
H. & N. ..... Hurlstone and Norman's Reports, Exchequer.
Halsbury ..... Halsbury's Laws of England, 1908-15.
Han. ..... Hannay's Reports, New Brunswick.
Holt N. P. ..... Holt's Nisi Prius Reports.
How ..... Howard's Reports, U. S. Supreme Court.
Ill. ..... Illinois Reports.
Imp. Act ..... Hills of Exchange Act, 1882 (45 and 46 V. c. 61).
Ir. L. R. ..... Irish Law Reports, Common Law.
Jac. & W. ..... Jacob and Walker's Reports, Chancery.
Johns. ..... Johnson's Reports, New York.
Jur. N. S. ..... Jurist (English), New Series.
L. C. J. ..... Lower Canada Jurist.
L. C. L. J. ..... Lower Canada Law Journal.
L. C. R. ..... Lower Canada Reports.
L. J. C. P. ..... Law Journal (English), Common Pleas.
L. J. Ch. ..... Law Journal (English), Chancery.
L. J. Ex. ..... Law Journal (English), Exchequer.
L. J. Q. B. ..... Law Journal (English), Queen's Bench.
L. N. ..... Legal News, Montreal.
L. R. C. C. ..... Law Reports (1865-75), Crown Cases Reserved.
L. R. C. P. ..... Law Reports (1865-75), Common Pleas.
L. R. Ch. ..... Law Reports (1865-75), Chancery Appeals.
L. R. E. & I. App. Law Reports (1865-75), English and Irish Appeals.
L. R. Eq. ..... Law Reports (1865-75), Equity Cases.
L. " " ..... Law Reports (1865-75), Exchequer.
L. " L. ..... Law Reports (1865-75), House of Lords.
L. R. P. C. ..... Law Reports (1865-75), Privy Council.
L. T. N. S. ..... Law Times (English), New Series.
La. Ann. ..... Louisiana Annual Reports.
Ld. Raym. ..... Lord Raymond's Reports.
Leake ..... Leake on Contracts, Can. ed., 1911.
M. C. R. ..... Montreal Condensed Reports.
M. L. R. —Q.B. Montreal Law Reports, Queen's Bench.
M. L. R.—S. C. Montreal Law Reports, Superior Court.
M. & G. ..... Manning and Granger's Reports, Common Pleas.
M. & M. ..... Moody and Malkin's Reports, Nisi Prius.
M. & R. ..... Manning and Ryland's Reports, King's Bench.
M. & Rob. ..... Moody and Robinson's Reports, Nisi Prius.
M. & S. ..... Maule and Selwyn's Reports, King's Bench.
M. & W. ..... Meeson and Welsby's Reports, Exchequer.
Macq. H. L. .... Macqueen's House of Lords Reports, Scotch.
Man. ..... Manitoba Law Reports.
Mass. ..... Massachusetts Reports.
Me. ..... Maine Reports.
Mete. ..... Metcalf's Reports, Mass.
Mich. ..... Michigan Reports.
Mo. App. ..... Missouri Appeal Reports.
Mod. ..... Modern Reports, 1669-1755.
Moore & S. ..... Moore and Scott's Reports, Common Pleas.
N. B. ..... New Brunswick Reports.
N. H. ..... New Hampshire Reports.
N. J. ..... New Jersey Reports.

N. S. ..... Nova Scotia Reports.
N. S. W. R. .... New South Wales Reports.
N. W. T. ..... Supreme Court Reports, North-West Territories.
N. Y. ..... New York Reports.
N. & M. ..... Neville and Manning's Reports, King's Bench.
Nouguier ..... Nouguier, Lettres de Change, 4th ed., 1875.
N. Z. L. R. ..... New Zealand Law Reports.
O. R. ..... Ontario Reports, 1882-1900.
O. L. R. ..... Ontario Law Reports, 1901-15.
O. W. N. ..... Ontario Weekly Notes, 1910-15.
O. W. R. ..... Ontario Weekly Reporter, 1902-15.
Ohio St. ..... Ohio State Reports.
Ont. A. R. ..... Ontario Appeal Reports, 1878-1900.
Ont. P. R. ..... Ontario Practice Reports.
P. & B. ..... Pugsley and Burbidge's Reports, New Brunswick.
P. & D. ..... Perry and Davison's Reports, Queen's Bench.
Penn. St. ..... Pennsylvania State Reports.
Pet. ..... Peters' Reports, Supreme Court, U. S.
Pick. ..... Pickering's Reports, Mass.
Pothier ..... Pothier, Traité du Contrat de Change.
Pugs. ..... Pugsley's Reports, New Brunswick.
Q. B. ..... Queen's Bench Reports, Adolphus and Ellis, N.S.
Q. B. D. ..... Queen's Bench Division, Law Reports, 1875-90.
Q. L. R. ..... Quebec Law Reports.
Q. R.—Q. B. .... Quebec Reports (Rapports Judiciaires de Quebec) —Queen's Bench.
Q. R.—K. B. .... Ibid—King's Bench.
Q. R.—S. C. .... Ibid—Superior Court.
R. ..... The Reports (English), 1893-95.
R. C. ..... Revue Critique, Montreal.
R. J. ..... Revue de Jurisprudence, Montreal.
R. I. ..... Rhode Island Reports.
R. L. ..... Revue Legale, Montreal.
R. S. B. C. ..... Revised Statutes of British Columbia, 1911.
R. S. C. ..... Revised Statutes of Canada, 1906.
R. S. Man. ..... Revised Statutes of Manitoba, 1913.
R. S. N. B. ..... Revised Statutes of New Brunswick, 1903.
R. S. N. S. ..... Revised Statutes of Nova Scotia, 1900.
R. S. O. ..... Revised Statutes of Ontario, 1914.
R. S. Sask. ..... Revised Statutes of Saskatchewan, 1909.
R. S. Q. ..... Revised Statutes of Quebec, 1909.
R. & C. ..... Russell and Chesley's Reports, N.S.
R. & G. ..... Russell and Geldert's Reports, N.S.
R. & M. ..... Ryan and Moody's Reports, Nisi Prius.
R. & R. ..... Russell and Ryan's Crown Cases Reserved.
Ramsay A. C. ... Ramsay's Appeal Cases, Montreal.
Randolph ..... Randolph on Commercial Paper, 1886-8.
Rev. d Lég. ..... Revue de Législation, Montreal.
Rob. & Jos. Dig.... Robinson and Joseph's Ontario Digest.
Ry & M. ..... Ryan and Moody's Reports.
S. C. Can. ..... Reports of the Supreme Court, Canada.
Salk. ..... Salkeld's Reports, King's Bench.
Sandf. ..... Sandford's S. C. Reports, N. Y.
Sask. ..... Saskatchewan Law Reports, 1908-15.
Scho. & Lef. ..... Schoales and Lefroy's Irish Chancery Reports.
Sess. Cas. ..... New Court of Session Cases, Scotland.
Serg. & R. ..... Sergeant and Rawle's Reports, Pennsylvania.
Show. ..... Shower's Reports, House of Lords.
Sm. & G. ..... Smale and Giffard's Reports, Vice-Chancellor's.
Stark. ..... Starkie's Reports, Nisi Prius
Str. ..... Strange's Reports, English.
T. L. R. ..... London Times Law Reports.
T. R. ..... Term Reports, Durnford and East, K.B.
Taunt. ..... Taunton's Reports, Common Pleas.
Taylor ..... Taylor on Evidence, 10th ed., 1906.

Terr. L. R.	N. W. Territories Law Reports, 1885-1907.
Thom.	Thomson's Reports, Nova Scotia.
Tyr.	Tyrwhitt's Reports, Exchequer.
U. C. C. P.	Upper Canada Common Pleas Reports.
U. C. L. J.	Upper Canada Law Journal.
U. C. O. S.	Upper Canada Reports, Old Series.
U. C. P. R.	Upper Canada Practice Reports.
U. C. Q. B.	Upper Canada Queen's Bench Reports.
U. S.	Reports Supreme Court, United States.
V. L. R.	Victoria Law Reports.
Ves.	Vesey Jr.'s Chancery Reports.
Vt.	Vermont Reports.
W. L. R.	Western Law Reporter, 1905-9.
W. N.	Weekly Notes, Law Reports, 1866-15.
W. W. R.	Western Weekly Reports, 1911-15.
Wall.	Wallace's Reports, United States Supreme Court.
Wend.	Wendell's Reports, N. Y.
Westlake	Westlake on International Law, 5th ed., 1905.
Wheat.	Wheaton's Reports, United States Supreme Court.
Y. & C.	Younge and Collyer's Reports.
[1	A. C. Law Reports (1891-1915), Appeal Cases.
[1	Ch. Law Reports (1891-1915), Chancery Division.
[1	Q. B. Law Reports (1891-1901), Queen's Bench Division.
[19	K. B. Law Reports (1901-1915), King's Bench Division.

CORRIGENDA

Page 50, line 28, for "R. S. C., c. 27" read "5 G. V., c. 4.

Page 91, line 24, for "R. S. C., c. 29" read "3-4 G. V., c. 9."

Page 105, line 11, for "Mamman" read "Hamman."

Page 233, line 5, for "Green" read "Yuen."

Page 317, line 12, for "R. S. O." read "R. S. C."

Page 361, line 14, for "2210 and 2211" read "2340 and 2341."

Page 451, line 38, for "Meecham" read "Beecham."

Page 470, line 19, add "also of the Appellate Division, Alberta, in Hayden National Bank v. Dixon, 33 W. L. R. 838 (1916)."

BILLS OF EXCHANGE ACT.

REVISED STATUTES OF CANADA, 1906.

Chapter 119.

An Act relating to Bills of Exchange, Cheques and Promissory Notes.

(Came into force January 31st, 1907.)

Dominion legislation.

BY the British North America Act, section 92, sub-section 18, the right to legislate respecting Bills of Exchange and Promissory Notes was assigned exclusively to the Dominion Parliament. So sparingly, however, had this power been exercised during the first nineteen years of Confederation, that when the Statutes were revised and consolidated in 1886, the whole of the Dominion legislation on the subject was comprised in ten short sections of chapter 123. The remaining twenty sections are made up of provincial enactments passed before Confederation, which were as a rule applicable only to a single province. Apart from that chapter, the only Canadian legislation on the subject in force in any part of the Dominion was: (1) two short chapters of the Civil Code of Quebec, (2) a single section in the Revised Statutes of Nova Scotia, (3) two sections in the Statutes of New Brunswick—all of which, except two Articles of the Code relating to evidence, are repealed by the present Act; and (4) such provisions in the criminal statutes and those relating to procedure in the provincial courts as refer to actions on bills and notes, which latter are not affected by the Act.

A cheque being a bill of exchange drawn on a bank, payable on demand, as defined by section 165 of the Act, falls under the authority of the Dominion Parliament, especially as the subject of banking is also within its exclusive jurisdiction. Previous legislation respecting cheques was still more meagre, being almost wholly confined to the short chapter on the subject in the Civil Code and the references to these instruments in the Criminal Statutes.

A code.

The Bills of Exchange Act, 1890, was really a codification of the law, although this idea was not expressed in its title, as is the case in the English Act from which it was copied, the title adopted being the same as that of chapter 123 of the Revised Statutes of Canada, with the addition of the single word "cheques."

Provincial subjects.

Although the Act treated directly only of Bills, Notes and Cheques, which are clearly within the jurisdiction of the Dominion Parliament, under section 91 of the British North America Act, it also touched and affected matters within the exclusive jurisdiction of the local legislatures. Mention need only be made of such subjects as the capacity of persons, and of corporations, the law of contracts, of agency, of partnership, of suretyship, of evidence, and the procedure in the provincial civil courts. There are also other matters indirectly affected, which come chiefly under the head of "Property and Civil Rights" and "the Administration of Justice."

The validity of similar Dominion legislation has been questioned from time to time, but it is well settled that the power to legislate conferred by section 91 of the British North America Act may be fully exercised, although the effect may be to modify civil rights in the province, or otherwise interfere with subjects assigned to the provinces by section 92. See Cushing v. Dupuy, 5 App. Cas. at p. 415; Tennant v. Union Bank, [1894] A. C. at p. 47; and Atty.-Gen. for Ontario v. Atty.-Gen. for the Dominion, [1896] A. C. at p. 360.

Bill of 1889.

The Bill which subsequently became law in the form of the Act of 1890, was first introduced by the Minister of Justice in the House of Commons in the session of 1889, in the following terms: "The object of this Bill is to render uniform in almost every particular the laws throughout the

Dominion with respect to these contracts. The law under this Bill will be uniform in every particular, except as regards statutory holidays, in respect of which special provision is to be made as regards the Province of Quebec. I may say that the Bill is principally the codification of the existing law relating to Bills, Cheques and Promissory Notes, and that the changes which are made in our law on these subjects are in the direction of making it uniform with the English Statute law."—Commons Debates, 1889, p. 14. As first submitted, it was almost an exact transcript of the Imperial Bills of Exchange Act, 1882, 45 and 46 V. c. 61, the full title of which is "An Act to codify the law relating to Bills of Exchange, Cheques and Promissory Notes." The changes proposed at that time were restricted almost entirely to substituting "Canada" for "the United Kingdom" wherever the latter words occurred in the Act, and the insertion of the numerous holidays of the different provinces for the comparatively few holidays recognized in England.

Bill of 1890.

The Bill was partially considered by the House of Commons in 1889, and various suggestions and recommendations were made during the session, and during the following recess by private individuals and commercial bodies. As a result, the Bill was re-introduced in 1890 with a number of modifications. Still further changes were made in both Houses of Parliament, most of these being in the direction of retaining special provisions of the law formerly recognized in Canada or in some of the provinces, and substituting these in the Bill for certain clauses of the Imperial Act which were embodied in the first draft.

Imperial Act.

The Bills of Exchange Act, 1882, is of special interest as being the first instance of the codification by the Imperial Parliament of any portion of the civil law. The experiment has been an unqualified success, and no greater tribute could be paid to those who prepared the bill and successfully piloted it through both Houses, than the mere mention of the fact that although it has now been in force for more than thirty-three years, only a single minor amendment has been found to be necessary, 6 E. VII., c. 17, relating to crossed cheques. The amount of litigation which has arisen over it has been relatively small, and it has been very favorably received by

the English Judges, some of whom were not disposed to look with much approval upon the idea of a code.

Canadian Act.

The changes which were made in the Canadian Bill in its passage through Parliament tended not only to lessen its similarity to the Imperial Act as above stated, but some of them also interfered with the uniformity of the law throughout the Dominion, which was stated to be its chief object. Examples of the former are found in the legislation regarding bills payable at sight, and as to the payment by banks of demand drafts on them, when the endorsement is forged; and of the latter, in the special provisions regarding the protest of inland bills in Quebec, and the retention of the provincial tariffs for notarial services. These and other changes of a like nature will be more specially noticed when considering the particular sections affected.

No uniform rule.

But probably the change which would have interfered most seriously with the uniformity of the law, and which would have brought about great diversity in the jurisprudence of the respective provinces, was the omission from the Act of a clause that stood in the original bill as section 97, and which was struck out in the Senate.—Senate Debates, 1890, p. 467. It was a reproduction of section 97, sub-section 2, of the Imperial Act, and read as follows: "The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes and cheques." All the Dominion Statutes in force at the passing of the Act, as well as all the subsisting provincial Statutes on the subject passed prior to Confederation, with the unimportant exceptions above mentioned, having been repealed by section 95, recourse would have been had in unprovided for cases in the several provinces, to the law as there originally introduced, in so far as it might be applicable, and where this failed, to the law in the respective provinces, which by analogy might serve as a rule in each particular case. The Act is no doubt a comparatively complete code of the law upon the subject, but a number of cases unprovided for will be pointed out in the course of the following notes, and others no doubt will arise.

The absence of any uniform rule or standard for the decision of these cases would no doubt have led to considerable diversity in the jurisprudence. In all the provinces except Quebec the English law was that which was originally introduced. It was introduced, however, at different dates, so that English Statutes which were thus in force in some provinces were not in others. The French commercial law in force in Quebec, it is true, had much more in common with that of England than had other branches of the civil law. Both were based on the law merchant, and upon the usages and customs of merchants, who were much more cosmopolitan in their ideas than the legislators or Judges who framed or settled the laws of these countries. The course of provincial legislation also tended to similarity. The provisions of the successive English Statutes on the subject were frequently re-enacted by the provinces, including Lower Canada. Notwithstanding these circumstances a glance at the jurisprudence, as it is recorded in the provincial reports, and as it will be briefly noted in the following pages, will show that there has been a wider divergence in the decisions of the Courts in the different provinces than might have been expected from the similarity of the statute law. Diversity.

The desire to render the law throughout the Dominion as nearly uniform as possible, which was one of the leading objects of the Act, no doubt influenced Parliament to restore the clause which had been dropped from the Bill in 1890, and it was made retroactive in its effect, thus avoiding even a temporary divergence in jurisprudence. In all cases not specially provided for by the Act, recourse will consequently be had in all the provinces to the common law of England and the law merchant, instead of to the law of France in Quebec or to that of England at varying dates in the other provinces, as would have been the case under the Act of 1890: 54-55 V. c. 17, s. 8; R. S. C. c. 119, s. 10. Common law.

The present Act is a revision or consolidation of the Act of 1890, and the amending Acts of 1891, 1893, 1894, 1897, 1901 and 1902. By the Act of 1903, which provided for the revision, the Commissioners, in consolidating the statutes and incorporating subsequent or amending Acts, were authorized to make such alterations in their language as Revised Act.

were requisite in order to preserve a uniform mode of expression, and to make such minor amendments as were necessary to bring out more clearly what they deemed to be the intention of Parliament, or to reconcile seemingly inconsistent enactments, or to correct clerical or typographical errors. Also the Revised Statutes were not to operate as new laws, but to be construed and have effect as a consolidation and as declaratory of the law as contained in the old Statutes, and for which they were to be substituted. But if upon any point they were not the same as the old Acts, then as to all matters subsequent to the time of their coming into force, their provisions were to prevail.

Not new laws.

By section 21 of the Interpretation Act, R. S. C. c. 1, it is not to be presumed that any construction which has been placed by judicial decision or otherwise, upon the language used in the old Act, has been adopted on account of the use of the same or similar language in the Revised Statute.

Revised Act.

In revising the Bills of Exchange Act, the revisers not only consolidated the Act of 1890, and the various amending Acts above noted, but largely recast the whole work. The 95 sections of the original Act and section 8 of the amending Act of 1891, which was the only new section introducing a substantive amendment, were in the revision subdivided into 187 sections, thus practically d[illegible] the number of sections. The order of sequence was also large[illegible] changed.

The Imperial Act of 1882 was copied without change by nearly all the British colonies, retaining the same numbering of the sections. In our Act of 1890, although a number of changes were made, as pointed out elsewhere, the numbers of the sections corresponded up to section 60. On account of the omission of that section, the numbers of the succeeding sections were each one below that of the corresponding section in the Imperial Act. In reading the reports of English or colonial cases, one could thus at once tell what section of our Act corresponded to the section named in any of these reports.

Since the revision of 1905 it is impossible in reading these reports, or any of our own reports as to transactions between 1890 and 1907, to tell readily what section of our new Act may correspond to any section that may be referred to. In order to assist in minimizing this difficulty, a table has been

prepared and appea. in the earlier part of this work, showing where the v rious sections of the old Acts are to be found in the revision.

The substitution of "endorse" for "indorse" in that verb and its derivatives, and some other minor changes, as pointed out elsewhere, were also made, apparently without taking into account the inconvenience that would result from such changes without countervailing advantages.

Cases under old law.

In the course of the following notes upon the various sections of the Act, a number of cases decided before 1890 will be cited which in whole or in part may be no longer law. This fact will be indicated, and they are cited partly for the purpose of pointing out that they are no longer law, and to prevent them being quoted as authorities.

In order to facilitate a comparison of this jurisprudence with the course of legislation, the dates of the various decisions will be given. A concise summary of the more salient points in the history of the law in the different provinces is also here given, which, it is hoped, will be found to be sufficiently full and exact for the purpose above stated.

French law.

Quebec.—The French commercial law, introduced with the Coutume de Paris on the establishment of the Conseil Superieur in 1663, as modified by subsequent enactments and decisions, and which was the law merchant, and substantially the same as the commercial law of England of the same period, regulated the bills and notes of the colony, until the conquest in 1760. The French Commercial Ordinance of March, 1673, has been generally held not to have been in force in the province on account of its not having been registered at Quebec: Merritt v. Lynch, 3 L. C. J. 276; 9 L. C. R. 353 (1859). The admirable treatise of Pothier on the subject, Contrat de Change, cannot consequently be accepted as an authority without question where the ordinance may have made a change in the older law. See the Seventh Report of the Commissioners on the Civil Code of Lower Canada, page 216.

Proclamation of 1763.

As to whether the law in force in Quebec between 1763 and 1774 was English or French, has been a matter of controversy. By the Proclamation of G. III. of the 7th of

October, 1763, the Government of Quebec was constituted, embracing the present Province of Quebec and the eastern part of Ontario: the people to have the "enjoyment of the benefit of the laws of England," and the Courts to decide "all cases according to law and equity, and, as near as may be, agreeable to the laws of England." The validity of this Proclamation as a legislative act has been questioned, but it was affirmed by a unanimous judgment of the Court of King's Bench, delivered by Lord Mansfield: Campbell v. Hall, Cowper, 204 (1774); Lofft, 655. It has also been recognized by the Privy Council: Lyons v. East India Co., 1 Moore 272 (1836); and by the House of Lords: Whicker v. Hume, 7 H. L. Cas. 150 (1858). See Anderson v. Todd, 2 U. C. Q. B. at p. 84 (1845); Stuart v. Bowman, 2 L. C. R. 369 (1851); in appeal, 3 L. C. R. 309 (1853); 2 L. C. J. Appendix No. 2; Wilcox v. Wilcox, 2 L. C. J. 1 (1857); Atty.-Gen. v. Stewart, 2 Merivale, 143 (1817); Jephson v. Riera, 3 Knapp, 152 (1835); Cameron v. Kyte, ibid. 346 (1835); Beamont v. Barrett, 1 Moore P. C. 272 (1836). The majority of the Judges in these Lower Canada cases held that the English law was not introduced into the province during the period in question. As a matter of fact, the Courts during that period administered the English law in commercial cases; Wilcox v. Wilcox, at p. 11.

By the Quebec Act of 1774, 14 G. III. c. 83 (Imp.), the limits of the province were extended westward, the proclamation of 1763 was revoked, and it was ordered that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada. This restored the French commercial law, with such modifications as had been introduced into Canada.

Provincial legislation.

In 1777 an Ordinance was passed by the Governor and council of the province regulating the protesting of bills, and the damages, interest and fees thereon: 17 G. III. c. 3. Another Ordinance passed in 1785, 25 G. III. c. 2, provided by Art. 10 that, "in proof of all facts concerning commercial matters, recourse shall be had, in all the Courts of civil jurisdiction in the province, to the rules of evidence laid down by the laws of England." In 1793 a statute was passed to facilitate the negotiation of promissory notes: 34 G. III. c. 2.

In the Act of 1849, 12 V. c. 22, for the first time a general law on the subject was enacted, embodying provisions that up to that time had existed in custom alone. This statute, passed by the Parliament of United Canada, does not purport to be for Lower Canada alone, but it has been decided that it did not apply to Upper Canada: Ridout v. Manning, 7 U. C. Q. B., 35 (1849). It was embodied in the Consolidated Statutes for Lower Canada as chapter 64, and most of its provisions subsequently appeared in the Civil Code. The Act itself was largely taken from the English law and usages, and by section 30, in all cases not provided for, recourse was to be had to the laws of England as they stood at the date of its passage, viz., May 30th, 1849, a provision that was retained in the Civil Code as Art. 2340. This has been held to apply only to the form, negotiability and proof of bills and notes, and not to matters of civil obligation resulting from the contract: Guy v. Paré, Q. R. 1 S. C. 443 (1892). The short Act of the following year, 13-14 V. c. 23, applied to both Upper and Lower Canada, and became chapter 57 of the Consolidated Statutes of Canada. It related chiefly to the protesting of bills and notes. Provincial legislation.

The Civil Code, which came into force on the 1st of August, 1866, contained 76 articles (2279 to 2354) on the subject of bills, notes and cheques. In framing these articles the codifiers drew largely from English sources, and this, with articles 2340 and 2341 adopting the English law and the English rules of evidence, tended to assimilate the law of Quebec on this subject to that of England, and thereby to that of the other provinces. The Code, modified in a few particulars by Dominion legislation, continued to be the law of Quebec on the subject until it was repealed by section 95 of the Act of 1890, with the exception of the two articles that relate to evidence, viz., 2341 and 2342: See Second Schedule. Civil Code.

Ontario.—What is now the Province of Ontario formed a part of Quebec until 1791. It was subject to the same laws, viz., the French law as modified by Canadian ordinances up to 1760, then military rule to the peace of 1763, English law after the proclamation of October, 1763, and French and Canadian law again after the 1st of May, 1775. The first Parliament of the new province of Upper Canada, which English law.

met at Niagara on the 17th of September, 1792, by its first Act, 32 G. III. c. 1, repealed that part of the Quebec Act relating to the laws of Canada, and provided that in all matters of controversy relative to property and civil rights, resort should be had to the laws of England as the rule for the decision of the same, that is, as they stood at that date.

Provincial legislation.

In 1811 the Quebec Ordinance of 1777 regulating protests above referred to, was repealed by 51 G. III. c. 9. The principal Acts relating to bills and notes were the following: 2 G. IV. c. 12, declaring that the Imperial Acts 15 & 17 G. III., respecting small notes, should not apply to Upper Canada; 5 Wm. IV. c. 1, facilitating actions on bills and notes; 7 Wm. IV. c. 5, requiring acceptances to be in writing, and making an acceptance at a particular place general unless the words "only and not otherwise or elsewhere" were added; 12 V. c. 76, regulating protests and damages; 14-15 V. c. 94, as to days of grace and holidays; and 19 V. c. 43, as to actions on lost bills and notes. These, with some others, were embodied in the Consolidated Statutes of Upper Canada of 1859, c. 42; and those sections which had not been previously altered by Dominion legislation formed sections 15 to 25 of chapter 123 of the Revised Statutes of Canada, 1886, but they continued to be applicable to Ontario alone.

English law.

Nova Scotia.—This province is considered to have become a British colony by discovery and settlement; and the date of its settlement is generally given as immediate[illegible]ing its discovery by Cabot in 1497: 1 Burge's Colonial Law, p. xxxiv.; Forsyth's Constitutional Law, p. 26. The first actual settlement was under the grant to Sir William Alexander in 1621. It subsequently passed into the hands of the French, who abandoned their claim by the Treaty of Utrecht in 1713. Even after this there was a conflict of possession, but it was finally confirmed to England by the Treaty of Paris in 1763. A country re-conquered from an enemy reverts to the same state that it was in before the conquest: Gumbe's case, 3 Knapp, 369 (1834). Having become a colony by settlement, the laws originally in force in Nova Scotia would be the common law of England with the statutes passed before its settlement, in so far as they were applicable to the condition of the people: Uniacke v. Dickson, 2 N. S. (James) at p. 300

(1848). The time usually fixed upon in such cases as the date when ordinary imperial legislation ceases to apply, is when the new colony first has a law-making body of its own. With respect to Nova Scotia, this date has not been authoritatively determined, some placing it as early as 1622, when Sir William Alexander made the first settlement, others placing it at various later dates.

From 1713 to 1758, the Government consisted of a Governor and a council, which undertook as a legislative body to pass ordinances. In 1755 the Chief Justice of the province held that they had no such power without an assembly, and this opinion was confirmed by the law officers of the Crown in England. The first General Assembly met at Halifax on the 3rd of October, 1758, and this would seem to be the latest date at which general British Statutes not specially applicable to it or the other colonies would apply: Doran v. Chambers, 20 N. S. at p. 311 (1887); Forsyth, p. 19.

Cape Breton is also claimed to have been a British colony from 1497 for the same reasons: 1 Burge, xxxiv. By the Treaty of Utrecht, however, it was retained by France. Conquered in 1758, it was confirmed to England by the Treaty of Paris; and, by the proclamation of October 7th, 1763, it was annexed to Nova Scotia, and the laws of England made applicable. It was separated in 1784, and reunited to Nova Scotia in 1820; Re Cape Breton, 5 Moore P. C. 259 (1846). By the Provincial Act, 1 & 2 G. IV. c. 5, the laws of Nova Scotia were extended to Cape Breton.

Provincial legislation.

Like most of the other colonies, the first Act passed by the Nova Scotia Assembly regarding bills of exchange was to regulate protests and the damages on dishonored bills, and this was done at the first session of 1758. The provincial legislation on the subject was very meagre, and at Confederation the whole of the statute law, apart from that relating to procedure in the Courts, was comprised in three short sections of chapter 82, Revised Statutes, as amended in 1865, relating respectively to (1) damages on protested bills, (2) the transfer and indorsement of promissory notes, and (3) requiring the acceptance of a bill to be in writing upon it. Notes for sums payable otherwise than in money were pre-

sumed to be for value, and recognized as promissory notes, but were not negotiable. These last have not been dealt with in the present Act, or in any other Dominion legislation, as they are not considered promissory notes within the meaning of the British North America Act.

The provincial Act making promissory notes assignable and indorsable like inland bills of exchange, and allowing the payee, indorsee, or holder to sue in his own name, was passed in 1768: 8 G. III. c. 2. This was substantially a re-enactment of the English Act, 3 & 4 Anne, c. 9. From this it would appear that the Local Assembly was of opinion that the Imperial Act was not in force in the colony.

It is possible that in Nova Scotia the period of the restoration of Charles II. was adopted as the date at which English Statutes generally should cease to apply, as is said by Judge Chipman in The King v. McLaughlin, quoted below, to have been the case in New Brunswick. The statute requiring the acceptance of a bill of exchange to be in writing on the bill was passed in 1865.

English law.

New Brunswick.—This province was a part of Nova Scotia until 1785; but all Nova Scotia statutes passed previous to that date were repealed in 1790, in so far as they affected the new province. As to English law and statutes, the rule would be the same as that applicable to Nova Scotia. The question was discussed in The King v. McLaughlin, an unreported case decided in 1830, quoted in Cassels' "Procedure in the Supreme and Exchequer Courts," at page 30, from which the following extracts are taken. Saunders, C.J., said that "the colony was not to be considered as either a conquered or a ceded country, and therefore the colonists at the time it was settled brought with them such parts of the common law of England as were applicable to their condition." Bliss, J., was of the same opinion, and Botsford, J., said he "never considered Nova Scotia, of which New Brunswick was a part, in the light of a conquered country. The British right to it was founded on discovery, and was always so maintained; and the grant to Sir William Alexander, in 1620, was founded on this right of discovery; therefore the English common law and all statutes in amendment of the common law passed anterior to the settlement of the colony

were in force." Chipman, J., considered the true principle to be as laid down by Lord Mansfield in Lindo v. Lord Rodney, that each colony at its settlement "took with it the common law and all the statute law applicable to its colonial condition. It might not be a clear point as to what period of time should be deemed the time of the settlement of that colony; the period of the restoration of Charles II., it was understood, was adopted in practice by the General Assembly of the province at its first session as the period anterior to which all Acts of Parliament should be c...sidered as extending, and the reason which had been given for this was that it was about the time of the restoration that the plantations began to be specially mentioned in Acts of Parliament, and the inference therefrom was that if any Act after that period was intended to extend to the plantations it would be so expressed."

Provincial legislation.

The provincial legislation on the subject of bills and notes was almost identical with that of Nova Scotia. Here also the statute of Anne was re-enacted at the first session held on the 3rd of January, 1786; 26 G. III. c. 23. The Act requiring the acceptance of a bill of exchange to be in writing on the bill was passed in 1836; 6 Wm. IV. c. 19. The law in force at the time of Confederation was to be found in 1 R. S. Title xxx. c. 116, as amended by 22 V. c. 22, and 30 V. c. 34. See C. S. N. B., pp. 1064-5.

English law.

Prince Edward Island.—This province is also claimed to have been a colony by settlement, dating from 1497, when it was discovered by Cabot: 1 Burge, xxxiv.; Forsyth, p. 26. It was, however, colonized by the French, but ceded to England by the treaty of Paris, and subsequently annexed to Nova Scotia by the proclamation of October 7th, 1763, when the laws of England at that date were made applicable to it. After being connected with Nova Scotia for some years it was made a separate colony in 1769, and its first Assembly convened in 1773.

Provincial legislation.

One of the first Acts of the Legislature was to fix the damages on protested bills; 13 G. III. c. 5. In 1836 an Act was passed to regulate the transfer of notes payable in Treasury notes: 6 Wm. IV. c. 3. In 1861 certain bills and notes were exempted from the usury laws: 24 Vict. c. 28.

The Act of 1864, 27 V. c. 6, declared the acceptance of a bill at a particular place to be general unless accepted there "only and not otherwise and elsewhere." It also required all acceptances to be in writing on the bill, and provided a remedy on lost bills and notes. These were the principal provincial Acts in force on the 1st of July, 1873, when Prince Edward Island became a part of the Dominion of Canada.

English law.

Manitoba.—There has been a conflict of decisions as to the law regulating bills and notes in this province. It formed a part of the territory of the Hudson's Bay Company under its charter of May 2nd, 1670. As the company was given the power "to make laws, constitutions, and ordinances," which were to be binding within its territories, subsequent English statutes would not be in force there unless specially made applicable to these territories or to the other colonies similarly situated: Connolly v. Woolrich, 11 L. C. J. 197 (1867). It does not appear that any laws or ordinances were made affecting bills or notes either by the company or by the Council of Assiniboia, which for some time before the union with Canada had jurisdiction over the central part of what is now the Province of Manitoba. With the rest of the Hudson's Bay territory it was purchased by Canada in 1869 and became a part of the Dominion on the 15th of July, 1870, under the Imperial order in council of June 23rd, 1870.

Jurisprudence.

On the 8th of October, 1883, in the case of the Canadian Bank of Commerce v. Adamson, 1 Man. 3, it was held by Justice Dubuc that the English Bills of Exchange Act, 19 & 20 V. c. 97, was in force in that part of the province formerly Assiniboia by virtue of the Ordinance of 1864, which he held introduced the English law of that date. A few days later, October 16th, Mr. Justice Taylor laid down the rule that the laws of England as of May 2nd, 1670, the date of the Hudson's Bay Company's charter, were in force until April 11th, 1862, when the laws of England as at Her Majesty's accession (June 20th, 1837) were brought in by local ordinance of the Council of Assiniboia; and that by another ordinance of January 8th, 1864, the laws of England as of that date were introduced: Keating v. Moises, 2 Man. 47 (1883). Mr. Justice Killam subsequently held that these ordinances merely introduced the English procedure in the local Courts, and that the general

statute law of England subsequent to the date of the Hudson's Bay Company's charter was not in force: Sinclair v. Mulligan, 3 Man. 481 (1886). This view was subsequently upheld by the full Court, Chief Justice Taylor adopting the view of Mr. Justice Killam: Sinclair v. Mulligan, 5 Man. 17 (1888).

In the case of the Merchants' Bank v. Mulvey, 6 Man. 467 (1890), Mr. Justice Dubuc held that although the English Statute, 3 & 4 Anne, c. 9, which made promissory notes transferable by indorsement, and gave the holder the right to sue in his own name, was not in force in Manitoba under the rule laid down in Sinclair v. Mulligan, yet the bank as holder of a note to order indorsed to it could recover on two grounds: (1) the Manitoba Statute, 38 V. c. 12, which introduced the English law, brought in the statute of Anne, in so far as it related to procedure and (2) the Dominion Banking Act of 1871 gave plaintiff the right to carry on the business of discounting notes. Under the authority of Goodwin v. Robarts, L. R. 10 Ex. 337 (1875), however, promissory notes would always have been negotiable in Manitoba, and private holders as well as banks could sue. Chief Justice Cockburn there held that the statute of Anne was declaratory of what was the law before it was changed by Lord Holt. The series of Lord Holt's decisions which the statute was passed to override extended from Clerke v. Martin, 2 Ld. Raym. 757 (1702) to Buller v. Crips, 6 Mod. 30 (1703), the first of them being more than 30 years subsequent to the Hudson's Bay Company's charter. Jurisprudence.

British Columbia.—The laws of England as they existed on November the 19th, 1858, were introduced into this province: R. S. B. C. c. 75; Reynolds v. Vaughan, 1 B. C. R. 3 (1872). The Imperial Stamp Act, 1853, however, was not one of the laws so introduced: Hinton Electric Co. v. Bank of Montreal, 9 B. C. R. 545 (1903). There was no provincial legislation regarding bills and notes prior to the admission of the province into the Dominion, which took place July 20th, 1871, under the Imperial Order in Council of May 16th, 1871.

Alberta, Saskatchewan, Yukon Territory and the North-West Territories formed a part of the Hudson's Bay terri-

tory, and, like Manitoba, were governed by the laws of England in force on the 2nd of May, 1670, until they became a part of Canada on the 15th of July, 1870. Dominion Statutes passed before 1886 did not apply to them unless specially so declared: N.-W. Territories Act, 1875, s. 77; 49 V. c. 25, s. 2. On the 2nd of June, 1886, the laws of England as they existed on the 15th of July, 1870, were introduced into the Territories: 49 V. c. 25, s. 3; Reg. v. Nan-e-quis-a-ka, 1 S. C. R. N. W. T. 24 (1889). Alberta and Saskatchewan were erected into provinces on the 1st of September, 1905; 4-5 E. VII. c. 3, and 42; the Yukon District into a separate territory on the 13th of June, 1898; 61 V. c. 6; and the territories of Canada not included in any province were constituted the existing North-West Territories: 4-5 E. VII. c. 27, s. 3.

No uniform rule.

The Old Laws.—The Act of 1890 having repealed all previous Dominion and Provincial legislation, and not having furnished any uniform rule for cases not provided for, recourse would have been had for these to the old law as introduced into each province, and failing any provision applicable there, to the principles of the law on analogous subjects in the respective provinces.

If this rule were adopted, recourse would have been had in the Province of Quebec to the old French law, and in the other provinces to the law of England as it existed at the following respective dates: In Ontario as on the 15th of October, 1792; in Nova Scotia and New Brunswick, probably as on the 3rd of October, 1758; in Prince Edward Island, as on the 7th of October, 1763; in Manitoba as on the 15th of July, 1870; in the North-West Territories, for matters arising prior to the 2nd of June, 1886, to the law of England, as on the 2nd of May, 1670, and for matters arising since the 2nd of June, 1886, to the law of England, as on the 15th of July, 1870; and in British Columbia to the law of England, as on the 19th of November, 1858.

Act of 1891.

It was no doubt the conclusion that such a conflict would to some extent defeat the uniformity which was declared to be one of the chief objects of the Act, that induced Parliament to pass section 8 of the amending Act of 1891, and to make it retroactive.

It might be thought that the Act is such a complete codification of the law regarding bills and notes, that few questions would arise which are not provided for. However, quite a number of such questions have already arisen and will be referred to in the following notes, and doubtless a number of others will arise from time to time.

Limitation of actions.

The Act does not treat of the limitation of actions or prescription as affecting bills and notes, but leaves the law of each province to be applied within its bounds. The period is five years in Quebec and six years in the other provinces. This diversity will in many cases involve a question of the conflict of laws as between the different provinces. For its consideration the reader is referred to the notes under section 160, as the rules which govern it have much in common with the principles there laid down when there may be a conflict between the law of Canada and that in force in foreign countries.

Other negotiable instruments.

The Act applies only to bills, notes, and cheques and not to other negotiable commercial instruments with the exception of section 7, which declares that the provisions as to crossed cheques shall apply to warrants for the payment of dividends. It is certain, however, that the rules laid down as to bills, notes, and cheques, will by analogy be applied in the course of business by bankers and merchants to the other commercial instruments which have so much in common with them, and some of which are now undergoing the process by which customs and usages of trade are crystallized into and acquire the force of law. A short chapter on other negotiable instruments will be found at the end of the notes on the Act.

It is difficult to over-estimate the importance to the commercial interests of the Dominion of not only a uniform law, but also a uniform interpretation and application of the law. This desirable end has been, no doubt, brought about in a large degree by the fact that we have had the advantage of the decisions of the English Courts under the Act since its adoption in 1882. On some of the points raised, and on which the judgments of our Courts have been conflicting, we will soon have authoritative decisions from the Supreme Court or the Privy Council.

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The United States.—On account of the law as to bills and notes in many States differing in some respects from that of England and Canada, and also from that in force in other States, the reports have been of comparatively little value and in many cases actually misleading. In 1897 the State of New York adopted the Negotiable Instruments Law. An examination of this law shews that in the main it agrees with the English and Canadian Acts. Attention will be called to some important differences under the respective sections. On the whole, it will tend, no doubt, not only to greater uniformity in the States affected, but to a closer agreement with English and Canadian decisions. This law, with a list of the States which have adopted it, will be found in the Appendix.

SHORT TITLE.

Short title.

1. This Act may be cited as the Bills of Exchange Act. 53 V., c. 33, s. 1. Imp. Act, *ibid.*

The Dominion Act, 53 V. c. 33, of which the present Act is a revision, was called "The Bills of Exchange Act, 1890."

It was assented to on the 16th of May, but did not come into force until the 1st of September of that year. It was not retrospective, and that part of it which was new law did not apply to instruments issued before its commencement, except in the case of transactions and matters connected with them after that time; as for instance, the acceptance of such a bill after the first of September, or the protesting of a bill or note issued before, but only dishonored after that date: Maxwell on the Interpretation of Statutes, 318; Leeds and County Bank v. Walker, 11 Q. B. D. at p. 91 (1883).

The Imperial Bills of Exchange Act, 1882, 45 & 46 V. c. 61, from which the Canadian Act of 1890 was almost wholly copied, has been held to be largely declaratory of the prior English law. The Master of the Rolls speaks of it as "the codifying Act which declares what was and is the law": Vagliano v. Bank of England, 23 Q. B. D. at p. 248 (1889); and Stirling, J., says that it "may be accepted as declaratory of the prior law": Re Bethell, 34 Ch. D. at p. 567 (1887). See also to the same effect the remarks of Lord Blackburn

in McLean v. Clydesdale Banking Co., 9 App. Cas., at p. 106 (1883); and of Lord Herschell in Bank of England v. Vagliano, [1891] A. C. at p. 144. § 1

As the law in the various provinces of Canada before 1890 varied considerably, as shewn in the foregoing pages, and as the Act of that year in a number of instances changed the law to make it harmonize with that of England, it cannot be so generally accepted as declaratory of the old law in Canada. Nevertheless, there has been a disposition on the part of the Courts to consider it as declaratory, where it is not clear that the law was actually changed.

It is intended to declare the law upon the subject of bills of exchange, cheques and notes; and where it is laid down clearly and without ambiguity, it is to be followed without any enquiry as to the previous state of the law. In cases of doubt, ambiguity or obscurity, the old cases may often be usefully examined and considered.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,— Definitions.

(*a*) 'acceptance' means an acceptance completed by delivery or notification; 'Acceptance.'

This, and the following clauses of this section, with the exceptions noted below, are taken from section 2 of the Act of 1890, which copied them from section 2 of the Imperial Act. The words defined occur a number of times, and are used in a technical, and not in their ordinary or popular sense, hence the necessity for definitions or an interpretation clause.

"Acceptance" in connection with a bill was formerly used to indicate the act by which the drawee made himself responsible for the payment of a bill—whether by writing on the bill itself, or by collateral writing, or by parol: Lumley v. Palmer, 2 Str. 1000 (1735): Clarke v. Cock, 4 East, 57 (1803); Lagueux v. Everett, 1 Reg. de Leg. 510 (1817); Jones v. Goudie, 2 Rev. de Lég. 334 (1820). Since the two latter methods have been done away with by legislation, the word has been generally used to designate simply the writing on the bill. In the Act, however, when used without qualification,

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it is applied only to the cases where the writing and the liability thereunder have become complete and irrevocable by being followed either by delivery of the bill or by notification that it has been accepted: Cox v. Troy, 5 B. & Ald. 474 (1822). "Acceptance" in commercial language is also sometimes used to designate a bill that has been accepted, but it is not used in this sense in the Act. "Delivery" here is also used in the technical sense defined in clause (*f*) of the present section. "Notification" is not defined in the Act, but is described in section 39, and may be either written or verbal.

The definition and requisites of a valid acceptance are given in section 35.

'Action.'

(*b*) 'action' includes counter-claim and set off:

The word "action" is found in sections 11, 19, 58, 93, 157 and 183. The procedure in the provincial Courts, in which actions on bills and notes are brought, is within the exclusive jurisdiction of the local Legislatures: B. N. A. Act, s. 92, s.-s. 14. The Dominion Parliament has however the right to interfere with this procedure in so far as may be necessary to deal fully with the subject of bills and notes. See Cushing v. Dupuy, 5 App. Cas. at p. 415 (1880), and Tennant v. Union Bank, [1894] A. C. 31. Most of the provinces have special provisions in their statutes and rules regulating the procedure of their Courts, as to actions on bills and notes. These have not been repealed by the present Act, and the provincial procedure will govern save in so far as it may be in conflict with the few provisions in the Act.

Pitt Lewis in his work on County Court Practice, quoted with approval by Cockburn, C.J., in Stooke v. Taylor, 5 Q. B. D. 577 (1880), says: "Set-off would seem to be of a different nature from a defence (? counter-claim), inasmuch as a set-off appears to shew a debt balancing the debt claimed by the plaintiff, and thus leaving nothing due to him; while a counter-claim, it would seem, consists of a cross-claim, not necessarily extinguishing or destroying the plaintiff's demand. In other words, a set-off appears to consist of a defence to the original claim of the plaintiff, a counter-claim is the assertion of a separate and independent demand, which

does not answer or destroy the original claim of the plaintiff. The right to reply on a set-off has long existed. The right to set up a counter-claim was first given by the Judicature Acts." See also Gathercole v. Smith, 7 Q. B. D. 626 (1881); Pellas v. Neptune Marine Ass. Co., 5 C. P. D. 34 (1879). § 2

Under the Imperial and Ontario Judicature Acts there have been conflicting decisions as to whether a counter-claim was to be considered as a defence or as an action: see Vavasseur v. Krupp, 15 Ch. D. 474 (1880); Beddall v. Maitland, 17 Ch. D. 174 (1881); Irwin v. Brown, 12 Ont. P. R. 639 (1888). Counter-claim.

In Ontario provision is made in Consolidated Rules 115 and 116 under the Judicature Act, which read as follows: "115. A defendant may set up by way of counter-claim, any right or claim whether the same sounds in damages or not. 116. A counter-claim shall be treated as an action, so as to enable the Court to pronounce a final judgment upon all the matters set up therein."

As to the Ontario law on the subject under the old rules, which have not been materially changed, see Gates v. Seagram, 19 O. L. R. 216 (1909); Thompson v. Big Cities Realty Co., 21 O. L. R. 394 (1910); Grills v. Farah, *ibid.* 457 (1910).

Set-off corresponds approximately to compensation under the civil law. The Quebec Civil Code, Art. 1188, says: "Compensation takes place by the sole operation of law between debts which are equally liquidated and demandable and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality. So soon as the debts exist simultaneously they are naturally extinguished in so far as their respective amounts correspond."

Counter-claim is analogous to a cross demand by a defendant in Quebec. The Code of Civil Procedure, Art. 217, says: "The defendant may set up by cross demand any claim arising out of the same causes as the principal demand, and which he cannot plead by defence. When the principal demand is for the payment of a sum of money, the defendant may also make a cross demand for any claim for money arising out of other causes; but such cross demand is distinct from and cannot retard the principal action. The court, Incidental demand.

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whenever it renders judgment upon both demands at the same time, may declare that there is compensation."

Clause (*k*) of the present section provides that "defence" when used in the Act also includes counter-claim.

'Bank.'

(*c*) 'bank' means an incorporated bank or savings bank carrying on business in Canada;

The corresponding word in the Imperial Act is "banker," which includes a body of persons whether incorporated or not who carry on the business of banking. There the business is carried on largely by individuals or incorporated bodies. The bill as introduced into the Canadian Parliament, in 1889, used the word "banker" and also adopted the English definition. As the business is carried on in Canada chiefly by incorporated banks which came under the provisions of the Bank Act, 53 V. c. 31, and savings banks which came under 53 V. c. 32, both of which came into force on the 1st of July, 1891, it was determined to restrict to these corporations the provisions relating to banking. The provisions relating to cheques upon these banks were embodied in the Bills of Exchange Act, 1890, sections 72 to 81 inclusive. As our Parliament refused to adopt the principle laid down in section 60 of the Imperial Act, which protects a banker who has paid a demand bill or a cheque on a forged indorsement, the omission of private banks from the definition and their exclusion from the provisions and privileges of the Act was not of so much consequence.

Formerly private bankers might use the words "bank," "banking company," "banking house," "banking association," or "banking institution," provided the words "not incorporated" were added. Since 1891, however, any private person or body using any of these terms is guilty of a misdemeanor and liable to a fine not exceeding $1,000, or to imprisonment for a term not exceeding 5 years, or to both: 53 V. c. 31, ss. 100, 101: R. S. C. c. 29, ss. 156, 157.

Bearer.

(*d*) 'bearer' means the person in possession of a bill or note which is payable to bearer;

A bill is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank: s. 21, s.-s. 3. Where a person acquires a bill for value from the holder to whose order it is payable without its being endorsed, he does not thereby become the "bearer" or entitled to the rights of a bearer under the Act: he merely acquires the rights of a transferee of a chose in action, and the right to have the endorsement of the transferrer: s. 61. On obtaining such endorsement he would become the "bearer" of the bill. The bearer need not be the owner of the bill. § 2 Bearer.

(*e*) 'bill' means bill of exchange, and 'note' means promissory note; 'Bill,' 'note.'

A bill of exchange is defined in section 17, and a promissory note in section 176. The latter does not include bank notes. A cheque is defined in section 165 as a bill of exchange drawn on a bank, payable on demand. Where the word "Bill" is used in the Act, it includes a cheque, unless in case of some conflicting provision in Part III. It also includes a promissory note, unless found in some portion of the Act within the exceptions mentioned in section 186.

(*f*) 'delivery' means transfer of possession, actual or constructive, from one person to another; 'Delivery.'

A person has constructive possession of a bill when it is in the actual possession of his servant or agent on his behalf. Delivery does not always imply an actual transfer from one possessor to another. A person who holds a bill for another may become the owner of it himself; a person who holds a bill for himself may become the holder of it for another; a person who holds a bill for one party may become the holder of it for another. In each of these cases there is "delivery" without any actual change of possession, and a sufficient delivery to comply with the requirements of section 40, and make the contract of the drawer, acceptor or indorser, as the

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case may be, complete and irrevocable. Where bankers indorsed a note to a customer, and put it in an envelope with his papers, at the same time making appropriate entries of the transaction in their books, it was held to be a sufficient delivery to him, and that a subsequent assignment of the bankers could not defeat it: Williams v. Galt, 95 Ill. 172 (1880). For a definition of the word "person" see the Interpretation Act, R. S. C. c. 1, s. 34 (20).

'Holder.'

(*g*) 'holder' means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof;

The holder may or may not be the legal owner. It is sufficient for him to be in possession and entitled, at law, to recover or receive its contents from another: Daniel, § 28. If the payee or indorsee of a bill or note indorse it in blank and send it to another person for discount, collection, or some other special purpose, the latter, while in possession, would be the "holder" of the bill or note: Allison v. Central Bank, 9 N. B. (4 Allen) 270 (1859).

The rights and powers of the holder of a bill are given in section 74.

The word holder is used in different senses. It may mean a "holder in due course" as defined in section 56; and every holder of a bill or note is prima facie deemed to be a holder in due course: s. 58, s.-s. 2. This latter expression is used in the Act instead of the old phrase "bona fide holder for value without notice." The term "holder for value" is defined in section 54.

The word holder also includes one whose possession is unlawful, but who can give a valid discharge to a person who pays the bill in good faith, or who can give a good title to a purchaser before maturity in good faith and for value, such as the finder of a bill payable to bearer or indorsed in blank: s. 74; Murray v. Lardner, 2 Wall. 110 (1864).

In order to enable C. to obtain a loan from plaintiff, defendant drew a bill on C. payable to his own order which C. accepted. Plaintiff gave C. the money for the bill, not

noticing that defendant had not indorsed it. Held that defendant was a holder of the bill and that s. 31, s.-s. 4 applied: Walters v. Neary, 21 T. L. R. 146 (1904). § 2

A person who is in possession of a bill or note otherwise than as above stated is not a "holder" of it. Thus the possessor under a forged indorsement even for value and in good faith acquires no rights and is not entitled to the designation: section 19: Smith v. Union Bank, L. R. 10 Q. B. per Blackburn, J., at p. 296 (1875): Colson v. Arnot, 57 N. Y. 253 (1874). Holder.

The words "Property of the Eastern Townships Bank" stamped on the face of a note, without any signature attached, prove nothing in the absence of any evidence as to how the words were placed there: Demers v. Hogle, Q. R. 7 S. C. 476 (1895).

Every "bearer" of a bill within the meaning of the definition in clause (*d*) of this section, is the holder of it: Howard v. Godard, 9 N. B. (4 Allen) 452 (1860).

(*h*) 'endorsement' means an endorsement completed by delivery; 'Endorsement.'

In the Act of 1890 "indorsement" was used in this clause, and the verb "indorse" and its derivatives used throughout the Act, as is done in the Imperial Act, and in those of the various colonies which copied it. It is also the form used in the American Negotiable Instruments Law, and in nearly all the reports, standard text books, digests and indexes of all these countries. While "endorse" is the more usual form in commercial and popular use, Murray's English Dictionary says: "Indorse is the form found in legal and statutory use, and in most political economists: it is also that approved in all American dictionaries." The London Times uses "endorse" in its law reports, probably for the sake of uniformity with its commercial columns: but the change has met with but scant support. The revisers would appear to have acted without fully realizing the difficulties or confusion that the innovation will introduce into our reports, indexes and digests. The spelling of the revisers

§ 2 — will be followed in the text of the Act and the author's notes: in the illustrations and notes of cases the spelling of the reports from which they have been taken will be retained

Endorsement.

Endorsement, as its derivation and meaning would indicate, is generally made by writing the name of the transferrer on the back of the bill: but it may be written on any other portion of it. "It is quite immaterial whether the indorsement be written on the back of the instrument or on the face," as said by Lord Campbell in Young v. Glover, 3 Jur. N. S. 637 (1857). See also Tapley v. Paquet, Q. R. 38 S. C. 292 (1910); Partridge v. Davis, 20 Vt. 499 (1848): Herring v. Woodhull, 29 Ill. 92 (1862): Haines v. Dubois, 30 N. J. 259 (1863): Arnot v. Symonds, 85 Penn. St. 99 (1877). In certain cases it may be written on an allonge or on a copy of a bill: s. 62.

In the Act the word is not applied to this writing alone, but only when followed and completed by the delivery of the bill to another, which makes the contract to the endorser complete and irrevocable: s. 39. Delivery is here used in the sense indicated in clause (*f*) of this section. The requisites of a valid endorsement to operate as a negotiation of a bill are set out in section 62.

An indorsement must be an assignment by somebody who has a right to assign, and if made by a stranger is no indorsement at all: Tai Yune v. Blum, 3 B. C. R. 21 (1893).

'Issue.'

(*i*) 'issue' means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;

"Issue" is used only a few times in the Act. Interest runs from the "issue" of an undated bill when it is expressed to be payable with interest, without saying from what time: s. 28. As to the effect of inserting a wrong date of issue when a bill has been issued undated, see section 30. As to the re-issue of a bill, see section 73. Where a bill drawn in one country is payable, negotiated or accepted in another, it may become of importance to determine the place of issue: s. 160. A bill is complete in form when it

complies with section 17, and a note when it complies with section 176. For the definition of "person," see the note at the end of the present section. § 2

(*j*) 'value' means valuable consideration; 'Value.'

Valuable consideration is defined in section 53.

(*k*) 'defence' includes counter-claim; 'Defence.'

"Defence" is used in sections 15 and 74. For a definition of counter-claim, see note to clause (*b*) of this section. "Defence" would also include set-off, and in Quebec a cross demand by a defendant: C. C. P. Art. 217.

(*l*) 'non-business days' means days directed by this Act to be observed as legal holidays or non-juridical days. 'Non-business days.'

2. Any day other than aforesaid is a business day. 53 V., c. 33, ss. 2 and 91. Imp. Act, s. 2. Business day.

Section 43 provides that Sundays and the other days therein named and no others shall be observed as legal holidays or non-juridical days.

The foregoing definitions except (*k*) and (*l*) are taken from the corresponding section of the Imperial Act almost without change. "Banker" has been replaced by "Bank" for the reasons above mentioned. "Bankrupt" is used in the Imperial but not in the Canadian Act, as we have no general bankruptcy or insolvency law in force in the Dominion. "Person," "written" and "writing," which are all used in a peculiar sense, are defined in the Imperial Act, but not in the Canadian, as they are defined in the general Interpretation Act, R. S. C. c. 1, s. 34, as follows:

"(22) 'Person' includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which such context extends."

"(23) 'Writing,' 'written,' or any term of like import, includes words printed, painted, engraved, lithographed, or otherwise traced or copied."

PART I.

GENERAL.

Thing done in good faith.

3. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not. 53 V., c. 33, s. 89. Imp. Act, s. 90.

The expression "in good faith" is used in section 56 with reference to a holder in due course acquiring a bill, in section 139, with reference to payment in due course; and in sections 172 and 175, with reference to the payment of a crossed cheque.

The rule of the civil law is that "good faith is always presumed; he who alleges bad faith must prove it": C. C. Art. 2202. See section 58 as to the shifting of the onus of proof once fraud is proved.

Origin of section.

This section was considered in England in the case of Tatam v. Haslar, 23 Q. B. D. 345 (1889). Denman, J., there says that it is obviously founded upon the distinction which is pointed out by Lord Blackburn in Jones v. Gordon, 2 App. Cas. at p. 629 (1877), between honest blundering or carelessness and a dishonest refraining from inquiry. The following is the substance of the remarks referred to:—If value has been given for a bill, it is not enough to show that there was carelessness, negligence or foolishness in not suspecting that the bill was wrong when there were circumstances that might have led a man to suspect that. It is necessary to show that the person who gave value for the bill, whether the value given be great or small, was affected with the notice that there was something wrong about it when he took it. It is not necessary that he should have notice of what the particular wrong was. Evidence of carelessness or blindness may be good evidence upon the real question, which is, whether he did know that there was something wrong in it. If he was honestly blundering and care

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...ss, and so took a bill or note when he ought not to have taken it, still he would be entitled to recover. But if the facts and circumstances are such that the jury, or whoever has to try the question, comes to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained on this account from asking questions or making further inquiry—I think that is dishonesty.

Bad faith more than negligence.

In re Gomersall, 1 Ch. D. at p. 116 (1875), it is said that "negligence or carelessness on the part of the holder of a bill, is not of itself sufficient to deprive him of his remedies for procuring its payment. But negligence or carelessness, when considered in connection with the surrounding circumstances, may be evidence of mala fides." In Swan v. North British Australasian Co., 2 H. & C. 184 (1863), Byles, J., says: "The negligence of the holder makes no difference in his title. However gross the holder's negligence, if it stop short of fraud, he has a title." The same rule was laid down in Goodman v. Harvey, 4 A. & E. at p. 876 (1836), going somewhat farther in this direction than Crook v. Jadis, 5 B. & Ad. 909 (1834), which was a partial departure from the rule laid down in Gill v. Cubitt, 3 B. & C. 466 (1824), where the jury was told that the question was, whether the bill took it under circumstances that ought to have excited the suspicion of a prudent and careful man. This case was disapproved of in Bank of Bengal v. Macleod, 7 Moore's Indian Appeals, 1 (1849), and Raphael v. Bank of England, 17 C. B. 161 (1855); and in London and County Bank v. Groome, 9 Q. B. D. 288 (1881), it was held to have been overruled. The old rule in England was similar to that laid down in the recent cases and adopted by the Act. See also Ross v. Chandler, 19 O. L. R. at p. 598 (1909).

Some American authorities followed Gill v. Cubitt, but the contrary doctrine has been firmly established there. See Murray v. Lardner, 2 Wall. (U.S.) 110 (1864); Shaw v. Railroad Co., 101 U. S. (11 Otto) 564 (1879); Swift v. Smith, 102 U. S. (12 Otto) 444 (1880); Shreeves v. Allen, 79 Ill. 553 (1875); Johnson v. Way, 27 Ohio St. 374 (1875);

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Mabie v. Johnson, 6 Hun (N.Y.) 309 (1876); Stimson v. Whitney, 130 Mass. 591 (1881); Daniel, §§ 775, 1503.

This rule has been generally recognized in Canada, although there are expressions in certain cases that are not quite consistent with it.

Signature.

4. Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. 53 V., c. 33, s. 90. Imp. Act, s. 91.

Speaking generally a signature is the writing or otherwise affixing a person's name, or a mark to represent his name, by himself, or by his authority, with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed: Reg. v. Justices of Kent, L. R. 8 Q. B. 305 (1873). Signature does not necessarily mean writing a person's Christian and surname, but any mark which identifies it as the act of the party, provided it be proved or admitted to be genuine: Morton v. Copeland, 16 C. B. 535 (1855).

The present section is a mere application of the common law rule, qui facit per alium facit per se.

The chief signatures required by the Act are those of the drawer of a bill: s. 17; or its acceptor: s. 36; or its endorser: s. 63; or the maker of a note: s. 176; or its endorser: s. 186. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: s. 131.

The signature may be by initials, or a cross or mark, or a trade or assumed name, and may be written in pencil, or by a stamp, or printed or engraved, provided it is clear that the party intended it as his signature. See p. 49.

A forged or unauthorized signature is wholly inoperative unless the party against whom it is sought to retain or enforce the bill is precluded from setting up the forgery or want of authority. An unauthorized signature may be ratified: s. 49.

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Signature.

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent was acting within the actual limits of his authority: s. 51. See the notes and illustrations under that section.

No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: provided that when a person signs a bill otherwise than as drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of the Act respecting endorsers: s. 131. Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name. The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners of the firm: s. 132.

What required of corporation.

5. In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. 53 V., c. 33, s. 90. Imp. Act, s. 91.

See the notes to the preceding section as to what instruments or writings are required by the Act to be signed.

The capacity of a corporation to make itself liable as the drawer, acceptor or endorser of a bill is determined by the law for the time being in force relating to such corporation: s. 47.

At common law if a seal were affixed to a paper in the ordinary form of a note, its character as such was destroyed. It was thereby converted into the deed or bond of the maker, and the instrument was not subject to the peculiar doctrines applicable to commercial securities. This rule applied to corporations as well as to individuals: Daniel, § 32.

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Computation of time.

6. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 53 V., c. 33, s. 91. Imp. Act, s. 92.

Non-business days are Sundays and the legal holidays named in section 43: s. 2 (*l*).

The following short delays in the Act fall within this rule: The drawee has two days to decide whether he will accept a bill: s. 80: presentment to the acceptor for honor should be on the day following maturity: s. 94: and notice of dishonor should be given the next following business day: ss. 97, 103 and 126.

Crossing dividend warrants.

7. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend. 53 V., c. 33, s. 94. Imp. Act, s. 95.

The provisions as to crossed cheques are found in ss. 168 to 175. It is probable that only warrants drawn upon an incorporated bank are intended, as instruments drawn upon other banks are not recognized as cheques by the Act.

In Canada they are usually called dividend cheques, and independently of this section the above sections would apply to them. When a bank issues such warrants drawn upon itself it is not properly a cheque, drawer and drawee being the same person: but by s. 26 the holder could treat it as a promissory note. The above sections would not be appropriate to a promissory note.

Bank of England dividend warrants, payable to a person by name, and not to his order or bearer, were formerly held not to be negotiable, although it was the practice of bankers to treat them as such: Partridge v. Bank of England, 9 Q. B. 396 (1846).

The Imperial Act contains a further provision, s. 9, 3 (*d*), that the Act shall not affect any usage relating to dividend warrants or their indorsement. This provision Chalmers says (p. 357), was intended to protect the practice of paying such warrants to one of several payees. Our Bank Act has a similar provision: s. 52, s.s. 2.

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The Bank Act not affected.

8. Nothing in this Act shall affect the provisions of the Bank Act. 53 V., c. 33, s. 95.

In the Act of 1890 this section formed a part of the repealing section, and read as follows: "Nothing in this Act or in any repeal effected thereby shall affect the provisions of the Bank Act."

The insertion of this section in its present form is probably a case of ex abundanti cautela; but it will prevent any claim being made that any of the provisions of this Act should interfere with the provisions of the Bank Act as to bank notes or other instruments issued by banks.

Imperial Act 15 G. III. c. 51 and 17 G. III. c. 30.

9. The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled *An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament, passed in the seventeenth year of His said Majesty's reign, intituled *An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, shall not extend to or be in force in any province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders made or uttered therein. 53 V., c. 33, s. 95.

This section formed part of the C. S. U. C. c. 42. It was inserted in R. S. C. (1886) c. 123 as section 93, but remained applicable to Ontario alone. These Imperial Acts were introduced into Upper Canada by the first statute of that province, 32 G. III. c. 1, ante p. 10. They would also be in force in Manitoba, British Columbia, and the provinces and territories formed out of the Hudson's Bay Territory, ante, pp. 14 and 16. "Province" here includes the Territories: R. S. C. c. 1, s. 34 (22).

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Common law of England.

10. The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques. 54-55 V., c. 17. s. 8. Imp. Act, s. 97.

This clause was in the bill as it passed the House of Commons in 1890, but was struck out in the Senate. See Senate Debates, 1890, p. 467. As to what would have been the effect of the omission of any uniform rule for cases unprovided for by the Act, see ante, pp. 16 and 17. The circumstances leading to its enactment in 1891 are set out in the preface to the first edition of this work. It was then made retrospective.

The expression "common law" is used in different senses.

Common law defined.

In this section it is probably used in the comprehensive sense in which it was spoken of by Baron Parke in the House of Lords in Mirehouse v. Rennell, 8 Bing. 515 (1832), when he said:—"Our common law system consists in applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency, and certainty, we must apply those rules, when they are not plainly unreasonable or inconvenient, to all cases which arise; and we are not at liberty to reject them, and abandon all analogy to them, in those to which they have not yet been judicially applied, because we think that the rules are not as convenient or reasonable as we ourselves could have devised."

Law merchant defined.

The "law merchant" is another expression that may not be capable of an exact definition. It has always, as its name applies, recognized the customs and usages of merchants. Indeed, it has been based upon them. . . "The law merchant is sometimes spoken of as a fixed body of law, forming part of the common law, and, as it were, coeval with it. But as a matter of legal history, this view is altogether incorrect. The law merchant thus spoken of with reference to bills of exchange and other negotiable securities is of comparatively recent origin. It is neither more nor less than

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the usages of merchants and traders, in the different departments of trade, ratified by the decisions of courts of law": per Cockburn, C.J., in Goodwin v. Robarts, L. R. 10 Ex., at p. 346 (1875). "When a general usage has been judicially ascertained and established, it becomes a part of the law merchant, which courts of justice are bound to know and recognize": per Lord Campbell in Brandao v. Barnett, 12 Cl. & F. at p. 805 (1846).

Legal usages.

The existence, nature and scope of a given usage is a question of fact. A particular or local usage must be proved each time, until it becomes so notorious that the courts will not require further proof of it, but will take judicial notice of it: per Brett, M.R., in Ex parte Turquand, 14 Q. B. D. at p. 645 (1885). For examples of the application of this principle in the United States, see Bowen v. Newell, 13 N. Y. 290 (1855), and Champion v. Gordon, 70 Penn. St. 476 (1872), where proved local usages as to cheques payable at a future day having no days of grace received judicial sanction. See also the remarks of Davidson, J., in La Banque Nationale v. Merchants' Bank, M. L. R. 7 S. C. 336 (1891), as to proof of the custom of the Montreal clearing house regarding unaccepted cheques.

Imperial Act, s. 97 (2).

The corresponding section of the Imperial Act has been considered in the case of Re Gillespie, Ex parte Robarts, 16 Q. B. D. 702 (1885). It was there held that section 57 of the Act was not exhaustive as to the damages the holder of a dishonored bill might recover. After quoting section 97, Cave, J., said, p. 705: "It therefore follows, unless there is something in the Act expressly inconsistent with the ancient law, that the right to prove for damages of the kind which I have spoken of still exists." In the same case, in appeal, 18 Q. B. D. at p. 292, Lindley, L.J., says, "section 97 preserves the former liability of the acceptor to indemnify the drawer against his liability in such a case. Section 97 has been added to meet cases not exhaustively dealt with by other sections of the Act."

Comparison with Code.

It will be observed that the language of the section is much broader than the corresponding article of the Civil Code. That Article, No. 2340, reads as follows: "In all matters relating to bills of exchange not provided for in this

§ 10 Quebec Code.

Code recourse shall be had to the laws of England in force on the 30th of May, 1849." Not only that part of the Code relating to bills of exchange was to be looked at, but the whole Code, before recourse could be had to the laws of England. Now the common law of England and the law merchant are to apply in Quebec as well as in the other provinces, when they are not inconsistent with the "express provisions of the Act."

In Noble v. Forgrave, Q. R. 17 S. C. 234 (1899), it was held that the enactment of this section had modified the former law of Quebec by introducing into that province the law of England respecting the liability of makers of notes being only joint and not joint and several, unless the latter liability was specially declared.

The effect of this section does not appear to have been discussed in the Ontario case of Cook v. Dodds, 6 O. L. R. 613 (1903), where the same question was considered.

This section would not introduce into the province of Quebec any part of the common law of England to interfere with the civil law of that province in cognate matters within provincial jurisdiction that may arise in connection with bills, notes or cheques; nor would it interfere with the law of any province as to such matters. See notes under sections 47, and 160 to 164.

This section has already had an important influence in harmonizing the decisions in provinces where the provincial laws differ on subjects directly or indirectly affecting bills and notes, some of which are considered in the notes under sections 47, 139 and 179.

Protest *prima facie* evidence.

11. A protest of any bill or note within Canada, and any copy thereof as copied by the notary or justice of the peace, shall, in any action, be *prima facie* evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour as stated in such protest or copy. 53 V., c. 33, s. 93.

This provision is not in the Imperial Act, but was taken in substance from Article 2305 of the Civil Code, which also

made the duplicate prima facie evidence. For similar provisions as to protests in Ontario, see C. S. C. c. 57, s. 6, and R. S. O. c. 76, ss. 35 and 36; for Nova Scotia, Prince Edward Island and New Brunswick, R. S. C. (1886) c. 123, ss. 7, 8, 10; and for Manitoba, R. S. M. c. 65, s. 29. § 11

The protest or copy only makes prima facie proof. It may be rebutted.

See also Ross v. McKindsay, 1 U. C. Q. B. 507 (1845); Cold v. Lewis, 8 ibid. 242 (1850); Merchants' Bank v. McDougall, 30 U. C. C. P. 236 (1879); Southam v. Ranton, 9 Ont. A. R. 530 (1883).

Section 12 makes protests out of Canada also prima facie evidence in all courts.

12. If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall be received in all courts, as *prima facie* evidence of such protest, notice and service. 53 V., c. 33, s. 71. Copy of protest. *prima facie* evidence.

This section is not in the Imperial Act. The Consolidated Statutes of Canada, (1859), had a similar provision, but it applied only to protests in Upper or Lower Canada: Griffin v. Judson, 12 U. C. C. P. 430 (1862). See also Ewing v. Cameron, 6 U. C. O. S. 541 (1842); Ontario Bank v. Burke, 10 Ont. P. R. 561 (1885); Security National Bank v. Pritt, 3 Sask. 188 (1910).

It is to be observed that a notarial certificate of the service of notice of dishonour is required as well as a copy of the protest and notice.

13. No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed. 53 V., c. 33, s. 51. Officer of bank not to act as notary.

§ 13

This provision is not in the Imperial Act. It was first enacted for Upper and Lower Canada in 1850, and was made applicable to the whole Dominion by R. S. C. (1886) c. 123, s. 11.

As the certificate of the notary is accepted as a substitute for sworn testimony, the desire is to obtain an officer who will not be biased. For the same reason it has been held that a notary who is an indorser on a note is not entitled to make the protest, even when he substitutes the name of another for his own and purports to make the protest at the request of such substitute: Pelletier v. Brosseau, M. L. R. 6 S. C. 331 (1890).

Such a protest by a clerk, teller or agent would not be prima facie evidence of protest under section 11 or 12, or avail otherwise as a protest: but might, when duly proved, be notice of dishonour. The offending officer might be liable under section 161 of the Criminal Code.

Consideration, purchase money of patent.

14. Every bill or note, the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words, *Given for a patent right.*

Absence of necessary words.

2. Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration. 53 V., c. 33, s. 30.

For a patent right.

These provisions are not in the Imperial Act and were not in the bill as introduced into The House of Commons, but were reluctantly inserted by the Minister of Justice at the urgent request of certain members of that House: Commons Debates, 1890, pp. 105, 1415, and 1520. The first Canadian statute on the subject was passed in 1884, 47 V. c. 38, which did not contain sub-section 2 above. This was added to override the interpretation placed upon the original

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For a patent right.

Act as embodied in R. S. C. c. 123, by the Ontario Common Pleas Divisional Court in the case of Girvin v. Burke, 19 O. R. 204 (1890), a decision which was rendered while the Bill was before Parliament: Senate Debates, 1890, p. 465. In that case it was held that the omission of the prescribed words in a note or renewal note did not render it void as between the maker and the payee, and that the intention of the Act was to give the indorsee or transferee notice, and to put him in the position of the payee as to any defence which the maker might have against a claim by the payee. In this the Court followed a decision in Pennsylvania on a similar statute: Haskell v. Jones, 86 Penn. St. 173 (1878); where Chief Justice Sharswood said: "By the express provisions of the statute the only effect of the insertion of such words is that such note or instrument in the hands of the purchaser or holder shall be subject to the same defence as if in the hands of the original owner or holder."

In those States which have passed similar statutes they are not embodied in the Negotiable Instruments Law.

In Johnson v. Martin, 19 Ont. A. R. 594 (1892), it was held that an indorsee for value before maturity who took a note given for a patent without these words, with knowledge of the consideration, could not recover.

A creditor of a patentee induced a third party to purchase a half interest in the patent for $700, and to join the patentee in a note for $1,000, the creditor giving the latter $200 as an inducement. The note was held to be void as to the third party for want of the words "given for a patent right": Craig v. Samuel, 24 S. C. Can. 278 (1895); reversing Samuel v. Fairgrieve, 21 Ont. A. R. 418 (1894).

As to what notice may prevent a holder for value of such a note from becoming a holder in due course, see Banque d'Hochelaga v. Menier, 3 R. J. 86 (1896); also the notes and authorities on the subject under s. 56.

Plaintiff moved for summary judgment on a promissory note. Defendant put in an affidavit that the consideration was to plaintiff's knowledge a patent right. Plaintiff denied this. Held, that defendant was entitled to unconditional leave to defend: Davey v. Sadler, 1 O. L. R. 626 (1901).

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Under a statute on this subject where the rights of a holder in due course were not in express terms protected, as they are in our Canadian Act, it was held that if the patent right consideration were not expressed in the note, a bona fide holder would be protected according to the general principles of the law merchant: Palmer v. Minar, 8 Hun (N. Y.) 342 (1876).

Transferee to take with equities.

15. The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties. 53 V., c. 33, s. 30.

Transferring defective note.

Indictable offence.

Penalty.

16. Everyone who issues, sells or transfers, by endorsement or delivery, any such instrument not having the words *Given for a patent right* printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of an indictable offence, and liable to imprisonment for any term not exceeding one year, or to such fine, not exceeding two hundred dollars, as the court thinks fit. 53 V., c. 33, s. 30.

The general scope of the Act is to restrict its provisions to the civil rights and remedies relating to bills and notes. This is adhered to in every other section, and provisions for the punishment of the forgery of bills and other frauds in connection with them, have not been inserted in the Act, but are to be found among the criminal statutes. This section is the only exception to this rule. It led to the further anomaly of the insertion in section 14 of the word "note" instead of leaving it to the operation of section 186, as it was not thought desirable to leave a criminal offence to implication, or the operation of incidental legislation: Senate Debates, 1890, p. 464.

PART II.

BILLS OF EXCHANGE.

The Act, as its title indicates, relates to Bills of Exchange, Cheques and Promissory Notes. The rules and principles relating to the former are set out in Part II., which embraces sections 17 to 164 inclusive.

Section 165 defines a cheque as a bill of exchange drawn on a bank payable on demand, and enacts that the provisions of the Act applicable to a bill of exchange payable on demand shall apply to a cheque, except as otherwise provided in Part III.

By section 186 the provisions of the Act relating to bills of exchange apply to promissory notes with the necessary modifications, and subject to the exceptions of that section and the provisions of Part IV.

In the notes and illustrations appended to the various sections of Part II. of the Act, where a clause or provision is equally applicable to a promissory note or cheque as well as to a bill, authorities and cases bearing upon the principle will be cited, although they may have been laid down or decided with reference to notes or cheques.

Form of Bill and Interpretation.

17. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer. 53 V., *c.* 33, s. 3 (1). Imp. Act, *ibid.* Bill of exchange defined.

The foregoing clause is copied from the Imperial Act without change. Probably no definition of a bill of exchange

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Bill defined.

has yet been given which is not open to criticism. The present one is not the most felicitous, as will be seen on comparing it with the second part of the section.

This definition also includes a cheque and is declaratory of the former law: McLean v. Clydesdale Banking Co., 9 App. Cas., per Lord Blackburn, at p. 106 (1883).

The following were the provisions on the subject contained in the Civil Code of Lower Canada: "Article 2279. A bill of exchange is a written order by one person to another for the payment of money absolutely and at all events.—Article 2280. It is essential to a bill of exchange that it be in writing and contain the signature or name of the drawer; that it be for the payment of a specific sum of money only; that it be payable at all events without any condition."

The definition in the Code is taken from Kent's Commentaries, vol. 3, p. 74. Kent copies it from Bayley on Bills, p. 1, and speaks of it as "a concise, clear and accurate production." Blackstone says a bill of exchange is "an open letter of request from one man to another desiring him to pay a sum of money therein named to a third person on his account:" 2 Comm. 466. Chitty follows Blackstone. For a very full list of the different definitions given by various authors, see 1 Randolph, § 3, note.

In France the law governing bills of exchange differs in some important particulars from that of England, as it may be seen from the following definition taken from the Code de Commerce, Art. 110:—"A bill of exchange is drawn from one place on another. It is dated. It sets forth the sum to be paid; the name of the person who is to pay; the time and place of payment; the value given in money, goods, account or otherwise. It is payable to the order of a third party, or of the drawer himself. It must state whether it be the first, second, third, or fourth, etc., of the same tenor and contents."

The New York Negotiable Instruments Law lays down the following rules as to the form of a negotiable instrument: "§ 20. An instrument to be negotiable must conform to the following requirements: 1. It must be in writing and signed by the maker or drawer. 2. Must contain an unconditional

promise or order to pay a sum certain in money. 3. Must be payable on demand or at a fixed or determinable future time. 4. Must be payable to order or to bearer; and 5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty." § 17

A bill of exchange is sometimes called a draft, and after it has been accepted, sometimes an acceptance. It may be in any language, and in any form of words that complies with the requirements of the foregoing definition or the provisions of the Act. Where an instrument is so ambiguous as to make it doubtful whether it is a bill of exchange or a promissory note, the holder may, as against the maker, treat it as either: Edis v. Bury, 6 B. & C. 433 (1827); Lloyd v. Oliver, 18 Q. B. 471 (1852); Forbes v. Marshall, 11 Ex. 166 (1855); Fielder v. Marshall, 9 C. B. N. S. 606 (1861). So also, where drawer and drawee are the same person: s. 26.

A bill taken for a debt in the ledger is a "book debt:" In re Stevens, W. N. (1888), 110, 116; Dawson v. Isle [1906] 1 Ch. 633.

"An Unconditional Order."—A bill of exchange is an order, and is in its nature the demand of a right, not the mere asking of a favor, and therefore a supplication made or authority given to pay an amount is not a bill: Daniel, § 35. The person addressed is "required" to pay the sum named. The insertion of mere terms of courtesy, however, will not destroy its validity. It seems impossible to reconcile the conflicting decisions on this point. The same may be said to be true as to what orders have been held to be "unconditional." As to an instrument payable on a contingency, see section 18 and the notes and illustrations thereunder. A promissory note is an unconditional promise to pay: s. 176. For illustrations of irregular instruments in this respect, see notes under that section.

ILLUSTRATIONS.

The following have been held to be valid bills:—

1. "Mr. Warren, please let the bearer, William Tuke, have the amount of £10, and you will oblige me, B. B. Mitchell": Reg. v. Tuke, 17 U. C. Q. B. 296 (1858).

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2. "Mr. Nelson will much oblige Mr. Webb by paying J. Ruff or order, twenty guineas on his account": Ruff v. Webb, 1 Esp. 129 (1794).

3. "To the Cashier,—Credit P. & Co., or order, with £500, claimed, per Cleopatra, in cash, on account of this corporation, A. C., Managing Director": Ellison v. Collingridge, 9 C. B. 570 (1850); Allen v. The Sea Fire and Life Assurance Co., 9 C. B. 574 (1850).

4. An order written under a note "Please pay the above note, and hold it against me in our settlement": Leonard v. Mason, 1 Wend. 522 (1828).

5. Also a like order written under an account: Hoyt v. Lynch, 2 Sandf. 328 (1847).

6. "Please let the bearer have $50. I will arrange it with you this forenoon. Yours truly": Bresenthal v. Williams, 1 Duval, 329 (1864).

The following have been held not to be valid bills:—

1. An open letter from one Government officer to another desiring the latter to pay plaintiff a certain sum of money due him by the department: McLean v. Ross, 3 Rev. de Lég. 434 (1816).

2. "Please to send £10 by bearer, as I am so ill I cannot wait upon you": Rex v. Ellor, 1 Leach, 323 (1784).

3. "Mr. L., please to let the bearer have £7, and place it to my account, and you will much oblige your humble servant, S.": Little v. Slackford, 1 M. & M. 71 (1828).

4. A note written by the creditor to his debtor at the foot of the creditor's account requesting the debtor to pay the account to the creditor's agent: Norris v. Solomon, 2 M. & Rob. 266 (1840).

5. "To E. & S.—We hereby authorize you to pay on our account to the order of G., £6,000, de W. & S.": Hamilton v. Spottiswoode, 4 Ex. 200 (1849).

6. An instrument in the form of a cheque with the following words added: "Provided the receipt form at the foot hereof is duly signed, stamped and dated": Bavins v. London and S. W. Bank [1900] 1 Q. B. 170.

"In Writing."—Writing as defined in the Interpretation Act, R. S. C. c. 1, s. 34 (31), "includes words printed, painted, engraved, lithographed, or otherwise traced or copied." It is not material whether the writing be in pencil or ink, though as a matter of permanence and security ink is of course preferable. A writing in pencil is within the meaning of that term at common law, and within the custom

of merchants: Geary v. Physic. 5 B & C., per Bayley, J., at p. 238 (1826). See also Jeffrey v. Walton, 1 Stark. 267 (1816); Rymes v. Clarkson, 1 Phil. 22 (1809); Dickenson v. Dickenson, 2 Phil. 173 (1814). § 17

Cannot be varied by parol.

It is a general rule of law that contracts in writing cannot be varied by extrinsic evidence of the intention of the parties: Burgess v. Wickham, 3 B. & S. 669 (1863); Taylor, § 1132; or as it is put in the Civil Code, Art. 1234, "Testimony cannot in any case be received to contradict or vary the terms of a valid written instrument." According to this rule the contracts of the parties to bills of exchange and promissory notes as appearing upon the face of the instrument, whether of drawer, acceptor, maker or indorser, cannot be varied by parol evidence: Hart v. Davy, 1 U. C. Q. B. 218 (1843); Ewart v. Weller, 5 ibid. 610 (1849); Adams v. Thomas, 7 ibid. 249 (1850); Davis v. McSherry, ibid. 490 (1850); Hall v. Francis, 4 U. C. C. P. 210 (1854); Hammond v. Small, 16 U. C. Q. B. 371 (1858); Armour v. Gates, 8 U. C. C. P. 548 (1859); Street v. Beckwith, 20 U. C. Q. B. 9 (1860); Moore v. Sullivan, 21 ibid. 445 (1862); Chamberlin v. Ball, 5 L. C. J. 88 (1860); Scott v. Quebec Bank, 7 L. N. 343 (1884); Decelles v. Samoisette, M. L. R. 4 S. C. 361 (1888); Inglis v. Allen, 7 N. S. (1 G. & O.) 101 (1867); Graham v. Graham, 11 N. S. (2 R. & C.) 265 (1877); Taylor v. McFarlane, 12 N. S. (3 R. & C.) 190 (1878); Smith v. Squires, 13 Man. 360 (1901); Emerson v. Erwin, 10 B. C. R. 101 (1903).

Illustration.

Thus in an action brought upon a bill or note, it is not admissible to prove that at the time of making it was agreed verbally that the bill or note should be renewed or not paid at maturity: Bradb v. Oliver, 5 U. C. O. S. 703 (1839); Durand v. Steven..on, 5 U. C. Q. B. 336 (1848); Hayes v. Davis, 6 ibid. 396 (1849); McQueen v. McQueen, 9 ibid. 536 (1852); Bank of Upper Canada v. Jones, 1 U. C. Pr. R. 185 (1854); Harper v. Paterson, 14 U. C. C. P. 538 (1864); Vidal v. Ford, 19 U. C. Q. B. 88 (1859); Porteous v. Muir, 8 O. R. 127 (1885); Letellier v. Cantin, Q. R. 11 S. C. 64 (1896); Vineberg v. Jones, Q. R. 22 K. B. 128 (1912); Imperial Bank v. Brydon, 2 Man. 117 (1885); Union Bank v. MacCullough, 4 Alta. 371 (1912); Young v. Austen, L. R.

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Cannot be varied by parol.

4 C. P. 553 (1869); New London Credit Syndicate v. Neale, [1898] 2 Q. B. 487; or, that the instrument expressed to be payable at a certain time should be payable only in a given event: Harvey v. Geary, 1 U. C. Q. B. 483 (1845); Reed v. Reed, 11 ibid. 26 (1853); Royal Canadian Bank v. Minaker, 19 U. C. C. P. 219 (1869); Stultzman v. Yeagley, 32 U. C. Q. B. 630 (1872); McNeil v. Cullen, 37 N. S. 13 (1904); Moore v. Grosvenor, 30 N. B. 221 (1890); Foster v. Jolly, 1 C. M. & R. 703 (1835); Hitchings v. Northern Leather Co., [1914] 3 K. B. 907; Heslop v. Phillips, 24 V. L. R. 498 (1898); or that certain of the makers were not to be held liable: Murphy v. Bryden, 7 O. W. R. 250 (1906); or that it should be payable by instalments or in any other manner than expressed in the instrument: Besant v. Cross, 10 C. B. 895 (1851); or, that a note payable on demand should not be payable until the death of the maker; Woodbridge v. Spooner, 3 B. & Ald. 233 (1819); or, that it should be only to secure the payment of interest during the life of the payee: Hill v. Wilson, L. R. 8 Ch. 888 (1873); or that it was agreed that a note making no mention of interest was to bear interest from its date: Dombroski v. Laliberté, Q. R. 17 S. C. 57 (1905); or, that an indorser at the time of indorsing had agreed to waive his right to have notice of dishonor: Free v. Hawkins, 8 Taunt. 92 (1817); Leake on Contracts, p. 122: or that the maker was not to be liable, beyond the amount of money received by him: Conley v. Ashley, 1 O. W. R. 704 (1902).

Exceptions.

But parol evidence is admissible to show that the date of the bill or note is not the true date: s. 29; or, that the delivery is incomplete and conditional only so that the contract is not inoperative: s. 40 (*b*); or, to impeach the consideration for the contract: Northfield v. Lawrance, M. L. R. 7 S. C. 148 (1891); Maisonneuve v. Chartier, Q. R. 20 S. C. 518 (1901); Abrey v. Crux, L. R. 5 C. P. 37 (1869); Downie v. Francis, 30 L. C. J. 22 (1885); Fisher v. Archibald, 8 N. S. (2 G. & O.) 298 (1871); Black v. Gesner, 3 N. S. (2 Thom.) 157 (1847); Gray v. Whitman, ibid. (1857); Lindsay v. Zwicker, 8 N. S. (2 G. & O.) 100 (1870); Standard Bank v. Wettlaufer, 33 O. L. R. 441 (1915); or to show (after complete performance) that when the note

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Parol.

was made there was an oral agreement that if the maker paid interest to the payee and supported for life a relative of the latter, the note should be considered paid: McQuarrie v. Brand, 28 O. R. 69 (1896); or to show that the contract has been discharged by payment, release or otherwise: Carden v. Finley, 8 L. C. J. 139 (1860); Phillips v. Sanborn, 6 ibid. 252 (1862); Gole v. Cockburn, 8 ibid. 341 (1864); Lalonde v. Rolland, 10 ibid. 321 (1864); Converse v. Brown, 10 ibid. 196 (1865); Hamilton v. Perry, Q. R. 5 S. C. 76 (1894); Moore v. Grosvenor, 30 N. B. 221 (1890); Foster v. Dawber, 6 Exch. 839 (1851); Walker v. Johnson, 6 N. Z. L. R. 41 (1880); but see now section 142 (3); or to show as against the payee that the maker signed for his accommodation: Hébert v. Poirier, Q. R. 40 S. C. 405 (1911).

In an Australian case, Bank of South Australia v. Williams, 19 V. L. R. 514 (1893), it was held that parol evidence was admissible to show that plaintiff agreed at the time of the making of the note that the maker should not be liable on it. The authorities chiefly relied upon were Goss v. Nugent, 5 B. & Ad. 58 (1833), and Foster v. Dawber, 6 Exch. 839 (1851). The decision, however, is open to question, especially in view of the principle adopted in section 142 of the Act. A contemporaneous agreement in writing referring to a bill or note between the same parties may be binding: Jenkins v. Bossom, 13 N. S. (1 R. & G.) 540 (1880); Young v. Austen, supra; Brown v. Langley, 4 M. & Gr. 466 (1842); Almon v. Webb, 3 H. L. Cas. 510 (1852); Lindley v. Lacy, 17 C. B. N. S. 578 (1864); Maillard v. Page, L. R. 5 Ex. 312 (1870); but the mere fact that a bill or note refers to a collateral writing or agreement which is conditional in its terms will not affect the bill in the hands of a holder without notice of its contents: Jury v. Barker, E. B. & E. 459 (1858); Taylor v. Curry, 109 Mass. 36 (1871).

"**Addressed by One Person to Another.**"—"Person" here includes any body corporate and politic, and the representatives of such person and the heirs, executors, administrators or other legal representatives of such person: R. S. C. c. 1, s. 34 (20). The person addressing the bill is called the drawer, and the one addressed, the drawee. After

§ 17 acceptance of the bill the latter is called the acceptor. The part of the definition is not strictly complied with when the drawer and drawee are the same person, or when the drawee is a fictitious person: s. 26. The holder may treat such an instrument as a bill or note at his option. An instrument regular in form, except that it is not addressed to any drawee, is not a bill of exchange: Forward v. Thompson, 12 U. C. Q. B. 103 (1854); McPherson v. Johnston, 3 B. C. R. 465 (1894). The drawee need not be named; it is sufficient that he be described with reasonable certainty, so that the bill can be duly presented to the proper person: s. 20.

A warrant in the form of a bill of exchange, signed by a committee of a city council and addressed to the city treasurer, is not a bill of exchange, as the drawer and drawee really represent the same person: Charlebois v. Montreal, Q. R. 15 S. C. 96 (1898). For the same reason a draft drawn by one branch of a bank on another branch of the same bank or a bank dividend warrant is not a bill or cheque: Capital & Counties Bank v. Gordon, [1903] A. C. 240.

"Signed."—The instrument is not a bill of exchange until signed by the drawer. He may sign a blank paper which may be subsequently filled up: s. 31; or it may be accepted first and signed by the drawer afterwards: s. 37. Even if accepted it is not a bill if it lack the drawer's signature: McCall v. Taylor, 19 C. B. N. S. 301 (1865); Reg v. Harper, 7 Q. B. D. 78 (1881); but if still in his hands it may be a security for the payment of money within section 75 of the Imperial Larceny Act, 1861: Reg. v. Bowerman, [1891] 1 Q. B. 112: or within section 364 (*d*), or section 396 of the Criminal Code.

Signature. It may be signed in pencil: Geary v. Physic, 5 B. & C. 234 (1826); Brown v. Butchers' Bank, 6 Hill 443 (1844); Closson v. Stearns, 4 Vt. 11 (1831); Reed v. Roark, 14 Tex. 329 (1855); or with a cross or mark: Noad v. Chateauvert, 1 Rev. de Lég. 229 (1846); Paterson v. Pain, 1 L. C. R. 219 (1851); Thurber v. Desève, M. C. R. 125 (1854); Anderson v. Park, 6 L. C. R. 479 (1855); Collins v. Bradshaw, 10 ibid. 366 (1860); Coupal v. Coupal, 5 R. L. 465 (1873); Hubert v. Moreau, 12 Moore, 219 (1827); George v. Surrey, M. &

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Signature.

M. 516 (1830); Baker v. Dening, 8 A. & E. 94 (1838); Re Boyce, 2 Curtis 325 (1839); Re Field, 3 Curtis, 752 (1843); Re Amiss, 2 Robertson, 116 (1849); Willoughby v. Moulton, 47 N. H. 205 (1866); Shank v. Butsch, 28 Ind. 19 (1867). Contra, Laguenx v. Casault, 2 Rev. de Lég. 28 (1813), and Jones v. Hart, ibid. 58 (1819), overruled. Signing with a cross or mark is good even where the witness cannot sign and merely makes his mark: Remillard v. Moisan, Q. R. 15 S. C. 622 (1899).

In written contracts of various kinds it has been held or intimated that the following were sufficient, where it was clear that the parties intended to adopt them as their signatures — initials, a trade or assumed name, a stamp, or a printed or engraved signature. See Saunderson v. Jackson, 2 B. & P. 238 (1800); Phillimore v. Barry, 1 Camp. 513 (1808); Schneider v. Norris, 2 M. & S. 286 (1814); Hyde v. Johnson, 2 Bing. N. C. 776 (1836); Jacob v. Kirk, 2 M. & Rob. 221 (1339); Re Christian, 2 Robertson, 110 (1849); Re Hinds, 16 Jur. 1161 (1852); Caton v. Caton, L. R. 2 H. L. 143 (1867); Bennett v. Brumfit, L. R. 3 C. P. 28 (1867); Ex parte Birmingham Banking Co., L. R. 3 Ch. 653 (1868); Merchants' Bank v. Spicer, 6 Wend. 443 (1831); Weston v. Meyers, 33 Ill. 424 (1864); Randolph. §§ 63, 64; 1 Daniel. § 74.

The signature of a party need not be written with his own hand; it is sufficient if it be by some other person by or under his author.

In the case of a corporation, the seal alone would be sufficient; but a seal is not necessary or even usual: s. 5.

Bills of a company incorporated under the Dominion "Companies Act," may be drawn by any agent, officer, or servant in general accordance with his powers under the by-laws: R. S. C. c. 79, s. 32. Most of the provincial companies Acts have a similar provision as to companies incorporated under them.

The contractions "Co." and "Ltd." are sufficient to bind a company: Thompson v. Big Cities Co., 21 O. L. R. 294 (1910).

§ 17 The drawer usually signs at the foot of the bill, but his signature may be in the body of it or on any part so long as he signs as drawer: Byles, p. 110.

"On demand, or at a fixed or determinable future time"—Every bill of exchange falls under one or other of the above classes. The words are used in a special or technical sense and are explained respectively in sections 23 and 24. See these sections and the notes and illustrations under them. Bills are usually made payable "on demand" or "at sight" or a certain time "after date" or "after sight."

Money. **"A sum certain in Money."**—A sum is certain within the meaning of the Act although payable with interest, or by stated instalments, or according to a certain rate of exchange: s. 28. It must be for money alone; but it may be in the money of any country: Chitty on Bills, p. 153. A promissory note must also be for a sum certain in money: s. 82. Money is not defined in the Act, and is used in its ordinary sense.

"What is Money?—It is not necessarily either gold, silver or paper. It is just what the people of the country where the instrument is made choose to treat as money, in other words, as currency. If the note be for the payment of what is deemed money, it is wholly immaterial in the money of what country the note is payable:" Third National Bank v. Cosby, 41 U. C. Q. B., per Harrison, C.J., at p. 408 (1878). Money in Canada would be specie or Dominion notes: see 9-10 E. VII. c. 14, an Act respecting the Currency; and R. S. C. c. 27, an Act respecting Dominion Notes. A cheque given by the purchaser of an insolvent's stock to the banker of the insolvent held to be a payment of money within the Assignment Act: Gordon v. Union Bank, 26 A. R. 155 (1899).

In the United States words of description prefaced to the word "money" have been held not to vitiate the instrument containing them, nor the addition of the words "gold" or "specie." Under the judgment of the Supreme Court of the United States in the Legal Tender cases, it makes no difference if a note be made payable in any particular kind

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money, as gold or silver; any money obligation can be discharged by legal tender notes: Legal Tender cases, 12 Wall. 457 (1870). This doctrine was reaffirmed in Dooley v. Smith, 13 Wall, 605 (1871); Bigler v. Waller, 14 Wall, 298 (1871); and Railroad Co. v. Johnson, 15 Wall, 195 (1872). Notes payable in "current funds" and in "currency" have been held in many States to be promissory notes payable in money.

ILLUSTRATIONS.

The following have been held to be valid bills or notes as being for a sum certain in money:—

1. A note made in Canada promising to pay at Chicago "8893 American currency": Third National Bank v. Cosby, 41 U. C. Q. B. 402 (1877). See Stephens v. Berry, 15 U. C. C. P. at p. 557 (1865).

2. A promise to pay in cash or goods if the holder chooses to demand the former: McDonell v. Holgate, 2 Rev. de Lég. 29 (1818). But see Nos. 3, 4 and 14 of invalid list, *post*.

3. A note, payable in American silver at par, before the proclamation declaring such silver uncurrent: Joseph v. Turcotte, 2 R. C. 479 (1871).

4. A note made in Nova Scotia promising to pay a sum of money in Boston "in currency": Souther v. Wallace, 20 N. S. 509 (1888). Affirmed in the Supreme Court of Canada, where it was held that "there is no objection to the validity of a promissory note that it is for the payment of a certain sum in currency, which must be held to mean United States currency when the note is payable in the United States": 16 S. C. Can. 717 (1889).

5. A note made in New Brunswick promising to pay "$——, payable in United States currency": St. Stephen Ry. Co. v. Black, 13 N. B. (2 Han.), 139 (1870).

6. A note payable "in bankable currency": Dunn v. A 24 N. B. 1 (1884).

7. A note payable "in legal tender money": North-Western National Bank v. Jarvis, 2 Man. 53 (1883).

8. A note payable "in Canadian currency": Black v. Ward, 27 Mich. 193 (1873).

The following instruments have been held not to be valid bills or notes:—

1. A promise to pay £14 "in carpenter's or joiner's work as required": Downs v. McNamara, 3 U. C. Q. B. 276 (1846).

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2. A promise to pay £83 in ten days for value received, with a memorandum indorsed, when made, that it was to be "paid by a mortgage": Newhorn v. Lawrence, 5 U. C. Q. B. 359 (1848).

3. A promise to pay £25 "in cash or mortgage," even in case of election to pay in cash: Going v. Barwick, 16 U. C. Q. B. 45 (1857).

4. A promissory note at six months for $400, with a memorandum that it is to be paid in lumber, and if not so paid within the time, then in cash: Houlton v. Jones, 19 U. C. Q. B. 517 (1860).

5. A promise to pay in Kingston, Canada, £72 "with exchange on New York": Palmer v. Fahnestock, 9 U. C. C. P. 172 (1859).

6. A promise dated in the United States to pay bearer "$482 in Canada bills": Gray v. Worden, 29 U. C. Q. B. 535 (1870).

7. A promise to pay in Cobourg, Canada, $200, in current funds of the United States: Hettle v. Weller, 30 U. C. Q. B. 23 (1870) — Overruled: Third National Bank v. Cosby, 43 Ibid. at p. 69 (1878).

8. A promise to pay at Auburn, N.Y., $3,361 "with exchange not to exceed one-half per cent.": Saxton v. Stevenson, 23 U. C. C. P. 503 (1874).

9. An order to pay $400 "with current rate of exchange on New York": Cazet v. Kirk, 9 N. B. (4 Allen) 543 (1860). But see now section 28 (*d*).

10. An order by A. on B. requesting him to pay K. "the amount of my account furnished," on which B. had written "Correct for say $75" and had initialed it: Kennedy v. Adams, 15 N. B. (2 Pugs.) 162 (1874).

11. "I will pay J. C. $90 for D. V. or otherwise settle the sum of $90 for him on a note that he says he gave J. C. for $100": Cochrane v. Caie, 16 N. B. (3 Pugs.) 224 (1875).

12. A promise to pay a sum "to collaterally secure the payment of the money mentioned in an assignment of mortgage": McRobbie v. Torrance, 5 Man. 114 (1888).

13. An order requiring payment in good East Indian Bonds: Haller, N. P., p. 268.

14. An order to pay "in cash or Bank of England notes": Ex parte Imeson, 2 Rose, 225 (1815). This was prior to 3 & 4 Wm. IV., c. 98, s. 5, making these notes a legal tender.

15. An order to pay the proceeds of a shipment of goods, value about £2,000: Jones v. Simpson, 2 B. & C. 318 (1823).

16. An order requiring payment of "the balance due to me for building the Baptist College Chapel": Crowfoot v. Gurney, 9 Bing. 372 (1832).

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17. A promise to pay £695 in four instalments, 3 of £200 each, and the balance, £95, to go as a set-off for an order: Davies v. Wilkinson, 10 A. & E. 98 (1839).

18. A promise to pay in current bank bills or notes: McCormick v. Trotter, 10 Serg. & R. 94 (1823).

19. A promise to pay "in office notes of a bank": Irvine v. Lowry, 14 Peters (U. S.) 293 (1840).

20. A promise in New York to pay "in Canadian currency": Thompson v. Sloan, 23 Wend. (N. Y.) 71 (1840).

"**A specified Person.**"—The person to whom or to whose order a bill is made payable is called the payee. As to the necessity for the payee being clearly specified when the bill is payable to order, see section 21. The payee may be the same person as the drawer or the drawee: s. 19; or a fictitious person: s. 21. As to the change in the law making negotiable a bill payable to a specified person, and not to his order, see notes on section 22. "Person" is here used in the wide sense of the Interpretation Act, R. S. C. c. 1, s. 34 (20), and includes corporations, partnerships, etc.

"**Bearer.**"—A bill payable "to John Smith or bearer" is a bill payable to bearer. All persons except chartered banks are prohibited under a penalty of $100 from issuing, making, drawing, or endorsing any bill, bond, note, or cheque intended to circulate as money; and such intention is presumed if the sum is less than $20, and the instrument is payable to bearer, or at sight, or on demand, or within 30 days, unless given by the maker directly to his immediate creditor: Bank Act, R. S. C. c. 29, s. 136. The prohibition extends to corporations, etc. In France a bill cannot be drawn payable to bearer, but must be to the order of a third party or of the drawer himself: Code de Com. Art. 110.

Non-compliance with requisites.

2. An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange. 53 V., c. 33, s. 3 (2). Imp. Act, *ibid.*

"**Except as hereinafter provided.**"—These words are not in the Imperial Act, and it is doubtful if they serve any

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Exceptions.

useful purpose. They were not in the bill as introduced, but were inserted in the House of Commons ostensibly to meet the case of a bill payable with exchange (sec. 28 (*d*)), which was assumed not to be for a sum certain: Commons Debates, 1889, p. 778. That section, however, declares such a bill to be for a sum certain, within the meaning of the Act. Probably the only instruments recognized as bills by the Act which do not fairly come within the definition in the first clause of this section are those in which the drawer and the drawee are the same person, which strictly speaking, are not addressed by one person to another.

The use of the word "conditions" here is not the most felicitous, in view of the use of "unconditional" in the definition; but it is the order to pay that must be unconditional.

ILLUSTRATIONS.

The following are examples of instruments held not to be valid bills or notes on account of their ordering or promising some act to be done in addition to the payment of money:—

1. An instrument in the form of a note, with the following clause added: "This note to be held as collateral security": Hall v. Merrick, 40 U. C. Q. B. 566 (1877).

2. A note payable in 3 years, with the following words added: "This note is given as collateral security for a guarantee of $5,000 given to John Sutherland by Alexander Sutherland": Sutherland v. Patterson, 4 O. R. 565 (1884).

3. An instrument in the form of a promissory note with the following clause added: "The title and right to the possession of the property for which this note is given shall remain in (the vendors) until this note is paid": Dominion Bank v. Wiggins, 21 Ont. A. R. 275 (1894); Molsons Bank v. Howard, 3 O. W. N. 661 (1912); Prescott v. Garland, 34 N. B. 291 (1897); Bank of Hamilton v. Gillies, 12 Man. 495 (1899); Keddy v. Morden, 42 C. L. J. (Man.) 124 (1905); Greenwood v. Kirby, 24 Man. 532 (1914); Imperial Bank v. Bromish (N. W. T.) 16 C. L. T. 21 (1895); New Hamburg Mfg. Co. v. Weisbrod (N.W.T.), 4 W. L. R. 125 (1906); Frank v. Gazelle, L. S. Co., 5 W. L. R. 573 (1906); Imperial Bank v. Georges, 2 Alta. 386 (1909); Douglas v. Auten, 6 Alta. 75 (1913); Int. Harvester Co. v. Maxwell, 15 D. L. R. 654 (1914). Contra, International Harvester Co. v. Grant, 4 E. L. R. (P. E. I.) 1 (1907); Choate v. Stevens, 116 Mich. 28 (1898); Merchants Bank v. Dunlop, 9 Man. 623 (1894); Chicago Railway Equipment Co. v. Merchants' Bank, 136 U. S. 269 (1890).

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4. A promise to pay a certain sum, half in cash and half in goods: Gillin v. Cutler, 1 L. C. J. 277 (1857); Burnham v. Watts, 1 N. B. (2 Kerr) 377 (1844).

5. An instrument promising to pay £25 for a mare by instalments, and further to give a mortgage on a day named, and if this were not given, the whole amount should be payable at once: Coté v. Lemieux, 9 L. C. R. 221 (1859).

6. An order on defendant to pay £5 "half cash and half goods": Melville v. Beddell, Stevens' N. B. Digest, p. 95 (1832).

7. A promise to pay a sum of money on a particular day, and deliver up horses and a wharf: Martin v. Chauntry, 2 Str. 1271 (1747).

8. A promise to pay £65, "and also all other sums which may be due": Smith v. Nightingale, 2 Stark 375 (1818).

9. A promise to pay £1,200, "this being intended to stand as a set-off to a legacy": Clarke v. Percival, 2 B. & Ad. 660 (1831).

10. A promise to pay £30, and the demands of the sick club: Bolton v. Dugdale, 4 B. & Ad. 619 (1833).

11. A promise to pay £10 and all fines according to rule: Ayrey v. Fearnsides, 4 M. & W. 168 (1838).

12. A covenant to pay contained in a mortgage: Davies v. Herbert, 11 V. L. R. 386 (1885).

13. An order requiring payment of a certain sum, "and to take up a note for the drawer": Irvine v. Lowry, 14 Peters (U. S.) 293 (1840).

14. An order for "$800, and such additional premiums as may be due on policy No. 218,171": Marrett v. Equitable Ins. Co., 54 Maine, 537 (1867).

15. A note for $1,100 "together with costs and $50 attorney's fees" if suit necessary: Waters v. Campbell, 25 W. L. R. 838 (Alta., 1913).

The following additions have been held not to invalidate notes:—

1. A note where "value received" in the printed form had been struck out and "account of lumber to be shipped" substituted: Merchants Bank v. Bury, 33 O. L. R. 204 (1915).

2. A note with the following added: "As per memo. of agreement": Jury v. Barker, E. B. & E. 459 (1858).

3. A note by a principal and surety, with the following: "Time may be given to either without the consent of the other": Yates v. Evans, 61 L. J. Q. B. 446; 66 L. T. N. S. 532 (1882).

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4. A note payable by instalments, the whole to become due on default of one instalment, with this clause added: "No time given to, or security taken from, or composition or arrangements entered into with either party hereto shall prejudice the rights of the holder to proceed against any other party": Kirkwood v. Carroll, [1901] 1 K. B. 531; Kirkwood v. Smith, [1896] 1 Q. B. 582, overruled. Yates v. Evans, *supra*, approved.

Unconditional order.

3. An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with,—

(*a*) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or,

(*b*) a statement of the transaction which gives rise to the bill;

is unconditional. 53 V., c. 33, s. 3. Imp. Act, *ibid.*

An order to pay out of a particular fund is not a bill, being conditional, as the fund may prove inadequate. It may however, be a valid assignment of the fund, or a part of it, and operate without an acceptance by the debtor. A bill may be accepted, payable out of a certain fund. As will be seen from the following illustrations, the decisions have not been consistent as to whether a particular bill should fall within the first or the second of the classes indicated in the above clause.

ILLUSTRATIONS.

The following have been held not to be bills or notes, as being payable out of a particular fund:—

1. An order for £25, payable out of S.'s money: Ockerman v. Blackloek, 12 U. C. C. P. 362 (1862); Jenny v. Herle, 2 Ld. Raym. 1361 (1724).

2. An order to pay £125, "on account of the plaintiff's claim in this suit": Corp. of Perth v. McGregor, 21 U. C. Q. B. 459 (1862).

3. An order to pay $306 "out of certificate of money due me on the first of June, for material furnished to above church": Bank of B. N. A. v. Gibson, 21 O. R. 613 (1892).

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4. An order to pay "$600 out of money due me by your company": Ward v. Royal Canadian Ins. Co., Q. R. 2 S. C. 229 (1892).

Defective bills.

5. An order to pay A. $6 a month "out of my salary during such time as I am indebted to said A."; Angers v. Dillon, Q. R. 15 S. C. 435 (1898).

6. An order to pay "out of the first moneys received by you on my account": Fullerton v. Chapman, 8 N. S. (2 G. & O.) 470 (1871).

7. An order by a captain for £420, as being the full amount of freight for the voyage: Brett v. Lovett, 8 N. S. (2 G. & O.) 472 (1871).

8. An order to pay £7 "out of my growing substance": Josselyn v. Lacier, 10 Mod. 294 (1715).

9. An order to pay "out of the moneys arising from my reversion": Carlos v. Fancourt, 5 T. R. 432 (1794).

10. "To B.—I do hereby order, authorize and request you to pay to B. £—— out of moneys due or to become due from you to me, and his receipt for same shall be a good discharge. G.": Brice v. Bannister, 3 Q. B. D. 569 (1878); see Buck v. Robson, ibid. 686 (1878).

11. A promise to pay out of the net proceeds of ore: Worden v. Dodge, 4 Denio (N. Y.) 159 (1847); Morton v. Naylor, 1 Hill (N. Y.) 583 (1841); Gallery v. Prindle, 14 Barb. (N. Y.) 186 (1851).

12. An order to pay $— "and deduct the same from my share of the profits of the partnership": Munger v. Shannon, 61 N. Y. 251 (1874).

Valid bills.

The following have been held to be valid bills and notes as coming within the rule in the latter part of the above sub-section:—

1. A promise to pay $150, with the clause added, "which when paid is to be indorsed on the mortgage bearing even date with this note": Chesney v. St. John, 4 Ont. A. R. 150 (1879).

2. An order to pay $138.40 for flooring supplied: Hall v. Prittie, 17 Ont. A. R. 306 (1890); followed in Brookler v. Security Co., 8 W. W. R. 861 (Man., 1915).

3. A promise to pay, with a memorandum that the note was given for insurance premiums: Wood v. Shaw, 3 L. C. J. 169 (1858).

4. An order to pay on account of wine had of the drawer: Buller v. Cripps, 6 Mod. 29 (1703).

5. An order to pay £9, "as my quarterly half pay, by advance": Macleod v. Snee, 2 Str. 762 (1728).

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Valid bills.

6. A promise to pay £50, being a portion of a value as money deposited in security for the payment hereof: Haussoullier v. Hartsinck, 7 T. R. 733 (1798).

7. A promise to pay £16 "by giving up clothes and papers, etc.: these latter words being merely equivalent to "value received": Dixon v. Nuttall, 6 C. & P. 320 (1834).

8. An order to pay £600 "on account of moneys advanced by me for the F. Co.": Griffin v. Weatherby, L. R. 3 Q. B. 753 (1868). (Banbury v. Lisset, 2 Str. 1211 (1744) overruled.)

9. An order for £3,374 "against credit No. 20, and place it to account as advised": Banner v. Johnston, L. R. 5 H. L. 157 (1871).

10. An order to pay £200 out of moneys which would become payable on the completion of a contract: Ex parte Shellard, L. R. 17 Eq. 109 (1873). Disapproved in Buck v. Robson, 3 Q. B. D. 686 (1878).

11. An order for £7,000, "which is on account of dividends and which charge to my account according to a registered letter I have addressed to you": In re Boyse, Crofton v. Crofton, 33 Ch. D. 612 (1886).

12. "To the trustees of the estate of T.—Please pay to C. the sum of £208, being the amount of two promissory notes given by me to him for meat. A. B.": Camp v. King, 14 V. L. R. 22 (1887).

Instrument payable on contingency.

18. An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. 53 V., c. 33, s. 11 (2). Imp. Act, *ibid.*

This is practically a reaffirmation of the unconditional order required by section 17. An instrument payable on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain, is however a good bill: s. 24. An acceptance may, however, be conditional: s. 38, s.s. 3 (*a*).

ILLUSTRATIONS.

Invalid bills.

Orders or promises to pay a certain sum of money on the following terms and conditions have been held not to be valid bills or notes, under the rule on which this subsection is based:—

1. At the sale of timber marked P. A., in Quebec: Russell v. Wells, 5 U. C. O. S. 725 (1848).

2. One month after a house is finished: Garner v. Hayes, 10 Ont. A. R. 24 (1884).

3. On completion of a contract on building now in course of erection: Thomson v. Higgins, 23 Ont. A. R. 191 (1896).

4. On the arrival of a certain ship: Wood v. Higginbotham, 2 Rev. de Lég. 28 (1813), Palmer v. Pratt, 2 Bing. 185 (1824); Coolidge v. Ruggles, 15 Mass. 386 (1819).

5. Three days after the sailing of a vessel: Dooly v. Ryanson, 1 Q. L. R. 219 (1878); Duchaine v. Maguire, 8 Q. L. R. 295 (1882).

6. Within so many days after the maker married: Pearson v. Garrett, 4 Mod. 242 (1693); Beardsley v. Baldwin, 2 Str. 1151 (1741).

7. £116 on the death of G. II., provided he left the makers so much, or if they were otherwise able to pay it: Roberts v. Peake, 1 Burr. 323 (1757).

8. From his reversion when sold: Carlos v. Fancourt, 5 T. R. at p. 486 (1794).

9. When I am in good circumstances: Ex parte Tootell, 4 Ves. 372 (1798).

10. When a certain sale is made: Hill v. Halford, 2 B. & P. 413 (1801); De Forest v. Fraley, 6 Cow. 151 (1826).

11. Ninety days after sight, or when realized: Alexander v. Thomas, 16 Q. B. 333 (1851).

12. Should another note not be met at maturity: Dickinson v. Bower, 14 T. L. R. 146 (1897).

13. When in funds: Gillespie v. Mather, 10 Penn. St. 28 (1848).

14. When an estate is settled up: Husband v. Epling, 81 Ill. 172 (1876).

15. On demand, or in three years: Maloney v. Fitzpatrick, 133 Mass. 151 (1881).

Addressed to two or more drawees.

2. A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. 53 V., c. 33, s. 6 (2). Imp. Act, *ibid.*

Where a bill addressed to two or more drawees, it must be accepted by all or it is a qualified acceptance: s. 38,

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3 (*d*). Those who accept are bound even if the others do not.

A bill might formerly be addressed to two drawees in the alternative: Anon. 12 Mod. 447 (1701), where an instrument directed to A., or in his absence to B., and beginning "Gentlemen, pray pay," etc., was held by Lord Holt to be a bill of exchange. If the bill is addressed to two persons "or either of them," acceptance by either is a sufficient compliance with its mandate. Thompson on Bills, p. 212. The referee in case of need sometimes named in a bill, as one to whom the holder may resort in case it is dishonored by the drawee, is not considered an alternative or successive drawee: s. 33.

Payee, drawer or drawee.

19. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee. 53 V., c. 33, s. 5 (1). Imp. Act, *Ibid.*

Usually there are three distinct parties to a bill, the drawer, the drawee and the payee. In the above cases there are only two parties. In the first instance the drawer and the payee are the same person. This is a form of bill or draft long in use, and frequently adopted: Butler v. Crips, 1 Salk. 130 (1704). Such an instrument may be treated either as a bill of exchange or as a promissory note: Golding v. Waterhouse, 16 N. B. (3 Pugs.) 313 (1876). An instrument payable "to order" is of this class and means "to my order": Chamberlain v. Young, [1893] 2 Q. B. 206.

In the second instance the drawee and the payee are the same. This is a more uncommon form, and may be used when the drawee acts for himself, and also as agent for another person interested in the bill, or when he acts as agent for two different persons: Pardessus, Droit Commercial, § 339. In this case he is, in the language of Pothier, at the same time, acceptans et praesentans: Change, No. 19.

In such cases the bill can not be enforced until the acceptor has endorsed and delivered it to some other person: Reg. v. Bartlett, 2 M. & R. 362 (1841); Holdsworth v. Hunter, 10 B. & C. 449 (1830); Witte v. Williams, 8 S. Car. 290 (1876).

The Civil Code did not in terms recognize as a bill an instrument payable to the order of the drawee: Art. 2282. Nor does the Code de Commerce: Art. 110. § 19

2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. 53 V., c. 33, s. 7 (2). Imp. Act, *ibid.* Two or more payees.

Chalmers says "this subsection materially alters the law." From the illustrations given below it will be seen that the decisions on the subject have been conflicting both in the United States and in Canada, and also that they were not absolutely uniform in England. This provision applies equally to endorsees under a special endorsement: s. 67 (4).

ILLUSTRATIONS.

1. A promise to pay "to E. S. R. or J. F., his guardian," is not a promissory note: Reed v. Reed, 11 U. C. Q. B. 26 (1853).

2. A note payable to A., "or to his wife and no other person," is a good note and the same as if payable to A. alone: Moodie v. Rowatt, 14 U. C. Q. B. 273 (1856).

3. A note payable to A., "or his heirs," is not a promissory note: Doak v. Robinson, 12 N. B. (1 Han.) 279 (1868).

4. A promise to pay "to A. or to B. or to C," is not a note: Blanckenhagen v. Blundell, 2 B. & Ald. 417 (1819).

5. A promise to pay "to the W. M. P., or order, or the major part of them," is a good note: Watson v. Evans, 1 H. & C. 662 (1863).

6. A note in the alternative is payable to, and may be sued on by, either one of the payees: Spaulding v. Evans, 2 McLean, 139 (1840).

7. A note payable to A. B., "or heirs," held to be a promissory note: Knight v. Jones, 21 Mich. 161 (1870).

8. A promise to pay a sum "to A. or B." is not a note: Carpenter v. Farnsworth, 106 Mass. 561 (1871).

3. A bill may be made payable to the holder of an office for the time being. 53 V., c. 33, s. 7 (2). Imp. Act, *ibid.* Holder of office payee.

§ 19 Before the Act this was followed as a general rule, but not always.

ILLUSTRATIONS.

1. A promise to pay "A. B., treasurer, etc., or his successor or successors in office," is a valid note: McGregor v. Daly, 5 U. C. C. P. 126 (1855).

2. A promise to pay J. P., "treasurer of the building committee of St. John's Church, or his successor duly appointed," is a promissory note: Patton v. Melville, 21 U. C. Q. B. 263 (1861).

3. A promise to pay to "W. & D., stewardesses for the time being of the P. D. Society, or their successors in office," held to be a promissory note: Rex v. Box, 6 Taunt. 325 (1815).

4. A promise to pay "to the trustees acting under the will of the late W.," held to be a promissory note: Megginson v. Harper, 2 C. & M. 322 (1834).

5. A promise to pay the secretary or treasurer for the time being of a society is not a note: Cowie v. Stirling, 6 E. & B. 333 (1856).

6. A promise to pay "to the trustees of the Wesleyan Chapel, Harrogate, or their treasurer for the time being," is a good note: Holmes v. Jueques, L. R. 1 Q. B. 376 (1866). See Auldjo v. McDougall, 3 U. C. O. S. 199 (1833).

7. A note payable to the order of "A. B., trustee for C. D.," is a good promissory note: Downer v. Read, 17 Minn. 493 (1871).

Drawee to be named.

20. The drawee must be named or otherwise indicated in a bill with reasonable certainty. 53 V., c. 33, s. 6. Imp. Act, *ibid.*

The name and address of the drawee, preceded by the word "To," are usually placed at the lower left-hand corner of a bill, but they may be placed on any part of it provided it be clear to whom the bill is meant to be addressed. The certainty is required in order that the payee may know upon whom he is to call to accept and pay the bill; and in order that the drawee may know whether he would be justified in accepting and paying the bill on account of the drawer. At common law the name of the drawee was not necessary, if he were otherwise sufficiently indicated. Blanks may be filled up in accordance with the provisions of section 31,—even after acceptance: s. 37 (*a*). If the drawee be a fictitious person, see section 26.

ILLUSTRATIONS. § 20

1. An instrument not addressed to any drawee is not a bill of exchange: Forward v. Thompson, 12 I. C. Q. B. 103 (1851); McPherson v. Johnston, 3 B. C. R. 465 (1894); Peto v. Reynolds, 9 Ex. 410 (1854); 11 Ex. 418 (1855). Drawee named.

2. Where the word "At" is placed before the name of the drawee instead of "To," it is sufficient: Shuttleworth v. Stephens, 1 Camp. 407 (1808).

3. Where the words "payable at No. 1 Wilmot Street, London," appeared on a bill in the place where the name of the drawee is usually written, and it was accepted by defendant, who lived there, held sufficient, and M. liable as acceptor: Gray v. Milner, 8 Taunt. 739 (1819).

4. Where an instrument not addressed to any person, is accepted, such party is not liable as an acceptor, but may be as the maker of a note: Fielder v. Marshall, 9 C. B. N. S. 606 (1861).

5. A bill addressed "To the agent and owners" of a certain ship without naming them, is a sufficient indication of the drawee: Taber v. Cannon, 8 Mete. 456 (1844).

6. A bill addressed "To the Steamer Dorrance and owners" is a sufficient designation: Alabama Coal Co. v. Brainard, 35 Ala. 476 (1860).

21. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable. 53 V., c. 33, s. 8 (1). Imp. Act, *ibid.* Transfer words.

Before the Act of 1890 if a party to a bill wished to make it not negotiable, all he had to do was to make it payable to a person named, omitting "order" or "bearer." Now such a note is negotiable: s. 22; and if he wishes to make it not negotiable he must do so in clear terms. Where a bill was drawn payable to the order of F. the drawer, and the drawees struck out the word "order" and accepted the bill "in favour of F. only," at a certain bank, it was held that such acceptance was not a qualified one, and did not vary the effect of the bill as drawn: Meyer v. Decroix, [1891] A. C. 520. Where a cheque payable to the order of M. was crossed "account of M., National Bank Dublin," it was held that these words in the crossing did not prohibit

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transfer, and that the bank having credited M. with the amount, could sue the drawer: National Bank v. Silke [1891] 1 Q. B. 435. For the rule as to bills negotiable in their origin, but which have their negotiability either stopped or limited by a restrictive indorsement, see section 63. The words "non-negotiable and given as security" written on the face of a note deprives it of its essential characteristic as a promissory note, and it becomes a mere contract of suretyship: Davis v. Robertson, Q. R. 6 Q. B. 264 (1897); but in Banque Nationale v. Lemaire, Q. R. 44 S. C. 115 (1913), it was held in Review (reversing the trial judge) that the words, "As a guarantee to the bills discounted at the Banque Nationale," written in the margin of a bill payable to order, and which were almost illegible and not seen by the bank manager who discounted it, formed no part of the instrument and the bank was entitled to recover.

The Old Law.—Formerly a bill payable to a particular person and not to his order or to bearer would have come under this sub-section, and most of the non-negotiable bills and notes in the reported cases are of this class; now, by section 22, such a bill is negotiable. It remains to be seen whether the Courts will recognize in third parties the same rights under a sale or assignment of a bill or note whose transfer is prohibited, as they have heretofore done as to a bill not payable to order or bearer. As to the law in England, Chalmers says, at p. 143: "A bill may be transferred by assignment or sale, subject to the same conditions as would be requisite in the case of an ordinary chose in action. Thus:—C. is the holder of a note payable to his order. He may transfer his title to D. by a separate writing assigning the note to D.: Re Barrington, 2 Scho. & Lef. 112 (1801); or by a voluntary deed constituting a declaration of trust in favor of D.: Richardson v. Richardson, L. R. 3 Eq. 686 (1867), as explained in Warriner v. Rogers, L. R. 16 Eq. 340 (1873), or by a written contract of sale: Sheldon v. Parker, 3 Hun (N.Y.) 498 (1875). A bill is a chattel, therefore it may be sold as a chattel. A bill is a chose in action, therefore it may be assigned as a chose in action."

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Chose in action.

Chose in Action.—In Ontario, R. S. O. c. 109, s. 49, provides for the transfer of a debt or other legal chose in action by an assignment in writing, and gives the assignee, after express notice of the assignment, the right to sue for or give a good discharge for the same without the concurrence of the assignor. R. S. N. S. c. 155, s. 19 (5); C. S. N. B. c. 111, s. 155; R. S. Man. c. 46, s. 26 (*e*); R. S. B. C. c. 133, s. 2 (25); Stat. Alta., 1907, c. 5, s. 7 (3); R. S. Sask. c. 146, s. 1, and Cons. Ord. N. W. T. c. 41, s. 1, contain similar provisions. See Tyrrell v. Murphy, 30 O. L. R. 235 (1913).

The law of Quebec is contained in Articles 1570 and 1571 of the Civil Code, and provides that the sale of debts and rights of action is effected by an instrument of sale, a copy of which is served on the debtor unless he is a party to it. The transferee may then sue in his own name. The institution of an action against the debtor is a sufficient service of transfer of the debt: Bank of Toronto v. St. Lawrence Fire Ins. Co., [1903] A. C. 59. Article 1573 provides that these provisions do not apply to bills, notes or cheques payable to order or bearer. In McCorkill v. Barrabé, M. L. R. 1 S. C. 319 (1885), it was held that the indorsee of a non-negotiable note could sue the maker, when a copy of the note and indorsement had been served upon the latter.

In Brice v. Bannister, 3 Q. B. D. 569 (1878), Bramwell, L.J., in speaking of an assignment of money to be earned under a written contract, says at p. 580: "It does seem to me a strange thing and hard on a man that he should enter into a contract with another and then find that because that other has entered into some contract with a third, he, the first man, is unable to do that which is reasonable and just he should do for his own good. But the law seems to be so; and any one who enters into a contract with A. must do so with the understanding that B. may be the person with whom he will have to reckon. Whether this can be avoided, I know not; may be, if in the contract with A. it was expressly stipulated that an assignment to B. should give no rights to [illegible] such a stipulation would be binding. I hope it would. "

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Chose in action.

This section of the Act appears to furnish the stipu tion suggested by Lord Bramwell, and as the law of Que makes provision for transfer the question proposed by h may come up for solution there. If there be a conflict tween the Act and the Code there may be still further an i portant question as to which law shall override the other

In Quebec it has been held that the indorsee of a n negotiable note could sue his immediate indorser but not a more remote party: Jones v. Whitty, 9 L. C. R. 191 (185 See Bard v. Francoeur, Q. R. 7 S. C. 315 (1891).

In Harvey v. The Bank of Hamilton, 16 S. C. Can. 7 (1888), an Ontario case, it was held that although the n was not negotiable the indorsee was entitled to recover fr the maker, it being shown that the note was intended by the makers to have been made negotiable, and was issued by th as such, but, by mistake or inadvertence, it was not e pressed to be payable to the order of the payee. But in t case, might not the holder have added the words "or order" as having been omitted by inadvertence? In Kershaw v. Cox, 3 Esp. 246 (1800), it was held that the insertion of these words did not vitiate the note.

It has been held that the indorser of a non-negotiable note is not liable to the payee: West v. Bown, 3 U. C. Q. B 290 (1846); and that the maker of a non-negotiable note payable to the treasurer of a township cannot be sued by the corporation: Township of Toronto v. McBride, 29 U. C. Q. B. 13 (1869).

The French Code de Commerce does not recognize a non-negotiable instrument as a bill of exchange: Arts. 110, 136; nor does the Negotiable Instruments Law: § 20 (4).

Negotiable bill.

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

When payable to bearer.

3. A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank. 53 V., c. 33, s. 8 (2) and (3). Imp. Act, *ibid.*

Section 22 defines a bill payable to order. § 21

A bill is expressed to be payable to bearer, not only when it is made payable to "bearer" simply, but also when made payable "to A. B. or bearer," or "to —— or bearer." Where a bill is negotiable in its origin, it continues to be negotiable until it has been restrictively endorsed or discharged by payment or otherwise: s. 69.

The last clause of this subsection altered the law in England, and it also alters the law in Canada: Sovereign Bank v. Gordon, 9 O. L. R. at p. 150 (1905). Formerly a bill having been indorsed in blank, its negotiability could not afterwards be restrained by a special indorsement: Walker v. Macdonald, 2 Ex. 527 (1848). No indorsement other than that by a payee can stop the negotiability of the bill: C. C. Art. 2288. A cheque payable to C. M. & S. or bearer was stamped for deposit to their credit in a bank and indorsed by them. Their clerk, instead of depositing it, drew the funds, the teller not observing the special indorsement. It was held that, as bearer, the clerk was entitled to receive payment and the bank which paid was not liable: Exchange Bank v. Quebec Bank, M. L. R. 6 S. C. 10 (1890).

Any holder of a bill may convert a blank indorsement into a special indorsement: s. 67 (5).

4. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. 53 V., c. 33, s. 7 (1). Imp. Act, *ibid.* Certainty of payee.

In the definition of a bill, the payee is spoken of as "a specified person:" s. 17. He should be clearly specified, so that the drawee, when he accepts, may know to whom or to whose order he can safely pay. The payee need not be mentioned by name; it is sufficient that he be indicated, so that he can be clearly identified. As to indication by office, see notes to the following subsection. Where the name of the payee is mis-spelt or where he is described by his office or otherwise, parol evidence is admissible to identify him; but not to show who is meant where he is neither named nor

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Certainty of payee.

described: s. 64. If another person of the same name endorses as payee, it is a forgery. See s. 19, III. 7. If the name of the payee be left in blank, the legal holder of the bill may fill up the blank: C. C. Art. 2282; Cruchley v. Clarance, 2 M. & S. 90 (1813); Bagley v. Ellison, 16 V. L. R. 263 (1890).

ILLUSTRATIONS.

1. An order to pay to the order of the trustees of an insolvent firm, without naming them, is sufficiently certain: Auldjo v. McDougall, 3 U. C. O. S. 199 (1833).

2. A note payable to the order of J. B. G., for the use of W. M., is a promissory note: Munro v. Cox, 30 U. C. Q. B. 363 (1870).

3. A note payable "to the estate of D." is valid: Dominion Bank v. Beacock, 9 C. L. T. (Ont.) 252 (1889); Lewinsohn v. Kent, 87 Hun (N.Y.) 340 (1895); Lyon v. Marshall, 11 Barb. (N.Y.) 241 (1851); Shaw v. Smith, 150 Mass. 166 (1889).

4. Where a note was made payable to John Souther & Son, it may be shewn that John Souther & Co. were meant: Wallace v. Souther, 16 S. C. Can. 717 (1889).

5. A note payable to —— or order cannot be recovered by the person to whom it was given either as payee or bearer, without inserting his name in the blank as payee: Mutual Safety Ins. Co. v. Porter, 7 N. B. (2 Allen) 230 (1851).

6. If no one be named or definitely referred to as payee, the instrument is not a valid bill: Gibson v. Minet, 1 H. Bl. 569 (1791); Enthoven v. Hoyle, 13 C. B. 373 (1853).

7. Where the bill was made payable to —— or order, evidence to show that C. was intended to be the payee was held to be inadmissible: Rex v. Randall, R. & R. 195 (1811).

8. Where a bill was made payable to the order of J. Smythe, evidence was admitted to show that T. Smith was the person intended: Willis v. Barrett, 2 Stark, 29 (1816). See Soares v. Glyn, 8 Q. B. 24 (1845); Jacobs v. Benson, 39 Me. 132 (1855).

9. An instrument which was made payable to "—— or order," the blank never having been filled in, must be construed as meaning that it was payable to "my order," that is to the order of the drawer and having been indorsed by him, it was a valid bill of exchange: Chamberlain v. Young, [1893] 2 Q. B. 206.

10. A note payable "to the order of the indorser" was held to be valid, and payable to any holder who might indorse it: United States v. White, 2 Hill (N.Y.) 59 (1841).

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Fictitious payee.

5. Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. 53 V., c. 33, s. 7 (3). Imp. Act, *ibid.*

Formerly in England, it was only as against a party to the bill who knew that the payee was a fictitious person, that a bona fide holder could treat the bill as one payable to bearer: Chitty, p. 113; Minet v. Gibson, 3 T. R. 481 (1789).

Chalmers says, p. 23:—"This subsection was inserted in committee in place of a clause working out in detail the effect of the cases. The words 'or non-existing' seem superfluous; but they were probably intended to cover the case of Ashpitel v. Bryan, 3 B. & S. 171 (1864).

"Before the Act, it appears that even the holder in due course could not enforce a bill which he held under the indorsement of a fictitious person, excepting as against parties who were privy to the fiction; the exception that bills drawn to the order of a fictitious or non-existing payee might be treated as payable to bearer was based uniformly upon the law of estoppel, and applied only against the parties who at the time they became liable on the will were cognizant of the fictitious character or non-existence of the supposed payee: Vagliano v. Bank of England, (1889) 23 Q. B. D. 243, at p. 260, per Bowen, L.J., reviewing the cases: Story on Bills, ss. 56, 200.

"But the Act has swept away the former qualifications, and now any holder who could recover if the bill had been drawn payable to bearer can recover if the payee be fictitious. Where a bill is payable to the order of a fictitious person, it is obvious that a genuine indorsement can never be obtained, and in accordance with the language of the old cases and text-books, the Act puts it on the footing of a bill payable to bearer. But inasmuch as a bill payable to one person, but in the hands of another, is patently irregular, it is clear that the bill should be indorsed, and perhaps a bona fide holder would be justified in indorsing it in the payee's name. It might have been better if the Act had provided that a bill payable to the order of a fictitious person might be treated as payable to the order of any one who should indorse it, or,

§ 21 in other words, as indorsable by the bearer. Though the bill may be payable to bearer, it is clear that a holder who is party or privy to any fraud acquires no title. What the Act has done is to declare that the mere fact that a bill is payable to a fictitious person shall not affect the rights of a person who has received or paid it in good faith."

Vagliano case.

Vagliano's Case.—The case of Vagliano and the Bank of England above mentioned is the most striking one that has arisen under the Imperial Act, and is of special interest not only on account of the number and magnitude of the forgeries in question, but also on account of the skilful manner in which they were perpetrated, and the great diversity of judicial opinion upon the questions of law involved. The following are the leading facts of the case: Vagliano, the plaintiff, was a London merchant, who kept his account with the Bank of England and made his bills payable there. These each year numbered about 4,000 and amounted to three or four million pounds. Among his foreign correspondents was Vucina, an Odessa merchant, who for several years had drawn a large number of bills upon him, several of them being to the order of C. Petridi & Co., of Constantinople. During 1887, up to the 12th of October, Vucina's drafts upon him numbered over 700, aggregating about £340,000. Vagliano had a clerk named Glyka, who committed the forgeries in question. His plan was as follows:—He would forge Vucina's name to a draft in favor of C. Petridi & Co., place it among the genuine bills left for acceptance, forge a letter of advice from Vucina, procure Vagliano's acceptance, have it entered among the bills payable, and then steal the bill. The bank would be notified in due course, and Glyka would forge the indorsement of C. Petridi & Co., present the bill, and get the money. Between the 4th of February, 1887, and the 11th of October of that year, when his forgeries were discovered, he had forged no less than 43 such bills, which aggregated £71,500. The bank charged these bills to Vagliano, and the action was brought by him to recover that amount.

Trial.

The case was tried before Charles, J., without a jury. It was conceded that by section 54 of the Act, Vagliano was

precluded from denying the genuineness of the signature of Vacina. The questions remained whether the case came within sub-section 3 of section 7, and what effect the conduct of the parties had upon their respective rights and liabilities. The decision was in favor of the plaintiff, the Judge holding that C. Petridi & Co., the payees, were not "fictitious or non-existing persons" within the meaning of this sub-section, and the bank was not entitled to treat the bills in question as payable to bearer; that Vagliano had not been guilty of negligence immediately connected with the transactions, so as to disentitle him to recover; and that on the authority of Roberts v. Tucker, 16 Q. B. 560 (1851), embodied in section 24 of the Act, the bills being payable to order the bank had no right to pay to one who had not become the holder by genuine indorsement: 22 Q. B. D. 103 (1888). § 21

The case went to the Court of Appeal, where it was heard by six judges. The decision of Charles, J., was affirmed by the majority, Lord Esher, M.R., dissenting: 23 Q. B. D. 243 (1889). It was held that although the instruments in question might not really be bills of exchange at all, there being no real drawee and no real payee, the bank, in view of their acceptance by plaintiff and his letters directing their payment, was justified in dealing with them as if they were actual bills; that the payees were not fictitious or non-existing, but a real and existing firm; that "fictitious" meant fictitious to the knowledge of the party sought to be charged upon the bill; and that the bank was not justified in paying upon a forged indorsement. Lord Esher was of opinion that the instruments were not bills of exchange at all, but that Vagliano was estopped from saying that they were not bills; that the Bills of Exchange Act altered the law so that it was not necessary that Vagliano should know that the payees were fictitious in order to make the bills payable to bearer, and that in this case the payees were really fictitious and the bank consequently justified in paying the bills to the bearer. In appeal.

In the House of Lords these decisions were reversed by the Lord Chancellor, Lords Selborne, Watson, Herschell, Macnaghten and Morris, while Lords Bramwell and Field were in favor of the plaintiff: [1891] A. C. 107. The Final judgment.

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majority, however, did not agree in the grounds upon which the judgment should be based. Lords Watson, Herschell, Macnaghten and Morris held that this sub-section applied, an opinion in which the Lord Chancellor reluctantly concurred, while Lord Selborne thought that the payees were not fictitious or non-existing. The Lord Chancellor and Lord Selborne thought that as Vagliano had accepted the bills, and had advised the bank that he had done so, and had seen the payments entered in his pass-book, he was estopped from claiming that the payments were unauthorized, an opinion in which Lords Watson and Macnaghten alone partly concurred. The divergence of opinion was such that it would seem almost to justify the somewhat caustic remark of Lord Bramwell regarding the dissenting opinion of himself and of Lord Field, when he said: "It is some comfort to me to think that the head-note of our opinion may be expressed very shortly, and in the most abstract form—namely, a banker cannot charge his customer with the amount of a bill paid to a person who had no right of action against the customer, the acceptor. But I think the head-note which will represent the decision of your lordships should be in a strictly concrete form, stating the facts and saying that on them it was held that judgment should be for the appellants."

An Australian case.

This clause as applicable to a promissory note was considered in the City Bank v. Rowan, 14 N. S. W. R. (Law) 127 (1893), a case under the New South Wales Act, which is identical with the English and Canadian Acts on this point. One W. Shackell, pretending to be acting for James Shackell & Co., of Melbourne, sold a lot of wool to defendant in Sydney, and on his handing over a bogus store warrant for the wool signed by one Jones, who claimed to be the Sydney agent of the Melbourne firm, received a promissory note payable to the order of James Shackell & Co. This was indorsed by Jones in the name of James Shackell & Co., and discounted with the City Bank. There had been a firm of James Shackell & Co. in the wool business in Melbourne: but it had been out of business for some time, although James Shackell still lived there. The Court held that the case was governed by Vagliano v. Bank of England, that James Shackell & Co., the payees, were non-existing, and even if they had been still

an existing firm, they had no interest in the note, and no right to indorse it, or to be paid upon it, and that the payees were in reality fictitious. There being no person who had the right to indorse it as payee, it was in effect payable to bearer. § 21

Case of a cheque.

The clause has also been considered by the House of Lords in another case arising out of cheques on a banker: Clutton v. Attenborough, [1897] A. C. 90. A clerk of plaintiffs, by fraudulently representing to them that work had been done for them by George Brett, induced them from time to time to draw cheques payable to the order of George Brett. There was no such person as George Brett and no such work had been done. The clerk forged Brett's indorsement, and negotiated the cheques with defendants, who gave value for them in good faith. They were duly paid by the banker. When plaintiffs discovered the fraud they sued defendants for money paid under a mistake of fact. It was claimed for plaintiffs that in case of a cheque the payee must be fictitious or non-existing to the knowledge of the drawer to bring it within the Act; but it was held that the case was governed by the Vagliano case, and that the payee was not the less a "fictitious or non-existing person," because the drawers supposed him to be a real person, and that the cheques were consequently payable to bearer.

An Ontario case.

There has been also a case on the point in Ontario. The Ottawa agent of a London life insurance company had policies issued in the names of persons in or near Ottawa without their knowledge. He paid the premiums for a time, and at different times sent in proofs of their death, all the papers, applications, proofs, claims, etc., being forged by him. The company sent him the cheques in settlement payable to the order of the respective claimants, drawn upon the Molsons Bank at Ottawa. He obtained the money by forged indorsements. After the frauds had been discovered, and he had been convicted of the forgeries, the company sued the bank for the amount of the cheques. The Court of Appeal held that the payees were fictitious or non-existing persons, although there were persons of the same names in or near Ottawa; but that the company had made their cheques payable, not to these persons, but to the fictitious claimants,

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who were, in reality, no other than their fraudulent agents, and that the case was governed by the Vagliano case, and the cheques were consequently really payable to bearer: London Life Ins. Co. v. Molsons Bank, 8 O. L. R. 238 (1904).

Vinden v. Hughes.

In another English case, plaintiffs' clerk made out cheques to the order of customers for sums which he pretended to be due to them and procured plaintiffs' signature to them. He forged the indorsement of the payees, and defendant bona fide cashed them for him. It was held that the payees were not "fictitious persons," and that plaintiffs were entitled to recover: Vinden v. Hughes, [1905] 1 K. B. 795.

The Macbeth case.

The latest English case is Macbeth v. North and South Wales Bank, in which plaintiff was induced to make out a cheque to the order of one Kirk to pay for shares in a company which it was alleged by one White, Kirk had agreed to sell to him. Kirk had no such shares, and knew nothing of the matter. Plaintiff handed the cheque to White, who forged the indorsement and deposited the cheque in the defendant bank. It was held by Bray, J., that the payee was not a fictitious but a real person, and that Vinden v. Hughes applied, and not the Vagliano case. This judgment was affirmed by the Court of Appeal and the House of Lords. In the latter the Lord Chancellor adopted the following language of Bray, J.:—"It seems to me that when there is a real drawer who has designated an existing person as the payee, and intended that that person should be the payee, it is impossible that that payee can be fictitious." Lord Robertson said that so far from Kirk the payee being a fictitious or feigned or imaginary person, he "was a living man, in business, known to the drawer of the cheque and intended by him to receive the proceeds:" North and South Wales Bank v. Macbeth, [1908] A. C. 137.

The result of the cases.

The judgment of the House of Lords in this last case will doubtless go far to remove some of the doubts and uncertainty which were created by the conflicting opinions expressed by the law lords in the Vagliano case, and which fully justified the caustic criticism of Lord Bramwell above quoted, and will tend to limit the cases to which the clause would otherwise have been applied.

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It fairly results from this decision that the test laid down in the Australian case was not the proper one, and that the fact that the payees had no interest in the note, and no right to indorse it or be paid upon it, did not make them fictitious persons.

With regard to the Ontario case, the facts are different. There the company did not know the payees, and so far as there was any intention as to payment of the cheques, the intention was that they should be paid to the beneficiaries in whose names the bogus claims had been made, who were in fact no other than their Ottawa agent, Niblock, masquerading under these various names. The cheques were intended to be paid to the beneficiaries under the various policies and no such beneficiaries existed. If a bogus claim was made in the name of John Smith, pretending to act as the administrator or executor of Thomas Jones, or as the beneficiary named in the policy on the life of Thomas Jones, the fact that there had been a Thomas Jones in or near Ottawa when the policy was issued, and that there was also a John Smith there at the time the cheque for the pretended loss was issued, would surely not make John Smith the payee other than a fictitious person when the cheque was issued to him as the executor or administrator or beneficiary of Thomas Jones, an office or capacity he never filled or occupied, and when the company had no knowledge of his existence, and only thought of him as the occupant of an office which he never pretended to fill.

Fictitious payee.

United States.—Under the Negotiable Instruments Law, § 28 (3), such an instrument is payable to bearer only "when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable." It will be observed that these latter words are a very important departure from the English and Canadian Acts. Nor do they agree with the former English law which is thus summarized by Lord Bowen in the Vagliano case, at p. 260 of 23 Q. B. D.:—"Down therefore to the date of the passing of the recent statute the exception that bills drawn to the order of a fictitious or non-existing payee might be treated as payable to bearer was based uniformly on the law

§ 21 of estoppel, and applied only against the parties who at the time they became liable on the bill were cognizant of the fictitious character or of the non-existence of the supposed payee."

Estoppels as to Payee.—The acceptor is precluded from denying to a holder in due course the existence of the payee and his capacity to endorse at the time of acceptance: section 129 (*c*). The drawer is also precluded from denying to a holder in due course the existence of the payee and his capacity to endorse at the time the bill is drawn: section 13 (*b*). The onus is on the holder to prove that the payee is fictitious or non-existing. The holder of such a bill, if he desires to negotiate it, should endorse it in the name of the fictitious payee. The signature of the name of a fictitious payee in such a case must be distinguished from the forgery of the signature of a real person, and also from the case of a real payee using a business or fictitious name instead of his own. In France a bill with a fictitious payee is void in the hands of a holder with notice: Nougnier, § 277. In the United States it is looked upon with disfavor: Daniel, §§ 136-140.

By s. 67, s.s. 4, the provisions of the Act relating to a payee apply with the necessary modifications to an endorsee under a special indorsement.

ILLUSTRATIONS.

1. Where a note is made payable to a fictitious payee and not to his order or bearer, a holder for value cannot maintain an action against the maker as on a note payable to bearer, as it is not negotiable: Williams v. Noxon, 10 U. C. Q. B. 259 (1853).

2. A note in favor of one who is absent, and who (as it happens) is dead, is not void and his executors may maintain an action on it: Grant v. Wilson, 2 Rev. de Lég. 29 (1814).

3. When a bill was drawn in favor of a fictitious payee and indorsed by the drawer in that name to the knowledge of the acceptor, the latter is liable to an innocent indorsee for value: Gibson v. Minet, 1 H. Bl. 569 (1791).

4. The holder with notice of a bill payable to a fictitious payee cannot sue the acceptor: Hunter v. Jeffery, Peake, Ad. Ca. 146 (1797).

Illustrations.

5. An agent having money in his hands, purchases with it a bill of exchange, which he indorses specially to his principal; the latter, at the time of the indorsement, was dead, but the fact was not known to the agent. Held, that the property in the bill passed to the administrator of the principal: Murray v. East India Co., 5 B. & Ald. 204 (1821).

6. When a clerk drew and endorsed a bill as attorney for his deceased employer, upon a debtor of the estate who accepted with full knowledge of the facts, the acceptor was liable to the indorsee on the bill: Ashpitel v. Bryan, 3 B. & S. 474 (1864).

7. The innocent acceptor of a forged bill payable to a fictitious payee is liable to a bona fide holder for value, and the bill may be treated as if payable to bearer: Phillips v. im Thurn, L. R. 1 C. P. 463 (1866).

8. Where a promoter of a company induced a friend to subscribe for shares as C., a name not his own, and gave the directors the cheque of a third party to the order of C., which was not indorsed, the directors could treat the payee as fictitious, and indorse the cheque in the name of C.: Edinburgh Ballarat G. M. Q. Co. v. Sydney, 7 T. L. R. 656 (1891).

9. Where the name of the payee is fictitious it may be indorsed by the person to whom the note is delivered: Blodgett v. Jackson, 40 N. H. 21 (1859).

10. An instrument payable "to the estate of A.," a deceased person, is a promissory note, payable to a fictitious payee: Lewinsohn v. Kent, 87 Hun (N.Y.) 257 (1895).

11. When one procures a cheque by falsely pretending that he is another person (the maker knowing that there is such a person and making it payable to his order) and indorses it in the name of such other person, his indorsement conveys no title: Tolman v. American National Bank, 22 R. I. 462 (1901).

Bill payable to order when.

22. A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. 53 V., c. 33, s. 8 (4). Imp. Act, *ibid.*

The second clause of this subsection made an important change in the law. See Ward v. Quebec Bank, Q. R. 3 Q. B. 122 (1894). Before 1890 in Canada a bill or note payable to a particular person by name and not to his order or to bearer was not negotiable: Harvey v. Bank of Hamilton, 16 S. C. Can. 714 (1888): Jones v. Whitty, 9 L. C. R.

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191 (1859); Banque du Peuple v. Ethier, 1 R. L. 47 (186[illegible]; McCorkill v. Barrabé, M. L. R. 1 S. C. 319 (1885); Mc[illegible]lette v. Sutcliffe, Q. R. 5 S. C. 430 (1894); West v. Bow[illegible] U. C. Q. B. 290 (1846).

Such a note was not a negotiable instrument in Engl[illegible] before the Act of 1882, which adopted the law of Scotlan[illegible] this respect for the United Kingdom: Plimley v. Westle[illegible]2 Bing. N. C. 251 (1835). Such is still the law in nearly [illegible] the United States, including those States which have adopte[illegible] the Negotiable Instruments Law: Daniel, §105; Rando[illegible] § 174; Neg. Insts. Law, §§ 20, 25.

This section applies to cheques: Bank of B. N. A. v. Warren, 19 O. L. R. at p. 262 (1909).

As to the assignment or transfer of non-negotiable b[illegible] or what is a sufficient indication of an intention that a [illegible] should not be transferable, see the notes to section 21 (1).

Under the old law if a bill originally negotiable w[illegible] indorsed to a particular person and not to his order, it would still be negotiable by him: Moore v. Manning, Comyns, 311 (1719): C. C. Art. 2288.

When payable to person or order.

2. Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. 53 V., c. 33, s. 8 (5). Imp. Act, s. 8 (5).

A bill payable to a person "or his order" or "to the order" of a person means the same thing, and in either case he can demand payment without indorsing it: Myers v. Wilkins, 6 U. C. Q. B. 421 (1849). If required he must, however, give a receipt for the money: Lockridge v. Lacey, 30 U. C. Q. B. 494 (1870). A note payable "to A. or order on account of B." is payable to A. or to his order and not to B.: Newton v. Allen and Moir v. Allen, 2 Rev. de Lég. 29 (181[illegible]); Clark v. Esson, 2 Rev. de Lég. 30 (1820).

23. A bill is payable on demand,— § 23

(*a*) which is expressed to be payable on demand, or on presentation; or, Payable on demand when.

(*b*) in which no time for payment is expressed. 53 V., c. 33, s. 10 (1). Imp. Act, *ibid.*

Clause (*a*) differs from the Imperial Act which has the words "or at sight" after "demand." If this section stood alone it might be inferred that bills payable "at sight" were meant to be included as being payable "on presentation," and therefore not entitled to three days of grace under section 12. But sections 11, 45 and 75 show that bills payable at sight were not meant to be included among those payable on demand.

By section 17 every bill is payable either on demand or at a determinable future time. The Imperial Act enumerates in section 10 the five classes of bills which are payable on demand within the meaning of that Act, viz.:

(1) Those expressed to be payable on demand;

(2) Or at sight;

(3) Or on presentation;

(4) Those with no date expressed; and

(5) Those accepted or indorsed after maturity.

In section 11 it enumerates the four classes of those payable at a determinable future time, viz.: At a future time.

(1) Those payable at a fixed period after date;

(2) Or after sight;

(3) On the occurrence of a specified event certain to happen; and

(4) At a fixed period after the happening of such event.

Those in section 11 are entitled to days of grace, those in section 10 are not. For a long time it was a doubtful point in England whether bills payable at sight or on presentation were entitled to days of grace. It was finally settled by the Courts that they were. But by 34 & 35 V. c. 74, after stating the doubts that had arisen on the subject, it was

§ 23

enacted that bills and notes payable at sight or on presentation should be payable on demand and have no days of grace. This provision was reproduced in the Imperial Act of 1882.

Days of grace.

In Canada, before the Act of 1890, bills payable at sight were entitled to days of grace. The bill as introduced into Parliament proposed to assimilate our law to that of England in this respect. The House of Commons, however, decided not to make the change, and the words "or at sight" were struck out of the clause (*a*): Commons Debates, 1890, p. 105. Apparently, however, by an oversight they were not then inserted in section 11; so that the enumeration in these two sections, which was meant to be exhaustive and to include all bills that meet the conditions of section 3 (now s. 17), did not, in the Act as passed in 1890, include bills payable at sight under either head. This was remedied by the Act of 1891, which included them among those payable at a determinable future time, and so entitled to grace.

The term "on presentation" has not been in common use in Canada. "On demand" has been the ordinary expression used when the bill was to be paid on presentation, and "at sight" when it was to be paid three days later. These particular words, however, need not be used; any other words that convey the same idea would serve equally well. "Presentation" is used in section 11, as synonymous with "presentment."

In the United States as a rule days of grace were formerly allowed on bills payable at sight: 1 Daniel, § 617. In those States which have adopted the Negotiable Instruments Law there are no days of grace on any bill or note: § 145. In France a bill payable at sight is payable on presentation: Code de Com. Art. 130.

Endorsed when overdue.

2. Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand. 53 V., c. 33, s. 10 (2). Imp. Act. *ibid.*

A time bill or note is overdue after the expiration of the last day of grace: Leftley v. Mills, 4 T. R. 170 (1792):

a demand bill when it appears on its face to have been in circulation for an unreasonable length of time: s. 70 (2); a less stringent rule is applied to a demand note: s. 182. § 23

"Before this enactment the English law on the subject dealt with was very obscure; but it had been held in the United States that where a bill was indorsed after maturity, the indorser was entitled to have it presented for payment, and to receive notice of dishonor in the event of non-payment, within a reasonable time": Chalmers, p. 32. In Upper Canada the same principle had been laid down in Davis v. Dunn, 6 U. C. Q. B. 327 (1849). As to the United States, see Patterson v. Todd, 18 Penn. St. 426 (1852); Goodwin v. Davenport, 47 Me. 112 (1860); Light v. Kingsbury, 50 Mo. 331 (1872); Eisenlord v. Dillenbeck, 15 Hun (N.Y.) 23 (1878); Bull v. First Nat. Bank, 11 Fed. Rep. 613 (1883); Bassenhorst v. Willby, 45 Ohio St. 336 (1887); German-American Nat. Bank v. Atwater, 165 N. Y. 36 (1900); also Daniel, § 611, and Randolph, §§ 596 and 671 and cases there cited.

24. A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable,— Determinable future time.

(*a*) at sight or at a fixed period after date or sight; Sight.

(*b*) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain. 53 V., c. 33, s. 11; 54-55 V., c. 17, s. 1. Imp. Act, s. 11 (1) and (2). Specified event.

(*a*) This clause in the Act of 1890 was copied from the Imperial Act without change and read, "At a fixed period after date or sight." As mentioned in the notes under section 23, sight bills in England are payable on demand. The Canadian Parliament refused to abolish the days of grace on these bills, and they were struck out of section 10 (now c. 23), but were not then inserted in this section, so that they did

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Determinable future time.

not appear in either list. The first section of the amending Act of 1891 placed them in the first clause of the present section.

As to when bills payable at a determinable future time fall due, see section 42. In the case of acceptance for honour, see section 150.

It is not necessary to use either the word "date" or "sight" to bring a bill within the provisions of clause (*a*) of this section.

The following are examples of bills and notes that have been held to be valid as coming within the rule laid down in this sub-section:—

1. An instrument payable 17 months after date without interest, or 41 months after date with interest, as falling due at the later date: Hogg v. Marsh, 5 U. C. Q. B. 319 (1849).

2. A promise to pay on a specified date, with a proviso that if the maker should sooner sell certain lands, the note should be payable on demand: Elliott v. Beech, 2 Man. 213 (1886).

3. A note payable on a day named with the addition that if the payees considered the note insecure they have power to declare it due and payable at any time: Massey Mfg. Co. v. Perrin, 8 Man. 457 (1892).

4. A promise to pay 12 months after notice: Clayton v. Gosling, 5 B. & C. 360 (1826); or on six months' notice: Walker v. Roberts, Car. & M. 590 (1842); or two months after demand in writing: Price v. Taylor, 5 H. & N. 540 (1860); or upon notification of 30 days in any newspaper: Protection Ins. Co. v. Bill, 31 Conn. 534 (1863).

"**Certain to Happen.**"—Most of the instances of valid notes under this head are those payable at or after the death of some person.

The following are illustrations:—

1. "Six weeks after the death of my father": Cooke v. Colehan, 2 Str. 1217 (1743); "one year after my death"; Roffey v. Greenwell, 10 A. & E. 222 (1839); "on demand after my decease": Bristol v. Warner, 19 Conn. 7 (1848).

2. It was held in Andrews v. Franklin, 1 Str. 24 (1717), that a note payable two months after a Government ship was paid off, was a good note as Government was certain to pay. Followed in

Evans v. Underwood, 1 Wils. 262 (1749). These would probably not be followed now. § 24

3. A promise to pay when an inf. a comes of age, naming the day, is a good note: Goss v. Nelson, 1 Burr. 226 (1757); also a promise to pay on a day named, or when a certain work is completed, the day named being held to be the day when it fell due: Stevens v. Blount, 7 Mass. 240 (1810); on or before a certain day: Massie v. Belford, 68 Ill. 290 (1873); Preston v. Dunham, 52 Ala. 217 (1875); on or before a certain time: Bates v. Leclair, 49 Vt. 229 (1877); Helmer v. Krolick, 36 Mich. 371 (1877). Certain to happen.

25. An inland bill is a bill which is, or on the face of it purports to be,— Inland bill defined.

(*a*) both drawn and payable within Canada; or,

(*b*) drawn within Canada upon some person resident therein.

2. Any other bill is a foreign bill. 53 V., c. 33, s. 4 (1). Imp. Act, *ibid.* Other bills.

The foregoing is taken from the Imperial Act, the only change being the substitution of "Canada" for the "British Islands." Prior to the passing of the Act, the different provinces were, as a rule, considered to be foreign to each other; but a note made in Upper Canada, payable in Montreal, was held to be payable generally under 7 Wm. IV. c. 5, and treated as an inland note: Bradbury v. Doole, 1 U. C. Q. B. 142 (1841). In a later case, however, a similar note was treated as a foreign note and proof of the Lower Canadian law received: McLellan v. McLellan, 17 U. C. C. P. 109 (1866).

In Quebec the Civil Code, Art. 2336, provided that bills drawn upon persons in Upper Canada, or any other of the British North American Colonies, and returned under protest for non-payment, were subject to four per cent. damages. Most of the other provinces had similar provisions. See C. S. U. C. c. 42, s. 9; R. S. N. S. (3rd Series) c. 32, s. 1: 1 R. S. N. B. (1854) c. 116, s. 1; and Acts of P. E. I., 17 Geo. III. c. 5, s. 2. These damages were abolished by the Dominion Act, 38 V. c. 19, and only the amount of the bill, with the cost of noting and protest, interest, exchange and re-exchange, were to be recoverable after the 1st of July, 1875, on a bill drawn upon any person in the Dominion or Newfoundland.

§ 25

Inland or foreign.

The following are inland bills:

1. A bill drawn in Canada upon some person resident there and payable in Canada.

2. A bill drawn in Canada upon some person abroad but payable in Canada.

3. A bill drawn in Canada upon some person resident there but payable abroad.

4. A bill which on its face purports to come within any of the foregoing classes but which was actually drawn abroad though dated in Canada.

The place of payment in any of the foregoing cases may be determined by the acceptance: s. 38, s.-s. 4. If no place of payment is specified in a bill or acceptance it is payable at the address of the drawee or acceptor: s. 88 (*b*). Forms of inland and also of foreign bills will be found in the Appendix.

It is sometimes of importance to determine whether a bill is an inland or a foreign one. The latter, when dishonored in any part of Canada by non-acceptance or non-payment, must be protested: s. 112. In any other province than Quebec an inland bill need not be protested; notice of dishonor is sufficient: s. 113. The drawer, acceptor, and each endorser of a bill is a several and distinct contracting party, and the rights, duties, and liabilities of these parties respectively may vary according to the law of the place of issue, or of the place where such contract was made, or where it is to be performed. On this point see sections 160 and 161. As to inland and foreign promissory notes, see sections 177 to 187.

In the United States the different States are considered to be foreign to each other for the purposes of bills of exchange: 1 Daniel, § 9.

ILLUSTRATIONS.

1. On a bill drawn in London, England, on defendant in Toronto, but accepted by him in London and payable there, plaintiff was allowed the current rate of exchange on the day it became due, and not merely 24s. 4d. in the £ sterling: Greatorex v. Seore, 6 U. C. L. J. 212 (1860).

Inland or foreign.

2. A bill in blank signed and endorsed in Ireland, sent to England where the blanks were filled up and the bill negotiated there, is a foreign bill: Snaith v. Mingay, 1 M. & S. 87 (1813).

3. A bill written and accepted in England and sent abroad to the drawer, who signed it there, is a foreign bill: Boehm v. Campbell, Gow 46 (1818).

4. A bill drawn in London upon Brussels and accepted there, but payable in London, is an inland bill: Amner v. Clark, 2 C. M. & R. 468 (1835).

5. A bill payable to order, drawn, accepted and payable in England, but indorsed in France, is an inland bill: Lebel v. Tucker, L. R. 3 Q. B. 77 (1867).

6. A bill drawn and payable in England upon a Boston house, and accepted in England by a partner of the Boston house, who was there at the time, held to be a foreign bill, as if accepted in Boston: Grimshaw v. Bender, 6 Mass. 157 (1809).

7. A bill drawn in one State and payable in another, is a foreign bill, although all parties are citizens of one State: Grafton Bank v. Moore, 14 N. H. 142 (1843).

Presumption.

3. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. 53 V., c. 33, s. 4 (2). Imperial Act, *ibid.*

This is given by Chalmers as the English law. He says, p. 17: "The result appears to be that although a bill purports to be a foreign bill, the holder may nevertheless show that it is in fact an inland bill for the purpose of excusing protest; while if it purports to be an inland bill, though really a foreign bill, he may treat it at his option as either."

The former part of this quotation appears to be clear; not however from subsection 3, but from the first part of the section, which declares that to be an inland bill which is drawn and payable within Canada, or is drawn within Canada upon some person resident therein. If actually drawn within Canada it may be treated as an inland bill although dated abroad. The second part of the above quotation does not appear to be authorized by any part of the section. The most obvious meaning of subsection 3 would appear to be the same as that part of the first subsection which declares that to be an inland bill which on its face purports to be drawn within Canada although actually drawn abroad, and which meets the other requisites of an inland bill.

§ 26

Bill or note.

Option.

26. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. 53 V., c. 33, s. 5 (2). Imp. Act, *ibid.*

Where the drawer and the drawee are the same person notice of dishonor is dispensed with as regards the drawer: s. 107 (*a*).

Fictitious drawee.

Where a bill is drawn upon a fictitious person or person not having capacity to contract by bill, presentment for acceptance is excused: s. 79 (*a*); also presentment for payment if drawee is fictitious: s. 92 (*b*). Notice of dishonor is, in such cases, dispensed with as regards the drawer: s. 107 (*b*), and also as regards an endorser who was aware of the fact at the time he endorsed the bill: s. 108 (*a*).

For instance, a bill is drawn upon a fictitious person, or a minor, or a corporation having no power to incur liability on a bill, or a married woman having no separation of property from her husband in the Province of Quebec and not a trader or merchande publique. The holder may treat it as a note, and without presenting it for acceptance or protesting it, sue the drawer or such endorser.

ILLUSTRATIONS.

1. A warrant issued by a city police committee to the city treasurer may be treated as a note: Charlebois v. Montreal, Q. R. 15 S. C. 96 (1898).

2. A bill is drawn upon a fictitious person and negotiated by the drawer. The holder may treat it as a note of the drawer and need not prove presentment or notice of dishonor: Smith v. Bellairy, 2 Stark 223 (1817).

3. An instrument in the form of a bill, drawn upon a bank, by the manager of one of its branch banks, by order of the directors, may be treated as a note: Miller v. Thompson, 3 M. & G. 576 (1841).

4. The directors of a joint stock company draw a bill in the name of the company, addressed "To the Cashier." The holder may treat it as a note by the company: Allen v. Sea. F. & L. A. Co., 9 C. B. 574 (1850).

5. Although instruments where drawer and drawee are the same persons are promissory notes rather than bills, yet where the intention to give and receive them as bills of exchange is clear, both the holders and the parties may treat them accordingly: Williams v. Ayers, 3 App. Cas. 133 (1877). Bill or note.

6. A draft by a branch bank on the head office is not a bill of exchange, but the holder may sue the bank upon treating it as a bill or a note at his option: Capital and Counties Bank v. Gordon, [1903] A. C. 240.

7. A bill drawn by a party upon himself is a bill of exchange in the hands of an indorsee: Randolph v. Parish, 9 Porter, 76 (1839).

8. Where the president of a company drew upon its treasurer for the amount due the payee as contractor, the holder may treat it as a draft of the company on itself or as a note of the company: Fairchild v. Ogdenburgh R. R. Co., 15 N. Y. 337 (1857); approved in Mobley v. Clark, 28 Barb. 391 (1858). See Taylor v. Newman, 77 Mo. 257 (1883).

27. A bill is not invalid by reason only,— Valid bill.

(*a*) that it is not dated; 53 V., c. 33, s. 3 (4*a*). Imp. Act, *ibid.* Not dated.

A bill without a date is irregular, although not invalid. If issued undated and payable at a fixed period after date, any holder may insert the true date of issue and it shall be payable accordingly: s. 30. It is presumed to be dated on the day it is made: Hague v. French, 3 B. & P. 173 (1802); Giles v. Bourne, 6 M. & S. 73 (1817); and proof of this may be made by parol: Davis v. Jones, 17 C. B. 625 (1856). Although not an essential part of a bill the date is a material part, and when altered without proper assent renders the bill void: s. 146. In France a bill must be dated or it is invalid: Code de Com. Art. 110.

(*b*) that it does not specify the value given, or that any value has been given therefor; 53 V., c. 33, s. 3 (4*b*). Imp. Act, *ibid.* Statement of value.

Formerly the words "value received" or some words implying consideration were necessary: Byles, p. 109; Randolph, § 159. By the Civil Code of Lower Canada, Article 2285, when a bill contains the words "value received," value for the amount of it is presumed to have been received Value.

§ 27

Value.

on the bill and upon the indorsements thereon: Larocque v. Franklin County Bank, 8 L. C. R. 328 (1858); Walters v. Maham, 6 L. N. 316 (1883). Even where the words are in a bill, parol evidence may be received to prove the contrary: Davis v. McSherry, 7 U. C. Q. B. 490 (1850); Baxter v. Bourdeau, 9 Q. L. R. 268 (1883); Abbott v. Hendricks, 1 M. & G. 791 (1840). In an accepted bill, payable to the order of the drawer, these words imply value received by the acceptor: Highmore v. Primrose, 5 M. & S. 65 (1816). If the bill be payable to a third party they imply value received by the drawer: Grant v. Da Costa, 3 M. & S. 351 (1815). In England these words have long been unnecessary: Hatch v. Trayes, 11 A. & E. 702 (1840).

Statement of place.

(*c*) that it does not specify the place where it is drawn or the place where it is payable; 53 V., c. 33, s. 3 (4*c*). Imp. Act, *ibid.*

The place where a bill is drawn is usually placed at the top before the date. If no place is specified the holder may treat it as an inland bill, even although drawn abroad: s. 25 (3). In France the place must be stated on the bill: Code de Com. Art. 110; Nougnier, §§ 93-105.

If no place of payment is specified it is payable generally: s. 88. It may be made payable at either of two places at the option of the holder: Pollard v. Herries, 3 B. & P. 335 (1803); Beeching v. Gower, Holt N. P. 313 (1816). An acceptance may name the place of payment: s. 38 (4). A change in the place of payment or the addition of a place of payment without the acceptor's assent is a material alteration, and may render the bill void: s. 146 (*d*). In France the place of payment must be different from that where it is drawn, and there must be a possible rate of exchange between the two places: Code de Com. Art. 110; Nougnier, §§ 93-105. The tendency in France is to a relaxation of this rule.

Irregular date.

(*d*) that it is antedated or postdated, or that it bears date on a Sunday or other non-juridical day. 53 V., c. 33, s. 13 (2). Imp. Act, *ibid.*

§ 27

Ante-dated or post-dated.

Bills, cheques, and notes are sometimes postdated or antedated for purposes of convenience; and the fact that they are negotiated prior to the day of date, is not a suspicious circumstance against which parties must guard: 1 Daniel, § 85. The indorsee of a bill that was postdated, and indorsed by the payee who died before the day of date, was held to have derived title through the endorser and entitled to recover against the drawer: Pasmore v. North, 13 East, 517 (1811). This case has been followed in the United States: Brewster v. McCardel, 8 Wend. 479 (1832). Time is computed on such bills with reference to the actual date they bear. A postdated cheque is equivalent to a bill payable after date, and the special provisions relating to cheques are not applicable to it: Forster v. Mackreth, L. R. 2 Ex. 163 (1867); Royal Bank v. Tottenham, [1894] 2 Q. B. 715: Hutley v. Peacock, 30 T. L. R. 42 (1913).

Dated on Sunday.

The above rule as to a bill dated on Sunday, is that of the Imperial Act and also of the English law before the Act. But if a bill were given in pursuance of a contract declared by 29 Car. 2, c. 7, to be illegal, as being made on a Sunday in the course of a man's ordinary calling, it would be void as between the immediate parties, and as to any person who takes it with notice: Begbie v. Levi, 1 C. & J. 180 (1830): s. 56, s.-s. 2. The fact of its being dated on Sunday would not be such notice: Bailey v. Dawson, 25 O. L. R., at p. 400 (1912). The above Act of Charles II. is in force in some of the provinces, and in several of the provinces similar Acts have been passed. See R. S. O. p. 2962; R. S. Q. Art. 4166; R. S. N. B. Tit. 39, c. 134, s. 2; 20 Geo. III. (P. E. I.) c. 3.

In Atty.-Gen. v. Hamilton Street Ry. Co., [1903] A. C. 524, it was held that R. S. O. (1897), c. 246, treated as a whole was beyond the competency of the Ontario Legislature to enact, and fell within the scope of the criminal law which was reserved for the Dominion. In consequence of this decision the Dominion Statute, 6 E. VII. c. 27 (now R. S. C. c. 153) was passed making it unlawful for any person to carry on or transact any business of his ordinary calling, except works of necessity or mercy on the Lord's Day. Section 16 provides that the Act shall not affect any existing provincial law on the subject.

§ 27

Any provincial Act or portion of a provincial Act, which might fairly be held to affect only property and civil rights or to come within any other subject assigned to the provinces would not be affected by the above decision or by the Dominion statute.

The words "or other non-juridical day," are not in the Imperial Act, and were not in the bill, but were added in the Senate to remove possible doubts: Senate Debates, 1890, p. 463.

A note void as between the immediate parties on account of its being a Sunday transaction, would be valid in the hands of a holder in due course.

ILLUSTRATIONS.

1. A note made on Sunday in payment of goods sold on that day is void as between the original parties, but not as against an indorsee for value and without notice: Houliston v. Parsons, 9 U. C. Q. B. 681 (1852); Crombie v. Overholtzer, 11 U. C. Q. B. 55 (1853).

2. A promissory note dated on Sunday given in payment of a horse purchased on that day, is null and void: Coté v. Lemieux, 9 L. C. R. 221 (1859).

3. A promissory note made on Sunday is valid: Kearney v. Kinch, 7 L. C. J. 31 (1863).

4. An indorsee may recover against the acceptor of a bill dated on Sunday: Begbie v. Levi, 1 Cr. & J. 180 (1830).

5. A bill made and delivered on Sunday is void in most of the United States: Randolph, §§ 225, 1790.

Sum certain.

28. The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid,—

Interest.

(*a*) with interest; 53 V., c. 33, s. 9. Imp. Act, *ibid.*

A bill must be for "a sum certain in money:" s. 7. See notes and illustrations ante p. 50. This section gives some instances that might not be considered to comply with that requirement, hence they are so declared.

§ 28

The first is that it may be "with interest." This may be "with interest" simply, or with interest at a certain rate. In the former case the rate up to maturity at least would be determined by the law of the place where the bill is drawn: Story on Conflict of Laws, 8th ed., s. 305: Allen v. Kemble, 6 Moore P. C. at p. 321 (1848). In Canada where no special rate is mentioned, the law formerly fixed it at 6 per cent.; since the 7th of July, 1900, the rate has been 5 per cent.; but the parties may agree upon any higher or lower rate: R. S. C. c. 120, s. 2. Formerly there were restrictions in certain cases in most of the provinces. In Ontario and Quebec certain corporations could not take more than six, and others not more than eight per cent.: R. S. C. (1886) c. 127, s. 10. See as to Nova Scotia, ss. 12 to 17; New Brunswick, ss. 18 to 23; British Columbia, ss. 24 to 27; Prince Edward Island, ss. 28 to 30. The restrictions relating to these provinces were all abolished by the Act of 1890, 53 V. c. 31, which repealed sections 9 to 30 inclusive of R. S. C. (1886) c. 127. Banks are subject to the following limitation: "The bank may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per centum per annum, and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by the bank:" Bank Act, R. S. C. c. 29, s. 91. Certain corporations by their charters are restricted as to the rate of interest they may take. These are not affected by the above repeal.

With Interest.

By the Money-Lenders' Act, R. S. C. c. 122, any money-lender who shall stipulate for, allow, or exact on any negotiable instrument, contract or agreement concerning a loan of less than $500, a rate of interest greater than 12 per cent. per annum, is liable to one year's imprisonment, or a penalty of $1,000. After judgment the rate is reduced to 5 per cent. By section 8 the bona fide holder before maturity of a negotiable instrument discounted by a preceding holder at more than 12 per cent. may recover the amount thereof, but the party paying may reclaim the excess from the money-lender.

Money-Lenders' Act.

In England the rate in the absence of contract is 5 per cent., but the parties may agree upon any other rate: Upton

Interest.

§ 28

With interest.

v. Ferrers, 5 Ves. 803 (1801). In the United States the ... varies. In most of the northern and north-eastern St... the legal rate is 6 per cent.; in Wisconsin, Minnesota, ... some other western States it is 7 per cent. In Massachu... Rhode Island, and Connecticut usury laws have been a... ished; in the other northern and north-eastern States ... still exist with varying degrees of severity. In New Y... any higher rate than 6 per cent. is only allowed in excepti... cases. In Ohio, Indiana and Illinois the maximum is 8 pe... cent.: in Michigan Wisconsin, and Minnesota, 10 per cen...

Where a bill drawn in one country is negotiated, ac... cepted or payable in another, for the rule as to what ... of interest is to govern, see the notes under section 161.

Where a special rate of interest is mentioned in the ..., see the notes and cases under section 134, as to the ... which is to ru... after maturity.

Instalments.

(*b*) by stated instalments;

Default.

(*c*) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due; 53 V., c. 33, s. 9 (*b* and *c*). Imp. Act, *ibid.*

The instalments must be "stated," for if there be ... uncertainty about them the instrument is not a bill. The instalments may be either with or without interest. As to presentment and notice of dishonor each instalment is treated as a separate bill. A valid endorsement must be of all instalments unpaid.

ILLUSTRATIONS.

1. A promise to pay £102 "in yearly proportions," held to be a valid note payable in two annual instalments: McQueen v. McQueen, 9 U. C. Q. B. 536 (1852).

2. A note was made payable in eighteen months, with interest at 7 per cent. payable half-yearly. In order to bind the indorser for any instalment of interest the note should have been presented when the instalment was payable, and notice given him of dishonor: Jennings v. Napanee Brush Co., 4 C. L. T. 595 (1884), followed in Moore v. Scott, 5 W. L. R. 8; 16 Man. L. 92 (1907).

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3. An action lies on a note payable by instalments as soon as the first day of payment is passed, but only for the amount of the first instalment, each of them being considered as a separate debt: Chariblue v. Morris, 2 Rev. de Lég. 30 (1820).

4. A promise to pay $342 in 6 instalments, with a proviso for a discount of 5 per cent. if paid in full in 5 days, and for interest at 6 per cent. after maturity, is a promissory note: National Bank v. Rooney, 6 Sask. 72 (1913).

5. A promise to pay £50 by instalments, all payments to cease on the death of W., is not a note: Worley v. Harrison, 3 A. & E. 669 (1835).

6. A promise to pay £6 "by instalments" simply, is not a note: Moffat v. Edwards, Car. & M. 16 (1841).

7. A note payable by instalments, with a proviso that if default is made on the first instalment the whole shall become due, is a valid note, and on default an indorser is liable for the whole amount: Carlon v. Kenealy, 12 M. & W. 139 (1843).

8. A non-negotiable note, payable in instalments, but on default the whole to become due, is valid, and the maker has three days' grace: Miller v. Biddle, 11 Jur. N. S. 980; 13 L. T. N. S. 334 (1865).

9. A promise "to pay £250 on demand together with any interest that may accrue thereon," is not a promissory note as the rate of interest and the time for which it is to run are both uncertain: Lamberton v. Aiken, 2 Rettie (5th series) 189 (1899).

10. A n[illegible]vable "in such instalments, and at such times as the directors [illegible]ompany may from time to time require," held to be a valid note, as being payable on demand, or in instalments on demand: White v. Smith, 77 Ill. 35 (1875).

(d) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill. 53 V., c. 33, s. 9 *(d)*. Imp. Act, *ibid.* Exchange.

Where the bill is to be paid in one country and the sum is expressed in the currency of another, the amount is determined according to the rate of exchange on the day the bill is payable: Hirschfield v. Smith, L. R. 1 C. P. p. 340 (1866): s. 163. On a sterling bill drawn in London on defendant in Toronto, but accepted by him in London and payable there, plaintiff was held entitled to be paid at the current rate of exchange: Greatorex v. Score, 6 U. C. L. J. 212 (1860). It was formerly held in Ontario that a promise to pay a certain sum "with exchange on New York,"

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With exchange.

or "with the current rate of exchange on New York," "with exchange not to exceed one-half per cent.," was valid as not being for a sum certain: Palmer v. Falmestock, 9 U. C. C. P. 172 (1858); Falmestock v. Palmer, 20 U. C. Q. B. 307 (1860); Grant v. Young, 23 ibid. 387 (1864); Wilson v. Young, 14 U. C. C. P. 250 (1864); Saxton v. Stevenson, 23 ibid. 503 (1874). It was also held in New Brunswick that a promise to pay £12 3s. 9d. with current rate of exchange on Boston was not a promissory note: Nash v. Gibbon, 9 N. B. (4 Allen) 479 (1860). It was also held in a number of cases in Ontario that notes payable in currency funds of the United States were not valid, but these cases were expressly overruled in Third National Bank of Chicago v. Cosby, 43 U. C. Q. B. 58 (1878).

An instrument requiring the payment of a certain sum "with interest and exchange," without stating the rate, is not a bill of exchange: British Columbia Trust Co. v. Lantz, 3 W. W. R. 1134 (1913).

Figures and words.

2. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. 53 V., c. 33, s. 9 (2). Imp. Act, *ibid.*

Usually the amount is stated in words in the body of the bill, and in figures in the margin. In some countries the law requires the amount to be stated in words, while in others both are required: Randolph, § 105. The figures in the margin form no part of the bill or note: Garrard v. Lewis, 10 Q. B. D. 30 (1882). When the words are not distinct, or the word "dollars" or "pounds" is omitted, the figures in the margin may be looked at to explain them: Rex v. Elliott, 1 Leach C. C. 175 (1777); Phipps v. Tanner, 5 C. & P. 188 (1833); Beardsley v. Hill, 61 Ill. 354 (1871).

The rule in this subsection is so binding that when the figures in the margin differ from the amount in words evidence is inadmissible to show that the amount in figures is the correct one: Saunderson v. Piper, 5 Bing. N. C. 425 (1839).

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With interest.

3. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. 53 V., c. 33, s. 9 (3). Imp. Act, *ibid.*

The first part of this sub-section follows the old law. On a note payable on demand with interest, the interest runs from the date of the note: Baxter v. Robinson, 2 Rev. de Lég. 139 (1816); Dechantal v. Pominville, 6 L. C. J. 88 (1860); Crouse v. Park, 3 U. C. Q. B. 453 (1847); Howland v. Jennings, 11 U. C. C. P. 272 (1861). Where a note was made payable twelve months after date, with six months' interest, the interest began to run six months after the date of the note: Heaviside v. Munr, 2 Rev. de Lég. 139 (1817). The agreement between the parties fixes the rate, no matter how exorbitant it may be: Young v. Fluke, 15 U. C. C. P. 360 (1865).

As to what rate of interest should be allowed after maturity, see notes to section 134 (*b*).

An undated bill is issued when first delivered, complete in form, to a person who takes it as a holder: s. 2 (*i*). A bill is complete in this sense without being dated: s. 21 (*a*). If a wrong date is inserted and the bill comes into the hands of a holder in due course, he can collect interest from the date inserted, even if it be previous to the true date of issue: ss. 30 and 32.

True date presumption.

29. Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be. 53 V., c. 33, s. 13. Imp. Act, *ibid.*

Date.

"It may be laid down as a general prima facie presumption that all documents were made on the day they bear date": 1 Taylor, § 169. This has been specially recognized with reference to bills and notes: Hays v. David, 3 L. C. R.

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Date of bill.

112 (1852); Evans v. Cross, 15 L. C. R. 86 (1865); Hutchins v. Cohen, 14 L. C. J. 85 (1869); Smith v. Battens, 1 M. & Rob. 341 (1834); Anderson v. Weston, 6 Bing. N. C. 296 (1840); Roberts v. Bethell, 12 C. B. 778 (1852).

Parol evidence is admissible to show that the date on the bill is not the true date and to show the true date: Pasmore v. North, 13 East 517 (1811); Montague v. Perkins, 17 Jur. 557 (1853); Macdonald v. Whitfield, 8 App. Cas. 733 (1883); Bayley v. Taber, 5 Mass. 286 (1809); Drake v. Rogers, 32 Me. 524 (1851); Germania Bank v. Distler, 4 Hun 633 (1875); Biggs v. Piper, 86 Tenn. 589 (1888); Higgins v. Ridgway, 153 N. Y. 130 (1898); Witherow v. Slayback, 158 N. Y. 699 (1899).

If an indorsement is not dated, the true date of the indorsement and delivery may be proved: Inkiel v. Laforest, Q. R. 7 Q. B. 456 (1897).

If a bill be dated on an impossible date, such as the 31st of September, the law adopts the nearest day by the doctrine of cy pres; and the computation will be from the 30th of September: Wagner v. Kenner, 2 Robinson (La.) 120 (1842).

Undated bill payable after date.

30. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly. Provided that, —

Inserting wrong date.

(*a*) where the holder in good faith and by mistake inserts a wrong date; and,

Liability of holder.

(*b*) in every other case where a wrong date is inserted;

if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. 53 V., c. 33, s. 12; 54-55 V., c. 17, s. 2. Imp. Act, s. 12.

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In the Act as passed in 1890 the third line read, "payable at a fixed period after sight," thus following the Imperial Act. It was another case of an omission to harmonize the rest of the Act with the change made in section 10 by the exclusion of sight bills from those payable on demand. Sight bills thus requiring acceptance a rule became necessary for an undated acceptance. The words "at sight or" were therefore inserted after "payable" by section 2 of the Act of 1891.

Inserting date.

A bill of exchange without a date is valid: De la Courtier v. Bellamy, 2 Show. 422 (1685); Hague v. French, 3 B. & P. 173 (1802); Pasmore v. North, 13 East 521 (1811); Giles v. Bourne, 6 M. & S. 73 (1817); Cowing v. Altman, 71 N. Y. 441 (1877). A date is not included among the conditions in section 17; but it is a material part of a bill or note and should not be altered: s. 146 (*a*). A bill is issued when it is first delivered complete in form, to a person who takes it as holder: s. 2 (*i*). It is only when payable at a fixed period after date, or at sight, or at a fixed period after sight, that the date of the bill or of the acceptance becomes of importance. When a bill is issued without a date the holder may fill up the date: s. 31. Where an acceptance is not dated, the bill is presumed to have been accepted a few days after its date: Roberts v. Bethell, 12 C. B. 778 (1852). In France if a bill be payable after sight, and the acceptance be not dated, time runs from the date of the bill: Code de Com., Art. 122.

The section probably goes farther than the old law. It has been held that parol evidence was admissible to show from what time an undated instrument was intended to operate: Davis v. Jones, 17 C. B. 625 (1856); Richardson v. Elliott, 10 Tex. 190 (1853); Cowing v. Altman, 71 N. Y. 435 (1877); and that when a note without date was made for another's accommodation, the maker authorized him to fill up the date as he saw fit: Androscoggin Bank v. Kimball, 10 Cush. 373 (1852). And where the maker in June, 1875, sent an accommodation note dated "6th, 1875," not naming a month and the 6th of June was a Sunday, and the receiver made the date "June 8th," the note was held not to be voided: Merchants Bank v. Stirling, 13 N. S. (1 R. & G.) 439 (1880).

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This presumption of authorization is now extended as regards the kind of bills named to any payee or endorsee who has the bill in possession, and to the bearer. As to filling up omissions in incomplete bills generally, see s. 31.

In France, under the Code de Commerce, Art. 110. a bill must be dated. Under the old French law, according to Pothier, No. 3, "omission of the date, or error in the date, cannot be raised by the drawer or the acceptor."

Perfecting bill.

Authority.

31. Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. 53 V., c. 33, s. 20 (1). Imp. Act, *ibid.*

This section applies to notes as well as to bills, and is copied from the Imperial Act with the omission of its reference to stamps. In the case of a note the signature could be used for that of the maker or endorser. In England the signature must be on "blank stamped paper," and it can only be filled up for an amount that "the stamp will cover." This is a great aid in checking fraud. It is to be observed that the paper must have been delivered by the signer in order that it might be converted into a bill or note, and the onus of proving this delivery is on the holder. Once it is proved that it was so delivered, the onus is shifted, and it is then for the signer to prove that it was not filled up within a reasonable time or in accordance with the authority given. The particular case of an undated bill which is payable at a fixed period after date, or an undated acceptance of a bill payable at sight or at a fixed period after sight, is provided for by section 30.

"**In order that it may be converted into a bill.**"—These words have been construed strictly. Where such a paper was

placed in the hands of an agent and he was told to hold it until he received further instructions from his principal, and the agent fraudulently filled it up without such instructions and used it for his own purposes, it was held that the agent received it as a custodian simply, and the holder could not recover on it: Smith v. Prosser, [1907] 2 K. B. 735. Followed in Hubbert v. Home Bank, 20 O. L. R. 651 (1910); Ray v. Willson, 24 O. L. R. 122 (1910); 45 S. C. Can. 401 (1911); Brown v. Chamberlain, 3 O. W. N. 569 (1912); McKenty v. Vanhorenback, 21 Man. 360 (1911); Campbell v. Bourque, 24 Man. 252 (1914). § 31

ILLUSTRATIONS.

Inchoate instruments.

1. Where the payee of a note indorsed it with the date and amount blank, he was liable to an innocent indorsee for the note as filled up: Sandford v. Ross, 6 U. C. O. S. 104 (1841).

2. An indorser of a note who signs before the maker or payee, and before the amount is filled up, is liable on the note as completed: Rossin v. McCarty, 7 U. C. Q. B. 100 (1849).

3. The maker of a note delivered it with the amount in blank. It was fraudulently filled up for $855. He was held liable to an innocent indorsee: McInnes v. Milton, 30 U. C. Q. B. 489 (1870).

4. A writing in the form of a note, which was written over the signature of the maker, given merely for the purpose of indicating his address, cannot be recovered on: Ford v. Auger, 18 L. C. J. 296 (1874).

5. Where a signature was obtained ostensibly for a receipt, and a note was written over it, the signer is not liable: Banque Jacques Cartier v. Lesearde, 13 Q. L. R. 39 (1886).

6. A note, signed in blank and sent with instructions to be filled up for $115, was filled up for $461. Held, that the maker was liable for the full amount to a holder in due course: Bank of Nova Scotia v. Lepage, M. L. R. 6 S. C. 321 (1889).

7. A note payable to —— or order cannot be recovered by the person to whom it was given, either as payee or bearer, without inserting his name in the blank as payee: Mutual Safety Ins. Co. v. Porter, 7 N. B. (2 Allen) 230 (1851).

8. A note with a blank for the name of the payee, and the rate of interest, was filled up with the name of the first indorser as payee, and with a reasonable rate of interest by a subsequent indorser. It was held to be good: Burton v. Goffin, 5 B. C. R. 454 (1897).

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9. A note with a blank for the rate of interest was filled up with the figures 18, and was held good: Brit. Col. L. & I. Agency v. Ellis, 6 B. C. R. 80 (1898)

Filling up bills.

10. A. indorsed a note for the accommodation of the maker on condition that B. should indorse also. The maker issued it without B.'s indorsement. Held, that a holder in due course could not recover from A.: Ontario Bank v. Gibson, 4 Man. 440 (1887); Ripley v. Vellie, 8 W. W. R. 764 (Sask., 1915).

11. A bill is drawn payable to —— or order. Any holder for value may write his own name in the blank and sue on the bill: Crutchly v. Mann, 5 Taunt. 529 (1814); Gardner v. Lecker, 16 R. L. N. S. 14 (1909).

12. A note is signed by one maker on condition that another sign as joint maker. The person to whom he gives it fills it up without the other signature and negotiates it. A holder in due course cannot recover: Awde v. Dixon, 6 Ex. 869 (1851).

13. Where a blank acceptance was stolen from the desk of the signer and filled up, he was held not liable to a holder in due course: Baxendale v. Bennett, 3 Q. B. D. 525 (1878).

14. Three bills of exchange were accepted by defendant without a drawer's name and handed to B. in payment of bets. B. subsequently, for consideration, handed the bills to the plaintiff who signed his own name to them as drawer and sued the defendant on them. Held, that the Gaming Act, 1892, did not apply, and that the defendant was liable: Faulks v. Atkins, 10 T. L. R. 178 (1893).

15. A bill drawn payable "to —— order," indorsed by the drawer, need not be filled up, as it should be read "to myself or order:" Chamberlain v. Young, [1893] 2 Q. B. 206.

When to be complete.

32. In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given: Provided that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Reasonable time.

2. Reasonable time within the meaning of this section is a question of fact. 53 V., c. 33, s. 20 (2). Imp. Act, *ibid.*

The above proviso does not avail a holder in whose presence such an instrument was filled up, as he cannot become a holder in due course: Demers v. Léveillé, Q. R. 44 S. C. 61 (1913): affirmed on appeal, 23 K. B. 346 (1914). But see Bacon v. Décarie, Q. R. 34 S. C. 103 (1908).

Where a party received a note with instructions to fill it up for £15, but filled it up for £30, the stamp being sufficient for the latter sum, and gave it to the payee for value and without notice of the breach of authority, the payee was held not entitled to the benefit of this proviso, as the note was not "negotiated" to him but merely "issued": Herdman v. Wheeler, [1902] 1 K. B. 361.

This case was questioned in the Court of Appeal in Lloyds Bank v. Cooke, [1907] 1 K. B. 361, in which the defendant S. signed two blank notes for C. which he was to fill up for £250 each. He filled one of them up for £1,000 for which the stamp was sufficient, and discounted it with the plaintiffs who gave full value in good faith. The court unanimously gave judgment for plaintiffs. The Master of the Rolls and Cozens-Hardy, L.J., without passing upon Herdman v. Wheeler, rested their judgment entirely upon the common law doctrine of estoppel; Fletcher Moulton, L.J., was of opinion that this section applied, that the note was negotiated to plaintiffs and that they were holders in due course.

Where a contract imports performance within a reasonable time, extrinsic evidence of all the material circumstances is necessarily admissible to determine what is a reasonable time for the purpose: Ellis v. Thompson, 3 M. & W. 445 (1838); Attwood v. Emery, 1 C. B. N. S. 110 (1856); Goodwyn v. Cheveley, 4 H. & N. 631 (1859); Brighty v. Norton, 3 B. & S. 305 (1862); Toms v. Wilson, 4 B. & S. 455 (1863); Hales v. London & N. W. Ry., 4 B. & S. 66 (1863).

It is for the party other than a holder in due course seeking to enforce the bill to account for the delay if it has been unusual.

Where a debtor gave his creditor a blank promissory note and subsequently failed, and the creditor did not fill

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Completing bill.

up the note until after he had obtained his discharge five years later, the jury found that the delay was not unreasonable under the circumstances and the verdict was upheld: Temple v. Pullen, 8 Ex. 389 (1853).

The word "completion" in the proviso does not include delivery: Herdman v. Wheeler, [1902] 1 K. B. at p. 371.

"**The Authority Given.**"—The onus is on the signer seeking to escape liability to prove that the authority given has been exceeded, as the holder has prima facie authority to fill up as he sees fit: Anderson v. Somerville, 1 Rettie (5th series), 36 (1898). If no instructions have been given or are proved, the bill will be upheld. Any person taking a bill in an incomplete state is exposed to this defence except in the case of the want of a date in section 30. Death revokes the authority to fill up a bill unless the holder be a holder for value. The liability of the signer begins when the bill is first issued complete in form, and not when he signs.

"**Holder in Due Course.**"—The preceding limitations, as to time and authority, have no application to one who takes a bill complete and regular on the face of it before maturity, in good faith and for value without notice of dishonor or defect: ss. 56 and 74; Hanseome v. Cotton, 15 U. C. Q. B. 42 (1857); Merchants' Bank v. Good, 6 Man. 339 (1890); Montague v. Perkins, 17 Jur. 557; 22 L. J. C. P. 183 (1853). The instrument so taken must have been originally delivered as a bill or delivered in an incomplete state in order that it might be converted into a bill. The limitations apply to a holder who has taken it in good faith, but who has not given value: Paine v. Bevan, 30 T. L. R. 395 (1914).

"**A Reasonable Time.**"—In determining what is a reasonable time regard should be had to the nature of the bill, the usage of trade, and the facts of the particular case: ss. 77, 86 and 166.

ILLUSTRATIONS.

1. A partner having authority to do so gives a blank acceptance in the name of his firm and dies. It may be filled up and enforced against the surviving partners: Usher v. Dauncey, 4 Camp. 97 (1814).

2. After the death of a signer of an accommodation acceptance it was filled up in the presence of a person who discounted it. The latter cannot recover from the estate of the acceptor: Hatch v. Searles, 2 Sm. & G. 147 (1854).

3. A debtor gives a blank acceptance to a creditor who dies without filling it up. The administrator has a right to fill it up, using his own name as drawer: Scard v. Jackson, 24 W. R. 159; 34 L. T. N. S. 65 (1875).

4. A partner gives without authority a blank acceptance of his firm. It is subsequently negotiated in an incomplete state to a holder for value who completes it. The latter cannot recover on the bill: Hogarth v. Latham, 3 Q. B. D. 643 (1878).

5. A debtor gives his creditor a blank acceptance and dies. The creditor may fill in his own name as drawer and payee and recover from his debtor's estate: Carter v. White, 20 Ch. D. 225 (1882); 25 Ch. D. 666 (1883).

6. An acceptance is signed with £4 in the margin, but with the amount blank in the body of the bill. It is fraudulently filled up for £40 and the margin altered to £40. The acceptor is liable to a holder in due course for £40: Garrard v. Lewis, 10 Q. B. D. 30 (1882).

7. A bill without date and payable "—— months after date" was filled up with the date Sept. 24th, 1887, and made payable 18 months after date. Held, that it was valid in the hands of a bona fide holder for value: Morgans v. Heskett, 6 T. L. R. 162 (1890).

8. Plaintiff accepted bills without dates or drawers' signatures, and gave them to an agent with authority to fill up when cash was given plaintiff for them. He filled up dates and induced defendant to sign as drawer after his authority had been revoked. The jury found that defendant acted in good faith but negligently. Held, that plaintiff was entitled to recover the amount he was obliged to pay: Watkin v. Lamb, 17 T. L. R. 777 (1901); 85 L. T. 483.

33. The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Referee in case of need.

2. It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit. Option.

53 V., c. 33, s. 15. Imp. Act, *ibid.*

§ 33

Referee in case of need.

This is given by Chalmers as new law. He has reference probably to the last sentence, which settles a point that before the Act had not been decided in England. According to Pothier, No. 137, it had been a disputed point in France whether it was obligatory on the holder to present a bill to the referee in the event of its being dishonored by the drawee. The Civil Code of Quebec made it compulsory. If the bill be unaccepted and there be a drawee au besoin (referee in case of need), presentment must be made in like manner to him also: Art. 2306 "In modern France if the drawee au besoin be named by the drawer, the bill, if dishonored, must be presented to him; if he be named by an indorser it is at the option of the holder": Nouguier, §§ 249, 250. Before a bill is presented to the referee in case of need for payment it must have been protested for non-payment: s. 117; or at least have been noted for non-payment: s. 118.

If the bill has been drawn or endorsed abroad it would be prudent to resort to the referee in case of need in every case of dishonor, as many foreign countries make it compulsory. The American Negotiable Instruments Law is similar to the Imperial and Canadian Acts: §215.

Stipulations.

34. The drawer of a bill, and any endorser, may insert therein an express stipulation,—

Limiting.

(*a*) negativing or limiting his own liability to the holder;

Waiving rights.

(*b*) waiving, as regards himself, some or all of holder's duties. 53 V., c. 33, s. 16. Imp. Act, *ibid.*

The ordinary liability of the drawer to the holder is that if the bill be dishonored and due notice given he will compensate the latter: s. 130. He is in a sense after acceptance surety for the acceptor. The ordinary liability of an endorser to the holder is similar; and he is in the nature of a new drawer: s. 133. The drawer may stipulate that he shall not be liable on the bill, and then the holder must look alone to the acceptor, and to any endorser who may be liable to him. Or the drawer may limit his liability as to amount

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Express stipulations.

or otherwise, and any endorser may do the same. In practice it is not common for drawers to make such a stipulation; endorsers frequently do so. The form in which the latter generally negative liability is by writing over their endorsement the words "sans recours," or "without recourse." For all practical purposes an endorsement "without recourse" may be placed upon the same footing as a note payable to bearer or transferred by delivery. The party so making the transfer does not thereby incur the obligation or responsibility of an endorser: Dumont v. Williamson, 2 U. C. L. J. 219 (1866); Gompy v. Harden, 7 Taunt. 163 (1816); Rice v. Stearns, 3 Mass. 224 (1807); Ticonic Bank v. Smiley, 27 Me. 225 (1847); Hailey v. Falconer, 32 Ala. 536 (1858); Mannum v. Richardson, 48 Vt. 508 (1875).

A customer of a bank who endorses a cheque "without recourse" and deposits it for collection with the bank, on receiving the money and paying it over to the prior endorser who had forged the endorsement of the payee, is liable to refund the money to the bank: Bank of Ottawa v. Harty, 12 O. L. R. 218 (1906).

One who is not the holder of a bill but who simply puts his name on the back of it, and is only a quasi-endorser, may limit his liability by writing "sans recours" after his signature: Wakefield v. Alexander, 17 T. L. R. 217 (1901).

Waiving holder's duties.

The duties of a holder of a bill to a drawer or endorser are to present it for acceptance and payment, or for payment only, according to its tenor, and in case of dishonor to give due notice to the drawer and endorsers, as provided in sections 95 to 108 inclusive. The drawer or any endorser may relieve the holder from these obligations. The usual form of effecting this is by using the words "return without protest," "protest waived," or "notice of dishonor waived."

In Scotland the endorser of a bill which had not been presented for payment and as to which no notice of dishonor had been given, made a payment on account in the belief that she was a joint acceptor. It was held that this error of fact prevented the payment being a waiver of presentment and of notice of dishonor: Maetavish v. Michael's Trustees, [1912] S. C. 425 Ct. of Sess.

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Waiving holder's duties.

In the United States it has been held that where the waiver is embodied in the instrument itself, it enters into the contract of every party who signs it: Bryant v. Merchants' Bank 8 Bush. (Ky.) 43 (1871); Bryant v. Lord, 19 Minn. 207 (1872); Parshley v. Heath, 69 Me. 90 (1879); Pool v. Anderson, 116 Ind. 94 (1888); Daniel, §§ 1092, 1093. Such is also the law of France: Cass. 9th Nov. 1870, Dalloz, 70. 1. 350. Our statute would appear to contemplate the restriction of the waiver to the drawer or endorser who expressly waives any of the holder's duties "as regards himself." Waiver by a curator in Quebec has been held to bind the insolvent endorser who had assigned: In re Boutin, Q. R. 12 S. C. 186 (1897); the contrary was held in Denenberg v. Mendelssohn, Q. R. 23 S. C. 128 (1903); Molsons Bank v. Steel, Q. R. 23 S. C. 316 (1903).

A waiver of protest is a waiver of notice of dishonor: Rat Portage L. Co. v. Margulius, 24 Man. 230 (1914).

Acceptance and Interpretation.

Acceptance defined.

35. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. 53 V., c. 33, s. 17 (1). Imp. Act, *id.*

When the drawee writes his name on the bill and delivers it or gives notice he becomes the acceptor and his act is irrevocable: s. 39. No one can accept a bill except the drawee or an authorized agent, save the referee in case of need, or an acceptor for honor: ss. 33 and 147. Before the law was so strict in requiring an acceptance to be signed by the acceptor, there was also laxity in other respects as will be seen from some of the illustrations given below.

In some instances where a bill is drawn upon the officer of a corporation it is frequently difficult to decide whether the drawee is the corporation or the officer individually. As will be seen from some of the illustrations below the tendency has been to hold the officer personally liable. The maker of a promissory note usually corresponds to the acceptor of a bill. The decisions regarding promissory notes made by officers of corporations show that personal liability

is less readily presumed than in the case of bills. The difference arises largely from the rule of the present section that it is the drawee who must accept the bill.

Where a bill is addressed to a firm it is the same in effect as though addressed to all the partners, and the signature of a firm's name by a partner or agent is equivalent to his signing the names of all the partners: s. 132.

The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance: s. 128.

It will be borne in mind that the provisions of this and the following sections apply only to acceptances in Canada. By section 162 the validity of the form of an acceptance is determined by the law of the country where it takes place.

ILLUSTRATIONS.

1. Upon a bill addressed to "P. C. De Latre, Pres. N. D. & H. Co.," and accepted thus,—"Accepted, P. C. De Latre, Pres. N. D. & H. Co.," the acceptor was held personally liable to the payees: Bank of Montreal v. De Latre, 5 U. C. Q. B. 362 (1848).

2. Defendant accepted a bill drawn upon him as treasurer of the Wolfe Island Railway and Canal Co. thus,—"Accepted, W. A. Geddes, Treas., W. I. R. & C. Co.," and affixed the company's seal. Held, that he was personally liable: Foster v. Geddes, 14 U. C. Q. B. 239 (1856).

3. Upon a bill drawn by the secretary of a company upon its president and accepted thus,—"Accepted, Geo. Macbeth, President," both were held personally liable: Bank of Montreal v. Smart, 10 U. C. C. P. 15 (1860).

4. On a bill addressed to "James Glass, Sec. R. G. M. Co.," and accepted thus,—"Accepted, the R. G. M. Co., per Jas. Glass, Sec.," held that the secretary was not the acceptor or personally liable: Robertson v. Glass, 20 U. C. C. P. 250 (1869).

5. A bill was addressed "M. H. Taylor, Tr. C. S. Ry. Co.," and accepted thus,—"Accepted, M. H. Taylor, Tr." Held, that he was personally liable as acceptor to an indorsee who took it as the bill of the company: Laing v. Taylor, 26 U. C. C. P. 416 (1876).

6. A bill addressed "to the Pres. Midland Railway" was accepted thus,—"For the Midland Railway of Canada, accepted, H. Read, Sec., Geo. A. Cox, President." Held, that the president was personally liable as acceptor: Madden v. Cox, 5 Ont. A. R. 473 (1880).

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Acceptance of bills.

7. The drawee wrote his name under the signature of the dr. Held sufficient, even without the word "Accepted": Dibs v. S. 11 R. J. 297 (1904).

8. Defendant accepted a bill "as executor of estate J. P." Plaintiff was holder without notice. A defence that defendant was liable only as executor was struck out: Campbell v. M. 24 N. S. 404.

9. A bill drawn "M. & McQ.," intended for M. McQ. & Co., was accepted by manager of the latter in the name of "M. & McQ." M. McQ. & Co. were held not liable as acceptors: Quebec Bank v. [illegible] Jan. 17 (1885).

10. A bill drawn on Board of Managers Presbyterian Church," an unincorporated body, was accepted as follows:—"Accepted, D. McLean, Chairman. G. Potter, Treasurer." There being evidence that they were respectively the chairman and treasurer of the board, they were held personally liable: McDonald v. McLean, 1 Terr. L. R. 30 (1883).

11. Where a person to whom a bill is not addressed writes an acceptance upon it (not as acceptor for honor) he is not liable as an acceptor: Jackson v. Hudson, 2 Camp. 447 (1810); Polhill v. Walter, 3 B. & Ad. 114 (1832); Davis v. Clarke, 6 Q. B. 16 (1844). Steele v. McKinlay, 5 App. Cas. 754 (1880).

12. A bill addressed to the "Directors of the B. Co.," is accepted by two directors and the manager. The latter is not liable as an acceptor: Bult v. Morrell, 12 A. & E. 745 (1840).

13. A bill addressed to a firm is accepted by a partner in his own name. He is personally liable as an acceptor: Owen v. Van Uster, 10 C. B. 318 (1850). If he accept in the firm name and add his own it does not make him separately liable to an indorsee: Re Barnard, 32 Ch. D. 447 (1886).

14. A bill addressed to a partner is accepted by him in the firm name. He is personally liable as the firm name is a short form of the partners' names: Nicholls v. Diamond, 9 Ex. 154 (1853).

15. A bill is addressed to the S. S. P. Co., the proper name being the S. S. P. Co., Limited. It is accepted by "J. M. See to the Co." This is not the acceptance of the company, but under the Companies' Act, J. M. is personally liable: Pearose v. Martyr, E. B. & E. 499 (1858); Atkins v. Wardle, 58 L. J. Q. B. 377 (1889).

16. A bill addressed "to the joint managers of the Royal M. M. Association," is accepted thus,—"Accepted, J. J., W. S. as joint managers of the Royal M. M. Association." Held, that they were personally liable as acceptors: Jones v. Jackson, 22 [illegible] T. N. S. 828 (1870).

17. A bill addressed to the "B. Co." is accepted thus,—"J. S. and H. T., directors of the B. Co." This is an acceptance by the company and not by the directors personally: Okell v. Charles, 34 L. T. N. S. 822 (1876).

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18. A bill addressed to "J. B., agent of the L. Co.," is accepted thus,—"Accepted on behalf of the company, J. B." He is personally liable as acceptor: Herald v. Connah, 34 L. T. N. S. 885 (1876); Mare v. Charles, 5 E. & B. 978 (1856).

19. A bill was drawn on a firm in liquidation, and the agent who was winding it up accepted it for his own purposes, in the name of one of the former partners, and in his own. Held, that the former partner was not liable: Odell v. Cormack, 19 Q. B. D. 223 (1887).

20. A bill drawn on Gen. L. W. Matthews, President of the Sultan of Zanzibar's Government, was accepted thus, — "L. W. Matthews, First Minister of the Zanzibar Government." Held that these added words did not exempt from personal liability: Forwood v. Matthews, 10 T. L. R. 138 (1893).

21. Two directors and the secretary of "The Bastille Syndicate, Limited," accepted a bill in the name of "The old Paris and Bastille Syndicate, Limited." The company did not pay the bill, and the directors and secretary were held personally liable under section 42 of the Companies' Act: Nassau Press v. Tyler, 70 L. T. N. S. 376 (1894).

Drawee's name wrong.

2. Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature. 53 V., c. 33, s. 17.

This subsection is not in the Imperial Act, but the same principle as to a payee or endorsee is found in section 32 (2) of that Act (s. 64 of this Act), and it is in harmony with commercial usage. It was inserted in the bill at a suggestion of the Toronto bankers: Commons Debates, 1890, p. 709. When section 32 of the bill of 1890 was under consideration in the Senate a member of that body suggested that the words "if he thinks fit" should be omitted, on the ground that if a man adopted a wrongful designation or name that was not his own, he should be compelled to do so over his proper signature. The suggestion was adopted, and the words struck out: Senate Debates, 1890, p. 572. It was apparently not observed that a like expression was used in this section. We have consequently the anomaly that it is optional with a drawee to add his proper signature, but compulsory on a payee or endorsee.

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Acceptance.

36. An acceptance is invalid unless it complies with the following conditions, namely:—

On the bill.

(*a*) It must be written on the bill and be signed by the drawee;

For money.

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

Mere signature.

2. The mere signature of the drawee written on the bill without additional words is a sufficient acceptance. 53 V., c. 33, s. 17 (2). Imp. Act. *ibid.*

(*a*) "According to the law merchant, an acceptance may be (1) expressed in words, or (2) implied from the conduct of the drawee. (3) It may be verbal or written. (4) It may be in writing on the bill itself or on a separate paper. (5) It may be before the bill is drawn or afterwards. Acceptance by telegram has been held sufficient:" 1 Daniel, § 496. In nearly all countries these provisions have been restricted by statute.

In writing.

It was held in England that the statute 3 & 4 Anne, c. 9, which was intended to require a written acceptance of inland bills, had not that effect: Wilkinson v. Lutwidge, 1 Str. 648 (1726); Lumley v. Palmer, 2 Str. 1000 (1735); Pillans v. Van Mierop, 3 Burr. 1663 (1765). The Act 1 & 2 Geo. IV. c. 78, was passed to make a written acceptance necessary in such cases, and the Mercantile Amendment Act, 1856, 19 & 20 Vict. c. 97, s. 6, required an acceptance on any bill, foreign or inland, to be in writing and signed by the drawee. It was held in Hindhaugh v. Blakey, 3 C. P. D. 136 (1878), that the signature alone of the acceptor was not sufficient, and the Bills of Exchange Act, 1878, 41 & 42 Vict. c. 13, was passed to declare the mere signature sufficient.

Acceptance.

In Lower Canada a parol acceptance was formerly held to be sufficient: Lagueux v. Everett, 1 Rev. de Lég. 510 (1817); Jones v. Goudie, 2 Rev. de Lég. 334 (1820). The Act of 1849 required an acceptance to be in writing on the bill, and this was subsequently embodied in the Civil Code.

Art. 2292. The same law was introduced into Upper Canada by 7 Wm. IV. c. 5; into Nova Scotia by 28 Vict. c. 10; into New Brunswick by 6 Wm. IV. c. 49; and into Prince Edward Island by 27 Vict. c. 6. § 36

These various provisions were consolidated and made applicable to the whole Dominion in section 4 of chapter 123 of R. S. C. (1886). It is in effect reproduced in the first part of the above clause, which says, "It must be written on the bill." As to what is a writing, and what is recognized as a signature, see notes on section 17 ante, pp. 44 and 48.

Where on bills.

The acceptance and signature of the drawee are usually written across the face of the bill; but its direction and position are immaterial, provided it appear that it was meant to be an acceptance. It may be below the drawee's name or above it, and parallel to it, or it may be even on the back of the bill: Young v. Glover, 3 Jur. N. S. 637 (1857); 1 Daniel, § 498.

Source of law.

The whole clause is copied from section 17 of the Imperial Act, the latter part, relating to the signature of the drawee, having been taken from the Mercantile Amendment Act, 1856, and the Bills of Exchange Act, 1878, as stated above. These statutes were not in force in any part of Canada, except the Act of 1856, in Manitoba, British Columbia, and the North-West Territories, having been introduced there as part of the law of England, as mentioned in the introduction. However, the various provincial statutes above mentioned were very similar to the Imperial Act, 1 & 2 Geo. IV. c. 78, and it was held in England that the signature alone of the drawee on the bill was a sufficient acceptance: Leslie v. Hastings, 1 M. & Rob. 119 (1831).

In New Brunswick, under the Act requiring an acceptance to be in writing, a bill was drawn upon a bank payable in three instalments. When the first instalment became due, the cashier paid it, and endorsed on the bill, "Paid on the within $741, Aug. 12, 1861." This was held to be an acceptance for the remaining instalments: Berton v. Central Bank, 10 N. B. (5 Allen), 493 (1863). This would not be an acceptance under the present Act for want of a signature.

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In some of the United States the old common law rule of verbal acceptance still prevails. The Negotiable Instruments Law requires it to be in writing and signed by the drawee: § 220.

Must pay in money.

(*b*) A bill may be varied in certain respects by the acceptance: s. 38. But the drawee does not become an acceptor if he proposes to satisfy the bill in anything except money. This was the old law. As to what is money, see notes on section 17, ante p. 50.

An acceptance to pay by another bill is not an acceptance: Russell v. Phillips, 14 Q. B. 891 (1850).

Promise to accept.

A Promise to Accept is not an acceptance. The drawee who gives such a promise may be held liable on his contract by estoppel, but not as an acceptor. So if what would formerly have been acceptance is written elsewhere than on the bill: See Bank of Montreal v. Thomas, 16 O. R. 503 (1888); Simpson v. Dolan, 16 O. L. R. 459 (1908); Torrance v. Bank of British North America, 17 L. C. J. 185; L. R. 5 P. C. 247 (1873); Dunspaugh v. Molsons Bank, 23 L. C. J. 57 (1878); Maritime Bank v. Union Bank, M. L. R. 4 S. C. 244 (1888); Coolidge v. Payson, 2 Wheaton, 66 (1817); Ilsley v. Jones, 12 Gray, 260 (1858); Riggs v. Lindsay, 7 Cranch (U.S.) 500 (1813).

A verbal promise to accept was insufficient under the old law, when a verbal acceptance was binding: Johnson v. Collings, 1 East, 98 (1800); Bank of Ireland v. Archer, 11 M. & W. 383 (1843); Kennedy v. Geddes, 8 Porter (Ala.) 268 (1839).

Acceptance.

37. A bill may be accepted,—

Before completion.

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

Overdue.

(*b*) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment. 53 V., c. 33, s. 18 (1). Imp. Act, s. 18 (1), (2).

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(*a*) The acceptance may be upon a blank paper, and if delivered to be filled up as a bill it is binding, and any other material particular in respect to which the bill may be incomplete, the person in possession has a prima facie authority to supply in any way he thinks fit: s. 31. By section 186 this is one of the sections not applicable to a promissory note. The signing of an incomplete note by the maker is however covered by the rule laid down in section 32, which does apply to promissory notes.

For illustrations of the foregoing see the notes to section 31.

(*b*) A bill accepted when overdue is payable on demand: s. 23 (2). After a bill has been refused acceptance, and notice of dishonor has been given, the holder may apply to the referee in case of need if there be one named in the bill: s. 33; or it may be accepted for honor by a third person: s. 147; or the drawee himself may change his mind and accept: Wynne v. Raikes, 5 East, 514 (1804). If he should do so, the date from which time should run is fixed by the next subsection.

A bill is presumed to have been accepted shortly after its issue and before maturity, unless something appears or is shown to the contrary.

Acceptance after dishonour.

2. When a bill payable at sight or after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. 53 V., c. 33, s. 18; 54-55 V., c. 17, s. 3. Imp. Act, s. 18 (3).

This subsection in the Act of 1890 was copied verbatim from the Imperial Act, which does not contain the words "at sight or" in the first line. It was another instance of the omission of the change necessary to make the Act consistent with the decision to continue to allow days of grace on sight bills. These words were added by the amending

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Act of 1891, thus putting all bills payable at a certain time after acceptance on the same footing.

Acceptance after dishonour.

It introduced new law, and was designed to place all parties in the same position as if the bill had been accepted when first presented: s. 80; or as if accepted by a referee in case of need or by an acceptor for honour: s. 94. The date of the first presentment, notwithstanding the words of the Act, will probably be held to be fixed by the date of the protest for non-acceptance, which may be two days later than the actual first presentment: s. 80.

The words of the subsection are ambiguous; but it is likely that they will be held not to be sufficiently strong to place a drawee in a worse position than he would be under subsection 4 of section 80.

If the holder took an acceptance of a later date, it would be a qualified acceptance and he would do so at his own risk: s. 84.

Kinds.

38. An acceptance is either,—

(*a*) general; or,

(*b*) qualified.

General.

2. A general acceptance assents without qualification to the order of the drawer. 53 V., c. 33, s. 19 (1). Imp. Act, *ibid.*

Acceptance.

The usual way of accepting a bill generally, is for the drawee simply to write his name across the face of the bill under the word "accepted," adding the date if it be payable at or after sight. It is sufficient if he simply sign his name: s. 36. He may also name a particular specified place of payment as provided in subsection 4 without making his acceptance a qualified one. The definition of a general acceptance given above is taken from the Imperial Act without change, but the effect of the change made in subsection 4 and in sections 88 and 93 is to materially change the law.

The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain a general acceptance he

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may treat the bill as dishonoured by non-acceptance: s. 83. An acceptance will be construed as a general one wherever practicable, and a memorandum of a wrong due date in a bill was held not to vary its effect or to be a qualified acceptance, but that anything in an acceptance contrary to the tenor of the bill should be in the clearest language: Fanshawe v. Peet, 26 L. J. N. S. 311 Ex. (1857). General.

A bill of exchange being drawn by L. D. Flipo, payable "to order L. D. Flipo," the drawees erased the word "order," and accepted the bill "in favour of L. D. Flipo only, payable at the Allianee Bank, London." In an action upon the bill by the indorsees for value against the acceptors it was held by the English Court of Appeal, reversing the decision of the lower Court, that the acceptanee did not vary the effect of the bill, as drawn, and that it was a general acceptanee of a negotiable bill, and the action was maintainable: Decroix v. Meyer, 25 Q. B. D. 343 (1890). The decision was affirmed by the House of Lords: [1891] A. C. 520.

If a qualified acceptance is taken, it discharges the drawer and endorsers if they have not authorized it, or disapprove on receiving notice: s. 84.

3. A qualified acceptance in express terms varies the effect of the bill as drawn and in particular, an acceptance is qualified which is,— Qualified.

(*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; Conditional.

(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; Partial.

(*c*) qualified as to time; Time.

(*d*) the acceptance of some one or more of the drawees, but not of all. 53 V., c. 33, s. 19 (2). Imp. Act, *ibid.* Drawees.

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(*a*) **Conditional Acceptance.**—A bill of exchange is an unconditional order to pay; but the acceptance may be conditional without destroying its validity. On the fulfilment of the condition it becomes absolute and the acceptor liable. Mann v. Prest, 4 Camp. 393 (1816).

Conditional acceptance.

Where the acceptance on a bill is unconditional, parol evidence cannot be received to show that it was accepted conditionally: Bradbury v. Oliver, 5 U. C. O. S. 703 (1839). Conditional acceptances were not recognized in the old French law: Pothier, No. 47; nor are they under the Code de Commerce: Art. 124. England and the United States are said to be the only countries which acknowledge them.

ILLUSTRATIONS.

The following are examples of conditional acceptances:—

1. If a certain house shall be finished: Dufresne v. Jacques Cartier Building Society, 5 R. L. 235 (1873).

2. When in funds from the estate of C.: Potters v. Taylor, 20 N. S. (8 R. & G.) 362 (1888).

3. Provided they shall have earned that sum: McLean v. Shields, 1 Man. 278 (1884).

4. When certain debentures are sold: Ontario Bank v. McArthur, 5 Man. 381 (1889).

5. As soon as he should sell such goods: Smith v. Abbott, 2 Strange 1152 (1741).

6. As remitted for: Banbury v. Lissett, 2 Strange, 1211 (1744).

7. When he would obtain those funds from France: Mendizabal v. Machado, 3 Moore & S. 841 (1833).

8. On condition that it be renewed: Russell v. Phillips, 14 Q. B. 891 (1850).

9. On giving up bills of lading: Smith v. Vertue, 9 C. B. N. S. 214 (1860).

(*b*) **Partial Acceptance.**—A bill may be validly accepted for part: Petit v. Benson, Comberbach, 452 (1697); Wegersloffe v. Keanc, 1 Str. 214 (1709). In this form of qualified acceptance, the drawer and endorsers have no opportunity of freeing themselves by their dissent. The holder should give

due notice of the partial dishonour: s. 84; Pothier, No. 49: Code de Com., Art. 124. § 38

Conditional acceptances.

(*c*) **Qualified Acceptance as to Time.**—The acceptor may vary the time of payment named by the bill; and if none be named he may fix a time and he will be bound by it: Walker v. Atwood, 11 Mod. 190 (1709); Russell v. Phillips, 14 Q. B. 891 (1850); Pothier, No. 49.

(*d*) **Acceptance by Part of Drawees.**—If there are several drawees and they do not all accept, those who do are bound. A partner may accept in his own name a bill addressed to his firm and it is a valid acceptance: Owen v. Van Uster, 10 C. B. 318 (1850).

The list of qualified acceptances given in this section may not cover the whole ground. Any acceptance which by its terms varies the effect of the bill as drawn would be a qualified acceptance, although it might not literally be within any of the classes enumerated. Of the corresponding section in the Imperial Act, the Master of the Rolls says, in Decroix v. Meyer, 25 Q. B. D. 348 (1890):—"I think it is true to say in section 19 of the Act the examples given of a qualified acceptance are not exhaustive and that there might be other cases of qualified acceptances, when the acceptance in express terms varied the effect of the bill as drawn."

4. An acceptance to pay at a particular specified place is not on that account conditional or qualified. 53 V., c. 33, s. 19 (2). Imp. Act, *ibid.*

Specified place.

This subsection differs from the Imperial Act. It is a substitute for clause (*c*) of section 19 (2), one of the examples of a qualified acceptance, and which reads as follows: "(*c*) local, that is to say, an acceptance to pay only at a specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere."

Prior to 1820 it was a point much disputed in England whether a bill made or accepted payable at a particular place required to be presented there in order to charge the

At particular place.

§ 38

Payable at a particular place.

acceptor, drawer and endorsers. In Rowe v. Young, 2 B & B. 165 (1820) it was decided by the House of Lords that such an acceptance was a qualified acceptance, rendering it necessary in an action against the acceptor to prove presentment at such place. The practice of making bills payable at a banker's had become general and was found to be a great convenience. If this were held to be a qualified acceptance it would require the assent of the drawer and endorsers. To overcome the effect of the decision in Rowe v. Young, the Act 1 & 2 G. IV. c. 78, was passed, declaring an acceptance to pay at a particular place a general acceptance, unless made payable there "only and not otherwise or elsewhere." Clause (*c*) of section 19 of the Imperial Act above quoted is a reproduction of this Act. A similar Act applicable also to promissory notes was passed in Upper Canada in 1837 as 7 Wm. IV. c. 5. This was embodied in the C. S. U. C. c. 42, as sections 5 and 6, and appears in chapter 123 of the Revised Statutes of Canada, 1886, as section 16, but remained applicable to Ontario alone, and was repealed by the present Act. For cases where bills and notes omitting the restrictive words were held to be payable generally, see Commercial Bank v. Johnston, 2 U. C. Q. B. 126 (1845), and Bank of U. C. v. Parsons, 3 U. C. Q. B. 383 (1846). On such a note payable in Scotland or the United States the holder could not recover the difference of exchange or the damage allowed on foreign notes: Wilson v. Aitkin, 5 U. C. C. P. 376 (1855); Meyer v. Hutchinson, 16 U. C. Q. B. 476 (1858); Hooker v. Leslie, 27 U. C. Q. B. 295 (1868). A clause to the same effect was made applicable to Lower Canada in 1849 by 12 V. c. 22, s. 7; but it was repealed the next year by 13 & 14 V. c. 23, and replaced by the following which subsequently appeared in the Civil Code as Art. 2307: "If a bill of exchange be made payable at any stated place, either by its original tenor or by a qualified acceptance, presentment must be made at such place." In Prince Edward Island an Act to the same effect as 1 & 2 G. IV. c. 78, was passed, 27 V. c. 6. This was repealed by the Revised Statutes of Canada, 1886, Schedule A, p. 2274.

Changes in bill.

In the Canadian bill as introduced in 1889, section 19 was identical with the Imperial Act. There was a strong expres-

sion of opinion against the principle of the Act 1 & 2 G. IV. c. 78, especially against requiring the words "only and not otherwise or elsewhere," and when the bill was introduced in 1890 the second sentence of clause (*c*) of the Imperial Act was omitted entirely. While the bill was before the Senate it was further amended and put in its present form by omitting the whole of the original clause (*c*), and adding to clause (*a*) the words: "but an acceptance to pay at a particular specified place is not conditional or qualified." To appreciate the full effect of this change the present section must be read in connection with sections 83 to 90 inclusive. § 38

The effect of the Canadian Act would appear to be this: When the drawer has not named a particular place of payment, the acceptor may name a place in his acceptance, and this will be a general acceptance which must be taken by the holder, and of which he need not give notice to the drawer or indorsers in order to hold them liable on the bill. Effect of changes.

Where a place of payment is specified either in the bill as originally drawn or in the acceptance the bill must be presented there or the drawer and endorsers will be discharged: s. 87. The acceptor is not discharged by the omission to present the bill for payment on the day that it matures, but if he is sued before presentation the costs are in the discretion of the Court: s. 109.

A difficulty may possibly arise if the drawee should, by his acceptance, make the bill payable in another town. This would literally be within the words of the Act as "an acceptance to pay at a particular specified place," and being a general acceptance the holder could not refuse it, or protest the bill for non-acceptance. It might be very inconvenient for the holder of a bill drawn upon a person in Toronto, if the latter could accept it payable at New York, Chicago, or Winnipeg, and require the holder to present it there in order to bind the drawer and endorsers. The Courts may possibly restrict the word "place" to a bank or other place in the town or locality which is given in the bill as the address of the drawee, and treat an acceptance to pay in another town as a qualified acceptance. There appears, however, to be Meaning of place.

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nothing in the context or in the Act to require such a construction, and "place of payment" in section 88 (*b*), and in section 93, is distinguished from the address of the drawee as given in the bill. A few words limiting it to the town or locality where the drawee is addressed, or within a certain limited distance, would have removed all uncertainty. It was held in the State of New York that where a bill addressed to "E. C. H., of New York," was "accepted payable at the American Exchange Bank, Clayville Mills," which was in another county, it was a qualified acceptance: Walker v. Bank of N. Y., 13 Barb. 636 (1852); so also where a bill addressed A. Y. & Co., at Cobourg, Upper Canada, and accepted "payable at the Bank of Upper Canada, Port Hope": Niagara District Bank v. Fairman, 31 Barb. 403 (1860).

If the bill as drawn specifies a particular place of payment, and the acceptance names a different one, this would be such a variance as would make the acceptance a qualified one: Rowe v. Young, 2 B. & B. 165 (1820).

When-acceptance complete.

39. Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. 53 V., c. 33, s. 21 (1). Imp. Act, *ibid.*

Proviso.

Delivery or notice.

Delivery has been defined in section 2 as the transfer of possession, actual or constructive, from one person to another; and it is here used in that sense. The acceptance must be in writing, but the notification may be either written or verbal. Delivery is necessary also to render the contract of the maker or endorser of a promissory note complete and irrevocable.

"Delivery is the final step necessary to perfect the existence of any written contract; and, therefore, as long as a

bill or note remains in the hands of the drawer or maker it is a nullity. And even though it be placed by the drawer or maker in the hands of his agent for delivery, it is still undelivered so long as it remains in his hands, and may be recalled:" 1 Daniel, § 63.

As to the requisites of an effective delivery and the presumptions regarding the same, see s. 40.

ILLUSTRATIONS.

1. Where the secretary of a company, intending to give a renewal note of the company, signed his name with the word "per" before it, leaving a space before his signature for the stamp of the company, and sent it to the manager, who signed the note but omitted to insert the company's name, and delivered it to the creditor, it was held, that the instrument never was perfected or delivered as a promissory note and the secretary was not liable as maker: Brown v. Howland, 9 O. R. 48 (1885); affirmed, 15 Ont. A. R. 750 (1887).

2. Where a drawee has written his acceptance on the bill, but cancels it and returns it to the holder, who has it noted for non-acceptance, the drawer is not liable as an acceptor: Bentinck v. Dorrien, 6 East, 199 (1805).

3. Where a drawee, after writing his acceptance on the bill, changes his mind, and instead of notifying the holder or delivering the bill, erases his acceptance, he is not liable as an acceptor: Cox v. Troy, 5 B. & Ald. 474 (1822).

4. A debtor made a promissory note in favour of his creditor for the amount of his claim, but died before delivering it. If given to the creditor subsequently it is not a valid note: Bromage v. Lloyd, 1 Ex. 32 (1847).

5. A partner who is also agent for a creditor of the firm, indorses the firm's name on a bill, and places it among some other papers of the creditor which he has. This is a valid indorsement by the firm and a delivery to the creditor: Lysaght v. Bryant, 9 C. B. 46 (1850).

6. The drawee writes an acceptance on a bill left with him. The holder calls for it next day and is told it is mislaid. The drawee hears that the drawer has failed and erases his acceptance. The following day he delivers the dishonoured bill to the holder. This is not an acceptance. Bank of Van Diemen's Land v. Bank of Victoria, L. R. 3 P. C. 526 (1871).

7. By the delivery of a note to the trustee under a composition deed, the creditor, who is the payee, acquires no property in it: Latter v. White, L. R. 5 H. L. 578 (1872).

§ 39

Delivery.

8. A letter when posted becomes the property of the party to whom it is addressed. If it contains a bill, this is a delivery: Ex parte Coté, L. R. 2 Ch. 27 (1873).

9. A bill is specially indorsed and inclosed in a letter addressed to the indorsee. It is placed in the office letter box of the indorser but before posting or delivery is stolen by a clerk, who forges an indorsement and negotiates it. The property in the bill remains in the indorser: Arnold v. Cheque Bank, 1 C. P. D. 584 (1876).

10. The defendant left two blank forms of promissory notes with his agent, with instructions to keep them until defendant gave instructions regarding them. The agent fraudulently filled them up and plaintiff bona fide gave value for them. Held, that as the agent received them as custodian only, and as defendant never delivered them and they never became negotiable notes, he was not liable: Smith v. Prosser, [1907] 2 K. B. 735. (See other cases cited *ante* p. 99).

Delivery.

Requisites.

40. As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery,—

Authority.

(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting or endorsing, as the case may be;

Conditional.

(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. 53 V., c. 33, s. 21 (2). Imp. Act, *ibid.*

In the Act of 1890 this section with sections 39 and 41 together formed section 21. Although they have been separated by the revisers, they should still be read together.

"Immediate parties" are those who have direct dealings with each other in relation to a bill, such as drawer and acceptor, drawer and payee, endorser and next endorsee. A "remote party" taking a bill incomplete or irregular on its face, or after maturity, or with notice of a defect, or without giving value, is in no better position. For the definition of a "holder in due course," see section 56. The present subsection has no application to a holder in due course; delivery

as it affects him is dealt with in sub-section 2. See section 2 (f) as to the meaning of delivery. § 40

Where a bill has been delivered conditionally or for a special purpose only, and the person who has so received it violates his trust, the owner may recover the bill or its amount from such person or anyone who has taken it with notice: Goggerley v. Cuthbert, 5 B. & P. 170 (1806); Alexander v. Close, 10 M. & W. 576 (1842); Muttyloll Seal v. Dent, 8 Moore, P. C. 319 (1853); Arnold v. Cheque Bank, 1 C. P. D. 585 (1876); Burson v. Huntington, 21 Mich. 115 (1870). **Delivery of bill.**

Where a promissory note was indorsed on the understanding that it should be available only on the happening of a certain condition, it is not binding where the condition has not been fulfilled. Plaintiff's agent took the note with knowledge of the condition. This was notice to the bank, as it was not shown that the agent was a party to a fraud upon it, and it was not enough to show that he had an interest in deceiving the bank: Commercial Bank of Windsor v. Morrison, 32 S. C. R. 98 (1902).

The maker of a promissory note alleged on his examination that he made and delivered the note to a company for a purpose other than that for which the company deposited it with the plaintiff, the payee of the note. He did not allege that plaintiff had notice of this, or allege fraud, but merely that plaintiff took the note without consideration. Held, no defence: Ontario Bank v. Young, 2 O. L. R. 761 (1901).

Escrow.—A bill or note may be delivered conditionally, and upon the happening of the event or fulfilment of the condition, no further delivery is necessary. What was before a mere paper writing becomes a valid bill. In the case of a deed the custodian must be a third party. In Bell v. Ingestre, 12 Q. B. 317 (1848), Lord Denman held that the same principle applied to indorsees who received bills as trustees. The death of the parties liable does not prevent the bill taking effect: Belden v. Carter, 4 Day 66 (1809); Giddings v. Giddings, 51 Vt. 227 (1878). "There is this distinction between negotiable and sealed instruments: If the custodian of the former betrays his trust, and passes off the negotiable instrument to a bona fide holder, before maturity, **Escrow.**

§ 40 and without notice, all parties are bound; but if the instrument be sealed, the rule is otherwise": 1 Daniel, § 68. A bill, complete in form, put into the hands of a third party as an escrow is not a valid bill, but a mere paper writing until the happening of the condition: Chandler v. Beckwith, 2 N. B. (Berton), 423 (1838).

Escrow.

ILLUSTRATIONS.

Delivery.

1. When defendant delivers a note signed by him to the plaintiff without consideration and solely for the purpose of its being held for defendant, the plaintiff cannot recover on it: Wismer v. Wismer, 24 U. C. Q. B. 446 (1863).

2. The payee of a promissory note, after a writ of attachment had issued against him, for value indorsed it to a bona fide holder before its maturity. Held, that the indorsee had no title, as it had vested in the assignee before its indorsement or delivery: Jenks v. Doran, 5 Ont. A. R. 558 (1880). (But would not the indorsee as a holder in due course now be within the provisions of the last clause of sub-section 2?)

3. The payee of a note which was delivered to him conditionally sues upon it. The maker may shew that the condition was not complied with: Jeffries v. Austin, 1 Str. 674 (1725).

4. A bill was delivered by the acceptor to the drawer for a purpose for which it became unnecessary. The drawer indorsed it for value to a person who was aware he had no right to do so. The property in the bill remained in the acceptor: Evans v. Kymer, 1 B. & Ad. 528 (1830).

5. The payee of a bill gave it to a friend to get it discounted. The latter had to indorse it to get it discounted, and only received a part of the proceeds. The person who discounted it was aware of the facts. The payee could shew the nature of the delivery and recover the balance of the proceeds: Bastable v. Poole, 1 C. M. & R. 410 (1834).

6. Defendant drew on one who was a debtor of himself and plaintiff jointly. The debtor accepted and defendant indorsed and delivered the bill to plaintiff to collect. It was dishonoured, and plaintiff sued defendant as indorsee. Held, that this was not an indorsement and delivery that would pass the property: Denton v. Peters, L. R. 5 Q. B. 475 (1870).

7. Where a bill was indorsed and handed to a banker for discount on February 22nd, but was not actually discounted until the 28th, it did not become the property of the banker until the latter date, the indorsement and delivery being conditional upon the subsequent discounting: Dawson v. Isle, [1906] 1 Ch. 633; Merchants Bank v. Thompson, 23 O. L. R. 502 (1911).

8. In an action by the payee of a promissory note against the maker, evidence is admissible to show a parol agreement at the time of the making of the note, that it should not become operative as a note until the maker could examine the property for which it was given, and determine whether he would purchase it: Burke v. Dulaney, 153 U. S. 228 (1894). § 40

2. If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. 53 V., c. 33, s. 21. Imp. Act, *ibid.* Presumptions.

This subsection and section 41 afford examples of the two kinds of presumptions of law, namely, conclusive and disputable as they are designated in the language of English law; or presumptions juris et de jure and legal presumptions as they are called in the language of the civil law. "Conclusive presumptions of law are rules determining the quantity of evidence requisite for the support of any particular averment which is not permitted to be overcome by any proof that the fact is otherwise. . . . They have been adopted by common consent, from motives of public policy, for the sake of greater certainty, and the promotion of peace and quiet in the community; and therefore it is, that all corroborating evidence is dispensed with, and all opposing evidence is forbidden": 1 Taylor, s. 71. In disputable presumptions, the "law defines the nature and amount of the evidence which is sufficient to establish a prima facie case, and to throw the burden of proof on the other party; and if no opposing evidence is offered, the jury are bound to find in favour of the presumption. A contrary verdict may be set aside as being against evidence": 1 Taylor, s. 109. "Legal presumptions are those which are specially attached by law to certain facts. They exempt from making other proof those in whose favour they exist; certain of them may be contradicted by other proof; others are presumptions juris et de jure and cannot be contradicted": C. C. Art. 1239. Presumptions.

"A holder in due course" is defined in section 56 as a holder who has taken a bill, complete and regular on its face before it was overdue, in good faith and for value, and who had no notice at the time it was negotiated to him of any

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defect of title of the person who negotiated it, or of its having been dishonoured if such was the fact.

Holder in due course.

The presumption would not apply to an instrument never issued as a bill: Smith v. Prosser, [1907] 2 K. B. 735, and other cases cited *ante*, p. 99.

The presumption applies only to those persons who may have become parties to the instrument as a bill.

Parting with possession.

41. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved. 53 V., c. 33, s. 21. Imp. Act, *ibid.*

The previous subsection gave an example of a presumption that is conclusive or juris et de jure; the present section of a presumption that is disputable, or legal, to use the language of the civil law.

The presumption is created in the interest of negotiable paper, in order to give it greater currency; the provision for the admission of evidence to prove the real facts is for the prevention of fraud.

Computation of Time, non-juridical days and days of grace.

Computation of time.

42. Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that whenever the last day of grace falls on a legal holiday or non-juridical day in the province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such province, shall be the last day of grace. 53 V., c. 33, s. 14 (1). Imp. Act, *ibid.*

Last day of grace.

§ 42

Days of grace.

The first part of this section was taken verbatim from the Imperial Act; its effect, however, is different. There, bills payable at sight are by section 10, payable on demand, so that they are not entitled to days of grace. In Canada, they fall under the rule in the first part of this section. The proviso was taken from R. S. C. (1886), c. 123, s. 2, and differs materially from the corresponding rule in England. There when the last day of grace falls on Sunday, Christmas Day, Good Friday, or a public fast or thanksgiving day, it is payable on the preceding business day, except that when the last day of grace is a bank holiday other than Christmas or Good Friday, or when the last day of grace is a Sunday, and the second day of grace is a bank holiday, the bill is payable on the succeeding business day.

This section applies only to bills payable in Canada. Those payable elsewhere are governed as to their due date by the law of the place where they are payable: s. 164.

In the United States, as a general rule, if a bill payable without grace falls due on a Sunday or legal holiday, it is not payable until the next regular business day; but if payable with grace and the last day of grace falls on a Sunday or holiday, it is payable on the day preceding: 1 Daniel, § 627. In France, a note maturing on a holiday is payable the day before: Code de Com. Art. 134.

"**Days of Grace.**"—What was at first a real grace or indulgence granted for the payment of foreign bills subsequently passed into a right. Later it was extended to inland bills, and finally by the Statute of Anne (1704) promissory notes were placed on the same footing. It was held in Wiffen v. Roberts, 1 Esp. 262 (1795), that presentment on the second day was invalid. In England, the United States and Canada, the authorities agreed that days of grace did not apply to bills payable on demand, or those without specification of time, or those expressly payable without grace. The only difference has been with respect to bills payable at sight. For the law as to these, see the notes on section 24. In France, days of grace were abolished by the Code de Commerce, Art. 135. Other European countries have done likewise, and they have been abolished in those states of the

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American Union which have enacted the Negotiable Instruments Law (§ 145); also in California.

Days of grace.

A similar proposal was made in the English Parliament in 1882, but was not adopted. The perpetuation of this practice after the necessity for it has long since disappeared, seems to be at variance with the precision and punctuality that characterize modern commercial transactions.

Where a bill is payable by instalments, days of grace are allowed on each instalment: Oridge v. Sherbourne, 11 M. & W. 374 (1843).

The allowance of grace in the United States is usually limited to three days as in England, except that in some states it has been varied by statute, and in some localities modified by a well-established usage.

A note or bill dated January 31st, payable "without grace" one month after date, falls due February 28th: Roehner v. Knickerbocker Life Ass. Co., 63 N. Y. 160 (1875).

The following expressions in bills have been held to be a sufficient indication that days of grace are not to be allowed:—"without grace," "no grace," and "fixed." But a memorandum of the due date in the margin is not sufficient.

Non-negotiable notes not payable on demand are entitled to days of grace: Smith v. Kendall, 6 T. R. 123 (1794).

A note, payable "on demand, at sight," was held to be a sight bill and entitled to days of grace: Dixon v. Nuttall, 1 C. M. & R. 307 (1834).

Non-juridical days.

43. In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days:—

General.

(*a*) In all the provinces of Canada,

Sundays,

New Year's Day,

Good Friday,

Easter Monday,
Victoria Day (May 24th),
Dominion Day (July 1st),
Labour Day (1st Monday in Sept.),
Christmas Day,
The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign;
Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada,
The day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday;

(*b*) In the province of Quebec in addition to the said days, Quebec.

The Epiphany (Jan. 6th),
The Ascension (Movable),
All Saints' Day (Nov. 1st),
Conception Day (Dec. 8th),

(*c*) In any one of the provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such province for a public holiday, or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province. 53 V., c. 33, s. 14; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 2; 1 E. VII., c. 12, ss. 2 and 4. Provincial proclamation.

"**Province**" includes the Northwest Territories, the District of Keewatin, and the Yukon Territory; and "lieutenant-governor" includes administrator: R. S. C. c. 1, s. 34 (22) and (13).

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Holidays.

The Act of 1890 increased the number of holidays in two particulars:—1st, in making Monday a holiday when the Queen's birthday fell on Sunday; and 2nd, in making every provincial non-juridical day a holiday for bills in that province. The Annunciation, March 25th, Corpus Christi, a movable festival, and St. Peter's and St. Paul's Day, June 24th, were holidays for Quebec under the Act of 1890; but were struck out in 1893, by 56 V. c. 30. Labour Day was added in 1894, and Victoria Day in 1901, both for the whole Dominion.

The holidays on bills and notes in England are Sundays, Christmas Day, Good Friday, and any public fast or thanksgiving day, and the bank holidays—Easter Monday, Whit Monday, and the first Monday in August.

In most of the United States, the holidays on bills and notes besides Sundays are New Year's Day; Washington's Birthday, Feb. 22nd; July 4th; Thanksgiving Day, and Christmas Day; also in most of the Northern States, Declaration or Memorial Day, May 30th, and in many of the States, election day. As a rule when any of these days is a Sunday, Monday is observed as a holiday.

Time of payment.

44. Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment. 53 V., c. 33, s. 14 (2). Imp. Act, *ibid.*

The method of computing time on a bill is that of the old law: Campbell v. French, 6 T. R. 200 (1795); also of the English Judicature Act, Order LXIV., Rule 12; of the Ontario Judicature Act, Rule 173, and of the Quebec Civil Code in matters of prescription, Art. 2240; but not the law of procedure in Quebec, where both terminal days are excluded: C. C. P. Art. 9. There is no general rule in computing time from an act or event, that the day is to be inclusive or exclusive; it depends on the reason of the thing according to circumstances: Lester v. Garland, 15 Ves. 248

(1808). The expressions "in thirty days," "in thirty days from date," "at thirty days," and "thirty days after date," are synonymous: Ammidown v. Woodman, 31 Me. 580 (1850); Henry v. Jones, 8 Mass. 453 (1812). § 44

A promissory note dated 7th Nov., 1895, and payable "21st Nov. next," is payable on the 21st Nov., 1896, and not on 21st Nov., 1895: Drapeau v. Pominville, Q. R. 11 S. C. 326 (1897).

45. Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery. 53 V., c. 33, s. 14 (4). Imp. Act, *ibid.* Sight bill.

This section also reproduces the old law: Campbell v. French, 6 T. R. 200 (1795). A bill need not be noted or protested for non-acceptance, if the drawee do not forthwith accept on its presentment; but if not accepted on that day or within two days thereafter, it must be treated as dishonoured or the holder will lose his recourse against the drawer and endorsers: s. 80. A bill is protested for non-delivery when the drawee to whom it has been presented wrongly detains it, and refuses either to accept or return it: s. 120. When a bill, payable after sight, is dishonoured and subsequently accepted supra protest, the time runs from the date of protesting for non-acceptance and not from the date of acceptance: s. 150.

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

§ 46

'Month.'

2. The term 'month' in a bill means the calendar month. 53 V., c. 33, s. 14 (6) and (5). Imp. Act, s. 14 (4).

Due date.

The first subsection is not in the Imperial Act, but it corresponds with the English usage: Chalmers, p. 38, and with that of the United States: 1 Daniel, § 624. When first enacted in Canada in 1872, the preamble of the Act stated that doubts existed on the point: 35 V. c. 10. The last clause of the subsection as found in the present Act differs from that in the previous Acts, which read: "with the addition, in all cases, of the days of grace allowed by law." By section 42, days of grace are allowed "where the bill itself does not otherwise provide." Notwithstanding the clause as it now stands says that they shall be allowed "in all cases," it is hardly to be presumed that it would be held to apply, say to a bill made after date "without grace." The rule will sometimes make bills of different dates on their face having an equal time to run, mature on the same day. For instance, four bills dated respectively, December 28th, 29th, 30th and 31st, 1914, payable two months from date, would all fall due on the 3rd of March, 1915. If made on the same dates in 1915, the first would fall due on the 2nd of March and the other three on the 3rd of March, 1916, on account of 1916 being a leap year.

"Month" has been always held to mean a calendar month in mercantile contracts, even when at common law and in statutes it meant a lunar month: Reg. v. Chawton, 1 Q. B. 247 (1841); Webb v. Fairmaner, 3 M. & W. 473 (1838); Hart v. Middleton, 2 C. & K. 10 (1845). In England, the change was not made in the interpretation of Statutes until 1850. In Canada, it was made in 1849.

Capacity and Authority of Parties.

Capacity of parties.

Corporations.

47. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract: Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or endorser, of a bill, unless it is com-

petent to it so to do under the law for the time being in force relating to such corporation. 53 V., c. 33, s. 22 (1). Imp. Act, *ibid.*

§ 47

Capacity of corporations.

Under the British North America Act, s. 92, s-s. 13, the Local Legislatures have the exclusive right, under the head of "civil rights," to legislate regarding the capacity to contract, except as to corporations created by or under the authority of the Dominion Parliament, and they may be subject indirectly to Dominion legislation regarding some of the other subjects enumerated in section 91. The first part of this section, like the greater part of the Act, is taken without change from the Imperial Act. In England, it could not give rise to any question, except as to contracts made abroad. Here questions frequently arise where there is a conflict between Dominion and Provincial legislation. In Cushing v. Dupuy, 5 App. Cas. 409 (1880), the Privy Council upheld Dominion legislation on bankruptcy, and in Tennant v. Union Bank, [1894] A. C. 31, legislation on banking, although they both interfered with subjects exclusively assigned to the local legislatures by section 92 of the B. N. A. Act. In other cases, a like rule has been laid down. It has been, perhaps, most pointedly expressed in La Compagnie Hydraulique v. The Continental Heat and Light Co., [1909] A. C. 194, where it was contended that the powers conferred by the Dominion Parliament on the latter company were affected by provincial legislation in favour of the former. At p. 198, it is said: "This contention seems to their Lordships to be in conflict with several decisions of this Board. Those decisions have established that where, as here, a given field of legislation is within the competence both of the Parliament of Canada and of the Provincial Legislature, and both have legislated, the enactment of the Dominion Parliament must prevail over that of the Province if the two are in conflict, as they clearly are in the present case."

Conflict of laws.

The practical difficulty that will arise will be as to which provincial law is to govern where that of more than one province is to be applied. The law of Quebec as to capacity differs considerably from that of most of the other provinces, and the intimate commercial relations between that province and the others will no doubt bring these questions before

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Conflict of laws.

the Courts. The point to be determined in such cases is whether the law of the domicile of the person or the law of the place where the contract is made, or of the place where it is to be performed, is to control. The law in Quebec is explicit, and adopts the civil law rule in favour of the domicile. The Civil Code says: —"Art. 6. An inhabitant of Lower Canada, so long as he retains his domicile therein, is governed by its laws respecting the status and capacity of persons." The law of the other provinces can hardly be said to have been settled in the comparatively few cases which have come up for adjudication by the want of unanimity of judicial opinion. In this, they followed the example of the judges in England, where there was great divergence. The tendency, however, was in the main towards the adoption of the law of the domicile, and it may probably be said to be fairly well settled in that sense. The authorities ordinarily cited in favour of the lex loci contractus are Lord Kenyon in Huet v. Le Mesurier, 1 Cox 275 (1786); Lord Eldon in Male v. Roberts, 3 Esp. 163 (1800); Creswell, J., in Simonin v. Mallac, 2 S. & T. 77 (1860); and Hannen, J., in Sottomayor v. De Barros, 5 P. D. 94 (1879). In favour of the law of the domicile the following are leading authorities: Lord Westbury in Udny v. Udny, L. R. 1 Sc. Ap. 457 (1869); Cotton, J., in Sottomayor v. De Barros, 3 P. D. 5 (1877); and Lord Halsbury in Cooper v. Cooper, 13 App. Cas. 99 (1888). In this last case, Lords Watson and Macnaghten were against the lex loci solutionis, but did not decide between the domicile and lex loci contractus, which there happened to be the same.

On a review of the authorities, Westlake lays down the following proposition at p. 43:—"When the capacity of a person to act in any given way is questioned on the ground of his age, the solution of the question will be referred in England to his personal law" (the law of his domicile). And at p. 47: "When the capacity of a married woman to act in any given way, is questioned on the ground of her coverture, the solution will also be referred in England to her personal law."

It is provided by section 95 of the Bank Act R. S. C. c. 29, that any person, although not qualified to enter into ordinary contracts, may make deposits up to $500 and with-

draw the money without the authority or assistance of any person or official. This would authorize the drawing of cheques by such disqualified persons. By section 29 of the Quebec Savings Bank Act, R. S. C. c. 32, deposits may be made in Quebec by such persons to the amount of $2,000 in these savings banks.

The principal classes of persons without full capacity to contract are:—

1. Infants or Minors.—As the age of majority throughout the Dominion, as in England, is fixed at 21, conflict will not arise as to these, except probably as to minors emancipated under the law of Quebec by marriage, or by the Court, whereby they acquire a restricted right to contract: C. C. Arts. 314-322; or by engaging in trade when they are reputed of full age for all acts relating to such trade: Art. 323. A promise or ratification after majority to pay a debt or obligation contracted during minority, is only binding when in writing: C. C. Art. 1235 (2); R. S. O. c. 102, s. 7. Infants or minors.

ILLUSTRATIONS.

1. Where a minor simply pleaded his minority to an action on note given by him, held that he should have pleaded lesion and asked to be relieved to the extent to which he was not benefited: Cartier v. Pelletier, 1 R. L. 46 (1868); Boucher v. Girard, 20 L. C. J. 134 (1875).

2. A note made by a minor engaged in trade in connection with his business is binding on him: City Bank v. Laflenr, 20 L. C. J. 131 (1875); but a note signed and made payable in Montreal, by an Ontario trader who is a minor, is null, the law of Ontario governing as to his capacity: Jones v. Dickinson, Q. R. 7 S. C. 313 (1895).

3. A minor, 20 years of age, gave a note in payment of a premium of life insurance on his own life. Being sued after he became of age, he was held liable as he did not prove lesion: Manufacturers Life Ins. Co. v. King, Q. R. 9 S. C. 236 (1896).

4. A person is liable on a note given by him during infancy, if, after coming of age, he promises to pay it: Fisher v. Jewett, 2 N. B. (Berton) 69 (1835).

5. An infant 20 years and 9 months old accepts a bill payable in six months. He ratifies the transaction on attaining his majority and the bill is negotiated. He is not liable on the bill: Ex parte Kibble, L. R. 10 Ch. 373 (1875); 37 & 38 V. c. 62 (Imp.).

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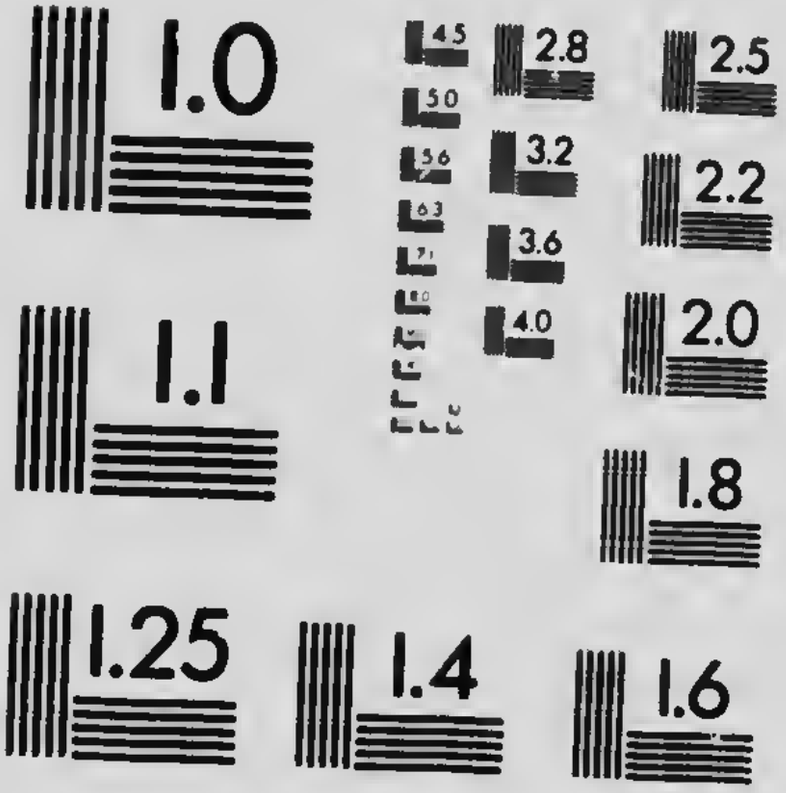

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Want of capacity.

6. A person after coming of age accepts a bill for a debt contracted by him during his infancy. He is liable to a holder in due course: Belfast Banking Co. v. Doherty, 4 Ir. L. R. Q. B. D. 321 (1879).

7. An infant trader cannot be adjudicated a bankrupt for debts contracted for trading purposes: Ex parte Jones, 18 Ch. D. 109 (1881).

8. An infant cannot bind himself by the acceptance of a bill of exchange, even when it is given for necessaries supplied him. Such an acceptance is wholly void: Re Soltykoff. Ex parte Margett, [1891] 1 Q. B. 413.

2. Idiots, Lunatics and Interdicted Persons.—The rule in Quebec is that all acts subsequent to interdiction for imbecility, madness, or insanity are null and void: previous acts may be annulled if injurious: C. C. Arts. 334, 335. So of the acts of persons interdicted for prodigality: C. C. Art. 987; and for drunkenness: C. C. Art. 336 *b*. "The old law as to a lunatic's acts was that he could not be admitted to avoid them himself, though in certain cases the Crown, and in other cases his heirs could. The modern rule as to the contract of a lunatic (at all events if not so found by inquisition) or drunken man, who by reason of lunacy or drunkenness, is not capable of understanding its terms or forming a rational judgment of its effect on his interest, is that such a contract is voidable at his option, but only if his state is known to the other party:": Pollock on Contracts, p. 97. See Robertson v. Kelly, 2 O. R. 163 (1883).

ILLUSTRATIONS.

1. An infant gave his note for value and got it indorsed by his father, who was of unsound mind, and who got no value for it. The holder was not aware of the condition of the father. Held, that the father's estate was not liable: Re James, 9 Ont. P. R. 88 (1881).

2. Complete drunkenness, so that the party did not know what he was doing, held to be a good defence by an indorser against an indorsee who took with notice: Gore v. Gibson, 13 M. & W. 623 (1845).

3. A lunatic, while sane, gave a note for a very large sum for a merely moral obligation. Held, that the payee was not entitled to rank on the lunatic's estate for the amount of the note: In re Whitaker, 42 Ch. D. 119 (1889).

4. It is not enough that defendant show that he was insane when he gave the note sued on: he must also show that the person to whom he gave it knew that he was insane: Imperial Loan Co. v. Stone, [1892] 1 Q. B. 599. § 47

3. Married Women.—The law of Quebec differs in this respect from that of the other provinces. The general rule there is that a wife cannot contract without the authorization of her husband. If she is separate as to property by marriage contract she may administer her own property: C. C. Art. 1422: or if she be granted by the Court a separation from bed and board: Art. 210: or even a separation as to property only: Art. 177. If she is a public trader she may bind herself without the authorization of her husband for all that relates to her commerce: Art. 179. A wife cannot bind her separate property in any contract with or for her husband: Art. 1301. So that if a wife gives a note or accepts a bill for her husband's debt, or endorses her husband's bill or note, it is a nullity: and the highest Court of the province has held that this, being a matter of public policy, makes the instrument void, even in the hands of a bona fide holder for value before maturity. The Privy Council has gone the length of holding that ignorance on the part of the lender that money was borrowed for the husband's purposes is of no avail and the burden is on him to prove that it was not so borrowed: Trust & Loan Co. v. Gauthier, [1904] A. C. 94. Married women.

In the other provinces the original rule was that of the common law. "At common law a married woman could in general bind neither herself nor her husband by drawing, indorsing or accepting a bill, nor could she convey a title to a third party:" Byles, p. 82. In those provinces which have adopted the principle of the English Married Women's Property Act, 1882, the stringency of the common law rule has been relaxed, and a married woman having separate property may by bill, note, or otherwise, bind the separate property which she then has or may afterwards acquire, in all respects as if she were feme sole. See "The Married Women's Property Act," R. S. O. c. 149: R. S. N. S. c. 112: C. S. N. B. c. 78: R. S. Man. c. 123: 44 V. c. 12, P. E. I.: R. S. B. C. c. 152: R. S. Sask., c. 45: N.-W. Territories Act, R. S. C. c. 62, s. 26; Cons. Ord. N. W. T. c. 47.

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Married women.

ILLUSTRATIONS.

1. A promissory note made by a married woman for a debt of her husband is not binding on her personally either at common law or under the statutes. Where a married woman who has separate property contracts a debt, she is deemed in equity to have contracted it with reference to her separate property, and if she had power to dispose of that property, equity will make it liable for the payment of the debt: Lawson v. Laidlaw, 3 Oat. A. R. 77 (1878). See also Merchants' Bank v. Bell, 29 Grant, 413 (1881). These cases were prior to the passing of the Ontario Married Women's Property Act, 47 V. c. 19.

2. Defendant, a married woman, indorsed certain notes held by plaintiff and wrote him a letter that she had $33,000 worth of land in her own name and right. There was no evidence given at the trial as to when she was married or as to how the property was held for her. Held that there was not sufficient evidence to entitle the plaintiff to a judgment against her: Moore v. Jackson, 16 Ont. A. R. 431 (1889). In a subsequent action founded on the same transaction further proof was made, and it was held by the Supreme Court that plaintiff was entitled to judgment against her and to execution against her separate property: Moore v. Jackson, 22 S. C. Can. 210 (1893). See Palliser v. Gurney, 19 Q. B. D. 519 (1887).

3. Where a married woman and her daughter were induced by the fraud and undue influence of the husband and father to sign promissory notes, the holder who was aware of the confidential relation existing between them, cannot recover upon the notes unless he establishes that competent and independent advice had been given to the wife and daughter: Cox v. Adams, 35 S. C. Can. 393 (1904). (Disapproved in Bank of Montreal v. Stuart, [1910] A. C. 120.)

4. A promissory note signed by a wife, separate as to property, is null, unless authorized by her husband: Guay v. Peltier, 2 Rev. de Lég. 437 (1812); Badeau v. Brault, 1 L. C. J. 171 (1857), overruling Rivet v. Leonard, 1 L. C. J. 172 (1848); Danziger v. Ritchie, 8 L. C. J. 103 (1864).

5. A wife is not liable on a note made by her jointly with her husband where she received no value: Shearer v. Compain, 5 L. C. J. 47 (1860). Nor where value was received by the community: Daigneault v. Wells, 8 R. J. 489 (1902).

6. A husband and wife are both liable on a note given for business in which they are jointly interested: Girouard v. Lachapelle, 7 L. C. J. 289 (1863).

7. A note made by a wife, separate as to property, in favour of her husband, and indorsed by him for necessaries purchased by her, is binding on her: Cholet v. Duplessis, 6 L. C. J. 81 (1862).

8. A note made by a wife, who is a public trader, for her business is binding on her, although not authorized by her husband: Beaubien v. Husson, 12 L. C. R. 17 (1862).

9. A wife separate as to property is not liable on a note given or indorsed for a debt of her husband: Scantlin v. St. Pierre, 10 R. L. 52 (1879); Martin v. Guyot, M. L. R. 1 S. C. 181 (1885): Thibaudeau v. Burke, 20 R. L. 85 (1890).

10. The authorization of a married woman to make a promissory note is sufficiently proved by the indorsement of her husband: Johnston v. Scott, 3 L. N. 171 (1880).

11. The indorsement by a wife, separate as to property, of her husband's note given for goods sold and delivered and charged to him is null, although such goods may have contributed to her support: Bruneau v. Barnes, 25 L. C. J. 245 (1880).

12. A promissory note, made by a wife separate as to property, jointly and severally with her husband, is null and of no effect as regards the wife, such an obligation being prohibited by the terms of Art. 1301, C. C.: Chapdelaine v. Vallée, M. L. R. 3 S. C. 380 (1886); Leclerc v. Ouimet, 19 R. L. 78 (1890).

13. A note signed by a wife for the benefit of her husband, and for which she receives no value, is null; and this nullity being a matter of public policy, may be invoked even against a holder in due course: Ricard v. Banque Nationale, Q. R. 3 Q. B. 161 (1893); Maclean v. O'Brien, Q. R. 12 S. C. 110 (1896); overruling Kearney v. Gervais, Q. R. 3 S. C. 496 (1893). See Banque Nationale v. Guy, M. L. R. 7 S. C. 144 (1891).

14. A husband had a power of attorney to manage his wife's business. He indorsed a note in her name to accommodate a friend without authority. The wife made an assignment and included this note among her liabilities. The husband was not a party to the assignment. Held, that the ratification was null, and her estate was not liable: Paquin v. Dawson, Q. R. 4 Q. B. 72 (1894). See also La Banque Ville Marie v. Mayrand, Q. R. 10 S. C. 460 (1896).

15. A married woman is not liable on a note given by her during her coverture: Sinclair v. Wakefield, 13 N. S. (1 R. & G.) 465 (1880). (Before the Married Women's Property Act.)

4. Corporations.—Some corporations are given special authority to become parties to notes and bills by their charters, or by the general laws by which they are governed. In the case of others it is implied from the nature of their objects. In the case of a company having capacity to become a party to bills and notes, it will be presumed that it has officers that can indorse, for it is only through officers or agents that it can exercise this function: Canadian Bank of Commerce v. Rogers, 23 O. L. R. at p. 120 (1911); Royal British Bank v. Turquand, 6 E. & B. 327 (1856).

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Capacity of corporations.

"In every (Dominion) Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate shall,—(a) vest in such corporation power to sue and be sued, to contract and be contracted with in their corporate name," etc.: Interpretation Act, R. S. C. c. 1, s. 30.

"The rights which a corporation may exercise, besides those specially conferred by its title, or by the general laws applicable to its particular kind, are all those which are necessary to attain the object of its creation: thus it may acquire, alienate, and possess property, sue and be sued, contract, incur obligations, and bind others in its favour": C. C. Art. 358. Formerly the right to become parties to bills and notes was almost restricted to commercial corporations; the modern tendency is to extend it to corporations generally.

As to companies incorporated under the Dominion Companies Act, whether by Letters Patent from the Governor-in-Council or by special Act of Parliament, it is provided that: "Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company by any agent, officer or servant of the company in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company. 2. In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order. 3. No person so acting as agent, officer or servant of the company, shall be thereby subjected individually to any liability whatsoever to any third person:" R. S. C. c. 79, ss. 32 and 160.

It is also provided that every company incorporated by Letters Patent shall have its name with the word "limited" after it mentioned in all bills of exchange, promissory notes, endorsements and cheques purporting to be signed by it or on its behalf; and every director, manager or officer of the company, and every person on its behalf who signs or auth-

orizes to be signed on its behalf any bill, note, endorsement or cheque without the said word, shall incur a penalty of $200 and be personally liable to the holder of such bill, note or cheque unless the same is paid by the company: R. S. C. c. 79, ss. 33 and 115. In the case of companies incorporated by special Act and subject to the general Act, "the directors of the company shall be jointly and severally liable upon every written contract or undertaking of the company, on the face whereof the word 'limited,' or the words 'limited liability' are not distinctly written or printed after the name of the company, where it first occurs in such contract or undertaking": R. S. C. c. 79, s. 165. § 47

Using the abbreviation "Ltd." is a sufficient compliance with this requirement: Stacey & Co. v. Wallis, 28 T. L. R. 209 (1912).

The provisions of the general Acts of most of the provinces regarding companies incorporated by special Act or provincial Letters Patent regarding the making, accepting and endorsing of bills, notes and cheques, are similar to those of R. S. C. c. 79, above quoted. See R. S. O. c. 178, s. 23 (*l*); R. S. Q. Art. 6024; R. S. N. S. c. 128, ss. 73, 74 and 88; C. S. N. B. c. 85, s. 72; R. S. Man. c. 35, s. 66; R. S. B. C. c. 39, ss. 85 and 86; R. S. Sask. c. 72, ss. 96 and 97; Cons. Ord. N. W. T. c. 61, ss. 96 and 97. Provincial charters.

In England, where the power to issue bills and notes is not expressly given, it has been laid down that it will be implied only when the corporation without it cannot carry on its business, or attain the end for which it was created, and that it cannot be implied from the power to contract debts, since the power to issue commercial or negotiable paper involves something more than the contracting of a debt, namely, the imposition upon the corporation of the liability to innocent indorsers for debts, which the corporation is not authorized to contract. See Lindley on Companies, p. 242: Bateman v. Mid-Wales Ry. Co., L. R. 1 C. P. 499 (1866); West London Commercial Bank v. Kitson, 13 Q. B. D. 360 (1884). It has also been held that this implied power is not possessed by a water works company: Neale v. Turton, 4 Bing. 149 (1827); Broughton v. Manchester Water Works,

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Corporations.

3 B. & Ald. 1 (1819); or by mining companies: Dickinson v. Valpy, 10 B. & C. 128 (1829); Brown v. Byers, 16 M. & W. 252 (1847); Bult v. Morrell, 12 A. & E. 745 (1840); by a salvage company: Thompson v. Universal Salvage Co., 1 Ex. 694 (1848); by a gas company: Bramah v. Roberts, 3 Bing. N. C. 963 (1837); by a railway company: Bateman v. Mid-Wales Ry. Co., L. R. 1 C. P. 499 (1866); or by a cemetery company: Steele v. Harmer, 14 M. & W. 831 (1845). The tendency of recent decisions, however, is towards a more liberal interpretation of these powers: Re Peruvian Railways Co., L. R. 2 Ch. 617 (1867).

In the United States, the Courts have laid down the broad rule, that whenever a corporation can contract a debt for a certain object, it may give a negotiable note, or accept a bill of exchange for the amount: 1 Daniel, §§ 381-3.

ILLUSTRATIONS.

1. Under the Act, 7 Vic. c. 16, the K. M. R. Co. incorporated for repairing vessels, etc., may give and receive notes in the course of its business: Kingston Marine R. Co. v. Gunn, 3 U. C. Q. B. 368 (1846).

2. The Buffalo B. & G. Ry. Co. have no power under their charter or under the General Railway Clauses Consolidation Act to make promissory notes: Topping v. Buffalo B. & G. Ry. Co., 6 U. C. C. P. 141 (1856).

3. A manufacturing company will be presumed to be a trading corporation and capable in law of making a promissory note: Farrell v. Oshawa Manufacturing Co., 9 U. C. Q. B. 239 (1859).

4. Debentures or coupons cannot be considered promissory notes when the company which issues them has no authority to make notes: Geddes v. Toronto Street Railway Co., 14 U. C. C. P. 513 (1864).

5. A building society, incorporated under C. S. U. C. c. 53, may make promissory notes: Snarr v. Toronto Permanent Building and Savings Society, 29 U. C. Q. B. 317 (1869).

6. The defendants desiring to raise money drew a bill and requested plaintiffs to indorse it for their accommodation, which plaintiffs did. Defendants got it discounted, but failed to meet it and the plaintiffs had to pay it. Held, that, assuming defendants had no power to draw the bill, they were nevertheless liable to plaintiffs as for money paid for them: Brockville and Ottawa Ry. Co. v. Canada Central Ry. Co., 41 U. C. Q. B. 431 (1877).

7. Where the holders of a note sued the president of a club personally on a note of the club signed by him as president, on the

ground among others that the club had no power to make notes, it was held that this was a matter of law known to plaintiffs as well as defendant, and they had accepted it as a note of the club, which had never repudiated liability: Bank of Ottawa v. Harrington, 28 U. C. C. P. 488 (1878).

8. S., who was the president and treasurer of a company, kept the company's account with a banker in his own name as president. He made a note in the company's name without authority, which the banker discounted, placing the proceeds to the company's credit. The president paid the money out to creditors of the company whom he should personally have paid with moneys which he had misappropriated. The banker, being in good faith, was held entitled to charge up the note to the company's account: Bridgewater Cheese F. Co. v. Murphy, 23 Ont. A. R. 66 (1896). Affirmed, 26 S. C. Can. 443 (1896).

9. Municipal corporations have not the right to make notes or accept bills: Pacaud v. Halifax South, 17 L. C. R. 56 (1866); Martin v. City of Hull, 10 R. L. 232 (1878); contra: Ledoux v. The Municipality of Mile End, 2 L. N. 37 (1878).

10. A municipal corporation will be condemned to pay the amount of a promissory note signed by the mayor and secretary-treasurer in the name of the corporation, where it is not proved that the note was given without consideration: Corporation of Grantham v. Couture, 24 L. C. J. 105 (1879); Ville d'Iberville v. Banque du Peuple, Q. R. 4 Q. B. 268 (1895).

11. Where the by-laws of a company require notes to be signed by the president and vice-president, and countersigned by the treasurer, a note payable to the order of the company indorsed by the vice-president alone and delivered to a creditor for a private debt is not binding on the company: Mechanics' Bank v. Bramley, 25 L. C. J. 256 (1879); Standard Bank v. McCullough, 8 Alta. 320 (1915).

12. A building society not specially authorized to make notes held liable to an indorsee for value: Société de Construction du Canada v. La Banque Nationale, 3 L. N. 130; 24 L. C. J. 226 (1880).

13. The by-laws of a mutual assurance company gave the president the management of its affairs, and it was his duty to sign all notes authorized by the board or by the by-laws. He gave a note in the name of the company in settlement of a loss. The company was held liable to a holder in due course: Jones v. Eastern Townships Mutual Fire Ins. Co., M. L. R. 3 S. C. 413 (1887).

14. The chairman and secretary-treasurer of a board of school commissioners have no right to give a note for a debt of the Board without special authorization: Letellier v. School Commissioners of Ouiatchouan, 16 R. L. 449 (1888).

15. The making or indorsing of a promissory note on behalf of a charitable corporation where liability is incurred is not an act of mere administration, and must be either authorized or ratified by the governing body to bind the corporation: Banque Jacques Cartier v. Les Religieuses Soeurs, Q. R. 1 Q. B. 215 (1892).

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16. Under R. S. Q. Art. 4889, as amended in 1890, a company is bound by the signatures of its officers to a promissory note when they are authorized by a by-law or special resolution: Merchants Advertising Co. v. Bissonet, 10 R. J. 269 (1903).

Corporations.

17. Authority to the secretary-treasurer of a company to accept bills drawn on the company, does not authorize him to indorse accommodation bills: Union Bank v. Eureka Woollen Mfg. Co., 33 N. S. 302 (1900).

18. The managing director of a company gave promissory notes of the company in connection with its business. There was no by-law defining his powers, but similar notes had been paid without objection by the other directors or the auditor. The company was held liable: Imperial Bank v. Farmers Trading Co., 13 Man. 412 (1901).

19. Directors passed a resolution requiring all bills of exchange to be signed by one director and countersigned by the secretary. Bills were accepted by a director, but not countersigned. Held, that he was not "acting under the authority of the company," within the meaning of the Companies Act, and the company was not liable: Premier Industrial Bank v. Carlton Mfg. Co., [1909] 1 K. B. 106.

Effect of disability on holder.

48. Where a bill is drawn or endorsed by an infant, minor or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. 53 V., c. 33, s. 22 (2). Imp. Act, *ibid.*

It is not necessary to the validity of a bill that the drawer or endorsers should be liable. The drawer or an endorser may insert an express stipulation negativing his liability to the holder: s. 34. As to estoppel of the drawer, acceptor, or endorser of a bill to a holder in due course, see sections 129, 130 and 133.

Married women.

It is to be observed that a married woman is not included in the list of incompetent persons who may become parties to a bill and render others liable thereon without incurring liability themselves. The clause is taken without change from the Imperial Act, and in England she is now practically in the same position as if unmarried. By the law of Quebec, if not separate as to property, a wife could not validly pass the property in a bill payable to her order, without authorization of her husband, except as against an acceptor, drawer or endorser, who is precluded from denying it under sections 129, 130, and 133. See C. C. Art. 177.

ILLUSTRATIONS. § 48

1. The holder of a note, payable to a certain society or bearer, may recover from the maker, even although the society has no power to endorse or transfer notes: Hammond v. Small, 16 U. C. Q. B. 371 (1858).

2. A husband, who made a note payable to the order of his wife, is liable to her indorsee: McIver v. Dennison, 18 U. C. Q. B. 619 (1859).

3. An infant may withdraw by cheque monies deposited in a bank by him in his own name: Freeman v. Bank of Montreal, 26 O. L. R. 451 (1912).

4. An indorser pour aval cannot set up as a defence that the note is null because the maker, a married woman, was not authorized by her husband: Norris v. Condon, 14 Q. L. R. 184 (1888).

5. A corporation which has not power to borrow upon promissory notes, and which might not be able to enforce payment of a note, may by indorsement constitute the indorsee a holder in due course and enable him to recover from the maker: Merchants Bank v. McLeod, 15 B. C. R. 290 (1910).

6. In an action against an acceptor by an indorsee, it is no defence that the drawers and payees were infants: Taylor v. Croker, 4 Esp. 187 (1803).

7. The infancy of the payee is no answer in an action by the indorsee against the drawer: Grey v. Cooper, 3 Douglas 65 (1782); Lebel v. Tucker, 8 B. & S. 833 (1867); Nightingale v. Withington, 15 Mass. 272 (1818).

8. A father and son made a joint and several note for a loan to the son by the plaintiff who probably knew that the son was not of age. Held, that although the son was not liable, the father was liable as a principal borrower: Wauthier v. Wilson, 28 T. L. R. 239 (1912).

Forgery.

49. Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is

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Estoppel.

sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that,—

Ratification.

(*a*) nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery;

Recovery of amount paid on forged cheque.

(*b*) if a cheque payable to order is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery.

Default of notice.

2. In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights. 53 V., c. 33, s. 24, Imp. Act, *ibid.*

History of section.

The first paragraph of this section and proviso (*a*) are taken from the Imperial Act, and form the whole of section 24 of that Act. Proviso (*b*) and subsection 2 are in part a substitute for section 60 of the Imperial Act, which protects a banker who pays a cheque or bill payable to order on demand on which one or more indorsements are forged or unauthorized.

In the bill as introduced into the Canadian Parliament section 60 was a copy of the same section in the Imperial Act; but after a long discussion it was struck out in the House of Commons as it would have made an important innovation in our law: Commons Debates, 1890, p. 1526. In

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History of section.

the Senate a motion was made to restore it, but this was rejected: Senate Debates, 1890, p. 373. In lieu of section 60, proviso (*b*) and sub-section 2 of this section were in substance inserted in the Bill in the Senate: Debates p. 461; and the Commons finally accepted it.

By the amending Act of 1891 an additional subsection was added to make it clear that a bank or endorser would have a remedy against endorsers subsequent to the forged endorsement. It was represented to Parliament that this added provision did not accomplish the purpose intended, and in 1892 that sub-section was repealed, and the present section 50 was substituted.

"Subject to the Provisions of this Act."—These words in the Imperial Act apply especially to section 60 above referred to. The sections in the present Act to which they would appear to apply are 129, 130 and 133 relating to estoppel as to a drawer or acceptor of a bill, and 173 and 175 relating to the payment of crossed cheques by a bank.

"Forged or Unauthorized Signatures."—Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one, whether within Canada or not, or that some person should be induced, by the belief that it is genuine, to do or refrain from doing anything, whether within Canada or not: Criminal Code, R. S. C. c. 146, s. 466. Signing the name of a non-existing or fictitious person or firm with fraudulent intent is forgery: Reg. v. Rogers, 8 C. & P. 629 (1838).

The following is the section of the Criminal Code relating to the forgery of "bills and notes:" "468. Every one who commits forgery of . . . (*r*) any bank note or bill of exchange, promissory note or cheque, or any acceptance, endorsement or assignment thereof, is guilty of an indictable offence and liable to imprisonment for life if the document forged purports to be, or was intended by the offender to be understood or to be used as genuine."

The forged instrument must be false in itself. The mere subscribing a cheque, given as a party's own, by a

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fictitious name, is not forgery: Reg. v. Martin, 5 Q. B. D. 34 (1879).

Forged bill.

The present section treats only of bills where the signature is forged, and not of those forged by being fraudulently altered. As to these latter, see section 145.

A signature that is wholly unauthorized, whether purporting to be by procuration or otherwise, is as ineffectual to convey title to a bill as a forged signature, except as against a party who is precluded or estopped from setting up the forgery or want of authority.

A signature placed on a bill, without being authorized, but not amounting to a forgery, may be ratified.

Cannot be ratified.

It has been laid down that a forgery cannot be ratified, and the language of the first proviso of this section would seem by implication to sustain that view. In Brook v. Hook, L. R. 6 Ex. 89 (1871) Chief Baron Kelly, speaking for the majority of the court, says, p. 100: "In all the cases cited for the plaintiff, the act ratified was an act pretended to have been done for or under the authority of the party sought to be charged; and such would have been the case here if Jones had pretended to have had the authority of the defendant to put his name to the note, and that he had signed the note for the defendant accordingly, and had thus induced the plaintiff to take it. In that case, although there had been no previous authority, it would have been competent to the defendant to ratify the act. But here Jones had forged the name of the defendant to the note, and pretended that the signature was that of defendant; and there is no instance to be found in the books of such an act being held to have been ratified by a subsequent ratification or statement. Again, in the cases cited, the act done, though unauthorized at the time, was a civil act, and capable of being made good by a subsequent recognition or declaration; but no authority is to be found that an act which is in itself a criminal offence is capable of ratification." This view has been adopted by the Court of Appeal in Ontario: Merchants' Bank v. Lucas, 15 Ont. A. R. 573 (1889); and affirmed by the Supreme Court of Canada in the same case: 18 S. C. Can. 704 (1890). See

also La Banque Jacques Cartier v. La Banque d'Epargne, 13 App. Cas. (1887), at p. 118; and Vagliano v. Bank of England, [1891] A. C. 130.

In the Scotch case of McKenzie v. The British Linen Co., 6 App. Cas. 82, in the House of Lords, Lord Blackburn said (p. 99) that if a document was uttered under such circumstances of intent to defraud as amounted to forgery, the person whose name was forged could not ratify it so as to make a defence to the forger against a criminal charge. "But," he added, "if the person whose name was used without authority chooses to ratify the act, even though known to be a crime, he makes himself civilly responsible just as if he had originally authorized it." It is to be observed, however, that it was held that in this case there was no ratification, and the principal question was one of estoppel, which it was also held was not made out.

In Scott v. The Bank of New Brunswick, 23 S. C. Can. 277 (1894), where the signature of the payee of a non-negotiable bank deposit receipt was forged and the money received by the forger, Strong, C.J., discusses the foregoing cases, and holds that Brook v. Hook is no longer law in so far as it states broadly that a forgery cannot be ratified, having been overruled by the McKenzie case. The decision in the Scott case was put upon the ground that the payee of the deposit receipt had ratified the payment by the bank, and that his action was properly dismissed.

The question of estoppel as to forged cheques, and of the proper measure of damages in such a case, was discussed in the Privy Council in Ogilvie v. West Australia Mortgage Co., [1896] A. C. 257.

In Ewing v. Dominion Bank, 35 S. C. R. 133 (1904), it was held, affirming the Ontario courts, that where the appellants received a notice from respondents that a note of theirs was held by the bank and giving particulars, the note being a forgery, they were under a legal duty to inform the bank at once of the fact, and as their not doing so enabled the forger to draw from the bank the balance of the proceeds of the discount of the forged note, it made them liable for the

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Forged bill.

full amount of the note, as they were estopped from denying their signature. The Privy Council refused leave to appeal on the ground that it was a question of fact whether it was properly a case of estoppel or what Lord Blackburn in the McKenzie case called "a ratification for a time" of the signature, and that there was evidence on which the Canadian courts might find as they did. Followed in Pickup v. Northern Bank, 18 Man. 675 (1908).

In Bank of Montreal v. The King, 38 S. C. R. 258 (1906), where the Dominion Government sued the bank for improperly paying cheques on which a clerk had forged the signatures of the officers of one of the departments as drawers the Supreme Court, affirming the Ontario courts, held that the exception in the first part of this section could not avail the defence, as estoppel could not be invoked against the Crown. Leave to appeal was refused by the Privy Council.

In Embiricos v. Anglo-Austrian Bank, [1905] 1 K. B. 677, it was held that section 24 of the Imperial Act which corresponds to the first part of this section in our Act does not apply to the case of an indorsement abroad.

Where a bill is held with a forged signature, the court will restrain its negotiation by injunction, or order it to be given up and cancelled: Esdaile v. La Nauze, 1 Y. & C. 394 (1835).

In the United States it has been held that a forgery may be ratified: Greenfield Bank v. Crafts, 4 Allen, 447 (1862); Union Bank v. Middlebrook, 33 Conn. 95 (1865); Casco Bank v. Keene, 53 Me. 103 (1865); Howard v. Duncan, 3 Lansing (N.Y.) 175 (1870); Bartlett v. Tucker, 104 Mass. 341 (1870); Wellington v. Jackson, 121 Mass. 159 (1876); Bowlin v. Creel, 63 Mo. App. 229. There are however decisions to the contrary: McHugh v. Schuylkill Co., 5 Am. Rep. 445 (1871); Shisler v. Vandike, 92 Penn. St. 449 (1880); Smith v. Tramel, 68 Iowa, 488 (1886); Henry v. Heeb, 114 Ind. 275 (1887).

It will be seen that proviso (b) and subsection 2 apply only to a cheque with a forged endorsement, which has been charged by the bank upon which it is drawn against the

drawer. The failure of the drawer to give notice to the bank within the year, defeats not only his own right of action but also that of any other party to the cheque who has not taken proceedings within the year. § 49

Estoppel.—In the Imperial Act "precluded" was used instead of "estoppel" when it was determined to extend the Act to Scotland, as the latter word is unknown to Scotch law. A party to a bill, whose signature is unauthorized or even forged, may by his language or conduct have led an innocent holder to take the bill as genuine, and he cannot subsequently repudiate it to such innocent holder. The rule is, that when one by his words or conduct wilfully causes another to believe in the existence of a certain state of things and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time: Pickard v. Sears, 6 A. & E. 469 (1837). See also Carr v. London & N. W. Ry. Co., L. R. 10 C. P. 307 (1875). Estoppel.

"Notice of such Forgery."—Where actual notice has been given or received, no question will arise as to when the year for action will expire. The difficulty will arise where notice or knowledge is to be inferred from the circumstances of the case, as for instance the fact of the cheque with the forged endorsement being given up to the drawer.

ILLUSTRATIONS.

1. Defendant's name was signed by a nephew for whom he was in the habit of indorsing on purchases from plaintiffs, and he had acknowledged his liability and asked for time, and only denied his liability after his nephew had absconded. Held, that he had precluded himself from disputing his liability: Pratt v. Drake, 17 U. C. Q. B. 27 (1858). Forged signature.

2. A cheque to the order of a company was cashed by a bank on the indorsation of the secretary. The by-laws required the signature of the president also. The secretary had on previous occasions indorsed in the same way, and the company had not objected. Held, that the bank was not liable to the company: Thorold Manufacturing Co. v. Imperial Bank, 13 O. R. 330 (1887); Standard Bank v. Stephens, 16 O. L. R. 115 (1908).

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Forged signature.

3. Defendnnts separntely enlled at plaintiff's hank and exnmined a bill to which their firm nnme had been forged. They hoth exnmined it closely, and one of them nsed words throwing doubts ns to its genuineness, and gnve an evasive nnswer as to its pnyment. The other promised to send n cheque for it the next day. They were held not to he precluded from setting up the defence of forgery: Merchants' Bank v. Lucas, 15 Ont. A. R. 573 (1889); nffirmed in the Supreme Court: 18 S. C. Can. 704 (1890). A forged bill or note cannot be ratified: Westloh v. Brown, 43 U. C. Q. B. 402 (1878) Merchnnts' Bank v. Lucas, supra.

4. The holder of a promissory note whose title was derived from n forged indorsement although he noted in entire good faith, cannot recover the nmount of the note from any of the previous indorsers. Larue v. Evanturel, 2 L. C. L. J. 112 (1866).

5. When the maker of a note, whose signature was forged, stated before suit that he had signed the note for the accommodation of the indorser and offered to pay if time was given, and the holder in consequence refrained from prosecuting the indorser for forgery; held that the maker was liable and was precluded from setting up the defence of forgery: Union Bank v. Farnsworth, 19 N. S. 82 (1886).

6. Plaintiff, a sea captain, deposited with the defendants $1,000, and took a deposit receipt payable to his order, which he left with R., the managing owner of the vessel, who indorsed plaintiff's name and drew the money. Plaintiff was absent three years, and on his return R. confessed, promised to pay the money and gave a mortgage as security. Plaintiff was again absent two years, and when he returned R. had absconded. The jury gave a verdict for plaintiff, hut held on appeal that by withholding from the hank for two years the knowledge he had, plaintiff by his laches was estopped from recovery: Scott v. Bank of New Brunswick, 31 N. B. 21 (1891).

7. Where a note is payable to the order of Henry Davis and is indorsed by another person of the same name it is a forgery and the indorsee cannot recover: Mead v. Young, 4 T. R. 28 (1790); and if he collect on the forged indorsement he is liable to refund: Johnson v. Windle, 3 Bing. N. C. 225 (1836); Robarts v. Tucker, 16 Q. B. 560 (1851); Ogden v. Benas, L. R. 9 C. P. 513 (1874); Carpenter v. Northborough National Bank, 123 Mnss. 66 (1877); Ryan v. Bank of Montreal, 14 Ont. A. R. 533 (1887).

8. If a party whose name is forged on a bill acknowledges the signnture, and a holder takes it on the strength of this, he is liable: Lench v. Buchannn, 4 Esp. 226 (1803).

9. The name of a firm, as drawers and indorsers of a bill, was forged. The aeceptor who negotinted it is estopped from setting up the defence of forgery to the indorsement as well as to the drawing: Beemnn v. Duck, 11 M. & W. 251 (1843).

10. A clerk of the pnyee of a letter of credit forged the payee's name and got the money from the bank. The payee can recover the amount from the bank: Orr v. Union Bank, 1 Macqueen H. L. 513 (1854).

Forged signature.

11. A partner in a commercial firm fraudulently accepts a bill in the firm name for his private debt. The firm is estopped from setting up the fraud against a holder for value without notice: Hogg v. Skeen, 18 C. B. N. S. 432 (1865).

12. A partner fraudulently indorses for a private debt a bill payable to the firm. The indorsee collects the money. The partner becomes bankrupt. The other members of the firm and his trustee can recover the money from the indorsee: Heilbut v. Nevill, L. R. 5 C. P. 478 (1870).

13. Defendant in order to prevent the prosecution of one who had forged his name to a note wrote, "I hold myself responsible for a note dated, etc., bearing my signature." The ratification is illegal and he is not liable: Brook v. Hook, L. R. 6 Ex. 89 (1871).

14. Before discounting a bill plaintiff went to the acceptor, and asked him if he had accepted bills for the drawer. He said he had but was not shewn the bills. The jury found for the defendant; the Court refused a new trial, the Judge not saying that he was dissatisfied with the verdict: Levinson v. Young, 1 T. L. R. 571 (1885).

15. Where a person assumes and is known by a name not his own, and a cheque is drawn to his order and delivered to him, the drawer believing him to be another person of the name assumed by him, a holder in due course can recover on the cheque on the ground of estoppel: Robertson v. Coleman, 141 Mass. 231 (1886). Followed in First Nat. Bank v. American Exchange Nat. Bank, 49 App. Div. N. Y. 349 (1899); and Hoffman v. ibid., 96 N. W. Rep. 112 (S. C. Neb. 1901).

Recovery of amount paid on forged endorsement.

50. If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned.

Rights over.

2. Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser

§ 50 subsequent to the forged or unauthorized endorsement.

Notice of forgery.

3. Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner, and if sent by post may be addressed in the same way, as notice of protest or dishonour of a bill may be given or addressed under this Act. 60-61 V., c. 10, s. 1.

Forged or unauthorized endorsement.

As stated in the notes to the last section the latter part of that section was, in the Act of 1890, added to section 24 of the Imperial Act in order to give some relief to a bank and to endorsers where the bank had paid a cheque upon a forged or unauthorized endorsement. As it was considered that such did not accomplish the desired result, a subsection was added in the amending Act of 1891. This again was not deemed satisfactory, and in 1897 the present section was substituted for it.

The present section is much wider than proviso (*b*) and subsection 2 of the preceding one. They refer only to a cheque payable to order which has been paid on a forged endorsement. This refers not only to cheques but to any bill which has been so paid. The drafting is faulty, and it will be found difficult to harmonize the two provisions. This section being the later enactment should prevail.

The payment by or for the drawee or acceptor must have been made in good faith and in the ordinary course of business. As to the meaning of "good faith" in the Act, see section 3 and the notes thereon.

Any endorser on receiving notice of the forgery or want of authority should give notice to any prior endorser to whom he looks for indemnity, if such notice has not been given by the drawee or acceptor.

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The notice is to be given within a reasonable time after the person seeking to recover has received such notice. Reasonable time is not defined in the Act, but has been held to be a mixed question of law and fact, and to be determined by the usage of trade and the particular circumstances. In case of dishonour or protest the party desiring to preserve his recourse must give notice not later than the next following juridical or business day: s. 97; and it would be prudent to be equally diligent in this case. The Imperial Act provides that notice of dishonour is to be given within a reasonable time, and this has been interpreted to mean that if the parties live in the same place it should be sent so as to arrive the day after dishonour, if in different places, so as to go off by the next day's post if there is one.

Notice of forgery.

It is to be given in the same manner as notice of protest or dishonour; that probably means that it may be given to all endorsers subsequent to the forged or unauthorized endorsement, or to such only as are looked to for indemnity, and these in turn would have a reasonable time to notify the prior endorsers to whom they looked. The notice may be either in writing or personal, identifying the bill and indicating the defect: s. 98. If sent by post the requirements of section 103 should be observed.

The amount of recovery is determined by the amount properly paid and not by the amount of the bill.

In so far as the rights of the parties are not expressly varied by the Act, the ordinary rules as to the recovery of money paid by mistake of fact and without consideration would apply.

If there was bad faith on the part of the holder of the bill the money could be recovered back from the person to whom it was paid without complying with the section, but without any recourse over.

51. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting

Procuration signatures.

§ 51 within the actual limits of his authority. 53 V., c. 33, s. 25. Imp. Act, *ibid.*

Signature by procuration.

Whenever an authority purports to be derived from a written instrument, or the agent signs the paper with the words "by procuration," in such a case the party dealing with him is bound to take notice that there is a written instrument of procuration, and he ought to call for and examine the instrument itself, to see whether it justifies the act of the agent. Under such circumstances he is chargeable with enquiry as to the extent of the agent's authority; and if without examining into it when he knows of its existence—and especially if he has it in his possession—he ventures to deal with the agent, he acts at his peril and must bear the loss if the agent has transcended his authority: 1 Daniel, § 280.

Where an agent draws, accepts, makes or indorses "per pro.," or words of like import the taker of such a bill or note is bound to inquire as to the extent of the agent's authority. Where an agent has such authority, the abuse of it does not affect a bona fide holder for value. The apparent authority is the real authority: Bryant v. Quebec Bank, [1893] A. C. 170; Bissell v. Fox, 53 L. T. N. S. 193; 1 T. L. R. 452 (1885); Hambro v. Burnand, [1904] 2 K. B. 10; Gompertz v. Cook, 20 T. L. R. 106 (1903); Crumplin v. London J. S. Bank, 30 T. L. R. 99 (1913); Westfield Bank v. Cornen, 37 N. Y. (10 Tiffany) 322 (1867).

Corporation officers.

The same rule applies where a bill is signed on behalf of a corporation by its officers or agents. In such a case the statute or by-laws take the place of the power of attorney. As to Dominion and Provincial Joint Stock Companies, see the notes on section 47, ante, p. 140.

Agents.

An agent or attorney who is not competent to make himself liable on a bill, may nevertheless be able to bind a principal. It may be laid down as a general rule that all persons of sane mind are capable of becoming agents to sign bills. This applies to infants, married women, etc.

As to the personal liability of an agent who transcends his authority or who signs without authority, see the notes on the next section.

"The mandate and powers of the partners to act for the partnership cease with its dissolution, except for such acts as are a necessary consequence of business already begun:" C. C. Art. 1897. The giving of a note or the drawing or accepting a bill in the firm name even for partnership business would not be such an act, but would require special authority from the co-partners: Dolman v. Orchard, 2 C. & P. 104 (1825); Bank of Montreal v. Page, 98 Ill. 110 (1881). § 51 Partners.

ILLUSTRATIONS.

1. A general power of attorney to an agent to sign bills, notes, etc., and to superintend, manage and direct all the affairs of the principal, gives him a power to indorse notes: Auldjo v. McDougall, 3 U. C. O. S. 199 (1833).

2. D. was a clerk or agent keeping a store at L. for defendant, who had sanctioned his purchasing certain goods. Held, that the circumstances gave D. no implied authority to sign defendant's name to a note: Heathfield v. Van Allan, 7 U. C. C. P. 346 (1857).

3. J. M. B. held a power of attorney from the executors of E., authorizing him, among other things, to indorse notes in their names. He indorsed some notes "J. M. B., agent of the executors of E.," and others "the executors late E., per pro B.," and delivered them to M., an executor, who was financially embarrassed, and who discounted them with plaintiffs on his private account. Held, that the indorsements were sufficient in form, but not within the scope of B.'s power, and the other executor was not liable: Gore Bank v. Crooks, 26 U. C. Q. B. 251 (1867).

4. When the president was authorized by the directors to sign a note in the name of the company, irregularity in the appointment of the directors was not sufficient to destroy such authority, when the company received value and the plaintiff took the note in good faith: Currier v. Ottawa Gas Company, 18 U. C. C. P. 202 (1868).

5. A wife bought her husband's insolvent estate and the business was continued by him, she having given him a power of attorney. Held, that his agency was not limited by the writing, but might be ascertained from any admissible evidence, and she was held for notes given by him not strictly within the written authority: Cooper v. Blacklock, 5 Ont. A. R. 535 (1880).

6. In the absence of proof to the contrary the secretary of a commercial company will be presumed to have authority to indorse notes payable to the order of the company: Wood v. Shaw, 3 L. C. J. 173 (1858).

7. A non-commercial corporation is not liable on a bill drawn by the manager upon and accepted by the secretary in his capacity as such, which is not authorized by the board: Browning v. British American Friendly Society, 3 L. C. J. 306 (1859).

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Procuration.

8. Where a promissory note is signed by procuration, proof of the due execution of such procuration must be made to entitle the plaintiff to recover judgment in an ex parte suit on a note: [illegible] v. Thomas, 15 L. C. J. 225; 17 L. C. J. 79 (1870). See also Dosay v. Hutton, 9 L. C. R. 299 (1859).

9. A power of attorney to a husband to administer the affairs of his wife generally, and to mortgage her property, is not an authority to sign her name to a promissory note, and verbal evidence of his right to sign could not be received, his powers being governed by the terms of the written power of attorney: St. Jean v. The Metropolitan Bank, 21 L. C. J. 207 (1876).

10. An agent under a general power of attorney cannot bind his principal by bill or note: Castle v. Baby, 5 L. C. R. 411 (1854); Messier v. Davignon, 3 L. C. L. J. 67 (1867); Serré v. Metropolitan Bank, 21 L. C. J. 207 (1876); Banque Nationale v. Converse, Ramsay A. C. 431 (1878); Molsons Bank v. Cook, Q. R. 27 S. C. 130 (1905).

11. The president of a company incorporated under the Canada Joint Stock Companies' Act, 1877, will be presumed to have authority, in absence of proof to the contrary, to sign a promissory note on behalf of the company: Brice v. The Morton Dairy Farming Co., 6 L. N. 171 (1882).

12. Where a cheque was payable to the order of "William Almour," the bank was not justified in paying it on the indorsement "William Almour, per A. B. Almour," unless the authority of the latter to indorse were proved: Almour v. LaBanque Jacques Cartier, M. L. R. 1 S. C. 142 (1884).

13. The by-laws of a mutual insurance company gave the president "the management of the concern and funds, with power to act in his discretion and judgment in the absence of specific directions from the directors." It was also made his duty "to sign all notes authorized by the board or by virtue of the by-laws." Held, that the company was liable on a note in settlement of a loss, signed by the president: Jones v. E. T. Mutual Fire Ins. Co., M. L. R. 3 S. C. 413 (1887).

14. A power of attorney to draw, accept and indorse bills of exchange, promissory notes, bills of lading, delivery orders, dock warrants, bought and sold notes, contract notes, charter parties, etc., includes the power to make and sign promissory notes, more particularly where the whole tenor of the document shows the intention to confer powers of general agency: Quebec Bank v. Bryant, 17 Q. L. R. 78 (1891); affirmed on appeal, and in the Privy Council, Bryant v. Quebec Bank, [1893] A. C. 179; Molsons Bank v. Brockville, 31 U. C. C. P. 174 (1880).

15. A power of attorney, whether bestowed by a written instrument or inferred from a train of circumstances, must be construed strictly. The power of attorney [illegible] Quebec Bank v. Bryant, supra (14) does not give the agent [illegible] to borrow money for the prin-

cipal; Banque du Peuple v. Bryant, 17 Q. L. R. 103 (1891); reversed on appeal, but the original judgment was restored in the Privy Council: Bryant v. Banque du Peuple, [1893] A. C. 170.

16. A wife appointed her husband her general and special attorney, with power to draw for her bills of exchange, promissory notes, etc. Held, that the wife's liability was not limited by Art. 181 C. C. to notes required for the purposes of administration: Banque d'Hochelaga v. Jones, [1895] A. C. 612.

17. The company's station agent endorsed and cashed at the bank cheques to the order of the company given for freight. He had no authority to endorse. Held that the bank was liable to the company as the owner of the cheques, and it was no answer that the agent had used the proceeds to cover up previous defalcations: Canadian Pacific Ry. Co. v. Hochelaga Bank, Q. R. 18 K. B. 237 (1908).

18. Where a note is payable to a testator, the indorsement by one of several executors held sufficient: Almon v. Cock, 3 N. S. (2 Thomson), 265 (1847).

19. The agent of a company gave a mortgage note in its name for the balance of the purchase price of land. The company with knowledge of the fact did not repudiate his act, but took possession of the land. Held, that it was estopped from denying its liability on the note: Ryan v. Terminal City Co. 25 N. S. 131 (1893).

20. The power of an agent authorized to draw a bill ceases with the drawing, and if the principal is afterwards relieved, the agent cannot revive his liability: McGhie v. Gilbert, 6 N. B. (1 Allen) 235 (1848).

21. A bill drawn on a merchant was accepted by his clerk, "per pro." The drawee in speaking of the bill some months later said that the drawer should pay it as it was for his benefit. Held, that this was sufficient to leave to the jury the question of whether the clerk's authority had been recognized: Morrison v. Spurr, 8 N. B. (3 Allen) 288 (1856).

22. The indorsee of a note died intestate. His widow who was not administering the estate could not indorse it, even to pay funeral expenses and her husband's debts: Gerow v. Holt, 24 N. B. 412 (1884).

23. A plaintiff claiming under endorsement by a company must show that the officer or agent endorsing had authority: Standard Bank v. McCullough, 30 W. L. R. 708 (1915).

24. The local manager of a company was authorized to indorse cheques only for deposit with the Bank of British Columbia. The Bank of Montreal gave him the cash for cheques which he indorsed in the company's name. Held, that the bank was liable to the company for the amount so paid: Hinton v. Bank of Montreal, 9 B. C. R. 545 (1903); Gompertz v. Cook, 20 T. L. R. 106 (1903).

25. B., a member of a firm, gave a power of attorney to accept bills in his name [illegible] of his private business, to his co-partner

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Procuration.

8. The latter accepted a bill in respect of partnership business in the name of B. and the bill was negotiated. Held, that B. was not liable: Attwood v. Munnings, 7 B. & C. 278 (1827).

26. A confidential clerk was accustomed to draw cheques for his employers, and in one instance at least was authorized to indorse for them, and in two instances they received money through his indorsing their name. These acts were evidence to go to a jury as to the general authority to indorse: Prescott v. Flynn, 9 Bing. 19 (1832).

27. A power of attorney giving full power to manage certain real estate, followed by general words giving full power to do all the business of the principal, does not authorize the agent to indorse bills in the name of the principal: Esdaile v. Le Naaze, 1 Y. & C. 394 (1835).

28. In an action against the drawee of a bill of exchange, accepted in his name by another person, when evidence had been given of a general authority in that person to accept bills in defendant's name, an admission by defendant of liability on another bill so accepted, is confirmatory of the former: Llewellyn v. Winckworth, 13 M. & W. 598 (1845).

29. A wife was in the habit of drawing, accepting and indorsing bills for her husband. She requested a daughter to indorse a bill in her presence and handed it to the plaintiff. Held, sufficient to sustain a verdict for the plaintiff: Lord v. Hall, 8 C. B. 627 (1849).

30. M., a traveller, obtained from a customer of his employers an acceptance in blank, which he signed as drawer and indorser and fraudulently negotiated. It was proved that on a former occasion he had obtained from the customer a blank acceptance which his employers received in payment, and on this occasion he showed the customer a letter that his employers desired to draw upon him. Held, that neither the letter nor the former dealing authorized him to draw the bill: Hogarth v. Wherley, L. R. 10 C. P. 630 (1875).

31. An agent appointed to wind up the business of a firm held not to have authority to accept bills drawn on the firm, or to accept a bill in the name of a partner: Odell v. Cormack, 19 Q. B. D. 223 (1887).

32. The general manager of a company in order to obtain a guarantee for the company's business, without authority gave a note signed "for myself and in representation of the —— Co." This was not necessary or in the ordinary course of the company's business. Held, that the company was not liable on the note: Re Cunningham & Co., 36 Ch. D. 532 (1887).

33. Defendants' manager had authority to draw on their bank account for the business, but not to overdraw or to borrow. Having overdrawn the account for his own purposes, he borrowed money from plaintiff, and gave him a cheque of the firm, paying the money to the firm's credit in the bank, and using it for their business. It was held, that plaintiff could not recover on the cheque as it exceeded the authority given, but defendants were liable for money had and received: Reid v. Rigby, [1894] 2 Q. B. 40.

34. The manager of a firm of brokers had a power of attorney to sign cheques for the firm for their business. He gave such a cheque to defendant in payment of his own racing debts. Held, that the latter had sufficient notice of his limited authority and must return the money: Morison v. Kemp, 29 T. L. R. 70 (1912). § 51 Procuration.

35. A power of attorney to draw, indorse, or accept bills, does not authorize the agent to become a party to accommodation paper: Wallace v. Branch Bank, 1 Ala. 565 (1840); North River Bank v. Aymar, 3 Hill (N. Y.) 262 (1842); Dingsley v. State Bank, 3 Yerger (Tenn.) 107 (1832); German N. Bank v. Studley, 1 Mo. App. 260 (1876). But the principal would be liable to a holder in due course: Edwards v. Thomas, 66 Mo. 469 (1877); North River Bank v. Aymar, supra.

52. Where a person signs a bill as drawer, endorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. Signing in representative capacity.

2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. 53 V., c. 33, s. 26. Imp. Act, *ibid.* Rule for determining capacity.

Section 131 provides that no person is liable as drawer, acceptor or endorser of a bill who has not signed it as such. The present section says down the rule as to when a person who has signed a bill, but ostensibly for another, becomes or does not become personally liable thereon. A party need not sign with his own hand: s. 4. It is sufficient for a corporation to execute a bill by using its corporate seal alone, although in practice this is seldom done: s. 5. Where the signature is by an agent or officer, the principal is only bound if the agent has in fact authority to sign: s. 51.

While the present section relates to agents generally and to persons acting in a representative capacity, a great

§ 52 majority of the cases which arise under it relate to bill corporations which have been signed for them by their offi

Signature by agent.

Agents and Officers of Corporations.- Notes and bills constantly made, accepted and endorsed by agents and officers of corporations in such a way as to make it very difficu say whether the signers are liable personally, or whether principal or corporation is liable, or whether both are li The question in every such case is one of construction. W note or bill does it purport to be? If, on the true constru tion of the instrument, it is the note or bill of the princ or of the company, they will be liable on it, and not the individuals whose names are on it, unless it is the note or bi of both. On the other hand, if on the true construction, it is not the note or bill of the principal or company, the persons whose names are upon it may be liable, whether they intended to be so or not. The address of a bill and the body of a note are frequently more conclusive on this point than the words that may follow the signature.

The first impression on reading the section would be that it was intended to relax the somewhat severe rules that have been followed, in England and Ontario especially, in holding officers of companies personally liable on bills connected with the business of the company.

In the United States there has been a great conflict of decisions, but the tendency seems to be, on the whole, to relieve the officers of corporations in certain cases where they would have been held liable in England or Ontario.

In making promissory notes on which a company alone is to be liable, officers would do well to use the name of the company in the body of the note and not the ordinary "I" or "we;" and if agents would sign the name of their principals first, followed by "per" or "per pro." before their own names, there would be less danger of ambiguity. In drawing bills the name of the company or principal should likewise be placed prominently in the foreground. In accepting bills they should look carefully to see who is the drawee, as this is usually the controlling circumstance in the case of bills, the form of whose acceptance might leave it a matter of doubt

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Bills of corporations.

whether it was that of the company or of the officer accepting. Except in case of need or for honour it is only the drawee that can accept. It is on this account that officers of companies have been held to be personally liable on bills where the acceptance would appear to be in the same terms as promissory notes where the officers signing them have been relieved from personal liability.

The officer of a company who becomes a party to a bill or note on its behalf in accordance with his powers under the by-laws is not personally liable. In the case of companies incorporated by letters patent under the Dominion Companies Act, he will be personally liable if the word "limited" does not appear in legible characters after the name of the company: R. S. C. c. 79, s. 165; so also in the case of companies incorporated under most of the provincial Acts.

Where from the terms of a bill, or from the words added to his signature, it is apparent that the person signing is merely doing so in the name of and on behalf of another who is fully disclosed, or that he is merely acting in a representative character, "he is not personally liable thereon," as he is not, properly speaking, a party to the bill. He may, however, be held liable in an action for false representation: West London Commercial Bank v. Kitson, 13 Q. B. D. 362 (1884).

ILLUSTRATIONS.

1. A bill was drawn upon "P. C. De Latre, president N. D. & H. Co." and accepted by him in the same terms. He was held personally liable: Bank of Montreal v. De Latre, 5 U. C. Q. B. 362 (1848).

2. A bill was drawn on "W. A. Geddes, treas. W. I. C. Co." He accepted it "W. A. Geddes, treas. W. I. C. Co." and affixed the company's seal. He was held personally liable: Foster v. Geddes, 14 U. C. Q. B. 239 (1856); Laing v. Taylor, 26 U. C. C. P. 416 (1876).

3. A note in the words "we promise to pay" was signed G. H. C., "president G. T. Co." and F. A. W. "sec. G. T. Co." Held, that G. H. C. and F. A. W. were not personally liable: City Bank v. Cheney, 15 U. C. Q. B. 400 (1857); following Aggs v. Nicholson, 1 H. & N. 165 (1856). See Lindus v. Melrose, 3 H. & N. 177 (1858); followed by Union Bank v. Cross, 2 Alta. 3 (1909).

4. Defendants purchased a load of coal, and in payment sent a bill signed by them with the word "agents" under their signature

§ 52 — and accepted by their principals. They were held personally liable: Reid v. McChesney, 8 U. C. C. P. 50 (1858).

Officers of corporations.

5. In settlement of a loss payable by an insurance company a note was given in these words: "I promise to pay," and signed "C. H. Gates, sec. O. M. & F. Co." He was held personally liable: Armour v. Gates, 8 U. C. C. P. 518 (1859).

6. A bill drawn by the secretary of a railway company on and accepted by, the president, is not a bill of the company under the Act, as being accepted by the president and countersigned by the secretary, and the parties are personally liable: Bank of Montreal v. Smart, 10 U. C. C. P. 15 (1860).

7. A bill addressed "To the secretary R. G. M. Co." and accepted thus—"The R. G. M. Co., per James Glass, secretary," held not to be the acceptance of the secretary, and that he was not personally liable: Robertson v. Glass, 20 U. C. C. P. 50 (1869).

8. On a bill addressed to an Insurance Co. by its inspector signed "A. Squier, Inspect[illegible]" he was held personally liable: Hogarty v. Squier, 12 U. C. Q[illegible]. 165 (1877).

9. A bill addressed "To the President, Midland Railway," was accepted thus:—"For the Midland Railway of Canada: accepted, F. Read, secretary, Geo. A. Cox, President." Held, that the president was personally liable: Madden v. Cox, 44 U. C. Q. B. 542 (1879) affirmed 5 Ont. A. R. 473 (1880).

10. Where the president of a company signed a note for a debt of the company, thus, "per O. A. H." and left a space above his signature for the company's name to be stamped, but the note was countersigned by the manager and delivered without this being done, it was held not to be the note of the president, and he was not personally liable: Brown v. Howland, 9 O. R. 48 (1883), affirmed 15 Ont. A. R. 750 (1887).

11. A bill addressed to defendant was accepted by him as follows: "Accepted D. Mason, for the United Fire Agencies, Limited." Held, that he was not personally liable on the bill: Smith v. Mason, Q. R. 40 S. C. 75 (1911).

12. A president and secretary signed a note which bore date before the incorporation of the company. They were held personally liable and were not allowed to produce evidence to shew that when the note was negotiated the company was incorporated: Jardine v. Rowley, 15 N. S. (3 R. & G.) 111 (1882).

13. Defendant, as commissioner of the N. B. & C. Ry. Co., drew a bill on the company to pay for work done on the railway, and signed it "J. J. Robinson, commissioner." He was held personally liable: Peele v. Robinson, 9 N. B. (4 Allen) 561 (1860).

14. A note reading "we promise to pay" was signed "A. G. Bowes, Prest., Gazette Publishing Co." Held, on the authority of Fairchild v. Ferguson, No. 16, infra, and overruling Canada Paper

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Officers of corporations.

Co. v. Gazette Publishing Co., 32 N. B. 685 (1893), that it was the note of the company and not of Bowes personally: Canada Paper Co. v. Gazette Pub. Co., 32 N. B. 689 (1893).

15. Where defendants signed notes as president and manager of a company which had no existence, they were held personally liable on an implied warranty of the existence of the company, and of their right to make the notes on its behalf: Crane v. Lavoie, 22 Man. 330 (1912).

16. A note reading "We promise to pay," etc., was signed "W. D. Rorison, Manager Otter Tail L. Co." The company was an unincorporated one, Rorison being a partner and the manager. His co-partners alone were sued. The company received value for the note. Held, that the note was the company's and not Rorison's individual note: Fairchild v. Ferguson, 21 S. C. Can. 481 (1892).

17. A note signed with the name of an incorporated company, followed by the signatures of the various persons, with the description "Dir" or "Mgr." is the note of the company and not of the persons so signing: Union Bank v. Cross, 2 Alta. 3 (1909).

18. A man who puts his name to a bill of exchange makes himself personally liable unless he states upon the face of the bill that he subscribes it for another, or by procuration of another. Unless he says plainly "I am the mere scribe," he becomes liable: per Lord Ellenborough, in Leadhitter v. Farrow, 5 M. & S. at p. 349 (1816).

19. Defendants gave a note in these words:—"We the undersigned being members of the executive committee, on behalf of the L. & S. W. Ry. Co-operative Society, do jointly promise to pay," etc. Held, that they were personally liable: Gray v. Raper, L. R. 1 C. P. 694 (1866). See also Courtauld v. Sanders, 16 L. T. N. S. 562 (1867).

20. On a promissory note in the words "I promise to pay," etc., signed: "For the M. T. & W. Ry. Co.—John Sizer, secretary," held that the secretary was not personally liable: Alexander v. Sizer, L. R. 4 Ex. 102 (1869).

21. Defendants signed a note, "We the Directors of the I. M. S. Co., promise to pay," etc., and affixed the company's seal. They were held personally liable: Dutton v. Marsh, L. R. 6 Q. B. 361 (1871). See Penkivil v. Connell, 5 Ex. 381 (1850); Maclae v. Sutherland, 3 E. & B. 1 (1854); Hoskins v. Thomson, 14 N. S. W. (Law), 323 (1893).

22. A bill of exchange addressed to the B. & I. Co. which had no power to accept bills, was accepted thus: "Accepted for and on behalf of the B. & I. Co., G. K., F. S. P. directors, B. W., secretary." The directors and secretary were held personally liable to a holder in due course, as by their acceptance they represented that they had authority to accept for the company: West London Commercial Bank v. Kitson, 13 Q. B. D. (1884).

23. A note read "I promise to pay" and was signed "J. S. S.'s Laundry Dye Works Ltd., J. H. Smethurst, managing director."

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Held, to be the note of the company, and J. H. S. not personally liable: Chapman v. Smethurst, [1909] 1 K. B. 73, 927.

24. Where a note read, "I promise to pay," etc., and was signed "For the Providence Hat Mfg. Co., A. B., agent," it was held to be the company's note, and not the agent's notwithstanding the words "I promise": Emerson v. Providence H. M. Co., 12 Mass. 237 (1815).

25. Where a bill contained the direction to "place to account of Derby Fishing Co." and was signed "A. B., President," the company was held to be the drawer: Witte v. Derby Fishing Co., 2 Conn. 260 (1817).

26. "We, the subscribers, jointly and severally promise," etc., and signed "For the Boston Glass Manufactory, A. B. & C.," was held to be the note of the individual makers: Bradlee v. Boston Glass Co., 16 Pick. 347 (1835).

27. A promissory note which reads, "four months after date we promise to pay to the order of George Moebs, Sec. & Treas., $1,061.21 at M. Bank, value received," signed "Peninsular Cigar Co., Geo. Moebs, Sec. & Treas." is a note drawn by, payable to, and indorsed by the corporation, and without ambiguity in the indorsement; and evidence is not admissible to show that it was the intention of the indorser in making the indorsement to bind himself personally: Falk v. Moebs, 127 U. S. 597 (1888).

Executors, etc.

Other Representative Capacities.—The same principles apply to those acting in other representative capacities, such as executors, administrators, trustees, guardians, tutors, curators, etc. With regard to these, the law in the other provinces in which the common law prevails is much more stringent in holding them personally than in the Province of Quebec where the principles of the civil law obtain. In Quebec the representative capacity or quality, as it is there called, is more fully recognized, and a bill or note signed in this form would be frequently treated as the bill or note of the person or body represented, where in England or the other provinces, the person actually signing would alone be held liable.

Where any person is under obligation to endorse a bill or note in a representative capacity he may do so in such terms as to negative personal liability: s. 61, s.-s. 2. The usual method is to use the words "sans recours" or "without recourse" in endorsing.

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Executors, etc.

1. A note indorsed "Eastwood & Co., per J. Eastwood, Jr.," imports that the signer is not a partner, and he is not personally liable: Dowling v. Eastwood, 3 U. C. Q. B. 376 (1846).

2. Defendants, as executors, purchased goods from plaintiffs and gave notes,—"We, as executors of the late B. P., promise to pay," etc., and after their signatures wrote "executors," etc. Held, that they were personally liable: Kerr v. Parsons, 11 U. C. C. P. 513 (1862).

3. A firm assigned for the benefit of creditors. The assignee continued the business and gave plaintiffs notes for goods, signing the firm name, and also his own followed by the word "Assignee." He was held personally liable: Boyd v. Mortimer, 30 O. R. 290 (1899).

4. Where trustees of an insolvent estate under a deed of composition, which gave them no power to draw or accept bills, signed promissory notes with the words "Trustees to estate C. D. Edwards" after their signatures, held that they were personally liable: Archibald v. Brown, 21 L. C. J. 85 (1879).

5. The maker of a note wrote below his signatur[illegible]ney B. C. L." He was held liable personally: Hamilton v. [illegible] R. 10 S. C. 196 (1886); also the drawer of a cheque who ad[illegible] "in trust" to his signature: Royal Bank v. Douglas, 14 R. L. 162 (1908).

6. A party who adds to his signature the word "witness" under a printed statement on the back of a promissory note guaranteeing payment thereof is personally liable as an indorser, and the word "witness" is to be taken as merely descriptive, and in no wise intended to exclude liability: Nicholson v. McKale, Q. R. 201 S. C. 340 (1912).

7. On a promissory note whereby the makers as executors of the late T. promise to pay, they are personally liable, when they do not expressly limit their liability to pay out of the estate: Childs v. Monins 2 Brod. & B. 460 (1821).

8. The churchwardens for a debt of the parish gave a note signed "J. B. and G. W., churchwardens," for which they were held personally liable: Rew v. Pettet, 1 A. & E. 196 (1831).

9. Executors carrying on the business of the testator as directed by the will, in the ordinary course, accepted a bill describing themselves simply as executors of the testator. They were held personally liable. Liverpool Borough Bank v. Walker, 4 DeG. & J. 24 (1859); Campbell v. McKay, 24 N. S. 404 (1892).

10. A., B. and C. signed a note in the following terms: "We the undersigned, in the name and on behalf of the Reformed Presbyterian Church, Stranraer, promise to pay," etc.:—Held, that

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A., B. and C. were personally liable on the note: McMeekin v. Easton, 16 Court of Session Cases, 363 (1889).

11. The master of a steamship is personally liable on a [illegible] drawn by him for coal and other necessaries supplied the vessel, although he adds the words "for which I hold my vessel owners and freight responsible": The Elmville, [1904] P. 319.

"**The Construction Most Favourable to the Validity of the Instrument.**"—This is in accordance with the maxim [illegible] res magis valeat quam pereat. In many of the cases in which an agent or officer has been held personally liable on a bill it is quite evident that he did not intend to bind himself personally, and there is a great deal to be said in favour of his not being liable; but inasmuch as he did not legally bind his principal or the company as the case may be, he has been condemned personally on the principle laid down in this subsection.

Valuable.

53. Valuable consideration for a bill may be constituted by:—

Sufficiency.

(*a*) any consideration sufficient to support a simple contract;

Antecedent debt.

(*b*) an antecedent debt or liability;

Form of bill.

2. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. 53 V., c. 33, s. 27. Imp. Act, *ibid.*

The terms "valuable consideration" and "value" in the Act are synonymous: s. 2. "It is necessary, in order to create a legal obligation, that a simple contract should include in the matter agreed upon, besides a promise, what is called a consideration for the promise; which may be described generally as some matter accepted or agreed upon as a return or equivalent for the promise made. . . A promise merely voluntary, that is, made without consideration, if it rests in agreement only, is not binding in law:" Leake, p. 5. "A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit, accruing to the

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Consideration for contracts.

one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other:" Currie v. Misa, L. R. 10 Ex. 162 (1875). In the French law the word "cause," which takes the place of the English "consideration," has a wider meaning, and includes natural or moral obligations: Pothier on Obligations, Nos. 42, 43; Code Napoleon, Arts. 1108, 1131; 16 Laurent, 107-111; 24 Demolombe, p. 329. A mere moral obligation is not a sufficient consideration for a bill or note in England: Eastwood v. Kenyon, 11 A. & E. 438 (1840); but may be in Quebec: Lockerby v. O'Hara, M. L. R. 7 S. C. 35 (1890); Bédard v. Chaput, Q. R. 15 S. C. 572 (1899); Brulé v. Brulé, Q. R. 26 S. C. 77 (1904).

The meaning of "sans cause" seems in the French law to be confined to what in English law would be called total failure of consideration as distinguished from mere absence of consideration: 16 Laurent, 111-119; 24 Demolombe, p. 342. The Civil Code of Lower Canada has introduced the English "consideration" as a synonym for the French "cause." One of the requisites to the validity of a contract is "a lawful cause or consideration:" C. C. Art. 984. "A contract without a consideration or with an unlawful consideration has no effect:" C. C. Art. 989. The Privy Council has held in a case from Quebec that there is no difference between French law and English law as to the necessity for a valuable consideration for the validity of a contract: McGreevy v. Russell, 56 L. T. N. S. 501 (1887).

As the subject of contract is within the jurisdiction of the local legislatures, the validity or invalidity of bills and notes on the question of consideration may vary in the different provinces, and where contracts on a bill or note, or rights in it, arise in more than one province, the application of the principles of international law will be required for their solution. See notes on sections 47 and 160.

Formerly in England it was doubted whether an antecedent debt was a valid consideration for a bill payable on demand, but it was settled in accordance with the rule laid down in this clause in Currie v. Misa, L. R. 10 Ex. 153 (1875).

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Consideration.

In the case of Cox v. Canadian Bank of Commerce, 46 S. C. Can. 564 (1912), affirming 21 Man. 1, it was held that the bank was entitled to recover on the notes of the directors of a company pledged by the manager as collateral security for the liabilities of the company, even after the liabilities had been paid off, as he had apparent authority so to do.

For the law as to accommodation bills see section 56. As to bills tainted with illegal consideration, fraud, etc., see section 56, s.-s. 2.

Evidence as to Consideration. In Quebec under the code it was provided by article 2285, that when a bill or note contained the words "value received," value for the amount of it would be presumed to have been received on the bill, note and on the indorsements. The omission of these words did not render the instrument invalid, but threw upon the holder the onus of proving value: Duchesnay v. Evans, 2 Rev. de Lég. 31 (1821); Hart v. Macpherson, Girouard's Lettres de Change, 66 (1818); Larocque v. Franklin Bank, 8 L. C. R. 328 (1858). These words were at one time considered necessary in England: Byles, p. 109. In France the bill should state in what the value consists: Code de Com., Art. 110; but it has been held, that when a bill does not state the nature of the value, it is not on that account void, but the holder must prove what the value was: Cour de Cassation, 30th Aug., 1828.

Now every party whose signature appears on a bill or note is presumed to have become a party for value: s. 24. While oral evidence is not admissible to vary the terms of the written contract between the parties, it is admissible to impeach the consideration for the contract, and notwithstanding the words "value received" or their equivalent, the defendant may prove by parol the want or failure of consideration, where, on the issues raised, that would be a defence: Foster v. Jolly, 1 C. M. & R. at p. 708 (1835); Abrey v. Crux, L. R. 5 C. P. at p. 45 (1869); Temple v. Jones, Ramsay A. C. 76 (1883); Taylor, § 1138. The evidence should be clear and conclusive: Ross v. Western L. & T. Co., Q. R. 11 Q. B. 292 (1900).

See also notes on section 17, ante, p. 16.

ILLUSTRATIONS. § 53

In the following cases it was held that there was a valid consideration for the bills or notes in question:— Consideration.

1. A debt due to a bankrupt estate is a good consideration for notes given to the trustees and assignees of the estate: Gates v. Crooks, Dra. 116 (1831).

2. A member of a joint stock company, not incorporated, lending, with the assent of the company, a sum of money out of the joint fund, to another member, and taking from him a note payable to himself individually, can recover on the note: Comer v. Thompson, 4 U. C. O. S. 256 (1836).

3. A debt due by a third party, but not payable, may form a valid consideration for a note: Dickenson v. Clemow, 7 U. C. Q. B. 121 (1850).

4. A pre-existing debt is a good consideration in whole or in part for a note or bill: Gooderham v. Hutchison, 5 U. C. C. P. 211 (1855); Hillis v. Templeton, 7 U. C. L. J. 301 (1861); Evans v. Morley, 21 U. C. Q. B. 517 (1862); Canadian Bank of Commerce v. Gurley, 30 U. C. C. P. 583 (1880); even when a mortgage has been given for the same debt: Bank of U. C. v. Bartlett, 12 U. C. C. P. 238 (1862).

5. A note promising to pay to the Toronto Church Society or bearer £50 towards the support of a bishop to be appointed to a western diocese, held to be founded upon a sufficient consideration: Hammond v. Small, 16 U. C. Q. B. 371 (1858).

6. A note was made by the secretary of an insurance company in his own name for a loss, the policy being surrendered, and marked cancelled, and the note being payable three days after the loss would be payable according to the policy. Held, sufficient consideration: Armour v. Gates, 8 U. C. C. P. 518 (1859).

7. Value arising at any time during the currency of a note is sufficient: Blake v. Walsh, 29 U. C. Q. B. 511 (1870).

8. A note barred by the Statute of Limitations is a good consideration for a new note: Wright v. Wright, 6 Ont. P. R. 295 (1876); LaTouche v. LaTouche, 3 H. & C. 576 (1865); Giddings v. Giddings, 51 Vt. 227 (1878).

9. An oral bargain for the sale of land by plaintiff to defendant, of a definite parcel of land is a good consideration for a cheque for part of the purchase money: Kinzie v. Harper, 15 O. L. R. 582 (1908); following Jones v. Jones, 6 M. & W. 84 (1840); Black v. Gesner, 3 N. S. (2 Thomson) 157 (1817), not followed.

10. A customer owed a bank $409.53. He deposited a third party's cheque for $1,000, requesting the bank to place the amount to his credit, which was done. The drawer stopped payment of

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Consideration.

the cheque. The bank was a holder for value, and in due course was held entitled to recover $1,000 from the drawer, although it admitted that the customer had not given value to the drawer: Bank of B. N. A. v. Warren, 19 O. L. R. 257 (1909).

11. Notes given to an insurance company for premiums subsequently earned, are given for a valuable consideration and are valid: Wood v. Shaw, 3 L. C. J. 169 (1858).

12. A promissory note was given as an indemnity to a party assuming a liability for a third person. Held, that the payee could sue on the note as soon as troubled, and before paying the debt for which he had become liable: Perry v. Milne, 5 L. C. J. 121 (1861).

13. Where a tenant was partly deprived of the use of the premises by works carried on by the corporation of Quebec, but at the end of the year gave his landlord a note for the full amount of the rent, there was sufficient consideration for the note although the landlord was suing the corporation for damages to the leased premises: Motz v. Holiwell, 1 Q. L. R. 64 (1875).

14. On a sale of the stock of an insolvent made by the assignee nominally to a third party, who in reality purchased for the insolvent, he accepted in part payment a note of the latter: held that there was consideration for the note: Lemieux v. Bourassa, 1 Dorion, 305 (1881).

15. Where a note was given on a verbal purchase of land of which the defendant took possession, held to be for a good consideration: Gray v. Whitman, 3 N. S. (2 Thomson) 157 (1857).

16. A note was given in part payment of land when the deed was executed by plaintiff and his wife, and delivered; but plaintiff's wife was to go before a J. P. to be examined separate and apart from her husband, which she refused to do. Held, that the delivery of the deed was a good consideration: Graham v. Graham, 11 N. S. (2 R. & C.) 265 (1877).

17. An agreement to forbear is a good consideration for an acceptance: Lyons v. Donkin, 23 N. S. 258 (1891). See also Hubley v. Morash, 27 N. S. 281 (1894), and McGregor v. McKenzie, 30 N. S. 214 (1897); Elkington v. Cooke-Hill, 30 T. L. R. 670 (1914); also forbearance in enforcing a judgment: Smith v. Frame, 41 N. S. 20 (1907).

18. A promissory note given in satisfaction of a claim for damages for an assault on plaintiff's minor son is binding: Hubley v. Morash, 27 N. S. 281 (1894).

19. Placing to the credit of a customer's overdrawn account is a giving of value: Bank of N. S. v. Harvey, 8 D. L. R. 473 (1912).

20. A note was given by a son in payment of his father's debt. Held, that it was not invalid for want of consideration: Street v. Quinton, 18 N. B. 567 (1879).

21. Release from imprisonment for non-payment of a fine and costs is a good consideration for a note for the amount of the fine and costs: Proctor v. Parker, 12 Mun. 528 (1899).

22. Cross acceptances for mutual accommodation are respectively considerations for each other: Cowley v. Dunlop, 7 T. R. 565 (1798); Newman v. Frost, 52 N. Y. 421 (1873); Millins v. Kauffman, 127 N. Y. St. 669 (1905). Also an exchange of cheques: Matlock v. Scheuerman, 93 Pac. R. (Oregon) 823 (1908).

23. An agreement not to bring suit on the debt or on other liability of one person is a valid consideration for the commercial paper of another: Balfour v. Bell, 3 C. B. N. S. 300 (1857); Randolph v. Peck, 1 Hun 138 (1871); Abbott v. Fisher, 124 Mass. 414 (1878); Millins v. Kauffman, 101 App. Div. 442, 127 N. Y. St. 669 (1905).

24. A promise to give up a bill thought to be invalid is a sufficient consideration: Smith v. Smith, 13 C. B. N. S. 418 (1863). So is the bona fide compromise of a disputed claim, although it afterwards appears that the claim was wholly unfounded: Callisher v. Bischoffsheim, L. R. 5 Q. B. 449 (1870); Power v. Power, 43 N. S. 412 (1909).

25. Actual forbearance from suing a third party is a good consideration for a note, although there was no contract to forbear: Crears v. Hunter, 19 Q. B. D. 341 (1887). Followed in Creelman v. Stewart, 28 N. S. 185 (1896).

26. The manager of a bank stole certain securities which he negotiated. He subsequently obtained them from the purchasers by fraud and returned them to the bank. Held, that the bank was a holder for value: London and County Bank v. London and River Plate Bank, 21 Q. B. D. 535 (1888).

27. A promissory note given for a mere moral obligation is not binding, but where the maker had made payments thereon, and afterwards became a lunatic, the Court recognized it as a debt of honor to be paid out of the estate: In re Whittaker, 42 Ch. D. 119 (1889).

28. Where a promise to pay £200 was supposed to be enforceable though not in fact so, a promissory note given to postpone payment of such sum was given for a good consideration: Kingsford v. Ovenden, 7 T. L. R. 565 (1891).

29. An undertaking by a bank to give a customer credit on his general account for a cheque deposited, is a sufficient consideration to constitute the bank a holder for value: Royal Bank v. Tottenham, [1894] 2 Q. B. 715; even though the account be not overdrawn: Ex parte Richdale, 19 Ch. D. 409 (1882).

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30. A pre-existing debt is a good consideration for a promissory note payable on demand for a larger amount than the debt due: Husbam v. Williams, 11 N. S. W. R. (Law) 110 (1893).

31. The accomplishment of the objects of an educational institution held to be sufficient consideration for a note: Wesleyan Seminary v. Fisher, 1 Mich. 515 (1857); Roche v. Romoke Seminary, 56 Ind. 198 (1877).

32. A note given in settlement of a civil suit for damages against the maker's brother, is founded upon sufficient consideration: Smith v. Richards, 29 Conn. 232 (1860).

33. When A. is indebted to B. and B. to C., and A. gives his note, in extinguishment of both debts, to C., there is sufficient consideration: Outhwite v. Porter, 13 Mich. 533 (1865).

34. The consideration for the acceptance of drafts which were given for the future delivery of coal, does not fail by reason of the non-delivery thereof, since a promise to deliver is a sufficient consideration for the acceptance: Tradesmen's Nat. Bank v. Curtis, 167 N. Y. 191 (1901).

35. An antecedent debt is value even though the bill is transferred merely as collateral security for such debt: Pane v. Zell, 98 Va. 291, 36 S. E. R. 379 (1900).

ILLUSTRATIONS.

In the following cases it was held that there was no valid consideration for the bills or notes in question:—

1. Notes given to commissioners of a turnpike trust by the tenant for rent on a lease beyond the powers of the commissioners cannot be collected, although the tenant was in possession for the full term of the lease: Ireland v. Guess, 3 U. C. Q. B. 220 (1846).

2. A note given by A. to B. for a debt due by C., upon no consideration for forbearance, and upon no privity shewn between A. and C., cannot be enforced. McGillivray v. Keefer, 1 U. C. Q. B. 456 (1817).

3. A defence that the note was made to the holder as a gratuity and that the maker never received any consideration for it, is good: Poulton v. Dolmage, 6 U. C. Q. B. 277 (1850).

4. Defendant having indorsed a note for $1,250, to enable the maker to get as an additional advance the difference between that sum and the original loan of $918, advanced to him before the making of the note, which additional advance was, however, not made, it was held that defendant was not liable on the note for any sum: Greenwood v. Perry, 19 U. C. C. P. 403 (1869).

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5. A note payable on demand with interest held to be without consideration as to one of the makers, the note being for an old debt due by the other maker alone: Merchants' Bank v. Robinson, 3 Ont. P. R. 117 (1879).

6. When, after a note is completed, so far as the intention of the parties is concerned, it is signed by a third person, or is so signed by him after maturity, without any consideration moving directly to such third person, or any agreement to extend the time for payment, such third person is not liable thereon: Ryan v. McKerral, 15 O. R. 130 (1888); Stuck v. Dowd, 15 Q. L. R. 331 (1907).

7. A note given to a new firm, after the dissolution of the old, in satisfaction of a guarantee given to the old for advances made by them, was held to have been given in error and without consideration, and, therefore, void: Hénault v. Thomas, 1 R. L. 708 (1868).

8. A promissory note given for consideration erroneously believed to be good in law, is not valid: Riel v. McEwen, Ramsay, A. C. 82 (1881).

9. Where an I. O. U., made to represent the value of a share in a business purchased by the plaintiff, was indorsed and transferred to the plaintiff by the vendor, the plaintiff could not sue the vendor thereon, while at the same time he retained the share acquired by him in the business, which was represented by the I. O. U.: Crediford v. Bulmer, M. L. R. 4 Q. B. 293 (1886).

10. A note given for a patent which is not a new and useful invention is void for want of consideration: Almour v. Cable, Ramsay, A. C. 87 (1886).

11. A draft made by B. & Co. through their agent D., given to a bank in payment of another draft by W. on S. in favour of D. (subsequently dishonored by S.), discounted by the bank to pay a note due by reason of a transaction by which B. & Co. never profited, and of which they were ignorant, is without consideration, and no action lies against B. & Co.: Union Bank v. Bryant, 17 Q. L. R. 93 (1891).

12. A note for the premium of a fire policy under the mistaken idea that the maker was the owner of the property, is without consideration, the policy itself being null: Assurance Mutuelle v. Lemay, Q. R. 12 S. C. 232 (1896).

13. A purely moral consideration (affection and regard) does not constitute sufficient consideration for a promissory note: Baker v. Read, 7 N. S. (1 G. & O.) 199 (1868); Holliday v. Atkinson, 5 B. & C. 501 (1826).

14. C. made an assignment under the Insolvent Act. One of the debts due him was by a woman whom he subsequently married. After her marriage the assignee induced her to give a note, the hus-

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band signing as a surety: Held, that there was no considera for her giving the note: McDaniel v. McMillan, 11 N. S. (2 I. & C.) 495 (1876).

15. A deed of land was made by a father to one of his who, at the father's request, gave his promissory notes pa to the other brothers respectively, the arrangement being purpose of distributing the estate of the father without Held, that the payees could not recover on the notes for w consideration moving from them to the maker: Forsyth v. 13 N. S. (1 R. & G.) 380 (1880).

16. A., who was indebted to plaintiffs, sold defendant a thr ing machine, and took his note, which at A.'s request was m payable to plaintiffs. A. sent plaintiffs the note, but they kn nothing of the transaction for which it was given. Held, that could not recover on the note for want of consideration moving from them to defendant: Cossitt v. Cook, 17 N. S. (5 R. & G. 8 (1884).

17. Defendant gave his note to the city for arrears of re condition of his getting a lease on the same terms as the previ lessee. There was no power to lease except by auction. Held, the defendant was not liable on the note: City of Fredericto Lucas, 8 N. B. (3 Allen) 583 (1857).

18. A note given to a brother of a deceased intestate by the person who received the estate, on the ground that if the deceased had left a will, he would have left his brother the amount of note, is void for want of consideration: McCarroll v. Reardon, 9 N M. (4 Allen) 261 (1859).

19. A note given by A. to his son-in-law B. by way of advance ment to B.'s wife held void for want of consideration: Thomas v McLeod, 12 N. B. (1 Han.) 588 (1869).

20. A debt represented to be due, but not really due, is not a sufficient consideration: Southall v. Rigg, 11 C. B. 418 (1851) nor is the giving up of a void note: Coward v. Hughes, 1 K. & J 443 (1855).

21. The voluntary gift of a sum of money is not a valid con sideration: Hill v. Wilson, L. R. 8 Ch. at p. 894 (1873).

22. An agreement to pay a debt within three years is no consideration for giving a note payable on demand: Stott v. Fairlamb 52 L. J. Q. B. 420, per Denman, J. (1883).

23. A note made merely in renewal of a prior note which was without consideration is void for want of consideration: Edwards v. Chancellor, 52 J. P. 451 (1888).

24. Mere forbearance without an agreement to forbear, not a sufficient consideration for a note: Manter v. Churchill, 127 Mass. 31 (1879); Smith v. Bibber, 82 Me. 34 (1889). [See No. 25, p. 173.]

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25. The compromise of a claim, which the party putting it forward knew was unfounded and illegal, is not a sufficient consideration: Ormsbee v. Howe, 51 Vt. 182 (1881).

26. The gift of the donor's own note as a donatio mortis causa is not valid as his representatives may prove that it was without consideration: Baskett v. Haskell, 107 U. S. 602 (1882).

Total Failure of Consideration. Every party whose signature appears on a bill or note is presumed to have become a party to it for valuable consideration, but he may prove the contrary. If a total failure of consideration be proved, it is a good defence if the plaintiff and defendant are immediate parties, that is, if they contracted directly with each other, or even if they are remote parties, provided value has not been given for the bill. A total failure of consideration has the same effect upon the liability of the parties as an original want of consideration. Total failure.

ILLUSTRATIONS.

1. A, being seized in fee of lands, made jointly with B, a lease to C., taking notes from C. for the rent. The day after the execution of the lease A. died intestate, and then B. died and his executors sued C. on the notes. Held, that they could not recover, the consideration having wholly failed: Merwin v. Gates, 1 Rob. & Jos. Dig. 529 (1837).

2. When a stockholder in a joint stock company had given notes for his stock, which he afterwards forfeited by not complying with the conditions of the association, it was held that there was not a failure of consideration, and it was no defence to an action on the notes: Glassford v. McFaul, 1 Rob. & Jos. Dig. 557 (1840).

3. In a suit upon a renewal note, total failure of consideration for the original may be a good defence: Bullion Gold Mining Co. v. Cartwright, 5 O. W. R. 522, 6 O. W. R. 505 (1905); Hooker v. Hubbard, 102 Mass. 239 (1869).

4. Where a note was given for logs on condition that no claim should be made for the logs, and they were revendicated, there was a total failure of consideration and the note became null: Gamsby v. Chapman, 13 L. C. R. 239 (1862).

5. Where the discharge of an insolvent was annulled by the Court, the indorsers remained liable on the composition notes, and there was not a total failure of consideration: Marchand v. Wilkes, 3 L. N. 318 (1880).

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6. A note was given by a purchaser of land for part of the price. The plaintiff became the holder after maturity. The vendor rescinded the contract and its provisions. Held, that the action failed for want of consideration: Murckel v. Taplin, 6 Sask. L. R. (1913).

Total failure.

7. A. appointed B. his executor and gave him a demand note to compensate him. B. died first and his executors sued on the note. It was held that there was a total failure of consideration and the action failed: Solly v. Hinde, 6 C. & P. 316 (1834). See Wells v. Hopkins, 5 M. & W. 7 (1839).

8. A. draws a bill at three months on B. in favor of C., to be paid for in seven days. B., who is A.'s agent, accepts on his account. C. does not pay A. He cannot sue B.: Astley v. Johnson, 5 H. & N. 137 (1860).

9. When bills are given for a cargo, and owing to the inability of the acceptor to meet the bills the cargo is sold by the drawer at a loss, the latter should sue for the difference in price, and not sue upon the bills, which fail for want of consideration: Bevan v. Stevenson, 1 T. L. R. 587 (1885).

10. Total want of title constitutes a total failure of consideration: Curtis v. Clark, 133 Mass. 509 (1882).

Partial failure of consideration.

Partial Failure of Consideration.—When the consideration for a note has only partially failed, the question as to how far it may be set up as a defence, is largely a question of pleading. Formerly it would not be allowed [illegible] or the provinces where the old English rules [illegible] were followed. Now in England and Ontario it may be set up as a defence pro tanto as between the original parties, or between those who are in the same position, provided the failure be for a definite sum clearly ascertained.

Failure of consideration should not be confounded with inadequacy of consideration.

ILLUSTRATIONS.

1. Where a note was given on an exchange of horses, the maker, when sued on the note two years later, was not allowed to set up as a defence that the horse he received was not sound as warranted: Hall v. Coleman, 3 U. C. O. S. 39 (1833).

2. In the following cases a partial failure of consideration was held to be no defence in actions on bills and notes between immediate parties: Dutton v. Lake, 4 U. C. O. S. 15 (1834); Dive v. Paul, ibid. 327 (1835); Kellogg v. Hyatt, 1 U. C. Q. B. 445

(1841); Matthewson v. Carman, 1 ibid. 266 (1843); Brown v. Garret, 5 ibid. 243 (1848); Thompson v. Irr, 6 ibid. 387 (1849); Orser v. Mountenay, 9 ibid. 382 (1851); Goldie v. Harper, 31 O. R. 281 (1899); Spelman v. Robidoux, 1 R. C. 241 (1871); Renaud v. Bougie, Q. R. 16 S. C. 105 (1899); Brudidge v. Delaney, 8 N. S. (2 G. & O.) 62 (1870); Hill v. McLeod, 17 N. S. (5 R. & G.) 280 (1881); McIntosh v. McLeod, 18 N. S. (6 R. & G.) 128, 6 C. L. T. 449 (1885); Whitman v. Parker, 18 N. S. (6 R. & G.) 155, 6 C. L. T. 448 (1885); Clarke v. Ash, 5 N. B. (3 Kerr) 211 (1846); Primeau v. Monchr 15 Man. 360 (1905); Glennie v. Imri, 3 Y. & C. 436 (1839); wick v. Nairn, 10 Ex. 762 (1855).

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Partial failure.

3. In the following cases it was held that the partial failure of consideration was not sufficiently definite or clearly ascertained to be allowed as a defence in part: Coulter v. Lee, 5 U. C. C. P. 201 (1856); Henderson v. Cotter, 15 U. C. Q. B. 315 (1858); Georgian Bay L. Co. v. Thompson, 35 U. C. Q. B. 61 (1874); Kilroy v. Simkins, 26 U. C. C. P. 281 (1876); Fletcher v. Noble, 8 O. R. 122 (1885); Automobile Sales v. Moore, 4 O. W. N. 400 (1913); Home Life Association v. Walsh, 36 N. S. 73 (1903); McGregor v. Harris, 30 N. B. 456 (1891); affirmed in the Supreme Court, Esson v. McGregor, 20 S. C. Can. 176 (1892); O'Donohue v. Swain, 4 Man. 476 (1886); Day v. Nix, 9 Moore, 159 (1821). In a number of the cases in this and No. 2, supra, the decision is based largely upon the technical rules of pleading that then prevailed. Under the modern Judicature Acts, it might in most cases be set up by way of counterclaim.

4. In the following cases a partial failure of consideration, where the amount was definitely ascertained, was allowed as a defence *pro tanto* between immediate parties: O'Brien v. Ficht, 18 U. C. Q. B. 211 (1859); Barber v. Morton, 7 Ont. A. R. 111 (1882); Star Kidney Pad Co. v. Greenwood, 5 O. R. 28 (1881); Lalonde v. Rolland, 10 L. C. J. 321 (1861); Fisher v. Archibald, 8 N. S. (2 H. & O.) 298 (1871); Agra Bank v. Leighton, L. R. 2 Ex. 56 (1866). Also between remote parties, where the plaintiff became the holder only only after maturity: Rennie v. Jarvis, 6 U. C. Q. B. 329 (1850); McGregor v. Bishop, 14 O. R. 7 (1887); Fraser v. Ekstrom, 6 Terr. L. R. 464 (1899).

54. Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. 53 V., c. 33, s. 27 (2). Imp. Act, *ibid.*

Holder for value.

The holder is the payee or endorsee of a bill who is in possession of it, or the bearer of it: s. 2. The holder for value may not be a holder in due course: s. 56: Raphael v. Bank of England, 17 C. B. at p. 174 (1855). He may have taken the bill or note after maturity and dishonour. He need

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Holder for value.

not have given value himself, it is sufficient that some previous holder has done so, in order to enable him to recover on the bill from the prior parties: Milnes v. Dawson, 5 E. 948 (1850).

For the rights of a holder, see section 74. Until value has been given for a bill it cannot be enforced against any of the parties even though it may have passed through the hands of a number of holders: Perry v. Rodden, 5 R. L. 673 (1873).

Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value: and every holder of a bill is prima facie deemed to be a holder in due course: s. 58.

ILLUSTRATIONS.

1. An indorsee without value is entitled to recover on a bill or note if any intermediate party is a holder for value: Wise v. Ross, 8 U. C. C. P. 299 (1859); Hunter v. Wilson, 4 Ex. 489 (1849); Oulds v. Harrison, 10 Ex. 579 (1854).

2. A bill is drawn payable to the order of the drawer, and the drawee accepts for the accommodation of the drawer, but subsequently receives value from him. The drawer thereby becomes a holder for value as against the acceptor: Burdon v. Benton, 9 Q. B. 843 (1847).

3. A. drew a bill on B. to the order of C., and delivered it to D., who received value for the bill from C., but who did not pay C. C. is a holder for value and can recover on the bill from A.: Munroe v. Bordier, 8 C. B. 862 (1849).

In case of lien.

2. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien. 53 V., c. 33, s. 27 (3). Imp. Act, *ibid.*

A lien is the right to retain possession of a thing belonging to another until a claim be satisfied. Where bills and notes are deposited as collateral security for a debt, the creditor acquires a lien upon them by contract: Ex parte Twogood, 19 Ves. 229 (1812); Ex parte Schofield, 12 Ch. D. 337 (1879); Bélanger v. Robert, Q. R. 21 S. C. 513 (1902);

Sterling Bank v. Zuber, 32 O. L. R. 123 (1914). If while they are in possession of the creditor, the debtor contracts other debts, he will have, in the absence of agreement to the contrary, a lien on them by implication of law for the payment of these new debts: C. C. Art. 1975.

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Lien on notes.

In England a banker has a lien by implication of law on all bills or notes received from his customers in the ordinary course of banking business to secure any balance that may be due: Brandao v. Barnett, 3 C. B. at p. 531 (1846); Johnson v. Robarts, L. R. 10 Ch. 505 (1875); Misa v. Currie, 1 App. Cas. at p. 569 (1876); London Chartered Bank of Australia v. White, 4 App. Cas. 113 (1879); Re Bowes, 33 Ch. D. 586 (1886).

If the amount of the lien is less than the note, the holder is a trustee for the pledgor for the difference: Reid v. Furnival, 1 Cr. & M. 538 (1833).

In the Bank of Commerce v. Wait, 1 Alta. 68 (1907), it was held that when a note was taken by a bank, without previous promise as collateral security for a debt not then payable, and no new consideration was given, the bank was not a holder in due course or even a holder for value. This conclusion was arrived at on a consideration of the law as it stood before the enactment of either the Canadian or the Imperial Act. The introduction of the words "or liability" (meaning an antecedent liability) into section 27 of the Imperial Act, and now found in section 53 of our Act, which Chalmers suggests may have changed the old law, was not discussed; nor was the question of its having been given as collateral security under the present section considered. This case was followed in Bank of B. N. A. v. McComb, 21 Man. 58 (1911); and was distinguished in Bank of N. S. v. Harvey, 8 L. W. R. 476 (1912); Bank of Commerce v. McLeod, 30 W. L. R. 537 (Alta. 1915) and Bank of Commerce v. Waldner, ibid. 807 (Sask. 1915).

ILLUSTRATIONS.

1. **A holder received a £30 note as security for a £10 loan. He can only recover £10 from the accommodation maker: Strathy v. Nicholls, 1 U. C. Q. B. 32 (1844).**

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As to lien.

2. The holder of promissory notes transferred by the payee as collateral security against a future liability on the holder's part for the payee, can collect the notes at maturity before that liability arises, and hold the proceeds to the extent of his liability: Ross v. Tyson, 19 U. C. C. P. 294 (1869).

3. When a $200 note is deposited as collateral to a discounted note of the same amount, it may be retained as collateral to a partial renewal of the discounted note for $175, and the latter not being paid the holder can recover $175 from the maker of the collateral note: Canadian Bank of Commerce v. Woodward, 8 Ont. A. R. 347 (1883).

4. A creditor who has received the promissory notes of third parties as collateral security, is not responsible to the debtor for laches with respect to the collection of the notes or want of notice to the debtor, unless the latter has been injured thereby: Ryan v. McConnell, 18 O. R. 409 (1889).

5. Where a seller took customers' notes and hire receipts as collateral, discounted the notes with a bank, letting the bank know the circumstances, but not giving the receipts with the notes, the receipts were held to be accessory to the debt, and on default the bank was entitled to have them handed over: Central Bank v. Garland, 20 O. R. 142 (1890); affirmed in appeal, 18 Ont. A. R. 438 (1891).

6. Bills and notes held as collateral security may found a writ of attachment in insolvency against the maker: Hutchins v. Cole, 14 L. C. J. 85 (1869).

7. The holder of a promissory note as collateral security for a loan is a holder for value within the meaning of Art. 2287 of the Civil Code: Exchange Bank v. Normand, 13 R. L. 59 (1884).

8. Where the indorser pays a note discounted at a bank he is entitled to recover any collaterals held by the bank, and to realize on these without notice to the maker up to the amount of his claim: Vezina v. Maltais, 10 R. J. 301 (1904).

9. An agent holds a bill indorsed in blank. He fraudulently pledges it to a party who makes an advance on it in good faith. The pledgee can hold it against the principal for the amount due him: Collins v. Martin, 1 B. & P. 648 (1797).

10. A., the holder of a bill for £100, deposits it with B. as security for a running account. When the note matures there is a balance in A.'s favor, but subsequently there is a balance of £50 against him. B. is a holder for value for £50: Atwood v. Crowdie, 1 Stark. 483 (1816).

11. Where a bill is negotiated from one person to another it will be presumed that it has been wholly transferred. He who claims that it was only pledged or deposited as collateral security must prove it: Hills v. Parker, 14 L. T. N. S. 107 (1866); Re Boys, L. R. 10 Eq. 467 (1870).

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12. If a banker negotiate a bill that he knows does not belong to his customer, no lien can attach: Ex parte Kingston, L. R. 6 Ch. 632 (1871).

Holder having lien.

13 A depositor has two accounts in a bank. He indorses a bill as collateral security for one account and draws for part of the amount. He fails and the other account is overdrawn more than the balance of the bill. The bank is holder of the bill for full value: Re European Bank, L. R. 8 Ch. 41 (1872).

14. Where a bill is discounted the party discounting it does not hold it as collateral security, or as a pledgee, but is a holder for full value: Re Gommersall, 1 Ch. D. 112 (1875). Ex parte Schofield, 12 Ch. D. 337 (1879).

15. The drawer of an accommodation bill indorses it as a security for a smaller sum. The acceptor fails. The indorsee can prove for the full amount of the bill, but cannot receive dividends in excess of the amount of the loan: Ex parte Newton 16 Ch. D. 330 (1880).

16. Solicitors cannot acquire a lien as against the acceptors on a bill which their client received from the acceptors to discount, when the solicitors received it after maturity with knowledge of the facts: Redfern v. Rosenthal, 86 L. T. N. S. 855 (1902).

17. Accommodation paper may be pledged as collateral: Washington Bank v. Krum, 15 Iowa 53 (1863).

55. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefor, and for the purpose of lending his name to some other person. 53 V., c. 33, s. 28 (1). Imp. Act, *ibid.*

Accommodation party.

A bill may be drawn or endorsed by accommodation parties without being an accommodation bill. It is only when the acceptor of a bill or the maker of a note is an accommodation party, that it is strictly an accommodation bill or note. The person accommodated need not be a party to the bill or note. Where an accommodation bill is paid in due course by the party accommodated the bill is discharged: s. 139, s.s. 3. Where an accommodation bill is accepted, for the benefit of the drawer or an endorser, he is liable without presentment for payment, protest, or notice of dishonour: s. 92, (*c*) and (*d*), s. 108 (*c*), and s. 110. As to the negotiation of an overdue accommodation bill, see section 70. Every party whose signature appears on a bill is prima facie deemed to

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Accommodation party.

have become a party for value, so that any person claiming to be an accommodation party must make clear proof of the fact: s. 58: Morehouse v. Burland, Ramsay, A. C. 280 (1875); Parker v. Fuller, ibid. 281 (1877).

Where parties exchange promissory notes for the same amount, payable each to the order of the other, and each to the note of the other, both notes are thereby converted from accommodation to business paper, and the maker of each becomes liable as a principal debtor: State Bank v. Smith, 155 N. Y. 185 (1898).

Where notes were agreed to be made and indorsed indiscriminately by a number of partners and the proceeds go to the benefit of the joint concern, they were held to be accommodation notes, and one partner could not recover as a holder from his co-partners: Bowes v. Holland, 14 U. C. Q. B. 316 (1856).

Where there is a running account between the drawer and drawee, and a bill is accepted, it is not an accommodation bill, even although the account was against the drawer at the time of acceptance: Re Overend, Gurney & Co., Ex parte Swan, L. R. 6 Eq. 356 (1868).

Where the drawer and acceptor receive a commission for drawing and accepting the bill from a person who does not become a party to it, this is an accommodation bill: Overend Financial Corporation v. Overend, L. R. 7 Ch. 142 (1871).

An accommodation bill is not issued until it comes into the hands of some person who can sue upon it: Engel v. Stourton, 5 T. L. R. 441; 53 J. P. 535 (1889); Downes v. Richardson, 5 B. & Ald. 674 (1822).

The possession and negotiation by the maker of a note with the indorsement of the payee import that the indorsement was for accommodation: Oppenheim v. Simon Reiger Cigar Co., 124 N. Y. St. 355 (1904).

Liability of party.

2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew

such party to be an accommodation party or not. 53 V., c. 33, s. 28 (2). Imp. Act, *ibid.* § 55

Accommodation party

The rights of a holder for value have been defined in section 54. An accommodation party occupies the relation of a surety with respect to the person for whose accommodation he has become a party, and may set up any defence connected with the bill that his principal could. He may also be released by the holder giving time to the principal, if the holder is aware of the relation between them: Bechervaise v. Lewis, L. R. 7 C. P. 372 (1872).

ILLUSTRATIONS.

1. A second accommodation indorser who has paid a note, may recover from a prior accommodation indorser: Breeze v. Baldwin, 5 U. C. O. S. 444 (1837).

2. It is no defence by a maker of a note payable to bearer that it was made for the accommodation of a third party, and that plaintiffs hold it without value or consideration: Muir v. Cameron, 10 U. C. Q. B. 356 (1852); overruling on this point Straiby v. Nicholls, 1 U. C. Q. B. 32 (1841).

3. It is no defence by the maker that the plaintiff, indorsee, gave no value to the indorser for his indorsement, or that he took the note knowing that it was indorsed for the accommodation of the maker, without denying that he is holder for value: Miller v. Ferrier, 7 U. C. C. Q. B. 540 (1850).

4. The indorser of a note to enable the maker to get goods from the payee is liable on an action by the payee: Moffatt v. Rees, 15 U. C. Q. B. 527 (1857). See also Peck v. Phippon, 9 U. C. Q. B. 73 (1851); Foster v. Farewell, 13 U. C. Q. B. 449 (1855); Gunn v. McPherson, 18 U. C. Q. B. 244 (1859); Smith v. Richardson, 16 U. C. C. P. 210 (1865).

5. The holder of a bill for value notwithstanding his having subsequently become aware of its being an accommodation bill, may release the drawer without releasing the acceptor: City of Glasgow Bank v. Murdock, 11 U. C. C. P. 138 (1861).

6. Accommodation indorsers, after the note on which they were liable had matured, filed a bill against the holder and maker to enforce payment against the latter. The relief prayed was granted, and the maker was ordered to pay the costs both of the plaintiff and the holder of the note: Cunningham v. Lyster, 13 Grant, 575 (1867).

7. The holder of accommodation paper, knowing it to be such, may rank upon the estate of and discharge the indorsers, and then

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recover the balance from the accommodation maker: Lyman v. Dyon, 13 L. C. J. 160 (1868).

8. The holder for value can recover from the accommodation maker the amount of a note although he was aware of the fact when he took it, and was interested in the transaction out of which it arose: Belque v. Bury, 3 L. N. 160 (1880); Scott v. Quebec Bank, 7 L. N. 343 (1884); Bankers' Iowa Bank v. Mason Land Co., 90 N. W. Rep. 612 (1902).

9. A party who had a note discounted at a bank paid it at maturity without protesting it. He held it for three years without any demand on the maker, although he was a man of small means and needed money. These facts were held to create a strong presumption in favor of the maker, and the endorser, who swore that it was an accommodation note: Rousseau v. Nadeau, Q. R. 19 Q. B. 97 (1909).

10. A manufacturing corporation has no power to bind itself as an accommodation party. The plaintiff must show both the unpaid value and also that he did not know of the accommodation character of the instrument: National Bank v. Snyder Co., 117 App. Div. 370, 136 N. Y. St. 478 (1907).

Holder in due course.

56. A holder in due course is a holder who has taken a bill complete and regular on the face of it, under the following conditions, namely:—

Notice.

(*a*) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact;

Good faith.

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. 53 V., c. 33, s. 29 (1). Imp. Act, *ibid.*

"**Holder in Due Course**" is used in the Act as an equivalent for the old expression, "bona fide holder for value without notice." Holder has been defined in section 2 as the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof: and bearer as the person in possession of a bill or note which is payable to bearer. The rights and powers of a holder, and holder in due course respectively, are set out in section 74. A holder for value, who has taken

a bill under circumstances that do not meet all the conditions of the present section, has all the rights of an ordinary holder, and in addition, those mentioned in sections 54, 55, and 71. § 56 Holder in due course.

It was laid down by Lord Russell, C.J., in Lewis v. Clay, 67 L. J. Q. B. 224, and 11 T. L. R. 149 (1897), that the payee of a note could not become a holder in due course, as it could not be said that the note had been "negotiated" to him in accordance with this section and section 31 (now s. 601. In Herdman v. Wheeler, [1902] 1 K. B. at p. 371, this was questioned, and attention was called to the fact that in the former case the definition of the word "holder" which includes the payee had been apparently overlooked, but it was held that in neither of these cases was it necessary to decide the point.

This latter case was in turn considered by the Court of Appeal in Lloyds' Bank v. Cooke, [1907] 1 K. B. 794. The Master of the Rolls and Cozens-Hardy, L.J., did not think it necessary to base their decision on the sections of the Act, as the defendant who denied his liability to the bank which was the payee of the note there in question was in their opinion liable on the common law doctrine of estoppel which they held still applied to negotiable instruments. Fletcher Moulton, L.J., while agreeing as to the estoppel, was of opinion that the note was negotiated to the bank and that it became a holder in due course.

In Canada it has been expressly held by the Courts of Appeal of Ontario, Quebec and Manitoba that the payee of a note may become a holder in due course: McDonough v. Cook, 19 O. L. R. 267 (1909); Lilly v. Farrar, Q. R. 17 K. B. 554 (1908); Knechtel Furniture Co. v. Ideal House Furnishers, 19 Man. 652 (1911).

In Glenie v. Bruce Smith, [1908] 1 K. B. 263, the defendant had agreed to become responsible for goods sold to the acceptor, and indorsed two blank bills, which were filled up by the drawer for the proper amounts, payable to his own order, and duly accepted. One bill the drawer indorsed above the defendant's signature; the other below. He subsequently

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Conditions.

died. The plaintiffs, his executors, were held by the Court of Appeal entitled to recover, as they were holders in due course of both bills, the same having been filled up in a reasonable time and strictly in accordance with the authority given: also Watson v. Russell, 5 B. & S. 968 (1864); Thorpe v. White, 188 Mass. 333 (1905); Robinson v. Mann, 34 S. C. Can. 181 (1904).

In the negotiation of a bill to a holder in due course the transferrer frequently conveys greater rights than he himself possesses. The bill may have been without value in his hands, or void for fraud, illegality or other defect, but these are cured on its coming into the hands of a holder in due course: Whistler v. Forster, 14 C. B. N. S. 248 (1863).

Complete and Regular on the Face of It. Such a bill must meet all the requirements of the definition in section 17. An undated bill is not invalid: s. 27 (*a*), but it is incomplete and irregular if payable at a fixed period after date. A person taking an incomplete bill, even before maturity and for full value in good faith, does not acquire the rights of a holder in due course, unless it be filled up in a reasonable time, and strictly in accordance with the authority given: s. 32, and Glenie v. Bruce Smith, supra. It is sufficient if the bill is apparently complete and regular: Maxon v. Juckes, 15 O. L. R. 81 (1907).

An unaccepted bill is not on that account incomplete: National Park Bank v. Berggren, 30 T. L. R. 387 (1914).

A person in whose presence the amount of a blank bill, its date, and the time and place of payment, and name of payee, were filled up without authority, cannot become a holder in due course: Demers v. Léveillé, Q. R. 44 S. C. 61 (1913); nor where a material alteration is apparent: Cousineau v. Voskoboinik, Q. R. 45 S. C. 101 (1913).

The fact of a cheque being post-dated does not prevent its being regular within the meaning of this section: Hitchcock v. Edwards, 60 L. T. N. S. 636 (1889); Carpenter v. Street, 6 T. L. R. 410 (1890).

Plaintiff received an overdue bill accepted and indorsed, but not signed by the drawer. He was not a holder in due course: South Wales v. Underwood, 15 T. L. R. 157 (1899). s. 56 Holder in due course.

As to a bill bearing marks of cancellation, see section 143 and notes thereon.

Not Overdue.—The maturity of bills not payable on demand is determined by the rules laid down in sections 12 to 16; those payable on demand are deemed to be overdue when in circulation for an unreasonable length of time: s. 70. A demand note would not be considered overdue for the purposes of the present section, solely on the ground that a reasonable time for presenting it for payment had elapsed since its issue: s. 182.

Without Notice of Dishonour or Defect.—The fact that a bill had been dishonoured by non-acceptance, or if a demand note, for non-payment, would not prevent a person from becoming a holder in due course, if it bore no mark of protest or dishonour, and if he had no notice otherwise: Dunn v. O'Keefe, 5 M. & S. 282 (1816).

Formal notice is not necessary: it is enough that the party have knowledge, or even a suspicion, and that he wilfully shuts his eyes: Raphael v. Bank of England, 17 C. B. 153 (1855); Jones v. Gordon, 2 App. Cas. 616 (1877); Frey v. Ives, 8 T. L. R. 582 (1892); Banque d'Hochelaga v. Grenier, 3 R. J. 86 (1896); Lockhart v. Wilson, 39 S. C. Can. 511 (1907). Mere negligence however on the part of the person taking a bill does not fix him with the defective title of the party passing it to him: Goodman v. Harvey, 4 A. & E. 870 (1836); Bank of Bengal v. Fagan, 7 Moore P. C. 61 (1849).

Notice to the agent is notice to the principal and vice versa, but when a bill is negotiated to one and notice is given to the other, a reasonable time must be given for communication: Willis v. Bank of England, 1 A. & E. at p. 39 (1835); Robinson v. Lister, 7 De G. M. & G. at p. 637 (1855). If the agent is a party to a fraud he is not presumed to have advised his principal of it: Ex parte Oriental Bank, L. R. 5 Ch. 358 (1870).

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Good Faith.—A thing is deemed to be done in good faith within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not: s. 3; see the notes on that section. "Good faith is always presumed. He who alleges bad faith must prove it": C. C. Art. 2202. "Gross negligence may be evidence of bad faith, but it is not the same thing": Lord Denman in Goodman v. Harvey, supra, at p. 881.

For Value.—Value means valuable consideration: s. 2. For the meaning of valuable consideration see section 53, and the notes thereon. Value is presumed to have been given whether the bill or note contains the words "value received" or not: s. 58.

Negotiation of Bill.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. A bill payable to bearer is negotiated by delivery. A bill payable to order is negotiated by the endorsement of the holder completed by delivery: s. 60. The holder need not be the owner of the bill: he may, for example, be merely a pledgee, or hold it for discount, collection, or the like: s. 54, s.-s. 2.

When a note payable to a firm was indorsed and transferred to a member of the firm, any defence that would be good as against the firm is equally good as against the partner: Vezina v. Piché, Q. R. 13 S. C. 213 (1898).

Defects of title.

Defect in Title.—The defects in the title of one negotiating a bill, which prevent the person acquiring it with notice from becoming a holder in due course, are set forth in subsection 2 of the present section.

ILLUSTRATIONS.

1. The fact that the word "renewal" had been written on the back of a note and erased, was not sufficient notice to prevent an indorsee for value before maturity from becoming a bona fide holder: Larkin v. Wiard, 5 U. C. O. S. 661 (1838).

2. The fact of the name of the maker of the note having been used without authority, is a fact material for the jury to consider in connection with other evidence offered to show that the plaintiff took the note with knowledge of the circumstances: Hausseur v. Cotton, 16 U. C. Q. B. 98 (1857).

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Title defective.

3. The fact that a note made by an incorporated company was for the accommodation of another is not sufficient to shift over to plaintiff the onus of proving that he gave value: Merchants Bank v. Ontario Coal Co., 16 Ont. Pr. R. 87 (1894), following Re Peruvian Railways Co., L. R. 2 Ch. 617 (1867).

4. A person receiving in good faith, notes before maturity as collateral security without notice of their bogus nature, is not affected by any equities between the original parties: Wood v. Shaw, 3 L. C. J. 169 (1858); Ward v. Quebec Bank, Q. R. 3 Q. B. 122 (1894).

5. A note was made payable in two years with interest payable annually. The first year's interest was not paid, nor was the note presented at the place of payment. Plaintiffs acquired the note in good faith and for value during the second year. Held, that it was not then overdue, and the plaintiffs were holders in due course: Union Investment Co. v. Wells, 39 S. C. Can. 625 (1908).

6. Where plaintiff knew when he took the note that it was indorsed for the accommodation of the maker by an agent, who had not the right to do so, he cannot recover from the principal on the indorsement: Reinhardt v. Shirley, Q. R. 6 S. C. 11 (1894).

7. The fact that a bill has been torn and the pieces pasted together again, is a sufficient irregularity to prevent the holder becoming a holder in due course: Ingham v. Primrose, 7 C. B. N. S. 82 (1859). See also Scholey v. Ramsbottom, 2 Camp. 485 (1810); Redmayne v. Burton, 2 L. T. N. S. 324 (1860).

8. An indorsee who takes a cheque from the payee knowing that the drawer claimed that it had been delivered only conditionally, and that he had stopped its payment, is not a holder in due course: Semple v. Kyle, 4 Rettie (5th series) 421 (1902).

9. Where a mortgage is given to secure payment of a promissory note, the holder who takes it with knowledge of the mortgage, cannot recover on the note more than is due on the mortgage, if the mortgagor is allowed to deal with the original mortgagee without notice of the transfer: Colonial Investment and Agency Co. v. Maxwell, 8 N. Z. L. R. 656 (1890).

10. The erasure of the name of one of the sureties on a note, is an irregularity which should put the purchaser upon enquiry: Mc-Cramer v. Thompson, 21 Iowa 244 (1866).

11. The erasure of the indorsement of the payee by a thief, was held to be an irregularity sufficiently patent to have put the purchaser on his guard: Colson v. Arnot, 57 N. Y. 253 (1874).

12. If blanks in a note are filled up by a holder with stipulations repugnant to what was previously written, or erasures are made with like intent, this is a sufficient irregularity to prevent a subsequent holder claiming to be a bona fide holder for value without notice: Angle v. N. W. Mutual Life Ins. Co., 92 U. S. (2 Otto) 330 (1875).

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13. Knowledge by a bank that a bill has been accepted for coal to be delivered does not prevent its being a holder in due course, although there is subsequently a failure to deliver the coal: Tradesmen's Nat. Bank v. Curtis, 167 N. Y. 194 (1901).

2. In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. 53 V., c. 33, s. 29 (2). Imp. Act, *ibid.*

This sub-section does not purport to name all the defects that may be in the title of a person negotiating a bill, but merely gives a number of illustrations of the defects of title referred to in the first sub-section. These may be called personal defences as being available against the holder personally, as distinguished from real defences available against the bill itself. A defective title must not be confounded with the case of no title at all, as in the case of a forged endorsement.

The present clause considers the bill with reference to the person responsible for the offences or illegalities mentioned: section 58 considers the question of the validity of the bill in the hands of the person who acquires it from him.

Fraud, etc.

Fraud, Duress, or Force and Fear.—When it was decided to extend the Imperial Act to Scotland, the words "force and fear" were added as the equivalent of "duress," which is not used in Scotch law. The corresponding words in the Civil Code of Quebec are "fraud, violence or fear": Art. 991. They are grounds of nullity not only in bills and notes, but in all contracts under the provincial laws, which however do not differ widely. Such contracts are not absolutely void, they are merely voidable at the option of the party on whom they were practised, or those who are in the exercise of his rights.

Fraud consists in inducing a party to act by some misrepresentation or untrue statement intentionally made for

that purpose. Duress may consist in actual violence to the person or in threats thereof. "Violence or fear is a cause of nullity, whether practised or produced by the party for whose benefit the contract is made or by any other person": C. C. Art. 994. The "other unlawful means" referred to, which when employed would ce a bill or acceptance obtained thereby and constitute a defect in the title of the party negotiating it, would be means similar to those enumerated. Fraud is never presumed, but must be proved: C. C. Art. 993; White Co. v. Cannon, 13 E. L. R. (P.E.I.) 222 (1913).

ILLUSTRATIONS.

See also illustrations under section 58, s.-s. 2.

1. On a settlement, part of the consideration for a note was that certain notes according to a schedule were to be handed over to the maker, and plaintiff fraudulently concealed the fact that he had not all the notes. Held, to be a good defence on the note: McCollum v. Church, 3 U. C. O. S. 356 (1834).

2. When it was alleged that a prior note had been obtained by fraud from the maker, and the note sued on given as a renewal, evidence of the alleged fraud is admissible in the action on the renewal: Dougall v. Post, 5 U. C. Q. B. 554 (1848).

3. Where a note was obtained in exchange for a bill drawn by shippers, but which the latter had no expectation or right to expect would be accepted by reason of their account being overdrawn and notice from the drawees, it was held that the note was obtained by fraud: Gooderham v. Hutchison, 5 U. C. C. P. 241 (1855).

4. Action on a bill drawn by K. upon and accepted by C. and indorsed to plaintiffs. A plea by C. that he was induced to accept by the fraud of the drawers and indorsers, and that it was indorsed to plaintiffs without value, held to be a good defence: Bank of Montreal v. Cameron, 17 U. C. Q. B. 636 (1859).

5. A note was given to the payee and indorser for a share in a company for the sale of a patent alleged to be held by the payee. It was doubtful whether such company ever existed, or the maker of the note ever had a chance to join. Held, that the maker might set up the defence, that it was obtained from him by fraud: Wa[illegible]d v. Jaynes, 22 U. C. C. P. 212 (1872).

6. A note given to plaintiff in consequence of threats to prosecute the maker for perjury and obtaining money on false pretences, cannot be recovered by him: Canada Farmers' M. Ins. Co. v. Watson, 25 U. C. C. P. 1 (1875).

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Fraud, etc.

7. Where defendant's son had committed forgery and the notes sued on were given to plaintiff to prevent the scandal becoming public, they were held to be void: Doyle v. Carroll, 28 U. C. C. P. 218 (1877).

8. Where a husband as the agent of his wife obtained a note by fraud, her title is defective, and a holder for value receiving it after maturity cannot recover: Robertson v. Furness, 43 U. C. Q. B. 143 (1878).

9. The defendant C. being in prison under indictment for assaulting plaintiff, who had also sued him for damages, offered through his counsel, in settlement, an indorsed note for $1,000 which was accepted. The amount was held not to be disproportionate to the injury. The civil action was withdrawn, and the Judge, in view of the settlement and reparation, inflicted a fine merely for common assault. Held, that there was no fraud, and no duress, and no illegal consideration, as the law had been vindicated: Kneeshaw v. Collier, 30 U. C. C. P. 265 (1879).

10. Plaintiff purchased from an alleged company 15 bushels of hull-less oats at $10 a bushel, and received the company's bond to sell 30 bushels for him at the same price. Defendant bought plaintiff's 30 bushels, giving his note for $300 and getting the company's bond to sell 60 bushels for him. The company sold defendant's notes to plaintiff. Both plaintiff and defendant knew this was only part of a series of transactions and that subsequent parties would be defrauded, the oats being worth no more than ordinary oats. Held, that the transaction was part of a fraudulent scheme, was contrary to public policy, and plaintiff's action properly dismissed: Bonisteel v. Saylor, 17 Ont. A. R. 505 (1890).

11. A master gave a female servant his note for $1,500 over and above her wages on condition that she would not then marry, but remain in his service as long as he wanted her. Held, not void for being in restraint of marriage for an unreasonable period: Crowder-Jones v. Sullivan, 9 O. L. R. 27 (1904).

12. A son having acknowledged to have taken $25 from plaintiff, the latter by threatening to have the son arrested, induced the mother to give a note for $400. Held, that there was violence, fear and illegal consideration and she was not liable: Macfarlane v. Dewey, 15 L. C. J. 85 (1870).

13. Where a broker obtained a note to be discounted by a solicitor who advanced the money and shared the profits with him, and an attempt was made by the solicitor's firm to garnish the proceeds in the hands of the broker, the solicitor was held not to be a holder in due course, the broker's knowledge being his knowledge: Millar v. Plummer, 22 S. C. Can. 253 (1893).

14. Where a creditor secured secretly the notes of the insolvent for the balance of his claim, it was a fraud on the indorsers of the composition notes, and they were entitled to the benefit of this payment: Arpin v. Poulin, 1 L. N. 290 (1878).

15. Where an illiterate man thought he was making his mark to a receipt, and plaintiff concealed the fact that it was a promissory note, plaintiff cannot recover: Benoit v. Brais, 6 L. N. 342 (1883). Where an educated man admits his signature, but sets up such a claim, he must prove it very clearly: Darling v. McBarney, Q. R. 6 S. C. 357 (1894).

16. An affidavit by defendant that no value was received for a note is irrelevant and useless, and will be rejected on motion: Sanford Co. v. McLaren, Q. R. 4 S. C. 57 (1892); Vallières v. Baxter, Q. R. 7 S. C. 286 (1894).

17. A note given by defendant without consideration through fear that he would lose his situation if he refused is null: La Banque Nationale v. Hamel, Q. R. 43 S. C. 425 (1913).

18. Where a person takes a note made or indorsed in a partnership name, knowing that it was not made or indorsed for the purposes of the partnership, the onus is cast upon him of showing that the note was signed with the knowledge or assent of every member of the firm: Union Bank v. Bulmer, 2 Man. 380 (1885).

19. A defence that a note was signed under threats of a criminal prosecution, upheld: Commercial Bank v. Rokeby, 10 Man. 281 (1894).

20. Where the drawer of a bill gave it for special purpose to a party who, instead of using it as directed, negotiated it after maturity, the person so acquiring it is not entitled to recover: Lloyd v. Howard, 15 Q. B. 995 (1850).

21. Where a son forged his father's name to certain notes and discounted them in a bank, the forgeries being discovered, the bank caused the father to give security, which he did. Held, that the [illegible]tion was void on the ground of duress and illegal consideration: Williams v. Bayley, L. R. 1 H. L. 200 (1866).

22. In an action on a note given for the compounding of a prosecution for perjury, it was held, following Ex parte Wolverhampton and S. Banking Co., 14 Q. B. D. 32 (1884), that the consent of the magistrate did not make the transaction a lawful one: Bull v. Copeland, 4 T. L. R. 139 (1887).

Illegal Consideration.—Considerations are illegal which violate the rules of morality, which contravene public policy, or which are prohibited by statute. If part of the consideration of a bill be illegal the instrument is vitiated altogether. A renewal, or the substitution of a new instrument for the old one, will not cure the defect. Illegal consideration.

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Illegal consideration.

ILLUSTRATIONS.

See also illustrations under section 58, s.-s. 2.

1. An agreement not to proceed in a prosecution for permitting unlawful gambling in a tavern, is an illegal consideration for a note: Dwight v. Ellsworth, 9 U. C. Q. B. 339 (1852).

2. To support a plea that a note was given in consideration of forbearance to proceed in a prosecution for felony, the particular nature of the charge should be proved: Henry v. Little, 11 U. C. Q. B. 296 (1854).

3. A note given in consideration of a charge of felony being not proceeded with in Utah, is void and cannot be recovered on in Ontario: Toponce v. Martin, 38 U. C. Q. B. 411 (1876).

4. It is no defence to an action on a note that the consideration was for pork speculations in Chicago, which are illegal by the laws of Illinois, the contract which was made in Ontario not being against its laws: Bank of Toronto v. McDougall, 28 U. C. C. P. 345 (1877).

5. Defendant, a J. P., was arrested for embezzling fines belonging to the township. Plaintiff gave his note to the township and took the note of defendant and his wife, and the prosecution was abandoned. Held, that the plaintiff was in no better position than the township, and the note was void for illegal consideration: Bell v. Riddell, 2 O. R. 25 (1882); affirmed 10 Ont. A. R. 544 (1885).

6. A note given for an agreement to release from and for stifling a prosecution for defrauding creditors is void: Leggatt v. Brown, 30 O. R. 299 (1899).

7. The general manager of the Sovereign Bank, who was also vice-president, spent money of the bank in buying shares of the bank "to support the market." He finally persuaded the other directors to take over these shares for themselves and friends, and to give their promissory notes therefor. An action by the liquidator on these notes was dismissed by the Chancellor on the ground of illegality of the consideration. The Court of Appeal held that the illegality of the transaction did not relieve the makers of the notes; that the recouping to the bank of the money which had been unlawfully used in the purchase of the shares was a good consideration as between the bank and the makers of the notes: Stavert v. McMillan, 24 O. L. R. 456 (1911). Affirmed by the Privy Council, July 23rd, 1913.

8. Promissory notes to creditors for the balance of their claim for signing a deed of composition or discharge are void: Blanchwood v. Chinic, 2 Rev. de Lég. 27 (1809); Sinclair v. Henderson, 9 L. C. J. 306 (1865); Deeelles v. Bertrand, 21 L. C. J. 291 (1877); Martin v. Poulin, 1 Dorion, 78 (1880); Gervais v. Dubé, M. L. R. 6 S. C. 91 (1890); Greene v. Tobin, Q. R. 1 S. C. 377 (1892); Collins v. Baril, ibid.; Ross v. Ross, ibid.; Garneau v. Larivière, Q. R. 1 S. C.

891 (1892); Fisher v. Genser, Q. R. 15 S. C. 605 (1898); Budden v. Rochon, Q. R. 15 S. C. 322 (1898); Bellemare v. Gray, Q. R. 16 S. C. 581 (1899). Also a renewal of such note: McDonald v. Senez, 21 L. C. J. 290 (1877); Arpin v. Poulin, 22 L. C. J. 331; 1 L. N. 290 (1878); Wilkes v. Skinner, Ramsay A. C. 82 (1882); Bury v. Nowell, Q. R. 10 S. C. 537 (1896). They are void even when given by a third person: Brigham v. Banque Jacques Cartier, 30 S. C. Can. 429 (1900), following McKewan v. Sanderson, L. R. 20 Eq. 65 (1875), and Re Milner, 15 Q. B. D. 605 (1885).

9. A note given to raise money for corrupt purposes at an election where the maker was a candidate, is null: Gugy v. Larkin, 7 L. C. R. 11 (1857); also a note given as a wager on an election: Dufresne v. Guevremont, 5 L. C. J. 278 (1859).

10. Notes given in excess of composition, held not to be void for illegal consideration: Greenshields v. Plamondon, 8 L. C. J. 192 (1860); Perrault v. Lauria, 8 L. C. J. 195 (1863); Martin v. Macfarlane, 1 L. C. L. J. 55 (1865); Bank of Montreal v. Audette, 4 Q. L. R. 254 (1878); Chapleau v. Lemay, 14 R. L. 198 (1886); Lefebvre v. Berthiaume, 18 R. L. 325 (1889); Racine v. Champoux, M. L. R. 6 S. C. 478 (1890); Lamalice v. Ethier, Q. R. 1 S. C. 377 (1890); Tees v. McArthur, 35 L. C. J. 33 (1891).

11. A note of a third party given by an insolvent to a creditor, to obtain his consent to the discharge of the insolvent, is null and void: Prevost v. Pickel, 17 L. C. J. 314 (1872); Leclaire v. Casgrain, M. L. R. 3 S. C. 355 (1887).

12. A trader obtained from his creditors an extension of time, and a party indorsed the last instalment extension notes, on condition that he would pay into a bank a certain sum per week. He made an assignment before the indorsed notes became due, when about half their amount had been deposited. Held, that the consideration was not illegal, and the assignee could not claim this money without relieving the indorser from his liability: Normand v. Beausoleil, 2 Dorion 215 (1882); affirmed, 9 S. C. Can. 711 (1883).

13. A note given to the collector of revenue for a fine is not null, although the fine belongs in part to the provincial treasury: Bois v. Gervais, 10 L. N. 195 (1887).

14. A note given as a subscription to an election fund for provincial elections is null: Dansereau v. St. Louis, 18 S. C. Can. 587 (1890). Also a renewal of such a note: St. Pierre v. L'Ecuyer, Q. R. 23 S. C. 495 (1902).

15. No action lies on a promissory note given by the proprietor of what is commonly termed a "bucket shop" to plaintiff, a customer, in settlement of speculative transactions between them, i.e., speculations on the rise and fall of prices of goods and stocks, without intention of delivery: Dalglish v. Bond, M. L. R. 7 S. C. 400 (1890). See Forget v. Ostigny, [1895] A. C. 318.

16. A note given for smuggled whiskey is null, and where the holder does not make the proof required by clause (*b*) the action

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will be dismissed: Banque Jacques Cartier v. Gagnon, Q. R. 5 S. C. 499 (1894); Ross v. Gannon, 39 S. C. Can. 675 (1906).

Illegal consideration.

17. Where a year after a composition, the debtor applied to the creditor for a new credit, and then gave a note for the old unpaid balance there was held to be a valid consideration: Bédard v. Caput, Q. R. 15 S. C. 572 (1899).

18. A father is liable for his notes given to cover the defalcations of his minor son: Corbett v. Murray, 7 R. J. 203 (1900).

19. A note given for the insurance of the furniture in a house of ill-fame is an illegal and immoral contract, and will not be enforced by the courts: Bruneau v. Laliberté, Q. R. 19 S. C. 425 (1901).

20. The maker of a note who had forged an indorsement upon it and discounted it in a bank, induced defendant to indorse a note for him to retire the first. The bank was aware of the forgery, defendant was not. The latter was held liable: Banque Nationale v. Drolet, Q. R. 28 S. C. 146 (1905).

21. A note given for a gambling debt (bucket shop) is void, and the action will be dismissed, although this is not pleaded: Allan v. Robert, 2 E. L. R. (Que.) 556 (1907). A cheque given for a gaming debt is void under C. C. Art. 1927: Riopelle v. Riopelle, 19 R. L. N. S. 249 (1913).

22. A note given in part for illegal sales of liquor is wholly invalid: Smith v. McEachren, 7 N. S. (1 G. & O.) 299 (1868). St. Charles v. Vassalo, 45 N. S. 195 (1911); Wilson v. Mayflower Bottling Co., 13 E. L. R. (N.S.) 489 (1913).

23. A note given to a hotel-keeper in part for liquor is wholly void: Benard v. McKay, 9 Man. 156 (1893).

24. A cheque given in payment of bets on a horse-race is void in hands of a holder for value with notice of the consideration: Woolf v. Hamilton, [1898] 2 Q. B. 337.

25. A promissory note given as collateral security for an illegal contract or agreement, and in effect as part of the same transaction, is tainted with the same illegality, and an action cannot be maintained upon it: Byrne v. O'Callaghan, 13 V. L. R. 924 (1887).

26. It is no defence to an action against an acceptor, that the bill was given for bets on horse races, made by the drawer as his agent, and paid without his request: Oulds v. Harrison, 10 Exch. 572 (1854).

27. A cheque on a London bank given for a gambling debt in a country where gambling is not illegal, cannot be collected in England: Moulis v. Owen, [1907] 1 K. B. 746; especially if it has been obtained by threats of criminal proceedings: Société de Hotels v. Hawker, 29 T. L. R. 578 (1913).

28. Defendant gave a cheque for a bet won by plaintiffs, made a partial payment on it, and requested plaintiffs to hold it over and not declare them defaulters, and so injure them with their customers, giving a verbal promise to pay the balance in a few days. Held on an appeal that refraining from posting defendants as defaulters was a sufficient consideration to pay the balance. Moulton, L.J., dissented on the ground that the cheque being void, the giving of time was not a good consideration: Hyams v. King, [1908] 2 K. B. 696. § 56

29. Notes given in part for the costs of a *qui tam* action settled without the consent of the Crown or the Court, are void *pro tanto* between the original parties, part of the consideration being illegal: Laprès v. Massé, Q. R. 19 S. C. 275 (1901).

57. A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. 53 V., c. 33, s. 29 (3). Imp. Act, *ibid.* Right of subsequent holder.

A holder for value is defined in section 54; a holder in due course in section 56.

It is only one who has been a party to the fraud or illegality, that is precluded from acquiring all the rights and privileges of a holder in due course. Previous notice or knowledge of the original defect in the bill is not sufficient. See Embrey v. Jemison, 131 U. S. 336 (388).

ILLUSTRATIONS.

1. The indorsee of a note given for lottery tickets, who received it from a bona fide holder for value without notice before maturity, can recover from the maker, even although he knew what the consideration was when he acquired the note: Wallbridge v. Becket, 13 U. C. Q. B. 395 (1855).

2. Where a bona fide holder for value transferred a note to plaintiff, the latter was entitled to recover although he may have known of previous fraud in connection with the note: Clarkson v. Lawson, 14 U. C. Q. B. 67 (1856).

3. B. indorsed a note for C. to renew another note indorsed by him for C.'s accommodation. C. transferred the note for value to plaintiff, who knew no more than that B. was an accommodation indorser; there was no bad faith on plaintiff's part. Held, that he was entitled to recover: Cross v. Currie, 5 Ont. A. R. 31 (1880).

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Illustrations.

4. A person receiving after its maturity an accommodation [illegible] from a holder in due course, may recover from the maker: Pich v. Lajoie, 10 L. N. 266 (1887).

5. A third party cannot recover from the maker the amount of a promissory note obtained by fraud, if such third party was aware of the fraud before the note was transferred to him, although the transfer was made by an indorser who took it before maturity in good faith and for value: Baxter v. Brunoau, 17 R. L. 359 (1888). Contra, above section of Act.

6. Plaintiff acquired for value a cheque after payment had been stopped to his knowledge, but derived title through an indorser who was a holder in due course. He can recover against the drawer and defendants the indorsers prior to such holder in due course: Gaun[illegible] v. Reinhardt, Q. R. 26 S. C. 134 (1904).

7. The indorsee of a note who received it after maturity from a holder in due course, is not affected by the fact that his indorser was aware before he transferred it to the indorsee that it had been issued by a partner in fraud of the partnership. McLeod v. Carman, 12 N. B. (1 Han.) 592 (1869).

8. The indorsee of a bill sues the acceptor who proves that he accepted it for the accommodation of the drawer. This does not make it necessary for the indorsee to prove that he gave value: Mills v. Barber, 1 M. & W. 425 (1836).

9. A partner fraudulently indorses a firm bill to D. for a private debt. F. is aware of the fraud but not a party to it. D. indorses the bill for value to E., who accepts it in good faith. E. indorses it to F., who thereby acquires all E.'s rights. If he gave value for the bill he can sue all parties; if he did not give value, he can sue all except E.: May v. Chapman, 16 M. & W. 355 (1847). See also Masters v. Ibberson, 8 C. B. 100 (1849); Marion Co. v. Clarke, 94 U. S. (4 Ot[illegible] 278 (1876).

10. C[illegible] by fraud induces B. to make a note in his favor, which he indorses to D. for value without notice. Subsequently D. indorses it back to C. for value. C. cannot collect the note from B.; Sawyer v. Wiswell, 91 Mass. 42 (1864); Andrews v. Robertson, 87 N. W. Rep. 190 (Wisc. 1901).

Presumption of value.

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

Due course.

2. Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear,

or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course. 53 V., c. 33, s. 30 (1), (2). Imp. Act, *ibid.* § 58

Presumption of value.

Value is defined in section 2 as valuable consideration, which is defined and illustrated in section 53 and the notes thereon.

A party to a bill who disputes his liability on the ground that he is only an accommodation party, or a surety for some other person, should make clear proof of such claim. Even if the bill contain the words "value received" or otherwise declare that value was given, the contrary may be proved by parol: see p. 170. Evidence to rebut the presumption of value must be clear: mere improbability of the existence of a debt is not sufficient: Larraway v. Harvey, Q. R. 14 S. C. 97 (1898).

"Illegality" in this section is used as the equivalent of "other unlawful means" and "illegal consideration" in section 56, s.-s. 2. "Good faith" is defined in section 3, and a thing is deemed to be done in good faith when it is done honestly.

The latter part of sub-section 2 in the Imperial Act reads as follows:—"The burden of proof is shifted unless the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill." There is probably no difference in the effect of the two clauses.

In Talbot v. Von Boris, [1911] 1 K. B. 854, it was held by the Court of Appeal, where there was no evidence as to knowledge of duress by the plaintiff, that the onus of proof of such knowledge lay upon the defendant, and that the latter part of the subsection just quoted does not apply to a case where the holder seeking to enforce the instrument is the person to whom it was originally delivered, and in whose

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Presumption of value.

possession it remains; so that the Imperial Act was strued in accordance with the clear meaning of our le tion.

ILLUSTRATIONS.

See Illustrations under section 56, s.s. 2.

1. Where in an action on a note payable to A. it was that B. indorsed it and brought it to A., who indorsed it accommodation: Held, that want of consideration could not o facts be inferred, as between the maker and B., and plaintiff w obliged to prove consideration: Muir v. McLean, 1 U. C. Q. (1841).

2. In an action on a note where defendant pleads no cons tion, he must impeach it, the plaintiff need not prove it in t instance: Sutherland v. Patterson, 1 Rob. & Jos. Dig. 511 Gardner v. Lecker, 16 R. L. N. S. 11 (1909).

3. Where a note is obtained by fraud or affected by ill on the part of an indorser, plaintiff must prove that he is a fide indorsee for value: Maulson v. Arrol, 11 U. C. Q. B. 81

4. Where the indorser indorsed the note while in blank, being no maker's name, or any sum or payee expressed, and peared that the maker's name was afterwards signed without ority: held, that the indorsee suing must shew himself a bon holder for value: Hanscome v. Cotton, 15 U. C. Q. B. 42 (1857

5. The presumption of value having been given recogniz by this section is not sufficient to protect an executor who pays of the testator, after notice that they were given without con ration, and were intended as gifts to the payees: Re Williams, 27 O R. 405 (1896).

6. Where defendant swears to fraud he is entitled to u tional leave to defend, although plaintiff swears he is a hold value: Farmer v. Ellis, 2 O. L. R. 544 (1901); Flour City Ba v. Connery, 12 Man. 305 (1898) Fuller v. Alexander, 47 L. T. N. S 443 (1882).

7. Proof of fraud in the making of the note, casts up the holder a third party the burden of showing that he is a bo fide holder for value: Withall v. Ruston, 7 L. C. R. 399 (1857) See also Hunt v. Lee, 2 Rev. de Lég. 28 (1819); Robinson v. Scott, Ramsay A. C. 83 (1875); Banque Jacques Cartier v. Gagnon 6 S. C. 88 (1891); Kern v. Tamblyn, 7 Sask. 64 (1914).

8. The presumption created by the words "value receiv d" is not only destroyed by proof that the note was obtained fr the maker by fraud, but the presumption then is that the tra feree before maturity has not given value and is not owner of the note: Baxter v. Bilodeau, 9 Q. L. R. 268 (1883).

§ 58 Illustrations.

9. Where a note is transferred by indorsement before maturity, but it is proved that it was obtained from the maker by fraud, it does not come under the general rule laid down in Art. 2287 C. C., and the onus of showing that he is in good faith falls upon the holder: Belanger v. Baxter, 6 L. N. 113 (1883).

10. Where a note was obtained from the maker by fraud and without consideration, the holder cannot recover unless he proves that he received the note before maturity, for good and valuable consideration, and in ignorance of the circumstances under which it was given: Dumas v. Baxter, 11 R. L. 196 (1885); Exchange Bank v. Carle, M. L. R. 3 Q. B. 61; 31 L. C. J. 90 (1887); or that some previous bona fide holder after the fraud had given value: Robinson v. Beudel, 29 T. L. R. 175 (1913).

11. Before the Act there was the same presumption in favor of the holder: Bard v. Francoeur, Q. R. 7 S. C. 315 (1894).

12. Defendants proved that the note was for the accommodation of a third party and not authorized; but there was no defence of illegality or fraud. Held, that the onus was not on plaintiffs to prove that they were holders in due course: Farmers' Bank v. Dominion Coal Co., 9 Man. 542 (1893).

13. Where there is illegality and the plaintiff proves simply that he gave value, but not that he or any previous holder took the note in good faith, and had no notice of the illegality, he is not a holder in due course: Gibson v. Coates, 1 W. L. R. (Man.) 556 (1905).

14. The holder of a note sues the maker. It is proved that it was given for an illegal consideration. Plaintiff must prove that he gave value: Bailey v. Bidwell, 13 M. & W. 73 (1844).

15. The indorsee of a note sues the maker, who proves that it was given for a wager, which is a consideration void by statute, but not prohibited under a penalty. Plaintiff is not obliged to prove that he gave value: Fitch v. Jones, 5 E. & B. 238 (1855).

16. Where the plaintiff drew a cheque to the order of the defendant, and gave it to a third party, who was to deliver it only on certain terms, but who delivered it unconditionally to the defendant, who gave value for it in good faith, the latter was held entitled to keep the cheque: Watson v. Russell, 3 B. & S. 34 (1862); affirmed 5 B. & S. 968 (1864).

17. A firm sued as acceptors prove that it was signed by one partner for a private debt in fraud of the others. Plaintiff must prove that he is a holder for value: Hogg v. Skeen, 18 C. B. N. S. 426 (1865).

18. The owner of a negotiable instrument which has been stolen has no title to it against a bona fide holder for value, although he has prosecuted the thief to conviction: Chichester v. Hill, 52 L. J. Q. B. 160 (1882).

19. Where authority was given to fill in the name of a firm as drawers of a bill, and a partner filled in his own name as drawer

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and accepted the bill in the firm name in fraud of the partners, the latter was held not liable, as the holder had not exercised due care and did not prove that he had given value in good faith: Oakley v. Boulton, 5 T. L. R. 60 (1888).

Presumption of value.

20. Where there was evidence that the acceptor of a bill had handed it to L. to get it discounted for him, but instead of doing so, L. had fraudulently handed it to the drawer, who negotiated it, the burden of proof is on the holder to prove both that value had been given, and that it had been given in good faith without notice of fraud: Tatam v. Haslar, 23 Q. B. D. 345 (1889).

21. Sub-section 2 of section 30 of the Imperial Act does not affect or vary the practice of the Chancery Division in dealing with an application for an injunction to restrain negotiation of a bill of exchange, and an acceptor or holder who applies for an injunction in such a case, even though he alleges fraud, must still be prepared, as formerly, to pay the amount of the bill into court or give security: Hawkins v. Ward, W. N. Nov. 29th, 1890, p. 203. The sub-section relates to the proceedings at a trial, and the shifting of the burden of proof after evidence has been given of fraud, etc: Hawkins v. Troup, 7 T. L. R. 104 (1890).

Usurious consideration.

59. No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract. 53 V., c. 33, s. 30.

Usury laws.

The Imperial Act does not contain any provision similar to this, which was taken in substance from R. S. C. (1886) c. 123, s. 17, where however it applied to Ontario alone, having been enacted for Upper Canada when the usury laws were in force there. There was a similar provision for Quebec in Art. 2335 of the Civil Code. It is now practically obsolete in Canada. The Act, 53 V. c. 34, s. 2, which immediately follows the Bills of Exchange Act in the statutes of 1890, and which came into force on the day of its assent May 16th, 1890, repealed all the subsisting usury laws which remained in force from old provincial enactments, and which were embodied in the Revised Statutes of Canada (1886) as chapter 127, with varying provisions applicable to the provinces of Ontario, Quebec, Nova Scotia and New Brunswick respectively. Since then any individual or corporation, in

the absence of some special statutory prohibition, might stipulate for, allow, and exact, on bills and notes, or on any other contract or agreement, any rate of interest or discount which is agreed upon: R. S. C. c. 120, s. 1. By section 91 of the Bank Act, chartered banks are not allowed to take more than 7 per cent. They do not however incur any penalty or forfeiture for usury.

Money-lenders' Act.

The Money-Lenders' Act of 1906, R. S. C. c. 122, provides that notwithstanding the above provision of the Interest Act, no money-lender shall stipulate for, allow or exact on any negotiable instrument concerning a loan under $500 a rate of interest or discount greater than 12 per cent., and interest shall be reduced to 5 per cent. from the date of a judgment for the amount due. The holder in due course of a negotiable instrument discounted by a preceding holder at a rate over 12 per cent. may recover the amount thereof, but the party paying may reclaim from the money-lender any amount paid for interest or discount above the amount allowed by the Act. Any money-lender violating the Act is guilty of an indictable offence and liable to imprisonment for a year or to a penalty not exceeding $1,000.

The section would protect the holder in Canada of a foreign bill, which might have been voided for violation of the foreign usury laws. It will be observed that it is not merely a holder in due course, or even a holder for value that is protected; but any holder who had not at the time of the transfer to him of the bill, actual knowledge of the illegality.

NEGOTIATION.

Sections 60 to 74 inclusive treat of the negotiation of bills. The Act treats only of the negotiation or transfer of bills according to the law merchant, that is, by delivery when a bill is payable to bearer, and by endorsement and delivery when it is payable to order.

Other methods by which negotiable bills may be transferred, or the methods by which non-negotiable bills may be transferred, are not considered at all. These are left to the operation of the ordinary laws. It is to be observed that

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by none of these other methods can a transferee become a holder in due course or acquire greater rights than were possessed by the transferrer.

Thus bills, whether negotiable or non-negotiable, may pass by death, by assignment in bankruptcy, by ordinary execution, by gift, by donatio mortis causa, or by any method recognized by the law of the respective provinces.

By transfer.

60. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. 53 V., c. 33, s. 31 (1). Imp. Act, *ibid.*

To payee.

"Holder" has been defined in section 2 as the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof. He need not be the owner, he may have it merely for discount, collection or the like, or may even hold it unlawfully; so that the negotiation of a bill or note is not necessarily a sale of the instrument, but may be a pledging or a mere transfer of possession, provided the transferee is in a position thereby to acquire the status of a holder as above defined. As to the rights of a holder, see section 71.

In Herdman v. Wheeler, [1902] 1 K. B. 361, it was held that the delivery of the note of a third party to the payee who gave value for it was not a negotiation of it within the meaning of what in the Canadian Act is section 32 or 56: that the note was "issued" to him, but not "negotiated." This case was questioned in Lloyd's Bank v. Cooke, [1907] 1 K. B. 794; but the Court did not find it necessary to decide the point. Fletcher Moulton, L.J., however, expressed his opinion that it was negotiated to the payee and that he became a holder in due course under sections corresponding to 32 and 56, a view affirmed by the Court of Appeal in Glenie v. Bruce Smith, [1908] 1 K. B. 263.

The decisions in the United States have also been conflicting. Hall v. Cordell, 142 U. S. 116 (1891), Blakeston v. Dudley, 5 Duer (N.Y.) 373 (1856), Vander Ploeg v. Van Zunk (Iowa) 112 N. W. R. 807 (1907) agree with Herdman

v. Wheeler. Contra, Boston Steel & Iron Co. v. Steuer, 183 Mass. 140 (1903); Thorpe v. White, 188 Mass. 333 (1905). § 60

By transfer.

In Crouch v. Credit Foncier, L. R. 8 Q. B. (1873), at p. 381, Lord Blackburn speaks of negotiation as follows:—"In the notes to Miller v. Race in Smith's Leading Cases, where all the authorities are collected, the very learned author says: 'It may therefore be laid down as a safe rule, that where an instrument is by the custom of trade transferable, like cash, by delivery, and is also capable of being sued upon by the person holding it pro tempore, then it is entitled to the name of a negotiable instrument, and the property in it passes to a bona fide transferee for value, though the transfer may not have taken place in market overt.' Bills of exchange and promissory notes, whether payable to order or to bearer, are by the law merchant negotiable in both senses of the word." See also Wookey v. Pole, 4 B. & Ald. at p. 10 (1820); and Swan v. N. B. Australasian Co., 2 H. & C., at p. 184 (1863).

Where a merchant in London, England, drew upon a firm in Toronto, who accepted payable in London, it was held that the bill was not negotiated in Upper Canada within the meaning of the statute 12 V. c. 76: Foster v. Bowes, 2 U. C. P. R. 256 (1857).

The validity of the transfer of a bill like that of a chattel is determined by the law of the country where the transfer takes place: Embiricos v. Anglo-Austrian Bank, [1905] 1 K. B. 677.

One who personates the holder or makes title through a forged indorsement is not the holder: Smith v. Union Bank, L. R. 10 Q. B. 295 (1875).

2. A bill payable to bearer is negotiated by delivery. 53 V., c. 33, s. 31 (2). Imp. Act, *ibid.* By delivery.

Bearer is defined in section 2 as the person in possession of a bill or note which is payable to bearer, that is, one which is expressed to be so payable, or on which the only or last endorsement is in blank, or where the payee is a fictitious or

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non-existing person: s. 21. Delivery is transfer of possession, actual or constructive, from one person to another: s. 2.

By delivery.

The conditions and presumptions regarding delivery are set out in sections 40 and 41.

Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a transferrer by delivery: s. 137. See section 138 and the notes thereon as to the liability of a transferrer by delivery.

The holder of a bill payable to bearer may endorse it before delivering it, and he then becomes an endorser and liable as such; but in such a case the endorsement is no part of the negotiation but precedes it: s. 131.

By endorsement.

3. A bill payable to order is negotiated by the endorsement of the holder completed by delivery. 53 V., c. 33, s. 31 (3). Imp. Act, *ibid.*

A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer, or indicating an intention that it should not be transferable: s. 22. The conditions necessary to a valid endorsement are set out in section 62 and the different kinds of endorsement in sections 63 and 64. The endorsement and delivery must be by the same person. The delivery in order to be effectual must be made either by or under the authority of the party endorsing: s. 40. Where the payee of a note indorsed it in blank before his death, and his executrix delivered it to plaintiff, it was held that the latter could not recover: Bromage v. Lloyd, 1 Ex. 32 (1847); Clark v. Boyd, 2 O. S. 56 (1825); Clark v. Sigourney, 17 Conn. 511 (1846).

A promissory note executed before a notary in Quebec is an ordinary promissory note and negotiable by indorsement in the ordinary way: Morrin v. Légault, 3 L. C. J. 55 (1859); Aurèle v. Durocher, 5 R. L. 165 (1873); overruling Brunet v. Lalonde, 16 L. C. R. 347 (1866), where it was held that it could be negotiated only by special indorsement.

A bill of exchange was indorsed to the order of the Bank of Nova Scotia at Amherst, and by the agent at Amherst to the order of the Bank of Nova Scotia at Halifax "for collection." It was dishonoured by non-payment and returned to the agent at Amherst, who sold it to L. without indorsing it. L. was sued by the assignee of the drawers, and pleaded the bill by way of set-off. Held, that he could not do so without indorsement: Forsyth v. Lawrence, 19 N. S. 148; 7 C. L. T. 174 (1886). § 60

On the death of the holder of a bill payable to his order all his rights pass to his executors or personal representatives, who may negotiate it by indorsement: Robinson v. Stone, 2 Str. 1260 (1746). So also if a bill be made payable to a dead man in ignorance of his death: Murray v. E. I. Co., 5 B. & Ald. 204 (1821).

Where a note is payable to the order of an unincorporated company, the endorsement by the "president" and the "financial secretary" is insufficient: Cooper v. McDonald, 19 Man. 1 (1909).

Negotiation in this sub-section is a transfer by the law merchant, and has no reference to a transfer that may take place under the provincial law in various other ways, as by sale or assignment, by transmission, by death, by will, or by gift: Re Barrington, 2 Scho. & Lef. 112 (1804). Where the plaintiff acquired all the assets of an estate including a note payable to order and not indorsed, he could not sue on it as a holder, but only as the purchaser of a debt or right of action, and must give notice to the maker under C. C. 1571: Clonbrook v. Browne, Q. R. 18 S. C. 375 (1906).

61. Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferrer had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferrer. 53 V., c. 53, s. 31 (4). Imp. Act, *ibid.* Without endorsement.

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Without endorsement.

Such transfer may be made to a purchaser or to a pledgee. While the bill remains payable to the order of the transferrer, the transferee is not the holder of the bill, even if he has given full value for it. Even if he receive it before maturity, he cannot become a holder in due course, and does not acquire a better title than the transferrer had. He holds the bill subject to any defect of title in the transferrer, of which he becomes aware before the endorsement of the bill to him, and if it is not indorsed before maturity, it is subject to any defects of title that existed in the transferrer. This is in accordance with principle. In the interest of commerce, the law makes an exception to the general rule, which is that no person can give to another greater rights than he himself has. This exception being part of the law merchant, it applies only where a transfer takes place according to the law merchant, and the law merchant does not recognize any transfer of a bill payable to order, except by endorsement. The bill is not "negotiated" until it is endorsed, and the transfer dates from that time: Whistler v. Forster, 14 C. B. N. S. 258 (1863). The claim for the indorsement and on the bill may be combined: Walters v. Neary, 21 T. L. R. 146 (1904).

In a Scotch case where the payee of a bill transferred it for value without indorsing it, it was held that the transferee was entitled to recover from the acceptor: Hood v. Stewart, 17 Court of Sessions Cases, 749 (1890).

In a Quebec case, Dupuis v. Marsan, 17 L. C. J. 42 (1872), it was held that the transferee of a note for $35 payable to order, could become the holder without indorsement by the payee, and that he might prove the transfer by parol under Art. 1233 of the Civil Code, which says that proof may be made by testimony in all matters in which the sum in question does not exceed $50. In another Quebec case it was held, that where the payee of a note, payable to order, gave it without indorsing it as collateral security to a creditor, and the payee became insolvent and his whole estate was sold by the assignee to the creditor who held the note, such sale and transfer was equivalent to indorsement, and he could collect from the maker: Guerin v. Orr, 5 L. N. 379 (1882). The former of these decisions at least is not in

accordance with the present Act, or indeed with Article 2286 of the Civil Code. § 61

Where the maker of a promissory note payable to his own order, transferred it for value without indorsing it, he was held liable to the transferee, and a judgment ordering him to indorse it held to be superfluous: Coutu v. Rafferty, M. L. R. 7 S. C. 146 (1891). In this case indorsers were held liable without protest as indorsers "ponr aval"; but one of them appealed, and it was held that the instrument was not really a promissory note and he was not liable: Trenholme v. Coutu, Q. R. 2 Q. B. 387 (1893). Where a note is not indorsed by the payee the presumption is that it is still his property: Demers v. Hogle, Q. R. 7 S. C. 476 (1895).

If the transferrer refuses to indorse the bill, the transferee has a right of action to compel him: Ex parte Greening, 13 Ves. 206 (1806): Day v. Longhurst, 62 L. J. Ch. 334 (1893). Right to compel indorsement.

If the transferrer should die before indorsing, his personal representatives would be subject to the same obligation. Where such indorsement has been omitted by mistake, the transferee has not the right to sign the name of the transferrer in order to perfect his title: Harrop v. Fisher, 10 C. B. N. S. 196 (1861). Transfer.

A payee who has transferred for value without indorsing may be made a party: Vandal v. Domville, 20 R. L. 305 (1890).

A promissory note was transferred by delivery to the plaintiffs by way of pledge to secure repayment of an advance. There was no intention on the part of the transferrer to transfer the whole of his rights in the note, nor to indorse it. It was held that the plaintiffs could not recover from the maker: Good v. Walker, 61 L. J. Ch. 736 (1892).

Where it was shewn that the drawer of a bill made the bank where it was made payable the payee merely for the purpose of collection, and the bank returned it to the drawer after dishonour, it was held that the drawer could recover from the acceptor without indorsement by the bank: Nova

§ 61 Scotia Carriage Co. v. Lockhart, 1 E. L. R. (N.S.) [illegible] (1906). The drawer was not the holder under s. 2 (g), and had not the right to sue on the bill under s. 70; nor does it appear that he had such right under any provincial law.

Representative capacity.

2. Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability. 53 V., c. 33, s. 31 (2). Imp. Act, *ibid.*

This sub-section would be applicable where bills or notes were made payable to the order of persons who died or lost their capacity before endorsing them when executors, administrators, tutors, or curators would require to do so. Endorsing in such capacity would ordinarily relieve them from personal liability: s. 61; but it would be prudent in these cases to add such words as "without recourse" or "without recourse to me personally": s. 34; Ex parte Mowbray, 1 Jac. & W. 428 (1820); Watkins v. Maule, 2 Jac. & W. 243 (1820). The mere addition to the signature of words describing the signer as an agent or as filling a representative character does not exempt him from personal liability: s. 52

Endorsing.

62. An endorsement in order to operate as a negotiation,—

Writing.

(*a*) must be written on the bill itself and be signed by the endorser;

Entire bill.

(*b*) must be an endorsement of the entire bill 53 V., c. 33, s. 32 (1). Imp. Act, *ibid.*

(*a*) According to subsection 3 of section 60 a bill payable to order is negotiated by the endorsement of the holder completed by delivery. The present section sets out the conditions of such an endorsement. In the first place it must be "written." This, as we have seen, according to the Interpretation Act, R. S. C. c. 1, s. 34 (31), includes words printed, painted, engraved, lithographed or otherwise traced or copied. A stamp is frequently used by banks and other corporations

so that the only writing is the signature of the officer who executes it. The endorser need not sign with his own hand; his signature may be written by some one authorized by him: ss. 4 and 51. The endorsement and signature may be in pencil: ante p. 41. As to what is sufficient signature, see page 48. § 62

Indorsement in its literal sense means writing one's name on the back of the bill, but the indorsement may be on any part of it, even on the face: Young v. Glover, 3 Jur. N. S. Q. B. 637 (1857); Ex parte Yates, 2 De G. & J. 191 (1858); Carrique v. Beaty, 28 O. R. 175 (1896); Tapley v. Paquet, Q. R. 38 S. C. 292 (1910); Arnot v. Symonds, 85 Penn. St. 99 (1877). Where a person signs a bill otherwise than as a drawer or acceptor, he is liable as an endorser: s. 131.

An agreement in writing to indorse a bill is not an indorsement: Rose v. Sims, 1 B. & Ad. 521 (1830); Harrop v. Fisher, 10 C. B. N. S. at p. 204 (1861). Nor is the assignment of a bill by a separate writing: Re Barrington, 2 Scho. & Lef. 112 (1804); Ex parte Harrison, 2 Brown C. C. 615 (1789). The latter may be a transfer of all the rights of the holder to the transferee, but it does not operate as a commercial negotiation under the law merchant, to which the law accords special privileges, one of them being that the holder may give to his transferee greater rights than he himself has, when the latter is in the position to become a holder in due course. Not an indorsement. Negotiation.

A bank stamped its name on cheques which it was sending through the clearing house. This was for the purpose of identifying them as its property, and not for negotiation. It was not an indorsement: Rex v. Bank of Montreal, 10 O. L. R. at p. 135 (1905).

Only one part of a bill in a set should be endorsed: s. 159.

ILLUSTRATIONS.

1. The following words over the signature of the payee on the back of a bill are a good special indorsement: "I hereby assign this draft and all benefit of the money secured thereby to J. G.": Richards v. Frankum, 9 C. & P. 225 (1840); Sears v. Lantz, 47 Iowa, 658 (1878); Hatch v. Barrett, 34 Kansas, 223 (1885).

2. The holder of a note writes on the back, "I bequeath—pay the within to D. or his order at my death," signs it and gives it to

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D. This is not an indorsement: Mitchell v. Smith, 33 L. J. [illegible] 596 (1864).

3. In Michigan it has been held that the words, "I transfer [illegible] right, title and interest in the within note to Y," over the signature of the indorser on the back of a note, do not operate as a commercial indorsement, but only as an ordinary assignment, and if for value before maturity, do not give the transferee any higher or greater rights than the transferrer possessed: Aniba v. Yeomans, 39 Mich. 171 (1878). This has been criticized and not followed in other States: 1 Daniel, § 688*b*.

Allonge.

2. An endorsement written on an allonge, or on a *copy* of a bill issued or negotiated in a country where *copies* are recognized, is deemed to be written on the bill itself. 53 V., c. 33, s. 32 (1). Imp. Act, *ibid.*

An allonge (literally lengthening or elongation) is a paper attached to the bill to receive endorsements, when there is no longer room for them on the back of the bill itself.

Copies of bills are not used in England, Canada or the United States: but on the continent of Europe, where the practice of drawing bills in sets is not followed, copies are sometimes used for convenience of transfer while the original is being forwarded for acceptance: Nouguier, § 208.

Partial endorsement.

3. A partial endorsement, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill. 53 V., c. 33, s. 32 (2). Imp. Act, *ibid.*

Three may be a partial acceptance of a bill: s. 38, s. 3 (b) An endorsement of such a bill would be valid. It would be an endorsement of the entire bill as accepted. An endorsement of part of the bill does not constitute the indorsee a holder or give him the rights of a holder. A person who has made himself liable on a bill cannot be compelled to defend two actions on it instead of one. See Hawkins v. Cardy, 1 Ld. Raym. 360 (1704): Jones v. Bond-

hurst, 9 C. B. 173 (1850); Heilbut v. Nevill, L. R. 4 C. P. at p. 358 (1869); Miller v. Bledsoe, 2 Ill. 530 (1838). § 62

The endorsement of a bill partly paid would be for the entire balance due.

63. The simple signature of the endorser on the bill without additional words, is a sufficient endorsement. Signature sufficient.

2. Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others. 53 V., c. 33, s. 32. Imp. Act, *ibid.* Two or more payees.

This simple method of forming a contract by a signature alone without words is part of the law merchant. In the case of a corporation the seal alone is sufficient, but is not necessary: s. 5. As to what is a signature under the Act, see p. 18.

It can perhaps hardly be said that there is any very well settled rule as to the manner in which endorsements should be made. It is important that the signature would follow as closely as practicable the form of the name as given in the bill or special endorsement. The following will probably be found to be in accordance with the best commercial usage:— Manner of endorsement.

Use the Christian name or initials as in the bill or special endorsement if there be no mistake in the name as there given and no misspelling, dropping all prefixes and suffixes such as "Mr.," "Mrs.," "Miss," "Messrs.," "Hon.," "Esq.," etc. Where for the purpose of identification, an addition follows, such as "merchant," "M.D.," "M.P.," "K. C." or the like, it may be well to add this to the signature. A bill to the order of Mrs. John Smith may be endorsed "Mary Smith, wife of John Smith": or a bill "to the estate of John Jones, or order," by "A. B., executor or administrator late John Jones": a bill "to the order of the City Treasurer, Toronto," by "A. C., City Treasurer, Toronto"; a bill to the order of "The Canada Gas Co.," by "The Canada Gas

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Manner of endorsement.

Co., per E. F., Manager"; a bill "to the order of John Smith & Co.," if by a partner, should be indorsed simply "John Smith & Co.," and if by another person authorized by the firm "John Smith & Co., per G. H., Atty.," or "per G. H."

Signatures such as the following should be avoided, partly on the ground of ambiguity, and partly on account of the danger of the agent or representative making himself personally liable:—"A. B., agent for C. D.," "Per proc. E. F., G. H.," "J. K., for the L. M. Co.," "J. K., for L. M. & Co." "J. K., for the estate of L. M."

Two or more Payees or Endorsees.—This clause is an example of the custom of merchants having overcome the law as laid down by the judges. In the case of Carvick v. Vickery, 2 Douglas 653 n. (1781), action was brought upon a bill drawn by two persons, not partners, payable "to us or our order," and endorsed by only one of them in his own name. The full Court unanimously set aside a nonsuit, Lord Mansfield remarking that the drawers by making the bill payable "to our order" had made themselves partners as to this transaction. At the new trial the defence stated and offered to prove, that by the universal usage and understanding of all the bankers and merchants in London, the endorsement was bad, because not signed by both payees. The jury, *nisi prius*, declared they knew it perfectly to be as stated, and without hearing a witness found a verdict for defendant.

Where one party has the authority of the other and endorses in his name, it is in effect endorsed by both, so this is no exception. In the case of a partnership, a partner is presumed to have authority to endorse a bill payable to the order of the firm.

Misspelling payee's name.

64. Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature. 53 V., c. 33, s. 32 (2). Imp. Act, s. 32 (4).

In the Imperial Act when a payee or endorsee is wrongly designated or his name is miss-pelt, and he endorses the bill as described, he may or may not, at his option, add his proper signature, the words "if he thinks fit" being inserted after the word "adding." These words were struck out in the Senate on the ground that if a person endorsed a bill otherwise than regularly in his own name, he should be required to add his proper signature: Senate Debates, 1890, p. 362. They were however allowed to stand in a similar clause as to the acceptor: s. 35; so that an acceptor under similar circumstances is not obliged to add his proper signature. If he should endorse a bill by such wrong name or designation as aforesaid, it would no doubt be held to be a valid negotiation of the bill, as he would be presumed to have adopted that as his proper name. s 64

65. Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved. 53 V., c. 33, s. 32 (3). Imp. Act, s. [illegible]. Presumption as to order of endorsement.

Each endorser undertakes to compensate the holder or a subsequent endorser who is compelled to pay the bill, if the requisite proceedings on dishonour are taken: s. 133. As between themselves they may agree that this liability shall not exist, or even that it may be reversed: Macdonald v. Whitfield, 8 App. Cas. 733 (1883). Such an agreement would not affect the bona fide holder of a note who may treat the prior parties as liable in the order in which they stand on the note, although a contrary agreement, of which he was aware when he took it, may exist between the parties: Elder v. Kelly, 8 U. C. Q. B. 240 (1850); McLean v. Garnier, 11 N. S. (2 R. & G.) 432 (1881). Endorsement.

This agreement may be proved by parol: Wordsworth v. McDougall, 8 U. C. C. P. 403 (1858); Day v. Sculthorpe, 11 L. C. R. 269 (1861); Leveillé v. Daigle, 2 Dorion, 129 (1880); Willett v. Court, 6 L. N. 204 (1883); Scott v. Turnbull, ibid. 397 (1883); Deschamps v. Leger, M. L. R. 3 S. C. 1 (1886); Wilders v. Stevens, 15 M. & W. 208 (1846); Mac-

§ 65 donald v. Whitfield, supra; Coolidge v. Wiggin, 62 Me. 568 (1873).

Disregarding condition.

66. Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not. 53 V., c. 33, s. 33. Imp. Act, *ibid.*

An absolute endorsement is one by which the endorser binds himself to pay, upon no other condition than the failure of prior parties to do so, and due notice to him of such failure, and protest when required by law. A conditional endorsement is one by which the endorser annexes some other condition to his liability. Sometimes the condition is precedent and sometimes subsequent. Thus, "Pay to A. or order if he lives until he is 21," or "if he is alive when the bill becomes due," is an endorsement upon a condition precedent. "Pay to A. or order, unless before payment I give you notice to the contrary," is upon a condition subsequent. A condition attached to the endorsement does not restrain the negotiability of the bill: Commercial Bank v. Morrison, 32 S. C. Can. 98 (1902).

This section alters the old law. In England, where the acceptor of a bill paid the indorsee who held under a conditional indorsement, the condition not having been fulfilled, he was obliged to pay a second time: Robertson v. Kensington, 4 Taunt. 30 (1811); Savage v. Aldren, 2 Stark. 232 (1817). In Quebec the same rule prevailed: "An indorsement may be restrictive, qualified or conditional, and the rights of the holder under such indorsement are regulated accordingly": C. C. Art. 2288.

Conditional.

The new rule is much more equitable, as it was manifestly unfair to impose, for example, the duty upon an acceptor of determining whether or not a condition that had been placed upon the bill after his acceptance, and by parties of whom he might know nothing, had been fulfilled. By paying he ran the risk of being compelled to pay a second time; by refusing, his paper would go to protest, and he exposed to costs.

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It is to be observed that the section does not give the holder the right to compel payment if the condition is not fulfilled; it only discharges the person who pays. If the condition is not fulfilled the holder who receives payment may be responsible to the prior endorser who made the conditional endorsement.

A bill of exchange must be unconditional: ss. 17 and 18; an acceptance like an endorsement may be conditional: s. 38 s.s. 3 (*a*).

67. An endorsement may be made in blank or special. Endorsement in blank.

2. An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer. 53 V., c. 33, s. 32 (4), and s. 34 (1). Imp. Act, s. 32 (6), and s. 34 (1).

An endorsement in blank consists simply of the signature of the endorser. When so endorsed it may be negotiated by delivery: s. 60 s.s. 2, unless or until the blank endorsement is converted into a special endorsement: s.s. 5, post.

Subsection 2 has long been recognized as law in England: Peacock v. Rhodes, 2 Douglas, 633 (1781).

Endorsement.

By the old French law indorsements in blank were not recognized: Pothier, No. 38; nor are they now except as "procurations" and not as negotiations of bills, the holder being merely the agent of the indorser: Code de Com. Arts. 137, 138. In Lower Canada the old French law was modified by 17 Geo. III. c. 2, which allowed notes of bankers, merchants and traders to be indorsed in blank. A tavern-keeper's note was held to be within the Act: Patterson v. Welsh, 2 Rev. de Lég. 30 (1819); McRoberts v. Scott, 2 Rev. de Lég. 31 (1821); and it was held that only bankers, merchants and traders could indorse in blank: Bank of Montreal v. Duglois, 3 Rev. de Lég. 88 (1847). By 12 V. c. 22, s. 1, it was enacted that any bill or note payable to the order of any person might be indorsed in full or in blank, and this was embodied in the Civil Code as Article 2286.

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Special endorsement.

3. A special endorsement specifies the person to whom, or to whose order, the bill is to be payable. 53 V., c. 53, s. 34 (2). Imp. Act, *ibid.*

A special endorsement or endorsement in full is so called because the endorser not only signs his name but states in whose favor the endorsement is made. It may be in any of the following forms: "Pay to A. B.," which gave the right to negotiate the bill while a bill in that form was not negotiable: Edie v. East India Co., 2 Burr. 1216 (1761); or "Pay to A. B. or order"; or "Pay to the order of A. B.," which last is equivalent to the preceding, as it enables A. B. to demand payment without endorsing, or to endorse the bill at his option: sec. 22 (2). See Soares v. Glyn, 8 Q. B. 24 (1845); Harmer v. Steele, 4 Ex. 15 (1849); Robarts v. Tucker, 16 Q. B. 579 (1851); Law v. Parnell, 7 C. B. N. S. 285 (1859).

A bill specially endorsed is negotiated by endorsement and delivery: s. 60 s.s. 3.

A French endorsement must be dated, must declare how value has been given, and give the name of him in whose favor it is made: Code de Com. Art. 137.

Application of Act to.

4. The provisions of this Act relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement. 53 V., c. 33, s. 34 (3). Imp. Act, *ibid.*

As to payee.

Each endorsement is like a new drawing of the bill: if in blank, it is as if the new drawing were in favor of bearer: if special, as if it were in favor of the endorsee. The chief provisions of the Act made applicable to an endorsee by this clause are that he must be named or clearly indicated by his office or otherwise; that a bill may be endorsed to two or more endorsees jointly, or to one of two or more; and that the endorsee may either demand payment of the bill himself or again endorse it specially or in blank; and that if the endorsee be fictitious or non-existing the bill may be treated as payable to bearer: ss. 19, 21 and 22.

5. Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. 53 V., c. 33, ss. 32 and 34. Imp. Act, *ibid.* § 67

Conversion of blank endorsement.

If the holder make the bill payable to himself he must indorse it, in order to negotiate it; he may however by writing over the signature of the last indorser the direction that it be paid to another person, do so without making himself liable as an indorser: Vincent v. Horlock, 1 Camp. 442 (1808); Hirschfield v. Smith, L. R. 1 C. P. 340 (1866). In such a case the indorsee takes the bill as specially indorsed to him by the last indorser. See Sovereign Bank v. Gordon, 9 O. L. R. 146 (1905).

The person in possession of a French bill indorsed in blank may, if he has given value, in the same manner complete the indorsement in his own favor, and so constitute himself a holder of the bill: Nougnier, §§ 747, 748.

If there are several blank indorsements the holder may convert the first into a special indorsement without discharging the subsequent indorsers: Bank of British N. A. v. Ellis, 2 Federal Reporter, 46 (1880).

Striking out Indorsements.—A holder may not only convert a blank indorsement into a special one, but he may also strike out any number of blank indorsements. Any indorser subsequent to one struck out is discharged: Wilkinson v. Johnson, 3 B. & C. 428 (1824); Mayer v. Jadis, 1 M. & Rob. 247 (1833). He cannot strike out special indorsements, through which he has to make title. He cannot strike out a special indorsement and insert his own name: Porter v. Cushman, 19 Ill. 572 (1858). The former Quebec rule is found in Article 2289 C. C. Indorsements for collection may be struck out by the owner of the bill, and its possession after dishonor by an indorser with his special indorsement struck out, is prima facie evidence that he took up the bill on its dishonor, although there was no re-indorsement to

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Endorsement.

him: Black v. Strickland, 3 O. R. 217 (1883); Callow v. Lawrenee, 3 M. & S. 95 (1814).

The fact that the words in a special indorsement "payable to the order of the Home Bank" were struck out when brought to the bank by a member of the firm who were the holders, was not alone sufficient to put the bank upon enquiry and prevent its becoming a holder in due course: Pickard v. Northern Bank, 18 Man. 675 (1908).

Restrictive endorsement.

68. An endorsement may also contain terms making it restrictive.

What is.

2. An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is endorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D, or order, for collection.' 53 V., c. 33, s. 32 (4) and s. 35 (1). Imp. Act, s. 32 (6) and s. 35 (1).

A restrictive endorsement indicates that the endorsee is merely an agent to receive the money, and that he is not a purchaser of the bill. He cannot pledge or sell the bill except in the case mentioned in subsection 4 of this section, and all subsequent endorsees are subject to the same restriction.

An endorsement in favor of a person named, as "Pay D.," was not restrictive before the Act, when the same words in the body of a bill or note would have rendered it not negotiable: Acheson v. Fountain, 1 Str. 557 (1723); Edie v. E. I. Co., 2 Burr. 1227 (1761); Cunliffe v. Whitehead, 3 Bing. N. C. 829 (1837); Gay v. Lander, 6 C. B. 336 (1848). An acceptance "in favor of D. only," is not a qualified acceptance: Meyer v. Decroix, [1891] A. C. 520. The meaning of adding the word "only" in the acceptance in that case was that it was a bill of which D. was the only drawer: per Lord Esher, 25 Q. B. D. at p. 348. The adding of the

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Restrictive.

word, however, in an indorsement makes it restrictive according to this section. The examples given are not the only words that render an indorsement restrictive; any others which shew that the indorsee is not a purchaser of the bill are equally effective. Where a wife, separated from her husband, received notes of third parties in settlement of the amount to be paid to her, with the indorsement that they were not to be sold, her indorsee could not recover on them: Wilson v. McQueen, Rob. & Jos. Ont. Digest, 491 (1840). A method adopted by some with cheques about to be deposited in a bank is to indorse them "For deposit only," to prevent any person acquiring them in good faith, in case they should be lost or stolen before reaching the bank.

Even if the indorsee, under a restrictive indorsement, has given full value, he cannot sue the indorser on the bill: Williams v. Shadbolt, 1 C. & E. 529; 1 T. L. R. 417 (1885); White v. National Bank, 102 U. S. (12 Otto) 658 (1880); Third Nat. Bank v. Nat. Bank, ibid. 633 (1880).

ILLUSTRATIONS.

The following are examples of the restrictions referred to in this section:—

1. "Pay D. only": Byles, p. 179; Randolph, § 725.

2. "Pay D. for the account of X.," or "for my use," or "for the use of X.," or the like: Cramlington v. Evans, 2 Ventris 307 (1687); Snee v. Prescott, 1 Atk. 247 (1743); Archer v. Bank of England, 2 Douglas, 637 (1781); Trenttel v. Barandon, 8 Taunt. 100 (1817); Lloyd v. Sigourney, 5 Bing. 525 (1829); Wedlake v. Hurley, 1 C. & J. 83 (1830); Wilson v. Holmes, 5 Mass. 543 (1809); Blaine v. Bourne, 11 R. I. 119 (1875); Hook v. Pratt, 78 N. Y. 371 (1879); White v. National Bank, supra; First Nat. Bank v. Reno Co. Bank, 3 Fed. Rep. 257 (1880).

3. "Pay D. or order for collection": Williams v. Shadbolt, 1 C. & E. 529 (1885); Sweeney v. Easter, 1 Wall. 166 (1863); Merchants' Bank v. Hanson, 53 Am. Rep. 5 (1884).

Restrictive endorsement.

A married woman, the indorsee of a note, indorsed it for collection to a bank, her husband signing his name below hers. Held, that as she had indorsed the note restrictively, the bank was obliged to pay over the proceeds to her notwithstanding the husband's signature: Perreault v. Merchants' Bank, Q. R. 27 S. C. 349 (1905).

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The holder under a restrictive indorsement cannot strike out indorsements on the bill: C. C. Art. 2289; Barth[illegible] Armstrong, 5 R. L. 213 (1869); Mayer v. Jadis, 1 M. & Rob. 247 (1833).

An indorsement is not restrictive on account of its containing a statement of the transaction out of which it arose: Potts v. Reed, 6 Esp. 57 (1806); or of being for "value in account with A."; Murrow v. Stuart, 8 Moore P. C. 267 (1853); Buckley v. Jackson, L. R. 3 Ex. 135 (1868).

Rights of endorsee.

3. A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.

If further transfer is authorized.

4. Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement. 53 V., c. 33, s. 35 (2) and (3). Imp. Act, *ibid.*

Before the Canadian and Imperial Acts if the restrictive indorsement was in favor of the indorser "or order," this would give him authority to transfer the bill, but always subject to the same restriction as in the indorsement to himself: Munro v. Cox, 30 U. C. Q. B. 363 (1870); Lloyd v. Sigourney, 5 Bing. 525 (1829). Now the same result follows even if the words "or order" are not used: s. 22.

The relation between the restrictive indorser and indorsee is that of principal and agent, so that if the acceptor pay the indorser the indorsee cannot recover from him, although he may have given value for the bill: Williams v. Shadbolt, 1 C. & E. 529 (1885). Such indorser is sometimes spoken of as a trustee, but this is true only so far as an agent or bailee is a trustee: Cook v. Lister, 13 C. B. N. S. 543 (1863); Re Hallett's Estate, 13 Ch. D. 708 (1879).

In some of the United States a restrictive indorsee cannot sue in his own name: Rock Co. Nat. Bank v. Hollister, 21 Minn. 385 (1875); Iselin v. Rowlands, 30 Hun (N. Y.) 188 (1883). § 68

See sections 66 and 67 of the Negotiable Instruments Law as to what is a restrictive indorsement, and its effect upon the rights of an indorsee.

Conventions and Rules Respecting Endorsements.

In order to secure uniformity of practice respecting endorsements the Canadian Bankers' Association has adopted the following rules which are to govern the exchange of bills, notes and cheques between them through the clearing house or otherwise. They were adopted on the 26th Feb., 1898. They are binding only upon the banks which are members of the Association and have agreed to them: but in course of time they may become so well established that they may become usages of trade, and so general, that parties may be considered to have contracted with reference to them, and be binding upon persons who may not have in terms agreed to them. Bank rules.

1. **Mode of Endorsement.** — An endorsement may be either written or stamped, in whole or in part.

2. **Regular Endorsements.**—A regular endorsement within the meaning of these Conventions and Rules must be neither restrictive nor conditional, and must be so placed and worded as to show clearly that an endorsement is intended.

If purporting to be the endorsement of the person or firm to whom the item is payable (whether originally or by endorsement), the names must correspond, subject, however, to section 32, s.s. 2 (now s. 64) of the Bills of Exchange Act.

If purporting to be the endorsement of a corporation, the name of corporation and the official position of the person or persons signing for it must be stated.

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If purporting to be made by some one on behalf of the endorser, it must indicate by words that the person signing has been authorized to sign; e.g., "John Smith, by his attorney, Thomas Robinson," or "Brown, Jones & Co., by Thomas Robinson, their Attorney," or "Per Pro. or P. P. the Smith Brown Company, Limited, Thomas Robinson."

3. Irregular Endorsements.—An endorsement, other than a restrictive endorsement, which is not in accordance with the foregoing definition of a regular endorsement, or which is so placed or worded as to raise doubts whether it is intended as an endorsement, is an irregular endorsement within the meaning of these Conventions and Rules.

4. Restrictive Endorsements.—The following further examples (in addition to those in s. 68, s.-s. 2, of the Bills of Exchange Act) shall be treated as restrictive endorsements within the meaning of these Conventions and Rules, without prejudice, however, to their true character, should the question arise in Court, viz.:—

"For deposit only to credit of ....."
"For deposit in.....bank to credit of..... ....."
"Deposited in.....bank for account of....."
"Credit..... ....bank....."

5. Form and Effect of Guarantee.—A guarantee of endorsements shall be in the following form or to the like effect:—

"Prior endorsements guaranteed by.....(name of bank)"

It may be written or stamped, but shall be signed in writing by an authorized officer of the bank giving it.

By virtue of such guarantee and of these Conventions and Rules, the Bank giving same shall return to the paying bank the amount of the item bearing the guarantee, if, owing to the nature of any endorsement, or to its being forged, it should appear that such payment was improperly made. (Added by the Association, Feb. 22nd, 1906): In case of a

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ms, whether restrictively endorsed or otherwise, sent through the exchanges by members of the Association, the member sending the item shall be deemed and held as guaranteeing the authentieity of all endorsements thereon, and if such guaranty do not expressly appear it shall be implied.

6. **Endorsement by Depositing Bank.**—When one bank deposits with or presents for payment to another bank (whether through the Clearing House or otherwise) a bill, note or cheque, the item so deposited or presented shall bear the stamped open endorsement of the depositing or presenting bank. Such stamp shall contain the name of the bank, its branch or agency, and the date, and shall for all purposes be the endorsement of the depositing or presenting bank, and, except as hereinafter specified, no further or other endorsement shall be required, whether the item be specially payable to the bank or otherwise, or be payable at the chief office or elsewhere.

7. **Restrictively Endorsed Notes.**—If a bill, note or cheque bearing a restrictive endorsement be so deposited or presented, the depositing or presenting bank shall ipso facto, and by virtue of these Conventions and Rules, be deemed to have guaranteed such endorsement in accordance with section 5 hereof, and shall be liable to the paying bank to the same extent as if such guarantee had been actually placed upon the item, but payment may, notwithstanding, be refused, until the restriction be removed.

8. **Irregularly Endorsed Items.**—If a bill, note or cheque bearing an irregular endorsement as above defined, be so deposited or presented, the depositing or presenting bank shall endorse thereon the guarantee referred to in section 5 hereof, but payment may, notwithstanding, be refused, until the irregularity be removed.

9. **Letters of Credit, Deposit Receipts, Etc.**—When a letter of credit, deposit receipt, or other item not negotiable, and to which the provisions of the Bills of Exchange Act do not apply, is so deposited or presented, a receipt and indemnity in the following form, or to the like effect, shall be

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written or stamped thereon, signed in writing by an authorized officer of the presenting or depositing bank, viz.:—

"Received amount of within from the within named bank, which is hereby indemnified against all claims had or made under by any person."

10. Agreement as to Practice.—While it is understood that in general, for convenience of the depositing or presenting bank, no objection will be made to a restrictive endorsement, or to an irregular endorsement if the guarantee above provided for be given, yet in view of the responsibility which a depositing or presenting bank incurs in connection therewith, each bank undertakes to make all reasonable efforts to have all endorsements or items deposited or presented by it made regular in order that its customers and the public generally may ultimately be led to adopt a regular and uniform system.

It is also understood that endorsements regularly made within the meaning of these Conventions and Rules shall not be objected to except for special reasons to be communicated with the objection.

When negotiability ceases.

69. Where a bill is negotiable in its origin, it continues to be negotiable until it has been,—

(*a*) restrictively endorsed; or,

(*b*) discharged by payment or otherwise. 5 V., c. 33, s. 36. Imp. Act, *ibid.*

A bill is not negotiable in its origin which contains words prohibiting transfer, or indicating an intention that it should not be transferable. A bill negotiable in its origin is one made payable to bearer, or to a particular person or his order: s. 21.

As to what is a restrictive endorsement, see section 68. Under the Quebec Civil Code, which recognized restrictive indorsements, it was provided by Art. 2288, that "no indorsement other than that by the payee can stop the negotiability

of the bill." A cheque payable to C. M. & S. or bearer, was indorsed by them and stamped for deposit to their credit in the bank where they kept their account. Their clerk, instead of depositing it, took it to the bank on which it was drawn and the teller paid it without noticing the writing on the back. It was held that such a cheque could not be restrictively indorsed: Exchange Bank v. Quebec Bank, M. L. R. 6 S. C. 10 (1890). But see now section 21, s.s. 3 and the note thereon. § 69

70. Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it. 53 V., c. 33, s. 36 (2). Imp. Act, *ibid.* Overdue bill. Equities.

Overdue.—A bill payable on demand is deemed to be overdue when it appears on its face to have been in circulation for an unreasonable length of time: s.-s. 2. A note payable on demand is not deemed to be overdue for the purpose of this sub-section by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue: s. 180. A time bill or note is overdue after the expiration of the last day of grace: Leftley v. Mills, 4 T. R. 170 (1791). "The term overdue seems to be used as convertible with after maturity." Union Investment Co. v. Wells, 39 S. C. Can. at p. 629 (1908). Overdue bill.

Defect of Title.—This phrase was introduced into the Imperial Act as a substitute for the old expression "equity attaching to the bill," as the latter term was unknown in Scotch law. The corresponding provision in the Quebec Civil Code is found in Art. 2287: "The transfer of a bill by indorsement may be made either before or after it becomes due. In the former case the holder acquires a perfect title free from all liabilities and objections which any parties may have had against it in the hands of the indorser; in the latter case the bill is subject to such liabilities and objections in the same manner as if it were in the hands of the Defect of title.

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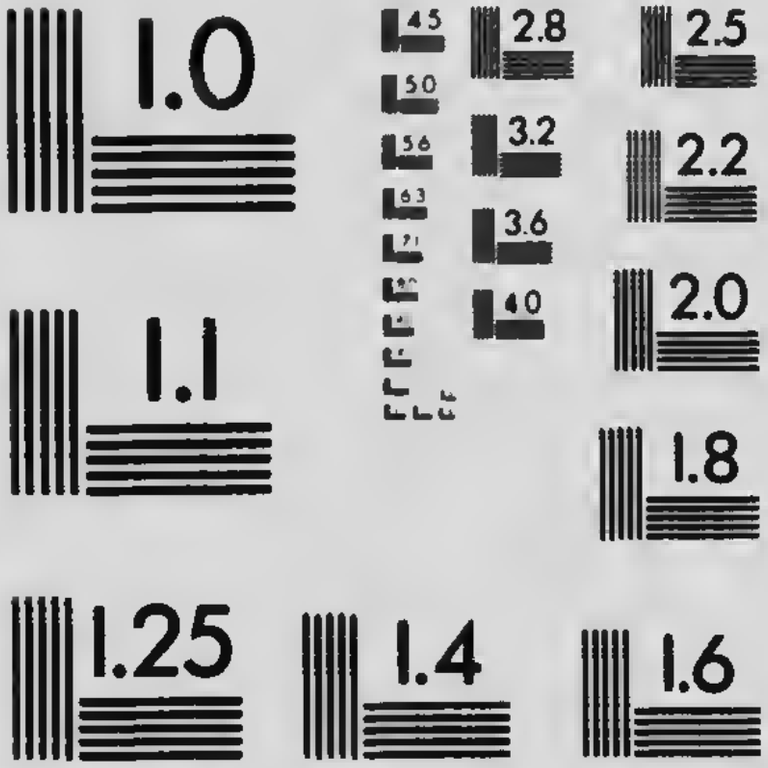

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previous holder." The chief "defects of title" are fraud, duress, undue influence, force and fear, or other unlawful means in obtaining the bill or the acceptance thereof, illegal consideration, or negotiation in breach of faith: s. 56, s.-s. 2, or being given for a patent right: s. 14; or set-off or compensation.

Where a bill has been discharged by payment or otherwise and is improperly negotiated after maturity, this is strictly speaking, a defect in title, as the bill is no longer a bill.

ILLUSTRATIONS.

Illustrations.

1. Where plaintiff took a note after maturity from a holder who had agreed that it should be set off against a bond, he took it subject to this defence: Broke v. Arnold, Taylor U. C. 25 (1823).

2. The admissions of the holder of an overdue note are admissible, without calling him, against plaintiff, to whom he subsequently transferred it: Myers v. Cornell, 2 U. C. Q. B. 279 (1845).

3. Where an overdue note is transferred and there has been a partial failure of consideration, such failure is a good defence pro tanto: Rennie v. Jarvis, 6 U. C. Q. B. 329 (1850).

4. Where a note was given to a person to get discounted for the maker, and he discounted it after maturity for his own benefit, it is a good defence: Kerr v. Straat, 8 U. C. Q. B. 82 (1851).

5. The indorsee of a bill or note is liable to such equities only as attach to the bill or note itself and to nothing collateral due from the indorser to the maker, or indorsee to payee: Wood v. Ross, 8 U. C. C. P. 299 (1858); Metropolitan Bank v. Snure, 10 U. C. C. P. 24 (1860); Hughes v. Snure, 22 U. C. Q. B. 597 (1863); Canadian Securities Co. v. Prentice, 9 Ont. P. R. 324 (1882); Ferguson v. Stewart, 2 U. C. L. J. 116 (1856); Burrough v. Moss, 10 B. & C. 558 (1830).

6. Where an agent of the holder disposes of an overdue note, without authority, though for value, the purchaser obtains no title against the principal. West v. MacInnes, 23 U. C. Q. B. 357 (1864); Lloyd v. Howard, 15 Q. B. 995 (1850).

7. A valid agreement to give time is an equity which attaches to a bill as against a person taking it after maturity: Britton v. Fisher, 26 U. C. Q. B. 338 (1867).

8. An agreement not to negotiate a note after maturity is an equity attaching to such note when overdue: Grant v. Winstanley, 21 U. C. C. P. 257 (1871); Parr v. Jewell, 16 C. B. 684 (1854).

9. The holder of an overdue note agreed to let a board bill go in reduction. Held, that a subsequent transfer is subject to this claim: Chung v. Jeffrey, 12 Ont. A. R. 432 (1885); Duguay v. Senecal, 1 L. C. L. J. 26 (1865); Graves v. Key, 3 B. & Ad. 319 (1832).

10. Where the plaintiff received the note sued on after maturity without consideration and was merely an agent, the maker has a right to set up all matters he could have pleaded against the real owner, and also to obtain a reduction of the usurious interest included in the note and of payments made on account thereof: Brooks v. Clegg, 12 L. C. R. 461 (1862).

11. A person receiving by indorsement a note after it was due, held it under Art. 2287 C. C., subject to the objections to which it was liable in the hands of the indorser. This article differs from the law of England, which makes the indorser liable only to the equities attaching to the note itself, that is to the equities arising out of the transaction in the course of which the note was made, but not to those arising out of a collateral matter: Amazon Ins. Co. v. Quebec and Gulf Ports S. S. Co., 2 Q. L. R. 310 (1876). As to law of England see Whitehead v. Walker, 10 M. & W. 696 (1842); Oulds v. Harrison, 10 Ex. 572 (1854).

12. Neither this section nor Art. 1487 of the Civil Code prevents the purchaser in good faith of negotiable instruments after their maturity from acquiring a good title from an agent, who disposes of them in fraud of his principal: Macnider v. Young, Q. R. 3 Q. B. 539 (1894). Affirmed in the Supreme Court, where it was also held that a person taking such instruments after maturity, took them subject not only to the equities of prior parties to them, but also to the equities of third parties: Young v. Macnider, 25 S. C. Can. 272 (1895). See Re European Bank, L. R. 5 Ch. 358 (1870).

13. Where a person indorsed a note at the request of the payee on the understanding that he was not to be held liable, he is not liable to a party to whom the payee afterwards indorsed it after it was due: McQuin v. Sorell, 7 N. B. (2 Allen) 140 (1851).

14. A. gave his note to his son-in-law B. as a gift by way of advancement to B.'s wife. B. transferred it for value after maturity. Held, that the holder could not recover from A.'s executors as the note was void for want of consideration, and he took it subject to that defect: Thomas v. McLeod, 12 N. B. (1 Han.) 588 (1869).

15. A note is not overdue simply because a payment of interest was not made when due, the principal not being yet due: Union Investment Co. v. Wells, 39 S. C. Can. 625 (1908); Peters v. Perras, 42 S. C. Can. 244 (1909).

16. An agreement between the maker and payee of a promissory note that it shall only be used for a particular purpose, constitutes an equity which attaches to it in the hands of a bona fide holder for value who takes it after dishonor: MacArthur v. MacDowall, 23 S. C. Can. 571 (1893).

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17. A note is made payable for an illegal consideration. After maturity the payee indorses it. The indorsee cannot recover from the maker: Amory v. Merryweather, 2 B. & C. 573 (1824).

18. The fact of a bill being an accommodation bill, is not an equity attaching to it in the hands of a holder to whom the drawer, who is also payee, has indorsed it after maturity: Stein v. Yglesias, 1 C. M. & R. 565 (1834); Sturtevant v. Ford, 4 M. & G. 101 (1842); Ex parte Swan, L. R. 6 Eq. 344 (1868).

19. A plea that a previous action was begun by another person and is pending, is no defence to an action on a note brought by a holder who acquired it after maturity: Denters v. Townsend, 5 B. & S. 613 (1864).

20. The acceptors of a bill gave it to the drawer to get it discounted for them. He did not do so, but after its maturity gave it to his solicitors, who were aware of the facts. They claimed to recover as lienholders from the acceptors the amount of their claim against the drawer. Held, that they could not recover: Redfern v. Rosenthal, 86 L. T. 855 (1902).

Demand bill when overdue.

2. A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time.

Time.

3. What is an unreasonable length of time for such purpose is a question of fact. 53 V., c. 33, s. 36 (3). Imp. Act, *ibid.*

(2) As to this sub-section, Chalmers says, p. 131: "There appears to be no English or American case as to a bill, but the enactment is probably declaratory." It will be observed that the rule here laid down is only for the purposes of this section, and not the purpose of presentment for payment, the Statute of Limitations, prescription, interest or the like. It was adopted in England before the Act of 1882 with regard to cheques, which are bills of exchange drawn on a bank, payable on demand: Down v. Halling, 4 B. & C. 330 (1825); Rothschild v. Corney, 9 B. & C. 388 (1829); Serrell v. Derbyshire Ry. Co., 9 C. B. 811 (1850); London & County Banking Co. v. Groome, 8 Q. B. D. 288 (1881).

This sub-section does not apply to promissory notes payable on demand which have been negotiated: s. 182. It does

apply to cheques, subject to the provisions of section 166: § 70
- 165.

A cheque dated 9th June was received by the plaintiff October 30th. Held, that the length of time was unreasonable: Northern Bank v. Green, 2 Alta. 310 (1909).

(3) In determining what is an unreasonable length of time regard should be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. The interests not only of the drawer and indorsers should be taken into account, but also of the holder: Meliish v. Rawdon, 9 Bing. 416 (1832); Mullick v. Radakissen, 9 Moore P. C. 46 (1853): Nelson v. Easdale Slate Quarries, Rep. 1910, Scots Law Times, 21.

71. Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. 53 V., c. 33, s. 36 (4). Imp. Act, *ibid.* **Presumption as to.**

If the endorsement bears date, it is presumed to be the true date of endorsing. If undated, it is presumed to have been endorsed before maturity and either on the date of the bill or within a reasonable time thereafter. In any of such cases the contrary may be proved: see Lewis v. Parker, 4 A. & E. 838 (1826); Parkin v. Moon, 7 C. & P. 408 (1836); Bounsall v. Harrison, 1 M. & W. 611 (1836); Good v. Martin, 95 U. S. (5 Otto) 94 (1877).

72. Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course. 53 V., c. 33, s. 36 (5). Imp. Act, *ibid.* **Taking bill with notice of dishonour.**

This may happen in case of non-payment of a bill payable on demand, or of non-acceptance of another bill, when the bill has not been noted or protested. It taken with notice

§ 72 it is open to the same objections as an overdue bill. In England before the Act there were conflicting decisions. The rule laid down in Crossley v. Ham, 13 East, 498 (1811), and O'Keefe v. Dunn, 6 Taunt. 305 (1815), has been adopted, and that in Goodman v. Harvey, 6 Nev. & Man. 372 (1836), rejected.

As to dishonour of a bill see sections 81 and 95; as to when a bill is overdue, the notes on section 70; as to notice and holders in due course, sections 56 and 74.

Re-issue of bill.

73. Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. 53 V., c. 33, s. 37. Imp. Act, *ibid.*

A bill negotiable in its origin continues to be negotiable until it is restrictively endorsed or discharged by payment or otherwise; s. 69. As to restrictive endorsements, see section 68; and as to discharge of a bill, sections 139 to 141.

ILLUSTRATIONS.

1. Where a note overdue has been retired and settled by a renewal note, it cannot be put in circulation again, even by the payee, who has taken up the renewal note out of his own funds, at least so as to make a subsequent indorser liable: Cuvillier v. Fraser, 5 L. C. Q. B. 152 (1848).

2. The drawer of a bill payable to his order specially indorsed it. It subsequently came into his hands after maturity. He struck out all the special indorsements, and indorsed it to plaintiff, who sued the acceptor. Held, that he was entitled to recover: Black v. Strickland, 3 O. R. 217 (1883).

3. A bill was paid after maturity by the drawer, who waived protest and indorsed it. Held, that he was liable to the indorsee jointly and severally with the acceptor: Hovey v. Nolin, 18 S. C. R. 439 (1889).

4. As to a bill negotiated back to the drawer, see Bishop v. Hayward, 4 T. R. 470 (1791); Wilders v. Stevens, 15 M. & W. 208

(1846); Woodward v. Pell, L. R. 4 Q. B. 55 (1868); to a prior indorser, Foster v. Farewell, 13 U. C. Q. B. 449 (1855); Moffatt v. Rees, 15 U. C. Q. B. 527 (1858); Gunn v. Macpherson, 18 U. C. Q. B. 244 (1859); Morris v. Walker, 15 Q. B. 594 (1850); Wilkinson v. Unwin, 7 Q. B. D. 636 (1881); to the acceptor before maturity, Attenborough v. Mackenzie, 25 L. J. Ex. 244 (1856).

5. One of two joint makers of a note to whom it is negotiated back, cannot re-issue and further negotiate it, so as to make the other joint maker liable: Hopkins v. Farewell, 32 N. H. 429 (1855); Patch v. King, 29 Me. 448 (1849).

74. The rights and powers of the holder of a bill are as follows: Rights of holder.

(*a*) He may sue on the bill in his own name; 53 V., c. 33, s. 38 (*a*). Imp. Act, s. 38 (1). May sue.

The "holder" of a bill has been defined in section 2 as the payee or endorsee who is in possession of it, or the bearer thereof; and "bearer" as the person in possession of a bill or note which is payable to bearer. As there pointed out, the holder need not be the owner; it is sufficient for him to be in possession and entitled at law to recover or receive its contents from another. Rights of the holder.

If a note is non-negotiable in its origin, the payee alone can be the holder; if negotiable in its origin any person to whom it is negotiated, until it is restrictively endorsed or discharged, is the holder.

If a holder sues on a note, and he is not the owner but is merely acting for another, any defence that could be set up against the real owner is available against him: Biron v. Brossard, M. L. R. 2 S. C. 105 (1880); Lee v. Zagury, 8 Taunt. 114 (1817); Re Anglo-Greek Navigation Co., L. R. 4 Ch. 1.4 (1869); Thornton v. Maynard, L. R. 10 C. P. 695 (1875).

Plaintiff must be the holder of the bill when the action is instituted: Emmett v. Tottenham, 8 Exch. 884 (1853); Torney v. McNeill, 28 W. L. R. 565 (Sask. 1914). An action was brought for the price of goods for which the buyer had given a bill, which was in the hands of a third party and dishonoured. The action was dismissed although

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plaintiff got possession of the bill before the trial: Davis-Reilly, [1898] 1 Q. B. 1; Pure Colour Co. v. O'Sullivan, 10 O. W. R. 313 (1907).

This section furnishes one of the tests of whether or not an instrument is negotiable. If it may pass by delivery or indorsement as provided in section 60, and if the holder who so acquires it can sue upon it in his own name, then it is in the proper sense of the term a negotiable instrument, and has the special privileges accorded to such instruments by the law merchant.

The right to sue upon a bill accrues upon its dishonour for non-acceptance: s. 82: or for non-payment: s. 95.

If the holder be the person who has given the consideration for the dishonoured bill he may sue either upon the bill or for the consideration except in the case of a transferrer by delivery, who is generally not liable on either: Byles, p. 358.

Plaintiffs have sometimes been given judgments on bills and notes of which they were not the legal holders, although the owners had endorsed them to a bank or agent for collection or the like, who had not endorsed them back: Nova Scotia Carriage Co. v. Lockhart, 1 E. L. R. 76 (N. S. 1906); Jones v. England, 7 Terr. L. R. 440 (1906): Byles, p. 359, n. (z). The regular course would have been to endorse them back without recourse, or to strike out the special endorsement to the agent: s. 140; Rat Portage L. Co. v. Margulius, 24 Man. 230 (1914).

As to an action on a lost bill or note, see section 157.

In the case of the death of the holder of a bill, his executor or personal representative would have the same right to sue as he himself would have had. So also would the assignee or trustee of a bankrupt holder.

ILLUSTRATIONS.

1. Defendant gave to plaintiff's wife his note in payment of a legacy. She died before the note was paid. Her husband sued the maker. A defence that the note was in the wife's possession up to her death and that there was no administration to her estate was upheld: Robinson v. Cripps, 6 U. C. C. P. 381 (1856).

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2. Plaintiffs declared against the acceptor of a bill as drawn in their favor. It was on its face payable "to the order of T. G. Ridout, cashier," and indorsed "Pay J. Smart, cashier, or order, T. G. Ridout," but the signature T. G. Ridout had been erased. At the trial an amendment was allowed alleging that the bill was payable to the order of Ridout, who indorsed to Smart, and that Ridout and Smart, being plaintiff's cashiers and agents, received the bill for them and as their property. Held, that the beneficial interest plaintiffs were alleged to have in the bill did not entitle them to sue on it in their own name: Bank of U. C. v. Ruttan, 22 U. C. Q. B. 451 (1863).

3. The holder of notes as collateral security against future liability can sue upon them when they mature and before the liability arises. Plaintiff, who held the notes indorsed in blank, as his father's agent, could sue upon them in his own name: Ross v. Tyson, 19 U. C. C. P. 294 (1869).

4. A note indorsed in blank may be sued in the name of a person to whom the owner has handed it for that purpose, even although the plaintiff has no beneficial interest in the note: Shepley v. Hurd, 3 Ont. A. R. 549 (1879); Mills v. Philbin, 3 Rev. de Lég. 255 (1818); Ridgeway v. Dunsereau, Q. R. 17 S. C. 176 (1899).

5. Plaintiff sued on notes alleging himself to be the holder. The payee had indorsed them, but his indorsement was erased. Held, that plaintiff was not the legal holder and had no title: Hempsted v. Drummond, 10 L. C. R. 27 (1859).

6. An action on a promissory note not produced will be dismissed: Hudon v. Girouard, 21 L. C. J. 15 (1875).

7. The holder of a promissory note, although without personal interest in it, may sue on it in his own name, the defendant being protected by being allowed to set up any defence he may [illegible]st the real owner: McKinnon v. Keronack, 15 R. L. 34 [illegible]Biron v. Brossard, M. L. R. 2 S. C. 105 (1880); Leet v. [illegible]d. (1885); Fulton v. Lafleur, Q. R. 5 S. C. 431 (1894); [illegible]v. Central Bank, 9 N. B. (4 Allen) 270 (1859); Howard v. Girouard, ibid. 452 (1860); Street v. Quinton, 18 N. B. 567 (1879).

8. The maker of a note when sued by the indorsee has no right to plead that the note belongs to the insolvent estate of the payee and not to plaintiff: Lemay v. Boissinot, 10 Q. L. R. 90 (1883).

9. Where an indorser paid a note which was detained by the government, and there was no delivery, actual or legal, to the company plaintiff, the latter could not recover as holder: Compagnie de Moulins v. Parkin, Q. R. 4 S. C. 365 (1893).

10. Where defendant pleads that plaintiff is not the holder of the note, the latter may reply that he is the holder for collection for the last indorser: Legal and Financial Exchange v. Cameron, 5 Q. P. R. 98 (1902).

11. A promissory note made payable to John Souther & Son, was sued by John Souther & Co. It being clear from the evidence

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that the plaintiffs were the persons designated as payees, it was held that they could recover: Wallace v. Souther, 16 S. C. Can. 737 (1889), affirming 20 N. S. 509 (1888).

12. A note in favor of a life insurance agent with the addition of his agency, given for a premium on a policy, may be sued by him or transferred by indorsement: McDonald v. Snmill, 25 N. S. 440 (1893).

13. Where a bill is made payable to bearer, or is indorsed in blank, the person who has actual or constructive possession of it may sue upon it, and the person liable on the bill cannot question his right: Clerk v. Pigot, 12 Mod. 193 (1699); Ord v. Portal, 3 Camp. 239 (1812); Low v. Copestake, 3 C. & P. 300 (1828); Wood v. Connop, 5 Q. B. 292 (1843); Emmett v. Tottenham, 8 Ex. 884 (1853); Demuth v. Cutler, 50 Me. 300 (1862).

14. But possession by a nominal holder does not give him the right to sue if he holds the bill adversely to the real owner: Jones v. Broadhurst, 9 C. B. 173 (1850); Logan v. Cassell, 88 Penn. St. 290 (1879); Towne v. Wason, 128 Mass. 517 (1880).

15. The holder may sue on a bill without ever having had any interest therein: Law v. Parnell, 7 C. B. N. S. 282 (1859); Jenkins v. Tongue, 29 L. J. Ex. 147 (1860); or after he has parted with his interest: Williams v. James, 15 Q. B. (1850); Poirier v. Morris, 2 E. & B. 89 (1853).

16. The holder of a bill, without the knowledge or authority of the plaintiff, indorsed and delivered it to an attorney for the plaintiff, in order that an action might be brought upon it in his name, and the plaintiff after action brought ratified the act. Held, that the subsequent ratification was equivalent to a prior authority, and that the plaintiff had a valid title to sue on the bill: Ancona v. Marks, 7 H. & N. 686 (1862); Potter v. Morrisey, 35 N. B. R. (1902).

Prior defects.

(*b*) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill. 53 V., c. 33, s. 38 (*b*). Imp. Act, c. 38 (2).

A "holder in due course" is one who takes a bill, complete and regular on its face, before maturity, in good faith, without notice of any defect in the bill or in the title of the person negotiating it to him. The principal defects of title arise from fraud, duress, undue influence or other unlawful means, illegal consideration or fraudulent negotiation: s. 56.

"Mere personal defences" might include the foregoing, and also set-off, compensation, etc. They would not include capacity, want of authority, the defence of forgery, those cases where the bill is declared by statute to be void, or the like.

§ 74

Prior defects.

Anything which renders a note absolutely void would not be included in either of the above terms.

ILLUSTRATIONS.

See illustrations under section 56, s.-s. 2, and 58, s.-s. 2.

1. A note indorsed on condition that it was to be used to renew another note was fraudulently negotiated by the maker for value before maturity. Held, that the holder, being in good faith, could recover from the indorser: Larkin v. Wlard, 5 U. C. O. S. 661 (1828); Cross v. Currie, 5 Ont. A. R. 31 (1880).

Right to sue.

2. A note given for lottery tickets is not void under 12 Geo. 2, c. 28, in the hands of a bona fide holder for value before maturity: Evans v. Morley, 21 U. C. Q. B. 547 (1862).

3. Where the maker signed a blank note and delivered it to the payee to fill up, and the latter fraudulently filled it up for a larger sum than authorized, the plaintiff, an indorsee before maturity for value without notice, can recover the full amount from the maker: McInnes v. Milton, 30 U. C. Q. B. 489 (1870); Merchants' Bank v. Good, 6 Man. 339 (1890).

4. A bank placed a cheque for $1,000 to the credit of a customer whose account was overdrawn to the extent of $409. It was held to be a holder in due course and entitled to recover the full $1,000 from the drawer who had stopped payment of the cheque, although it was admitted that the customer had not given value for the cheque to the drawer: Bank of B. N. A. v. Warren, 19 O. L. R. 257 (1909).

5. A cheque given in settlement of losses at matching coppers is a note of hand given in consideration of gambling debt within R. S. O. c. 47, s. 53, s.-s. 3, and such a security is void under 9 Anne, c. 14, even in the hands of a bona fide holder for value: Summerfeldt v. Watts, 12 O. R. 48 (1886).

6. A note given for a gambling debt is null and void even in the hands of an innocent indorsee for value before maturity: Biroleau v. Deromin, 7 L. C. J. 128 (1863). Contra, Dion v. Lachance, Q. R. 14 S. C. 77 (1898); Laurence v. Hearn, 21 N. S. 375 (1888).

7. A note given in violation of paragraph 3 of the Insolvent Act of 1864 is an absolute nullity, and is void ab initio even in the hands of a third party, innocent holder for value before maturity: Davis v. Muir, 13 L. C. J. 184 (1869).

§ 74

Right to sue.

8. Cheques fraudulently initialled by the manager of a bank for which the drawer has given in exchange to the manager certain securities which the bank retains, cannot be repudiated by the bank when the cheques are held by a bona fide holder for value: Banque Nationale v. City Bank, 17 L. C. J. 197 (1873).

9. A note given for an illegal consideration, namely, to induce a witness not to give evidence on a criminal prosecution, may be collected by a bona fide holder for value before maturity: Dorion v. Chalifoux, 6 R. L. 325 (1875).

10. The holder of a promissory note for value without notice can recover against the indorser, although the agent to whom the latter transmitted the note delivered it against his instructions: Sylvain v. Flanagan, Ramsay A. C. 80 (1875). See as to maker, Hastings v. O'Mahoney, 9 N. B. (4 Allen) 305 (1859).

11. A note fraudulently made by a partner in the partnership name, binds the firm in the hands of a bona fide holder for value: Walter v. Molsons Bank, Ramsay A. C. 80 (1877).

12. Where a note was given by an insolvent to a creditor for his consent to his discharge, an indorsee who received it before maturity for value, and without notice, can recover from the maker: Girouard v. Guindon, 2 L. N. 270 (1879).

13. A party to a bill or note when sued by the holder has no right to have the action stayed by dilatory exception, until other parties who may be liable to him are called in as warrantors: Desrocher v. Lapalme, M. L. R. 1 S. C. 494 (1885); Block v. Lazarovitz, M. L. R. 2 S. C. 279 (1886); Molsons Bank v. Charlebois, Q. R. 2 S. C. 286 (1892); Merchants Bank v. Moseley, 24 N. S. 301 (1892). Beaulieu v. Demers, 5 R. L. 244 (1874); and Mathieu v. Mousseau, 5 R. L. 260 (1874), contra, overruled.

14. Where an illiterate man was led to believe that he was becoming a party to an agreement, but the instrument proved to be a promissory note, and he was not guilty of negligence, he is not liable on the note even to a holder in due course: Banque Jacques Cartier v. Lescard, 13 Q. L. R. 39 (1886); L'Abbé v. Normandin, 32 L. C. J. 163 (1888); Banque Jacques Cartier v. Lalonde, Q. R. 20 S. C. 43 (1901); Alloway v. Hrabi, 14 Man. 627 (1904); Foster v. Mackinnon, L. R. 4 C. P. 704 (1869); Lewis v. Clay, 14 T. L. R. 149, 67 L. J. Q. B. 224 (1897); Puffer v. Smith, 57 Ill. 527 (1871); Griffiths v. Hogg, 39 Wis. 290 (1876).

15. A person who receives for value in good faith a cheque on the day of its date which is payable four days later, can enforce it against the drawer, even if improperly obtained by the first holder: Kenny v. Price, 20 R. L. 1 (1890).

16. A promissory note made by a married woman, separate as to property, in favor of a creditor of her husband is absolutely null and no action can be maintained thereon by a bank which has discounted the same in good faith before maturity, in ignorance of the cause of nullity: Banque Nationale v. Guy, M. L. R. 7 S. C. 144 (1891).

Rand v. La Banque Nationale, Q. R. 3 Q. B. 161 (1893); Maclean v. O'Brien, Q. R. 12 S. C. 110 (1896). § 74

17. Abuse of power or betrayal of trust by an agent who misuses a bill of exchange for his principal, does not affect the recourse against the latter of a bona fide holder for value, who had no knowledge of such abuse or betrayal: Quebec Bank v. Bryant, 17 Q. L. R. 98 (1891). *Right to sue.*

18. Where the maker was aware he was signing a promissory note, fraud on the part of the person to whom he delivered it will not prevent a holder in due course recovering on it: Banque Jacques Cartier v. Leldame, Q. R. 1 Q. B. 128 (1892).

19. A note given to a creditor to induce him to sign a deed of composition is void as between the parties; but is valid in the hands of a holder in due course, or of one who holds it for him: Bellemare v. Gray, Q. R. 16 S. C. [illegible] (1899).

20. In an action by a bona fide indorsee of a note for value before maturity against the indorsers, it is no defence that the note was indorsed in the firm name by one of the partners fraudulently without the knowledge of the others, and for matters not relating to the business of the partnership: McLeod v. Curran, 12 N. B. (1 Han.) 592 (1869).

21. A writ of attachment having issued against the payee of a promissory note, he indorsed and delivered the note, and the holder indorsed it before maturity for value to plaintiff, who was not aware of the insolvency of the payee. Held, that he was entitled to recover: Machellan v. Davidson, 20 N. B. (4 P. & B.) 338 (1880).

22. A bill was indorsed for value before maturity by the payee, who was the payee. On its dishonor the holder returned it to the drawer, by whom it was sent back to the indorsee, who sued upon it. The acceptor set up as a defence that he had not received value from the drawer. Held, that this was no defence; that the mere sending of the bill back to the drawer did not deprive the plaintiff of his rights as a holder in due course: Cohn v. Werner, 8 T. L. R. 11 (1891).

(c) Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and. *Title from him.*

(d) Where his title is defective if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill. 53 V., c. 33, s. 38 (*c*). Imp. Act, s. 38 (3). *Discharge from him.*

§ 74

See the preceding clause (*b*) of this section as to a defective title and as to the rights of a holder in due course.

Payment of bill.

Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith, and without notice that his title to the bill is defective: s. 139. If a bill be made payable to bearer or endorsed in blank, the person in possession may be presumed to be entitled to receive payment in due course, and payment to him is valid if made in good faith, although he may be a thief, finder, or fraudulent holder: Byles, p. 196; Randolph, § 1144.

In order to vitiate the payment by the maker of a promissory note indorsed in blank, bad faith must be shewn: payment under circumstances of suspicion is not enough. The maker is only bound to assure himself of the genuineness of the signatures, and is not bound to make any enquiry: Ferrie v. Wardens of the House of Industry, 1 Rev. de Lég. 27 (1845); Johnson v. Way, 27 Ohio St. 374 (1875).

Transfer and Transmission of Bills by the Operation of Provincial Law.

Provincial law.

Sections 60 to 74 inclusive treat only of the negotiation and transfer of bills by the operation of the Act and the provisions of the law merchant. They are also like other personal property subject to transfer and transmission by the operation of provincial law in so far as these are not in conflict with the Act. In so far as there is a conflict the Dominion law must prevail: Tennant v. Union Bank [1894] A. C. 31: La Compagnie Hydraulique v. Continental Heat and Light Co. [1909] A. C. 197.

Some of the principal modes of such transfer or transmission are the following:

1. By Will.—Where a testator is the holder or owner of a bill, it passes to the executor unless there be some provision in the provincial law or in the will to the contrary. His power to indorse and deliver a bill payable to order or his right to dispose of and deliver a bill payable to bearer is

subject to the like limitations: Bishop v. Curtis, 18 Q. B. 391 (1852); C. C. Art. 919. § 74

2. By Death and Intestacy.—Where an intestate dies having bills in such condition they pass to the administrator of his personal estate in those provinces where such appointments are made, and in the province of Quebec to the heirs, who have such powers respectively regarding them as the provincial law may give.

3. By Insolvency.—As there is no Dominion Insolvent Act, the provisions of the various provincial acts regulating the assignment and transfer of the estates of insolvent debtors will govern. If such an estate includes a bill payable to order which the debtor does not endorse, the assignee, trustee, or curator, as the case may be, acquires such rights as the provincial law may confer as to choses in action, debts, or rights of action.

4. By Assignment or Sale.—Such a transfer of a bill payable to order gives the assignee or purchaser such rights as are mentioned in the last paragraph.

5. By Seizure, Sale, etc.—If a sheriff seizes and sells such a note or it is sold by order of the Court, licitation or analogous proceeding, the purchaser acquires such rights as the provincial law may confer upon the sale of such property.

6. **Donatio Mortis Causa.**—A bill may be the subject of a valid donatio mortis causa. If payable to bearer the donee acquires a title under the Act: if payable to order he becomes the owner of the bill according to the provincial law, but not the holder under the Act.

The whole of the foregoing may also be subject to modification in all the provinces, and to some extent even in the province of Quebec, by the provisions of section 10 of this Act, which applies the rules of the common law of England to bills.

§ 75

Presentment for Acceptance.

When necessary.

75. Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. 53 V., c. 33, s. 39 (1). Imp. Act, *ibid.*

Bills payable at or after sight.

This sub-section in the Imperial Act reads, "Where a bill is payable after sight," etc. The words "at sight or" were inserted in the bill in the Canadian House of Commons after it had been determined not to change our law which allowed grace on bills payable at sight, and they had been struck out of section 10, where they stood as one of the classes of bills payable on demand. In England a sight bill is payable on demand, so that it need not be presented for acceptance. Such is also the law in those States which have adopted the Negotiable Instruments Law, which has abolished days of grace, § 240.

The acceptance of a bill payable at or after sight should be dated, so that it may be known from what day the time runs. A sight bill is payable on the third day after acceptance, one payable after sight on the third day after the expiration of the time mentioned in the bill. See sections 44, 45, and 77. The sub-section as it stands is in accordance with the law of England before the passage of the Act of 1871; Campbell v. French, 6 T. R. at p. 212 (1795); Haynes v. Kerrison, 2 Taunt. 323 (1810); Sturdy v. Henderson, 4 B. & Ald. 592 (1821).

Mode of presentment.

A bill should be presented for acceptance to the drawee personally, or at his place of business or residence; or to his authorized agent. If it is addressed to him at a particular place, it may be treated as dishonoured if he has absconded: Anon. 1 Ld. Raym. 743 (1701): but if he has merely changed his residence or place of business, or if the bill is not addressed to him at a particular place, it is incumbent on the holder to use due diligence to find him. And due diligence in such a case is a question of fact: Collins v. Butler, 2 Str. 1087 (1729); Bateman v. Joseph, 12 East, 433 (1810). It is not enough to present it to some person in the drawee's

yard, without knowing who that person is: Cheek v. Roper, 5 Esp. 175 (1805). § 75

The Act does not give definite directions as to the proper place to present a bill, but the rules laid down in section 88, as to presentment for payment, would seem to be reasonable so far as they are applicable. According to this, a bill should be presented for acceptance, (1) at the address given, if any: (2) if no address is given, to the drawee personally or to his duly authorized agent, or at his ordinary place of business, if known; and if not, at his ordinary residence, if known. If he has no known residence in the place it may be presented at his last known place of business or residence. The object of presentment for acceptance is to reach the drawee or an agent authorized by him to accept; the object of presentment for payment is to get the money, and it should be made where the acceptor ought to have the money to pay the bill. Where to present.

2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment. 53 V., c. 33, s. 39 (2). Imp. Act, *ibid.* Express stipulation.

The second part of this subsection, according to Chalmers (p. 145), settles a point which had not been decided in England. In Upper Canada it had been decided that presentment for acceptance was not necessary in such a case, so that it introduces new law in Ontario: Richardson v. Daniels, 5 U. C. O. S. 671 (1838). This latter is the rule in the United States: 1 Daniel, § 454; Walker v. Stetson, 19 Ohio St. 400 (1869); Neg. Insts. Law, § 240 (3); but not in France: Nouguier, § 1068.

This subsection is subject to section 76.

3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill. 53 V., c. 33, s. 39 (3). Imp. Act, *ibid.* Other case.

§ 75 A bill payable at a fixed period after date, or on or at a fixed period after the occurrence of a specified event, need not be presented for acceptance, unless it come within sub-section 2. Although not necessary, it is, however, advisable to present such bills for acceptance, in order to secure the liability of the drawee if he accepts, or to have recourse at once against the other parties liable on the bill if he refuses to accept. An agent should in all cases present such bills for acceptance, or he may be held liable for negligence: Allen v. Suydam, 20 Wend. (N.Y.) 321 (1838); Pothier, No. 128; Nouguier, § 462. If the bill contain the words "acceptance waived" or equivalent words, it need not be presented except for payment: Reg. v. Kinnear, 2 M. & R. 117 (1838); Freeman v. Boynton, 7 Mass. 483 (1811); Nouguier, § 470.

Present-ment excused.

76. Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers. 53 V., c. 33, s. 39 (4). Imp. Act, *ibid.*

This subsection is introduced in order to prevent hardship from the rule laid down in subsection 2 of section 75. It is applicable to bills payable at a fixed period after date, or on the occurrence of a specified event or at a fixed period after it.

What is "reasonable diligence" will depend upon the facts and circumstances of each particular case.

Sight bill.

77. Subject to the provisions of this Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

§ 77

If not presented.

2. If he does not do so, the drawer and all endorsers prior to that holder are discharged. 53 V., c. 33, s. 40 (1) and (2); 54-55 V., c. 17, s. 5. Imp. Act, s. 40 (1) and (2).

The provisions of the Act referred to are those that relate to excuses for presentment which are found in section 79.

Section 80 lays down the rules as to delay for acceptance.

The words "at sight or" are not in the Imperial Act, as under it bills payable at sight being payable on demand need not be presented for acceptance. Our Act of 1890 copied the Imperial Act without making the change in this section to correspond with that in section 23, omitting bills payable at sight from among those payable on demand. This was remedied, and these words added, by the amending Act of 1891.

The rule laid down in this subsection is that in force in England before the change in the law: Byles (16th ed.), p. 139; and is also the law in most of the United States: Daniel, § 454; Neg. Insts. Law, § 241; and was in Quebec: C. C. Art. 291. As to what is a reasonable time, see subsection 3.

The reason for the rule is that the drawer, and prior endorsers, if any, have a right to expect that they shall not be prejudiced by undue delay, as they have an interest in knowing at an early date whether the drawee will accept, and also in case he accepts that the date of payment shall not be unduly postponed, thus extending the period of their liability, and increasing the risk of their losing through the failure of the acceptor.

Reasonable time.

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. 53 V., c. 33, s. 40 (3). Imp. Act, *ibid.*

§ 77

Reasonable time.

What is a reasonable time to present such a bill for acceptance has been held to be a mixed question of law and fact: Perley v. Howard, 4 N. B. (2 Kerr) 518 (1845); Tindal v. Brown, 1 T. R. 168 (1786); Muilman v. D'Eguino, 2 H. Bl. 565 (1795); Shute v. Robins, 3 C. & P. 80 (1828); Mellish v. Rawdon, 9 Bing. 416 (1832); Mullick v. Radakissen, 9 Moore P. C. 46 (1854); Wallace v. Agry, 4 Mason (U. S.) 336 (1827). But see section 70, s.-s. 3, where what is an unreasonable length of time for a demand bill to be in circulation is made a question of fact alone. Regard should be had not only to the interest of the drawer and drawee, but also to that of the holder, who is entitled to a reasonable time to put it into circulation: Mullick v. Radakissen, 9 Moore P. C. 46 (1854).

As to what is a reasonable time in case of a bank deposit receipt payable on demand, see Security National Bank v. Pritt, 3 Sask. 188 (1910).

No absolute rule has ever been laid down in England the United States or Canada, as to what is a reasonable time for such presentment. In France, a limit of three months is fixed for Europe and Algeria, four months for Asia, six months for America and Southern Africa, and a year for the rest of the world: Code de Com. Art. 160, as amended by the law of the 3rd of May, 1862.

ILLUSTRATIONS.

1. A bill drawn in Toronto on August 6th, by a party dealing in Mills, on New York, payable at sight, in favor of a party living in Illinois to be sent there as a remittance and for circulation, which passed through a number of hands, was presented in New York on November 10th. The jury found that the delay was not unreasonable, and the court refused a new trial: Boyes v. Joseph, 7 L. C. Q. B. 505 (1850).

2. A bill of exchange was drawn on the 27th of August, and after passing through the hands of two intermediate holders, was presented on the 1st of September, and refused payment, and protested on September 8th, all parties being in Montreal. The holder sued the last indorser. Held, that presentation and protest had not been made with due diligence, and action dismissed: Harris v. Schwob, 3 R. L. 453 (1871).

3. Defendants indorsed on October 8th, a bill payable after sight, drawn on Liverpool, England. The drawer held it over two mails,

and on November 5th sold it for full value to plaintiffs, who remitted it the same day. It was accepted, but the acceptor failed before it became due. Defendants claimed that they were discharged by want of diligence in presenting. Plea struck out on the ground that there was no such delay as would constitute a defence: Wylde v. Wetmore, 7 N. S. (1 G. & O.) 504 (1869).

4. A jury having found a verdict against the drawee, on a bill drawn in Windsor, payable in London a month after sight, and presented on the fourth day, the Court held that the delay was not unreasonable and refused a new trial: Fry v. Hill, 7 Taunt. 397 (1817).

5. A bill drawn on August 12th, in Carbonear, Newfoundland, on London, payable 90 days after sight, was presented for acceptance November 16th. There was a daily mail from Carbonear to St. John's, 20 miles, and a tri-weekly mail from St. John's to London. The delay was not explained. The jury found the delay to be unreasonable and the Court refused a new trial: Straker v. Graham, 4 M. & W. 721 (1839).

6. A bill drawn at Calcutta, February 16th, on Hong Kong at 60 days after sight, was indorsed and negotiated by the drawers. On account of the state of the money market the indorsee kept it five months and then negotiated it. The holder presented it on October 24th to the drawee at Hong Kong, who refused to accept it. The Supreme Court of Calcutta found the delay unreasonable, and the Privy Council would not disturb the finding: Mulliek v. Radakissen, 9 Moore P. C. 46 (1854).

78. A bill is duly presented for acceptance which is presented in accordance with the following rules, namely:— **Rules.**

(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue. 53 V., c. 33, s. 41 (*a*). Imp. Act, *ibid.* **By holder to drawee**

The holder by whom or on whose behalf a bill is presented need not be the owner or even a lawful holder. s. 2 (g); Morrison v. Buchanan, 6 C. & P. 18 (1833); Nouguier, § 462. **By or for holder.**

As to what is a reasonable hour may depend on where the bill should be presented. If at a bank it should be during banking hours; if at another office, during ordinary office **Hour and day.**

§ 78

Time of presentment.

hours; if at a private house, it may be earlier in the morning or later in the evening: Parker v. Gordon, 7 East, 385 (1806); Elford v. Teed, 1 M. & S. 28 (1813); Wilkins v. Jadis, 2 B. & Ad. 188 (1831); Cayuga Co. Bank v. Hunt, 2 Hill (N. Y.) 635 (1842). Any day is a business day except those mentioned in section 43: see section 2 (2). A bill should be presented for acceptance before maturity. If accepted after maturity it becomes a bill payable on demand, and should then be presented for payment within a reasonable time so as to bind endorsers after acceptance: s. 86 (*b*).

Mode of presentment.

The Act does not give precise directions as to the presentment of a bill for acceptance. Some of the rules laid down in sections 86, 87, and 88 as to presentment for payment are no doubt applicable; but there is a difference in principle between the two presentments, the former being personal, and the latter local. Where a drawee has accepted a bill he knows when and where it will be presented for payment, and all that is required is that some person on his behalf shall be there at the time with the money to hand over, and to receive the bill. In the case of a presentment for acceptance, however, even if advised by the drawer of the drawing, he may not know when the holder may choose to present it.

When a bill is payable 15 days after sight a demand of payment unaccompanied by a presentment for acceptance is insufficient, and the action will be dismissed: Cousineau v. Lecours, M. L. R. 4 S. C. 249 (1888). The bill should be actually exhibited to the drawee: Fall River U. Bank v. Willard, 5 Metcalf (Mass.) 216 (1842).

To all drawees.

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only. 53 V., c. 33, s. 41 (*b*). Imp. Act, *ibid.*

If all the drawees do not accept, the acceptance is a qualified one: s. 38 s.-s. 3 (*d*); and the holder should either notify the drawer and endorsers, or treat the bill as dis-

honoured by non-acceptance; otherwise the drawer and endorsers will be discharged: s. 84. § 78

(*c*) Where the drawee is dead, presentment may be made to his personal representative. 53 V., c. 33, s. 41 (*c*). Imp. Act, *ibid.* To personal representative.

As to the law in England, Chalmers says, p. 151, "Before this enactment the law on this point was very doubtful": Smith v. New South Wales Bank, 8 Moore P. C. N. S. 461, 462 (1872). In Quebec the rule was laid down in Art. 2290 C. C.: "If the drawee be dead or cannot be found and is not represented, presentment is made at his last known domicile or place of business."

It will be observed that presentment to the personal representative is optional with the holder. He may treat the bill as dishonoured by non-acceptance without presenting it at all: s. 79 (*a*).

(*d*) Where authorized by agreement or usage, a presentment through the post office is sufficient. 53 V., c. 33, s. 41 (*d*). Imp. Act, s. 41 (*c*). Post office.

"This enactment gives effect to the recognized practice among English merchants": Chalmers, p. 151. Long before the Act it had been well established in England with regard to cheques: Bailey v. Bodenham, 16 C. B. N. S. 288 (1864); Prideaux v. Criddle, L. R. 4 Q. B. 461 (1869); Heywood v. Pickering, L. R. 9 Q. B. 432 (1874).

The same usage was followed in Canada by banks with regard to cheques drawn upon their own correspondents: The Queen v. Bank of Montreal, 1 Exch. Can. 154 (1886).

As to presentment for payment through the post, or at the post office, see section 90.

79. Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance,— Excuses.

§ 79

Drawee dead.

(*a*) where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill. 53 V., c. 33, s. 41 (2*a*); 54-55 V., c. 17, s. 6. Imp. Act, s. 41 (2*a*).

Where the drawee is dead the holder may either treat the bill as dishonoured by non-acceptance or may present it to his personal representative: s. 78 (*c*).

The Act of 1890 read "Where the drawee is dead or bankrupt," following the Imperial Act. As there is no bankrupt law in Canada the words were struck out in other places, but left in here by inadvertence. They were struck out by the amending Act of 1891. Where there has been an assignment for the benefit of creditors, or an abandonment of his estate, by a debtor under a provincial Act, presentment should still be made to him.

As to a fictitious drawee, see section 26; and as to capacity to contract by bill, see section 47.

Impracticability.

(*b*) where, after the exercise of reasonable diligence, such presentment cannot be effected. 53 V., c. 33, s. 41 (2*b*). Imp. Act, *ibid.*

Reasonable diligence is a question of fact to be determined according to the facts and circumstances of each particular case.

Waiver.

(*c*) where although the presentment has been irregular, acceptance has been refused on some other ground. 53 V., c. 33, s. 41 (2*c*). Imp. Act, *ibid.*

This is on the ground of estoppel. A refusal to accept is an acknowledgment of the sufficiency of the presentment.

Excuse.

2. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. 53 V., c. 33, s. 41 (3). Imp. Act, *ibid.*

This was the law in England before the Act: Ex parte Tondeur, L. R. 5 Eq. 165 (1867). § 79

A similar rule prevails as to presentment for payment: s. 92 (2).

80. The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter. Time for acceptance.

2. When a bill is so duly presented for acceptance and is not accepted within the time aforesaid, the person presenting it must treat it as dishonoured by non-acceptance. Dishonour.

3. If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers. Loss of rights.

4. In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid but not later than the day of his actual acceptance of the bill. Date of acceptance.

5. If the acceptance is not so dated, the holder may refuse to take the acceptance and may treat the bill as dishonoured by non-acceptance. 2 E. VII., c. 2, s. 1. Imp. Act, s. 42. Refusing acceptance.

History of Section.—In the Imperial Act a bill is to be treated as dishonoured if it is not accepted "within the customary time." In the Canadian draft bill the same expression was used. It was changed in the Commons so as to require acceptance on the day of presentment or on the next business day, which was in accordance with Canadian usage, at least in the principal cities of Ontario and Quebec. In the Senate the time was extended to two days. This would mean two business days: s. 6. The law remained in this form until the 15th May, 1902, when it was amended in the above form. History of section.

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Time for acceptance.

The change was made on account of the apparent clash ing between this section, which expressly allowed two days to accept, and section 37, s.-s. 2, which says that the holder is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. The point was whether an acceptance as allowed by this section was a qualified acceptance which the holder could refuse to take, and which would discharge the drawer and endorsers who did not assent thereto. The general opinion appears to have been that the legal effect of these sections as they formerly stood was to authorize the practice laid down in this section as it now stands, and such appears to have been the general commercial usage throughout Canada. On account, however, of dissent being expressed by some, the amendment of 1907 was passed to put it beyond question.

In cases of urgency, say for instance, where a demand draft is attached to a bill of lading of perishable goods, and a more speedy acceptance is required, special instructions should be given, as otherwise the drawee would be justified in claiming and the party presenting the bill in granting the delay mentioned in the Act. In case of a draft on a known business house the usual practice is to leave the bill for acceptance. If it is detained by the drawee protest may be made on a copy or written particulars of the bill: s. 120.

Before the law required an acceptance to be in writing on the bill, detention beyond the time allowed by law was treated as an acceptance: Harvey v. Martin, 1 Camp. 425, n. (1807). Such is still the law in most places where parol acceptances are recognized.

Dishonour.

81. A bill is dishonoured by non-acceptance. —

Present-ment.

(*a*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained, or,

Excuse.

(*b*) when presentment for acceptance is excused and the bill is not accepted. 53 V., c. 33, s. 43 (*a*) (*b*). Imp. Act, *ibid.*

The rules for the due presentment of a bill for acceptance have been given in section 78. The requisites of a valid acceptance are set forth in sections 36 and 38. If a qualified acceptance is offered, see section 83 as to the rights and duties of the holder of the bill. The holder may wait two days after presentment for an acceptance; if not then obtained he must treat the bill as dishonoured: s. 80. The circumstances which excuse presentment are given in section 51. § 81

82. Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary. 53 V., c. 33, s. 43 (2). Imp. Act, *ibid.* Recourse in such case.

The provisions of the Act to which this sub-section is subject, and which suspend the immediate right of recourse against the parties named, are section 96 as to notice of dishonour, and those relating to acceptance and payment for honour, sections 147 to 155. If the drawer or endorser has named a referee in case of need, the holder has the option of proceeding immediately against the drawer and endorsers after the dishonour of the bill by the drawee or of resorting to the referee: s. 37. If he applies to the referee and he accepts, the holder must await the maturity of the bill to see whether it will be paid. If after dishonour, the drawee is willing to accept, the holder may allow him to do so; but such acceptance, if the bill is payable at or after sight, should bear the date of the first presentment: s. 37. Effect of dishonour.

In England the rule laid down in this sub-section has long been recognized as law. See as to the drawer, Milford v. Mayor, 1 Douglas, 54 (1779): and as to the indorser, Ballingalls v. Gloster, 3 East, 481 (1803). So also in Upper Canada. In Ross v. Dixie, 7 U. C. Q. B. 414 (1850), Robinson, C.J., said: "An indorser, like the drawer, is liable the moment the holder is refused acceptance." It had been held in England that the right of action is not complete until notice of dishonour has had time to reach the parties: Old law.

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Whitehead v. Walker, 9 M. & W. 506 (1842); Castrique v. Bernabo, 6 Q. B. 498 (1844). In Quebec it was sufficient that the notice was sent: C. C. Art. 2298. So also in the United States: Lenox v. Cook, 8 Mass. 460 (1812); Robinson v. Ames, 20 Johns. 146 (1822); Shed v. Brett, 1 Pick. 401 (1823); Boston Bank v. Hodges, 9 Pick. 420 (1830); Watson v. Tarpley, 18 Howard (U. S.) at p. 519 (1855); Neg. Insts. Law, § 151.

French law.

Under the modern French law no right of action accrues on dishonour for non-acceptance. The holder can only protest the bill and claim security from the drawer and indorsers until the maturity of the bill: Code de Com. Art. 120. Under old French law he had also to await maturity and protest for non-payment: Pothier, Change, No. 133; Prevost v. Johnston, 2 Rev. de Lég. 28 (1813).

Qualified acceptance.

83. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

Assent.

2. When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. 53 V., c. 33, s. 44 (1) (3). Imp. Act. *ibid.*

Qualified acceptance.

A qualified acceptance is one which in express terms varies the effect of the bill as drawn: s. 38 (3). The examples there enumerated are acceptances that are conditional, partial, qualified as to time or by some of the drawees only. The "unqualified" acceptance of this section is the general acceptance in section 38 (2). If the drawee insists upon adding anything to a bare acceptance beyond indicating a bank or other place where he will pay, that will vary the terms of the bill, the holder may refuse to take it, and treat the bill as dishonoured. This has always been the law in England: Petit v. Benson, Comberbach, 452 (1697); Smith v. Abbott, 2 Str. 1152 (1741); Parker v. Gordon, 7 East 385

(1896). Also in the Province of Quebec: "The acceptance must be absolute and unconditional, but if the holder consent to a conditional or qualified acceptance the acceptor is bound by it": C. C. Art. 2293. See also Pothier, Change, Nos. 47-49. The same doctrine is recognized in the United States: 1 Daniel, § 465; Randolph, § 621. If the holder takes a qualified acceptance he is bound by it, and does so at the risk of releasing the drawer and endorsers, save as provided in the following section. § 83

84. Where a qualified acceptance is taken, and the drawer or an endorser has not expressedly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill: Provided that this section shall not apply to a partial acceptance, whereof due notice has been given. 53 V., c. 33, s. 44 (2). Imp. Act, *ibid.* Qualified acceptance without authority. Partial acceptance.

This section is said by Chalmers to introduce new law in England. He probably refers to the proviso regarding a partial acceptance, as the first clause appears to have been well recognized in England before the Act of 1882: Byles (11th ed.), p. 164; Chitty (11th ed.), p. 207; Sebag v. Abitbol, 4 M. & S. at p. 466 (1816); Rowe v. Young, 2 B. & B. 165 (1820). A similar rule prevailed in the United States: 1 Daniel, §§ 508, 515; McEowen v. Scott, 49 Vt. 376 (1877). If the holder is willing to accept the offer, he should then give notice of its exact terms to all the parties, and state his readiness to accept the offer, if they will respectively consent: 1 Daniel, § 510.

Presentment for Payment.

85. Subject to the provisions of this Act, a bill must be duly presented for payment. Necessity.

2. If it is not so presented, the drawer and endorsers shall be discharged. 53 V., c. 33, s. 45 (1). Imp. Act, *ibid.* Result of none.

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Present-ment for payment.

The provisions of the Act which relieve from prese- ment of a bill for payment are the following:—Section ... which allows a delay in certain cases for bills that m... first be presented for acceptance: section 82, which ... vides that a bill dishonoured by non-acceptance need not ... presented for payment; and sections 91 and 92, which m... tion the circumstances which excuse delay in presenting ... payment, or dispense with it entirely.

In presenting a bill it should be exhibited: s.-s. 3. ... cases under that sub-section, as to a bill being at the p... of payment on the day it matures. For the rules as to ... presentment of a cheque, see section 166.

The consequence of not duly presenting a bill for ... ment is that the drawer and indorsers are discharged ... their liability, not only on the bill, but also on the consid... tion for which it was given: Peacock v. Pursell, 14 C. ... N. S. 728 (1863); Hart v. McDougall, 25 N. S. 38 (... No presentment is necessary as against the acceptor, ... is the primary debtor; but if the bill be payable in a spec... place and be sued before presentment, the costs are in ... discretion of the Court: s. 93. See McLellan v. McL... 17 U. C. C. P. 109 (1866).

Manner of.

3. Where the holder of a bill presents it ... payment, he shall exhibit the bill to the person from whom he demands payment. 53 V., c. 33, s. 52 (4). Imp. Act, *ibid.*

Presentment for payment is made by the holder o... some person authorized to receive payment on his be... s. 87 (1). For a definition of holder see section 2 (... and as to payment, section 139. See section 156 as to a... bill.

Bill should be ex-hibited.

The bill should be produced and exhibited, as the p... paying has a right to it as a voucher in his account with other parties: De la Chevrotière v. Guilmet, 9 L. N. ... (1886); Jordan v. Coates, 7 N. B. (2 Allen) 107 (18...); Hansard v. Robinson, 7 B. & C. at p. 94 (1827); Ram... v. Crowe, 1 Ex. at p. 174 (1847); Crowe v. Clay, 9 Ex. ... (1854); Musson v. Lake, 4 How. (U. S.) 262 (1846).

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If a bill is payable at a bank or other particular place, and is lying there on the day of maturity, no special form of presentment is necessary: Harris v. Perry, 8 U. C. C. P. 409 (1858); Pullen v. Sanford, 16 N. S. (4 R. & G.) 242 (1883); Souther v. Wallace, 20 N. S. 509 (1888); Biggs v. Wood, 2 Man. 272 (1885); Merchants Bank v. Mulvey, 6 Man. 467 (1890); Union Bank v. McCullough, 4 Alta. 351 (1912); Bailey v. Porter, 14 M. & W. 44 (1845). If at place.

If on demand of payment the bill is not asked for and payment is refused on some other ground, or inability to pay is acknowledged, exhibition of the bill is waived: Chandler v. Beckwith, 2 N. B. (Berton) 423 (1838); Gilbert v. Dennis, 3 Metc. 495 (1842); Lockwood v. Crawford, 18 Conn. 361 (1847). Waiver.

86. A bill is duly presented for payment which is presented,— Time for.

(*a*) when the bill is not payable on demand, on the day it falls due. 53 V., c. 33, s. 45 (2*a*). Imp. Act, s. 45 (1). Due date.

Not Payable on Demand.—The rules as to the due date of bills not payable on demand are given in section 42. Presentment must be made on the third day of grace, unless that be a non-business day, when it must be presented on the next business day: Richardson v. Daniels, 5 U. C. O. S. 671 (1838); McLellan v. McLellan, 17 U. C. C. P. 109 (1866).

Presentment on the second day of grace is a nullity: Wilson v. Roberts, 1 Esp. 262 (1795); Mechanics' Bank v. Merchants' Bank, 6 Metc. 13 (1843); Henry v. Jones, 8 Mass. 153 (1812); also on the day after maturity unless the delay is excused: Prideaux v. Collier, 2 Stark. 58 (1817).

Where an indorser gave the holder a memorandum that a note would be good ten days after maturity, he was held liable on a presentment and protest at the end of ten days: Barrett v. Monaghan, 1 R. C. 133 (1871).

As to the hour at which presentment should be made, see notes to section 87.

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Demand bill.

(*b*) when the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable.

Reasonable time.

2. In determining what is a reasonable time within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. 53 V., c. 33, s. 45 (2*b*). Imp. Act, s. 45 (2).

Payable on Demand.—As to what bills are payable on demand, see section 23. The modifying provision referred to is that relating to cheques which are bills of exchange payable on demand: s. 166. As to a "reasonable time" see section 77, s.-s. 3. In France the same delays are fixed for presenting for payment a bill payable on demand as for presenting for acceptance a bill payable after sight: Code de Com., Art. 160 as amended.

Clearing house rules.

The defendant endorsed and negotiated a demand draft on the Farmers Bank, Toronto, to a country branch of the plaintiff bank on Friday. It reached the Toronto office at 8.30 a.m. on Saturday, too late according to practice for the clearing house that day. It went through on Monday at 10, and was stamped by the Farmers Bank as its property but not paid. The Farmers Bank suspended later that day. The defendant was not proved to be aware of the clearing house usages, and it was held that she was relieved by the dealings of the two banks: Sterling Bank v. Laughlin, 21 O. W. R. 221 (1913).

As to the delay for presenting for payment promissory notes payable on demand, see section 180.

By and to whom.

87. Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place as hereinafter defined, and either to the person designated by

the bill as payer or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence such person can there be found. 53 V., c. 33, s. 45 (2c). Imp. Act, s. 45 (3). § 87

Change from Imperial Act.

This clause differs from that in the Imperial Act in two particulars. There the words "at a reasonable hour on a business day" follow the words "on his behalf" in the third line; and the words "or to his representative" in the fifth line are not found in the Imperial Act. Our Act does not specify the hour of presentment for payment; but section 121 (*b*) provides that a protest shall not be made until after three o'clock in the afternoon. The Quebec Civil Code provided that a bill should be presented "in the afternoon," and if payable at a bank "either within or after the usual hours of banking": Art. 2306.

Rules vary.

The English Rule has been stated as follows: If a bill be payable at a bank it must be presented within banking hours: Elford v. Teed, 1 M. & S. 28 (1813); Parker v. Gordon, 7 East, 385 (1806); Whitaker v. Bank of England, 1 C. M. & R. 750 (1835); if at a merchant's place of business, then within ordinary business hours: Barclay v. Bailey, 2 Camp. 527 (1810), time 8 p.m.; Morgan v. Davison, 1 Stark. 114 (1815), time 6.30 p.m.; Allen v. Edmundson, 2 Ex. 723 (1848); if at a private house, probably a presentment up to bed-time would be sufficient: Triggs v. Newnham, 10 Moore, 249 (1825), time 8 p.m.; Wilkins v. Jadis, 2 B. & Ad. 188 (1831).

In Quebec it has been held that presentment at the closed doors of a bank after its usual office hours was not sufficient to base a protest upon: Watters v. Reiffenstein, 16 L. C. R. 297 (1866).

In New Brunswick where a note was payable at a "store," the only evidence was that when the holder went to present it the store was closed. It was held that in the absence of evidence it might be inferred that it was closed in the due course of business, and that the presentment was not made at a reasonable time: Patterson v. Tapley, 9 N. B.

§ 87 (4 Allen) 292 (1859). Presentment at the door of a st which was closed at 5 p.m. held sufficient: Reed v. Ka nagh, 9 N. B. (4 Allen) 457 (1859).

Present-ment for payment.

In Massachusetts a presentment at the maker's reside ten miles from Boston, at 9 p.m., was held sufficient, althou he and his family had retired: Farnsworth v. Allen, 1 Gr 453 (1855). In Maine a presentment at the maker's ho a few minutes before midnight, when he was wakened was held insufficient: Dana v. Sawyer, 22 Me. 244 (184

A note was payable at the Mechanics' Bank, New Y city. The bank closed at 3 o'clock, but the clerks remai after that hour, and notes were presented and paid or fused. It was held that though the presentment was of banking hours, it was sufficient if there was a per there authorized to give the holder an answer: Utica Smith, 18 Johns. 230 (1820).

Two acceptors.

2. When a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. 53 V., c. 33, s. 45 (4 Imp. Act, s. 45 (6).

Chalmers says, p. 161: "This is probably declarat but the point was not clear. Of course, if he pays, or in fusing payment, acts as the agent of the others, that is enough." Presentment should be made according to s tion 88 (*b*, *c*, *d*.) If they are in different places so that sentment cannot be made to all on the day of maturity bill should be presented to at least one on that day an to the others as soon as practicable. The case is more li ly to arise with joint makers of a note payable generally. Willis v. Green, 5 Hill, 232 (1843); Arnold v. Dresse 8 Allen (Mass.), 435 (1864); Union Bank v. Willis, 8 M e. 504 (1844); Blake v. McMillen, 33 Iowa, 150 (187 Gates v. Beecher, 60 N. Y. 523 (1875); Britt v. Lawson 15 Hun (N. Y.) 123 (1878).

Personal represent-ation.

3. When the drawee or acceptor of a bill is dead, and no place of payment is specified, pre-

sentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found. 53 V., c. 33, s. 45 (5). Imp. Act, s. 45 (7). § 87

Presentment for acceptance in such a case is excused, or may be made: s. 38 (*c*). In the case of payment it must be presented to the personal representative if at all practicable. See Camnt v. Thompson, 7 C. B. 400 (1849); Dana v. Bradley, 10 N. B. (5 Allen) 292 (1862).

88. A bill is presented at the proper place,— Place of.

(*a*) where a place of payment is specified in the bill or acceptance, and the bill is there presented. 53 V., c. 33, s. 45 (2 *d* 1). Imp. Act, s. 45 (4 *a*). When specified.

The words "or acceptance" are not in the Imperial Act or the Negotiable Instruments Law. According to Chalmers the word "bill" includes acceptance. He says, p. 159: "The place of payment may be specified either by the drawer or the acceptor": Gibb v. Mather, 2 Cr. & J. 254 (1832); Saul v. Jones, 1 E. & E. 59 (1858). Where a bill was payable at the office of the acceptor, Swansea, and was presented to him personally at Newport, it was held that an indorser was not liable: Beirnstein v. Usher, 11 T. L. R. 356 (1895). In England it is only when it is stated that the bill is to be paid at a particular place and not elsewhere that it must be presented there. So also formerly in Ontario as to both bills and notes, and in Prince Edward Island as to bills: see note to section 38, s.-s. 4.

In Canada it is now sufficient to name the place of payment in the bill or acceptance without the additional words: s. 38 (4).

When a place of payment is named it should be presented there: C. C. Art. 2307; O'Brien v. Stevenson, 15 L. C. R. 265 (1865); Ferrie v. Rykman, Draper U. C. 61 (1830); Driggs v. Waite, 6 U. C. O. S. 310 (1842); Darling v. Gillies, 20 N. S. 423, 9 C. L. T. 120 (1888); Clayton v.

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McDonald, 25 N. S. 446 (1893); Biggs v. Wood, 2 Man. 272 (1885); Philpott v. Bryant, 3 C. & P. 244 (1827).

Presentment.

If the bill is at the bank or other place of payment its maturity, and the acceptor has no assets there, this is sufficient: Bailey v. Porter, 14 M. & W. 44 (1845); Merchants Bank v. Mulvey, 6 Man. 167 (1890).

At proper place.

The rule in the United States is the same as that settled in Canada: Daniel, §§ 643, 644; Bank of U. S. v. Smith, 11 Wheaton (U.S.) 171 (1826); Cox v. National Bank, 100 U. S. (10 Otto) 712 (1879); Neg. Insts. Act, § 133.

Where a person accepts a bill payable at his own bank, it is in effect an order to the bank to pay it unless notified to the contrary, and to charge it to his account: Robarts v. Tucker, 16 Q. B. 560 (1851); Bank of England v. Vagliano, [1891] A. C. 107.

If a bill is payable at a bank in a town where there is a clearing-house, it has been held in England that presentment through the clearing-house is sufficient: Reynolds v. Chettle, 2 Camp. 596 (1811); Harris v. Packer, 3 Tyr. 370 (1833); Boddington v. Schlenker, 4 B. & Ad. 752 (1833).

If alternative places are named it is sufficient to present it at one: Beeching v. Gower, Holt N. P. C. 313 (1816).

A note made in Boston and payable "at any bank" means any bank in Boston: Baldwin v. Hitchcock, 12 N. B. (1 Han.) 310 (1869).

A note dated at Brandon, Man., and made payable "at the Imperial Bank," is payable at the office of that bank in Brandon, and not at the head office in Toronto: Commercial Bank v. Bissett, 7 Man. 586 (1891).

When not specified.

(*b*) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

When no address is given.

(*c*) where no place of payment is specified and no address given, and the bill is presented at

the drawee's or acceptor's place of business, if known, and if not at his ordinary residence, if known; § 88

(*d*) in any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. 53 V., c. 33, s. 45 (2*d*) (2) (3) (4). Imp. Act, s. 45 (2*d*) (4 *b*, *c*, *d*). Other cases.

These rules have been generally followed in Canada, England and the United States.

A note payable generally was left for collection at a bank in the town where the maker lived. Before it matured he left town. A clerk went to present it at the house where he formerly lived, and could not learn there where he had gone to. He had heard before the note matured that the maker had left town, but heard different reports as to where he had gone. No enquiry was made at any of these places. It was proved that his leaving was no secret, and his business partner was not asked as to his whereabouts. Held, that reasonable diligence was not used and the indorser was released: Browne v. Boulton, 9 U. C. Q. B. 64 (1851). No place specified.

The maker of a promissory note, a merchant, having absconded before the note became due and closed his store, it was held that presentment at his late dwelling-house was sufficient without proof of presentment at the store, or that the store remained closed on the day the note fell due: Robinson v. Taylor, 4 N. B. (2 Kerr) 198 (1843).

The maker of a note was proved to have occupied an office up to May 1st, after which there was no direct evidence of occupation, but his desk remained there as before. Held, in the absence of any proof of his having changed his office, that presentment of the note there after the 1st of May was sufficient: Kinnear v. Goddard, 9 N. B. (4 Allen) 559 (1860).

See Fitch v. Kelly, 44 U. C. Q. B. 587 (1879): Evans v. Foster, 13 N. S. 66 (1879): Sharp v. Power, 33 N. S.

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371 (1900); Hine v. Allely, 1 N. & M. 433 (1833); Buxton v. Jones, 1 M. & Gr. 83 (1840); McGruder v. Bank Washington, 9 Wheaton (U. S.) 598 (1824); Sussex B v. Baldwin, 2 Harrison (N. J.), 487 (1836); West Brown, 6 Ohio St. 542 (1856); Granite Bank v. Ayers, Pick. (Mass.) 392 (1835).

Sufficient presentment.

89. Where a bill is presented at the proper place as aforesaid and after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there be found, no further presentment to the drawee or acceptor is required. 53 V., c. 33, s. 45 (3). Imp. Act, s. 45 (5).

It is the duty of the acceptor to have some person at proper place, on the day a bill matures, to pay it. If person is there prepared to pay, or authorized to refuse ment, or if the place be closed during reasonable hours further presentment is required, and the bill may be treated as dishonoured: Hine v. Allely and Buxton v. Jones, su Crosse v. Smith, 1 M. & S. at p. 554 (1813).

Before the Act it was considered that where a b payable at a bank which has ceased to exist or which closed that particular office it is payable generally: B v. Amherstburg, 23 U. C. C. P. 602 (1874); McRobb Torrance, 5 Man. 114 (1888).

Presentment at post office.

90. Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient. 53 V., c. 33, s. 45 (7).

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There is no corresponding clause in the Imperial Act, and it is new law in Canada: Commons Debates, 1890, p. [illegible]. The former practice in England when the acceptor had no place of business or residence, was to present it at all the banks in the place: Hardy v. Woodroofe, 2 Stark, 319 (1818). This clause furnishes a very simple rule for a place where there is a large number of banks, or where there is no bank at all.

Through post office.

2. Where authorized by agreement or usage, a presentment through the post office is sufficient. 53 V., c. 33, s. 45 (6). Imp. Act, s. 45 (8).

It is a customary and legal method for a bank to present through the mail a cheque drawn on one of its correspondents: The Queen v. Bank of Montreal, 1 Exch. Can. [illegible] (1886).

In England and the United States such a usage has existed for many years, especially in the case of cheques. See Hare v. Henty, 10 C. B. N. S. 65 (1861); Prideaux v. Criddle, L. R. 4 Q. B. at p. 461 (1869); Heywood v. Pickering, L. R. 9 Q. B. at p. 432 (1874); Windham Bank v. Norton, 22 Conn. 214 (1852); Berg v. Abbott, 83 Penn. St. [illegible] (1876); Shipsey v. Bowery National Bank, 59 N. Y. [illegible] (1875).

Delay in presentment.

91. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

Diligence.

2. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. 53 V., c. 33, s. 46 (1). Imp. Act, *ibid.*

The present section mentions the circumstances under which delay is excused, while the cause of delay exists; the following one, those under which presentment is dispensed with entirely.

§ 91 See section 105 as to delay in giving notice of dishonour, and section 111 as to notice of protest.

ILLUSTRATIONS.

The following have been recognized as valid excuses for delay:—

Delay in presentment.

1. A request from the drawer or indorser sought to be charged: Burnett v. Monaghan, 1 R. C. 473 (1871); Lord Ward v. G. W. Ry. Co. 2 De G. M. & G. 750 (1852).

2. A note was lying at a branch bank where it was payable. The new agent was not aware of its being there until noon of the day after maturity, when he had it protested and notice given. Held sufficient to bind the indorser: Union Bank v. McKilligan, 1 M. 29 (1886).

3. The death of the holder: Rothschild v. Currie, 1 Q. B. 47 (1841); Pothier, No. 144; Nouguier, §§ 1107, 1108.

4. A state of siege or war, rendering it impracticable: Patterson v. Townley, 2 Smith, 223 (1805); Bond v. Moore, 93 U. S. (3 Otto) 593 (1876); 3 Randolph. § 1324.

5. A moratory law, passed in consequence of war, postponing the maturity of bills 3 months: Ronquette v. Overmann, L. R. 10 Q. B. 525 (1875).

6. Delay in the post office where it was mailed in ample time: Windham Bank v. Norton, 22 Conn. 213 (S. C. 1852); Pier v. Heinrichshoffen, 29 Am. Rep. 501 (1877).

Dispensed with.

92. Presentment for payment is dispensed with,—

Impracticable.

(*a*) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected. 53 V., c. 33, s. 46 (2), Imp. Act, *ibid.*

The dispensing with presentment for payment under the present section should be distinguished from the delay in presentment which is excused under the preceding section. In many of the cases the distinction is not kept in mind. The circumstances which excuse delay in notice of dishonour or dispense with it are to be found in sections 105 and 106.

The different modes in which presentment may be made, and the order in which they should be attempted, are set out in section 88. If after the exercise of reasonable diligence, a bill cannot be presented in any one of these ways, presentment is dispensed with entirely: Forward v. Thompson, 12 U. C. Q. B. 194 (1851); see. 106. § 92

Dispensed with.

Whether due diligence has been used is a mixed question of law and fact: Perley v. Howard, 1 N. B. (2 Kerr) 718 (1844).

ILLUSTRATIONS.

The following have been held not to be sufficient reasons for dispensing with presentment:—

1. The fact of the bill being overdue when indorsed: Davis v. Dunn, 6 P. C. Q. B. 327 (1850).

2. The insolvency of the acceptor: Quebec Bank v. Ogilvy, 3 Deacon 200 (1883); Esdaile v. Sowerby, 11 East 117 (1809); Bowes v. Howe, 5 Taunt. 30 (1813); Sands v. Clarke, 8 C. B. 751 (1849). Contra, Venner v. Futvoye, 13 L. C. R. 307 (1863).

3. The dangerous illness of the maker of the note: Nowlin v. Roach, 1 N. B. (2 Kerr) 337 (1843).

4. Notice that the acceptor will not pay when due: Baker v. Birch, 3 Camp. 107 (1811); Hill v. Heap, D. & R. N. P. C. 57 (1823); Ex parte Bignold, 1 Deacon. 712 (1836). See also Nicholson v. Gouthit, 2 H. Bl. 609 (1796).

5. The fact of an acceptor being abroad, when the agent who accepted for him is at the place where the bill was addressed and accepted: Phillips v. Astling, 2 Taunt. 206 (1809).

(*b*) where the drawee is a fictitious person. 53 V., *c.* 33, s. 46 (2*b*). Imp. Act, *ibid.* 53 Fictitious drawee.

Where the drawee is a fictitious person the holder may treat the instrument as a promissory note: s. 26: Smith v. Bellamy, 2 Stark. 223 (1817).

The fact of the drawee not having capacity to contract does not dispense with presentment for payment. The holder may treat such a bill as a promissory note: s. 26: and need not present it for acceptance: s. 79 (*a*): but it may be that it would be paid if presented and the drawer and indorsers thereby discharged.

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Useless.

(*c*) as regards the drawer, where the drawee acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented. 53 V., c. 33, s. 46 (2*c*). Imp. Act, *ibid.*

A bill accepted for the accommodation of the drawer need not be presented in order to charge him, where he has not provided funds to meet it: Stayner v. Howatt, 15 N. S. (3 R. & G.) 267 (1882); Terry v. Parker, 6 A. & E. 502 (1837); see Bowes v. Howe, 5 Taunt. 30 (1813); Wiltshire v. Austin, L. R. 10 C. P. 689 (1875); and in re Boyse, Crofton v. Crofton, 33 Ch. D. 612 (1886). It should be presented to charge the indorsers: Knapp v. Bank of Montreal, 1 L. C. R. 252 (1850); Saul v. Jones, 1 E. & E. 59 (1858).

Accommodation bill

(*d*) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented. 53 V., c. 33, s. 46 (2*d*). Imp. Act, *ibid.*

Where a bill was made and accepted for the accommodation of the last indorser and he made no provision for it, he is liable without presentment but the prior indorsers are not: In re Boutin, Q. R. 12 S. C. 186 (1897); Turner v. Samson, 2 Q. B. D. 23 (1876); see Foster v. Parker, 2 C. P. D. 18 (1876).

Waiver.

(*e*) by waiver of presentment, express or implied. 53 V., c. 33, s. 46 (2*e*). Imp. Act, *ibid.*

Waiver is binding without consideration. It may be either before or after the time for presentment. It may be in writing or verbal, or inferred from conduct or circumstances. It may be in or on the bill itself: s. 34 (*b*).

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ILLUSTRATIONS.

1. A declaration of inability to pay and request for time is a waiver as regards the party making it: McDonnell v. Lowry, 3 U. C. Q. S. 302 (1833). Waiver.

2. A promise to pay [illegible] the bill is due with full knowledge of the facts is a waiver: McIver v. McFarlane, Taylor U. C. 113 (1824); Macaulay v. McFarlane, Ros. & Jos. Dig. 493 (1840); McCuniffe v. Allen, 6 U. C. Q. B. 377 (1849); McCarthy v. Phelps, 30 ibid. 57 (1870); City Bank v. Hunter, 2 Rev. de Lég. 171 (1847); Johnson v. Gerrow, 7 L. C. J. 125 (1863); Watters v. Lordly, 4 N. B. (2 Kerr.) 13 (1842); Allen v. McNaughton, 9 N. B. (1 Allen) 234 (1858); St. Stephen B. Ry. Co. v. Black, 13 N. B. (2 Han.) 139 (1870); Colwell v. Robertson, 17 N. B. (1 P. & B.) 481 (1877); Whitehouse v. Bedell, 26 N. B. 46 (1886); Ayer v. Murray, 39 N. B. 170 (1909); Deering v. Hayden, 3 Man. 219 (1886); Sparrow v. Corbett, 18 B. C. R. 356 (1913); Newton v. Husson, 30 W. L. R. 99 (Sask. 1911); Hopley v. Dufresne, 15 East, 275 (1812); Croxon v. Worthen, 5 M. & W. 5 (1839); Armstrong v. Chadwick, 127 Mass. 156 (1879).

3. Where a bank suspended payment on the day a cheque should have been presented, and the drawer sued the bank for the full amount of his deposit, including this cheque, it was held that he had waived presentment and was liable: Blackley v. McCabe, 16 Ont. A. R. 295 (1889).

4. Waiver of presentment by the payee does not bind the drawer: McLellan v. McLellan, 17 U. C. C. P. 109 (1866).

5. Part payment is a waiver: Rice v. Bowker, 3 L. C. R. 305 (1853).

6. A promise by an indorser to pay a composition on a note if it was not paid at maturity, is not a waiver of presentment or of protest: Union Bank v. Gibeault, 12 Q. L. R. 115 (1886).

7. An offer to give new notes which the holder does not accept is not a waiver: Bank of New Brunswick v. Knowles, 4 N. B. (2 Kerr) 219 (1843).

8. An offer after maturity by an indorser to pay a note is not a waiver of presentment if he did not know that it had not been presented: Nowlin v. Roach, 4 N. B. (2 Kerr) 337 (1843); Dana v. Bradley, 10 N. B. 292 (1862); Ayer v. Murray, 39 N. B. 170 (1906).

9. The payee indorsed a note to plaintiff. The maker having absconded, plaintiff on the day of maturity took it to the payee, who handed it back to plaintiff, asking him to keep it. This was a waiver of presentment: Masters v. Stubbs, 9 N. B. (1 Allen) 453 (1860).

10. Waiver of demand of payment is waiver of presentment: Burton v. Goffin, 5 B. C. R. 454 (1897).

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11. Notice of countermand of a cheque by the drawer is a waiver of presentment: Trapp v. Prescott, 17 B. C. R. 298 (1912).

12. Waiver of notice of dishonor is not waiver of presentment: Hill v. Heap, D. & R. N. P. C. 57 (1823); Keith v. Burke, 1 C. & E. 551 (1885).

13. It is no defence that the party making the promise to pay did not know its legal effect: Third Nat. Bank v. Ashworth, 105 Mass. 503 (1870).

Not dispense with.

2. The fact that the holder has reason to believe that the bill will, on presentment, be dishonored, does not dispense with the necessity for presentment. 53 V., c. 33, s. 46 (2*a*). Imp. Act, *ibid.*

When no place specified.

93. When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable. 53 V., c. 33, s. 52 (1). Imp. Act, *ibid.*

The Imperial Act reads, "when a bill is accepted generally, presentment is not necessary in order to render the acceptor liable." The change was made in this section to correspond with that made in section 38, which provides that an acceptance to pay at a particular specified place is not a qualified acceptance. The same rule applies to the maker of a promissory note: s. 183. See Wilson v. Brown, 6 Ont. A. R. 87 (1881); Shuter v. Paxton, 5 L. C. J. 55 (1860); Archer v. Lortie, 3 Q. L. R. 159 (1877); Minet v. Lajoie, 9 R. L. 382 (1877); Rowe v. Young, 2 Bligh H. L. at pp. 467, 468 (1820); Maltby v. Murrells, 7 H. & N. at p. 823 (1860). See also notes and illustrations under section 183.

Where payment to be made.

The reason given by Chalmers for the rule in this section is that "at common law the debtor is bound to seek out his creditor to pay him": Coke on Littleton, s. 340; Crawley v. Hillary, 2 M. & S. 120 (1813); Walton v. Mascall, 13 M. & W. 458 (1844). The general rule in Quebec is that if no place is indicated in the contract, payment should be made at the domicile of the debtor: C. C. Art. 1132. By Art. 1069 of the Civil Code it is provided that in all contracts of a com-

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mercial nature in which the time of performance is fixed, the debtor is put in default by the mere lapse of time, and this would apply to bills and notes not payable on demand; so that it becomes a mere question of costs, if the debtor has always been ready to pay, and when sued pays the money into court. No place specified.

A drawee may always protect himself against the risk of interest and costs by naming a place of payment in his acceptance, if none is named in the bill.

Presentment and notice of dishonour unless dispensed with are necessary to render the drawer and endorsers liable: ss. 85 and 96.

2. When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court. If place specified. Neglect.

3. When [illegible] is paid, the holder shall forthwith deliver [illegible] to the party paying it. 53 V., c. 33, s. 52 (2). Imp. Act, *ibid.* Delivery on payment.

Section 52 (2) of the Imperial Act reads: "When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures." Imperial Act.

The change in the first part of the subsection was made in the Senate to correspond with the change made in section 38 as to an acceptance at a particular specified place; and the latter part was added no doubt to meet the case of an acceptor being ready to pay at the proper place and the holder suing without applying there. It is to be observed that the clause does not say that if suit is brought before presen- Reason for change.

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tation it shall be dismissed, but that the plaintiff may punished for his neglect to present the bill by being refus costs or made to pay them.

Costs of suit.

The provision as costs being in the discretion of t court is one that is found either in the law or the jurisp dence of most if not all the provinces. It means a judi discretion, and is not to be exercised capriciously. Holmested's Ont. Jud. Act and Rules, p. 251.

This same discretion would no doubt be exercised by the courts if an action were brought under subsection 1, if the acceptor was not aware who was the holder of the bill at its maturity or afterwards, and consequently not in any defau t.

Section 183 has a similar provision as to promissory not s.

See McIver v. McFarlane, Taylor, U. C. 113 (182 Macaulay v. McFarlane, Rob. & Jos. Dig. 493 (1840); B v. Bowker, 3 L. C. R. 305 (1853); Mount v. Dunn, 4 L. C. R. 348 (1854); O'Brien v. Stevenson, 15 L. C. R. 265 (186 Crépeau v. Moore, 8 Q. L. R. 197 (1882); Chandler v. B with, 2 N. B. (Berton) 423 (1838); Ratchford v. Griffith, 4 N. B. (2 Kerr) 112 (1843); Biggs v. Wood, 2 Man. 2 (1885).

"Express stipulation."

It would seem as if the words "express stipulation" the clause as it now stands, would mean an express stipu tion that the acceptor should be discharged if the bill w e not presented on the day of maturity.

Chalmers (p. 195) applies these words in the Impe Act to the case where a bill by the acceptance is made p able at a particular place only, and suggests that when a ill is made payable at a particular place, and there only, the position of the acceptor is for many purposes analogou to that of the drawer of a cheque, and that if he could sh w that he was damnified by the holder's omission to prese it on the proper day, he would probably be discharged. He refers to Bishop v. Chitty, 2 Str. 1195 (1742); Alexa er v. Burchfield, 7 M. & Gr. 1061 (1842); Halstead v. Skel on, 5 Q. B. at pp. 93, 94 (1843); Mullick v. Radakissen, 9 M re P. C. at p. 70 (1854); and Smith v. Vertue, 30 L. J. C P. at pp. 59, 60 (1860).

It will be observed that this clause in the Canadian Act is wider in its scope than the corresponding one in the Imperial Act. The latter applies only to a qualified acceptance making a bill payable at a particular place, and there only, the former to all cases where either the bill itself or the acceptance names a place of payment. § 93

94. Where the address of the acceptor for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity. Time for presentment.

2. Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him. 53 V., c. 33, s. 66 (2). Imp. Act, s. 67 (2). Parties in different places. Presentment for payment.

The provisions of the Act as to acceptance for honour are to be found in sections 147 to 152.

The "day following" means the next business day: s. 6. The Act is silent as to the effect of want of presentation to the acceptor for honour within the prescribed time. The language used would seem to imply that he would be discharged, and also any party to the bill who would have been discharged if he had paid it. See Story v. Patten, 3 Wend. (N. Y.) 486 (1830): Nouguier, § 583; s. 117 (2).

Where a dishonoured bill has been accepted for honour supra protest, it must be protested for non-payment before it is presented for payment to the acceptor for honour. If dishonoured by him it must be again protested for non-payment: s. 117.

3. Delay in presentment or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay for presentment for payment or non-presentment Excuses for delay.

§ 94 for payment. 53 V., c. 33, s. 66 (3). Imp. Act, s. 67 (3).

For the circumstances which excuse delay in presenting a bill for payment see section 91 and the notes thereon; for those which dispense with presentment for payment see section 92 and notes.

Dishonour.

Non-payment on presentment.

95. A bill is dishonoured by non-payment,

(*a*) when it is duly presented for payment and payment is refused or cannot be obtained; or,

Excuse.

(*b*) when presentment is excused and the bill is overdue and unpaid. 53 V., c. 33, s. 47 (1). Imp. Act, *ibid.*

The provisions in this and following sections relating to dishonour and notice apply only when the bill is dishonoured in Canada. As to those payable abroad the law of the place governs: s. 162.

As to presentment for payment, see sections 86 to 90; as to when it is excused, see section 91, and when dispensed with, section 92.

As to when a bill is overdue, see sections 42 to 46.

Recourse.

2. Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder. 53 V., c. 33, s. 47 (2). Imp. Act, *ibid.*

The provisions of the Act to which the right of recourse is subject are those relating to notice of dishonour to the drawer and endorsers, sections 96 to 108; and to protest and notice to them in sections 112 and 117. The acceptor is liable without notice. A bill is also subject to the provisions of sections 147 to 155 as to acceptance and payment for honour.

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In the Imperial Act the word acceptor is not used. Chalmers distinguishes between the right of recourse and the right of action. It has been held in England that the latter exists against a drawer or indorser only from the time when notice of dishonour is or ought to be received and not from the time when it is sent: Castrique v. Bernabo, 6 Q. B. 498 (1844).

Right of action.

There have been conflicting decisions in Canada, England and the United States as to whether an action may be instituted in the afternoon of the last day of grace after dishonour. It has been held that such an action is premature: Demers v. Rousseau, Q. R. 1 S. C. 140 (1892); Westaway v. Stewart, 2 Sask. 178 (1909); Willoughby v. Wainwright, 23 Man. 289 (1913); Wells v. Giles, 2 Gale, 209 (1836); Kennedy v. Thomas, [1894] 2 Q. B. 759; Wiesinger v. First Nat. Bank, 106 Mich. 291 (1895). Contra, Sinclair v. Robson, 16 U. C. Q. B. 211 (1858); Edgar v. Magee, 1 O. R. 287 (1882); Bank of Toronto v. McBean, 22 C. L. T. 34 (1900); Ontario Bank v. Foster, 6 L. N. 338 (1883); Lefley v. Mills, 4 T. R. 170 (1791); Estes v. Tower, 102 Mass. 66 (1869); Vandesande v. Chapman, 18 Me. 262 (1869).

When it arises.

In some of the cases a distinction has been drawn between an action against the acceptor of a bill or the maker of a note, and one against the drawer of a bill or the endorsers of a bill or note. Kennedy v. Thomas, supra, was an action against the acceptor, and the English Court of Appeal dismissed it as prematnre. Mathers, J., in Westaway v. Stewart, supra, decided to follow Kennedy v. Thomas in accordance with the dictum of the Privy Council in Trimble v. Hill, 5 App. Cas. 342 (1879) that where a colony has copied an English statute which had been construed by the English Court of Appeal, it was the duty of colonial courts to follow such decisions. He was of opinion that the enactment of section 121 (*b*) in the Canadian Act, providing for protest at any time after three o'clock, which is not in the English Act, was not sufficient to distinguish the two acts.

When holder may sue.

In Quebec the insolvency of the acceptor before the maturity of the bill made it immediately exigible as against

Quebec rule.

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When holder may sue.

him: Lovell v. Meikle, 2 L. C. J. 69 (1853); Corcoran v. Montreal Abattoir Co., 6 L. N. 135 (1882); Ontario Bank v. Foster, 6 L. N. 398 (1883); Pelletier v. Deschenes, 1 R. J. 352 (1892); La Banque Nationale v. Martel, Q. R. 17 C. 97 (1899); but not as against an indorser: Guilbault v. Migue, 20 R. L. 597 (1891); Trottier v. Rivard, Q. R. 23 S. C. 526 (1903). Prescription does not, however, begin to run until the time fixed for the maturity of the bill: Whitney v. Pinkerton, Q. R. 2 S. C. 256 (1892).

Where the acceptance is conditional the condition must be fulfilled or the acceptor is not liable: Dufresne v. Jacques Cartier Building Society, 5 R. L. 235 (1873); Fullerton v. Chapman, 8 N. S. (2 G. & O.) 470 (1871); Potters v. Taylor, 20 N. S. 362; Ontario Bank v. McArthur, 5 Man. 351 (1889); Gammon v. Schmoll, 5 Taunt. 344 (1814).

In an action on a bill or note payable at a particular place it is not necessary to shew that there were not sufficient funds at the place named; all that is necessary, even as against an indorser, is to show presentment, non-payment, and notice of dishonour: McDonald v. McArthur, 8 Ont. A. R. 553 (1883).

Notice of dishonour.

96. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged: Provided that,—

Subsequent holder.

(*a*) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission;

Notice of non-payment.

(*b*) where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the

bill shall in the meantime have been accepted. 53 V., c. 33, s. 48. Imp. Act, *ibid.* § 96

Rules governing.

The provisions of the Act which dispense with notice of dishonour in certain cases, and excuse delay in giving notice in others, are in sections 105 to 108.

The rules governing notice of dishonour are to be found in section 97. As to when a bill is dishonoured by non-acceptance or non-payment, see sections 81 and 95.

The liability of the drawer and endorsers to a bill being contingent upon its non-acceptance or non-payment, notice of dishonour must be given to them, save in the exceptional cases mentioned in sections 106 to 108, in order to hold them liable.

By section 131, any person who signs a bill otherwise than as a drawer or acceptor, incurs the liabilities of an endorser to a holder in due course, and is subject to all the provisions of the Act respecting endorsers.

A note was made payable in 18 months with interest payable half-yearly. Non-payment of an instalment of interest held to be dishonour, and indorser released therefrom for want of notice: Jennings v. Napanee Brush Co., 8 C. L. T. 595 (1884); followed in Moore v. Scott, 16 Man. 192 (1907) and applied to the whole note. Contra, Union Investment Co. v. Wells, 39 S. C. Can. 625 (1908): Peters v. Perras, 42 S. C. Can. 244 (1909).

Under French law, indorsers are discharged for want of notice, but a drawer is not, unless he can shew that the drawee had funds to meet the bill: Code de Com. Art. 170. Under the Act, it is only a drawer as to whom the drawee or acceptor is under no obligation to accept or pay the bill, that must prove this: s. 92 (*c*).

Mere knowledge of the dishonour of a bill is not enough to affect a drawer or indorser: Burgh v. Legge, 5 M. & W. at p. 422 (1839); Carter v. Flower, 16 M. & W. at p. 719 (1847); Caunt v. Thompson, 7 C. B. 400 (1849). A notice in accordance with the rules in the three succeeding sections should be given where notice is not excused.

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Notice of dishonour.

Before the Act, persons who became parties to bill- warrantors, have been held not entitled to the same no as ordinary endorsers. As to their position now, see sect 106, and section 131 and notes thereon.

Proviso (*a*) would apply where the bill bore no mark dishonour, and the holder took it under the conditions out in section 56. See Roscow v. Hardy, 12 East 134 (181 Dunn v. O'Keefe, 5 M. & S. 282 (1816); Whitehea Walker, 9 M. & W. 506 (1842).

ILLUSTRATIONS.

1. A bill was indorsed for the accommodation of the dra The drawee refused to accept, and the bill was protested for acceptance and non-payment. Notices of both were sent to drawer, but of non-payment only to the indorser. Held, that indorser was discharged, although the drawer had no effects in hands of the drawee: Gore Bank v. Craig, 7 U. C. C. P. 344 (187

2. It is only the drawer or indorser who has not been not that can claim such discharge: Grant v. Winstanley, 21 U. C. C. P. 257 (1871).

3. A bank's notary received for protest a note made and indo for his accommodation which the bank had discounted for him. Instead of protesting it he gave it up to the parties, saying he had paid it. Some months after this he absconded. Held, that by l of the bank both maker and indorser were discharged: Canad Bank of Commerce v. Green, 45 U. C. Q. B. 81 (1880).

4. The omission to give notice of non-acceptance is not cure by notice of non-acceptance given with the notice of non-payme Jones v. Wilson, 2 Rev. de Lég. 28 (1813).

5. The indorser of a bill of exchange is in all cases entitle notice, even when the drawee has no effects in his hands: Grif v. Philips, 2 Rev. de Lég. 30 (1821).

6. An accommodation indorser is entitled to notice of dish or, and is discharged by the absence of it: Merchants' Bank v. Cun gham, Q. R. 1 Q. B. 33 (1892).

7. Failure to give notice to a prior endorser frees a subse ent endorser who waived notice for himself, as the latter is depr ved of his recourse against the prior endorser: Banque de St. Jean v. Desmarais, 17 R. J. 304 (1910).

8. A person who is interested in the bill to the knowledge the holder, but whose name is not on it, is not entitled to notice o dishonor: Anderson v. Archibald, 9 N. S. (3 G. & O.) 88 (18 2); Swinyard v. Bowles, 5 M. & S. 62 (1816); Hitchcock v. Humf ey, 5 M. & Gr. 559 (1843); Walton v. Mascall, 13 M. & W. 72 (18 4); Carter v. White, 25 Ch. D. 666 (1883).

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Illustrations.

9. This section applies to a demand note as well as to one payable at a fixed time. Notice of dishonor must be given an indorser before action: Royal Bank v. Kirk, 13 B. C. R. 1 (1907).

10. The maker of a note is not entitled to notice, even if the holder is aware that he is an accommodation holder: Hough v. Kenney, 3 Alta. 114 (1910).

11. A bill is dishonored and the holder gives notice to the indorser but not to the drawer. If the indorser in turn sends a notice to the drawer, the holder can sue both indorser and drawer. If such latter notice be not given the holder can sue the indorser, but neither of them can sue the drawer: Rickford v. Ridge, 2 Camp. 537 (1810); Myers v. Brown, 11 M. & W. 372 (1843); Berridge v. Fitzgerald, L. R. 4 Q. B. at p. 612 (1869).

12. Where the drawer or an indorser of a bill is discharged for want of notice of dishonor, he is also discharged from any liability on the consideration for the bill: Bridges v. Berry, 3 Taunt. 130 (1810); Peacock v. Pursell, 14 C. B. N. S. 728 (1863); Hart v. McDougall, 25 N. S. 38 (1892). So also is any person who is a warrantor or surety for him: Anderton v. Beck, 16 East 218 (1812); Hopkins v. Ware, L. R. 4 Ex. 268 (1869).

13. Failure to notify an indorser of an instalment note of the non payment of previous instalments does not affect his liability for later instalments of the non-payment of which he has been duly notified: Hopkins v. Merrill, 79 Conn. 626 (1907).

Notice to acceptor.

2. In order to render the acceptor of a bill liable, it is not necessary that notice of dishonour should be given to him. 53 V., c. 33, s. 52 (3). Imp. Act, *ibid.*

The acceptor is liable without notice of dishonour because he is the person primarily liable on the bill, and it is dishonoured through his default: Treacher v. Hinton, 4 B. & Ald. 413 (1821); Smith v. Thatcher, ibid. 200 (1821). He is liable even if it be not protested: s. 109.

The maker of a note is in the same position as the acceptor of a bill: s. 186.

Notice.

97. Notice of dishonour in order to be valid and effectual must be given,—

Time for.

(*a*) not later than the juridical or business day next following the dishonour of the bill. 53 V., c. 33, s. 49 (1*k*). Imp. Act, c. 49 (12).

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The rules in this and the following sections as to no[tice] of dishonour apply only to bills payable in Canada; [bills] payable abroad are governed by the law of the locality. T[hey] are taken from section 49 of the Imperial Act, with the [ex]ception o[f] that in section 103, which declares a notic[e] of protest or dishonour to be sufficient if posted on the day [after] the protest and dishonour, addressed to the party at [his] usual address or residence or at the place where the bi[ll] dated, unless he has given some other address on the [bill]. This latter provision obviates many of the difficulties t[hat] arise, which have been urged as reasons for delay in giv[ing] notice or for excusing notice altogether, in England and the United States, where they have no law making the [place] where the bill is dated a sufficient address. See the [notes] and illustrations under section 103.

Sub-section 10 of the Imperial Act allowing notice t[o be] given to the trustee of a bankrupt was omitted as being [in]applicable to Canada, there being no bankrupt law here, [or] the Act not recognizing or taking notice of the provi[sions] Acts relating to assignments for the benefit of creditors, [or] the appointment of trustees or curators to the estate[s] of those unable to pay their debts.

An indorser who has made an abandonment or assign[ment] ment under the Quebec Code is not liable without notice of dishonour, and his curator cannot bind him by waiver of protest: Denenberg v. Mendelsshon, Q. R. 23 S. C. 128 (1903); Molsons Bank v. Steel, ibid. 316 (1903).

(*a*) The Imperial Act provides that notice must be given "within a reasonable time" after dishonour. If the parties live in the same place it should be sent so as to arrive the day after dishonour, if in different places, so as to go by next day's post if there is one. A notice by telegram on the second day after dishonour was held sufficient, as it reached the indorser as soon as a letter posted the preceding day would have done: Fielding v. Corry, [1898] 1 Q. B. 268. The Canadian Act has adopted the old rule in force in Ontario: R. S. C. (1886) s. 123, s. 23. In Quebec the indorser had three days after protest to give notice: C. C. Art. 2330.

A juridical or business day is any day except Sunday or one of the holidays mentioned in section 13. § 97

For questions as to time of giving notice under the old law, see Nassau v. O'Reilly, Rob. & Jos. Dig. 498 (1839); Bank of B. N. A. v. Ross, 1 U. C. Q. B. 199 (1843); Chapman v. Bishop, 1 U. C. C. P. 432 (1852); Brent v. Lees, 2 Rev. de Lég. 335 (1820).

See also illustrations under section 103.

(*b*) by or on behalf of the holder, or by or on behalf of an endorser, who at the time of giving it, is himself liable on the bill. 53 V., c. 33, s. 49 (*a*). Imp. Act, s. 49 (1). By holder or endorser.

The holder or such endorser, or the person acting on behalf of either of them, may give notice to all the antecedent parties entitled to notice, or only to such of them as he may desire to hold liable on the bill. In the latter case, an endorser receiving notice may thereupon give notice to any additional parties entitled to notice, whom he desires to hold liable: ss. 100 and 101. The usual practice in Canada is for the holder or his agent to give notice to all prior parties who have not waived notice on the bill.

ILLUSTRATIONS.

1. When a note payable at a bank is sent there for collection, the protest may properly be made and notice given by the bank although it has no interest in the note: Wilson v. Pringle, 14 U. C. Q. B. 230 (1856); Girvin v. Price, 8 N. B. (3 Allen) 409 (1857); Howard v. Godard, 9 N. B. (4 Allen) 432 (1860). Also by any person authorized to receive payment: Rowe v. Tipper, 13 C. B. 249 (1853).

2. An indorser is notified of dishonor by a person who formerly held the bill, but had not at the time of dishonor any such relation as above indicated. He is released: Stewart v. Kennett, 2 Camp. 177 (1809); Chanoine v. Fowler, 3 Wend. 173 (1829).

3. The drawee may act as agent for a party entitled to give notice: Rosher v. Kieran, 4 Camp. 87 (1814), as modified by Harrison v. Ruscoe, 15 M. & W. at p. 235 (1846). If, however, the drawee be not properly authorized the notice is bad: Stanton v. Blossom, 14 Mass. 116 (1817). Who may give notice.

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4. An indorser who is discharged by notice coming one day late gives notice in time to the drawer. The latter is not liable: Turner v. Leech, 4 B. & Ald. 451 (1821).

5. A notice by an attorney is sufficient, although he does not say for whom he is acting, the bill being in his hands and indorsed in blank: Woodthorpe v. Lawes, 2 M. & W. 109 (1836).

6. An indorser who holds a bill as agent for the indorsee may give notice in his own name: Lysaght v. Bryant, 9 C. B. 46 (1850).

7. Notice by a party liable is good, although he is not at the time certain of the dishonor or of his own liability: Jennings v. Roberts, 4 E. & B. 615 (1855).

8. If the holder be dead, notice should be given by his personal representative: White v. Stoddard, 11 Gray, 258 (1858).

Personal representative.

(*c*) in the case of the death, if known to the party giving notice, of the drawer or endorser, to a personal representative, if such there is and with the exercise of reasonable diligence he can be found. 53 V., c. 33, s. 46 (*i*). Imp. Act, s. 49 (9).

Section 103 provides that a notice posted shall not be invalid by reason that the party to whom it is addressed is dead. As the present clause is imperative where the death is known and a representative can be found, that sub-section will be limited to the cases where the party giving notice does not know of the death or cannot find such representative. Chalmers, p. 176, says there was no English decision on the point. If there be no personal representative appointed, notice should be sent to the last residence or last place of business of the deceased.

ILLUSTRATIONS.

See also illustrations under section 103.

1. A notice of non-payment, merely "To the executrix or executor of the late Mr. Jones, Toronto," is bad: Bank of B. N. A. v. Jones, 8 U. C. Q. B. 86 (1850).

2. Where an indorser died intestate and no administrator had been appointed when the note matured, a notice addressed to him at his last residence was held good: Gillespie v. Marsh, 1 U. C. C. P. 453 (1852).

3. Where S., an indorser, died and notices were sent addressed to the "Administrators of S.'s estate." at B., and also at C., where the deceased had lived, and it appeared that they reached them, the estate was held liable: McKenzie v. Northrop, 22 U. C. C. P. 383 (1872). Where party dead.

4. The indorser, a married woman, died intestate. A notice was addressed to the husband as executor of his wife and received by him. The wife's estate was held liable: Merchants' Bank v. Bell, 29 Grant 413 (1881).

5. Where an indorser has recently died and no administrator or executor can be found, a notice addressed to the "legal representative" of deceased is sufficient: Pillow v. Hardeman, 3 Humphrey (Tenn.) 538 (1842).

6. A notice addressed to one of several executors or administrators is sufficient: Bealls v. Peck, 12 Barb. 245 (1851).

(*d*) in case of two or more drawers or endorsers who are not partners, to each of them, unless one of them has authority to receive notice for the others. 53 V., c. 33, s. 49 (*j*). Imp. Act, s. 49 (11). Two drawers.

The contrary had been held in Upper Canada: Bank of Michigan v. Gray, 1 U. C. Q. B. 422 (1841). Chalmers says, p. 136, that there was no English decision on the point. The Act adopted the rule followed in the United States: Willis v. Green, 5 Hill (N.Y) 232 (1843); Miser v. Trovinger, 7 Ohio St. 281 (1857); Boyd v. Orton, 16 Wis. 495 (1863).

In the case of partners notice to the firm is notice to all; even where the drawer is a member of the firm which accepted the bill: Hills v. Thorowgood, 5 L. J. K. B. 214 (1836).

98. Notice of dishonour may be given,— Notice.

(*a*) as soon as the bill is dishonoured; Earliest time.

(*b*) to the party to whom the same is required to be given, or to his agent in that behalf. 53 V., c. 33, s. 49 (*k*, *h*). Imp. Act, s. 49 (12, 8). To whom.

A notice that a bill was going to be dishonoured would not be sufficient under the Act. It may be given immediately upon dishonour, and is invalid if given later than the

§ 98 next following business day unless excused or dispensed with: s. 97 (*a*).

Notice to whom.

Where notice is given not to the party himself but to an agent, it should be an agent designated for that purpose, or in charge or employed at his office or residence.

ILLUSTRATIONS.

1. A notice to a firm about a note alleged to be indorsed by them, held not to be sufficient to bind a partner who was the real indorser: Bank of Montreal v. Grover, 3 U. C. Q. B. 27 (1846).

2. Delivery of a notice to a man cutting wood in the indorser's yard is insufficient, there being no evidence that the man was an inmate of the family or that the indorser received the notice: Commercial Bank v. Weller, 5 U. C. Q. B. 543 (1848).

3. Where the maker of a note gave the wrong address of his accommodation indorser, a notice to the latter at the address given was held to be binding on him: McMurrich v. Powers, 10 U. C. Q. B. 481 (1853).

4. Where an indorser goes to fill an office temporarily but leaves his family in his old home, a notice left there is sufficient: Ryan v. Malo, 12 L. C. R. 8 (1861).

5. Notice to the curator in Quebec will not bind the indorser: Denenberg v. Mendelsshon, Q. R. 23 S. C. 128 (1903); Molsons Bank v. Steel, ibid. 316 (1903).

6. Verbal notice to the solicitor of an indorser is insufficient: Crosse v. Smith, 1 M. & S. at p. 554 (1813).

7. Notice to the person who has indorsed the bill under a power of attorney is probably good notice to the indorser: Firth v. Thrush, 8 B. & C. at p. 391 (1828).

8. Notice to a clerk in the office of the indorser, who is a merchant, is sufficient: Allen v. Edmundson, 2 Ex. at p. 724 (1848).

9. Notice to a referee indicated by an indorser is not sufficient to bind the latter: Ex parte Prange, L. R. 1 Eq. at p. 5 (1865).

10. Information of a dishonor received by the secretary of a company is not notice to him as the secretary of another company, unless it was his duty in the former capacity to communicate it to the latter company: In re Fenwick Stobart & Co., Ex parte Deep Sea I. Co. [1902] 1 Ch. 507.

11. Where a party has no office, and boards at a private boarding house, a notice left there with a fellow-boarder, in his absence, held sufficient: Bank of U. S. v. Hatch, 6 Pet. (U.S.) 250 (1832).

(*c*) by an agent either in his own name or in the name of any party entitled to give notice whether that party is his principal or not. 53 V., c. 33, s. 49 (*b*). Imp. Act, s. 49 (2). § 98 By agent.

See section 97 (*b*) and the notes thereon, ante p. 283.

(*d*) in writing or by personal communication and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment. 53 V., c. 33, s. 49 (*e*). Imp. Act, s. 49 (5). Manner.

Notice of dishonour.

The tendency of modern decisions in England has been to accept as sufficient any notice however informal, from which the party receiving it may know that the bill, on which he is conditionally liable, has been dishonoured. In Solarte v. Palmer, 1 Bing. N. C. 194 (1834), the House of Lords held that a notice must inform the holder either in terms or by necessary implication, that the bill had been presented and dishonoured. Chalmers says, p. 173: "Since 1841 it does not appear that any written notice of dishonour has been held bad on the ground of insufficiency in form." Under the Act very informal notices will suffice and the notice in the case referred to by Chalmers, Furze v. Sharwood, 2 Q. B. 388 (1841), would no doubt now be held to be good. A telegram would be considered a notice in writing: Fielding v. Corry [1898] 1 Q. B. 268; and a telephone message as a personal communication, or it might be partly in writing and partly personal if otherwise sufficient.

How to be given.

In the schedule to the Act are given forms (G. and H.) of notice of noting and of protest, for non-acceptance or non-payment.

ILLUSTRATIONS.

1. A notice that a foreign bill has been returned protested is a sufficient notice of non-acceptance, without sending a copy of the protest with the notice: O'Neil v. Perrin, Rob. & Jos. Dig. 496 (1839): Goodman v. Harvey, 4 A. & E. 870 (1836).

2. A notice to the indorser must, either in express terms or by necessary intendment, shew that the note has been presented for

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payment, and that payment has been refused: Bank of U. C. v. Street, Rob. & Jos. Dig. 496 (1841).

3. A notice to an indorser, describing the bill and saying that it "is due this day and unpaid, and as holder I look to you for payment," is sufficient: Bank of U. C. v. Street, 3 U. C. Q. B. 29 (1845); Blinn v. Dixon, 5 U. C. Q. B. 580 (1848); Robson v. Curlewis, 2 Q. B. 421 (1842). Also a verbal message to the drawer to the same effect: Metcalfe v. Richardson, 11 C. B. 1011 (1852).

4. What is or is not a sufficient notice of the dishonor of a bill or note, when the facts are undisputed, is a question of law: Bank of U. C. v. Smith, 4 U. C. Q. B. 483 (1847).

5. A notice to an indorser stating that the note was duly protested for non-payment, is sufficient without saying that it was presented: Blain v. Oliphant, 9 U. C. Q. B. 473 (1852).

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6. A notice describing the note, and adding, "you will in consequence of non-payment be held responsible," is sufficient: Harris v. Perry, 8 U. C. C. P. 407 (1858).

7. The following letter from a bank manager to a customer who had deposited a cheque for collection was held to be sufficient. "I am now advised that it (the cheque) has not yet been covered by Bank of P. E. Island. In case of its being returned here unpaid, I deem it proper to notify you of the circumstances, as I will be required in that event to reverse the entry and return it to the department": The Queen v. Bank of Montreal, 1 Exch. Can. 154 (1886).

8. The following notice was held sufficient to bind an indorser and his wife, whose agent he was: "I beg to advise you that T. C. L.'s note for $3,500 in your favor and indorsed by yourself and wife was due yesterday. As I have not received renewal, will you kindly see that same is forwarded with cheque for discount." Counsell v. Livingstone, 4 O. L. R. 340 (1902).

9. Where the plaintiff swore that a note was protested after presentment and notice sent, but the protest was not produced, this does not prove the protest; but in the absence of any weakening by cross-examination or otherwise, it may be sufficient proof of notice of dishonor: Wiedeman v. Guittard, 1 O. W. R. 110 (1902).

10. A notice giving other particulars of the note but not mentioning the amount is sufficient, when there is no evidence of the existence of another note: Handyside v. Courtney, 1 L. C. J. 250 (1857).

11. A notice to a female indorser, beginning "Sir," is sufficient if it reached her: Mitchell v. Browne, 9 L. C. J. 168 (1865), overruling Seymour v. Wright, 3 L. C. R. 454 (1852).

12. Where the notice of dishonor does not state that a foreign bill has been protested, the indorser will not be liable: Delaney v. Hall, 3 N. S. (2 Thom.) 401 (1858); see Rogers v. Stephens, 2 T

R. 713 (1788); Gale v. Walsh, 5 T. R. 239 (1793); Robins v. Gibson, 1 M. & S. 288 (1813). Contra, Ex parte Lowenthal, L. R. 9 Ch. 591 (1874). § 98

13. Where it was alleged that a notice of dishonor was sent by telegraph, but the contents of the telegram were not proved, and no evidence given of its having been received, the indorser was held to be discharged: McLean v. Garnier, 15 N. S. (3 R. & G.) 276 (1882).

14. The issue and service of a writ of summons is not a sufficient notice of dishonor to bind an indorser, although the writ was served on the same day that the note was dishonored: Commercial Bank v. Allan, 10 Man. 330 (1894).

15. A verbal notice by the holder at the drawer's house to his wife is sufficient without saying where the bill is lying: Housego v. Cowne, 2 M. & W. 348 (1837).

16. If there be more than one bill to which the notice may refer, the onus is on the defendant to prove this fact: Shelton v. Braithwaite, 7 M. & W. 436 (1841); Gates v. Beecher, 60 N. Y. (Sickles) at p. 527 (1875). What is sufficient.

17. A notice to an indorser describing the bill and stating that it lies at a certain place dishonored, is sufficient: King v. Bickley, 2 Q. B. 419 (1842).

18. The holder's clerk wrote to an indorser that J. C.'s acceptance due that day was unpaid, and requesting his immediate attention to it. Held, a sufficient notice of dishonor: Bailey v. Porter, 14 M. & W. 44 (1845). To the same effect, Armstrong v. Christiani, 5 C. B. 687 (1848); Everard v. Watson, 1 E. & B. 801 (1853); Paul v. Joel, 3 H. & N. 455; 4 H. & N. 355 (1859); Bain v. Gregory, 14 L. T. N. S. 601 (1866).

The spirit of the Act is in favour of holding any notice sufficient which would reasonably inform the party that the bill on which his name appears has been dishonoured. See the next section.

2. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. 53 V., c. 33, s. 49 (*g*). Imp. Act, s. 49 (7). Misdescription.

The following errors have been held not to vitiate the notice, the correct particulars being sufficient to identify the bill or note—a mistake in the due date of the bill or in its

§ 98 date: Blinn v. Dixon, 5 U. C. Q. B. 580 (1848); Thorn v. Sandford, 6 U. C. C. P. 462 (1857); Low v. Owen, 12 ib. 101 (1862); Cassidy v. Mansfield, 24 ibid. 383 (1874); Robinson v. Taylor, 4 N. B. (2 Kerr) 198 (1843); Mills v. Bank of U. S., 11 Wheat. (U.S.) 431 (1826); Smith v. Whiting, 12 Mass. 6 (1815);—giving a wrong amount: Thompson v. Cotterell, 11 U. C. Q. B. 185 (1854); Bank of Alexandria v. Swann, 9 Pet. (U.S.) 33 (1835);—giving the name of a party incorrectly: Girvan v. Price, 8 N. B. (3 Allen) 409 (1857); Harpham v. Child, 1 F. & F. 652 (1859); Dennistoun v. Stewart, 17 How. (U.S.) 606 (1854);—transposing the names of the drawer and acceptor: Mellers v. Rippen, 7 Ex. 578 (1852);—calling a bill a note, or vice versa: Stockman v. Parr, 11 M. & W. 809 (1843);—naming the wrong bank or place where the bill was payable or was lying: Bromage v. Vaughan, 9 Q. B. 608 (1846); Rowlands v. Springett, 14 M. & W. 7 (1845).

Form.

99. In point of form,—

Return of bill.

(*a*) the return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour;

Signature.

(*b*) a written notice need not be signed.

Verbal supplement.

2. An insufficient written notice may be supplemented and validated by verbal communication. 53 V., c. 33, s. 49 (*f*, *g*). Imp. Act, s. 49 (6, 7).

If the bill is returned to an endorser who looks to prior endorsers or to the drawer, he should give them notice not later than the next following business day: s. 101.

A verbal notice may be sufficient: s. 98 (*d*).

Although a written notice need not be signed it should come from the right person or his agent: Maxwell v. Brain, 10 L. T. N. S. 301 (1864).

A notice by holder to indorser in these terms:—"Messrs. H. are surprised to hear that Mrs. G.'s bill was returned to

the holder unpaid," followed by a visit from the indorser to the holder the same day, when he expressed his regret and promised to write to the other parties, was held sufficient: Houldsitch v. Canty, 1 Bing. N. C. 111 (1838). § 99

For other instances of imperfect written notices accompanied or followed by verbal communications, see East v. Smith, 1 D. & L. 711 (1847); Chard v. Fox, 14 Q. B. 200 (1849); Jennings v. Roberts, 1 E. & B. 615 (1855); Viale v. Michael, 30 L. T. N. S. 463 (1874).

100. Where a bill when dishonoured is in the hands of an agent, he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal, upon receipt of the notice, shall have the same time for giving notice as if the agent had been an independent holder. Notice to agent. Effect on principal.

2. If the agent gives notice to his principal, he must do so within the same time as if he were an independent holder. 53 V., c. 33, s. 49 (2). Imp. Act, s. 49 (13). Time for.

This and the following section lay down the rule for successive notices of dishonour, a practice not generally followed in Canada, where the usage has been for the holder at the time of dishonour to give notice to all the parties through the post office in accordance with the rules laid down in section 103.

As such a large proportion of the commercial paper of the country is at the time of its maturity held by the banks, either under discount or for collection, the duty of giving notice of dishonour, as a rule, devolves upon them. They usually, through their notary, protest those that are dishonoured, and the protest and notice state that it is done at the request of the bank.

If the bank or other agent does not give notice to all the parties, the principal should be advised of this fact, as

§ 100 otherwise, in view of the general practice in this country, it might be held that such omission was negligence.

Notice to antecedent parties.

101. Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that a holder has after dishonour. 53 V., c. 33, s. 49 (3). Imp. Act, s. 49 (14).

Each party receiving notice of dishonour has the whole of the next following business day to send notice to any party to the bill whom he desires to hold liable. If not so given, the fact that the aggregate time of the successive notices is not exceeded will not avail; the promptness of one party will not avail to extend the time for another. A single break in the sequence is fatal: Miers v. Brown, 11 M. & W. 372 (1843).

See note to section 103, as to indorsers who do not give their address.

ILLUSTRATIONS.

1. A holder in the country gives to his banker there a bill payable in London. The banker sends it to his London agent, who presents it and gives notice of dishonor to the country banker. The latter, the day after getting notice, notifies the customer, who in turn notifies his indorser. The latter has received due notice: Bray v. Hadwen, 5 M. & S. 68 (1816).

2. An indorser received a notice of dishonor from the post office on Sunday. Held, that he had until Tuesday to give notice to antecedent parties, as he was not bound to open his letter until Monday morning: Wright v. Shawcross, 2 B. & Ald. at p. 501, n. (1819).

3. Different branches of a bank are considered as distinct parties for the purpose of this section: Clode v. Bayley, 12 M. & W. 51 (1843); Prince v. Oriental Bank, 3 App. Cas. at p. 332 (1878); Steinhoff v. Merchants' Bank, 46 U. C. Q. B. 25 (1881).

4. A party pays a bill supra protest for the honor of an indorser who is abroad, and to whom he posts the bill the same day. The latter by return post sends notice of dishonor to the drawer. Although this is not received until six days after dishonor, it is in time: Goodall v. Polhill, 1 C. B. 233 (1845).

5. The holder in order to charge an earlier party by notice from himself, must send the notice as promptly as if to his own immediate indorser: Rowe v. Tipper, 13 C. B. 249 (1853). § 101

6. The one day allowed by law to give notice cannot be extended to allow an agent and his principal to confer: Ex parte Prange, L. R. 1 Eq. 1 (1865).

102. A notice of dishonour enures for the benefit,— Benefit enures.

(*a*) of all subsequent holders and of all prior endorsers who have a right of recourse against the party to whom it is given, where given on behalf of the holder;

(*b*) of the holder and of all endorsers subsequent to the party to whom notice is given, where given, by or on behalf of an endorser entitled under this Part to give notice. 53 V., c. 33, s. 49 (*c*, *d*). Imp. Act, s. 49 (3, 4). Parties to whom.

Notice of dishonour may be given by or on behalf of the holder or by or on behalf of an endorser who at the time of giving it, is himself liable on the bill: s. 97 (*b*).

The holder of a bill is entitled to avail himself of notice of dishonour given by or on behalf of any s[illegible] to the bill or any previous holder: Chapman v. Keane, 3 A. & E. 193 (1835), over-ruling Tindal v. Brown, 1 T. R. 167 (1786): Wilson v. Swabey, 1 Stark. 34 (1815); Stafford v. Yates, 18 Johns. 327 (1820); Brailsford v. Williams, 12 Md. 157 (1859): Palen v. Shurtleff, 9 Metc. 581 (1845). Enures to whom.

The holder may, at his option, give notice only to his immediate endorser, or to the drawer and endorsers, or to as many of them as he may desire to hold liable on the bill. He must give all such notices not later than the next following business day after dishonour. Any party so notified can avail himself of the notice given to any party prior to him. If all prior parties are not notified he must give notice to such of them as he may desire to look to, not later than the next following business day.

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If some but not all endorsers are notified, any endorser so notified may give notice to any party prior to him not later than the next following business day. A notice by or on behalf of an endorser who has not been notified, or who has not waived notice, is of no avail to any party. See Horne v. Rouquette, 3 Q. B. D. at p. 517 (1878).

In these successive notices the sequence may be broken at any point by a failure to give notice at the proper time, the effect of which is to release all parties antecedent to the endorser who has thus broken the sequence, who may not have been previously notified.

Sufficiency of giving.

103. Notice of the dishonour of any bill payable in Canada shall, notwithstanding anything in this Act contained, be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place.

Sufficiency of notice.

2. Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day.

Death of party.

3. Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead. 53 V., c. 33, s. 49 (4).

Source of law.

The Imperial Act has no provision exactly corresponding to this sub-section, nor has the Negotiable Instruments Law.

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It is taken in part from section 5 of chapter 123 R. S. C. (1886), which was first enacted in 1871 and applied to the whole of Canada; and in part from section 23 of that chapter which applied to Ontario alone, and Article 2328 of the Civil Code which applied to Quebec. The last clause was added in harmony with the decision of the Supreme Court in the case of Cosgrave v. Boyle, 6 S. C. Can. 165 (1881). If the death of the party is known to the party giving notice, then the notice should be given to the personal representative of the deceased, if he can be found: s. 97 (*c*).

Notice through the post.

Heretofore in Canada the usage has been for the holder at the time of dishonour to send notice to all parties entitled to it through the post, addressed to them at the place at which the bill or note is dated. This is very frequently not the real address of the endorsers, especially when maker and payee or drawer and drawee reside in different parts of the country, and a great many of such notices never reach the parties to whom they are addressed. If the holder should not send a notice to all the parties, an endorser who in such a case has neglected to give his real address, may find that his recourse against antecedent parties is entirely gone. By section 104, when such a notice is addressed and posted, the sender is deemed to have given due notice, and by the present section such notice is sufficient. It is not likely that in such a case where the notice does not reach an endorser that he will be held to have "received due notice" within the meaning of section 101, so as to make the delay run as to notice to antecedent parties; but the miscarriage being due to his own fault and neglect he might be held responsible under certain circumstances. At all events, in such a case he should lose no time in giving notice to antecedent parties, if the holder has not notified them.

In Canada.

In England.

In England the holder must use due diligence to ascertain the correct address of the drawer and indorsers. It has been laid down that while there might not be any reason for addressing a notice of dishonour to an indorser at the place where the bill was dated, yet it was proper to leave it to a jury whether a notice to the drawer might not reasonably be addressed there: Burmester v. Barron, 17 Q. B. 828

§ 103 (187); Clarke v. Sharpe, 3 M. & W. 166 (1838); M... v. Moor... Ry. & M. 249 (1825).

In United States. ... United States it has generally been held that ... of a bill is not even prima facie evidence of ... indorser, and if it appear that it is not the ... drawer the holder must show that he had ... Barnewell v. Mitchell, 3 Conn. 101 (1819); ... Scott, 4 Wend. (N.Y.) 358 (1840); Pierce ... 249 (1856). Where a bill is sent ... to the United States for collection and ... com is to return the bill to the own... the notices, and let him send them to the proper addresses.

In New Brunswick before the Dominion Act of 1871 it was held that a posted notice addressed to the drawee at the place where the bill was dated was not valid in the absence of proof that a notice sent to that office would reach him: Balloch v. Binney, 5 N. B. (3 Kerr) 410 (1847).

Endorsers who may wish to look to prior parties should be careful to see (1) that their proper address is given, and (2) that notice of dishonour has been given to such prior parties, and if not, to give it themselves within the legal delay.

ILLUSTRATIONS.

Dishonour. Notice by post.

1. A notice deposited in the Toronto post office for an indorser residing there is as good as if left at his residence: Commercial Bank v. Eccles, 4 U. C. Q. B. 336 (1847).

2. A notice duly posted and addressed to an indorser in "York Township," in which he resided, was held sufficient, there being no evidence that it should have been otherwise addressed: Bank of U. C. v. Bloor, 5 U. C. Q. B. 619 (1849).

3. An indorser's agent gave a wrong address which was written by plaintiff's agent under his signature. A notice sent to the address given held sufficient: Vaughan v. Ross, 8 U. C. Q. B. 506 (1852).

4. Notice mailed between eight and nine in the evening of the day after protest held sufficient, though the post-mark was of the following day: Wilson v. Pringle, 14 U. C. Q. B. 230 (1856).

5. A note was presented for payment at G., where the indorser lived, and notice was mailed the following day at M., five miles

distant, but not received at G. until the fourth day after dishonor. Held, sufficient: Taylor v. Grier, 17 U. C. Q. B. 222 (1858). § 103

6. When a notary mailed a notice to a wrong address which reached the indorser about a week later, and there was some evidence of the latter having applied to plaintiff for further time, the court refused to disturb a verdict for plaintiff: Leith v. O'Neill, 19 U. C. Q. B. 233 (1860).

7. An indorser died shortly before the maturity of the note. The bank which held it not being aware of his death sent the notice of dishonor addressed to him at Toronto, where the note was dated. The firm who got it discounted took it up and sued his executor. They were aware, before the note matured, both of the death and of the will. Held, reversing 5 Ont. A. R. 458, that the notice was sufficient, and enured to the benefit of plaintiffs: Cosgrave v. Boyle, 6 S. C. Can. 165 (1881).

8. A notary in Montreal protested a note payable there, which was dated at Belleville. Being unable to decipher an indorsement, he put a facsimile of it on an envelope, addressing it to Belleville. The holder knew the indorser's name, but had not told the notary. The indorser swore that he did not receive the notice. Held, that he was discharged: Baillie v. Dickson, 7 Ont. A. R. 759 (1882).

9. The address under the indorser's name need not be written by himself. It may be written by another with his knowledge and consent. Sending a notice to such address is sufficient, even if the holder has reason to know that it is not his residence or place of business: Hay v. Burke, 16 Ont. A. R. 403 (1889).

10. A noted dated at Montreal payable at Albany, N. Y., was protested there, and a notice addressed to the indorser at Montreal. Held, sufficient as to form, but invalid as it did not appear that the postage was prepaid: Howard v. Sabourin, 5 L. C. R. 45 (1854)

11. A notice which the notary swore was mailed on the evening of the last day for mailing, was held sufficient although it bore the stamp of the following day: Dentre v. La Banque Jacques Cartier, De Bellefeuille C. C. Art. 2319 (1878). See also Stocken v. Collin, 7 M. & W. 515 (1841); New Haven Co. Bank v. Mitchell, 15 Conn. 206 (1842). Through the post.

12. Notice of protest sent to an indorser to a wrong address given by the maker when he got the note discounted, is not sufficient to bind the indorser: Merchants' Bank v. Cunningham, Q. R. 1 Q. B. 33 (1892).

13. "Under his signature" in this section does not mean "below his signature," but written so that the signature covers it. Where a wrong address of the indorser was written in pencil under his name, and no proof made as to who wrote it, a notice of protest sent to such address, not being the place where the note was dated, is sufficient: Banque Jacques Cartier v. Gagnon, Q. B. 5 S. C. 389 (1894).

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14. Where an endorser wrote under his signature his address as 204 St. James Street, Montreal, a notice mailed to him simply at Montreal, without the street or number is insufficient: Rosenberg v. Johnson, Q. R. 40 S. C. 511 (1911); Fisher v. Thériault, 18 R. L. N. S. 173 (1911).

15. Under the Dominion Act of 1874, a notice posted to the address of the indorser the day following dishonor is sufficient, although he lives in the same town, and there is no local delivery: Merchants' Bank v. McNutt, 11 S. C. Can. 126 (1883).

16. A notice to an indorser posted at St. John, addressed "Mr. D. Duff, near Blake's Mills, Nashwaak," is not sufficient without proof that such a letter would probably reach him: Robinson v. Duff, 4 N. B. (2 Kerr) 206 (1843).

17. The holder got the address of an indorser from the payee of the note, with whom he did business, and addressed a notice to him there. It was afterwards learned that he had lately removed. Held, sufficient: Bank of New Brunswick v. Millican, 9 N. B. (4 Allen) 254 (1859).

18. It has been held in England that to address a letter to a person in a large town without any addition to the name of the person or of the town may be invalid. A letter addressed simply "W. Haynes, Bristol," held, not sufficient: Walter v. Haynes, R. & M. 149 (1821).

19. A notice addressed "Mrs. Susan Collins, Boston," held sufficient, there being no proof there was any other of the name. "Mrs Collins, Boston," would probably have been held insufficient: True v. Collins, 3 Allen, 440 (1862).

20. A drawer or indorser will be presumed not to have changed his address during the currency of the bill: Bank of Utica v. Phillips, 3 Wend. 408 (1829).

Miscarriage in post service.

104. Where a notice of dishonour is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office. 53 V., c. 33, s. 49 (5).

Notice by post.

If the address on the letter is that on the bill no question will arise. If, however, the holder, knowing that this is not the usual address or residence of the party, undertakes to send a notice to such address or residence he should be certain that he is correct. In such a case it would be prudent to send a notice to the address on the bill as well.

If the receipt of the notice is denied, plaintiff must prove that it was given: Macdougall v. Wordsworth, 8 U. C. C. P. 100 (1858); Merchants' Bank v. Macdougall, 30 U. C. C. P. 236 (1879); Hawkes v. Salter, 4 Bing. 715 (1828). A protest is prima facie evidence of the service of notice of dishonour: s. 11. § 104 Evidence of.

By R. S. C. c. 66, s. 83, as soon as any letter is deposited in the post office it ceases to be the property of the sender and becomes the property of the person to whom it is addressed. It is in accordance with principle that the loss should fall on the owner. See Bank of U. C. v. Smith, 3 U. C. Q. B. 358 (1846); Taylor v. Grier, 17 U. C. Q. B. 222 (1858); Shannon v. Hastings M. Ins. Co., 2 Ont. A. R. 81 (1877); Delaporte v. Madden, 17 L. C. J. at p. 32 (1872); Parker v. Gordon, 7 East, 385 (1806); Woodcock v. Houldsworth, 16 M. & W. 124 (1846); Dunlop v. Higgins, 1 H. L. Cas. 380 (1848).

105. Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence. Excuse for delay.

2. When the cause of delay ceases to operate, the notice must be given with reasonable diligence. 53 V., c. 33, s. 50 (1). Imp. Act, *ibid.* Diligence.

The present section deals with the circumstances which excuse delay in giving notice of dishonour: the following sections with those which dispense with it entirely. The language used is very similar to that in section 91 regarding the excuses for delay in the presentment for payment; and in section 111, regarding excuses for delay in noting or protesting.

In England and the United States, where no provision exists similar to that in section 103, recognizing as sufficient a notice posted to any party addressed to the place where the bill is dated, if no other address is given, circumstances would excuse delay, which would not be suffi-

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Excuse for delay.

cient in Canada. Notice does not require to be given until after presentment and dishonour. Where delay in presentment is excused, a notice mailed the following day is regular. The only circumstances likely to arise in Canada to cause excusable delay in giving notice, would be the death or sudden illness of the holder, or some accident to the person making out the notices, or to the messenger charged with taking them to the post office.

The following circumstances have been held in England and the United States sufficient to excuse delay:—

1. A state of war: see p. 268, ante.

2. An epidemic or other calamity, making communication impracticable: Windham Bank v. Norton, 22 Conn. 213 (1852); Tunno v. Lague, 2 Johns. (N.Y.) (1800).

3. Death or sudden illness of the holder or his agent who has the bill: Rothschild v. Currie, 1 Q. B. at p. 47 (1841): White v. Stoddard, 11 Gray (Mass.) 258 (1858)).

4. Delay caused by the indorser having given a wrong or illegible address: Hewitt v. Thompson, 1 M. & Rob. 543 (1836); Siggers v. Brown, 1 M. & Rob. 520 (1836); Berridge v. Fitzgerald, L. R. 4 Q. B. 639 (1869).

5. An indorser could not be found when a bill was dishonored. Subsequently his address became known, and some time after a writ was served on him without any previous notice. *Held*, that he was released on account of not being notified when his address became known: Studdy v. Beesty, 60 L. T. N. S. 647 (1889); W. N. 1889, p. 14. See Baldwin v. Richardson, 1 B. & C. 245 (1823).

The holders of a bill received notice of its dishonour on Monday and learned that the drawer, the master of a vessel, had arrived in the Tyne. Further enquiries failed to reveal the precise place. On Thursday they sent a registered letter to him on his vessel, Newcastle-on-Tyne, which he received three days later. Held, that the delay was excused, and notice sufficient; The Elmville, [1904] P. 319.

A bill drawn in St. John, N.B., was payable in London, Eng., on Saturday, October 16th, and was dishonoured. Plaintiffs at Wolverhampton were the holders. A mail left Liverpool on October 19th. Plaintiffs sent notice to the drawer by the next mail, which left on November 4th. Held,

that the delay was excused: Tarratt v. Wilmot, 6 N. B. (1 Allen) 353 (1849). § 105

The delay was held inexcusable in the following case: A bill was protested in Dublin, Ireland, on November 3rd. Mails for St. John, N.B., where the drawer and indorsers lived, left November 4th and 19th. Notices were sent only by the following mail, which arrived December 22nd. Held, that the drawer and indorsers were discharged: Bank of New Brunswick v. Knowles, 4 N. B. (2 Kerr) 219 (1843). Excuse for delay.

Care should be taken to give prompt notice of dishonour as soon as the cause of the excusable delay has ceased to exist, as otherwise the recourse and right of action against the drawer or endorser not notified may be lost.

Reasonable diligence in giving such notice is a question of fact to be determined by the facts of the particular case.

106. Notice of dishonour is dispensed with,— Dispensed with.

(*a*) when, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged. 53 V., c. 33, s. 50 (2*a*). Imp. Act, *ibid.* Reasonable diligence.

The preceding section gives the circumstances in which delay in giving notice of dishonour is excused; the present and two following sections those in which notice is dispensed with entirely.

The present section gives the circumstances which apply to both drawer and endorsers; the two following sections those which apply to them severally.

If a notice is sent otherwise than by post, and does not reach the party, from some cause for which the sender is not responsible, and the latter is not aware of the fact that the notice was not received, it will be dispensed with. If the sender becomes aware of the fact, or if the notice sent by post is to a wrong address, he should send a proper notice

§ 106 at once: Steinhoff v. Merchants' Bank, 46 U. C. Q. B. 55 (1881).

Dispensed with.

It has been held in England that ignorance of the place of residence of a drawer or indorser dispenses with notice if due diligence is used to discover it: Browning v. Kinnear, Gow, 81 (1819). See Bateman v. Joseph, 12 East, 433 (1810): Beveridge v. Burgis, 3 Camp. 262 (1812): Williams v. Germaine, 7 B. & C. 469 (1827). But in Canada notice may be mailed to the place where the bill is dated: s. 103.

Notice of dishonour is not dispensed with because presentment is dispensed with, or because the drawer or indorser has reason to believe the bill will not be paid, or because the acceptor is dead and no representative can be found: Carew v. Duckworth, L. R. 4 Ex. at p. 319 (1869); Caunt v. Thompson, 7 C. B. 400 (1849): or because the drawer or indorser is dead: s. 97 (*c*).

Waiver.

(*b*) by waiver, express or implied.

Time of.

2. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. 53 V., c. 33, s. 50 (2*b*). Imp. Act, *ibid.*

Waiver may be either in writing or oral. It may be on the bill itself: s. 34 (*b*). The usual form of express waiver is for the drawer or endorser to add to his signature "protest waived" or analogous words. Where an acknowledgment of liability is relied upon to establish a waiver it must be made with full knowledge of the facts: Goodall v. Dolley, 1 T. R. 712 (1787) McFatridge v. Williston, 25 N. S. 11 (1892).

A waiver of protest has been held not to be necessarily an admission that the instrument is genuine, or that the party is liable thereon: Royal Bank v. Maughan, 12 O. W. R. 899 (1908).

ILLUSTRATIONS.

1. An indorser asked for time and promised to pay. Held, to be a waiver of notice: Bank of Upper Canada v. Cooley, 4 U. C. O. S. 77 (1834). Where an indorser writes the holder that the maker of a note is insolvent to make him believe that presentment and notice

are unnecessary, it is a waiver of notice: Beckett v. Cornish, 4 U. C. Q. B. 138 (1847). § 106

2. A promise to pay with full knowledge of the facts is a waiver of notice: Bank of B. N. A. v. Ross, 1 U. C. Q. B. 199 (1843); Brown v. Marsh, 1 U. C. C. P. 438 (1852); Gillespie v. Marsh, ibid. 63 (1852); Burke v. Elliott, 15 U. C. Q. B. 610 (1857); Shaw v. Salmon, 19 U. C. Q. B. 512 (1860); Ross v. Wilson, 2 Rev. de Leg. 28 (1812); McLaurin v. Seguin, Q. R. 12 S. C. 63 (1897); Smith v. Laug, 22 C. L. T. 418 (1902); Martin v. Wrigley, 7 W. W. R. 760 (Sask., 1914); Mims v. Gibson, 16 L. J. C. P. 249 (1847); Woods v. Dean, 3 B. & S. 101 (1862); Cordery v. Colville, 32 L. J. C. P. 210 (1836); Bartholomew v. Hill, 5 L. T. N. S. 756 (1862); Kilby v. Rochussen, 18 C. B. N. S. 357 (1865); promise not sufficiently definite or well proved to amount to a waiver: Bank of Montreal v. Scott, 24 U. C. Q. B. 115 (1864); Reed v. Mercer, 16 U. C. C. P. 279 (1866). Waiver of notice.

3. A statement by the indorser of a dishonored note to the holder that he would see the maker about it, and his subsequent statement that he had seen the maker, who promised to pay it as soon as he could, with a request not to "crowd the note," are not in themselves sufficient evidence of waiver of notice of dishonor: Britton v. Milsom, 19 Ont. A. R. 96 (1892).

4. An indorser wrote above his signature on the back of a note: "I hold myself liable for my note." This was a waiver of notice of dishonor: Ranger v. Aumais, 5 Que. P. R. 450 (1903).

5. Waiver of protest by a curator in Quebec does not bind the insolvent: Denenberg v. Mendelssohn, Q. R. 23 S. C. 128 (1903); Molsons Bank v. Steel, ibid 316 (1903). In re Boutin, Q. R. 12 S. C. 186 (1897) overruled.

6. Waiver of notice to the holder enures to the benefit of prior parties, as well as to subsequent holders: Rabey v. Gilbert, 30 L. J. Ex. 170 (1861).

7. Waiver of notice of dishonor may not be a waiver of presentment for payment: Keith v. Burke, 1 Cab. & E. 551 (1885).

8. Waiver of notice enures to the benefit of the holder of a bill, and of all the indorsers subsequent to the party to whom the waiver is made: Coulcher v. Toppin, 2 T. L. R. 657 (1886).

9. The fact that a party to a note is aware that it will not be paid on presentment, does not dispense with the necessity of giving him notice of dishonor: Greig v. Taylor, 15 V. L. R. 86 (1889).

10. The indorser of a note told the holder before maturity that he knew it would not be paid, and promised to send money to the bank where it was payable. Held, evidence for the jury of dispensation of notice of dishonor by waiver: Wright v. Barrett, 13 N. S. W. R. (Law) 206 (1892).

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11. An indorser of a note, not yet due, being informed of the bankruptcy of the maker, said to the payee and holder: "I will have to provide for the note." This is not, as a matter of law, a waiver of notice of dishonor. The question should be left to the jury: Wiggins v. Bellve, 15 N. Z. 540 (1897).

Dispensed with.

107. Notice of dishonour is dispensed with as regards the drawer where,—

Same person.

(*a*) the drawer and the drawee are the same person;

Fictitious person.

(*b*) the drawee is a fictitious person or a person not having capacity to contract;

Presented to drawer.

(*c*) the drawer is the person to whom the bill is presented for payment;

No obligation.

(*d*) the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill;

Countermand.

(*e*) the drawer has countermanded payment. 53 V., c. 33, s. 50 (2*c*). Imp. Act, *ibid.*

Drawer principal debtor.

In these cases the drawer is in reality the principal debtor, and except in the last the bill is not what on its face it purports to be. He is, therefore, on the principles of the law merchant not entitled to notice, which is accorded only to the person who in effect only promises to pay if the person primarily liable does not honour the bill on due presentment, and if notice of such dishonour is duly given him.

Where drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may, if he choose, treat the instrument as a promissory note: s. 26. The drawer would then be in the position of maker of the note, and so not entitled to notice of its dishonour. In the other instances notice is equally unnecessary.

ILLUSTRATIONS. § 107

1. Where the drawer had no funds in the hands of the acceptor and made no provision for the payment of the bill, he is liable without protest or notice of dishonor: Knapp v. Bank of Montreal, 1 L. C. R. 252 (1850); Bickerdike v. Bollman, 1 T. R. 405 (1786); Dickens v. Beal, 10 Pet. (U.S.) 572 (1836).

2. A drawer who had no effects in the hands of the drawees, or any reasonable grounds for expecting he would have or that the bill would be honored, may be sued without previous notice of dishonor: Stayner v. Howatt, 15 N. S. (3 R. & G.) 267 (1882).

3. A bill drawn payable at the drawer's is presumably an accommodation bill, and he is not entitled to notice: Sharp v. Bailey 9 B. & C. 44 (1829).

4. Presentment of the bill to the drawer, as the executor of the acceptor, renders notice to him unnecessary: Caunt v. Thompson, 7 C. B. 400 (1849).

108. Notice of dishonour is dispensed with as regards the endorser where,— Dispensed with.

(*a*) the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill; Fictitious person.

(*b*) the endorser is the person to whom the bill is presented for payment; Presented to endorser.

(*c*) the bill was accepted or made for his accommodation. 53 V., c. 33, s. 50 (2*d*). Imp. Act, *ibid.* Accommodation.

Notice need not be given to the endorser in these cases, because in (*a*) he has no reasonable ground for believing that the bill will be honoured: in (*b*) he is aware it is not paid: and in (*c*) he is the person who ought to pay it.

Notice of dishonour is not dispensed with when a note becomes exigible in the Province of Quebec before the date of maturity under Art. 1092 C. C., on account of the insolvency of the maker and indorser: Banque Nationale v. Martel, Q. R. 17 S. C. 97 (1899).

§ 108 An indorser is entitled to notice of dishonour whether the drawee has funds in his hands or not: Griffin v. Phillips, 2 Rev. de Lég. 30 (1821); Knapp v. Bank of Montreal, 1 L. C. R. 252 (1850).

NOTICE TO OTHERS THAN DRAWER AND ENDORSERS.

The Act provides only for notice to the drawer and endorsers of a bill. The acceptor of a bill and maker of a note are liable without notice: ss. 128 and 185.

Only parties liable. The liability of persons who are not parties to a bill, but who may be guarantors of the bill or of some of the parties to it, or who may be liable on the consideration for which the bill is given, is not affected by the Act, but will remain subject to the common law or to the laws in force in the several provinces.

Guarantors. A person who has given a guarantee for the payment of a bill is liable without notice of dishonor: Palmer v. Baker, 22 U. C. C. P. 59 (1871); Warrington v. Furbor, 8 East, 242 (1807): Murray v. King, 5 B. & Ald. 165 (1821): Van Wart v. Woolley, 3 B. & C. 439 (1824); Walton v. Mascall, 13 M. & W. 72 (1844).

It has also been held that the person who gives a guarantee for the price of goods to be supplied to the acceptor of a bill or the maker of a note is not entitled to notice of dishonour: Anderson v. Archibald, 9 N. S. (3 G. & O.) 38 (1872): Holbrow v. Wilkins, 1 B. & C. 10 (1822): while the goods are for the drawer and the creditor fails to present the bill for payment or to give notice to the drawer or the guarantor until after the insolvency of the acceptor and drawer, the guarantor is discharged: Philips v. Astling, 2 Taunt. 206 (1809). See also Swinyard v. Bowles, 5 M. & S. 62 (1816): Camidge v. Allenby, 6 B. & C. 373 (1827): Smith v. Mercer, L. R. 3 Ex. 51 (1867); Carter v. White, 25 Ch. D. 666 (1883).

As to those who have placed their names on bills in Quebec "pour aval" or as warrantors elsewhere, see the notes on section 131.

Protest. § 109

109. In order to render the acceptor of a bill liable, it is not necessary to protest it. 53 V., c. 33, s. 52 (3). Imp. Act, *ibid.* Necessity of.

Protest or notice of dishonour to the acceptor of a bill in order to bind him is unnecessary even if it be a foreign bill. The maker of a note is in the same position: sec. 186. The reason is that they are the persons primarily liable: Treacher v. Hinton, 4 B. & Ald. 413 (1821); Smith v. Thatcher, ibid. 200 (1821). The acceptor engages to pay the bill according to the tenor of his acceptance: s. 128. By the very act of making a note the maker engages that he will pay it according to its tenor: s. 185.

110. Protest is dispensed with by any circumstances which would dispense with notice of dishonour. 53 V., c. 33, s. 51 (9). Imp. Act, *ibid.* Dispensed with.

The circumstances which dispense with notice of dishonour are set out in sections 106, 107 and 108.

111. Delay in noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. Delay excused.

2. When the cause of the delay ceases to operate, the bill must be noted or protested with reasonable diligence. 53 V., c. 33, s. 51 (9). Imp. Act, *ibid.* Diligence.

The circumstances which excuse delay in noting or protesting a bill are the same as those which excuse presentment for payment: s. 91: and notice of dishonour: s. 105.

See the notes and cases under these sections and also Legge v. Thorpe, 12 East, 171 (1810): Gibbon v. Coggon, 2 Camp. 188 (1809): Greenway v. Hindley, 4 Camp. 52 (1811); Patterson v. Becher, 6 Moore, 319 (1821): Camp-

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bell v. Webster, 2 C. B. 258 (1845); Ex parte Lowenthal, L. R. 9 Ch. 591 (1874).

Foreign bill, non-acceptance.

112. Where a foreign bill appearing on the face of it to be such has been dishonoured by non-acceptance, it must be duly protested for non-acceptance.

Non-payment.

2. Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.

Balance.

3. Where a foreign bill has been accepted only as to part, it must be protested as to the balance.

Discharge.

4. If a foreign bill is not protested as by this section required, the drawer and endorsers are discharged. 53 V., c. 33, ss. 44 (2) and 51 (2), Imp. Act, *ibid.*

Of foreign bill.

A foreign bill is one which is not or does not on its face purport to be both drawn and payable within Canada, or which is not, or does not on its face purport to be drawn within Canada upon some person resident therein. Unless the contrary appears on its face, the holder may treat it as an inland bill: s. 25.

An inland bill need not be protested for either non-acceptance or non-payment except in the province of Quebec: s. 113.

This section is part of the law merchant: Rogers v. Stephens, 2 T. R. 713 (1788); Gale v. Walsh, 5 T. R. 239 (1793); Orr v. Maginnis, 7 East, 359 (1806).

An inland as well as a foreign bill must be protested for non-acceptance before it is accepted supra protest or for honour: s. 147; and must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need: s. 117.

A foreign note, that is, one either made or payable outside Canada, must be protested in order to bind the endorsers: s. 187. § 112

113. Where an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it shall not, except in the Province of Quebec, be necessary to note or protest an inland bill in order to have recourse against the drawer or endorsers. 51 V., c. 33, s. 51 (1). Imp. Act, *ibid.* Protest of inland bill. Quebec.

An inland bill is one which is, or on its face purports to be, both drawn and payable within Canada, or which is drawn within Canada upon some person resident therein: s. 25. An inland note is one which is, or on its face purports to be, both made and payable within Canada. Sec. 51 of Imperial Act.

Section 51 of the Imperial Act reads as follows:—"Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be: but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser." It will be seen that the Canadian Act, for the provinces other than Quebec, is substantially the same as the Imperial Act: except that an inland bill may, on dishonour, be protested in Canada, and the expenses of protest added to the amount of the bill: s. 131. This applies also to an inland note, subject to the modifications mentioned in section 186. Other provinces.

In these provinces the holder of an inland bill may either protest it, or merely send notices of dishonour in accordance with section 96. As a protest makes prima facie proof not only of presentation and dishonour, but also of the service of the notices, the practice of protesting in these other provinces has, as a rule, been adopted: s. 12. If a bill sent for acceptance or collection is not to be protested in case of dishonour, special instructions should be given by attaching a memorandum of "no protest," or the like.

§ 113

Optional.

The protesting of inland bills for non-acceptance or for better security, elsewhere than in Quebec, is only compulsory as a preliminary to an acceptance supra protest for honour: s. 115; and a protest for non-payment, only as a preliminary to presentment for payment to the acceptor for honour, or referee in case of need: s. 117.

Conflict of laws.

In case of conflict, the laws governing presentment for acceptance or payment, and the necessity for or sufficiency of a protest, are those of the place where the act is done or the bill is dishonoured: s. 162.

The form for the noting of a bill for non-acceptance is given as Form A in the schedule to the Act.

Noting protest.

The protest of a bill need not be made out at the time, it is sufficient for the notary to make the necessary noting on the bill, and to extend it later, as of the day of the noting: s. 119.

When a bill is not paid on the day it falls due, but is expected to be on the following day, it is sometimes simply noted on the day of maturity. If it is not paid the next day as expected, the protest is extended and the notices of dishonour sent.

Section 152 of the Negotiable Instruments Law provides "Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonour is unnecessary." A foreign bill should be protested on dishonour.

Discharge in default of protest.

114. In the case of an inland bill drawn upon any person in the Province of Quebec or payable or accepted at any place in the said province the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment as the case may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonour.

Protest unnecessary.

2. Except as in this section provided, where a bill does not on the face of it appear to be a

foreign bill, protest thereof in case of dishonour is unnecessary. 53 V., c. 33, s. 51 (1). § 114

All bills must be protested in Quebec.

By the enactment of this section of the Act Quebec retained its old law as embodied in Articles 2298 and 2319 of the Civil Code, which required a notarial protest with notice to the drawer and endorsers of an inland as well as of a foreign bill, in order to hold them liable. A protest was not necessary to hold the acceptor.

Classes of bills.

This section covers three classes of inland bills: (1) those drawn upon any person in the province of Quebec; (2) those payable at any place in that province; and (3) those accepted at any place in the province.

The first class would no doubt be held to be those in which the address of the drawee on the bill was some place in that province, and possibly those addressed to a resident of that province without any place being designated. The second would include those in which the bill was payable there, either as drawn or by the acceptance. The third class would, if the language of the section were taken literally, include bills accepted by the drawee in that province even although addressed to him at some place in another province. It is probable, however, that a bill would not be held to come within the provisions of this section, unless there was something on its face that plainly showed that it was drawn upon some person, or payable or accepted at some place in that province.

Protest in Quebec.

Where a bill or note is payable in Lower Canada the law of that province was held to govern as to the sufficiency of notice of dishonour, although the indorser resided in Upper Canada, and made the indorsement there: City Bank v. Lee, 1 U. C. Q. B. 192 (1843): Smith v. Hall, 3 U. C. Q. B. 215 (1847).

See the notes under the preceding section as to noting and protest.

This section applies to inland notes also: s. 186.

For the circumstances which dispense with notice of dishonour, see sections 106, 107 and 108.

§ 115

Subsequent protest for non-payment.

115. A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment. 53 V., c. 33, s. 51 (3). Imp. Act, *ibid.*

The above provision regarding a waiver of protest for non-acceptance is not in the Imperial Act. The holder may upon dishonour by non-acceptance either proceed at once against the drawer and indorsers: s. 82; or if it is a time bill, he may hold it until maturity and present it for payment.

Protest for better security.

116. Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. 53 V., c. 33, s. 51 (5): 54-55 V., c. 17, s. 7. Imp. Act, s. 51 (5).

Section 51 (5) of the Imperial Act reads, "Where the acceptor of a bill becomes bankrupt or insolvent, or suspends payment, etc." In the Act of 1890, the words "or insolvent" were omitted, but "becomes bankrupt or" remained. These were struck out by the amending Act of 1891, as there is no general bankrupt law for Canada.

Rule on the continent.

Chalmers says (p. 190):—"Under some of the Continental codes, when the acceptor fails during the currency of a bill, security can be demanded from the drawer and indorsers. English law provides no such remedy, and the only effect of such a protest in England is, that the bill may be accepted for honour."

Rule in Quebec.

In Quebec the Civil Code provides, Art. 1092, that "the debtor cannot claim the benefit of the term when he has become bankrupt or insolvent," and bankruptcy is defined as "the condition of a trader who has discontinued his payments:" Art. 17 (23). It has been held that on the bankruptcy of the maker, a promissory note which had two years to run became immediately exigible: Lovell v. Meikle, 2 L. C. J. 69 (1853).

When both maker and indorser become insolvent the holder may proceed against both, but before proceeding against the indorser he should protest the note: Banque Nationale v. Martel, Q. R. 17 S. C. 97 (1899). § 116

In France, when the acceptor fails, the bill may at once be treated as dishonoured and protested for non-payment: Code de Com. Art. 163; Nougnier, § 1277.

117. Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. Acceptance for honour.

2. When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him. 53 V., c. 33, s. 66 (1) (4). Imp. Act, s. 67 (1) (4). Protest for non-payment.

It is sufficient that the bill be noted for non-payment on the day of dishonour: the protest may be extended subsequently: s. 118. It is optional with the holder to resort to the referee in case of need or not as he thinks fit: s. 33. In Quebec, under the Code, presentment to the referee was compulsory: C. C. 2306.

As to acceptance for honour, see sections 147 to 152.

The fact that a protest for non-payment is required in all cases where an acceptor for honour refuses to pay a bill, even when no one has endorsed the bill subsequent to his acceptance for honour, would seem to favour the idea that failure to protest it would not only release him, but also release the party for whose honour he had accepted and subsequent parties. Notice of dishonour should be sent to each of these parties. See Nougnier, §§ 1320, 1321.

118. For the purposes of this Act, when a bill is required to be protested within a specified time or before some further proceeding is taken, it is Noting equivalent to protest.

§ 118 sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding. 53 V., c. 33, s. 92. Imp. Act, s. 93.

A form of noting for non-acceptance is given in the schedule to the Act as Form A. This may be adapted to meet the case of noting for non-payment.

Before the Act it was held that the rule laid down in this section applied to the case of a payment supra protest for the honour of an indorser: Geralopulo v. Wieler, 10 C. B. 690 (1851).

Noting or protest.

119. Subject to the provisions of this Act, when a bill is protested, the protest must be made or noted on the day of its dishonour. 53 V., c. 33, s. 51 (4). Imp. Act, *ibid.*

Chalmers says that before the Imperial Act, it was not clear that a bill could not be lawfully noted for protest on the day after its dishonour, which is the law of France. The Negotiable Instruments Law requires the protest or noting to be on the day of the dishonour: § 263.

Extending protest.

2. When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting. 53 V., c. 33, ss. 51 (4) and 92. Imp. Act, ss. 51 (4) and 93.

Form D in the schedule for the extension of a protest where the bill had been duly noted would appear to suggest the extension as of the date of the protest and not of the date of the noting. A compliance with either this section or the form in the schedule would be sufficient.

Before the Act it was held in England that when a bill was duly noted the formal protest might be drawn up after the commencement of an action: Geralopulo v. Wieler, 10 C. B. 690 (1851); and even during the trial: Orr v. Maginnis, 7 East at p. 361 (1806).

120. Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof. 53 V., c. 33, s. 51 (8). Imp. Act, *ibid.* Protest on copy or particulars.

The provision here made for protest in case of the accidental detention or retention of a bill is not in the Imperial Act.

The right to make a protest on a copy of a lost bill has long been recognized: Dehers v. Harriot, 1 Shower, 163 (1690).

121. A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill. 53 V., c. 33, s. 51 (6). Imp. Act, *ibid.* Place of protest.

The Imperial Act simply reads, "A bill must be protested at the place where it is dishonoured." The other words were added in the House of Commons on the suggestion of the Minister of Justice, in order, as he said, to "facilitate the making of protests, and prevent hardship likely to occur in country districts." See Mitchell v. Baring, 4 C. & P. 35 (1829), and section 121.

Provided that,—

(*a*) when a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day. 53 V., c. 33, s. 51 (6*a*). Imp. Act, *ibid.* Where bill returned.

A bill may be presented for payment through the post office where by agreement or usage this is sufficient: s. 90. The Imperial Act requires the protest to be on the day of the return, if the bill arrives during business hours.

§ 121 Every day is a juridical day except the legal holidays mentioned in section 43.

Time when. (*b*) every protest for dishonour, either for non-acceptance or non-payment, may be made on the day of such dishonour, and in case of non-acceptance at any time after non-acceptance, and in case of non-payment at any time after three o'clock in the afternoon. 53 V., c. 33, s. 51 (6*b*).

This clause, which was taken from R. S. C. (1886) c. 123, s. 22, applied to Ontario alone, having been taken from the Consolidated Statutes of Upper Canada, chapter 42. In Quebec a bill could be protested for non-payment at any time in the afternoon of the last day of grace: C. C. 2319.

A bill may apparently be presented for payment at any reasonable hour of the day it falls due, or if payable on demand, at any reasonable time on any day on which the holder may choose to present it: s. 86; but it cannot be protested before 3 o'clock, even on Saturday. It was proposed in the Commons to make the hour one o'clock on Saturday, but the suggestion was not adopted. This provision as to the hour is general, and apparently will apply to bills payable on demand as well as to those payable on a fixed day. The protest does not require to state that it was made after three o'clock. See Forms in the Schedule.

In England, Canada, and most of the United States, bills, as a rule, are not presented by the notary in person, but by his clerk. Where such a usage prevails it will be recognized. So held in Ontario by Galt, C.J., in Boas v. McCartney, Feb. 18th, 1889; affirmed by Queen's Bench Divisional Court, May 23rd, 1889 (not reported).

Contents of protest. **122.** A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify,—

(*a*) the person at whose request the bill is protested; § 122

Person.

(*b*) the place and date of protest; Place.

(*c*) the cause or reason for protesting the bill; Reason.

(*d*) the demand made and the answer given, if any; or, Proceeding.

(*e*) the fact that the drawee or acceptor could not be found. 53 V., c. 33, s. 51 (7). Imp. Act, *ibid.* Excuse.

The words "or the original bill may be annexed thereto," are not in the Imperial Act: but this mode of protesting was that followed in Ontario before the Act: R. S. O. (1886), c. 123, s. 24, and Schedule A. In Quebec, the bill and indorsements were copied in the protest, which was made in duplicate, the notary retaining one in his office and delivering the other with the bill to the person at whose request the protest was made: Con. Stat. L. C. c. 64, ss. 11, 12; R. S. C. (1886), c. 123, s. 29, and Schedule B.

Before the Act of 1882, protests in England were usually made under the seal of the notary: Brooks' Notary, 4th ed., p. 82. The clause requiring a seal was struck out in Committee: Chalmers, p. 192.

In the case of foreign bills at least it is well for a notary to use his seal, as in some countries a protest will not be received in evidence without an official seal.

ILLUSTRATIONS.

1. Before the Act a seal was not required on the protest in Ontario or Quebec: Goldie v. Maxwell, 1 U. C. Q. B. 424 (1841); Russell v. Crofton, 1 U. C. C. P. 428 (1852); R. S. C. (1886) c. 123, Schedules A and B; but was in Nova Scotia: Merchants' Bank v. Spinney, 13 N. S. (1 R. & G.) 87 (1879). Protest.

2. Before the Act of 1851, a protest in Lower Canada that did not state that it was made in the afternoon of the day it bore date was invalid: Joseph v. Delisle, 1 L. C. R. 244 (1851).

§ 122

3. When the protest is made for a qualified acceptance, it must not state a general refusal to accept, otherwise the holder cannot avail himself of the qualified acceptance: Bentinck v. Dorrien, 6 East, 199 (1805); Sproat v. Matthews, 1 T. R. 182 (1786).

Official when notary is not accessible.

123. Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto. 53 V., c. 33, s. 93 (1). Imp. Act, s. 94.

The Imperial Act reads, "when a dishonoured bill or note," etc. No reason was given for the omission of "note." Under section 186, this provision would, no doubt, be held to apply to notes. It has been the law in Lower Canada and Quebec since 1849: C. S. L. C. c. 64, s. 24; C. C. Art. 2304. Instead of a justice of the peace, the Imperial Act names as the substitute for a notary "any householder or substantial resident." Justices of the peace are not so common in England as in Canada. The powers of a notary referred to are those relating to presentment, protest, and notice of dishonour.

Notaries.—In England, notaries are appointed by the Archbishop of Canterbury, acting as the Court of Faculties. In Canada, they are provincial officers. In most of the provinces there are statutes regulating their appointment, duties and powers. See R. S. O. c. 160; R. S. Q. Art. 4575; R. S. N. S. c. 34; C. S. N. B. c. 70; R. S. Man. c. 144; R. S. Sask. c. 65; Alta. 1906, c. 16; Cons. Ord. N. W. T. c. 25; R. S. B. C. c. 173. In the provinces, other than Quebec, they are usually barristers, solicitors or attorneys.

Notaries.

In Quebec the notarial is a distinct profession, and incompatible with that of advocate or attorney. Notaries are the regular conveyancers, and the more important documents must be executed before them "en minute," the notary keeping the original, and giving out certified copies; his certificate alone making full proof of the execution, in all

courts, and for registration, etc. Certain less formal documents may be executed "en brevet," the notary then simply attesting the instrument and handing out the original. Promissory notes are sometimes made before a notary in this form, which is analogous to the protest form under the Act. See form in Appendix. § 123

No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any branch of the bank in which he is employed: s. 13.

A notary who is one of the indorsers on a promissory note is not entitled to act as notary to make the protest, even where he substitutes the name of another person for his own and purports to make the protest at the request of the person so substituted: Pelletier v. Brosseau, M. L. R. 6 S. C. 331 (1890).

"Place" is not defined in the Act, and is to be taken in its popular sense as the city, town, village, municipality or neighbourhood where the bill is dishonoured.

124. The expense of noting and protesting any bill and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon. **Expenses.**

2. Notaries may charge the fees in each province heretofore allowed them. 53 V., c. 33, s. 93 (2) (3). **Fees.**

In some of the provincial tariffs no provision is made for a fee for noting. Under this section probably the same fee would be allowed as for a protest. It would also probably be held that a justice of the peace would be entitled to the same fee as a notary. The statute in force in Quebec since 1849 allows a justice of the peace the same fees as a notary. **Tariffs.**

In some of the provinces these fees were settled by statute; in others they were regulated by usages which were by no means uniform.

§ 124

Protest fees.

Ontario.—The fees allowed in Ontario before the Act were regulated by R. S. C. (1886), c. 123, s. 25, and were as follows:—

For the protest of any bill, draft, note or order	$0 50
For every notice	0 25
For postage, the amount actually expended.	

Quebec.—The tariff of fees and charges in Quebec is found in Schedule B to R. S. C. (1886), c. 123, and is as follows:—

For presenting and noting for non-acceptance any bill of exchange, and keeping the same on record	$1 00
Copy of the same when required by the holder	0 50
For noting and protesting for non-payment any bill of exchange, or promissory note, draft or order, and putting the same on record	1 00
For making and furnishing the holder of any bill or note with duplicate copy of any protest for non-acceptance or non-payment, with certificate of service and copy of notice served upon the drawer and indorsers	0 50
For every notice, including the service and recording copy of the same, to an indorser or drawer, in addition to the postage actually paid	0 50

Nova Scotia.—The following tariff is laid down in R. S. C. (1886), c. 123, s. 7, for the protest of bills of exchange and promissory notes of $40 and upwards drawn or made at any place in this province upon or in favour of any person in the province:—

For the protest	$0 50
For each notice	0 25
For other than local bills and notes the former charge of $2.50 for each protest, including notices, is still made.	
Postage being additional in all cases.	

New Brunswick.—The statute of this province, 46 Vict. c. 11, prescribed the following tariff:—

For the presentment and noting of any bill of exchange or promissory note, for non-acceptance or non-payment	$0 50
Protest of note or bill of exchange, when made, including presentment, noting and notice	1 00
Necessary postage to be allowed.	

As the Parliament of Canada has exclusive jurisdiction over Bills of Exchange and Promissory Notes, the constitutionality of this provincial Act is open to question. It is said that the charge still usually made in this province is that in force before the Act in question, viz.:— § 124 Fees.

For protest and all notices $3 00
Postage actually paid.

Prince Edward Island.—R. S. C. (1886), c. 123, s. 8, lays down for this province a tariff similar to that for Nova Scotia. The old tariff was framed in 1776, and allowed:—

For noting bills for non-acceptance ..... 1s. 0d. Stg.
For every protest ..... 3 6 "
For other than local bills and notes the usual charge still is
For protest and notices $2 50
Postage in addition

Manitoba.—The charges in this province appear to be regulated by usage, and are as follows:—

For protest $1 00
For each notice 0 50
Postage in addition.

Alberta, Saskatchewan, Yukon and the North-West Territories.—The charges in these provinces and territories also are governed by usage, and are as follows:—

For protest $2 00
For each notice 0 50
Postage in addition.

British Columbia.—The charges here also are governed by usage, and are as follows:—

For protest and notices $2 50
Postage in addition.

125. The forms in the schedule to this Act may be used in noting or protesting any bill and in giving notice thereof. Forms.

§ 125

Contents.

2. A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf made in the forms. 53 V., c. 33, s. 93 (4).

Protest forms.

The forms in the schedule to the Act are copied without change from Schedule B to R. S. C. (1886), c. 123, where they were applicable to the Province of Quebec alone, having been inserted there from the schedules to chapter 61 of the Consolidated Statutes of Lower Canada.

It will be observed that even the words "protested in duplicate" have been retained. In Quebec it was formerly compulsory to make out the protest in duplicate and to copy the bill or note in the protest. Neither of these is required by the present Act, so that these words are now inappropriate.

Form J also provides for an attesting witness and the seal of the justice of the peace, although neither of these is required by the Act. As a matter of prudence it might be well to have a witness sign and to affix the seal in such a case, although the use of the forms is not imperative, and immaterial variations would not vitiate them: R. S. C. c. 1, s. 31 (*d*).

It is a recognized rule in the construction of statutes that their operation will not be restrained by any reference to the words of a form given for convenience sake in a schedule; and if the enacting part and the schedule do not correspond, the latter must yield to the former: Re Barnes, 1 Cr. & P. 31 (1840); Dean v. Green, 8 P. D. at pp. 89, 90 (1882).

When notice of protest shall be given.

126. Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been duly given and served, if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this Part for notice of dishonour. 53 V., c. 33, s. 49.

Protest must be made or noted on the day of the dishonour of a bill: s. 119. § 126

As to the time within which notice of protest must be given the Act adopted the rule formerly in force in Ontario: R. S. C. (1886), c. 123, s. 23. In Quebec the notice might be given within three days after protest: C. C. Art. 2330.

Notice must be given to the drawer and endorsers: s. 96; and in case of death, to their personal representatives: s. 97 (c).

Notice may be given them personally or to their agent in that behalf: s. 98; or through the post office: s. 103.

Liabilities of Parties.

Sections 127 to 138, inclusive, treat of the liability of the several parties to a bill—the drawee, the acceptor, the drawer, the endorser—also of a stranger who puts his name upon it, and of a transferrer by delivery. The measure of damages against those who are parties to a dishonoured bill is also declared in section 134.

127. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. 53 V., c. 33, s. 53. Imp. Act, *ibid.* Equitable assignment.

Section 53 of the Imperial Act, from which the foregoing is taken, provides that it shall not apply to Scotland, and the following subsection is added:—"(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favor of the holder from the time when the bill is presented to the drawee." The law of France is similar to that of Scotland: Nouguier, §§ 392, 431. Law of Scotland.

An order to pay out of a particular fund is not a bill of exchange, not being unconditional: s. 17, s.s. 3. It would

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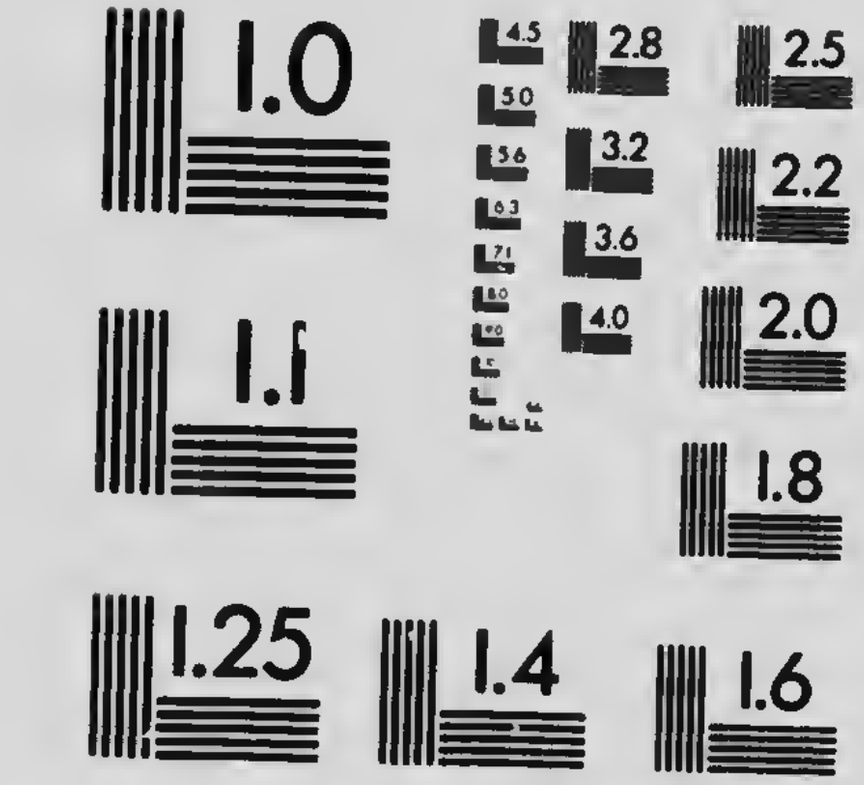

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§ 127 not therefore come within the provisions of the present Act, or within the jurisdiction of the Parliament of Canada; but would derive its validity and effect, if any, from the law of the particular province as to the transfer of a debt or chose in action: Lane v. Dungannon, 22 O. R. 264 (1892).

Drawee not liable.

The drawee of an unaccepted bill is not liable to the payee or other holder for want of privity. Nor is he liable to the drawer "on the instrument." It will be observed that the section says that a bill does not "of itself" operate as an assignment of funds in the hands of the drawee. This, however, may be effected by an agreement outside of the bill: Robey v. Ollier, L. R. 7 Ch. 695 (1872); Ranken v. Alfaro, 5 Ch. D. 786 (1877). In such a case the drawee will be liable for the damages that are the reasonable and natural consequence of his breach of contract: Prehn v. Royal Bank of Liverpool, L. R. 5 Ex. 92 (1870).

Promise to accept.

Drawees who have agreed to accept, or who have knowingly accepted the benefit of funds on a representation that they would accept, have been held liable, not on the instrument, but on their contract: Bank of Montreal v. Thomas, 16 O. R. 503 (1888); Simpson v. Dolan, 16 O. L. R. 459 (1908); Adams v. Craig, 24 O. L. R. 490 (1911); Torrance v. Bank of B. N. A., 17 L. C. J. 185; L. R. 5 P. C. 246 (1873); Dunspaugh v. Molsons Bank, 23 L. C. J. 57 (1878); Maritime Bank v. Union Bank, M. L. R. 4 S. C. 244 (1888); Coolidge v. Payson, 2 Wheaton 66 (1817); Ilsley v. Jones, 12 Gray, 260 (1858); Riggs v. Lindsay, 7 Cranch (U.S.) 500 (1813).

Bill not an assignment.

The rule laid down in this section has long been recognized in England as to ordinary bills: Griffin v. Weatherby, L. R. 3 Q. B. 753 (1868); Shand v. Du Buisson, L. R. 18 Eq. 283 (1874); even in case of a bill accepted payable at a banker's: Yates v. Bell, 3 B. & Ald. 643 (1820); Moore v. Bushell, 27 L. J. Ex. 3 (1857); Hill v. Royds, L. R. 8 Eq. 290 (1869). Also in Ontario: Lamb v. Sutherland, 37 U. C. Q. B. 143 (1875); Hall v. Prittie, 17 Ont. A. R. 306 (1890); and in the United States: Carr v. Nat. Bank, 101 Mass. 45 (1871); Bank of Commerce v. Bogy, 44 Mo. 17 (1869); First Nat. Bank v. Dubuque, 52 Iowa, 378 (1879).

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Cheque and equitable assignment.

It was formerly considered in England that a cheque was in the nature of an equitable assignment of funds in the hands of the banker: Keene v. Beard, 8 C. B. N. S. at p. 381 (1860). But it was well settled before the Act of 1882, that a cheque was not an equitable assignment, but a bill of exchange drawn upon a banker, that there was no privity between the banker and the holder of the cheque, and the latter had no action, even if there were funds: Hopkinson v. Forster, L. R. 19 Eq. 74 (1874); Schroeder v. Central Bank, 34 L. T. N. S. 735 (1876). It was also held in Ontario that an unaccepted cheque was not an equitable assignment, and the holder had no action against the bank: Caldwell v. Merchants' Bank, 26 U. C. C. P. 294 (1876). In Quebec, however, it was held that a cheque was a transfer of so much of the funds of the drawer in the bank and gave the holder a right of action: Marler v. Molsons Bank, 23 L. C. J. 293 (1879); but not so now: Silverstone v. Bank of Hochelaga, 21 C. L. T. 309 (1901). The general rule in the United States is similar to that of England, and an action cannot be maintained against a bank by the holder of an unaccepted cheque: Fourth Street Bank v. Yardley, 165 U. S. 634 (1897). In several of the States, however, the holder was allowed to sue on an unaccepted cheque;—in Louisiana: Gordon v. Muleher, 34 La. Ann. 608 (1882);—in Illinois: Union Nat. Bank v. Oceana Co. Bank, 80 Ill. 212 (1875): Springfield Ins. Co. v. Peck, 102 Ill. 265 (1882); in Missouri Senter v. Continental Bank, 7 Mo. App. 532 (1879); in Kentucky: Lester v. Given, 8 Bush (Ky), 358 (1871);—and in South Carolina: Fogartics v. State Bank, 12 Richardson, 518 (1860): Simmons Hardware Co. v. Bank, 41 S. C. 177 (1893). In those States which have adopted the Negotiable Instruments Law, the English rule applies, as section 321 defines a cheque as a bill of exchange drawn on a bank, payable on demand: and section 325 provides that it shall not operate as an assignment of the funds of the drawer in the bank, and that the bank shall not be liable to the holder, unless or until it accepts or certifies the cheque.

Drawee not liable.

Cheque a bill.

Since the coming into force of the present Act, the English and Ontario rule prevails throughout Canada, as section 165 of the Act provides that "a cheque is a bill of

§ 127 exchange drawn on a bank," and the present section applies to cheques as well as to other bills: Re Commercial Bank, 10 Man. 171 (1894).

Letter of credit.

A letter of credit is similar in this respect to a bill of exchange: Morgan v. Larivière, L. R. 7 H. L. 432 (1875); British Linen Co. v. Caledonian Ins. Co., 4 Macq. H. L. 109n. (1861); Union Bank v. Cole, 47 L. J. C. P. 109 (1878). Where, however, an open letter of credit contained a provision that parties negotiating bills under it were requested to indorse particulars on the back of it, and the payee of a bill drawn under it had the particulars duly indorsed, he was allowed to rank on the insolvent estate of the bank issuing the letter: Re Agra Bank, L. R. 2 Ch. 391 (1867). See also Ex parte Stephens, L. R. 3 Ch. 756 (1868), and Citizens' Bank v. New Orleans Bank, L. R. 6 H. L. 352 (1873). Bills of exchange drawn under a letter of credit are not affected by a private arrangement between the parties not appearing on the face of the instrument: Merchants Bank v. Winter, Nfld. Reports, 1898, p. 30.

Engagement by acceptance.

128. The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance. 53 V., c. 33, s. 54 (1). Imp. Act, *ibid.*

See section 36 as to the form of a valid acceptance.

An acceptance may be either general or qualified: s. 38. In the former case the undertaking of the acceptor is that he will pay the bill according to its terms; in the latter that he will pay it as modified by the terms of his qualified acceptance. By his acceptance he becomes the primary debtor, the drawer and indorsers being only secondarily or conditionally liable: Rowe v. Young, 2 Bligh H. L. 467 (1820); Philpot v. Briant, 4 Bing. 720 (1828); Jones v. Broadhurst, 9 C. B. 181 (1850); Smith v. Vertue, 9 C. B. N. S. 214 (1860); Cox v. National Bank, 100 U. S. (10 Otto) 712 (1879); C. C. Art. 2294.

The position of the drawer and indorsers after dishonour of a bill is analogous in several respects to that of a surety:

Cook v. Lister, 13 C. B. N. S. 543 (1863); Rouquette v. Overmann, L. R. 10 Q. B. 536 (1875), Duncan v. North & S. W. Bank, 6 App. Cas. 19 (1880). § 128

See Harmer v. Steele, 4 Ex. 1. 13 (1849), on the relation of several joint acceptors who are not partners.

See section 52 as to a person signing as acceptor, as an agent or in a representative character.

129. The acceptor of a bill by accepting it is precluded from denying to a holder in due course,— Estoppel.

(*a*) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill. 53 V., c. 33, s. 54 (*b*1). Imp. Act, s. 54 (2*a*). Genuineness and authority.

Holder in due course is defined in section 56.

Precluded here is synonymous with estoppel. When it was decided to extend the Imperial Act to Scotland, the present term was used, as "estoppel" is not a term of Scotch law.

Section 49 provides that, "subject to the provisions of the Act," a forged or unauthorized signature is wholly inoperative. The present is one of the provisions which modify that section. This has long been recognized as law: Jones v. Goudie, 2 Rev. de Lég. 334 (1820): McKenzie v. Fraser, ibid. 30 (1825); Ryan v. Bank of Montreal, 12 O. R. 39 (1886): 14 Ont. A. R. 533 (1887); Jenys v. Fawler, 2 Str. 946 (1732); Cooper v. Meyer, 10 B. & C. 468 (1830); Sanderson v. Collman, 4 M. & Gr. 209 (1842): Vagliano v. Bank of England, [1891] A. C. 107: Hoffman v. Bank of Milwaukee, 12 Wall. (U. S.) 193 (1870): Bank of U. S. v. Bank of Georgia, 10 Wheat. (U. S.) 333 (1825). Forged signature.

If the bill be materially altered the acceptor is not precluded from setting this up: Bank of Montreal v. The King, 38 S. C. Can. 267 (1907); Dominion Bank v. Union Bank, 40 ibid. 366 (1908); Burchfield v. Moore, 3 E. & B. 683 As to altered bill.

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(1854); Young v. Grote, 4 Bing. 253 (1827); Marine Nat. Bank v. National City Bank, 59 N. Y. 67 (1874). But where a bank issued a draft for $25 on one of its branches without advice, and the holder raised it to $5,000 and deposited it in another bank which drew the money, and the forgery was discovered six days later, it was held that the bank which had paid could not recover back: Union Bank v. Ontario Bank, 3 L. N. 386; 24 L. C. J. 309 (1880).

Where the drawee of a bill or cheque instead of accepting it, pays it on presentment, and afterwards discovers that the signature of the drawer has been forged, he cannot recover from the holder who presented it in good faith, the amount so paid: Bank of Montreal v. The King, 38 S. C. Can. 258 (1907); Price v. Neal, 3 Burr. 1354 (1762).

Capacity of drawer.

(*b*) in the case of a bill payable to drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement. 53 V., c. 33, s. 54 (*b*2). Imp. Act, s. 54 (2*b*).

The first part of this sub-section follows from the preceding one, for if the drawer has capacity to draw a bill, he has also capacity to endorse. When he has accepted such a bill, the acceptor is precluded from setting up that the drawer was an infant, an insane person, a married woman (where this is a disability), or a corporation without power to contract by bill: Taylor v. Croker, 4 Esp. 187 (1803) (infant): Smith v. Marsack, 6 C. B. 486 (1848) (married woman): Stoutimore v. Clark, 70 Mo. 477 (1879) (corporation).

Where a bill is drawn by an agent he might have authority to draw but not to endorse. For illustrations of this, see Robinson v. Yarrow, 7 Taunt. 455 (1817); Garland v. Jacomb, L. R. 8 Ex. 216 (1873).

If bill indorsed before acceptance.

It was for some time a disputed point whether an acceptanee admitted the genuineness and validity of the indorsement if the bill was indorsed before acceptance: Roberts v. Tucker, 16 Q. B. at p. 576 (1851); Ashpitel v. Bryan, 3 B. & S. 489 (1864). Before the Act it was, however, settled

in Ontario that this did not preclude the acceptor: Ryan v. Bank of Montreal, 14 Ont. A. R. 533 (1887). Before the Act of 1882 it was held in England that when a bill is accepted in blank for the purpose of being negotiated, and is afterwards filled in with the name and signature of a person as drawer and indorser, the acceptor cannot, as against a bona fide indorsee for value, adduce evidence to show that either the drawing or indorsement is a forgery: London and S. W. Bank v. Wentworth, 5 Ex. D. 96 (1880). This was based upon the principle that where one of two innocent persons must suffer from the fraud of a third, the loss should be borne by him who enabled the third person to commit the fraud. § 129

(*c*) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of the endorsement. 53 V., c. 33, s. 54 (3). Imp. Act, s. 54 (2*c*). Payee and capacity.

As to payee. A plea by an acceptor, that subsequent to his acceptance the payee became insolvent and indorsed it to the plaintiff without the knowledge of the assignee, held to be a good defence: Maclellan v. Davidson, 20 N. B. (4 P. & B.) 338 (1880).

As to forgery of the endorsement of the payee or want of authorization of his signature, see section 49 and the notes thereon. When the payee is fictitious or non-existing, the holder may treat the bill as payable to bearer: s. 21. This is the law even when the acceptor is not aware that the payee is a fictitious person: Vagliano v. Bank of England, [1891] A. C. 107; Clutton v. Attenborough, [1897] A. C. 90; City Bank v. Rowan, 14 N. S. W. R. 126 (1893).

See also the notes on the preceding clauses of this section.

130. The drawer of a bill, by drawing it,— Drawer.

(*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the Engages acceptance and compensation.

§ 130 holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken. 53 V., c. 33, s. 55 (1*a*). Imp. Act, *ibid.*

This is the ordinary undertaking of a drawer. By section 34 he may negative or limit his liability. The requisite proceedings on dishonour of an inland bill are set out in sections 96 to 103; of a foreign bill and of any bill dishonoured in the province of Quebec, in sections 112 to 126. These, or any of them, may be waived by the drawer: s. 34 (*b*). For the compensation due by the drawer to the holder or endorser who pays, see sections 135 and 136.

Liability of parties.

When a bill is drawn, the drawer is in the position of a principal debtor, and the endorser in that of a surety. When it is accepted the acceptor becomes the principal debtor, and the liability of the drawer and endorsers is conditional, until the bill is dishonoured. It is only an endorser "who is compelled to pay" the bill, that is, who is under legal liability to pay, that can claim to be compensated by the drawer. See Horne v. Rouquette, 3 Q. B. D. at p. 519 (1878).

The acceptor, drawer and indorsers are jointly and severally liable to the holder of a bill for its acceptance and payment: Rouquette v. Overmann, L. R. 10 Q. B. at p. 537 (1875); C. C. Art. 2310; Code de Com. Art. 140.

If the drawer has not capacity or power to incur liability by bill, he is not liable; but other parties to the bill may be: s. 48.

Estoppel or to payee.

(*b*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 83, s. 55 (1*b*). Imp. Act, *ibid.*

This has long been the law: Collis v. Emett, 1 H. Bl. 313 (1790). Holder in due course is defined in section 56. Even to him the drawer may deny the genuineness or validity of the endorsement by or on behalf of the payee; to a claim by any other holder all defences are open to him, unless the payee be fictitious or non-existing.

131. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers. 53 V., c. 33, ss. 23 and 56. Imp. Act, *ibid.* § 131

Liability by signature.

Irregular endorsement.

In the Act of 1890, as in the Imperial Act, the first clause of this section formed the first part of section 23, the remainder of that section now being section 132 of the present Act, and relating to a signature in a trade or assumed name or in the name of a firm. Section 56 of the Act of 1890 has become the proviso of the present section.

"Person" here includes any body corporate and politic, or party, and the heirs, executors, administrators or other legal representatives of such person: R. S. C. c. 1, s. 34 (20). It is not necessary that the person charged should have signed with his own hand, it is sufficient if his name be signed by some other person by or under his authority: s. 90; and in the case of a corporation that it be executed by the proper officers, or under the corporate seal, although the Act does not require the bill or note of a corporation to be under seal.

"Person" defined.

As to the personal liability of officers of corporations who purport to draw, endorse or accept on behalf of the corporation, see notes on section 52.

Officers.

As to what is a sufficient signature to a bill see the notes on section 17.

Agent.

If the name of an agent appears on a bill only as agent or attorney of the principal whose name he signs either as drawer, endorser or acceptor, he cannot be held liable on the bill even although he has no authority whatever from the person whose name he uses as principal. Still more so if his own name does not appear at all. If the agent becomes a party to a bill in his own name, his undisclosed principal cannot be held liable on the bill although the agent was duly authorized: Beckham v. Drake, 9 M. & W. 92 (1841):

§ 131 Re Adansonia Co., 43 L. J. Ch. 734 (1874). As between the immediate parties he may nevertheless be liable on the consideration.

Capacity. Subject to the proviso in the latter part of the section, the first part enacts that a person is only to be held liable as drawer, endorser or acceptor of a bill when he has signed it "as such." The capacity in which he has signed it, subject to the same proviso, may be determined by the terms of the bill itself, by the place where the signature appears, or the circumstances under which the signature was affixed, as to which evidence may be taken: Macdonald v. Whitfield, 8 App. Cas. 733 (1883); Glenie v. Bruce Smith, [1907] 2 K. B. at p. 512; Steele v. McKinlay, 5 App. Cas. p. 754. A party cannot be an acceptor unless the bill is addressed to him. In the case of a note a person can only become a party as maker or endorser.

In the Imperial Act the proviso of this section appears as section 56 and reads as follows: "Where a person signs a bill otherwise than as drawer or acceptor he thereby incurs the liabilities of an indorser to a holder in due course."

Aval. This was intended to lay down the English law on what is known in French law as an "aval," which Pothier in his Change, No. 122, describes as "the contract of warranty undertaken by a person, either for the drawer, by putting his signature at the foot of the bill; or for the indorser by signing below the indorsement; or for the acceptor by signing below the acceptance." Such person assumes towards the holder of a bill all the obligations of the party whose warrantor he becomes, and is bound by the notice given to his warrantee. So also in modern French law: Code de Com. Arts. 141, 142; Nouguier, §§ 821-840. It is also recognized in Louisiana: McGuire v. Boswell, 1 La. Ann. 248 (1846).

In Lower Canada before the Code, it was held, following the old French law prior to the Commercial Ordinance of 1673, that an indorser "pour aval" was not entitled to notice of dishonor or protest, and this rule was adopted in the Code, Art. 2311.

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English law.

As pointed out in Steele v. McKinlay, 5 App. Cas. at p. 772, by Lord Blackburn, neither the English nor the Scotch law goes so far as the French; but there was a qualified adoption of it as regards an endorsement. Originally an endorsement could only be made by the holder and for the purpose of transferring a bill payable to his order: later, endorsements of bills payable to bearer were recognized, whether by the holder or by a stranger to the bill.

Aval in England.

The most common form of endorsement by a stranger was when it was intended that he should become responsible to the payee as well as to subsequent holders. On account of the technical rules of English pleading the English law did not recognize the liability of a stranger to the payee when he signed his name on the back of the bill above the latter as an aval; but what Burton, J.A., in Duthie v. Essery, 22 Ont. A. R. at p. 192 (1895), called "a clumsy contrivance" and "unnecessary," was resorted to, viz., the payee endorsed "without recourse" and the stranger or warrantor endorsed below him either in blank or back to the payee, and thus became liable to the latter.

In Jenkins v. Coomber, [1898] 2 Q. B. 168, an action under section 56 by the payees who were also the drawers against one who had indorsed a bill as first indorser, a Divisional Court held under the authority of Steele v. McKinlay, supra, that the defendant was not liable, as the plaintiffs were not holders in due course, the instrument not being complete and regular when indorsed to them by the defendant on account of not having been previously indorsed by them as payees.

In Glenie v. Smith, [1908] 1 K. B. 263, however, in an action by the executors of the drawer and payee against such an indorser on two bills, the authority of Jenkins v. Coomber was shaken. They had been indorsed by the defendant being filled up by the drawer; one of them he had signed above the signature of the defendant, the other below. Evidence was given to show that the defendant had indorsed to guarantee the acceptance to the drawer, and that the bills were filled up in accordance with the authority given. It was held by the Court of Appeal

§ 131 that the plaintiffs were, under sections 20 and 30 of the Act, holders in due course and entitled to recover on both bills.

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In the subsequent case of Shaw v. Holland, [1913] 2 K. B. 15, the English Court of Appeal distinguished Glenie v. Smith, and followed Jenkins v. Coomber. These decisions, however, are not to be followed in this country, on account of the difference of the statutes and the binding force of the decision of our Supreme Court in Robinson v. Mann, infra.

In Canada.

In re-enacting section 56 of the Imperial Act, our Parliament made an important addition to it, viz., the concluding words of the proviso to this section, "and is subject to all the provisions of this Act respecting endorsers." This was done as stated by the leader of the Senate who had charge of the bill, to make it clear that endorsers "pour aval" such as those above spoken of, should be entitled to notice like ordinary endorsers. It would also make them subject to the same liabilities as other endorsers as laid down in the Act: s. 133.

Notwithstanding the addition of these words in the Canadian Act, it was said by Sedgewick, J., in Robertson v. Davis, 27 S. C. Can. (1897) at p. 574: "Under no circumstances can the payee of a promissory note or the drawer of a bill of exchange maintain an action against an indorser when the action is founded on the instrument itself;" but the appeal was dismissed on other grounds. This dictum and the judgment in Jenkins v. Coomber, were approved and followed in Clapperton v. Mutchmor, 30 O. R. 595 (1899); Canadian Bank of Commerce v. Perram, 31 O. R. 116 (1899); Small v. Henderson, 27 Ont. A. R. 492 (1899); and Secor v. Gray, 3 O. L. R. 34 (1901).

On the other hand, in Ayr American Plough Co. v. Wallace, 21 S. C. Can. 256 (1892), where the payees sued respondent as maker because he had indorsed a note before delivery to them, he was held not liable as maker. This was before the Act, and no notice of dishonor had been given him. In that case Strong, J., said (p. 260), that if the case were under the Act, respondent would have been liable as an indorser, but only as an indorser. This view of the Act

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taken in the province of Quebec where the doctrine had always prevailed. See Emard v. Marcille, Q. 2 S. C. 525 (1892) and 3 S. C. 268 (1893); Banque Jacques Cartier v. Common, Q. R. 5 S. C. 499 (1894); Abbott v. Wurtele, Q. R. 5 S. C. 307 (1894). Also in other provinces: Balcolm v. Phinney, 30 C. L. J. (N.S.) 340 (1892); Watson v. [illegible] 1 Man. 621 (1894); Wells v. McCarthy, 10 Man. 639 (1895); Fraser v. McLeod, 2 Terr. L. R. 154 (1895); Pegg v. Ho Ielt 28 O. R. 473 (1897). Also in New Zealand under a section similar to the Imperial Act: Cook v. Fenton, 11 N. Z. L. R. 505 (1895); and under the Negotiable Instruments Law: Reed v. Bacon, 175 Mass. 497 (1900); Davis v. Bly, 164 N. Y. 527 (1900).

Settled by Supreme Court.

The question was finally settled, so far as the Canadian courts are concerned, by the decision in Robinson v. Mann, 41 S. C. Can. 484 (1901), where it was held that the Molsons Bank were holders in due course of a note made payable to their order and which the defendant had indorsed above them, and that his indorsement was an "aval," a form of liability which the Bills of Exchange Act had adopted; see Slater v. Laboree, 10 O. L. R. 648 (1905) as to the binding force of this decision in Canada.

The following are some of the cases in which Robinson v. Mann has been followed and which illustrate the principle and application of this section. Lehigh v. Heckler, 18 O. L. R. 615 (1908); McDonough v. Cook, 19 ibid. 267 (1909); Lilly v. Farrar, Q. R. 17 K. B. 554 (1908); Knechtel v. Ideal House Furnishers, 19 Man. 652 (1910); Johnson v. McRae, 16 B. C. R. 473 (1910).

ILLUSTRATIONS.

1. A bill or note is payable to bearer, or is indorsed in blank. A person who puts his name on it to enable another to negotiate it, or who signs and negotiates it himself, is liable as an indorser to the holder: Scott v. Douglas, 5 U. C. O. S. 207 (1836); Ramsdell v. Telfer, 5 U. C. Q. B. 508 (1848); Booth v. Barclay, 6 ibid. 215 (1849); Vanleuven v. Vandusen, 7 ibid. 176 (1849); Fairclough v. Pavia, 9 Ex. p. 695 (1854).

2. A. made a note, payable to B. or order, and C. wrote his name on the back, without B.'s first indorsement. Held, that C. could not be considered as a new maker, and that the note would

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not support a recovery against him by B.: Steer v. Adams, 6 U. C. O. S. 60 (1839); Jones v. Ashcroft, ibid. 154 (1841); Wilcocks v. Tinning, 7 U. C. Q. B. 372 (1850); Skilbeck v. Porter, 14 ibid. 430 (1856); Moffatt v. Rees, 15 ibid. 522 (1857); Robertson v. Lonsdale, 21 O. R. 600 (1892); Morton v. Campbell, 3 N. S. (Cochrane) 5 (1859); Burns v. Snow, 9 N. S. (3 G. & O.) 530 (1875); Smith v. Hill, 6 N. B. (1 Allen) 213 (1848); Ayr American Plough Co. v. Wallace, 21 S. C. Can. 256 (1892); Tai Yune v. Blum, 3 B. C. R. 21 (1893); Gwinnell v. Herbert, 5 A. & E. 436 (1836). (Parties would now be liable under present section).

3. A. made a note to the order of B. for value and before delivery it was indorsed by C. as surety for the maker. B. indorses it "without recourse" above C.'s signature, and then sues C. He can recover: Peck v. Phippon, 9 U. C. Q. B. 73 (1851); Smith v. Richardson, 16 U. C. C. P. 210 (1865). See also Wordsworth v. Macdougall, 8 U. C. C. P. 403 (1858); Wilders v. Stevens, 15 M. & W. 208 (1846); Smith v. Marsack, 6 C. B. 486 (1848); Morris v. Walker, 15 Q. B. 589 (1850); Wilkinson v. Unwin, 7 Q. B. D. 636 (1881); Holmes v. Durkee, 1 C. & E. 23 (1883); Seabury v. Hungerford, 2 Hill (N.Y.) 80 (1841); Hall v. Newcomb, 3 Hill (N.Y.) 233 (1842). (Liable now without above formality).

4. Defendant having indorsed, as security for the maker, a promissory note payable to plaintiff but not negotiable, he was held not liable as a maker: West v. Bown, 3 U. C. Q. B. 290 (1846); McMurray v. Talbot, 5 U. C. C. P. 157 (1855). Contra, Piers v. Hall, 18 N. B. (2 P. & B.) 34 (1878).

5. Defendant owing plaintiff delivered him a note made by a third party payable to defendant or bearer, on the back of which defendant had written "In consideration of $100, I guarantee payment of the within note." Held, that defendant was liable without notice of dishonor: Palmer v. Baker, 23 U. C. C. P. 302 (1873).

6. Defendant indorsed on a note "I guarantee the payment of the within note to D. (the payee and plaintiff) on demand." This was done to secure time, which was given. Defendant was not liable as an indorser, the note never having been negotiated, but he was held liable as a guarantor: Davies v. Funston, 45 U. C. Q. B. 363 (1880).

7. Plaintiff lent money to a firm. One partner made and the other indorsed a non-negotiable note in plaintiff's favor for the amount. The indorser was held liable as a guarantor: McPhee v. McPhee, 19 O. R. 603 (1890); overruled by Robertson v. Lonsdale, 21 O. R. 600 (1892).

8. In Quebec one who puts his name on the back of a note before its delivery or indorsement by the payee, is an indorser pour aval, and is liable without notice of protest or dishonor: Paterson v. Pain, 1 L. C. R. 219 (1851); Merritt v. Lynch, 3 L. C. J. 276 (1859); Pariseau v. Ouellet, Mont. Cond. Rep. 69 (1859); Narbonne v. Tetreau, 9 L. C. J. 80 (1863); Latour v. Gauthier, 2 L. C. L. J. 109 (1866). Also one who puts his name on the back of cheque

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payable to bearer: Pratt v. Macdougall, 12 L. C. J. 243 (1868). (Notice required now).

9. An indorser pour aval is liable on a note although it is null because made by a married woman without authorization by her husband: Norris v. Condon, 14 Q. L. R. 184 (1888).

10. Under the Code, an aval was not entitled to notice of dishonor, and the Act of 1890 is not retroactive, so as to apply to bills or notes before its coming into force: Fyfe v. Boyce, 21 R. L. 4 (1891); Coutu v. Rafferty, M. L. R. 7 S. C. 146 (1891).

11. Where before the Act an indorser signed below the payee, the presumption is that he is not an aval, but an ordinary indorser; and the fact that he was never holder of the note, but indorsed it merely for the accommodation of the maker, is not sufficient to destroy this presumption: Merchants' Bank v. Cunningham, Q. R. 1 Q. B. 35 (1892).

12. Where a promissory note was drawn payable to the order of the maker and he did not indorse it, the indorsers were held not liable, as it was not a note under Arts. 2344 and 2345 C. C.: Trenholme v. Coutu, Q. R. 2 Q. B. 387 (1893).

13. Where two or more persons become parties to a bill to accommodate some third party, their rights and liabilities between themselves are those of co-sureties, and must be determined irrespective of the position of their names on the instrument. Parol evidence is admissible to prove the circumstances: Steacy v. Staynor, 7 O. L. R. 684 (1904); Vallée v. Talbot, Q. R. 1 S. C. 223 (1892); Reynolds v. Wheeler, 10 C. B. N. S. 561 (1861); Clipperton v. Spettigue, 15 Grant, 269 (1868); Cockburn v. Johnston, ibid. 577 (1869); Macdonald v. Whitfield, 8 App. Cas. 733 (1883), overruling Janson v. Paxton, 23 U. C. C. P. 439 (1874); and Fisken v. Meehan, 40 U. C. Q. B. 146 (1876).

14. The indorsement of a bill by one who is not the holder, but a stranger to it, is efficacious in English law. It creates no obligation to those who previously were parties to it; it is solely for the benefit of those who take it subsequently. To hold that a stranger to a bill who writes his name across the back of it, before it has passed out of the hands of the drawer, thereby becomes liable to the drawer' failing payment by the drawees, is inconsistent with the principles of the law merchant: Steele v. McKinlay, 5 App. Cas. at pp. 772, 782 (1880). See Hill v. Lewis, 1 Salk. at p. 133 (1710); Penny v. Innes, 1 C. M. & R. 439 (1834).

15. The fact that one person writes his name on the back of a bill of exchange and hands it to another, does not necessarily constitute the former an indorser, where the other is not a holder in due course: Westacott v. Smalley, 1 C. & E. 124 (1883).

16. Plaintiff drew a bill to his own order, which was accepted by the drawees, and guaranteed by defendant. The acceptors desir-

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Liability as endorser.

ing time, plaintiff offered to consent if defendant would continue his guarantee. He wrote a letter and put his name on the back of the bill. Held, that defendant was not liable as an indorser, as the bill was never negotiated; but the bill and letter read together were sufficient to satisfy the Statute of Frauds and he was liable as a guarantor: Singer v. Elliott, 4 T. L. R. 524 (1888).

17. Plaintiff drew a bill to his own order for an advance to be made to the acceptor on condition the latter got an indorser. On getting the bill accepted and indorsed, he then signed as drawer, and indorsed below the signature of the indorser. No agreement with the indorser was proved. Held, that plaintiff was not a holder; there was nothing in the Bills of Exchange Act to take the case out of the law merchant, which did not allow the drawer to sue an indorser: Mander v. Evans, 5 T. L. R. 75 (1888).

18. A director of a company which was trying to get a bill discounted for the drawer, stamped the company's name on the back, and wrote his own name opposite the word "Director." It required two directors to sign for the company. Not succeeding, he returned the bill to the drawer, leaving the incomplete indorsement inadvertently uncancelled. The drawer negotiated it. Held, that the director had not "signed" the bill, and was not liable as an indorser: London & Southern Cos. I. A. & D. Co. v. Clamp, 7 T. L. R. 131 (1890).

19. A bill of exchange bore an indorsement to the effect that in case of non-payment by the acceptors, it was to be presented to the defendant. It was held that the indorsement which defendant had signed was not a part of the bill, and he could not be sued as an indorser, but was liable as a guarantor: Stagg v. Broderick, 12 T. L. R. 12 (1895).

Trade or assumed name.

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

Firm name.

2. The signature of the name of a firm is equivalent to the signature by the person so signing, of the names of all persons liable as partners in that firm. 53 V., c. 33, s. 23. Imp. Act, *ibid.*

Assumed Name.—A person may adopt whatever name he pleases in his business dealings, unless there be some special reason against his using that particular name; and in such a case the adopted name is in law equivalent to his actual name. Thus an individual may carry on business in a firm name, or a husband in the name of his wife, or a principal in the

name of an agent, or a corporation may use a firm name or that of its agents, etc. § 132

Assumed or firm name.

ILLUSTRATIONS.

1. A bill drawn and indorsed by a wife in her own name in the presence of her husband and under his direction was treated as the bill of the husband: Prestwick v. Marshall, 7 Bing. 565 (1831).

2. A bill drawn on William Bradwell was accepted by his wife Mary Bradwell in her own name. The husband recognized his liability and promised to pay. Held, that he was liable as acceptor: Lindus v. Bradwell, 5 C. B. 583 (1848). See also Ross v. Codd, 7 U. C. Q. B. at p. 74 (1850); and Trueman v. Loder, 11 A. & E. at p. 594 (1840).

3. Where one partner of an English firm did business for the firm in America in his own individual name, the firm was held liable on indorsements by him: South Carolina Bank v. Case, 8 B. & C. 427 (1828).

4. The "Boston Iron Company" was held liable on notes signed "Horace Gray & Co."; Melledge v. Boston Iron Co., 5 Cush. 158 (1849).

Firm Signature.—The signature of a firm is deemed to be the signature of all those who are partners in the firm, whether working, dormant or secret, or who, by holding themselves out as partners, are liable as such to third parties: Pooley v. Driver, 5 Ch. D. 458 (1876); Gurney v. Evans, 27 L. J. Ex. 166 (1858).

The partners are presumed to have given each other authority to do the business of the firm, and what is done by one binds the others, not only ordinary partners but also dormant or secret partners. And in trading or commercial partnerships each partner will be presumed to have authority to sign the firm name as drawer, acceptor, maker or indorser to commercial paper for the business of the firm. If a partner sign the firm name on his private business, the firm is not liable except to a holder in due course: Bank of Australasia v. Breillat, 6 Moore P. C. 152 (1847); Wiseman v. Easton, 8 L. T. N. S. 637 (1863).

In civil or non-trading partnerships there is no such presumption, and the partner signing the firm name may make only himself liable: Dickinson v. Valpy, 10 B. & C.

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Firm signature.

137 (1829); Thicknesse v. Bromilow, 2 Cr. & J. 425 (1832); Ricketts v. Bennett, 4 C. B. 699 (1847); Garland v. Jacomb, L. R. 8 Ex. 219 (1873). But the others may become liable by estoppel or ratification: sec. 49.

ILLUSTRATIONS.

1. Where the drawing or accepting of bills is not a necessary part of the business of a firm, the fact that bills were drawn and accepted with defendant's knowledge while he was partner is sufficient to render him liable: Lee v. McDonald, 6 U. C. O. S. 130 (1841).

2. Where the plaintiff knowingly received a note indorsed for the accommodation of the maker by one partner without the co-partner's authority or knowledge, the latter is not liable: Harris v. McLeod, 14 U. C. Q. B. 164 (1856); Royal Canadian Bank v. Wilson, 24 U. C. C. P. 362 (1874).

3. A holder who received in good faith before maturity a note indorsed in the name of a commercial firm by one partner, is entitled to recover against the firm although the co-partner did not authorize the indorsement which was for the accommodation of the maker: Henderson v. Carveth, 16 U. C. Q. B. 324 (1858).

4. Where a firm of two or more indorse in the partnership name, the liability as sureties is a joint liability, and not the several liability of each partner: Clipperton v. Spettigue, 15 Grant, Chy. 269 (1868).

5. A draft was made on a firm and a partner marked it "good," adding his own initials. Held, that the firm was not liable: Hover v. Cassels, 30 U. C. C. P. 230 (1879).

6. Where a solicitor signed his firm's name to an accommodation note without the authority or knowledge of his co-partner, the latter is not liable, even to a holder in due course: Wilson v. Brown, 6 Ont. A. R. 411 (1881).

7. Plaintiffs discounted a note for the maker, payable to and indorsed in a firm name by one of the partners, plaintiffs knowing that it was so indorsed as security for the maker, and having no reason to suppose it was in connection with the partnership business. Held, that the other partners were not liable: Federal Bank v. Northwood, 7 O. R. 389 (1884).

8. Where a person held out to be a partner gave note in the name of the firm for money borrowed, and which was to be kept secret from the other partners, the lender cannot recover from the other members of the firm: McConnell v. Wilkins, 13 Ont. A. R. 438 (1885).

9. Where plaintiff took a note which had been fraudulently signed by a partner in the firm name after dissolution, but before being

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Firm signature.

advertised, and plaintiff knew nothing of the firm or its members, held that the other partner was not liable: Standard Bank v. Dunham, 14 O. R. 67 (1887).

10. A note made fraudulently by a partner in the firm name binds the partnership in the hands of a bona fide holder for value: Walter v. Molsons Bank, Ramsay A. C. (1877).

11. Where by the deed of dissolution of a partnership, one partner was given authority to sign notes in the firm's name, and another partner, when sued on such a note, pleaded that it was given without his knowledge in the name of a terminated co-partnership, he was held liable: White v. Wells, 1 L. N. 87 (1878).

12. A partner made notes in the firm's name, forged the name of the payee, got the notes discounted at the bank, and applied a large part of the proceeds to partnership purposes. Held, that the bank could not rank on the insolvent estate of the firm on the notes, but could for the amount of them as for money paid: Re Graham, 12 N. S. (3 R. & C.) 251 (1878).

13. A person who was a member in two firms made a note in the name of one, without the knowledge of his partner in that firm, to raise money for the other. The bank which discounted the note was aware of the facts. Held, that the partner who was ignorant of the making was not liable to the bank: Creighton v. Halifax Banking Co., 18 S. C. Can. 140 (1890).

14. In an action by a bona fide holder against a firm as indorsers of a note, it is no defence that it was indorsed fraudulently by one of the firm, and for matters not relating to the business of the partnership: McLeod v. Carman, 12 N. B. (1 Han.) 592 (1869).

15. Where a party takes a note made or indorsed in a firm's name, knowing that it was not for the purposes of the partnership, the onus is on him to prove the knowledge or assent of each partner: Union Bank v. Bulmer, 2 Man. 380 (1885).

16. Where a bill is drawn on M. & McQ. for goods supplied to M., McQ. & Co., and accepted in the name of M. & McQ. by the manager of M., McQ. & Co., the latter are not liable as acceptors of the bill: Quebec Bank v. Miller, 3 Man. 17 (1885).

17. Where a bill is payable to the order of a firm and the partnership is subsequently dissolved, the indorsement of an ex-partner of the late firm transfers the property therein, and authorizes the payment thereof: King v. Smith, 4 C. & P. 108 (1829); Lewis v. Reilly, 1 Q. B. 349 (1841); Ross v. Chandler, 45 S. C. Can. 127 (1911). Contra, 1 Daniel, § 370*a*, and cases there cited.

18. Where a member of a firm in fraud of his partner accepts a bill in a name which is not the regular firm name but resembles it, the latter is not liable: Faith v. Richmond, 11 A. & E. 339 (1840); Kirk v. Blurton, 9 M. & W. 284 (1841): Royal Canadian Bank v. Wilson, 24 U. C. C. P. 32 (1874).

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19. A person carries on business in his own name, but has a dormant partner. He accepts a bill in the common . . . on his private account. If the dormant partner can show that the bill is not a firm bill, he is not liable: Yorkshire Banking Co. v. Beat on 5 C. P. D. 109 (1880).

Endorser.

133. The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinbefore authorized,—

Engages acceptance or compensation.

(*a*) engage; that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured, he will compensate the holder or a subsequent endorsee who is compelled to pay it, if the requisite proceedings on dishonour are duly taken. 53 V., c. 33, s. 52 (2*a*); 7-8 Edw. VII., c. 8, s. 1. Imp. Act. s. 55 (2*a*).

In the Revised Statutes the word endorser was printed in the fourth line of (*a*) instead of endorsee. The error was corrected in 1908, by the Statute above noted.

As regards the holder of a bill an endorser has been compared to a new drawer: Penny v. Innes, 1 C. M. & R. at p. 441 (1834); Steele v. McKinlay, 5 App. Cas. at p. 769 (1880).

May be varied.

This section sets out the ordinary contract of the endorser. It may, like that of the drawer, be varied in different ways. His liability may be limited or even negatived: or he may waive, as regards himself, some or all of the duties imposed on the holder as to presentment, protest and notice: s. 34. See also section 60 and following sections.

As to the nature of the contract of indorsement, see the remarks of Maule, J., in Castrique v. Imrie, 10 Moore P. C. at p. 108 (1855).

The liability of an indorser is prima facie that of a surety for the acceptor: Horne v. Rouquette, 3 Q. B. D. at p. 318 (1878).

The indorsers may have an agreement varying as between themselves the undertaking in this section, and even revers-

ng the order in which they are to be liable to each other. § 133
If two or more persons indorse a bill or note to accommodate the acceptor or maker, their relation to each other is that of co-sureties, irrespective of the order in which they have indorsed: Macdonald v. Whitfield, 8 App. Cas. 733 (1883); Godsell v. Lloyd, 27 T. L. R. 383 (1911). See Small v. Riddel, 31 U. C. C. P. 373 (1880).

The fact that two persons indorsed a note for the accommodation of the maker does not give the prior indorser any recourse against the subsequent indorser, unless he shows that the latter intended to assume liabilities different from those assumed by so signing: Poisson v. Bourgeois, Q. R. 17 S. C. 94 (1898); McRae v. Lionais, Q. R. 16 S. C. 262 (1899); Lachance v. Duval, Q. R. 37 S. C. 475 (1910).

(*b*) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; Genuineness and regularity.

(*c*) is precluded from denying to his immediate or a subsequent endorser that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto. 53 V., c. 33, s. 55 (2 *b* and *c*). Imp. Act, *ibid.* Validity.

An endorser by putting his name on the back of the bill has in effect made these representations, and he is estopped from denying them to one who has in good faith given value for it while current, without notice of any defect.

ILLUSTRATIONS.

1. In an action against the last indorser, it is no defence that the names of the maker and prior indorsers are forged: Eastwood v. Westley, 6 U. C. O. S. 55 (1839); McLeod v. Carman, 12 N. B. (1 Han.) 592 (1869). Estoppel of endorser.

2. The indorser of an unaccepted bill is estopped from denying the signature or the competence of the drawer, a married woman: Ross v. Dixie, 7 U. C. Q. B. 414 (1850). See also Griffin v. Latimer, 13 U. C. Q. B. 187 (1856); Hanscombe v. Cotton, 16 U. C. Q. B. 98 (1857).

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Estoppel of endorser.

3. The indorser of a note made by a corporation is estopped from alleging that it was ultra vires: Merchants' Bank v. United Empire Club Co., 44 U. C. Q. B. 468 (1879).

4. An indorser sued on a note by the indorsee cannot plead that the note is null, because made by a married woman without the authorization of her husband: Leblanc v. Rollin, Mont. Cond. R. p. 68 (1854); Norris v. Condon, 14 Q. L. R. 184 (1888).

5. An accommodation indorser cannot in an action by a holder in due course plead that the signature of the maker is forged: Coquette v. Leclaire, Q. R. 19 S. C. 521 (1900).

6. A note in favor of two payees jointly was indorsed by one of them to a person who in turn indorsed it to another. The latter sued the payee who had indorsed. Held, that defendant was estopped from setting up the want of indorsement by the other payee: Thagar v. Clarke, 4 N. B. (2 Kerr) 370 (1844).

7. Where a partner, having authority to draw and indorse, raised money for firm use by drawing bills in fictitious names and indorsing them in the firm name, the other partner was liable to an indorsee: Thicknesse v. Bromilow, 2 Cr. & J. 425 (1832).

8. A plea denying the indorsement to defendant who indorsed it to plaintiff is bad: MacGregor v. Rhodes, 6 E. & B. 266 (1856). See Lambert v. Pack, 1 Salk 127 (1699); Bomley v. Frazier, 1 Stra. 441 (1721).

9. An indorsement for collection on a cheque made by one bank in sending it to another for payment, not being an indorsement for transfer and sale, does not carry with it a guarantee of previous indorsements: First Nat. Bank v. City Nat. Bank, 182 Mass. 130 (1902).

Measure of damages.

134. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be,—

Amount of bill.

(*a*) the amount of the bill;

Interest.

(*b*) interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;

Expense.

(*c*) the expenses of noting and protest. 53 V., c. 33, s. 57. Imp. Act, *ibid.*

These damages are recoverable immediately on the dishonour of a bill either by non-acceptance or non-payment.

They are deemed to be liquidated damages and may be included in a summary judgment on a specially endorsed writ in provinces where such a practice obtains. § 134 Interest.

(*a*) **Amount of the Bill.**—If the bill bears interest on its face this would be included: s. 28 (*a*); Crouse v. Park, 3 U. C. Q. B. 458 (1847); Hudson v. Fawcett, 7 M. & G. 1 (1844). So would exchange if indicated in the bill: s. 28 (*d*); s. 163.

See notes on sections 160 and 161 as to what law would govern in the case of a foreign bill where no rate is specified.

Usury laws having been abolished in Canada, the rate of interest, if named in the bill, would be allowed, except in the case of corporations or individuals restricted by special legislation. Thus banks are limited to 7 per cent.: Bank Act, s. 91; and if they stipulate for more, cannot recover more than 5 per cent.: McHugh v. Union Bank, [1913] A. C. 299. Professional money-lenders are limited to 12 per cent. for amounts under $500, to be reduced to 5 per cent.: R. S. C. c. 122, s. 6. See Bellamy v. Timbers, 31 O. L. R. 613 (1914); Bellamy v. Porter, 28 O. L. R. 572 (1915).

(*b*) **Interest.**—This clause applies only to interest allowed as damages for non-payment of the bill at maturity. As to interest provided for by the bill itself which forms part of the suit or debt, see section 28 (3). The rule in this clause is in accordance with the general rule as to interest. See R. S. O. c. 56, s. 35; C. C. Arts. 1067, 1069, 1070, 1077.

The rate of interest allowed by the law of Canada was formerly six per cent.: R. S. C. (1886) c. 127, s. 2. Since the 7th of July, 1900, it has been five per cent.: 63-64 V. c. 29, s. 1; R. S. C. c. 120, s. 3.

A third sub-section in the Imperial Act giving the Courts or jury a discretion as to the rate of interest to be allowed as damages was not adopted for Canada.

(*c*) **Expenses.**—As to these see section 124. Under this term the expense of protesting for better security is not included under the Imperial Act, which only allows it

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Damages on bill.

"when protest is necessary"; nor is commission nor brokerage: Re English Bank of the River Plate, Ex parte The Bank of Brazil, [1893] 2 Ch. 438; Banque Populaire v. Cavé, 1 Com. Cas. (Eng.) 67 (1895).

It has been held that this and the succeeding section do not exclude such unliquidated damages as might be claimed under the common law or the law merchant by a foreign drawer for re-exchange where a bill accepted in England and payable there has been dishonoured: In re Gillespie, Ex parte Robarts, 18 Q. B. D. 286 (1886). See Re General Steam America Co., 7 Ch. D. 637 (1877).

ILLUSTRATIONS.

Interest and expenses.

1. Where a bill or note is payable with interest at a certain rate, this rate governs after maturity: Howland v. Jennings, 11 U. C. C. P. 272 (1861); Montgomery v. Boucher, 14 U. C. C. P. 45 (1864); O'Connor v. Clarke, 18 Grant, 422 (1871); Keene v. Keene, 3 C. B. N. S. 144 (1857). Overruled by No. 7 below as to provinces where English law obtains.

2. In the absence of proof, interest will be allowed at the rate allowed by our law on a note dated and payable in the United States: Griffin v. Judson, 12 U. C. C. P. 430 (1862).

3. Where a note fixes the rate to be paid after maturity "and until paid," this will be allowed, in the absence of fraud, however exorbitant: Young v. Fluke, 15 U. C. C. P. 360 (1865).

4. Where a note was dated and payable in New York, but discounted in Canada, the law of Canada governs as to interest: Cloyes v. Chapman, 27 U. C. C. P. 22 (1876).

5. Where the holder of a note recovered judgment with costs against the maker and indorser, and the indorser paid and took an assignment of the judgment, he is entitled under R. S. O. c. 116, s. 3, to recover from the maker the whole of the judgment, including costs: Harper v. Culbert, 5 O. R. 152 (1883).

6. Where indorsers waived protest, the interest after maturity was not fixed by C. S. U. C. c. 42, s. 13, so as to enable the holder to rank for it under the Insolvent Act: Re Macdougall, 12 Ont. A. R. 265 (1885).

7. A note for $3,000, payable six months after date "with interest at the rate of two per cent. per month until paid," only bears interest at the legal rate of six per cent. after maturity: St. John v. Rykert, 10 S. C. Can. 278 (1884). See also Dalby v. Humphrey, 37 U. C. Q. B. 514 (1875); Simonton v. Graham, 8 Ont. P. R. 495 (1881); Powell v. Peck, 15 Ont. A. R. 138 (1888); People's

Loan v. Grant, 18 S. C. Can. 262 (1890); Canadian Heating Co. v. Cutts, 8 O. W. N. 565 (1915): Cook v. Fowler, L. R. 7 H. L. 29 (1874). § 134

Interest and expenses.

8. In Quebec under the old law a note payable on demand bore interest from its date: Dechantal v. Pominville, 4 C. J. 88 (1860), but under the Code, only from demand and default: Cleroux v. Pigeon, 32 L. C. J. 236 (1888).

9. "Bank charges" on a specially indorsed writ is a sufficient description of the expenses of noting: Dando v. Boden, [1893] 1 Q. B. 318. As to an indorsement for interest, see London & Universal Bank v. Clancarty, [1892] 1 Q. B. 689; Lawrence v. Willcocks, ibid. 596; McVicar v. McLaughlin, 16 Ont. P. R. 150 (1895).

Recovery of same.

135. In case of the dishonour of a bill the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser the damages aforesaid. 53 V., c. 33, s. 57, Imp. Act, *ibid.*

The payment of these damages in such circumstances is among the liabilities assumed by the acceptor: s. 128; by the drawer: s. 130; and by the endorser: ss. 131 and 133. Particulars of the damages are given by section 134.

The present section provides for the case of a bill dishonoured in Canada: the following section for bills dishonoured abroad.

Re-exchange and interest.

136. In the case of a bill which has been dishonoured abroad in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. 53 V., c. 33, s. 57, Imp. Act, *ibid.*

Re-exchange has been defined in England as the amount which the holder would have to pay to put himself in funds

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Re-exchange.

in the country where the bill was payable, or which the par who has been compelled to pay the dishonoured bill would have to pay for a sight bill, drawn at the time and place of dishonour at the then current rate of exchange on the pla where the drawer or indorser sought to be charged resid to cover the amount of the dishonoured bill with interest a expenses: De Tastet v. Baring, 11 East, at p. 269 (180 Suse v. Pompe, 8 C. B. N. S. at pp. 566, 567, (1860); W laus v. Ayers, 3 App. Cas. at p. 146 (1877). In Engl practice the re-exchange bill is now seldom actually se but the damages are computed on the same basis as if were: In re Commercial Bank, 36 Ch at p. 528 (188

Under the Canadian Act, re-exchange would not incl the items named in section 134, otherwise these would paid twice.

The same rule prevails in the United States: Bank of the United States v. United States: 2 How. 727 (1844).

The provisions of this section apply to promissory notes with the necessary modifications: s. 186.

No further damages.

It will be observed that the present Act does not re nize or allow the further damages formerly allowed on bills drawn or negotiated in Canada and dishonoured by non-p ment abroad. In the various provinces there was allo a percentage from ten per cent. downwards. By the Dominion Act of 1875, embodied in R. S. C. (1886), c. 123, s. 6, it was abolished for any part of Canada or Newfoundland and reduced to two and a half per cent. for other countries. See Foster v. Bowes, 2 U. C. P. R. 256 (1857); Bank of Montreal v. Harrison, 4 U. C. P. R. 331 (1868).

Transferrer by delivery.

137. Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a 'transferrer by delivery.'

Liability of.

2. A transferrer by delivery is not liable on the instrument. 53 V., c. 33, s. 58 (1, 2). Imp. Act, *ibid.*

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Transferrer by delivery.

A bill payable to bearer is one which is expressed to be so payable, or on which the only or last endorsement is in blank: s. 21 (3). The holder of such a bill is the person in possession of it whether as owner or otherwise: s. 2 (5). It is negotiated when it is transferred from such holder to another in such a manner as to constitute the transferee the holder: s. 60. If he endorses it he incurs the liabilities of an endorser; but the endorsement is no part of the negotiation, it precedes it

A transferrer by delivery is no party to the bill, and only those who are parties to it are liable on the instrument.

No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: s. 131. See Ex parte Roberts, 2 Cox, 171 (1789); Bank of England v. Newman, 1 Ld. Raym. 442 (1700); Fenn v. Harrison, 3 T. R. 757 (1790).

On consideration.

The transferrer by delivery, although not liable on the instrument itself, may in certain cases, in the event of its dishonour, be liable on the consideration for which the bill has been transferred: Merchants' Bank v. Whidden, 19 S. C. Can. 53 (1891). This is the case if the bill was given for an antecedent debt: Mitchell v. Hoiland, 16 S. C. Can. 687 (1889); Ward v. Evans, 2 Ld. Raym. 930 (1703); Camidge v. Allenby, 6 B. & C. 382 (1827); Guardians of Lichfield v. Greene, 1 H. & N. 884 (1857). Or if the delivery was not intended to operate a full and final discharge of the liability of the transferrer: Van Wart v. Woolley, 3 B. & C. 446 (1824).

The transferee, in order to hold the transferrer liable, must act with reasonable diligence in seeking to obtain payment, and in giving notice of dishonour or repudiating the transaction: Conn v. Merchants' Bank, 30 U. C. C. P. 380 (1879); Rogers v. Langford, 3 Tyr. 654 (1833); Moule v. Brown, 4 Bing. N. C. 266 (1838); Robson v. Oliver, 10 Q. B. 704 (1847).

Where a person changes bank notes or cashes a cheque payable to bearer to oblige the holder, he can recover back the money if the bank has stopped payment or if the cheque

§ 137 is dishonoured, provided he acts with diligence: Commercial Merchants' Bank, supra; Turner v. Stones, 7 Jur. 715 (1843); Timmins v. Gibbins, 18 Q. B. 722 (1852); Woodland v. Fear, 7 E. & B. 519 (1857).

Where bill brokers got bills discounted at their bankers for the drawer and acceptor, and made themselves liable to the banker by a separate document but did not indorse the bills, they were, on payment of the bills, held entitled to rank on the estate of the acceptor as if they had actually indorsed the bills: Ex parte Bishop, 15 Ch. D. 400 (1880).

Warranty by.

138. A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value,—

Genuineness.

(*a*) that the bill is what it purports to be:

Right to transfer.

(*b*) that he has a right to transfer it; and

Bona fides.

(*c*) that at the time of transfer he is not aware of any fact which renders it valueless. 53 V., c. 33, s. 58 (3). Imp. Act, *ibid.*

Subject to the conditions mentioned under the preceding section, these three warranties appear to comprise all that were recognized in England or Canada before their respective Acts. In some of the United States such a transferrer is held also to warrant the solvency of the maker at the time of the transfer: Roberts v. Fisher, 43 N. Y. 159 (1870); Wainwright v. Webster, 11 Vt. 576 (1839); Westfall v. Braley, 10 Ohio St. 188 (1859); while in others the English rule is followed: Young v. Adams, 6 Mass. 182 (1810); Milliken v. Chapman, 75 Me. 306 (1883).

As appears from some of the illustrations below, the word "valueless" is not always to be taken in a strictly literal sense.

ILLUSTRATIONS.

1. Defendant indorsed, without recourse, a cheque on a N. Y. bank, and delivered it to plaintiff for collection. The proceeds were paid to him. It was claimed that the indorsement of the payee was forged and plaintiff repaid the N. Y. bank. Held, that if the indorsement was forged defendant was liable: Bank of Ottawa v. Harty, 12 O. L. R. 218 (1906).

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Warranty by.

2. A transferrer by delivery for value impliedly warrants that the maker is not insolvent to his knowledge: Lewis v. Jeffery, M. L. R. 7 Q. B. 141 (1875). See Fenn v. Harrison, 3 T. R. 759 (1790); Delaware Bank v. Jarvis, 20 N. Y. 228 (1859); Bridge v. Batchelder, 9 Allen (Mass.) 394 (1864).

3. The transferrer of an unindorsed note represented it to be as good as gold when the parties were insolvent to his knowledge. He was held liable for the amount: Miller v. Dandelin, 24 L. C. J. 208 (1879).

4. A vendor of a bill impliedly warrants that it is of the kind and description that it purports on its face to be: Gompertz v. Bartlett, 2 E. & B. 849 (1853).

5. C. discounts with D. a bill payable to bearer without indorsing it, which, unknown to C., had been fraudulently altered in amount by a previous holder. D. can recover from C. the money he paid: Jones v. Ryde, 5 Taunt. 488 (1814); Burchfield v. Moore, 3 E. & B. 683 (1854); Bell v. Dagg, 60 N. Y. 530 (1875).

6. A bill broker discounts with a bank a bill indorsed in blank by the payee. The indorser absconds and the signatures of the drawer and acceptor turn out to be forgeries. The bank can recover from the broker the money it paid: Fuller v. Smith, R. & M. 49 (1824).

7. An agent gets a bank to discount a bill drawn and indorsed in blank by his principal, and then pays over the money to his principal. The signature of the acceptor was a forgery, but the agent did not know it. The drawer fails. The bank cannot recover from the agent: Ex parte Bird, 4 De G. & Sm. 273 (1851).

8. The bona fide holder of a bill purporting to be drawn by A., accepted by B., and indorsed in blank by C., discounts it with a banker. It turns out that the signatures of A. and B. were forgeries, and that C., whose indorsement was genuine, is insolvent. The banker can recover from the holder the money he paid: Gurney v. Womersley, 4 E. & B. 139 (1854); Allen v. Clark, 49 Vt. 390 (1877).

9. When the transferee discovers the defect in the bill, he must repudiate the transaction with reasonable diligence: Pooley v. Brown, 11 C. B. N. S. 566 (1862).

Discharge of Bill.

Sections 139 to 146 inclusive, treat of the circumstances under which a bill is discharged. These are, payment by the acceptor, his becoming the holder, his being released, or the bill being cancelled or materially altered.

"Discharge is a term used to denote either the end of the life of the instrument or the release of a party to the

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Discharge of bill.

instrument from his liability in respect of it. These divergent meanings require to be carefully distinguished. An instrument to which there are several parties is in reality not one contract, but a series of contracts gathered round the principal contract, which is that between the acceptor (or maker) and the party who is the holder of the instrument at maturity. Completion of the principal contract discharges the instrument and the subsidiary contracts also, but completion or dissolution of the subsidiary contracts does not have this effect: it merely releases the parties liable in respect of such subsidiary contracts." Halsbury's Laws of England, vol. 2, p. 549.

Section 142 (2) treats of the release of a party to a bill from his liability thereon, without the bill itself being discharged. Section 96 had provided for the discharge of a drawer or endorser to whom notice of dishonour was not given.

Besides the foregoing, the liability of a party to a bill may be terminated by the other means by which a debt may be extinguished. In the Province of Quebec an obligation to pay a sum of money may become extinct by payment, by novation, by release, by compensation, by confusion, by prescription, and by some other special causes: C. C. 1138. In the other provinces a bill may be satisfied in several ways, and may be discharged in whole or in part by set-off. In connection with the following sections under this heading these various subjects will be briefly noticed, as will also the release of a surety by the holder's dealings with the principal.

Payment.

139. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

Payment in due course.

2. Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective. 53 V., c. 33, s. 59 (1). Imp. Act, *ibid.*

At or after maturity.

Payment is not defined in the Act. A bill is for a sum certain in money, but it may be satisfied at or after maturity, in any way in which any other contract to pay money may be

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Payment.

satisfied; and also as by the holder renouncing his rights against the acceptor at or after maturity even without consideration: s. 142; or by cancellation: s. 143, in a manner which would not be sufficient in the case of ordinary contracts. "By payment is meant the discharge of a contract to pay money, by giving to the party entitled to receive it the amount agreed to be paid by one of the parties who entered into the agreement. Whether the transaction is a purchase or a payment, is a question to be resolved according to the intention of the parties, and looking to the substance of the matter rather than its form. Credit given by the drawee of a bill or by a party to a bill or note, who is liable for its payment to the holder at his request, is equivalent to payment. Payment of a debt is not necessarily a payment of money; but that is payment which the parties contract shall be accepted as payment, or which the law recognizes as such": 2 Daniel, § 1221.

Payment is what the holder accepts or recognizes as such, or what the law in force in the province where it is to be made or the Act declares to be sufficient to extinguish liability on the bill.

Before maturity.

If the drawee or acceptor pays a bill before maturity, it is not thereby discharged; he may negotiate it. If the bill is payable to bearer or endorsed in blank, he may pay to the bearer: if endorsed in full, he may pay to the endorsee or to his order. Payment is in good faith if made honestly: mere negligence is not enough to vitiate it: s. 3. As to what may render the title of the holder of a bill defective, see section 56 (2).

Payment.

Payment to operate as a discharge of the bill must be at or after maturity, and to the holder, that is to the payee or endorsee or to bearer. If an endorsement be forged or unauthorized the bill is not discharged, and the acceptor not released.

ILLUSTRATIONS.

1. Notes were given for the purchase money of personal property, and were not to be paid if the property was given up. The property was returned and sold for less than the first sale. Held, that the notes were satisfied by the return of the property as agreed: Smith v. Judson, 4 U. C. O. S. 134 (1835).

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Discharge by payment.

2. In an action by the indorsee against the acceptor of a bill, a plea of payment by the drawer is no defence, unless made on the acceptor's account and adopted by him: Bank of Montreal v. Armour, 9 U. C. C. P. 401 (1859).

3. Payment by the maker to the original holder after transfer would be at his own risk, and be no discharge though the note was overdue at the time of the transfer: Ferguson v. Stewart, 2 U. C. L. J. 116 (1866); Banque du Peuple v. Viau, 4 L. N. 133 (1880); Hawley v. Beverley, 6 M. & Gr. 221 (1843).

4. Where a bank held for collection a note made by one customer in favour of the other, and on the day it matured, charged it to the maker and credited it to the payee in their books, and in his pass-book, it was held to be a payment, and irrevocable: Nightingale v. City Bank, 26 U. C. C. P. 74 (1876); Cleveland v. Exchange Bank, 31 L. C. J. 126 (1887).

5. The firm of H. & M. were in the habit of buying goods from D. & C. and giving them notes for the price. They dissolved in 1876, M. carrying on the business and dealing with B. & Co., who took his notes for the running account. He failed in 1880. His payments to B. & Co. were sufficient to pay off the notes of H. & M. if so applied. Held, reversing 7 Ont. A. R. 33, that from the blending of the accounts and the course of dealing, the paper of H. & M. was fully paid: Birkett v. McGuire, Cassels' S. C. Digest, 538 (1883).

6. A note was given for goods. Before maturity the vendor who held the note agreed, on account of partial failure of [illegible] ation, to reduce it by $500. After maturity he indorsed it "without recourse." Held, that M. must credit this $500 on the note: McGregor v. Bishop, 14 O. R. 7 (1887).

7. In order to vitiate the payment by the maker of a note indorsed in blank, bad faith must be shewn: Fervie v. Wardens of the House of Industry, 1 Rev. de Lég. 27 (1845).

8. Proof of the payment of a promissory note in Lower Canada is governed by the law of England, and may be made by parol: Carden v. Finley, 8 L. C. J. 139 (1860).

9. Possession of a note by the maker after maturity, is a presumption of payment, but it may be rebutted by parol: Grenier v. Pothier, 3 Q. L. R. 377 (1877); McKenzie v. Frizzell, Ramsay A. C. 77 (1874).

10. Where an insolvent has secretly agreed to pay a creditor a sum in excess of the composition note, the indorser is not discharged, but the sum so paid must go in partial discharge of the note: Martin v. Poulin, 4 L. N. 20 (1880).

11. Charging a bill in the books of the bank to the account of the drawer who had got it discounted, is not payment, nor can the acceptor, when sued by the bank, set up in compensation claims he may have against the drawer: Goodall v. Exchange Bank, 11 L. R. 3 Q. B. 430 (1887).

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Discharge of bill.

12. The receipt of a cheque which is subsequently dishonored, is not payment, and is not a novation of the original debt: Corporation of Kingsey Falls v. Quesael, 19 R. L. 470 (1888).

13. The holder of a bill is not obliged to accept payment before maturity: Vanier v. Kent, Q. R. 11 Q. B. 373 (1902).

14. Plaintiff agreed to advance a sum of money to defendant to fit out his vessel, the latter giving his notes for the sum, and plaintiff to take as collateral security a mortgage on the vessel and an insurance policy for the amount. Plaintiff subsequently proposed to be his own insurer, and defendant paid him the premium. The vessel was lost. Held, that the notes were paid, and the subsequent agreement as to the insurance could be proved by parol: McKay v. O'Neil, 22 N. S. 346 (1890).

15. When the holder of a bill improperly sold property which he held as collateral, without notice, the note was paid only to the extent of the amount received, although the debtor might have a further claim for damages: Kinnear v. Ferguson, 9 N. B. (4 Allen) 391 (1859).

16. The fact that the holder of a note had possession of land belonging to the maker from which he might have received rent, does not operate as payment if he did not actually receive it: Simonds v. Travis, 13 N. B. (2 Han.) 14 (1870).

17. Part payment to the holder at or after maturity operates as a discharge pro tanto, and any subsequent holder takes it subject to such partial payment: Graves v. Key, 3 B. & Ad. 313 (1832).

18. Credit given to the holder of a bill by the party ultimately liable is equivalent to payment: Atkins v. Owen, 4 N. & M. 123 (1834).

19. Payment by the acceptor before maturity is equivalent to a purchase of the bill, and he may negotiate it before it becomes due: Morley v. Culverwell, 7 M. & W., at p. 182 (1840); Attenborough v. Mackenzie, 25 L. J. Ex. 244 (1856).

20. A bill is accepted by three joint acceptors, not partners. It is paid at maturity by one of them. It is discharged, and he cannot negotiate it, although he accepted it for the accommodation of the other two: Harmer v. Steele, 4 Ex. at p. 13 (1849). See as to promissory notes: Bartram v. Caddy, 9 A. & E. 275 (1838); Beaumont v. Greathead 2 C. B. 494 (1846).

21. The indorsee of a bill obtained it by fraud. He presented it at maturity to the acceptor, who paid it in good faith. The bill is discharged: Robarts v. Tucker, 16 Q. B. 560 (1851).

22. Payment on a forged indorsement is not a payment in due course: Ogden v. Benas, L. R. 9 C. P. 513 (1874).

23. The payee of a note payable on demand takes a mortgage as collateral security. He transfers the mortgage, getting the amount

§ 139 of the note. Afterwards he indorses the note to a holder in due course. The note is not paid: Glasscock v. Balls, 22 Q. B. D. 13 (1889).

24. When a bill becomes due and is presented for payment, and is paid in good faith, if such an interval of time has elapsed that the position of the holder may have been altered, the money so paid can not be recovered from the holder, although indorsements on the bill subsequently prove to be forgeries: London & River Plate Bank v. Bank of Liverpool, [1896] 1 Q. B. 7.

25. Where a person of the same name as the payee or indorsee of a bill payable to order, presents it at maturity to the acceptor, who pays it, he remains liable to the real owner: Graves v. American Bank, 17 N. Y. 205 (1858).

Discharge by renewal.—When a renewal bill is taken the original one is not discharged, unless there is a special agreement to that effect. It is a mere conditional payment. The remedy on the original bill is suspended until the maturity of the new one; if that is paid or discharged, so is the original. If the new one is dishonoured the original liability revives, except as to parties, who are merely sureties, and who may have been discharged by the delay granted to the principal debtor.

The renewal, however, will operate as a discharge, if the parties have so agreed. If the holder has retained the old bill, the strong presumption will be, that such was not the intention of the parties: Ex parte Barclay, 7 Ves. 596 (1802); Hubbard v. Gurney, 64 N. Y. 447 (1876); Hadden v. Dooley, 92 Fed. R. 274 (1899); Worden v. Hatfield, 11 N. B. 552 (1913).

ILLUSTRATIONS.

1. Where a note overdue has been retired and settled by a renewal note, it is cancelled and cannot be put in circulation again even by the payee, who has taken up the renewal note out of his own funds: Cuvillier v. Fraser, 5 U. C. Q. B. 152 (1848).

2. The acceptance of a renewal note is only conditional payment, especially when the holder retains the original. He may either sue on the original on tendering the renewal, or on the renewal itself: Bank of B. N. A. v. Hart, 18 R. J. 334 (1912).

3. If the maker of a note has the right to give a renewal, he must tender it at or before the maturity of the old one: White v. Sabiston, Q. R. 12 S. C. 345 (1896).

4. The acceptance of a renewal note is a conditional payment, and while it is current an action will not lie on the original note: Murray v. Gastonguay, 13 N. S. (1 R. & G.) 319 (1880). § 139

5. One of a firm who were makers of a note died, and the business was carried on by the surviving partner, who was executor of the deceased. The survivor gave a renewal note and the old one was given up to him. Held, that in the absence of proof of intention to release the estate of the deceased partner it remained liable: Re Estate Ives, 19 N. S. 108 (1886).

6. Defendant wrote offering to guarantee the renewal of two maturing bills of £1,048 and £462 respectively. Plaintiff took bills for £1,025 and £485. Held, that although these were not strictly renewals, the guarantee covered them, the aggregate being the same: Barber v. Muckrell, 68 L. T. N. S. 29 (1892).

Discharge by merger.—A bill may also be discharged by being merged in a security of a higher nature, such as a bond, mortgage, or the like. So a judgment recovered on a bill operates as an extinguishment of the original debt as between the defendant and the plaintiff, or any subsequent party, the bill being merged in the judgment. Merger.

ILLUSTRATIONS.

1. The following are examples of the discharge of the bill or note by merger in the mortgage or other security taken, although the holders may not have so intended: Matthewson v. Brouse, 1 U. C. Q. B. 272 (1843); Bank of B. N. A. v. Jones, 8 U. C. Q. B. 86 (1850); Parker v. McCrea, 7 U. C. C. P. 124 (1857); Fairman v. Maybee, ibid. 467 (1858); Fraser v. Armstrong, 10 ibid. 506 (1860); McLeod v. McKay, 20 U. C. Q. B. 258 (1860); Adams v. Nelson, 22 ibid. 199 (1862).

2. Where a mortgage or other security is taken as collateral to a bill or note, there is no merger, and the bill or note is not discharged, but may be sued if not paid, although the mortgage or other security is not due: Murray v. Miller, 1 U. C. Q. B. 353 (1845); Bank of U. C. v. Sherwood, 8 ibid. 116 (1850); Ross v. Winans, 5 U. C. C. P. 185 (1855); Shaw v. Crawford, 16 U. C. Q. B. 101 (1857); Commercial Bank v. Cuvillier, 18 ibid. 378 (1859); Bank of U. C. v. Bartlett, 12 U. C. C. P. 238 (1862); Gore Bank v. McWhirter, 18 ibid. 293 (1868); Gore Bank v. Eaton, 27 U. C. Q. B. 332 (1868); Molsons Bank v. McDonald, 2 Ont. A. R. 102 (1877).

3. A creditor took the note of a partner for a partnership debt, sued on it and took judgment. Failing to recover, it was held that he was not precluded from claiming against the partnership: Carruthers v. Ardagh, 20 Grant. 579 (1873).

4. A bond or deed to operate as a merger must be co-extensive with the bill and between the same parties: Boaler v. Mayor, 19 C. B. N. S. 76 (1865).

§ 139 **Discharge by novation.**—Article 1169 of the Civil Code provides that "Novation is effected (1) when the debtor contracts towards his creditor a new debt, which is substituted for the ancient one, and the latter is extinguished; (2) when a new debtor is substituted for a former one, who is discharged by the creditor; (3) when by the effect of a new contract a new creditor is substituted for a former one towards whom the debtor is discharged."

This term has been adopted in England from the civil law as explained by Lord Selborne C. in Scarf v. Jardine, 7 App. Cas. (1882), at p. 351. The first and second sub-sections of the above article from the Code arise frequently with respect to renewal of bills and notes in connection with changes in partnerships, and in the endorsements.

The following are examples of cases where bills or notes have been held not to have been discharged or extinguished by the taking of other notes: Beandoin v. Dalmasse, 7 L. C. R. 47 (1857); Brown v. Mailloux, 9 ibid. 252 (1859); Nash v. Lampson, 11 ibid. 29 (1860); Rogers v. Morris, 13 L. C. J. 20 (1869); Richard v. Boisvert, 3 R. L. 7 (1871); Landry v. Beauchamp, 3 L. N. 169 (1890); Pelletier v. Raymond, 1 R. J. 13 (1894). As an example of a discharge by novation see O'Brien v. Semple, M. L. R. 3 Q. B. 55 (1887).

Compensation or Set-off.—Compensation in Quebec differs from set-off in the other provinces in this, that when two persons are mutually debtor and creditor, compensation takes place by the sole operation of the law. The moment two debts, equally liquidated and demandable, exist simultaneously, they are mutually extinguished in so far as they correspond: C. C. Arts. 1187, 1188. The result is that in Quebec, a bill transferred after maturity would be subject to any money claim which the acceptor might have against any prior holder at or after maturity. In the other provinces a claim arising out of some matter not connected with the bill, and which a party liable on it might set up against the holder, could not be set up against a person to whom such holder might transfer it bona fide, even after maturity. In the old phraseology it is not an equity which

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Discharge by compensation.

ing to the bill, or in the language of the Act, a defect of title. The repeal of Art. 2287 of the Code, which went farther than the law of England in this respect, and the enactment of section 8 of the amending Act of 1891 (sec. 10 of the Act) will tend to assimilate the law in Quebec to that of the other provinces and of England in this matter.

ILLUSTRATIONS.

1. An attorney holding for collection the note of a local judge arranged to apply on the note fees payable to the maker. Certain fees were indorsed on the note and enough more were earned to pay it, but the attorney refused to credit or apply them. He afterwards absconded. It was held that the note was only discharged in part: Ketchum v. Powell, 3 U. C. O. S. 157 (1833).

2. Set-off by indorsees against the holder is no defence on a note given for the accommodation of the indorser. The indorsee of an overdue bill or note is liable to such equities only as attach to the bill or note itself, and to nothing collateral due from the indorser to the maker, or indorsee to payee: Wood v. Ross, 8 U. C. C. P. 299 (1858); Smith v. Nicholson, 19 U. C. Q. B. 27 (1859).

3. A note transferred after maturity is subject in Quebec to a money claim against any holder at or after maturity: Gibsone v. Lee, 1 Rev. de Lég. 347 (1814); Hays v. David, 3 L. C. R. 112 (1852); Dugnay v. Seneeal, 1 L. C. L. J. 26 (1865); Amazon Ins. Co. v. Quebec & G. P. S. S. Co., 2 Q. L. R. 310 (1876).

4. The indorser may set up in compensation any money due or paid to the maker by the holder since its maturity: Quebec Bank v. Melson, 1 L. C. R. 116 (1851).

5. An account for goods sold and delivered may be set up in compensation of a promissory note: Angers v. Ermatinger, 2 L. C. L. J. 158 (1866); Quintal v. Aubin, M. L. R. 1 S. C. 397 (1883).

6. Compensation not allowed against a bill or note because claim not equally "claire et liquide": Ryan v. Hunt, 10 L. C. R. 474 (1860); Parsons v. Graham, 15 L. C. J. 11 (1870); Perrault v. Herdman, 3 R. L. 440 (1871).

7. The maker of a note may set up in compensation against the holder the amount of a note of a third party which he gave him as collateral, and which the latter has disposed of: Lepage v. Hamel, 19 R. L. 439 (1884).

8. The indorsee of an overdue promissory note is liable, in an action against the maker, to all equities arising out of the note transaction itself, but not to a set-off in respect of a debt due from the indorser to the maker, arising out of collateral matters: Burrough v. Moss, 10 B. & C. 558 (1830).

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9. As to exchange of bills under a settlement at the clearing house, see Warwick v. Rogers, 5 M. & G. 340 (1843); Banque Nationale v. Merchants' Bank, M. L. R. 7 S. C. 336 (1891).

By prescription.

Prescription or the Statute of Limitations.—This is another subject as to which the law of Quebec differs from that of the other provinces, not only as to the length of time necessary to acquire the right, but also as to its nature, as to whether it merely bars the remedy on a bill or extinguishes the right of action.

In Quebec the time required is five years, reckoning from maturity: C. C. Art. 2260 (4). The debt is then absolutely extinguished, and no action can be maintained after the delay for prescription has expired: C. C. Art. 2267. This was also the law before the Code: Coté v. Morrison, 2 L. C. J. 206 (1858); Lavoie v. Crevier, 9 L. C. R. 418 (1859); Bardy v. Huot, 11 L. C. R. 200 (1861); Giard v. Giard, 15 L. C. R. 494 (1865); Bowker v. Fenn, 10 L. C. J. 120 (1865); Giard v. Lamoureux, 16 L. C. R. 201 (1865).

Where a loan is made by one non-trader to another and a note given for the amount at the time, the note constitutes the contract, and the debt is prescribed in five years: Vachon v. Poulin, Q. R. 7 Q. B. 60 (1898).

The Code also contains the following provisions regarding the interruption of prescription:—No indorsement on a note or bill made by a person receiving payment will take it out of the operation of the law: Art. 1229. Where the amount exceeds $50, no promise or acknowledgment is sufficient, unless in writing and signed by the party making the promise: Art. 1235. Prescription cannot be renounced by anticipation, but time acquired may be renounced: Art. 2184. Renunciation by any person does not prejudice his co-debtors, his sureties, or third parties: Art. 2229.

Prescription runs against absentees: Art. 2232; also against married women, minors, idiots, madmen and insane persons, saving their recourse against those who legally represent them: Arts. 2234, 2269. It does not run with respect to debts depending on a condition until the condition happens; or debts with a term until the term has expired:

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Art. 2236. Any one or more of the following prescriptions may be invoked in Quebec:—(1) Any prescription entirely acquired under foreign law, on a bill payable outside of Quebec, in favor of a person living abroad. (2) Any prescription entirely acquired in Quebec, reckoning from maturity, on a bill payable there, when the party was domiciled there at maturity, in other cases from the time he became domiciled there. (3) Any prescription resulting from the lapse of successive periods in the preceding cases, when the first period elapsed under the foreign law: Art. 2190. As to a conflict of these laws, see section 160 and notes thereon. The Code contains no express provisions as to evidence regarding bills and notes, therefore, in an action on a note made before the Act of 1890, by Arts. 2240 and 2241 recourse must be had to the law of England in force on the 30th of May, 1849. Under this proof may be made by parol of a payment on account, and this is sufficient to interrupt prescription. Art. 1235 does not apply to proof of such payment: Boulet v. Metayer, Q. R. 23 S. C. 289 (1902).

In the other provinces the time required is six ye of The English Statutes, 21 James I. c. 16, and 3 & 4 A c. 8, establishing this limitation as to bills and notes, w introduced into the other provinces at the various dates se out ante p. 16; but were never law in Lower Canada: Butler v. Macdonall, 2 Rev. de Lég. 70 (1835); Russell v. Fisher, 4 L. C. R. 237 (1854); Langlois v. Johnston, ibid. 357 (1854). There has also been provincial legislation fixing this time in Nova Scotia and New Brunswick: R. S. N. S. c. 167; C. S. N. B. c. 85. Under these Acts a promise or acknowledgment must be in writing and signed by the party chargeable, to take a case out of the statute. Payment may have such effect, but an endorsement on a bill or note by the party receiving or his agent, is not sufficient. No person is liable on account of the act or promise of his co-contractor or debtor, and one may be liable and may be sued without the other. Action by or against minors, married women, or insane persons, may be brought within six years from the removal of the disability. In New Brunswick, absentees are placed on the same footing; in Nova Scotia the provision applies only to actions to be brought against them In

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Ontario R. S. O. c. 75, s. 58, relating to the Limitation of Actions, provides that no indorsement on a bill or note by the party receiving payment shall be sufficient.

When it begins to run.

Ordinarily the statute begins to run when a bill matures or is dishonoured. Prescription begins to run on the day following the last day of grace: Dupuis v. Hudon, Q. R. 12 S. C. 327 (1897). If it is payable on demand, it has been held in Quebec, that prescription runs from its date or its issue (Ill. No. 5 (2), p. 364); and this was considered to have been the case in England: Byles, p. 321; Norton v. Ellam, 2 M. & W. 461 (1837). It has, however, been considered latterly that bills payable on or after demand, or at sight, or a fixed period after sight, should be on the same footing as other bills, and the statute should only run from their dishonor or maturity. See Re Boyse, 33 Ch. D. 612 (1886); R. Bethell, 34 Ch. D. 561 (1887); Sparham v. Carley, 8 Man. 246 (1892). But see the following cases where it was held that the statute runs from the date of a demand note: Brown v. Brown, [1893] 2 Ch. at p. 394; Edwards v. Walters, [1896] 2 Ch. at p. 162; Boulton v. Langmuir, 24 Ont. A. R. at p. 622 (1897).

By Statute of Limitations.

See section 134 (*b*), where interest, as damages on a dishonored bill, runs from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case. The principle there involved is somewhat analogous to that in the present question.

Law of England.

Chalmers (p. 322) lays down the following five rules as embodying the law of England on the subject:—

1. Subject to the case provided for by section 48 (1), and rule 5, no action on a bill can be maintained against any party thereto after the expiration of six years from the time when a cause of action first accrued to the then holder against such party.

2. As regards the acceptor, time begins to run from the maturity of the bill, unless:—

(1) Presentment for payment is necessary in order to charge the acceptor, in which case time (probably) runs from the date of such presentment; or

(2) The bill is accepted after its maturity, in which case time (probably) runs from the date of acceptance.

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3. As regards the drawer or an indorser, time (generally) begins to run from date when notice of dishonor is received.

4. When an action is brought against a party to a bill to enforce an obligation collateral to the bill, though arising out of the bill transaction, the nature of the particular transaction determines the period from which the time begins to run.

5. Any circumstance which postpones or defeats the operation of the Statute of Limitations in the case of an ordinary contract postpones or defeats it in like manner in the case of a bill. No indorsement or memorandum of any payment written or made upon a bill by or on behalf of the party to whom such payment is made, is sufficient to defeat the operation of the statute.

ILLUSTRATIONS.

The following expressions have been held not sufficient to take the case out of the statute:— Statute of Limitations.

1. "The notes are genuine; that is, I think I made them, but I am under the impression they were paid, but I don't think I am called upon to have any further conversation with you about them": Grantham v. Powell, 6 U. C. Q. B. 494 (1849).

2. "I am sorry to say I cannot do anything for you at present, but shall remember you as soon as possible": Gemmell v. Colton, 6 U. C. C. P. 57 (1856).

3. "If there is anything due plaintiff, I am willing to pay him": Keys v. Pollock, 1 N. S. (1 Thom.) 109 (1839).

4. A promise to pay "as soon as possible," without proof of defendant's ability: Murdoch v. Pitts, 2 N. S. (James) 258 (1854).

5. "I know it is due, but I will never pay it": Wainman v. Kynman, 1 Ex. 118 (1847). See also Scales v. Jacob, 3 Bing. 638 (1826); Ayton v. Bolt, 4 ibid. 105 (1827); Fearn v. Lewis, 6 ibid. 349 (1830); Brigstocke v. Smith, 1 Cr. & M. 483 (1833); Spong v. Wright, 9 M. & W. 629 (1842).

6. "I never shall be able to pay cash, but you may have any of the goods we have at Y.": Cawley v. Furnell, 12 C. B. 291 (1851).

7. "As I do not recollect the date or the amount of the indorsements, I would thank you to send me a statement of them": Gibson v. Grosvenor, 4 Gray, (Mass.) 606 (1855).

The following have been held to be sufficient to take the case out of the statute:—

1. "I shall repeat my assurance of the certainty of your being repaid your generous loan": Collis v. Stack, 1 H. & N. 605 (1857).

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2. "I hope to be in H. very soon, when I trust everything will be arranged with Mrs. W.": Edmonds v. Goater 415 (1852).

3. "The great kindness of your father in lending me the money to purchase my seat on the Stock Exchange places me now in your debt. I must leave it to your generosity whether you will have to liquidate the loan on the sale of my seat," where the seat had been sold: Buccleugh v. Eden, 5 T. L. R. 690 (1889).

4. "I suppose I shall have to pay in the end": Phelps v. Williamson, 26 Vt. 230 (1854).

5. "I supposed the note was paid by A.; and if he does not I shall have to pay it": Hayden v. Johnson, ibid. 768 (1854).

The following cases further illustrate the various rules above laid down:—

1. Payments made by one of two joint and several makers will not take the case out of the statute, as against the other, unless made expressly as his agent and by his authority: Creighton v. Allen 26 U. C. Q. B. 627 (1867); Paxton v. Smith, 18 Q. R. 178 (1880); Harris v. Greenwood, 9 O. L. R. 25 (1904).

2. A writing sufficient to take a note out of the statute enures to the benefit of a subsequent holder: Marshall v. Smith, 20 U. C. C. P. 356 (1870).

3. For conflicting decisions in Upper Canada as to prescription claimed under the Lower Canada Statute, see Hervey v. Pridham, 11 U. C. C. P. 329 (1861); King v. Glassford, ibid. 490 (1861); Shiriff v. Holcomb, 2 E. & A. (U. C.) 516 (1864); Hervey v. Jacques, 20 U. C. Q. B. 366 (1861); Darling v. Hitchcock, 28 U. C. Q. B. 439 (1868).

4. The statute begins to run the day after the last day of grace: Edgar v. Magee, 1 O. R. 287 (1882); Ste. Marie v. Stone, 2 Dorion, 369; 5 L. N. 322 (1882).

5. The old rule in Lower Canada was, that a note payable on demand was due from the day of its date, and prescription ran from that time: Larocque v. Andres, 2 L. C. R. 335 (1851). Also under the Code: Brown v. Barden, Q. R. 13 S. C. 151 (1898); Bachand v. Lalumière, Q. R. 21 S. C. 449 (1902); and under this Act: Bank of Ottawa v. McLean, Q. R. 26 S. C. 27 (1903).

6. The absence of the defendant from the country does not interrupt prescription: Darah v. Church, 14 L. C. R. 295 (1864).

7. A note made before a notary "en brevet" was held not to be a promissory note within the meaning of 12 V. c. 22, and C. S. L. C. c. 64, and not subject to the five years' prescription: Gravelle v. Beaudoin, 7 L. C. J. 289 (1863); Lacoste v. Chauvin, ibid. 339 (1863); Seguin v. Bergevin, 16 L. C. R. 415 (1865); Pigeon v. Page-

nals, 17 L. C. J. 21 (1872). Crevier v. Sauriole, 6 L. C. J. 257 (1862), overruled. Under the Bills of Exchange Act, it was held to be subject to five years' prescription, like an ordinary note: Guimond v. Blanchard, Q. R. 21 S. C. 106 (1901); Robert v. Charbonneau, 8 R. J. 68 (1902). But this latter case was reversed in Review, Q. R. 21 S. C. 106, note.

8. The lex fori governs as to prescription: Hillsburgh v. Mayer, 18 L. C. J. 69 (1873); Cross v. Snow, 9 L. N. 196 (1886); Lafaille v. Lafaille, 14 R. L. 466 (1886); but held in a case governed by the law before the Code, that where defendant made a note in the United States which was payable there, and before its maturity he absconded and came to Lower Canada, and the holder did not learn his whereabouts until more than five years had passed, the five years' prescription did not apply under the rule, "contra non valentem agere non currit prescriptio": Wilson v. Demers, 14 L. C. J. 317 (1870).

9. Where the defendant had frequently written during the five years, asking for delay, prescription was held to have been interrupted: Walker v. Sweet, 21 L. C. J. 29 (1876).

10. A verbal promise to pay a note under $50 during the five years will interrupt prescription: Fuchs v. Legaré, 3 Q. L. R. 11 (1876); but such a promise after the five years have expired will not revive a note: Fiset v. Fournier, 1 L. N. 589 (1878).

11. Where a bill is not accepted in payment of a debt, the prescription of the note does not prevent a recovery on the original debt if it is not prescribed: Robitaille v. Denechaud, 5 Q. L. R. 238 (1879); Mitchell v. Holland, 16 S. C. Can. 687 (1889); Bouchard v. Behrer, 5 R. J. 263 (1898).

12. A conditional offer in writing which is not accepted, does not interrupt prescription; nor does the deposit of collaterals with the holder: McGreevy v. McGreevy, 17 Q. L. R. 278 (1891).

13. Dividends on a note paid by a curator in Quebec interrupt prescription as if the payment had been made by the debtor himself: Boulet v. Metayer, Q. R. 22 S. C. 289 (1902); Hochelaga Bank v. Richard, 15 E. L. R. 573 (1908).

14. Payments on account by one partner take a firm note out of the statute as against his co-partner also: Sands v. Keator, 5 N. B. (3 Kerr) 329 (1847); Vanwart v. Roberts, ibid. 572 (1847).

15. The action accrued to the plaintiff, an indorser, when the note was transferred to him, and this being more than six years after it was due, his absence beyond the seas was immaterial: Bradbury v. Bailie, 6 N. B. (1 Allen) 690 (1850).

16. Where a note is payable by instalments, each instalment is subject to a separate plea of prescription: Montgomery v. McNair, 7 N. B. (2 Allen) 31 (1850).

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17. A bill is payable three months after date or sight. Time runs in favor of the acceptor from the day the bill is payable, not from the day the acceptance is given: Holmes v. Kerrison, 2 Taun. 323 (1810).

18. A note payable on demand, dated Jan. 1, is not issued until July 1. Time runs in favor of the maker from July 1: Savage v. Aldren, 2 Stark. 232 (1817).

19. A note is payable three months after demand. Time runs in favor of the maker the day it is payable: Thorpe v. Coombs, 8 D. & R. 347 (1826).

20. The consignee of goods authorizes the consignor to draw on him against them. The bill is dishonored and the drawer compelled to pay. Time runs against him on the implied contract of indemnity from the date of payment only: Huntley v. Sanderson, 1 Cr. & M. 467 (1833).

21. A bill is accepted to accommodate the drawer. It is dishonored, and two years afterwards the acceptor has to pay it. Time runs in favor of the drawer only from the time the acceptor was compelled to pay and not from maturity: Reynolds v. Doyle, 1 M. & Gr. 753 (1840); in cases of contribution, see Davies v. Humphreys, 6 M. & W. 153 (1840).

22. A bill payable 90 days after sight is dishonored by non-acceptance. As regards the drawer, time runs against the holder from the dishonor and notice thereof. If the bill is presented for payment and again dishonored, no fresh cause of action arises: Whitehead v. Walker, 9 M. & W. 506 (1842).

23. A note is payable on demand, with no mention of interest. Proof that interest has been paid on it takes it out of the statute: Bamfield v. Tupper, 7 Ex. 27 (1851).

24. In 1840 a blank acceptance is given to a person who in 1850 fills it up as a bill payable three months after date and negotiates it to a bona fide holder. Time runs in favor of the acceptor only from the day the bill was payable: Montague v. Perkins, 22 L. J. C. P. 187 (1853).

25. Defendant asked plaintiff for a loan, no time for re-payment being fixed. The latter gave him a cheque, which was not cashed at once. In an action to recover the sum lent, time runs from the day the cheque was cashed, and not from its date: Garden v. Bruce, L. R. 3 C. P. 300 (1868).

26. The maker of a note twenty years after it was due, signed his name and the date on the back of the note. Held, a sufficient acknowledgment to take it out of the statute: Bourdin v. Greenwood, L. R. 13 Eq. 281 (1871).

27. To take a case out of the statute there must be an acknowledgment of the debt from which a promise to pay is implied: or an

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conditional promise to pay; or a conditional promise, and proof of the fulfilment of the condition: Re River Steamer Co., L. R. 6 Ch. at p. 828 (1871); Green v. Humphreys, 36 Ch. D. at p. 479 (1887).

28. Where part payment is relied upon as an acknowledgment, it must be under such circumstances that a promise to pay may be inferred in fact, not merely implied in law: Morgan v. Rowlands, L. R. 7 Q. B., at p. 498 (1872).

29. A note dated in 1857 was made payable three months after demand with no mention of interest. Interest was paid in 1857 and 1858, and indorsed on the note. The maker died in 1869, and the payee in 1878, being still the holder. On a claim by the executor of the payee, held, that time ran from the first payment of interest, and independent of the statute it would be presumed to be paid: Re Rutherford, 14 Ch. D. 687 (1880).

30. Where a demand note was given and dated July 24th for a loan, but the money was not paid to the maker until September 8th, the statute (probably) runs from July 24th: Buceleugh v. Eden, 5 T. L. R. 690 (1889).

31. After the indorsement of a note the maker made a payment to the payee, who had no right to receive the money. Held, that this did not take the case out of the statute: Stamford Banking Co. v. Smith, [1892] 1 Q. B. 765.

3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged. 53 V., c. 33, s. 59 (3). Imp. Act, *ibid.* Accommodation bill.

An accommodation bill is one which the drawee has accepted for the accommodation of the drawer or some other person. The person thus accommodated may or may not be a party to the bill. An accommodation party is one who has signed a bill as drawer, acceptor or endorser without receiving value therefor, and for the purpose of lending his name to some other person: s. 55.

The principle on which the bill is discharged is, that it has been paid by the person who is in reality primarily liable for the debt; and having no rights against any person, he could not by a transfer after maturity give any rights to another holder: Solomon v. Davis, 1 C. & E. 83 (1883).

If the bill was for the accommodation of several parties and it is paid by one of them, the bill is discharged: but the party who has paid has his recourse against the others.

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Accommodation bill.

ILLUSTRATIONS.

1. Where an action against the indorser of a note was dismissed on the ground that he had indorsed for the accommodation of the plaintiffs, this was held to be an answer to an action seeking to hold him responsible as a partner by estoppel in the firm which made the note: Isbester v. Ray, 26 S. C. Can. 79 (1896).

2. Where a bill was accepted for the accommodation of a third party and discounted, its payment by the drawer does not relieve the acceptor: Dill v. Wheatley, 34 N. S. 525 (1901).

3. Where the payee for whose accommodation the bill was made pays it after maturity, the bill is discharged: Watson v. Porter, 3 N. B. (3 Kerr) 137 (1846).

4. Plaintiff took a bill of sale of A.'s goods, undertaking to pay his borrowed money and accommodation notes. The note sued on was made by defendant for A.'s accommodation and indorsed by him and discounted in a bank. Plaintiff paid it at maturity and sues the maker. Held, that although plaintiff did not know it was an accommodation note, it was discharged on his paying it for A. and his action was dismissed: Peters v. Waterbury, 24 N. B. 154 (1884).

5. A bill is accepted for the accommodation of the drawer. He negotiates it, and at maturity takes it up. Subsequently he re-issues it. The holder cannot sue the acceptor, for the bill was discharged when the drawer paid it: Cook v. Lister, 13 C. B. N. S. at p. 591 (1863). See also Lazarus v. Cowie, 3 Q. B. 459 (1842); Ralli v. Dennistoun, 6 Ex. 483 (1851); Parr v. Jewell, 16 C. B. at p. 709 (1855); Strong v. Foster, 17 C. B. at p. 222 (1855); Meakins v. Martin, Q. R. 8 S. C. 522 (1895).

Payment by Bill, Note or Cheque.

A creditor is not bound to take a bill, note or cheque in payment of a debt: and if he does so, it operates only as a conditional payment, unless he expressly agrees to take it in absolute payment, or unless there are special circumstances from which such an agreement may be implied: Maxwell v. Deare, 8 Moore P. C. 363 (1853); Currie v. Misa, 10 Exch. at p. 229 (1876).

If taken in absolute payment the debt is entirely extinguished, and the subsequent dishonour of the instrument would not revive it. If it is taken as a conditional payment only, then all remedies for the recovery of the debt would be suspended until the instrument becomes due and is dishonoured; if the instrument should be paid at maturity it would operate as a payment as of the date at which it was

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As absolute payment.

accepted in payment. If not paid at maturity, then the debt would revive as if it had never been suspended: Belshaw v. Bush, 11 C. B. 191 (1851); Hadley v. Hadley, [1898] 2 Ch. 680; Cohen v. Hale, 3 Q. B. D. 371 (1878). The same principles would apply where an instrument is taken in part payment: Marreco v. Richardson, [1908] 2 K. B. 584.

If the dishonoured instrument had been taken only as a conditional payment, the creditor may sue for the original debt; but only provided he is the holder of the instrument at the commencement of the action: Davis v. Reilly, [1898] 1 Q. B. 1.

If such an instrument is taken, not as payment, but merely as collateral security, then the remedy on the debt is not suspended.

In cases where the instrument has not been taken as absolute payment, and there are other parties to it, the creditor should exercise due diligence in presentment, notice of dishonour, etc., or otherwise the debt may be extinguished in whole or in part by his laches: Peacock v. Pursell, 14 C. B. N. S. 728 (1863); Smith v. Mercer, L. R. 3 Ex. 51 (1868).

Offered in full.

Where a bill, note or cheque is sent by a debtor to a creditor "in full of all demands," or in settlement of a larger claim, or the like, the law both in England and Canada is in a very unsatisfactory condition. The trouble arose in England largely from the decision in Day v. McLea, 22 Q. B. D. 610 (1889), which, as explained in Hirachand v. Temple, [1911] 2 K. B. 330, applied the rule laid down in the old case of Cumber v. Wane, 1 Stra. 426 (1721), and upheld in Foakes v. Beer, 9 App. Cas. 605 (1884), that a smaller sum could not be satisfaction for a greater. In the Day Case the Court followed an unreported decision of the same Court, where a jury had found on similar facts that there had been no accord and satisfaction. The Court held that keeping the cheque was not as a matter of law conclusive, but that it was a question of fact to be determined according to the circumstances in each particular case.

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Accord and satisfaction.

In Nathan v. Ogdens, 21 T. L. R. 775 (1905), affirmed on appeal, 22 T. L. R. 57, it was held that a receipt for a cheque as "my share of the second and final bonus distribution" was not evidence of accord and satisfaction of another debt not referred to in the receipt or in the letter accompanying the cheque.

In Hirachand v. Temple, supra, it was held by the Court of Appeal that where a third party sent to a creditor a draft for less than the amount of the debt in full settlement and the creditor cashed the draft and kept the proceeds he must be taken to have accepted the amount on the terms upon which it was offered.

Part performance.

The rule in Cumber v. Wane referred to never obtains in the province of Quebec, where the technicalities of English law on the subject are unknown: La Compagnie Pacaud v. Paquin, Q. R. 39 S. C. (1910), at p. 59; nor is it generally applicable in those provinces which have enacted that "Part performance of an obligation either before or after breach thereof when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation": R. S. O., ch. 133, s. 12; R. S. M. c. 10, s. 39 (*n*); R. S. Sask. c. 52, s. 31 (7); Cons. Ord. N. W. T. c. 16, s. 10 (7); nor to any province that may have any similar legislation.

In Mason v. Johnston, 20 Ont. A. R. 112 (1893), the plaintiff had an execution against the defendant. The latter sent to the plaintiff's solicitor a draft for a smaller sum purporting to be for an amount offered to be accepted in full. No such offer was proved, and the solicitor had no authority to accept any smaller amount in satisfaction and so wrote the defendant, and paid over the money to the plaintiff. The trial judge found that there had been no acceptance in satisfaction, and on appeal Day v. McLea, supra, was followed and the appeal dismissed.

In McPherson v. Copeland, 1 Sask. 519 (1908) the defendant debtor relied upon a cheque which had been sent to plaintiffs for half the amount of the debt, marked "in full of claim." Plaintiffs wrote in reply that they would not

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cept it in full and that they had struck out the above words. To this there was no dissent. It was held that there was no acceptance in satisfaction and Day v. McLea was followed. In this case but for the assent or acquiescence of the drawer, the alteration being a material one, the cheque would have been void (*s.* 115); and being apparent, the bank would have cashed it only at the risk of being held liable. See also Criminal Code, ss. 466 (2) and 468 (*c*). Day v. McLea.

The Day Case has been sometimes interpreted as laying it down as law that where a debtor has sent a cheque payable to the order of his creditor on the express condition that if accepted it must be taken in full of the claim, the creditor might endorse the cheque, and get it cashed, and then sue for the balance and recover, if he could prove for a larger amount.

This shocks the moral sense, especially if the creditor should cash the cheque before the debtor has an opportunity to countermand its payment should he so desire. At the most it should be left fairly to the jury to say whether it is not a fair case for the application of the adage that actions may speak louder than words. A debtor might post-date his cheque and require an early reply, and then countermand payment if not so accepted; but the implication that he might so act would be resented by most men, and an amicable settlement be less probable. The case would not be different if, in a personal interview, the debtor offered cash conditioned on acceptance, and the creditor reached out his hand, took the cash, put it in his pocket and said he would apply it on account.

Day v. McLea has not been followed in the United States. See 11 Lawyers' Reports Annotated (N.S.), p. 413, 27 ibid., p. 438, and 32 ibid., p. 382, and references to decisions in New York, Pennsylvania, Ohio, Illinois, Missouri, Iowa, Kansas, Mississippi, North Carolina, Texas and Alabama. Also 1 Corpus Juris, pp. 561, 562. Not followed.

It may be that section 357 of the Criminal Code may deter creditors in Canada from attempting to repeat what was done in some of the cases referred to. That section pro-

§ 139 Criminal Code.

vides, inter alia, that where any person receives a negotiable security with a direction that the proceeds should be applied to any purpose specified in such direction, in violation of good faith and contrary to such direction, fraudulently applies to any other purpose such proceeds or any part thereof, he commits theft. It provides further that where the parties deal with each other on such terms that the money would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account, the direction must be in writing.

It is to be observed that the above section was not part of the law of England when the Day case was decided (In re Bellencontre, [1891] 2 K. B. 122; nor was it in force in Canada when the Mason case was decided, having been first enacted as section 340 of the Criminal Code, and coming into force July 1st, 1893.

In any event it is very desirable that the question should be definitely and authoritatively settled.

ILLUSTRATIONS.

1. The Finance Minister deposited a cheque on the Bank of P. E. I. in the Bank of Montreal, at Ottawa, which placed the amount to his credit. On the dishonour of the cheque the Bank of Montreal was entitled to reverse the entry, as it was not a holder for value but merely an agent for collection: The Queen v. Bank of Montreal 1 Exch. Can. 154 (1886).

2. The fact that plaintiffs did not return a note sent them by defendant, but handed it to their attorneys with the claim, is not conclusive that it was accepted even as a conditional payment: Brown v. Harris, 13 N. S. (1 R. & G.) 13 (1879); Lyman v. Chamard, 1 L. C. J. 285 (1857).

3. The mere taking and indorsing a cheque is not conditional payment of a secured debt so as to release the security: In re Defries & Sons [1909] 2 Ch. 423; Henderson v. Arthur, [1907] 1 K. B. at p. 13.

Payment by drawer or endorser.

140. Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged: but,—

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(*a*) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill; Gives rights.

(*b*) where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. 53 V., c. 33, s. 59 (2 *a*, *b*). Imp. Act, *ibid.* Second negotiation.

The provisions to which this section is subject are those relating to accommodation bills in section 139 (3).

If the endorser, who has paid a bill, desires to negotiate the bill again, he must strike out his own and subsequent endorsements, and if endorsed to him in full he must re-endorse it.

The present section contemplates payment at or after maturity: where a bill before maturity is negotiated back to the drawer or an endorser, he may re-issue it, but cannot enforce the bill against any intervening party to whom he was previously liable: s. 73.

If several persons indorse a bill or note for the accommodation of the acceptor or maker, and one of them pays it, the whole circumstances attendant upon its making, issue and transference, may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, and reasonable inferences from these facts and circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them. Where several directors mutually agreed to become joint sureties for the company, and in pursuance thereof indorsed notes made by the company, they were entitled and liable to equal contributions among themselves: Macdonald v. Whitfield, 8 App. Cas. 733 (1883). Payment by drawer or endorser.

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A husband and wife made a promissory note to the order of the husband's brother, who endorsed it as he supposed for the accommodation of both makers. In fact the wife only signed for the accommodation of her husband. It was held that the wife and the payee were co-sureties, and as between them the wife was only liable for half the amount of the note: Godsell v. Lloyd, 27 T. L. R. 383 (1911).

ILLUSTRATIONS.

Payment by drawer or endorser.

1. The indorser who pays a note at maturity may at once proceed against the prior parties who are liable to him: Lambert v. Norton, 6 U. C. O. S. 82 (1841); McNab v. Wagstaff, 5 L. C. Q. B. 588 (1849).

2. The drawer drew a bill to his own order and specially indorsed it. After dishonor it came back into his hands; he struck out the special indorsement, and indorsed it to the plaintiff, who was held entitled to recover from the acceptor: Black v. Strickland, 3 O. R. 217 (1883); Callow v. Lawrence, 3 M. & S. 95 (1814); Hubbard v. Jackson, 4 Bing. 390 (1827).

3. An indorser who pays is not entitled to and does not need conventional subrogation against prior parties: Bove v. McDonald, 16 L. C. R. 191 (1865).

4. Payment of a bill by the drawer does not discharge the bill or free the acceptor: Goodall v. Exchange Bank, M. L. R. 3 Q. B. 430 (1887).

5. Where two persons indorse a note for the accommodation of the maker, and the last indorser pays it, he is entitled to recover only one-half the amount from the prior indorser: Vallée v. Talbot, Q. R. 1 S. C. 223 (1892).

6. An indorser who pays a note where there was neither protest nor waiver of protest has no recourse against prior indorsers: Savaria v. Paquette, Q. R. 20 S. C. 214 (1899).

7. An endorser who had specially endorsed a note, but parted to the endorsee, may, on leave, even after action brought against the maker, strike out his special endorsement and recover on the note: Rat Portage Lumber Co. v. Murgulius, 24 Man. 230 (1914).

8. The indorser of a bill writes to the drawer of a bill, promising to "retire" it, and accordingly takes it up before maturity. It is not discharged: Elsam v. Denny, 15 C. B. at p. 94 (1854).

9. The drawer or indorser of a bill who pays, is a quasi-surety for the acceptor, and as such is entitled to the benefit of any securities deposited with the holder by the acceptor: Duncan v. N. & S. Wales Bank, 6 App. Cas. 1 (1880). The indorser of a promissory note has the same rights: Aga Ahmed Ispahany v. Cris, 8 T. L. R. 132 (1891).

141. When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged. 53 V., c. 33, s. 60. Imp. Act, s. 61. § 141

Acceptor holding at maturity.

If the acceptor becomes the holder of the bill before its maturity it is not discharged, but he may re-issue and further negotiate it; but he is not entitled to enforce payment of it against any intervening party to whom he was previously liable: s. 73. When a bill is discharged, all rights of action on it are extinguished; it ceases to be a bill.

A bill not payable on demand is at maturity on the last day of grace: s. 42. A bill payable on demand is at maturity for some purposes immediately on its being issued: Edwards v. Walters, [1896] 2 Ch. 157; Re George, 44 Ch. D. 627 (1890). As to a promissory note payable on demand, see section 182. When at maturity.

At common law if the acceptor or maker became the administrator of the holder, the bill or note was not discharged: but if he became the executor of the holder it was discharged, though he had to account for the amount of it as assets: Freakley v. Fox, 9 B. & C. 130 (1829). The rule in Chancery, however, was that being appointed executor did not operate as a discharge; and under the Judicature Act the equity rule prevailed. It never was a ground of discharge in Quebec.

The discharge of the bill frees all parties to it: Jenkins v. McKenzie, 6 U. C. Q. B. 541 (1849); Lowe v. Peskett, 16 C. B. 500 (1855).

If a bill, accepted by two or more joint acceptors, is held by one of them at or after maturity, it is discharged: but such acceptor does not thereby lose his recourse or right of contribution against his co-acceptors: Harmer v. Steele, 4 Ex. 1 (1849). See Neale v. Turton, 4 Bing. at p. 151 (1827).

A note is discharged when the holder at or after maturity upon payment of a part surrenders the note to the maker, although the latter promised at the time to pay the

§ 141 balance: Schwartzman v. Post, 94 N. Y. App. Div. 1[illegible]: 872 (1904).

Confusion.

A note is discharged when it is surrendered to the maker after maturity in exchange for a renewal note, although the maker had altered the renewal note by striking out the name of one of the payees and substituting his own name: First National Bank v. Gridley, 112 N. Y. App. Div. 398 (1906).

The principle of this section is what is known in the civil law as "confusion." The law of Quebec on the subject is contained in the following Articles of the Civil Code: "1198. When the qualities of creditor and debtor are united in the same person, there arises a confusion which extinguishes the obligation.—1199. The confusion which takes place by the concurrence of the qualities of creditor and principal debtor in the same person avails the sureties." It only takes place when the person is both creditor and debtor personally, in his own right, or when he is both debtor and creditor in the same capacity or quality.

In His Own Right.—If the person who has accepted the bill in his own name, is, at maturity, the holder as agent, or in his capacity of executor, administrator, trustee, assignee, tutor, curator or the like, the bill would not be discharged. The converse would likewise be true. These words do not appear to have been construed in any Canadian case, but this has been held to be the meaning of the same words in the New York Negotiable Instruments Law, § 200 (5): Schwartzman v. Post, supra.

Construed in England.

This section was considered by the English Court of Appeal in Nash v. De Freville [1900] 2 Q. B. 72. Defendant had given demand notes for value to his solicitor on condition that they were not to be negotiated. However, he negotiated them for value to plaintiffs, who became holders in due course. Defendant paid the notes to the solicitor, who subsequently obtained the notes from the plaintiffs by fraud and sent them to defendant. It was argued for defendant that he had become the holder of the notes "in his own right," and not in a representative capacity, and that they were consequently discharged. For the plaintiff, it was claimed that these words meant "when he becomes the holder as of right."

and did not apply to a case where the notes were obtained from the holder by fraud. Defendant was held liable on the principle "That wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." It was also put on the ground of estoppel, and that the notes were past due when returned to defendant, who then gave no value for them, and acquired no greater right in them than that of the solicitor who gave them to him. § 141

Smith, L.J., added that plaintiff's counsel were right in their construction of section 61, that that section did not apply to the case, and the words "in his own right" do not mean in contradistinction to a representative capacity. Collins, L.J., also agreed with plaintiffs' counsel, and said the words meant something more than "not in a representative capacity." If not, and a thief stole a note and placed it in the possession of the maker at or after maturity, the note should ipso facto be satisfied; and this would be the result if the words bore the limited meaning suggested. He thought they must mean "having a right not subject to that of any else but his own—good against all the world." Romer, L.J., did not deal with this point. In his own right. Meaning of.

There was no question of any representative capacity in that case, and all that was said on this point was obiter. The words of the Act might have the meaning first suggested above, and also bear the meaning suggested by Collins, L.J. His objection was merely to restricting them to the "limited meaning suggested."

In Quebec law the phrase in question is one in frequent use, and the natural and ordinary meaning attached to it, is that first suggested. It is also a circumstance worthy of mention that in the French version of the Act, as the equivalent, Parliament used the expression "de son propre chef," words whose ordinary meaning is the opposite of representative capacity.

It remains to be seen how the Canadian Courts will deal with the question when it arises.

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142. When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. 53 V., c. 33, s. 61 (1). Imp. Act, s. 62 (1).

Renouncing rights.

As to when a bill is at maturity, see note to s. 141.

The release or renunciation must be in writing, unless the bill is delivered up to the acceptor: sub-sec. 3. No consideration is required by this section.

The principle of this section in allowing a bill to be discharged by accord alone, without satisfaction, is contrary to the ordinary rule of the common law with respect to contracts. It was embodied in the law merchant from the civil law. In French law it is called "remise": Pothier, No. 176; Nouguier, §§ 1043-1052.

Part performance.

Where there is a payment of a sum less than the amount of the bill, the bill may, in Quebec, Ontario and Manitoba, be discharged under the provisions of the present section; or, it may be considered as discharged by payment under section 139. This was always the rule of the civil law; and it has been in effect adopted in Ontario by R. S. O. c. 133, s. 16, which altered the rule of the common law as to accord and satisfaction, and provides that "part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction, or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation." There has been similar legislation in Manitoba: R. S. M. c. 46, s. 26 (*n*); in the North-West Territories: Cons. Ord. c. 24, s. 10 (7); and in Saskatchewan: R. S. c. 52, s. 31 (7). In any of the other provinces where the common law rule is still in force, part payment would only operate as a discharge when the conditions of the present section are complied with.

The holder of a demand note was in a dying condition and sent for the note to destroy it; but it could not be found. He dictated a memorandum that it was to be destroyed as

soon as found. Held, that this did not satisfy the statute; as if he had recovered he might have changed his mind: Re George; Francis v. Bruce, 44 Ch. D. 627 (1890). § 142

Where a plaintiff's title to a note has been obtained not by indorsement or delivery, but by assignment without indorsement, this section does not apply; and the maker is entitled to prove the discharge by the ordinary rules of evidence: Clonbrook v. Browne, Q. R. 18 S. C. 575 (1900).

For the consideration of the questions that may arise, where the holder reserves his rights against other parties to the bill, see the notes on the following sub-section.

2. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity. 53 V., c. 33, s. 61 (2). Imp. Act, s. 62 (2).

Against one party.

The previous sub-section treated of the discharge of the acceptor by renunciation or release, which discharges the bill and all the parties to it; the present treats of the renunciation of any other party to the bill.

"In like manner," that is, absolutely and unconditionally: s.-s. 1; and in writing, unless the bill is delivered up to the acceptor: s.-s. 3.

The discharge of any party operates as a discharge of all parties who are liable only subsequently to him.

Principal and surety.

Where the parties to a bill stand in the relation of principal and surety to each other, the nature of the renunciation of his rights by the holder against the party who stands in the relation of principal to other parties, becomes a matter of greater importance. The question arises most frequently in connection with composition and discharge, or the granting of time by taking a renewal.

At common law where parties to a bill stand in the relation of principal and surety to each other, if the holder being aware of the fact, grants a discharge to the principal debtor or gives him time, the sureties are discharged, unless

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the holder has expressly reserved his rights against the sureties, or has reserved their rights against the principal debtor: Oakley v. Pasheller, 4 Cl. & F. 207 (1836); Owen v. Homan, 4 H. L. Cas. 997 (1853); Oriental Corporation v. Overend, L. R. 7 Ch. 142 (1871); Polak v. Everett, 1 Q. B. D. at p. 673 (1876); Munster and Leinster Bank v. France, 24 Ir. L. R. 82 (1889); Thurgar v. Travis, 7 N. B. (2 Allen), 272 (1851); Holliday v. Jackson, 22 S. C. Can. 479 (1894); Demers v. Dumas, 3 R. J. 70 (1895); Gorman v. Dixon, 26 S. C. Can. 87 (1896); Fleming v. McLeod, 39 S. C. Can. at p. 296 (1907).

On this subject, Chalmers says, p. 241: "For the present purpose, prima facie the acceptor of a bill is the principal debtor, and the drawer and indorsers are, as regards him, sureties, and the drawer of a bill is the principal as regards the indorsers, and the first indorser is the principal as regards the second and subsequent indorsers, and so on in order;—but evidence for the present purpose is admissible to show the real relationship of the parties, and it is immaterial that the holder was ignorant of the relationship when he took the bill, provided he had notice thereof at the time of his dealings with the principal": Ewin v. Lancaster, 6 B. & S. at p. 577 (1865); Oriental Corporation v. Overend, L. R. 7 H. L. 348 (1874). The rule is the same if one who was originally a principal debtor becomes a surety, and the creditor has had notice of the change: Rouse v. Bradford Banking Co., [1894] A. C. 586.

Parol proof.

It was formerly held that an acceptor could not be shown to be a mere surety, as this would be contradicting the written instrument by parol: Fentum v. Pocock, 5 Taunt. 192 (1813). But now all the attendant facts and circumstances may be referred to, for the purpose of ascertaining the true relation of the parties to each other: Macdonald v. Whitfield, 8 App. Cas. at pp. 745, 748 (1883).

Suretyship in Quebec.

In Quebec suretyship becomes extinct by the same causes as other obligations: C. C. Art. 1956. For these, see p. 352, ante. The discharge of the principal debtor discharges the surety: C. C. Art. 1958; but delay given to the principal debtor does not discharge the surety, who may in case of

such delay sue the debtor in order to compel him to pay: C. C. Art. 1961. § 142

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The suretyship is also at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypotheces, and privileges of such creditor: C. C. Art. 1959.

As will be seen from the cases cited, the decisions in the Quebec Courts have been conflicting, and where a party to a bill occupying the relation of a surety has been released by the mere giving of time, notwithstanding Article 1961 of the Code, it is not usually clear from the report whether this is on account of there having been a novation, or on account of the provision making the law of England as to bills and notes applicable, where the law of the province or the Code has no express provision.

As to the effect of the conflict between the law of Quebec and that of other provinces, see notes on sections 10 and 160.

ILLUSTRATIONS.

1. Time given to the maker of a note, discharges an indorser: Vankoughnet v. Mills, 5 Grant, 653 (1856); Arthur v. Lier, 8 U. C. C. P. 180 (1858); Farrell v. Oshawa Mfg. Co., 9 U. C. C. P. 239 (1859); Bedell v. Eaton, 4 N. B. (2 Kerr) 217 (1843).

2. The holder of a note gave time to two makers who were the principal debtors, without the consent of a third maker who was surety for them. The latter was held not liable to a plaintiff who received the note after maturity with notice: Perley v. Loney, 17 L. C. Q. B. 279 (1858); Shepley v. Hurd, 3 Ont. A. R. 549 (1879); Davidson v. Bartlett, 1 U. C. Q. B. 50 (1844), overruled; Greenough v. McClelland, 2 El. & El. 424 (1860).

3. Mere delay, or indulgence, or even negligence, is not enough where there is no binding agreement to give time: Thompson v. McDonald, 17 U. C. Q. B. 304 (1858); Wilson v. Brown, 6 Ont. A. R. 87 (1881); Anthes v. Stoltz, 12 O. W. R. 549 (1908); Berthelot v. Aylwin, Rev. de Lég. 31 (1819); Merchants' Bank v. Whitfield, 2 Dorion, 157 (1881); Fleming v. McLeod, 39 S. C. R. at p. 298 (1907); Philpot v. Briant, 4 Bing. 717 (1828); Goring v. Edmonds, 6 Bing. at p. 99 (1829); Black v. Ottoman Bank, 15 Moore P. C. at p. 484 (1862); Carter v. White, 25 Ch. D. at p. 672 (1883); Hay v. Powrie, 13 Sess. Cas. 777 (1886); Greig v. Taylor, 15 V. L. R. 86 (1889).

4. A reserve of the rights of the holder against the parties who apparently occupy the relation of sureties, prevents a discharge of

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the latter: Bank of Upper Canada v. Jardine, 9 U. C. C. P. 332 (1859); Canadian Bank of Commerce v. Northwood, 14 O. R. 507 (1887); Muir v. Crawford, L. R. 2 Sc. App. 456 (1875).

5. When the holders of a note gave time to an indorser, knowing that the maker had signed the note for his accommodation, the maker was discharged: Bank of Upper Canada v. Ockermann, 15 U. C. C. P. 363 (1865); Leet v. Blumenthal, Q. R. 13 S. C. 250 (1898); Ex parte Webster, De Gex, 414 (1847); Bailey v. Edwards, 4 B. & S. 761 (1864).

6. A mother gave her son a note for his accommodation. The holder, who was aware of the facts, took two renewal notes from the son without the mother's knowledge. Held, that she was released: Devanney v. Brownlee, 8 Ont. A. R. 355 (1883). See Healey v. Dolson, 8 O. R. 691 (1885).

7. Where a bank gave up notes to a principal debtor and took forged renewals in their place, the surety was released: Merchants' Bank v. McKay, 15 S. C. Can. 672 (1888).

8. An indorsement of the payment of interest on a note up to a date beyond, is evidence of an extension of time of payment to such date, and discharges a surety: Ryan v. McKerrall, 15 O. R. 160 (1880).

9. Two partners gave a creditor a joint and several note, and a mortgage on firm property. The firm dissolved, one partner taking the assets and assuming the liabilities. The creditor discharged the mortgage without getting payment, and afterwards sued the other partner on the note. Held, that he could not recover: Allison v. McDonald, 23 S. C. Can. 635 (1894).

10. The acceptance, in renewal of a promissory note, some of the makers of which are sureties to the knowledge of the holder of a promissory note not signed by one surety, discharges the co-sureties: Banque Provinciale v. Arnoldi, 2 O. L. R. 624 (1901).

11. Delay granted to the maker of a note does not liberate the indorser in Quebec: Massue v. Crebassa, 7 L. C. J. 211 (1863); Meikle v. Dorion, Q. R. 1 S. C. 72 (1892); Guy v. Paré, ibid. 442 (1892); Contra, St. Aubin v. Fortin, 3 Rev. de Lég. 293 (1845); Desrosiers v. Guerin, 21 L. C. J. 96 (1876); Carslake v. Wyatt, 2 Stephens' Dig. 112 (1877); Banque Ville Marie v. Mallette, 32 L. C. J. 8 (1888); Pelletier v. Brosseau, M. L. R. 6 S. C. 331 (1890).

12. Where the holder accepted a composition from and released an indorser for whose accommodation the note was made, not knowing that it was for his accommodation, the maker is not discharged: Banque Nationale v. Betournay, 18 R. L. 175 (1887).

13. A creditor took from a debtor a sight bill accepted by a third party and instead of collecting it, took a renewal. The acceptor failed before the renewal matured. Held, that the original

debtor was discharged: O'Brien v. Semple, M. L. R. 3 Q. B. 55 (1887). § 142

14. The indorser of a note has the right to avail himself of time given to the maker: Molsons Bank v. Cooke, Q. R. 27 S. C. 130 (1905). Principal and surety.

15. An indorser was released before maturity by the bank which held the note at maturity. Held, that the plaintiff who took it when overdue, cannot recover from the indorser: McLeod v. Carman, 12 N. B. (1 Han.) 592 (1869).

16. Plaintiffs held as collateral a note indorsed by one of defendants for the accommodation of the makers, who were plaintiffs' debtors. Plaintiffs renewed the note, to which the indorsed note was collateral. This relieved the indorser: Le Jeune v. Sparrow, 1 Terr. L. R. 384 (1893).

17. A new trial was granted to an accommodation maker to determine whether he was prejudiced by delay given to his principal: Hough v. Kennedy, 3 Alta. 114 (1910).

18. Taking a renewal bill payable on demand, may be ec ditional payment and suspend the remedy until the bill is dishonoured: Currie v. Misa, L. R. 10 Ex. at pp. 163, 164 (1875).

19. When two or more sureties contract severally, the creditor by releasing one does not discharge the others; but when the creditor releases one of two or more sureties who have contracted jointly and severally, the others are discharged, the joint suretyship of the others being part of the consideration of the contract of each: Ward v. National Bank of New Zealand, 8 App. Cas., at p. 764 (1883).

20. The discharge of one of two makers of a joint and several promissory note on part payment, does not discharge the other from his liability for the balance: Stephens v. Hughes, 1 T. L. R. 415 (1885).

21. "An absolute discharge given to the acceptor discharges him from all liability on the bill. But a discharge with the reservation of the rights of the sureties, the indorsers, only discharges the acceptor from his liability to the person giving the discharge": per Lopes, L.J., in Jones v. Whittaker, 3 T. L. R. 723 (1887).

22. A holder may covenant not to sue the maker and reserve his rights against an indorser even though the note is made by a firm and indorsed by members of the firm individually: Faneuil Hall Bank v. Meloon, 183 Mass. 66 (1903).

3. A renunciation must be in writing, unless the bill is delivered up to the acceptor. 53 V., c. 33, s. 61 (1). Imp. Act, s. 62 (1). Writing.

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In England an express renunciation by parol was formerly sufficient: Dingwall v. Dunster, 1 Dougl. 247 (1779); Whatley v. Tricker, 1 Camp. 35 (1807); Foster v. Dawber, 6 Ex. at p. 851 (1851). The clause making a writing necessary was inserted in the Imperial Act from the Scotch law.

A verbal renunciation and delivery of a note to a devisee of the maker is not a discharge of the note, as the devisee does not represent the testator: Edwards v. Walters, [1896] 2 Ch. 157.

Holder in due course.

4. Nothing in this section shall affect the rights of a holder in due course without notice of renunciation. 53 V., c. 33, s. 61. Imp. Act, s. 62 (2).

As the section relates only to bills at or after maturity, and a holder in due course must have acquired the bill before it was overdue, the latter date could not possibly affect him. He might, however, but for this sub-section, have been affected as to a bill acquired at maturity, that is on the last day of grace of a time bill, or as to a demand bill which had not been in circulation an unreasonable length of time.

Cancellation of bill.

143. Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

Of any signature.

2. In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

Discharge of endorser.

3. In such case any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged. 53 V., c. 33, s. 62 (1) (2). Imp. Act, s. 63 (1) (2).

The usual mode of cancelling a bill is by writing "paid" or "discharged" upon it, or mutilating or cancelling the signature of the party primarily liable, or tearing the bill. It is a question of fact.

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As to striking out indorsements, see ante p. 221. Prior parties are not released by the cancellation of a signature: Barthe v. Armstrong, 5 R. L. 213 (1869); Biggs v. Wood, 2 Man. 272 (1885).

When a bill, produced at the trial, has the defendant's signature erased, the plaintiff cannot recover without evidence that it was done by mistake: Peel v. Kingsmill, 7 U. C. Q. B. 361 (1850); Isaacs v. Grothe, 29 N. B. 420 (1890); Knight v. Clements, 8 A. & E. 215 (1838); Clifford v. Parker, 2 M. & Gr. 909 (1841).

The surrender of a bill by the bank holding it to the acceptor, with the word "Paid" stamped on it, is a complete discharge of the drawer, and it cannot afterwards be used by the bank in support of a claim against the latter, because the acceptor has since become insolvent: Tessier v. Banque Nationale, Q. R. 28 S. C. 140 (1906).

For a discussion of the principle of the section, see Scholey v. Ramsbottom, 2 Camp. 485 (1810); Ralli v. Dennistoun, 6 Ex. 483 (1851); Ingham v. Primrose, 7 C. B. N. S. 82 (1859); Baxendale v. Bennett, 3 Q. B. D. at p. 532 (1878); Yglesias v. River Plate Bank, 3 C. P. D. 60 (1877).

No consideration is necessary to support a discharge under this section: McCormick v. Shea, 99 N. Y. Supp. 467 (1906).

144. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. 53 V., c. 33, s. 62 (3). Imp. Act, s. 63 (3).

Unintentional cancellation.

Burden of proof.

The usage in London in such a case is to return the bill with the words "Cancelled by mistake" written upon it: Byles, p. 234.

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If a banker cancel a bill by mistake, without any w[illful] of due care, he does not incur any liability; but if there [is] negligence, and any loss result therefrom, he may be [held] liable: Novelli v. Rossi, 2 B. & Ad. 757 (1831); Warw[ick] v. Rogers, 5 M. & Gr. 340, 373 (1843); Prince v. Orien[tal] Bank, 3 App. Cas. 325 (1878); Bank of Scotland v. Dom[inion] ion Bank, Toronto, [1891] A. C. 592. See also Rape [v.] Birkbeck, 15 East. 17 (1812); Wilkinson v. Johnson, 3 [B.] C. 428 (1824).

Alteration of bill.

Holder in due course.

145. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers: Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. 53 V., c. 33, s. 63 (1). Imp. Act, s. 64 (1).

The first clause is in accordance with the old law. Subsequent endorsers are held liable because endorsers are estopped from denying the prior signatures, and that it is a valid bill, and they assumed the liability indicated by the bill as altered: s. 133.

Where an instrument appears to have been altered the general rule is that the party offering it must explain this appearance. As every alteration raises a suspicion, it is only reasonable that the party claiming under it should remove the suspicion if the alteration be material. In the case of a bill or note there is no presumption as to when the alteration was made: this must be determined upon the evidence: Heaman v. Dickinson, 5 Bing. 183 (1828); Bishop v. Chambre, M. & M. 116 (1827); Johnson v. Marlborough, 2 Stark. 313 (1818); Langley v. Jodery, 47 N. S. at p. 457 (1913); 2 Taylor, § 1819.

It has been laid down that an alteration is material which in any way alters the operation of the bill and the

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habilities of the parties, whether the change be prejudicial or beneficial, or which would alter its effect if used for business purposes: Gardner v. Walsh, 5 E. & B. at p. 89 (1855), Suffell v. Bank of England, 9 Q. B. D. at pp. 568, 574 (1882). Whether an alteration is material or not, is a question of law: Re Commercial Bank, 10 Man. 174 (1894); Phillipp v. Northern Bank, 18 Man. R. 675 (1908): Vance v. Lowther, 1 Ex. D. 176 (1876).

The alteration need not be in the body of the bill or note. Adding in the corner "Interest at 6 per cent." is a material alteration, as it is part of the contract which is to be collected from all within the four corners of the instrument. It is not the same as a memorandum of the place of payment in the corner, which by mercantile usage may be inserted for convenience: Warrington v. Early, 2 E. & B. 763 (1853).

The proviso was inserted in the English bill in committee, and is intended to modify the rigor of the common law, which voided the bill entirely, even in the hands of an innocent holder. For a definition of a holder in due course, see section 56.

In England before the Act alteration even by a stranger made a bill void: Davidson v. Cooper, 11 M. & W. 799 (1843). The Act provides for a case of cancellation without authority of the holder: s. 141: but has made no provision as to alteration without authority. In the United States the English rule on this point was not followed: Jeffrey v. Rosenfeld, 179 Mass. 506 (1901): 2 Daniel, § 1373 *a*.

It is not actionable negligence for a drawee to accept a bill in which the amount is written in such a way that it might be fraudulently raised to a larger sum: Scholfield v. Londesborough, [1896] A. C. 514: Duquet v. Banque Nationale, Q. R. 46 S. C. 131 (1914).

ILLUSTRATIONS.

1. Defendant indorsed a note for the accommodation of the makers. They afterwards inserted the words "with interest at 10 per cent." without his knowledge. He was held not liable on the note to a bona fide holder for value: Halcrow v. Kelly, 28 U. C. C. P. 551 (1878).

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By material alteration.

2. Where indorsers subsequently assented to the addition of the words "with interest at 7 per cent." they were held liable: [illegible] v. Kelly, 44 U. C. Q. B. 578 (1879).

3. Where a note was payable to P. or bearer, and after being negotiated, the name P. was written, but not by him, below the signature of the makers, and without their knowledge, the note was held to be void: Reid v. Humphrey, 6 Ont. A. R. 403 (1881).

4. Two notes were given for patent rights, and the makers indorsed on them the words "the within notes not to be sold." The payee cut from one note the portion of these words, but without defacing it. On the other he erased the word "not." Plaintiff noticed the erasure when buying the notes, and gave much less than their value for them. Held that he was not an innocent holder, and the notes were void: Swainland v. David, 3 O. R. 320 (1882).

5. Two persons signed a promissory note commencing "I promise to pay to bearer." It was discounted by plaintiff for the holder, the latter agreeing to become responsible for the note, and signing below the makers. It was held that he was not an indorser, but was liable as a surety, and that the note was not voided as against any of the parties. Mersman v. Werges, 112 U. S. 139 (1884) approved Kinnard v. Tewsley, 27 O. R. 398 (1896).

6. Where the name of one of the makers of a note was not signed by him or with his authority, and this not being apparent, the plaintiff as a holder for value was held entitled to recover as if this name had never been on the note: Cunnington v. Peterson, 29 O. R. 346 (1898).

7. A note is voided by the insertion of the words "jointly or severally," even although the holder erases the words before the objecting makers become aware of the change: Banque Provinciale v. Arnoldi, 2 O. L. R. 624 (1901).

8. The words "Extended to No. 28, '02," written by the secretary of the plaintiff company on the corner of a note, and not assented to by defendants, will void the note: Mutual Life v. McLaughlin, 36 C. L. J. 630 (1903). Contra, Drexler v. Smith, 30 Fed. R. 754 (1887).

9. A cheque for $5 was accepted by the Bank of Hamilton, then raised by the drawer to $500, and deposited with the Imperial Bank which passed it through the clearing house, and the next day it was paid by the Bank of Hamilton. The following morning the Bank of Hamilton discovered the forgery and claimed $495 from the Imperial Bank. Held, in all the Courts, that it was entitled to recover: Imperial Bank v. Bank of Hamilton, [1903] A. C. 49.

10. Where the material alteration was a forgery, it could not be ratified, nor would a subsequent assent be a compliance with the section: Hébert v. Banque Nationale, 40 S. C. Can. 458 (1908).

11. The question of the alteration of a note is for the jury: Domville v. Davies, 13 N. S. (1 R. & G.) 159 (1879); Street v. Walsh, Stevens' N. B. Dig. 250 (1862).

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12. Where a renewal note was altered by inserting the words "jointly and severally," it was rendered void; but plaintiffs recovered the balance due on the original note which was also declared on: People's Bank v. Wharton, 27 N. S. 67 (1894).

13. The rule in the proviso was applied in favor of plaintiffs when after the note was signed the words "jointly and severally" had been inserted in the same handwriting as the rest of the body of the note: Waterous Engine Co. v. McLean, 2 Man. 279 (1885).

14. A genuine cheque for $6 was altered to $1,000 so skilfully as to escape detection, and deposited in another bank by the pretended payee, $25 being paid him at the time and $800 more after collection from the drawee bank. At the end of the month the forgery was discovered. Held, following Imperial Bank v. Bank of Hamilton, supra, that the drawee was entitled to recover from the collecting bank: Dominion Bank v. Union Bank, 40 S. C. Can. 366 (1908).

15. Where a bill is voided on account of a material alteration, the holder cannot sue on the consideration, unless the alteration took place before the bill was negotiated to him, or he is innocent in the matter, and the person from whom he received it, had no remedy over on the bill: Alderson v. Langdale, 3 B. & Ad. 660 (1832); Archfield v. Moore, 3 E. & B. 683 (1854); Atkinson v. Hawdon, 2 A. & E. 628 (1835).

16. Where a bill appears to have been altered, the party seeking to enforce it must show that it is not avoided thereby: Knight v. Clements, 8 A. & E. 215 (1838).

17. The alteration may be "apparent" although the holder may not have been able to detect it: Leeds Bank v. Walker, 11 Q. B. D. 84 (1883); Maxon v. Irwin, 15 O. L. R. 81 (1907). But see Cunningham v. Peterson, 29 O. R. at p. 319 (1898).

18. A bill for £500 was after acceptance altered by the drawer to £1,500. The stamp was sufficient to cover the larger amount, and the bill when accepted had spaces where the words and figures necessary for the alterations were written in. In an action by a holder for value against the acceptor, it was held that the latter was not estopped from setting up the true facts, and was only liable for £500: Schofield v. Londesborough, [1896] A. C. 514; followed in Imperial Bank v. Hamilton, [1903] A. C. 49; Colonial Bank v. Marshall, [1906] A. C. 559; Smith v. Prosser, [1907] 2 K. B. at p. 796; Lewes v. Barclay, 11 Com. Cas. 255 (1906); Darwin v. Thomson, 13 L. C. J. 262 (1869) overruled.

19. A bill was materially altered by the son of the acceptor. The next day the acceptor gave her son full authority to draw, accept, etc., for her. Held, that the bill was voided by the alteration: Sutton v. Blakey, 13 T. L. R. 441 (1897).

20. Except in the case of banker and customer, there is no duty on the part of the drawer or maker of a negotiable instrument to use care in framing it so as, as far as possible, to prevent fraudu-

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lent interpolation or alteration, and failure to use such care will prevent him from setting up the defence that the instrument has been avoided as against him by material alteration without his consent. A finding by the jury that but for the plaintiff's want of care he would have seen that the bill in question had been altered, negatived the proviso of this section and was equivalent to a finding that the alteration was apparent: Brown v. Bennett; Colonial Bank v. Bennett, 9 N. Z. L. R. 487 (1891). See No. 18, supra.

21. Defendants made a note in England to the order of the Goderich Organ Co. and sent it to the payees in Canada, who had become an incorporated company. The word "Limited" was added to the name of the payees on the face of the note, and it was endorsed in that name to the plaintiffs. The alteration was not apparent. Held, that the plaintiffs could not recover as the original payees had not endorsed: Bank of Montreal v. Exhibit and Trading Co., 22 T. L. R. 722 (1906).

Material.

146. In particular any alteration,—

Date. (*a*) of the date;

Sum. (*b*) of the sum payable;

Time. (*c*) of the time of payment;

Place. (*d*) of the place of payment;

Adding places. (*e*) by the addition of a place of payment without the acceptor's assent where a bill has been accepted generally; is a material alteration. 53 V., c. 33, s. 63 (2). Imp. Act, s. 64 (2).

This is not an exhaustive list of material alterations, but merely an enumeration of some of the changes which have been held to be material.

ILLUSTRATIONS.

The following alterations in bills and notes have been held to be material:—

1. Alteration of the date: Meredith v. Culver, 5 U. C. Q. B. 218 (1848); Gladstone v. Dew, 9 U. C. C. P. 439 (1859); Peltz v. Molsons Bank, 40 U. C. Q. B. 253 (1876); Banque Ville Marie v. Primeau, 26 L. C. J. 20 (1881); Quebec Bank v. Ogilvy, 3 Quebec 200 (1883); Master v. Miller, 4 T. R. 320 (1791); Outhwaite v. Luntley, 4 Camp. 179 (1815); Atkinson v. Hawdon, 2 A. & E. 628 (1835); Hirschman v. Budd, L. R. 8 Ex. 171 (1873); Vance v.

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Discharge by alteration.

Lowther, 1 Ex. D. 176 (1876); Engle v. Stourton, 5 T. L. R. 444 (1889). Even although it be by changing the date of a demand note, payable with interest, to a later date, which benefits the maker: Boulton v. Langmuir, 24 Ont. A. R. 618 (1897).

2. Alteration of the sum payable: Halcrow v. Kelly, 28 U. C. C. P. 551 (1878); Fitch v. Kelly, 44 U. C. Q. B. 578 (1879); Hébert v. Banque Nationale, 40 S. C. Can. 458 (1908). Even if made less: Bellamy v. Porter, 28 O. L. R. 572 (1913); Langley v. Evans, 13 D. L. R. 141 (N. S. 1913); Hamelin v. Bruck, 9 Q. B. 306 (1846); Sutton v. Toomer, 7 B. & C. 416 (1827); Warrington v. Early, 2 E. & B. 763 (1853).

3. Alteration of the time of payment: Meredith v. Culver, supra; Reg. v. Craig, 7 U. C. C. P. 239 (1857); Westloh v. Brown, 43 U. C. Q. B. 402 (1878); Long v. Moore, 3 Esp. 155 n. (1790).

4. Alteration of the place of payment: McQueen v. McIntyre, 30 U. C. C. P. 426 (1879); Tidmarsh v. Grover, 1 M. & S. 735 (1813); Cowie v. Halsall, 4 B. & Ald. 197 (1821).

5. Adding a place of payment: Jones v. Reid, 7 O. W. R. 131 (1906); Calvert v. Baker, 4 M. & W. 417 (1838); Gibb v. Mather, 2 Cr. & J. at p. 262 (1832).

6. Adding after "for value received" the words "for the good-will of the lease and trade of F. K.": Knill v. Williams, 10 East. 431 (1809).

7. Adding "with interest:" Jones v. Reid, 7 O. W. R. 131 (1906); Hébert v. Banque Nationale, 40 S. C. Can. 458 (1908).

8. Adding "Limited" to the name of the payee (Quære): Bank of Montreal v. Exhibit and Trading Co., 22 T. L. R. 722 (1906).

9. Making a "joint" note "joint and several:" Samson v. Yager, 4 U. C. O. S. 3 (1834); Banque Provinciale v. Arnoldi, 2 O. L. R. 624 (1901); People's Bank v. Wharton, 27 N. S. 67 (1894); Perring v. Hone, 4 Bing. 28 (1826). See Leslie v. Emmons, 25 U. C. Q. B. 213 (1866).

10. By striking out or clipping off a condition indorsed: Campbell v. McKinnon, 18 U. C. Q. B. 612 (1859); Swaisland v. Davidson, 3 O. R. 320 (1883).

11. By adding a new maker after issue: Reid v. Humphrey, 6 Ont. A. R. 403 (1881); Currique v. Beaty, 24 Ont. A. R. 302 (1897); Gardner v. Walsh, 5 E. & B. 83 (1855); Browning v. Gosnell (Iowa), 59 N. W. R. 340 (1894). Contra, Kinnard v. Tewsley, 27 O. R. 398 (1896); Mersman v. Werges, 112 U. S. 139 (1884), approved.

12. Erasing the word "renewal" in the margin: Maxon v. Irwin, 15 O. L. R. 81 (1907); or on the back: Fulton v. McArdle, 6 N. Z. L. R. 365 (1888).

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Material.

13. Changing the words "This note to follow agreement" in the margin, so as to read "This note to fall due for payment May 19th, 1913:" Gourre v. Voskoboinik, Q. R. 45 S. C. 101 (1913).

14. Erasing the signature of one of two joint makers: Nicholson v. Revill, 4 A. & E. 675 (1836).

15. Cutting off the signatures of one of several joint makers: Mason v. Bradley, 11 M. & W. 590 (1843).

16. Filling up a blank with an incorrect date: Harrison v. Cotgreave, 4 C. B. 562 (1847).

17. Writing on the face of a foreign bill a special rate of exchange: Hirschfield v. Smith, L. R. 1 C. P. 340 (1866).

18. Altering the numbers of Bank of England notes: Suffell v. Bank of England, 9 Q. B. D. 535 (1882).

19. Changing "I" to "we:" Draper v. Wood, 112 Mass. 315 (1873).

20. Changing "order" to "bearer:" Re Commercial Bank 10 Man. 171 (1894); Booth v. Powers, 56 N. Y. 22 (1874).

21. Where a note was payable with interest, adding "after maturity:" Coburn v. Webb, 56 Ind. 100 (1877).

Not material.

The following alterations have been held not to be material:—

1. Changing the date of a note from 1886 to 1896, where the former figures were written by inadvertence for the latter: McLaren v. Miller, 36 C. L. J. 680 (1900).

2. Inserting the word "months" where inadvertently omitted: Lainé v. Clarke, 3 Rev. de Lég. 434 (1816).

3. As regards the maker, giving the note a later date: Canadian Investment Co. v. Brown, 19 R. L. 364 (1890). See clause (*a*).

4. Writing the words "pour aval" over the signature of the first indorser, when he had in fact indorsed the note above the payee, and as an "aval:" Abbott v. Wurtele, Q. R. 6 S. C. 204 (1894).

5. The maker of an accommodation note issued in June, dated it "6th, 1875," without a month. June 6th was a Sunday. The payee made the date June 8th. Held, that the note was not voided: Merchants' Bank v. Sterling, 13 N. S. (1 R. & G.) 439 (1886). See clause (*a*).

6. Adding a memorandum at the foot declaring the note to be payable at a particular place: Cunard v. Tozer, 4 N. B. (2 Kerr) 365 (1844); Sims v. Anderson, V. L. R. (1908), p. 348.

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Not material.

7. Adding "or order:" Kershaw v. Cox, 3 Esp. 246 (1800); Byrom v. Thompson, 11 A. & E. 31 (1839). Contra, [illegible] Millidge, 4 N. B. (2 Kerr) 520 (1844).

8. Changing the name of the drawees from S. C. & Co. to S. & C. their proper firm name: Farquhar v. Southey, 1 M. & M. 14 (1826).

9. Adding "on demand," where no due time was mentioned: Abbott v. Cornwell, L. R. 3 Q. B. 573 (1868).

10. Striking out the word "order" in a bill payable "to order L. D. F.:" Decroix v. Meyer, 25 Q. B. D. 343 (1890).

11. Inserting the word "pay" where inadvertently omitted: Maclean v. McEwen, 1 Rettie (5th series), 381 (1899).

12. Adding "for the Bank of, etc.," to the signature of the cashier when he had in fact signed for the bank: Folger v. Chase, 18 Pick. (Mass.) 63 (1836).

13. Inserting the dollar mark before the numerals: Houghton v. Francis, 29 Ill. 244 (1862).

14. Correcting a name incorrectly written: Cole v. Hills, 44 N. H. 227 (1863); Derby v. Thrall, 44 Vt. 413 (1872).

15. Retracing a faded name in clear ink: U. S. Nat. Bank v. Nat. Park Bank, 59 Hun 495 (1891).

Acceptance and Payment for Honour.

Sections 147 to 155, inclusive, relate to this peculiar form of acceptance and payment, called also supra protest, because it can only take place after the bill has been protested for non-acceptance or non-payment as the case may be. In the French Code de Commerce it is called acceptance or payment by intervention. On account of the great facilities which parties to a bill now have for communicating with each other, it is seldom resorted to in the course of modern mercantile affairs. As a rule the same object may be attained by simply paying the amount of the bill to holder and taking a transfer from him.

Acceptance for honour supra protest.

147. Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene

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Supra protest.

and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 53 V., c. 33, s. 64 (1). Imp. Act, s. 65 (1).

It would seem that even the drawee may accept for the honour of the drawer or an indorser, and thereby incur only a minor risk: 2 Halsbury, p. 539, note (*i*).

It is not necessary that the protest should be extended before acceptance supra protest; it is sufficient that the bill has been noted: ss. 118, 119 (2).

As to protest for better security when the acceptor has failed, see section 116, and Ex parte Waekerbath, 5 Vesey, 574 (1800).

The holder may refuse to allow an acceptance supra protest: he may prefer an immediate recourse against the parties liable to him on the bill. An acceptance supra protest benefits only the party for whose honour it is made, and those subsequent to him. With the consent of the holder there might also be acceptances supra protest for the honour of prior parties: 1 Daniel, § 525. The drawee may also change his mind and accept supra protest. If the acceptor supra protest should fail, there might be a second acceptance, after a protest for better security. In Quebec under the Code, an acceptor was bound to give notice without delay to the party for whose benefit he accepted, and to the other parties liable to him on the bill: C. C. 2 [illegible]. This is not now required.

The acceptance for honour is conditional upon non-payment by the drawee. The bill must still be presented at maturity to the drawee and protested for non-payment before being presented to the acceptor for honour, who is in the position of a surety, rather than as being primarily liable: sections 152 and 155.

ILLUSTRATIONS.

1. A defendant cannot be charged as an acceptor of a bill that has already been accepted, though conditionally, by the drawee: Spalding v. McKay, 5 U. C. O. S. 656 (1838).

2. Originally it was not necessary to protest a bill before an acceptance for honour: Mutford v. Walcot, 1 Ld. Raym. 575 (1697). § 147

3. A protest was subsequently held to be a necessary preliminary in accordance with the custom of merchants: Vandewall v. Tyrrell, 1 M. & M. 87 (1827).

148. A bill may be accepted for honour for part only of the sum for which it is drawn. 53 V., c. 33, s. 64 (2). Imp. Act, s. 65 (2). In part.

An acceptance for part only is a qualified acceptance, which the holder may refuse to take: s. 38; but does not require the assent of the drawer or endorsers where notice has been given: s. 84. Where a foreign bill has been accepted as to part, it must be protested as to the balance: s. 112 (3).

149. Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. 53 V., c. 33, s. 64 (4). Imp. Act, s. 65 (4). Deemed to be for honour of drawer.

150. Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honour. 53 V., c. 33, s. 64 (5). Imp. Act, s. 65 (5). Maturity of after sight bill.

This section is copied from the Imperial Act with the single substitution of the word "protesting" for "noting," which really makes no change: s. 119 (2). In order to make it harmonize with section 23 (*a*), the words "at sight or" should have been inserted as was done by the amending Act of 1891, in what are now sections 5, 30, 37 and 77. It is likely, however, that the Courts will interpret it as if the change had been made. The former rule was to calculate the maturity from the date of the acceptance and not of the protest: Williams v. Germaine, 7 B. & C. at p. 471 (1827). In the case of an ordinary acceptance time runs from the date of acceptance: s. 45.

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Requirements. Writing.

151. An acceptance for honour *supra* protest, in order to be valid must,—

(*a*) be written on the bill, and indicate that it is an acceptance for honour; and,

Signature.

(*b*) be signed by the acceptor for honour. 53 V., c. 33, s. 64 (3). Imp. Act, s. 65 (3).

The usual form of such an acceptance is "accepted for honour," "accepted supra protest," or more frequently simply, "accepted S. P.," with the signature of the acceptor, and if not accepted for the honour of the drawer, with a designation of the party for whose honour it is made. Formerly a notarial "act of honour" was necessary as in the case of a payment for honour: Brooks' Notary, 6th ed., p. 83; Mitchell v. Baring, 10 B. & C. 4 (1829); Gazzam v. Armstrong, 3 Dana, 554 (1835); sec. 154; but this is not required by the Act. As to the requirements of an ordinary acceptance, see section 36. See also section 149.

Liability of acceptor for honour.

152. The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts.

To holder as others.

2. The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. 53 V., c. 33, s. 65. Imp. Act, s. 66.

The acceptor for honour is only secondarily liable on the bill. The reason for requiring a presentation for payment to the drawee at maturity, is that he may in the meantime have received effects or instructions that may lead him to pay the bill: Hoare v. Cazenove, 16 East, 398 (1812). The acceptor for honour is not justified in paying unless the bill has been protested, and he has received notice. It may

specify in his acceptance a particular place of payment, and if so the bill should be presented there: s. 38 (4). s. 152

He is bound by the estoppels which bind an original acceptor and those which bind the party for whose honour he has accepted: 2 Halsbury, s. 927; Phillips v. im Thurn, L. R. 1 C. P. 463 (1866).

If a bill is dishonoured by the acceptor for honour it must be protested for non-payment by him: s. 117 (2).

Payment for honour supra protest.

153. Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 53 V., c. 33, s. 67 (1). Imp. Act, s. 68 (1).

Any person may pay a protested bill supra protest whether liable on the bill or not, on observing the provisions of section 154.

It is not necessary that the protest be actually extended before the payment for honour is made: it is sufficient that it be noted: s. 118. The person for whose account a bill is drawn is in England called "the third account."

This section would appear to be applicable to promissory notes.

A person who takes up a bill supra protest for the benefit of a particular party to the bill succeeds to the title of the person from whom, not for whom, he receives it, and has all the title of such person to sue upon the bill, except that he discharges all the parties subsequent to the one for whose honour he takes it up, and that he cannot himself indorse it over: In re Overend, Gurney & Co., Ex parte Swan, L. R. 6 Eq. 344 (1868). See also Cowan v. Doolittle, 46 U. C. Q. B. 398 (1881); MacArthur v. MacDowall, 23 S. C. Can. 571 (1893); Ex parte Lambert, 13 Vesey, 179 (1806); Geralopulo v. Wieler, 10 C. B. 690 (1851); Ex parte Wyld, 2 De G. F. & J. 642 (1860); Deacon v. Stodhart, 2 M. & Gr. at p. 320 (1841); Baring v. Clark, 19 Pick. (Mass.) 220 (1837); Schofield v. Bayard, 3 Wend. (N. Y.) 88 (1830).

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The French Code de Commerce contains provisions similar to those of the present section: Arts. 158, 159. It is there called payment by intervention. See also Pothier, Nos. 113, 114, and Nougnier, §§ 1004-1009.

If more than one offer.

2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

Refusal to receive payment.

3. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

Entitled to bill.

4. The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

Liability for refusing.

5. If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages. 53 V., c. 33, s. 67 (6). Imp. Act, s. 68 (6).

It was held by Chitty, J., in re English Bank [1893] 2 Ch. at p. 144, that the notarial expenses in the clause of the Imperial Act corresponding to subsection 4 did not include the protest for better security under section 116. This was based on the language of section 57 of that Act, which provides for the expenses of noting being included in the amount of a bill, but for those of protesting only when a protest was necessary. He held that a protest for better security being voluntary it should not be included: the restrictive words, "when protest is necessary," are not in the Canadian Act: s. 124.

Attestation of payment for honour.

154. Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act

of honour, which may be appended to the protest or form an extension of it. § 154

2. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. 53 V., c. 33, s. 67 (3) (4). Imp. Act, s. 68 (3) (4). Declaration.

This notarial act of honour is necessary, in order to give the person who pays the rights and privileges accorded by section 155. For the form for such an act, see Appendix.

155. Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. 53 V., c. 33, s. 67 (5). Imp. Act, s. 68 (5). Discharge. Subrogation.

If the holder is a holder in due course, or if any party to the bill subsequent to the party for whose honour the bill has been paid was a holder in due course, the payer for honour acquires their rights in this respect. Among the duties to which he succeeds is that of giving notice of dishonour: Goodall v. Polhill, 14 L. J. C. P. 146 (1845).

Lost Instruments.

Only two sections, 156 and 157, are devoted to this subject. The former gives the holder the right to demand a duplicate of a bill lost before maturity; the latter gives the party liable the right to indemnity when he is called upon to pay a lost bill.

The Act does not treat of the rules of evidence, by which secondary evidence is allowed in the case of a bill or note lost or destroyed, as administered in the several provinces.

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Holder to have duplicate of lost bill.

156. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again.

Refusal.

Compulsion.

2. If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so. 53 V., c. 33, s. 68. Imp. Act, s. 69.

Before the passage of the Imperial Act this provision applied to inland bills and notes, under 9 Wm. III., c. 17, and 3-4 Anne, c. 8. Courts of Equity had extended it to indorsers as well as to the drawer. Chalmers (p. 257) speaks of the remedy as being still very inadequate, as it gives no power to obtain an indorsement or acceptance over again, and contrasts it with the remedy given by the Continental Codes, which have elaborate provisions on the subject. See Walmsley v. Child, 1 Vesey, sen. 341 (1749), and Rhodes v. Morse, 14 Jur. 800 (1850).

Presentment if bill is lost.

The loss or destruction of a bill does not relieve from the duty of demanding payment. This should be accompanied by an offer of indemnity, and if payment is refused, protest may be made on a copy or written particulars: s. 120. "Neglect to offer indemnity to the maker or acceptor on demand of payment does not deprive the payee of his right of action, but it will prevent him from recovering costs, and will compel him to bear any special damages resulting from the neglect on his subsequent suit": 2 Daniel, § 1 Thackray v. Blackett, 3 Camp. 164 (1812).

Action on lost bill.

Indemnity.

157. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the

court or judge against the claims of any other person upon the instrument in question. 53 V., c. 33, s. 69. Imp. Act, s. 70. § 157

Action on lost bill.

At common law, if a negotiable bill were lost, no action could be maintained, either on the instrument or on the consideration for it, even if it was overdue when lost: Pierson v. Hutchinson, 2 Camp. 211 (1809); Hansard v. Robinson, 7 B. & C. 90 (1827); Ramuz v. Crowe, 1 Ex. 167 (1847); Crowe v. Clay, 9 Ex. 604 (1854).

Before the Act of 1890 most of the provinces had provisions similar to the present section.

When the surrender of a bill or note has been obtained by fraud, by a forged renewal or otherwise, an action may be brought upon the bill or note so surrendered: Irwin v. Freeman, 13 Gr. 465 (1867); McIntyre v. McGregor, 21 C. L. T. 25 (1900); Matthews v. Marsh, 5 O. L. R. 540 (1903); Scholefield v. Templer, 4 DeG. & J. 433 (1859).

When the defendant did not demand security a decree was made for plaintiff without requiring it: Abell v. Morrison, 23 Grant, 109 (1876).

The loss of the note must be proved and indemnity offered: Waute v. Robinson, 2 Rev. de Lég. 29 (1816); Beaupré v. Burn, 2 Rev. de Lég. 31 (1821). See Carden v. Ruiter, 9 L. C. J. 217 (1865); Wright v. Maidstone, 1 K. & J. 701 (1855).

An indemnity may be required even if the bill is not negotiable: Pillow v. L'Espéranee, Q. R. 22 S. C. 213 (1902); Contra, Cooley v. Dominion Building Society, 24 L. C. J. 111 (1878). See Wain v. Bailey, 10 A. & E. 616 (1839); 2 Daniel, § 1481.

The section does not in terms apply to bills proved to have been destroyed; but there are expressions in the cases that put them on the same footing as lost bills. See Byles, pp. 345, 346.

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ILLUSTRATIONS.

Lost instruments.

1. Where a note had been indorsed to an attorney's clerk and mislaid: Held, that secondary evidence of it could not be given without calling the clerk, although the attorney was called and swore to his belief of its loss: Grover v. Clark, 5 U. C. Q. S. 208 (1835).

2. When the plaintiffs declared against the drawer of a lost note payable to plaintiffs' order on a promise to pay it, but did not state any new consideration for the promise, or allege that the bill was unindorsed at the time of the loss, the declaration was held bad on general demurrer. Russell v. McDonnald, 1 U. C. Q. B. 296 (1844).

3. Payee against maker. Plea, loss of the note by plaintiff before suit, and that he hath been and is unable to produce it. Replication denying the loss only, held good: Campbell v. McCrea, 11 U. C. Q. B. 93 (1853).

4. A person suing on a lost note should, before action, tender an indemnity to the maker. If he neglect this, it will be at the risk of costs to defendant. Banque Jacques Cartier v. Strachan, 5 Ont. P. R. 159 (1880); Tessier v. Laillé, Q. R. 25 S. C. 207 (1902); Palmer v. Reilly, 2 E. L. R. (P.E.I.) 508 (1906); King v. Zimmerman, 1 R. 6 C. P. 166 (1871).

5. When the maker of notes is entitled to get them back, and the holder says they are lost and offers security, the former is not obliged to accept security, but is entitled to a payment into Court of the amount: Hudon v. Gervais, Q. R. 7 S. C. 221 (1895).

6. When a lost bill is sued on, plaintiff should tender a bond with a sufficient surety or sureties. The Master may settle the bond. Orton v. Brett, 12 Man. 448 (1899).

BILL IN A SET.

The provisions of the Act relating to [illegible] found in sections 158 and 159. Bills in this [illegible] for remittances abroad. To prevent delay [illegible] should miscarry a second is frequently sent by a [illegible] mail. In Canada a set is generally made up of three [illegible] Each part contains a condition that the others (naming them) are unpaid. See form in Appendix.

Bills in set.

158. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

Acceptance.

2. The acceptance may be written on any part, and it must be written on one part only. 53 V., c. 33, s. 70 (1) (4). Imp. Act, s. 71 (1) (4).

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An agreement to deliver up certain sets of foreign bills which were drawn in three parts is not complied with by delivering up one of each set if he has others: Kearney v. West Granada Co., 1 H. & N. 112 (1856). A person who negotiates one part of a set does not warrant that he has the others: Picard v. Klockman, 3 B. & S. 388 (1863). If one part of a set does not contain a reference to the other parts a bona fide holder for value may recover on it as a separate bill: Davidson v. Robertson, 3 Dow. 218 (1815); Société Generale v. Metropolitan Bank, 27 L. T. N. S. 849 (1873).

Endorsing more than one part.

159. Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills.

Negotiation to different holders.

2. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill: Provided that nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

Acceptance in due course.

More than one part accepted.

3. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

Part accepted.

Payments without delivery.

4. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

Discharge.

5. Subject to the provisions of this section, where any one part of a bill drawn in a set is

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Bill in a set.

discharged by payment or otherwise, the whole bill is discharged. 53 V., c. 33, s. 70. Imp. Act, s. 71.

The first and third sub-sections are declaratory of the old law: Holdsworth v. Hunter, 10 B. & C. 449 (1830).

So also is the second sub-section: Perreira v. Jopp 10 B. & C. 450n. Laug v. Smith, 7 Bing. 284 (1831).

Such a bill may be discharged in the same way as an ordinary bill which consists of a single part, that is by payment, release, cancellation, material alteration, etc.

The discharge results from the rule in section 158, that the whole of the parts constitute one bill. See Wells v. Whitehead, 15 Wend. (N.Y.) 527 (1836); Durkin v. Cranston, 7 Johns (N.Y.) 442 (1811); Ingraham v. Gibbs, 2 Dallas, 134 (1791).

When the first of a set was accepted and in the hands of a third party to cover advances to be made, but which he declined to make, the holder of the second who had made advances on condition he should get the first, was held entitled to the latter to the extent of his advances, as against the holder, who claimed to hold them for a former balance due him: Société Generale v. Agopian, 11 T. L. R. 24 (1895).

In an action against the drawer or indorsers, the part of the set which was protested must be produced: Downes v. Church, 13 Peters (U. S.) 205 (1839).

Conflict of Laws.

Origin of sections.

Sections 160 to 164 lay down certain rules upon questions involving the conflict of laws or private international law. On some of the points thus settled, there had been a great conflict of authority and decisions in England and Canada. These sections formed only one (71) in the Act of 1890, which was copied from section 72 of the Imperial Act, with the single substitution of "Canada" for the words "United Kingdom" wherever they occur. The Negotiable Instruments Law does not deal with this subject.

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Questions in Canada.

On account of the peculiar character of our federal constitution some new questions arise in consequence of the adoption of the language of the Imperial Act without change or definition. Is Canada one "country" within the meaning of sub-section 1? Or will the different provinces be considered as different countries for the purposes of these sections with respect to matters as to which the Act itself makes different provisions for them, or where the provincial laws directly or indirectly affecting bills and notes differ so widely? The answer will probably be that where the question to be decided is one of federal law, Canada will be considered as one country: where, however, it is a question of provincial law then each province concerned will be considered as a different country. The analogy of the United States does not afford us much assistance, as there the subject belongs to the individual States, each of which is, for purposes within its jurisdiction, considered a distinct and independent sovereignty. In these respects the States retain their separate autonomies, and are deemed as much foreign to each other as if they did not form a union at all. As the rules laid down in these sections are those generally recognized, the Courts will apply them to a settlement of interprovincial as well as international questions.

Conflict of laws in Canada.

The points which arise under the Act involving such conflict between the laws of the different provinces, are numerous and important. Some of them arise under provisions of the Act itself, such as that of the due date of a bill being affected in certain cases by the non-juridical days differing in the different provinces under section 13: or the rules as to protests in Quebec differing from those in the other provinces. In sections 162 and 164 are laid down the rules which govern these cases. The questions will arise, however, chiefly from the conflict of provincial laws on such subjects as capacity, compensation, prescription, suretyship, joint liabilities, payment, etc.

It is to be borne in mind that foreign law is a question of fact, and where it is relied upon it must be pleaded and proved by experts: otherwise the foreign law will be presumed to be the same as our own: Westlake, §§ 353, 356; Smith v. Gould, 1 Moore P. C. 21 (1842): Cornelia v. Murie, 10 Ch. D. 543 (1890).

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These sections are applicable to promissory notes with the necessary modifications: s. 186.

The rules laid down in the Act are not at all exhaustive. In cases not provided for, the principles of the common law and the law merchant will be applied. For a full discussion of the important questions arising under this head, the reader is referred to the standard works on the subject, and to the full reports of the leading cases, some of which are cited in the following notes on the various clauses of these sections.

Requisites of form.

160. Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra* protest, is determined by the law of the place where the contract was made: Provided that,—

Unstamped bills.

(*a*) where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

Conforming to the law of Canada.

(*b*) where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada. 53 V., c. 33, s. 71 (1). Imp. Act, s. 72 (1).

Drawn in Canada.

As to the meaning of the word "country" in this part of the Act, see ante p. 405. As the Act lays down the requisites in form not only for bills themselves but also for the supervening contracts named, the whole of Canada is only one country for the purposes of this section, which is applicable wherever Canada is the place of one or more but not of all the operations or contracts named in the section. The

provisions of the Act as to the form of bills apply only to those issued in Canada, and those as to the form of the supervening contracts only to such of them as may be made in Canada. § 160

"Drawing, in reference to bills of exchange, includes not only the writing and signing, but also the full execution by delivery": Wallace v. Souther, 2 S. C. Can. at p. 613 (1878). A bill is not "drawn" until it is issued, that is, delivered, complete in form, to the payee or endorsee if it is payable to order, or to some person as bearer, if it is payable to bearer: s. 2. The contracts of acceptance and endorsement, like that of the drawer, are only complete upon delivery, so that it is the delivery in each case which determines the place of the contract: Chapman v. Cottrell, 34 L. J. Ex. 186 (1865). **Meaning of drawing.**

A bill is presumed to have been issued and endorsed at the place where it bears date, and to have been accepted at the place at which the drawee is addressed, unless there is something on it to show that the contract was in fact made in some other place.

The rule in this section, that the validity of a bill as regards the form of the bill itself, or of the acceptance or endorsement, is to be governed in each case by the lex loci contractus is one that is generally recognized. See on this point, Story on the Conflict of Laws, sees. 238, 260, 262; Westlake, § 228; Dicey, p. 589; 1 Daniel, §§ 867, 868. "Acts and deeds made out of Lower Canada are valid if made and passed according to the forms required by the law of the country where they were passed or made": C. C. Art. 7. See also Guepratte v. Young, 4 DeG. & Sm. at p. 228 (1851). **Lex loci.**

When a bill is drawn on a person in a foreign country or made payable there, what the drawer and endorsers agree to do is not to pay the bill in the foreign country, but they guarantee that it will be accepted and paid by the drawee, and if he does not do so, they will, if duly notified, reimburse the holder at the place where they have respectively drawn or endorsed the bill.

There are no reported cases on this section of the Canadian or the corresponding section of the Imperial Act; but **American rules.**

§ 160 the following will show the application of the principle by the American Courts:—

American rules.

A bill drawn in Michigan, where a verbal acceptance is not recognized, upon a person in Illinois, where such an acceptance is binding, may be validly accepted by parol: Mason v. Donsay, 35 Ill. 424 (1864); Bissell v. Lewis, 4 Mich. 450 (1857).

A bill drawn in Illinois upon a person in Missouri, where a verbal acceptance is not legal, and verbally accepted by the drawee in Illinois, binds him: Scudder v. Union National Bank, 91 U. S. (1 Otto) 406 (1875).

A verbal agreement in Missouri by a Chicago firm to accept and pay in Chicago certain drafts for goods consigned, is governed by the law of Illinois, the place of performance, and is consequently binding: Hall v. Cordell, 142 U. S. 116 (1891).

Revenue laws.

Proviso (*a*) adopts the well established rule of the common law that no country will regard or enforce the revenue laws of another country. See Story, secs. 245, 257; Boucher v. Lawson, Cas. temp. Hard. 89, 194 (1734); Holman v. Johnson, Cowp. 341 (1775); Biggs v. Lawrence, 3 T. R. 454 (1789); Lightfoot v. Tenant, 1 B. & P. 551, 557 (1796); Planche v. Fletcher, 1 Dongl. 251 (1779); James v. Catherwood, 3 D. & R. 190 (1823); Wynne v. Jackson, 2 Russ. 351 (1826); Ludlow v. Van Rensselaer, 1 Johns (N. Y.) 94 (1806). The doctrine of Clegg v. Levy, 3 Camp. 166 (1812), and Bristow v. Sequeville, 5 Ex. 275 (1850), that where the want of a stamp not only rendered a bill inadmissible in evidence but absolutely void in the foreign country were drawn, it would be held void in England, is not recognized by the Act, as regards bills drawn in one country and negotiated or payable in another.

Exception.

Proviso (*b*) contains an exception to the general rule laid down in the section. It validates bills which might be invalid by the law of the place of issue, as between those who have negotiated, held or become parties to them in this country. This applies not only to the body of the bill, but also to the acceptance and endorsement.

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Bills may be drawn in any language. The construction of those drawn in a foreign language, like all other documents, is for the court; but the court may require from experts a translation of the language, an explanation of the peculiar terms used, and of the foreign law relating to the case: Di Sora v. Phillips, 10 H. L. C. 624 (1863).

Bills of exchange were drawn in France by a domiciled Frenchman in the French language in English form on an English company, who duly accepted them. The drawer indorsed the bills and sent them to an Englishman in England. It was held that the acceptor could not dispute the negotiability of the bills by reason of the indorsements being invalid according to French law, when they would be valid indorsements according to the law of England: Re Marseilles Extension Ry. & L. Co., 30 Ch. D. 598 (1885).

Lex loci

161. Subject to the provisions of this Act, the interpretation of the drawing, endorsement, acceptance or acceptance *supra* protest of a bill, drawn in one country and negotiated, accepted or payable in another, is determined by the law of the place where such contract is made: Provided that where an inland bill is endorsed in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada. 53 V., c. 33, s. 71 (2*b*). Imp. Act, s. 72 (2).

Law of Canada.

The provisions of the Act to which this section is declared to be subject are no doubt the other sections (160 to 164) under the heading of conflict of laws, and also, it has been suggested, sections 33 and 127.

What is interpretation?

"Interpretation" is not defined in the Act. Is it to be taken in a narrow sense and confined simply to the meaning or construction of the drawing, endorsement or acceptance as the case may be? Or does it also include the nature and effect of these respective contracts, and the rights, obligations and liabilities of the parties who enter into them? In Alcock v. Smith, [1892] 1 Ch. at p. 256, Romer, J., says that

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Interpretation.

he understands "interpretation" here to mean "legal effect," and he held that the indorsement in Norway of an English inland bill was governed by Norwegian law; and that the indorsee of a bill after its maturity took it free from defects of title by such law. He applied the same law to a judicial sale of the note in Norway. This decision was affirmed in appeal. The same extended meaning was given to the word by Andrews, J., in London and Brazilian Bank v. Maguire, Q. R. 8 S. C. 358 (1895). Chalmers says (p. 266): "The term 'interpretation' clearly includes the obligations of the parties as deduced from such interpretation."

Foreign endorsements.

In Embiricos v. Anglo-Austrian Bank, a cheque drawn in Roumania on a London bank was stolen and negotiated in Vienna on a forged indorsement to a bank, which took it in good faith and without negligence, thereby acquiring a good title by Austrian law. It was indorsed and sent to the defendants in London, who presented it to the drawee and received the amount. Plaintiffs, the original indorsees, sued for conversion. It was held at the trial and on appeal that Austrian law governed, and the action failed. Walton, J., followed Alcock v. Smith, supra, but based his decision not on this section, but on the general law as to the sale of an ordinary chattel in a foreign country: [1904] 2 K. B. 870. The judgment in appeal was based on the same ground; two of the judges being of opinion that the section did not apply, while the third thought it might, as did also the trial judge: [1905] 1 K. B. 677.

Lex loci solutionis.

It has been generally recognized as a rule of international law that where a contract is entered into in one place to be performed in another, it is, in the absence of anything indicating a contrary intention, to be governed as to its validity, nature and obligation by the law of the place of performance, in accordance with the maxim, contrahisse unusquisque in eo loco intelligitur, in quo, ut solveret, se obligavit. See Story on Conflict of Laws, secs. 280, 281; Westlake, § 229; 3 Burge, Col. Law, pp. 771, 772; Robinson v. Bland, 2 Burr. 1078 (1760); Ferguson v. Fyffe, 8 Cl. & F. 121 (1840); Moulis v. Owen, [1907] 1 K. B. 746; Andrews v. Pond, 13 Pet. (U. S.) 65 (1839); C. C. Art. 3.

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To give a somewhat wide meaning to the word "interpretation" in this section might not interfere with the principle just mentioned so far as the obligations of the drawer and endorsers of a bill are concerned. When a bill is drawn upon a person in a foreign country or made payable there, what the drawer and endorsers bind themselves to do is not to pay the bill in the foreign country; but they guarantee that it will be accepted and paid by the drawee, and if he does not do so, they will, if duly notified, reimburse the holder at the place where they have respectively drawn or endorsed the bill.

Obligation of drawer.

The contract of the acceptor, on the other hand, is to pay at the place of payment. If it is payable generally, or in the place where it is accepted, then no difficulty arises as to the application of the present section; the law of the place of acceptance will govern. But if the bill is payable in a different country from that in which it is accepted, does the present section apply? For instance, if a bill drawn in Montreal is accepted in Toronto and payable in New York, is the liability of the acceptor to be determined by the law of Canada? If so, the rule above quoted as to the law of the place of payment or performance of the contract would appear to be overridden by the Act, unless "the law of the place where such contract is made," could be construed to mean that if the law of such place was that the law of the place of performance or payment should govern in certain respects, then such latter law should be applied to that extent. It is not probable that the law of the place of payment was to be wholly excluded by the Act, save as to the few points mentioned in these sections.

Of acceptor.

Burge suggests (vol. 3, p. 771) that the place of performance is, fictione juris, the locus contractus; and Westlake (p. 304) that the law of the place of fulfilment is really the law of that jurisdiction which would be the forum contractus according to true Roman principles.

Conflict of laws.

Westlake, in discussing this clause of the Imperial Act which is identical with our own, says § 229, "The obligation incurred by accepting a bill of exchange or making a promissory note, is measured by the law of the place where it is

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Lex loci solutionis.

payable." There is no attempt made to harmonize this with the rule laid down in the Act, nor is attention called to the apparent discrepancy.

Chalmers (p. 266) quotes the language of Story on Bills, § 154, as furnishing the reasons for the rule adopted in the clause of the Imperial Act which is copied in this section, but does not seem to anticipate any difficulty in its application, save as to a bill accepted in one country but payable in another. In this case he thinks the lex loci solutionis would be applied.

Dicey (p. 593), points out the difficulty in giving a precise meaning to the section, and suggests as an explanation of its origin that the framers of the Act adopted part of the language of Story, but misunderstood his meaning, which was really to apply the lex loci solutionis.

In Moulis v. Owen, [1907] 1 K. B. 746, the defendant, an Englishman, was sued upon a cheque drawn in England in form on an English bank, which he gave at Algiers for money lost in gaming, which was not illegal by the law of France. The Act was not referred to, but it was assumed by all the judges that English law applied as to whether the cheque was void as being for an illegal consideration. Moulton, L.J., said, at p. 757: "There is no doubt whatever as to what law governs the case. The plaintiff has come to an English court to enforce the payment of an English cheque, and beyond all controversy the matter must be governed by the English law relating to cheques. It seems to me quite immaterial whether we look on this as an instance of the application of the lex fori or the lex solutionis, inasmuch as the consequences are the same." The case turned upon the question as to whether the English Acts against gaming applied to a cheque given for losses in a foreign country where gaming was not illegal. The trial Judge thought they did not: this was reversed in appeal, Moulton, L.J., dissenting. This decision has been freely criticised, and in Saxby v. Fulton, [1909] 2 K. B. 208, it was distinguished and not followed.

From the foregoing as well as from the illustrations which follow will be apparent the difficulties which arise

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before the Act in dealing with the subject matter of the section, and also those in the way of properly construing the language adopted. It would almost appear as if the courts are more likely to attempt to settle some of the difficult questions that arise, by the application of well established principles of the common law or the law merchant, rather than by an attempt to construe the confessedly ambiguous language of the section where it is not absolutely necessary to do so.

The proviso of the section is in case of the acceptor, drawer or endorser of an inland bill who pays it. It would manifestly be a hardship to compel a party to such a bill to ascertain the law of any foreign country in which it might have been endorsed, and to have his rights or obligations determined by it. The principle would apply not only to an endorsement but also to a transfer by delivery.

ILLUSTRATIONS.

Conflict of laws.

1. Where a note made and payable in Quebec was sued upon in Ontario, and a defence of no consideration valid in Ontario was set up, plaintiff who simply joined issue could not show that the consideration was valid by the law of Quebec. He should have replied that it was governed by Quebec law and have proved it like any other fact: Hope v. Caldwell, 21 U. C. C. P. 241 (1871); Robertson v. Caldwell, 31 U. C. Q. B. 402 (1871). See Benham v. Lord Mornington, 3 C. P. 133 (1846).

2. A note payable in the State of New York was signed by a firm and indorsed there by one of the partners and by two other persons for the accommodation of the firm. It was then taken by another partner to Canada and negotiated there. Held, that it was a Canada contract: Cloyes v. Chapman, 27 U. C. C. P. 22 (1876). See also Gay v. Rainey, 89 Ill. 221 (1878); Bell v. Packard, 69 Me. 105 (1879).

3. Defendant domiciled in Ontario, while in New York, drew a bill in favor of plaintiff upon a person in Ontario, who refused acceptance. Defendant, by drawing the bill, in effect guaranteed its acceptance and payment in Ontario, and in default, agreed to reimburse the holder at New York, so that his contract was governed by the law of New York: Story v. McKay, 15 O. R. 169 (1888); Poth[illegible] v. Brown, 5 East, 124 (1804); Hicks v. Brown, 12 Johns. (N.Y.) [illegible] (1815); Powers v. Lynch, 3 Mass. 77 (1807); Prentiss v. Savage, 7 Mass. 20 (1816).

4. Interpretation in this section means "legal effect" or the liabilities of the parties to the bill. The liability of the drawer and indorser of a bill drawn and indorsed at Buenos Ayres, on a drawee

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Conflict of laws.

In New York, and payable there, is determined by the law of the Argentine Republic, and not by the law of New York: London & Brazilian Bank v. Maguire, Q. R. 8 S. C. 358 (1895).

5. A resident of Halifax while in Paris made a note for the accommodation of the payee and sent it to him at Halifax, where the payee negotiated it. Held, that the liability of the maker was governed by the law of Nova Scotia and not by that of France: Merchants' Bank v. Stirling, 13 N. S. (1 R. & G.) 439 (1880).

6. A bill drawn in Halifax on Manchester, England, is accepted there, payable in London. The interpretation of the acceptance is governed by the law of England: Sanders v. St. Helens, 39 N. S. 370 (1906).

7. A bill was drawn in London upon a drawee in Leghorn, and accepted. By the law of Leghorn, if an acceptor has not sufficient funds of the drawer's in his hands, and the latter fails, the acceptance is vacated. It was held that the liability of the acceptor was to be determined by the law of Leghorn: Burrows v. Jemino, 2 Str. 733 (1726).

8. A promissory note, made and payable in England to bearer, is transferred by delivery in France, where such transfer gives a title. Held, that the holder can recover: De la Chaumette v. Bank of England, 2 B. & Ad. 385 (1831).

9. A bill drawn in Belgium is indorsed in France. Held, that such indorsement is to be interpreted by the law of France: Trimbey v. Vignier, 1 Bing. N. C. 151 (1834); Bradlaugh v. De Rin, L. R. 3 C. P. 538 (1868).

10. A general acceptance given in Paris is to be interpreted by the law of France: Don v. Lippmann, 5 Cl. & F. at pp. 12, 13 (1837).

11. A bill drawn and accepted in Paris and payable in England is dishonored there. The law of England governs as to the rate of interest payable by the acceptor: Cooper v. Waldegrave, 2 Beav. 282 (1840).

12. A note made and payable in Scotland in favor of a payee and not to his order or bearer, being negotiable by the law of Scotland, was indorsed in England, when such a bill was not negotiable there. Held, that it was a valid negotiation: Robertson v. Bertram, 1 Ross, Scotch L. C. 824 (1843).

13. If a bill drawn in one country and payable in another is dishonored, the drawer is liable according to the law of the place where the bill was issued and not where it was payable: Allen v. Kemble, 6 Moore P. C. 314 (1848); Astor v. Benn, 2 Rev. de Lég. 27 (1812).

14. A bill drawn in California upon Washington is dishonored. The drawer is liable for interest at the rate in California: Gibbs v. Fremont, 9 Ex. 25 (1853).

15. A bill of exchange was drawn, accepted and payable in England. It was indorsed in France in proper English form, but in one

which would not by French law give the indorser the right to sue in his own name. Held, that the indorsee could recover from the acceptor in England: Lebel v. Tucker, L. R. 3 Q. B. 77 (1867).

Illustrations.

16. A bill drawn in England upon a person in Spain is indorsed in Spain. Such indorsement must be construed by the law of Spain: per Brett, L.J., in Horne v. Rouquette, 3 Q. B. D. at p. 520 (1878).

17. Bills drawn and indorsed in England and payable in Milan are dishonored. The Milan holder sues the drawer and indorsers in England. They plead that the bills are Italian, and by the law of Italy plaintiff's remedy is lost because no action was taken within 15 days after protest. Held, to be no defence in England: Cassanova v. Meier, 1 T. L. R. 215 (1885).

18. A man domiciled in Cape Colony, there assigned to his wife a policy on his life in an English company. He died at Cape Colony, being still domiciled there. Held, that the law of the colony which prohibited an assignment from husband to wife applied, and she could not recover: Lee v. Abdy, 17 Q. B. D. 309 (1886).

19. A note was signed and issued in Belgium. In an action by the indorsee against the maker, Belgian experts were examined as to whether the note was negotiable by Belgian law. The jury said they could not decide whether it was or not. This was held to be equivalent to a finding that the law of Belgium was not proved, and the note being negotiable by English law, it was assumed that it would be by Belgian law, and judgment given in favor of plaintiff: Nouvelle Banque de l'Union v. Ayton, 7 T. L. R. 377 (1891).

20. An inland English note payable to bearer, and overdue, was sold by judicial sale in Norway. By Norwegian law, the transferee of an overdue note in good faith takes it free from equities. Held, that the transfer was governed by Norwegian law and defendant could not set up the equities attaching to the note which he had against the person who held it at maturity: Alcock v. Smith, [1892] 1 Ch. 238.

21. The validity of the transfer of a bill, like that of a chattel, is determined by the law of the country where the transfer is made: Embiricos v. Anglo-Austrian Bank, [1905] 1 K. B. 677.

Laws as to duties of holder.

162. The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured. 53 V., c. 33, s. 71 (2 *c*). Imp. Act, s. 72 (3).

This is one of the provisions of the Act to which the rule laid down in section 161 is subject.

The last clause of the section should be construed as if it read "where the act is done or to be done."

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ILLUSTRATIONS.

Lex loci.

1. A bill is payable in Buffalo. Presentment, etc., are governed by the law in force there. In the absence of proof of that law, it will be presumed to be the same as here, and no presentment being proved or notice of dishonor, drawer and indorsers are not liable: Buffalo Bank v. Truscott, 1 Rob. & Jos. Dig. 495 (1838). See Howard v. Subourin, 5 L. C. R. 45 (1854); Allen v. McNaughton, 9 N. B. (4 Allen) 234 (1858).

2. Notes made in New Brunswick were payable in England and dishonored there. An indorser lived at Richibucto, N.B. The holder mailed a notice of protest to him there, but not being certain of his address, sent the protest to his agent in Halifax, who at once mailed a notice to him. Similar notes were also protested and sent to Halifax, and notices sent him from there. Held, that the notices were sufficient under section 49 of the Imperial Act: Fleming v. McLeod, 39 S. C. Can. 290 (1907).

3. Defendant indorsed in England to plaintiff a bill payable in Paris. Plaintiff indorsed to a Frenchman, who, on dishonor, had the bill protested and defendant notified according to French law. Held, that defendant was duly notified and was liable to plaintiff: Hirschfield v. Smith, L. R. 1 C. P. 340 (1866); Rothschild v. Currie, 1 Q. B. 43 (1841).

4. A bill drawn in England and payable in Spain is indorsed in England by defendant to plaintiff, who indorses it to M. in Spain. It is dishonored by non-acceptance, and twelve days later M. notifies plaintiff, who at once notifies defendant. The law of Spain does not require notice of non-acceptance. Defendant is liable to plaintiff: Horne v. Rouquette, 3 Q. B. D. 514 (1878).

Currency.

163. Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. 53 V., c. 33, s. 71 (2 *d*). Imp. Act, c. 72 (4).

Foreign currency.

The above rule is the same as that applied by section 136 to the converse case of a bill drawn in Canada and dishonoured abroad, and was the old law: Hirschfield v. Smith, L. R. 1 C. P. at p. 353 (1866). Although the bill is drawn for a certain sum expressed in the terms of a foreign currency, it would not on principle be satisfied by a tender in Canada of so much foreign coin or currency, unless the same passed current as money in Canada, and in case of dispute

as legal tender here. A bill must be for a sum certain in "money;" s. 17; and if made payable in Canada, this would, in the absence of some express stipulations, mean the equivalent in Canadian money of the amount named in the bill calculated as above indicated. § 163

The same rule applies where bills payable abroad in a foreign currency are sued upon in Canada. The holder is entitled to recover the amount according to the rate of exchange on the day of maturity or dishonour, with interest thereon and expenses.

164. Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. 53 V., c. 33, s. 71 (2 *e*). Imp. Act, s. 72 (5). Due date.

This is one of the provisions to which section 161 is subject, and is in accordance with the general principles of international law. The difference arises chiefly from legal holidays, and whether or not days of grace are allowed.

ILLUSTRATIONS.

1. A note drawn in Montreal was made payable in New York. The third day of grace fell on Sunday. The note was protested on Saturday in accordance with the law of New York. Held, to be regular: Bank of America v. Copeland, 4 L. N. 154 (1881).

2. A bill is drawn in England payable in Paris three months after date. Before it matures, a moratory law is passed in France, in consequence of war, postponing the maturity of all current bills for a month. The bill is subject to this French law: Rouquette v. Overmann, L. R. 10 Q. B. 525 (1875).

Capacity. — Any person who has capacity to contract may, as a rule, incur liability as party to a bill: s. 47. Where there is a conflict of different laws on this question, the general rule, as stated ante p. 134, is that it is governed by the law of the domicile. The Act has no provision on this question of conflict unless such a wide meaning should be given to the word "interpretation" in section 161 as to make it include the capacity of the parties. The Quebec Code, Art. 6, adopts the lex domicilii. A Quebec minor who

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is a trader may bind himself by a note for the purpose of his business: City Bank v. Lafleur, 20 L. C. J. 131 (1875), but a note given by an Ontario trader under 21 in Montreal and payable there is null, as by the law of Ontario he cannot bind himself: Jones v. Dickinson, Q. R. 7 S. C. 315 (1895).

Discharge.

Discharge.—The general rule is that a defence or discharge, good by the law of the place where the contract is made or is to be performed, is to be held of equal validity in every place where the question may come to be litigated. In England and America this principle has been adopted, and acted on with a most liberal justice: Ellis v. McHenry, L. R. 6 C. P. at p. 234 (1871); Gibbs v. Société Industrielle, 25 Q. B. D. at p. 405 (1890); Story on Conflict of Laws, secs. 331, 332. This rule would apply not only to the discharge of a bill, but also to the discharge of any party to it. The latter point arises most frequently with reference to discharges in bankruptcy: Potter v. Brown, 5 East, 124, 130 (1804); Smith v. Smith, 2 Johns. (N. Y.) 235 (1807); Blanchard v. Russell, 13 Mass. 1 (1816). Where, however, a bill was drawn, accepted and payable in England, the bankruptcy and discharge of the acceptor in Australia did not relieve him from the bill: Bartley v. Hodges, 30 L. J. Q. B. 352 (1861). Where an Austrian bill was discharged by a partial payment there, it was held good in England where if paid it would not have had that effect: Ralli v. Dennistoun, 6 Ex. at p. 496 (1861). If a Demerara bill is discharged by compensation there, it will be held discharged in England, where compensation would not have this effect: Allen v. Kemble, 6 Moore P. C. 314 (1838). So a bill discharged in Quebec by either compensation or prescription, would be held to be discharged in other countries where these would not operate as discharges to bills made or payable there. See Huber v. Steiner, 2 Bing. N. C. 211 (1835); Harris v. Quine, L. R. 4 Q. B. 653 (1869); Story, s. 582.

Lex loci contractus.—The general effect of this part of the Act will probably be to establish more firmly the doctrine of the law of the place where the contract is made, especially if section 161 is construed in a liberal way and a wide meaning given to the word "interpretation."

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Lex loci contractus.

Before the Imperial Act, the case of Lebel v. Tucker, L. R. 3 Q. B. 77 (1867), and the remarks of Cockburn, C.J., in Rouquette v. Overmann, L. R. 10 Q. B. 525 (1875), appeared to have somewhat shaken the doctrine laid down in Allen v. Kemble, 6 Moore P. C. 314 (1848), and Gibbs v. Fremont, 9 Ex. 25 (1853), in favour of the application of the law of the place where the contract was made. In Alcock v. Smith, [1892] 1 Ch. 238, however, the corresponding clauses of the Imperial Act, which have been copied into our own, were considered, and the doctrine of the earlier cases above cited re-affirmed. This case was approved and followed in the recent case of Embiricos v. Anglo-Austrian Bank, [1905] 1 K. B. 677. In the Quebec case of London and Brazilian Bank v. Maguire, Q. R. 8 S. C. 358 (1895), Andrews, J., gave a very able and comprehensive judgment, in which the authorities were carefully reviewed and full effect given to the wide meaning of "interpretation" in section 161 as to the drawer and indorsers. On the other hand the recent English case of Moulis v. Owen, [1907] 1 K. B. 746, while not referring to the Act, adopts the law of the place of performance as to the consideration for the contract of the drawer of a cheque. In Canada before the Act it was held that in an action against the drawer on a foreign bill the legality of the consideration was determined by the law of the place where it was drawn: Story v. McKay, 15 O. R. 169 (1888); and notes made in Ontario and Manitoba payable in the United States, but without the words "not otherwise or elsewhere" were governed by Canadian law: Hooker v. Leslie, 27 U. C. Q. B. 295 (1868); North-Western Bank v. Jarvis, 2 Man. 53 (1883).

The drawer of a bill on a foreign country which is dishonoured is liable for interest at the legal rate of the country in which the bill was drawn and not of that in which it was dishonoured: Gibbs v. Fremont, 9 Ex. 25 (1853); Allen v. Kemble, 6 Moore P. C. at p. 321 (1848).

Lex loci solutionis.—The law of the place of payment or performance is applied in the Act with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a protest or notice of dishonour: s. 162. Also

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as to the amount payable on foreign bills expressed in foreign currency: s. 163; and so to the due date of bills: s. 14.

Lex loci solutionis.

The same rule would be applicable where a party to a bill has impliedly contracted with reference to the law of the place of performance, as where a drawee has accepted or made a bill payable in another country, or where it is otherwise manifest that such was the intention: Moulis v. Owen, [1907] 1 K. B. 746; Re Marseilles Extension Ry. Co., 30 Ch. D. 598 (1895).

On this principle a drawee who accepts a bill in one country payable in another is liable for interest at the legal rate of the latter: Cooper v. Waldegrave, 2 Beav. 282 (1840); Westlake, § 229. See also Re Gillespie, Ex parte Robarts, 18 Q. B. D. 286 (1886); Re Commercial Bank of South Australia, 36 Ch. D. 522 (1887): s. 134.

Lex fori.

Lex fori.—The law of the place where the action is brought or proceedings are taken governs as to procedure and all matters belonging to the remedy or mode of enforcement: De la Vega v. Vianna, 1 B. & Ad. 284 (1830). Under this head are comprised:—

1. The limitation of actions or prescription, where the remedy is barred but the debt not extinguished; subject to the operation of the law in places like Quebec where it operates as a discharge. Don v. Lippmann, 5 Cl. & F. 1 (1837); British Linen Co. v. Drummond, 10 B. & C. 903 (1830); Fergusson v. Fyffe, 8 Cl. & F. at p. 140 (1841); Pardo v. Bingham, L. R. 4 Ch. 735 (1869); Alliance Bank v. Carey, 5 C. P. D. 429 (1880). See ante pp. 360-1.

2. Set-off or compensation, subject to the same limitations. See ante p. 358.

3. The admission of evidence: Yates v. Thompson, 3 Cl. & F. 544 (1835); Bain v. Proprietors W. & F. Ry. Co., 3 H. L. Cas. 1 (1850); Leroux v. Brown, 12 C. B. 801 (1852); Williams v. Wheeler, 8 C. B. N. S. at p. 316 (1860).

The Quebec Civil Code provides:—

Article 1206: "Where no provision is found in this Code for the proof of facts concerning commercial matters

recourse must be had to the rules of evidence laid down by the laws of England." § 164

Civil Code.

Article 2340: "In all matters relating to bills of exchange not provided for in this Code or the Federal laws, recourse must be had to the laws of England in force on the 30th day of May, 1849."

Article 2341: "In the investigation of facts, in actions or suits founded on bills of exchange drawn or endorsed by traders or other persons, recourse must be had to the laws of England in force at the time specified in the last preceding article, and no additional or different evidence is required or can be adduced by reason of any party to the bill not being a trader."

See Baril v. Têtrault, 29 L. C. J. 208 (1885); Guy v. Paré, Q. R. 1 S. C. 443 (1892); Hébert v. St. Cyr, 1 R. J. 246 (1895); Boulet v. Metayer, Q. R. 23 S. C. 289 (1902).

PART III.

CHEQUES ON A BANK.

The Third Part of the Act, which is devoted to cheques, consists of eleven sections, 165 to 175, inclusive. The first three of these relate to cheques generally, and the remaining eight to crossed cheques. They are taken from the Imperial Act, with but two slight changes. The first is the substitution of the word "bank" for "banker." The reason for this is that in England the banking business is carried on largely by individuals, partnerships and incorporated companies, while in Canada the Bank Act and the Bills of Exchange Act recognize only those banks incorporated under the Acts referred to on the next page. The other is the addition of sub-section 7 to section 169, providing for the uncrossing of a crossed cheque.

English and Canadian law differ.

Although the language of the two Acts is thus in the main identical, there are two marked differences between the law and the practice in the two countries. The first is in section 60 of the Imperial Act which provides that when a demand bill payable to order is drawn on a banker, and he pays it in good faith, he is not responsible, even if the endorsements are forged. This rule applies to a cheque, which is a bill of exchange drawn on a banker payable on demand. An effort was made by the banks to have this clause embodied in the Canadian Act, but the House of Commons was unwilling to make the change. The use of crossed cheques in England has been adopted largely to overcome the danger arising from such forged endorsements. Under the Canadian law there is not the same necessity, and although the Act has introduced the English statute as to the crossing of cheques, the practice has been adopted to a very limited extent.

The other great difference arises from the fact that the practice of getting cheques certified or accepted, so common in Canada, does not obtain in England. Byles and Chalmers

say that to issue them accepted would probably be an infringement of the Bank Charter Acts. There being no corresponding Acts in Canada the practice has developed and become general. § 165

Not a cheque.

A cheque drawn upon a private banker would not be a cheque within the meaning of the Bills of Exchange Act, and would not be subject to the special rules contained in this part of the Act, such as crossing and the like. It would be simply a bill of exchange, payable on demand, and subject to such provisions of the Act as apply to an instrument of that kind: Trunkfield v. Proctor, 2 O. L. R. 326 (1901). It would also be subject to such provisions of the common law and the law merchant as are applicable to such an instrument.

165. A cheque is a bill of exchange drawn on a bank payable on demand. 53 V., c. 33, s. 72 (1). Imp. Act, s. 73 (1).

Cheque defined.

Reading this definition in connection with that of a bill of exchange in section 17, a cheque is an unconditional order in writing addressed by a person to a bank, signed by the person giving it, requiring the bank to pay on demand a sum certain in money to, or to the order of a specified person, or to bearer.

According to the definition in section 2 (*c*), "bank" means "an incorporated bank or savings bank carrying on business in Canada"; that is, one of the banks to which the Bank Act, 3-4 Geo. V. c. 9, applies: or a savings bank under R. S. C. c. 30 or 3-4 Geo. V. c. 12; or a penny bank under R. S. C. c. 31; or a bank under an old provincial charter.

In Quebec, under the Code, a cheque might be drawn upon a private banker as well as upon an incorporated bank: Art. 2319. This was the law before the Act in the other provinces also.

A cheque should be addressed to the bank by its proper corporate name, and not to the "cashier," "manager" or "agent" of the bank. An instrument addressed to one of these would not, strictly speaking, be a cheque within

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Form of cheque.

the meaning of the Act, and if marked or accepted it might be claimed that the bank was not liable, as it would not be the drawee of the instrument and consequently might not become liable by acceptance.

An instrument in the form of a cheque addressed by a branch of a bank to another branch of the same bank is not, strictly speaking, a cheque within the meaning of this Act, the drawer and drawee being the same person: Brown v. National Bank, 18 T. L. R. 669 (1902): Capital & Counties Bank v. Gordon, [1903] A. C. 240. The holder may, however, treat it either as a cheque or a promissory note: s. 26.

The words "on demand" need not be on the cheque, as they are understood when no time for payment is expressed: s. 23.

Not invalid.

A cheque is not invalid because it is not dated, nor because it does not specify the place where it was drawn, nor because it is antedated, or post-dated, or bears date on a Sunday or other non-juridical day: s. 27: Wood v. Stephenson, 16 U. C. Q. B. 419 (1858): and the fact that it is post-dated is not an irregularity: Hitchcock v. Edwards, 60 L. T. N. S. 636 (1889): Carpenter v. Street, 6 T. L. R. 410 (1890). But a cheque dated seven days after delivery is, in substance, a bill of exchange at seven days' date: Forster v. Mackreth, L. R. 2 Ex. 163 (1867). A bank should not pay a cheque before the day of its date: DaSilva v. Fuller, cited in Morley v. Culverwell, 7 M. & W. 178 (1840).

Payable on a future day.

In the United States there has been a conflict as to whether a cheque may be made payable on a day subsequent to its date. The weight of authority is in favour of what is law under our Act, that such an instrument is not a cheque, and has three days' grace. See Bowen v. Newell, 13 N. Y. 290 (1853): Morrison v. Bailey, 5 Ohio St. 13 (1855): Harrison v. Nicollet Bank, 41 Minn. 488 (1889): 2 Daniel, § 1574. But see contra Re Brown, 2 Story, C. C. 502 (1843): Westminster Bank v. Wheaton, 4 R. I. 30 (1856): Champion v. Gordon, 70 Penn. St. 474 (1872): Way v. Towle, 155 Mass. 374 (1892). As in those states that have adopted the Negotiable Instruments Law there

are no days of grace, the question has become of less practical importance there. § 165

The Act does not make it a part of the definition that the drawer should be a customer of the bank; but if a person gets goods or money on the strength of a cheque when he has no account he is guilty of obtaining the goods or money by false pretences, and is liable to three years' imprisonment: Criminal Code, R. S. C. c. 146, s. 405: Rex v. Jackson, 3 Camp. 370 (1813); Reg. v. Hazelton, L. R. 2 C. C. 134 (1874). False pretences.

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof, and is not, in itself, a false representation of a fact past or present: The King v. Richard, 11 Can. Cr. Cas. 297 (1906).

The mere fact that a cheque is drawn with spaces which can be utilized for the purpose of fraudulent alteration is not by itself any violation of duty by the customer to his banker: Schofield v. Londesborough, [1896] A. C. 514 followed: Colonial Bank v. Marshall, [1906] A. C. 559.

2. Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V., c. 33, s. 72. Imp Act, s. 73. Provisions as to bills apply.

The exceptions are, (1) that failure to present a cheque for payment within a reasonable time does not discharge the drawer, except in so far as he is damaged thereby: s. 166: (2) that the bank should not pay after notice of the customer's death: s. 167: and (3) the provisions relating to crossed cheques: ss. 168 to 175, inclusive. Exceptions.

The law as to the presentment of a cheque for payment differs from that respecting a bill of exchange payable on demand. In suing on a cheque it is not necessary to allege or prove presentment within a reasonable time or protest for non-payment. These are matters of defence. It is for the drawer to allege and prove damage: De Serres v. Euard, 2 R. 17 S. C. 199 (1899).

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Chief provisions.

The chief provisions of the Act relating to bills paya on demand, which also apply to cheques, are the follow (1) There are no days of grace: s. 42; (2) when t appear on their face to have been in circulation for an reasonable length of time they are deemed to be over so as to prevent a holder from acquiring them free fr defects of title: s. 70; (3) they must be presented for p ment within a reasonable time after endorsement to ch an endorser: s. 86.

Not an assignment.

A cheque being a bill of exchange does not operate as an assignment of funds in the hands of the bank avai for the payment thereof, and until it accepts a cheque bank is not liable on it: s. 127. The holder of an u cepted cheque, consequently, cannot sue the bank upon except under the circumstances mentioned in sect 186. Under the Code it was held in Quebec that a cheque was an assignment of so much of the drawer's funds: Ma v. Molsons Bank, 23 L. C. J. 293 (1879). This is the law in Scotland: s. 53 (2) of the Imperial Act; and also in France: Nougnier, §§ 392, 431.

See section 49 (*b*), as to the claim against a bank which has paid a cheque upon a forged endorsement out of the funds of the drawer, and the necessity for giving notice to the bank within a year.

Cheques Certified or Accepted.—A cheque or any bill payable on demand does not require acceptance and the only presentment usually contemplated is that for payment. If, however, instead of presenting the instrument for payment at once, the drawer or holder prefers to accept in the meantime the credit of the drawee bank instead of the money, there is nothing in the common law or the law merchant to prevent the latter from certifying or accepting the bill or cheque and thus becoming subject to the provisions of the Act relating to an acceptor.

In England.

In England Lord Mansfield discussed the marking of a demand draft or cheque upon a banker in Robson v. Bennett, 2 Taunt. 388 (1810), and says at p. 396, "The effect of that marking is similar to the accepting of a bill," and that

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is a practice of bankers after a certain hour only to mark ... and to pay them at the clearing house the next day. In Keene v. Beard, 8 C. B. N. S. at p. 380 (1860), Erle, C.J., suggests that a banker might accept a cheque; and in Good ... v. Roberts, L. R. 10 Ex. at p. 351 (1875), Cockburn, C.J., says, "a custom has grown up among bankers themselves of marking cheques as good for the purposes of clearance, by which they become bound to one another." The best writers on the subject explain that the practice did not extend in England, as it would be a violation of the Bank Charter Acts to issue cheques after their acceptance by the banks on which they were drawn. It would appear that the marking by English banks is something informal and not sufficient to constitute an acceptance under section 17 of the Imperial Act, and the rights thereby acquired do not appear to have come up for judicial determination. In England.

In the United States the practice is one of comparatively recent growth, but has become general, and in the city of New York alone, the daily aggregate of certified cheques it is said, amounts to hundreds of millions of dollars. Where the holder of a cheque gets it accepted by the drawee bank it is as if he had drawn the money, as he is entitled to do, and redeposited it to the credit of the holder of the cheque, which thereby becomes the equivalent of a deposit receipt payable to the holder: 2 Daniel, § 1602; Randolph Bank v. Hornblower, 160 Mass. 101 (1894). The Negotiable Instruments Law has recognised and adopted the practice in the following sections: "323. Where a cheque is certified by the bank on which it is drawn the certification is equivalent to an acceptance.—324. Where the holder of a cheque procures it to be accepted or certified, the drawer and all indorsers are discharged from all liability thereon." In United States

In Canada the practice is said to have been introduced over fifty years ago and is now firmly established. There is nothing in this Act or in the Bank Act to interfere with it as in England. It has long been well settled that by such certification or acceptance the bank becomes liable to the holder and that there is privity between them: Banque Nationale v. City Bank, 17 L. C. J. 197 (1873); Exchange In Canada.

§ 165 Bank v. Banque du Peuple, M. L. R. 3 Q. B. (1886); de Commercial Bank, 10 Man. 171 (1894.)

Certified.

If the cheque is certified at the request of the drawer before issue the liability of the drawer and indorsers is different from what it is when certified at the request of a holder. In the former case the bank is in the position of an ordinary acceptor, and its credit is added to that of the drawer: in the latter case the bank becomes the sole debtor and the drawer and endorsers are discharged.

In Privy Council.

An illustration of acceptance at the request of the drawer is found in Gaden v. Newfoundland Savings Bank [1899], A. C. 281—a case from Newfoundland where the American and Canadian practice had been adopted. Their Lordships of the Privy Council speak of the operation (p. 285), as "this mode of indicating the acceptance of a cheque by the bank on which it is drawn," and proceed to say: "A cheque certified before delivery is subject, as regards its subsequent negotiation, to all the rules applicable to uncertified cheques. The only effect of the certifying is to give the cheque additional currency by shewing on the face that it is drawn in good faith on funds sufficient to meet its payment, and by adding to the credit of the drawer that of the bank on which it is drawn." A similar case from Canada is that of the Imperial Bank v. Bank of Hamilton [1903] A. C. 49, where the foregoing case was approved and followed. Their Lordships say at p. 54, "The effect of this marking or certifying" (at the request of the drawer), "was examined and explained by this Board in Gaden v. Newfoundland Savings Bank."

No special legislation.

There is no legislation in Canada similar to the rule in section 324 of the Negotiable Instruments Law above quoted but it is founded on principle and the Canadian Courts adopted it before the Act of 1890 and have since consistently followed it: Boyd v. Nasmith, 17 O. R. 40 (1888): Johns v. Standard Bank, 2 O. W. N. 910 (1911); Wellesley v. McFaddin, 19 O. W. R. 637 (1911): Legaré v. Arcand, Q. R. 9 S. C. 122 (1905): Jacques Cartier v. Corporation de Limoilu, Q. R. 17 S. C. 211 (1899); Brunelle v. Origuy, Q. R. 21 K. B. 302 (1911).

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The contract of the drawer of the cheque is that if it is presented to the bank on which it is drawn within a reasonable time it will be paid. If, however, the holder instead of presenting it for that purpose requests the bank to accept or certify it, thereby withdrawing the amount entirely from the control of the drawer, and accepting instead of the money the promise of the bank to pay it to him or any future holder of the cheque, he accepts this new contract in lieu of that of the drawer and not in addition to it. The effect in each of the three last above cited cases was that the holder by so acting prevented the drawer from withdrawing his deposit, as he might otherwise have done when the banks were on the eve of suspension.

Form of certificate.

In only one of the foregoing cases is the precise form of the certificate or acceptance shewn; but they would all appear to have been a sufficient compliance with the laws in force at the time, and to have been written on the bill, and to bear the stamped name of the bank or the initials of the proper officer, or something that had been adopted by the bank as its signature for this purpose, in some cases with the word "accepted," "good," "certified" or some equivalent expression. The bank may under section 38 give only a qualified acceptance or even indicate that its marking or certifying of the cheque is not to be taken as an acceptance; but unless it does so in clear terms, it should be held to have given the usual undertaking.

Effects of certificate.

Among the effects of such certifying would appear to be the following:—(1) the bank becomes the principal debtor and engages that it will pay the cheque to the holder on demand or at some later time named; s. 128; (2) the bank is subject to the estoppels in s. 129; (3) the drawer has no longer the right to countermand payment of the cheque after its issue; and (4) if presented for acceptance by a holder and not by the drawer, the drawer and all endorsers antecedent to such holder are discharged.

If a cheque is certified at the request of the drawer and he does not issue it or subsequently becomes the holder, he may either have the certificate cancelled and the entry reversed, or may deposit it in the bank with a like effect.

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ILLUSTRATIONS.

1. The production of a cheque is not even prima facie evidence of money lent by the drawer: Foster v. Fraser, Rob. & Jos. Dig. 652 (1810); Nichols v. Ryan, 2 R. L. 111 (1868); Dufresne v. St. Louis, M. L. R. 4 S. C. 310 (1888); Allaire v. King, Q. R. 33 S. C. 343 (1908).

2. A cheque may be post-dated, and is then payable on the day of its date without grace: Wood v. Stephenson, 16 U. C. Q. B. 119 (1858).

3. Plaintiff deposited in defendants' bank the cheque of a third party on another bank in the same town. Defendants credited it on his pass-book as cash and stamped it as their property. They presented it the next business day when it was dishonoured. If they had presented it the same day, it would have been paid. Held, that the bank was not liable: Owens v. Quebec Bank, 30 U. C. Q. B. 382 (1870).

4. Where a bank paid cheques on forged indorsements, the receipt given by the plaintiffs at the end of the month was, at most, an acknowledgment that the balance was correct on the assumption that the cheques had been paid to the proper parties. Where the names of the payees had also been forged on an application for a loan to plaintiffs, the cheques were not payable to fictitious payees: Agricultural S. & L. Association v. Federal Bank, 6 Ont. A. R. 192 (1880).

5. The Bank of Montreal allowed a private banker at London to put on his cheques "payable at Bank of Montreal, Toronto, at par." Held, that these words simply meant that there would be no charge for cashing the cheques, and not that the Bank of Montreal would pay them if there were no funds of the drawer to meet them: Rose-Belford Printing Co. v. Bank of Montreal, 12 O. R. 544 (1886).

6. The payee of a cheque took it to the bank on which it was drawn the same day as he received it from the drawer, and had it marked "good," the amount being charged to the drawer's account; but he did not demand payment. The bank suspended payment that evening, and the next day the cheque was presented for payment and dishonoured. Held, that the drawer was discharged from all liability thereon: Boyd v. Nasmith, 17 O. R. 40 (1888); Wellesley v. McFaddin, 19 O. W. R. 637 (1911); Legaré v. Arcand, Q. R. 9 S. C. 122 (1895); Banque Jacques Cartier v. Corporation de Limoilou, Q. R. 17 S. C. 211 (1899); Brunelle v. Ostigny, Q. R. 21 K. B. 302 (1911); Brossard v. Sterling Bank, Q. R. 43 S. C. 133 (1912); Northern Bank v. Yuen, 2 Alta. 310 (1909); Merchants Bank v. State Bank, 10 Wall. (U.S.) 647 (1870); First National Bank v. Leach, 52 N. Y. 350 (1873); Minot v. Russ 156 Mass. 458 (1892).

7. An instrument in the form of a cheque with the words "cheque conditional deposit" written on the face of it, is not a cheque, not being an unconditional order to pay: Hately v. Elliott, 9 O. L. R. 185 (1905). See Bavins v. London & S. W. Bank, [1900] 1 Q. B. 170.

8. A government clerk forged departmental cheques, and deposited them under a fictitious name in different banks, which col-

lected them from the drawee bank through the clearing house, and paid out the money after the payment of the cheques. By fraudulent checking of the lists of departmental cheques paid, he procured the sending to the bank certificates of the correctness of such lists. His forgeries were not discovered for months. Held, affirming the trial Judge and the Ontario Court of Appeal, that there could be no estoppel against the Crown, and that the drawee bank was liable and could not recover from the collecting banks: Bank of Montreal v. The King, 38 S. C. Can. 258 (1907). Leave to appeal refused by Privy Council.

9. Where the forgery of a cheque consisted in the amount being raised, the collecting bank was held liable for the amount by which it was raised, and which had been paid through the clearing house: Imperial Bank v. Bank of Hamilton, [1903] A. C. 49; Dominion Bank v. Union Bank, 40 S. C. Can. 366 (1908).

10. A bank was held liable for the amount of a cheque it had lost, which the drawer disputed, although the latter had been guilty of negligence in not objecting earlier when it was entered in his pass-book: Fournier v. Union Bank, 2 Stephens' Que. Dig. 99; Cons. Que. Dig. 185 (1873).

11. Where an account bears interest, it ceases on the amount of a cheque drawn on the account when the cheque is marked, although the money is not actually drawn out until long after: Wilson v. Banque Ville Marie, 3 L. N. 71 (1880).

12. A bank was held liable to the holder of a marked cheque: Banque Nationale v. City Bank, 17 L. C. J. 197 (1873), even when marked good only on a future day by the president and cashier: Exchange Bank v. Banque du Peuple, M. L. R. 3 Q. B. 232 (1886).

13. An instrument in the form of a cheque is none the less a cheque because not drawn against money on deposit, but because an overdraft or advance by the bank: Bank of Montreal v. Rankin, 4 L. N. 302 (1881).

14. Items of claim older than a cheque cannot properly be set up in compensation against it: Dorion v. Dorion, 5 L. N. 130 (1882).

15. A cheque should be presented the day after delivery and notice of dishonor given to charge the indorser: Lord v. Hunter, 6 L. N. 310 (1883); Boddington v. Schlenker, 4 B. & Ad. 752 (1833).

16. A cheque is a commercial matter, especially when given by a trader, and payment of it may be proved by parol in the Province of Quebec, even when above $50: Baril v. Tétrault, 29 L. C. J. 208 (1885).

17. A bank acting as agent for another bank is not authorized, in the absence of an express agreement, to cash a cheque drawn upon the principal bank, but not accepted by it: Maritime Bank v. Union Bank, M. L. R. 4 S. C. 244 (1888).

18. A cheque payable to C. M. & S., or bearer, was indorsed by them and stamped for deposit to their credit in the bank where they

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Illustrations.

kept their account. Their clerk, instead of depositing it, took it to the bank on which it was drawn, and the teller paid it without noticing the writing on the back. It was held that such a cheque could not be restrictively indorsed, and the bank so paying it was not liable: Exchange Bank v. Quebec Bank, M. L. R. 6 S. C. 10 (1890).

19. Where a person for accommodation lends his cheque to another person, he cannot refuse to pay the same to a third party who, in good faith, has given value for it: Kenny v. Price, 20 R. L. 1 (1890).

20. A person receiving a cheque seven months after its date, and after it was drawn, has no greater right against the drawer than the previous holder, in whose hands it was void as having been given for illegal expenditure at an election: Dion v. Boulanger, Q. R. 4 S. C. 358 (1893); confirmed in Review, 31st October, 1893.

21. A third party, who is the holder in good faith, of a cheque given in settlement of a gambling debt, can recover the amount. The fact that the cheque was not presented at the bank until a month after it was drawn does not prevent recovery against the drawer: Dion v. Lachance, Q. R. 14 S. C. 77 (1898).

22. Cheques and other negotiable instruments are presumed to have been given for value, although this is not expressed. The evidence to rebut this presumption must be clear and convincing: Larraway v. Harvey, Q. R. 14 S. C. 97 (1898).

23. L. gave an agent A. a cheque payable to the order of M., marked "deposit," to be used as a deposit on a purchase from the latter through his intervention. M. indorsed and applied the cheque on an old account against A. Held, that M. was, under the circumstances, bound to account to L. for the amount of the cheque: Leipschitz v. Montreal Street Ry. Co., Q. R. 9 Q. B. 518 (1899).

24. The payee of a cheque endorsed it and gave it for collection to a bank, which placed to his credit the amount less the cost of collection, and sent it to the bank on which it was drawn, accepting a draft on the head office of the latter bank. This was sent through the clearing house, but before presentation the bank (drawee) had suspended payment. Held, that the payee incurred only the ordinary liability of an indorsee and was liberated by the surrender of the cheque, and the acceptance of the draft: Banque de St. Hyacinthe v. Guilbault, 8 R. J. 115 (1901).

25. The initialling of a cheque by the cashier does not amount to an acceptance. A cheque so initialled received by the defendant only a few days before the trial, when it was more than four years old, could not be used by him as a set-off to the bill of exchange on which he was sued: Commercial Bank v. Fleming, 1 Stevens' N. B. Dig. 294 (1872).

26. H. owed defendant $500, and induced him to indorse his (H.'s) cheque for $1,000 on a bank at N., out of the proceeds of which the debt was to be paid. The two went to a bank at W. to get cash for the cheque. H. alone went into the manager's room, and on his return told defendant he had given the cheque to the manager to

forward it to N. for collection. H., in fact, retained the cheque, and the same day transferred it to plaintiff for value. Held, that defendant was liable on the cheque: Arnold v. Caldwell, 1 Man. 81 (1884).

27. A banker paid a cheque where the amount had been raised, but in such a way that it could not be easily detected. He was held liable to the customer for the difference between the genuine and the altered cheque: Hall v. Fuller, 5 B. & C. 750 (1826).

28. Filling in a blank cheque with a larger sum than that authorized is forgery: Reg. v. Wilson, 2 C. & K. 527 (1847).

29. The holder of an unaccepted cheque has no right of action against a bank, even if it has improperly refused to honor the cheque, as there is no privity of contract between him and the bank: Malcolm v. Scott, 5 Exch. 601 (1850); Fourth Street Bank v. Yardley, 165 U. S. 634 (1897).

30. If there are not sufficient funds to meet a cheque, the bank should not give any more than the information of the fact; it should not disclose the actual balance: Foster v. Bank of London, 3 F. & F. 214 (1862).

31. The cheque of a third party may be the subject of a valid donatio mortis causa: Veal v. Veal, 27 Beav. 303 (1859); Clement v. Cheesman, 27 Ch. D. 631 (1884). The cheque of the donor, not presented until after his death, is not: Hewitt v. Kaye, L. R. 6 Eq. 198 (1868); Beak v. Beak, L. R. 13 Eq. 489 (1872); Re Bernard, 2 O. W. N. 716 (1911); McLellan v. McLellan, 23 O. L. R. 214 (1911). It is, if presented, even though not paid: Bromley v. Brunton, L. R. 6 Eq. 275 (1868).

32. A cheque is not an equitable assignment of so much of the drawer's funds in the hands of his banker, or of a chose in action: Hopkinson v. Forster, L. R. 19 Eq. 74 (1874); Schroeder v. Central Bank, 34 L. T. N. S. 735 (1876).

33. The only effect of a drawee bank initialling a cheque for the drawer is to certify that it has funds of the drawer to meet it, and to add the credit of the bank to that of the drawer. Where a certified cheque is deposited and credited to the depositor, the presumption is that the bank accepted it as agent of the depositor to cash it, and not as acquiring title and guaranteeing its payment: Gaden v. Newfoundland Savings Bank, [1899] A. C. 281.

34. The words "to be retained" written on the face of a cheque do not make it conditional; its effect being only between the drawer and the payee: Roberts v. Marsh, [1915] 1 K. B. 42.

166. Subject to the provisions of this Act,—

(a) where a cheque is not presented for payment within a reasonable time of its issue,

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and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid. 53 V., c. 33, s. 73 (1). Imp. Act, s. 74 (1).

Measure of damage.

The provisions of the Act to which this section is subject, are those in s. 91 relating to excuses for nonpresentment and delay in presentment.

Not presenting.

As regards the drawer, the effect of not presenting a cheque for payment within a reasonable time differs from that relating to other bills payable on demand. In the case of the latter the drawer as well as the endorsers are wholly discharged by the failure to present it for payment within a reasonable time: s. 85. This part of the Act relating to cheques does not modify the rule as regards the endorsers, but the present section lays down a different rule as regards the drawer, who is only discharged to the extent to which he actually suffers damage by the delay, and otherwise is not discharged until relieved by prescription or the Statute of Limitations: Laws v. Rand, 3 C. B. N. S. 442 (1857).

New law in England.

Chalmers says, p. 275: "This section alters the previous law. It was introduced in the Lords by Lord Bramwell to mitigate the rigour of the common law rule. At common law the mere omission to present a cheque for payment did not discharge the drawer, until, at any rate, six years had elapsed, and in this respect the common law appears to be unaltered. But if a cheque was not presented within a reasonable time, as defined by the cases, and the drawer suffered actual damage by the delay, e.g., by the failure of the bank, the drawer was absolutely discharged, even though ultimately the bank might pay (say) fifteen shillings in the pound." The section was substantially the law of

Quebec before the Act, the Code placing the indorsers in the same position:—"If the cheque be not presented for payment within a reasonable time, and the bank fail between the delivery of the cheque and such presentment, the drawer or indorser will be discharged to the extent of the loss he suffers thereby:" Art. 2352. See also Re Oulton, 15 N. B. (Pugs.) 333 (1874). § 166

When the drawer or other person is thus discharged, the holder is a creditor of the bank to the extent of such discharge: clause (*b*).

The law as to the presentation of a cheque differs from that respecting a bill of exchange payable on demand. In suing on a cheque it is not necessary to allege or prove presentment within a reasonable time or to protest for non-payment. These are matters of defence. It is for the drawer to allege and prove damage: De Serres v. Euard Q. R. 17 S. C. 199 (1899). Differs from bill.

(*b*) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it. 53 V., c. 33, s. 73 (*c*). Imp. Act, sec. 74 (2), (3). Holder becomes creditor.

This is, to a certain extent, a modification of the rule in s. 127, that a bill is not an assignment of funds in the hands of the drawee. In England it introduced partially the Scotch principle of s.-s. of s. 53, and in Canada it recognizes in this particular case the principle laid down in Quebec in Marler v. Molsons Bank, 23 L. C. J. 293 (1879). These countries adopted it from the civil law.

2. In determining what is a reasonable time within this section, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. 53 V., c. 33, s. 73 (*b*). Imp. Act, s. 74 (2). Reasonable time.

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Reasonable time.

The following are said to embody the rules as to what is a reasonable time for the presentment of cheques in England:—

In England.

1. If the person who receives a cheque and the bank on which it is drawn are in the same place, the cheque must, in the absence of special circumstances, be presented for payment on the day after it is received: Alexander v. Burchfield, 7 M. & Gr. 1061 (1843); Firth v. Brooks, 1 L. T. N. S. 467 (1864).

2. If the person who receives a cheque and the bank on which it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it: Hare v. Henty, 10 C. B. N. S. 65 (1861); Prideaux v. Criddle, L. R. 4 Q. B. 455 (1869); Heywood v. Pickering, L. R. 9 Q. B. 428 (1874).

3. In computing time, non-business days must be excluded, and when a cheque is crossed, any delay caused by presenting the cheque pursuant to the crossing is excused: sec. 91.

In Canada.

These rules are substantially those that have been recognized in Canada. See Redpath v. Kolfage, 16 U. C. Q. B. 133 (1858); Owens v. Quebec Bank, 30 ibid. 382 (1870); Boyd v. Nasmith, 17 O. R. 10 (1888); Blackley v. McCabe, 16 Ont. A. R. 295 (1889); Sawyer v. Thomas, 18 Ont. A. R. 129 (1890); Marler v. Stewart, Cons. Que. Dig. 212 (1878); Lord v. Hunter, 6 L. N. 310 (1883).

A cheque is deemed to be stale or overdue when it appears on its face to have been in circulation an unreasonable time: s. 70. A bank is not justified in paying such a cheque without inquiry: Serle v. Norton, 2 M. & Rob. 401 (1844).

Whether a cheque is presented within a reasonable time is a question for the jury. In this case they found the delay (4 days) to be unreasonable: Wheeler v. Young, 13 T. L. R. 468 (1897).

As to what is a reasonable time where a cheque is drawn on a bank that is understood to be likely to suspend payment, see Légaré v. Arcand, Q. R. 9 S. C. 122 (1895), where one day was held to be unreasonable, and Banque Jacques Cartier v. Corporation de Limoilou, where the same was held as to three days.

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It has been held that a delay of six days is not necessarily an unreasonable time: Rothschild v. Corney, 9 B. & C. 388 (1829); and the same as to eight days: Campbell v. Riendeau, Q. R. 2 Q. B. 604 (1892); London and County Bank v. Groome, 8 Q. B. D. 288 (1881), and as to ten days: Bank of B. N. A. v. Warren, 19 O. L. R. 257 (1909); but that two months is an unreasonable time: Serrell v. Derbyshire Ry. Co., 9 C. B. 811 (1850). Reasonable time.

Where the holder of a cheque presents it for acceptance instead of for payment, and the accepting bank fails, the drawer and indorsers are discharged: Boyd v. Nasmith, 17 O. R. 10 (1888); Légaré v. Arcand, Q. R. 9 S. C. 122 (1895); Banque Jacques Cartier v. Limoilou, Q. R. 17 S. C. 211 (1899); Brunelle v. Ostigny, Q. R. 21 K. B. 302 (1911); Merchants Bank v. State Bank, 10 Wall. (U.S.) 647 (1870); First Nat. Bank of Jersey City v. Leach, 52 N. Y. 350 (1873).

167. The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by— Authority to pay.

(*a*) countermand of payment; Countermand.

(*b*) notice of the customer's death. 53 V., c. 33, s. 74. Imp. Act, s. 75. Death.

A bank having sufficient funds of the drawer of a cheque in its hands is bound to pay it, and in case of refusal is liable to an action of damages: Marzetti v. Williams, 1 B. & Ad. 415 (1830); Whitaker v. Bank of England, 6 C. & P. 700 (1835); Foley v. Hill, 2 H. L. Cas. 28 (1848); Rolin v. Steward, 14 C. B. 595 (1854); Summers v. City Bank, L. R. 9 C. P. 580 (1874); Todd v. Union Bank, 1 Man. R. 204 (1887); Fleming v. Bank of New Zealand, 16 T. L. R. 469 (1900). The damage recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit, are nominal or limited to interest on the money: Henderson v. Bank of Hamilton, 25 O. R. 641 (1894); Bank of New South Wales v. Milvain, 10 Vict. R. (Law) 3 (1884). Duty to pay.

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Payment by bank.

A bank may, without special instructions, pay any bills or notes, of which the customer is acceptor or maker, and which are payable at the bank: Jones v. Bank of Montreal, 29 U. C. Q. B. 118 (1869); Kymer v. Laurie, 18 L. J. Q. B. 218 (1849); Roberts v. Tucker, 16 Q. B. 560 (1851); Vagliano v. Bank of England, [1891] A. C. 107.

A bank refusing to pay such instruments incurs the same liability as in refusing to pay a cheque: Hill v. Smith, 12 M. & W. 618 (1844); Bell v. Carey, 8 C. B. 887 (1849).

Cheques are payable in the order in which they are presented, irrespective of their dates, provided the date is not subsequent to the presentment: Kilsby v. Williams, 5 B. & Ald. 815 (1822).

Branches of bank.

Where a customer keeps his account at one branch of the bank, other branches are not bound to honour his cheques: Woodland v. Fear, 7 E. & B. 519 (1857). But if he has accounts in two or more branches, the bank may combine them against him, provided they are all in the same right: Garnett v. McKeown, L. R. 8 Ex. 10 (1872); Prince v. Oriental Bank, 3 A. C. 325 (1878). See Daniels v. Imperial Bank, 3 W. L. R. 133 (Alta., 1914).

If, however, the course of dealing was such that the customer was allowed to draw upon one account irrespective of the state of the other, the bank cannot combine them against him without a reasonable notice that the former course of dealing would be discontinued: Cummings v. Shand, 5 H. & N. 95 (1860); Buckingham v. London & Midland Bank, 12 T. L. R. 70 (1895); Ireland v. North of Scotland Banking Co., 8 R. 215 (1880); Kirkwood v. Clyesdale Bank, 15 Sc. L. T. R. 413 (1907).

Entries made in a customer's pass book are prima facie evidence against the bank: Commercial Bank v. Rhind, 3 Macq. H. L. 643 (1860); Couper's Trustees v. National Bank of Scotland, 16 Sess. Cas. 412 (1889).

Partnership cheques were to be drawn by one partner and initialled by the other. The bank paid a cheque drawn by one without the initials of the other. The latter

recovered half the amount as damages: Twibell v. London & Suburban Bank, W. N. (1869), p. 127. § 167

Countermand of payment.

Countermand. — A customer may stop payment of a cheque before it is certified or accepted, but not after: Cohen v. Hale, 3 Q. B. D. 371 (1878); McLean v. Clydesdale Bank, 9 App. Cas. 95 (1883).

Notice of countermand of a cheque by the drawer is a waiver of presentment under s. 92 (*c*): Trupp v. Prescott, 17 B. C. R. 298 (1912).

When a cheque is handed to a person on a condition which the drawer finds is to be broken or eluded, he has the right to stop the payment of the cheque: Weinholt v. Spitta, 3 Camp. 376 (1813); Spincer v. Spin , 2 M. & Gr. 295 (1841): Elliott v. Crutchley, [1904] 1 K. B. 565.

Where a debtor, who has given a cheque for his debt, receives notice that the debt has been assigned by the creditor he is under no obligation to stop payment of the cheque: Benee v. Sherman, [1898] 2 Ch. 582.

One partner has power to stop a cheque issued in the firm name: one executor has power to stop a cheque signed by another: Grant v. Taylor, 2 Hare, 143 (1843).

Garnishee order.

A bank is not bound to honour a customer's cheques after a garnishee order is served on it, even although the balance exceed the judgment: Rogers v. Whitely, [1892] A. C. 118: Yates v. Terry, [1901] 1 K. B. 102.

A vendor of goods, after being paid, fraudulently sold them to another purchaser, who bought in good faith and gave his cheque in payment. The cheque was cashed at another bank on being guaranteed by an indorser. The second purchaser, on being served with garnishee proceedings by the first, stopped payment of the cheque and paid the money into Court. The indorser meanwhile paid the purchasing bank and received the cheque. Held, that he was entitled to the money in Court: Wilder v. Wolf, 4 O. L. R. 451 (1902).

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Countermand of payment.

The drawer of a cheque sent a telegram to the bank countermanding payment, which was placed in the letter box of the bank. It was left in the box when the rest of the letters, etc., were removed, and the cheque was presented and paid before the telegram came to the notice of the bank. Held, that there was no legal countermand, and the bank was not liable for the amount of the cheque even if the telegram was negligently overlooked. Quære — How far is a bank bound to act on an unauthenticated telegram? Curtice v. London City and Midland Bank, [1908] 1 K. B. 293.

Where the drawer of an accommodation cheque countermanded payment of it, a holder who gave value for it with knowledge of the countermand was not a holder in due course, and its accommodation character was a defect of title and he could not recover: Hornby v. McLaren, 24 T. L. R. 194 (1898).

Death of customer.—Payment after the death but before notice is valid: Rogerson v. Ladbroke, 1 Bing. 93 (1822). A bank cannot charge against a deceased customer's account notes maturing or cheques presented after it had notice of his death: Bailey v. Jellett, 9 Ont. A. R. 187 (1884). It has been held in England that after the death of a partner, the surviving partner may draw cheques upon the partnership account: Backhouse v. Charlton, 8 Ch. D. 444 (1878). In Quebec the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of a special agreement to the contrary: C. C. Arts. 1892, 1897.

Donatio mortis causa.

A cheque given as a donatio mortis causa must be presented or negotiated before notice of the death of the donor in order to charge his estate: Hewitt v. Kaye, L. R. 6 Eq. 198 (1868); Bromley v. Brunton, L. R. 6 Eq. 275 (1868); Beak v. Beak, L. R. 13 Eq. 489 (1872); Rolls v. Pearce, 5 Ch. D. 730 (1877); In re Beaumont, [1902] 1 Ch. 889; Re Bernard, 2 O. W. N. 716 (1911); McLellan v. McLellan, 25 O. L. R. 214 (1914).

CROSSED CHEQUES. § 168

Crossed cheques.

Sections 168 to 175, inclusive, treat of crossed cheques. They are copied from the Imperial Act, with the substitution of "bank" for "banker," as private bankers are not recognized by the Canadian Act. The practice of crossing cheques did not obtain in Canada before the Act of 1890, and it has been adopted only to a very limited extent since, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt section 80 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorization of the endorsement on cheques drawn upon it.

The practice is a comparatively modern one in England, and is another illustration of the elasticity of the law merchant by which a custom obtains for itself judicial sanction or legislative recognition. From the report of Stewart v. Lee, 1 M. & M. at p. 161 (1828), it would appear that the effect of crossing was not then fully settled. It is described in Boddington v. Schlenker, 4 B. & Ad. 752 (1833); and in Bellamy v. Marjoribanks, 7 Ex. at p. 102 (1852). Baron Parke there gives a history of its origin and growth.

The practice originated at the London clearing house, the clerks of the different bankers who did business there having been accustomed to write across the cheques the names of their employers, so as to enable the clearing house clerks to make up their accounts. It afterwards became a common practice to cross cheques which were not intended to go through the clearing house at all. Baron Parke held that this had nothing to do with the restriction of negotiability, and formed no part of the cheque, and in no way altered it: effect; but was a protection and safeguard to the owner, as, if the banker paid it otherwise than through another banker, the circumstance of his so paying would be strong evidence of negligence in an action against him. See also Carlon v. Ireland, 5 E. & B. 765 (1856).

Their origin.

The first Imperial Statute recognizing crossings was passed in 1856. In Simmons v. Taylor, 2 C. B. N. S. 528 (1857), it was held that the crossing was not a material part of the cheque and a holder might erase it. The Act of 1858

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was passed to overcome the effect of this decision. In Sm[illegible] v. Union Bank of London, 1 Q. B. D. 31 (1875), a che[illegible] crossed to a certain bank was stolen, and coming into [illegible] hands of a bona fide holder, he got it cashed through his [illegible] bank. The Court held that the Act of 1858 did not af[illegible] the negotiability of the cheque which had been indorsed [illegible] the payee. In Bobbett v. Pinkett, 1 Ex. D. 368 (187[illegible]), where the indorsement of the payee was forged, the ban[illegible] was held liable for paying it otherwise than through the banker to whom it was specially indorsed. Then came the Act of 1876, which introduced the "not negotiable" cross[illegible]ing, which has been substantially reprodnced in the Act of 1882 and the Canadian Act.

In Canada.

Although the crossing of cheques was not recognized in practice or in legislation in Canada, yet the Imperial Act, making the obliteration or alteration of the crossing a felo[illegible], was copied into our Forgery Act of 1869, and became section 31 of R. S. C. (1886), chap. 165. Even the words "and company" and "banker" were retained. In the Criminal Code, R. S. C. chap. 116, by section 468 (*r*), the forgery of a cheque renders the person found guilty liable to imprisonment for life, but obliterating or altering the crossing is not made a special offence.

The practice of crossing cheques has not been adopted in the United States, and is not recognized by the Negotiable Instruments Law.

Definition.

168. Where a cheque bears across its face an addition of—

(*a*) The word 'bank' between two parallel transverse lines, either with or without the words 'not negotiable;' or—

General.

(*b*) Two parallel transverse lines simply, either with or without the words 'not negotiable:'

such addition constitutes a crossing, and the cheque is crossed generally.

Special.

2. Where a cheque bears across its face an addition of the name of a bank, either with

or without the words 'not negotiable,' that addition constitutes a crossing, and the cheque is crossed specially and to that bank. 53 V., c. 33, s. 75. Imp. Act, s. 76. § 168

As already stated, this part of the Act does not apply to cheques on private bankers, nor can a cheque on an incorporated bank be crossed in favour of a private banker, or if crossed generally, be presented through him. Private banks.

Where the drawer of a cheque made it payable to the order of M., and crossed it "Account of M., National Bank," and gave it to M., who indorsed it to the National Bank, it was held that the bank could recover from the drawer, for these words, even assuming that section 8 of the Bills of Exchange Act applies to cheques, do not prohibit transfer, or indicate an intention that it should not be transferred; and that probably the only way to make a cheque not transferable would be to comply with the provisions of this section: National Bank v. Silke, [1891] 1 Q. B. 435.

169. A cheque may be crossed generally or specially by the drawer. By drawer.

2. Where a cheque is uncrossed, the holder may cross it generally or specially. By holder.

3. Where a cheque is crossed generally, the holder may cross it specially. Varying.

4. Where a cheque is crossed generally or specially, the holder may add the words 'Not negotiable.' Words added by bank for collection.

5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially, to another bank for collection.

6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially. 53 V., c. 33, s. 76. Imp. Act, s. 77. Changing crossing.

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The "holder" of a cheque is the payee or endorsee if it is payable to order, provided he is in possession of it. If it is payable to bearer, it is the person who is in possession of it. Bank here means an incorporated bank or savings bank doing business in Canada.

Crossing alone does not interfere with the negotiability of a cheque. "Apart from the 'negotiable' crossing, the whole purview and scope of the crossed cheque sections of the Act are for and against bankers, and bankers only, affording them a safer method of drawing cheques for the public:" Paget on Banking (2nd ed.), p. 69.

Uncrossing.

7. A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, the words, 'Pay cash,' and initialling the same. 53 V., c. 33, s. 76.

This is not in the Imperial Act, but is in accordance with English custom: Chalmers, p. 286. It is the drawer alone who can obliterate the crossing. See the next section.

Materially altering crossing.

170. A crossing authorized by this Act is a material part of the cheque.

2. It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V., c. 33, s. 77. Imp. Act, s. 78.

Altering crossing.

A material alteration voids a cheque except as to a party who has made, authorized or assented to it, and except as to endorsers subsequent to the alteration: sec. 115.

In England an unauthorized obliteration or alteration is forgery: 24-25 Vict. chap. 98, secs. 25 and 39. This was copied in our Canadian criminal law, and became R. S. C. (1886), chap. 165, sec. 31, but it is the English crossing that is there referred to, and declared to be a felony. That section is not applicable to the crossing authorized by the Canadian Act.

If the obliteration, addition or alteration does not amount to forgery, it would come under section 164 of the Criminal Code, R. S. C. c. 146, which makes any person who, without lawful excuse, disobeys an Act of Parliament, guilty of an offence, and liable to one year's imprisonment.

Crossed to more than one bank.

171. Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V., c. 33, s. 78 (1). Imp. Act, s. 79 (1).

This section would prevent the thief or a finder of a specially crossed cheque, or any holder subsequent to him, from crossing the cheque a second time and so getting paid through another bank.

The bank incurs no liability by such refusal, as the holder has no action on an unaccepted cheque. The next section gives a remedy to the true owner against a bank which improperly pays a crossed cheque.

Origin of section.

This section was originally section 8 of the Crossed Cheques Act of 1876, which was passed to overcome the effect of the decision in Smith v. Union Bank of London, 1 Q. B. D. 31 (1875), that crossing did not restrain the negotiability of a cheque, and that it might be crossed a second time and paid to the banker named therein.

Liability for improper payment.

172. Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been

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Bona fides.

added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. 53 V., c. 33, s. 78 (2), Imp. Act, s. 79 (2).

This section formed sections 10 and 11 of the Crossed Cheques Act of 1876, which was passed in consequence of the decision being held in Smith v. Union Bank of London, 1 Q. B. D. 31 (1875), that the payee of a cheque who had crossed a cheque specially, but from whom it had been stolen, had not ceased to be the holder, had no action against the defendants who had paid the cheque to a bona fide holder for value who had crossed it a second time specially to the defendants.

See Meyer & Co. v. Sze Hai Tong Co., [1913] A. C. 847, where appellant's cashier fraudulently misappropriated cheques crossed generally, and it was held that appellants were estopped by their conduct from denying that he had authority to receive payment in that manner.

Protection in such case.

173. Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. 53 V., c. 33, s. 79. Imp. Act, s. 80.

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Protection of bank.

This section gives to a bank on which a cheque is drawn the protection, in the case of a crossed cheque, which our Parliament refused to give it as to demand bills and ordinary cheques by striking out of the bill the clause corresponding to section 60 of the Imperial Act. On the other hand, it furnishes to the other parties to a cheque a strong reason for objecting to the crossing of a cheque. If a crossed cheque which had not been made "not negotiable" is lost or stolen before it reaches the hands of the payee, and the bank pays it in good faith and without negligence even upon a forged indorsement, the drawer has no recourse against the bank which has paid or the bank which has collected, but can only look to the guilty party or some subsequent holder. See Ogden v. Benas, L. R. 9 C. P. 513 (1874); Patent Safety Gun Cotton Co. v. Wilson, 49 L. J. C. P. 713 (1880); sec. 175. If it is lost or stolen after reaching the hands of the payee, and is paid in like manner, the drawer is released, but the payee, endorsee, or holder who has lost the bill, or from whom it has been stolen, is in the same position as the drawer in the case just mentioned.

Bank liable.

The payee of a crossed cheque specially indorsed it to plaintiffs and posted it to them. A stranger having obtained possession of it during transmission obliterated the indorsement to plaintiffs, and having specially indorsed it to himself, presented it at defendants' bank and requested them to collect it for him. They did so and handed him the money. In an action for conversion defendants were held liable for the amount of the cheque: Kleinwort v. Comptoir National d'Escompte, [1894] 2 Q. B. 157.

A cheque on defendants' bank in London in favour of plaintiff was crossed generally. The indorsement was forged, and a person purporting to be the last indorsee, and not a customer of the bank, presented it at defendants' branch in Paris and was paid. It was forwarded to London and credited to the Paris branch. It was held that English law governed, and that the bank was liable to plaintiff: Lacave v. Crédit Lyonnais, [1897] 1 Q. B. 148.

Not negotiable cross.

174. Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he

§ 174 . shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V., c. 33, s. 80, Imp. Act, s. 81.

Making a cheque "not negotiable" does not make it non-transferable, but merely puts it on the same footing as an overdue bill, so that any holder takes it subject to the equities attaching to it, and no person can become a holder in due course. If such a cheque should be lost or stolen the person receiving the money from the collecting bank would be liable in any event.

Where a cheque crossed "not negotiable" was drawn in favour of a firm, and one partner, S., in fraud of plaintiff, his co-partner, indorsed it to defendant, who got it cashed for S., defendant was held liable to the co-partner, who under the partnership articles was entitled to the cheque. Fisher v. Roberts, 6 T. L. R. 351 (1890). See National Bank v. Silke, [1891] 1 Q. B. 435.

The words "not negotiable" written on a cheque in themselves would have no effect under the statute. It is only when they are taken in connection with an addition which, by section 168, constitutes a crossing, that they are effectual in restricting the negotiability of the cheque: Paget on Banking (2nd ed.), p. 73.

The words "not negotiable" need not be within the lines which constitute the crossing, but should bear a reasonable relation or proximity to them, so that the connection can be reasonably inferred.

Customer without title.

Bank paying.

Bona fides.

175. Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V., c. 33, s. 81, Imp. Act, s. 82.

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Section 173 relieves the bank on which the crossed cheque is drawn; this section, the bank which collects it. If it be indorsed "per proc." and the banker makes no inquiry as to the authority to so indorse, this may be negligence: Bissel v. Fox, 53 L. T. N. S. 193; 1 T. L. R. 452 (1885). See Matthiessen v. London & County Bank, 5 C. P. D. 7 (1879); Bennett v. London & County Bank, 2 T. L. R. 765 (1886). For an illustration of negligence disentitling a bank to the benefit of this section, see Hannan's Lake View Central v. Armstrong, 16 T. L. R. 236 (1900), and House Property Co. v. London County and Westminster Bank, 31 T. L. R. 479 (1915).

Good faith.

A banker who in good faith collects a cheque signed "per proc." is not negligent within the meaning of this section, merely because he does not inquire into the drawer's authority. The owner was held not entitled to recover, partly on the ground of negligence and partly on the ground of ratification: Morison v. London County & Westminster Bank, [1914] 3 K. B. 356.

Where a customer's account is overdrawn, a banker collecting a crossed cheque, and placing the proceeds to his credit, is within the section: Clarke v. London & County Banking Co., [1897] 1 Q. B. 552.

A railway company drew an order in the form of a cheque on a bank for £69, with this clause added: "Provided the receipt form at foot hereof is duly signed, stamped and dated." The order was crossed generally, and was stolen and plaintiff's name forged to the receipt and indorsement. Defendants received it in good faith from a customer and collected it. Held, that it was not a cheque, being conditional, and the bank was not protected: Bavins v. South Western Bank, [1900] 1 Q. B. 270.

Bank liable.

The word "customer" implies something of use and habit. Where the only transaction between an individual and a bank is the collection of a crossed cheque, such individual is not a customer of the bank, and if he has no title the bank is not protected: Matthews v. Brown, 63 L. J. Q.

Meaning of customer.

§ 175 B. 494 (1894); (reported as Matthews v. Williams, 10 B. 210); Lacave v. Crédit Lyonnais, [1897] 1 Q. B. 148.

Meaning of customer.

A person becomes a customer of a bank when he goes to the bank with money or a cheque, and asks to have an account opened in his name, and the bank accepts the money or cheque, and is prepared to open such an account. When the drawer of a cheque crosses it "account payee only," a bank is guilty of negligence towards the drawer, if without making any inquiries it allows a person unknown to the bank to open an account with it, and collects the money for the cheque: Ladbrooke v. Todd, 30 T. L. R. 433 (1914).

To make a person a "customer" of the bank within the meaning of this section, there must be some sort of account, either a current or a deposit account, or some similar relation. A person fraudulently obtained from the drawer a cheque crossed generally and marked "not negotiable" and took it to a bank which, at his request, paid part of the amount of the cheque into the account of one of its customers and handed the balance to him. After the bank had received payment of the cheque from the bank on which it was drawn, the fraud was discovered, and the drawer sued the collecting bank. The latter received the payment in good faith and without negligence, and had for years been cashing cheques for the same person in like manner, but he had no account with them. Held, that he was not a customer, and the collecting bank was not protected, but was liable for the proceeds of the cheque: Great Western Ry. Co. v. London & County Banking Co., [1901] A. C. 414.

Two banks credited a customer with the amounts of cheques as soon as they were handed in to his account and allowed him to draw against the amounts so credited before the cheques were cashed. It was held that the protection of this section did not apply to such a case, as the banks received the amounts for themselves and not for the customer: Capital & Counties Bank v. Gordon and London City & Midland Bank v. Gordon, [1903] A. C. 240. To overcome the effect of these decisions the Imperial Act was amended

Amendment of Act.

by chapter 17 of 6 Edw. VII., providing that a banker receives payment of a crossed cheque within the meaning of section 82, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. The Canadian Act has not been amended, doubtless because crossed cheques are not in use here as in England. § 175

A clerk of the plaintiffs by fraud induced them to sign cheques crossed generally in favour of certain persons. He then forged the indorsement of the payees, and deposited the cheques in the defendant bank where he had an account. The latter credited him the amount in its books, crossed the cheques specially, and had them cashed. It then entered the amount in his pass-book, and allowed him to draw against it. Held, that the bank was protected under section 82: Akrokerri Mines v. Economic Bank, [1904] 2 K. B. 465. Bank protected.

In another case arising before the passing of the amending Act, 6 Edw. VII. c. 17, it was held by Channell, J., that a banker does not lose the protection of section 82 merely because, before a crossed cheque paid in by a customer is cleared, he makes a credit entry in the bank's books or in the pass-book not communicated to the customer. It may be negligence on the part of the banker to receive payment for a customer of a crossed cheque marked "account of payee," where the banker has information which may lead him to think that the account into which he is paying the amount of the cheque is not the payee's account: Bevan v. The National Bank, 23 T. L. R. 65 (1906).

PART IV.

PROMISSORY NOTES.

Only twelve sections of the Act, 176 to 187 inclusive, are devoted specially to promissory notes. As will be seen from section 186, however, most of the provisions of the Act in Part II. relating to bills of exchange, except those connected with their acceptance, apply also to promissory notes. The provisions relating to the acceptor of a bill are applicable, as a rule, to the maker of a note; and those relating to the drawer of an accepted bill payable to his own order, to the first endorser of a note.

Definition.

176. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time a sum certain in money, to, or to the order of, a specified person, or to bearer. 53 V., c. 33, s. 82 (1). Imp. Act, s. 83 (1).

This definition of a promissory note is an adaptation of that of a bill of exchange given in section 17, with the necessary modifications.

The definition in the Civil Code, Quebec, is given in Art. 2344 as follows:—"A promissory note is a written promise for the payment of money at all events and without any condition." The French Code de Commerce does not define a note, but, after specifying what articles apply to notes as well as to bills, says, Art. 188: "A promissory note is dated. It specifies the sum to be paid, the name of the person to the order of whom it is made, the time at which payment must be made, the value furnished in money, goods, account, or otherwise."

Old law.

The definition makes no change in the law as to what is a promissory note, except that in Nova Scotia and New

Brunswick notes payable otherwise than in money, which, under provincial Acts, were, in certain respects, placed on the same footing as promissory notes payable in money, and were generally called promissory notes, are not considered such under the Act. A note payable to a specified person and not to his order, or to bearer, was considered a promissory note before the Act, but was not negotiable. It is now negotiable: ss. 22 and 186. § 176

It is well settled that no particular form of words is necessary to constitute a promissory note. Where an instrument meets all the requirements of the section, and has been delivered to the payee or bearer, or where the maker is himself the payee and endorser to an endorsee or bearer, it is a completed promissory note.

"Unconditional Promise." — The maker of a note is deemed to correspond with the acceptor of a bill: s. 186. A bill is an unconditional order, but the acceptance may be conditional: s. 38. There is consequently this difference, that while the undertaking of the acceptor may be only conditional, that of the maker of a note is unconditional, and corresponds with the position of an unconditional acceptor. It must not be payable on a contingency: s. 18.

"In Writing."—Writing in the Act "includes words printed, painted, engraved, lithographed, or otherwise traced or copied." It may be in pencil as well as in ink. See p. 44.

"One Person to Another."—There are ordinarily three parties to a bill of exchange, the drawer, the drawee, and the payee. The drawer and payee may be the same person, or the bill may be made payable to bearer, in which cases there are only two named. Ordinarily there are two parties to a promissory note, the maker and the payee. The maker may make the note payable to his own order or to bearer, in which case there is only one person named.

"Signed."—The maker need not sign with his own hand: it is sufficient if his signature is written by some other person by or under his authority: s. 4. Corpora-

§ 176 Signature.

tions sign by their duly authorized officers, or by their se... s. 5. The note is not completed by the signature of t... maker; it must be delivered to the payee or bearer: s. 1... Where the maker is also payee it is not a note until he h... endorsed it: s.s. 2. He usually signs at the foot of the not... but he may sign anywhere, so long as it appears that h... has signed as maker. As to signature, see p. 48.

The maker may give his signature or an incomplete ... to be filled up as a note, and sections 31 and 32 would the... apply.

"On Demand," etc.—A note is payable on demand whe... is expressed to be so payable, or in which no time for pa... ment is expressed: ss. 23 and 186. A note is payable ... a fixed or determinable future time which is expressed to ... payable at a fixed period after date, or on or at a fixed perio... after the occurrence of a specified event which is certain t... happen, though the time of happening is uncertain: ss. 2... and 186. Sight has no application to notes. See the note... and illustrations under sections 23 and 24, most of which... apply to notes as well as to bills.

"A Sum Certain in Money."—A promise to pay out of a particular fund is not a promissory note: s. 17 (3... Money has been defined as "that which passes freely fro... hand to hand throughout the community in final discharg... of debts and full payment of commodities, being accepted... equally without reference to the character or credit of th... person who offers it and without the intention of the perso... who receives it to consume it or apply it to any other use... than in turn to tender it to others in discharge of debts o... payment for commodities:" Moss v. Hancock, [1899] 2 Q... B. 116. See p. 50.

"Specified Person."—The person to whom or to whose... order a note is made payable is called the payee. If the note... is not payable to bearer, the payee should be named or other... wise indicated with reasonable certainty: s. 21 (4). See... p. 67.

§ 176 **"Bearer."**—Most of the companies incorporated under Imperial, Dominion or Provincial Charters are prohibited from issuing a note payable to bearer. See R. S. C. c. 79, s. 121 (3). All persons except chartered banks are prohibited under a penalty of $100 from issuing notes payable to bearer, intended to circulate as money: Bank Act, 1913, 3 G. V. c. 9.

Ambiguous instrument.

No particular form of words is required to constitute a valid note, provided the instrument meet the requirements of the definition: Hall v. Bradbury, 1 Rev. de Lég. 180 (1845); Hooper v. Williams, 2 Ex. at p. 20 (1848). But a promissory note, as between the original parties at least, is something which they intend to be a promissory note: Sibree v. Tripp, 15 M. & W. at p. 29 (1846); Robert v. Charlonneau, Q. R. 22 S. C. 106 (1902). If an instrument is ambiguous and it is uncertain whether it was meant to be a bill or note, the holder may treat it as either at his option: Edis v. Bury, 6 B. & C. 433 (1827); Fielder v. Marshall, 9 C. B. N. S. 606 (1861). The construction most favourable to the validity of the instrument will be adopted: Mare v. Charles, 5 E. & B. at p. 981 (1856).

If an instrument is in the form of a bill, and the drawer and the drawee are the same person, or the drawee is a fictitious person or one not having capacity to contract, it may be treated as a note by the holder: s. 26.

ILLUSTRATIONS.

See also illustrations ante p. 51.

The following have been held to be valid negotiable promissory notes:—

1. A church subscription list held to be the several note of each subscriber for the sum opposite his name: Thomas v. Grace, 15 U. C. C. P. 462 (1865).

2. A promise to pay in cash or goods at the option of the holder: McDonnell v. Holgate, 2 Rev. de Lég. 29 (1818); Hosstatter v. Wilson, 31 Barb. (N. Y.) 307 (1862); Dinsmore v. Duncan, 57 N. Y. at p. 573 (1874).

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3. An obligation before a notary to pay a certain sum of money without condition: Aurèle v. Durocher, 5 R. L. 165 (1873).

Valid notes.

4. Municipal debentures under C. S. L. C. c. 25, payable to bearer: Eastern Townships' Bank v. Compton, 7 R. L. 446 (1874); Macfarlane v. St. Césaire, M. L. R. 2 Q. B. 160 (1886).

5. "This is to certify that L. N. K., hereby agrees and binds myself to pay to M., or order, $2,000, for all the space from date to close of navigation he has on the A. & B. line of steamers: $1,000 I now pay cash, and $1,000 I bind and pledge myself to pay to M. or order, on or about Nov. 15th, 1883. It is understood that the amount of $2,000 is paid for premium over and above the [illegible] freight to be paid for said steamers to agents and shipowners." Held, to be a negotiable note: Kennedy v. Exchange Bank, 30 L. C. J. 266 (1886).

6. An instrument in the form of a note written at the foot of a letter which set out the consideration, etc. The fact of the payee having cut off the letter before suing on the note was not a mutilation or alteration of the note: Palliser v. Lindsay, M. L. R. 6 Q. B. 311 (1890).

7. "Received from B. $1,200, for which I am responsible with interest at 7 per cent. upon production of this receipt, and after three months notice:" La Forest v. Babineau, 37 S. C. Can. 521 (1906).

8. A note worded as follows: "On demand ——— months after date, I promise to pay A. B. or order," etc.: Commercial Bank v. Allan, 10 Man. 330 (1894).

9. "Received from H. the sum of $500 advance to be repaid at expiration of 9 months": Halsted v. Hirschman, 18 Man. 102 (1908).

10. A note which reads, "I, William Smith, promise to pay," etc., and not otherwise signed, is a good note: Taylor v. Dobbins, 1 Str. 399 (1719).

11. "I have received the books, which with cash overpaid, amounts to £80, which I will pay in two years": Wheatley v. Williams, 1 M. & W. 533 (1836).

12. A joint and several note of three makers to the order of two payees, one of whom is one of the makers. The payees may sue the other two makers: Meecham v. Smith, E. B. & E. 412 (1858).

13. "I promise to pay S. or order, 3 months after date, £100 as per memorandum of agreement": Jury v. Barker, E. B. & E. 459 (1858).

14. "Received from A. B. £50, payable on demand": McCubbin v. Stephen, 28 Jurist (Sc.) 618 (1856).

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15. "We promise to pay one day after demand £500," is a promissory note, although no payee is named. Having been delivered to plaintiff as a promissory note, it may be treated as if payable to bearer: Dann v. Sherwood, 11 T. L. R. 211 (1895).

16. Mexican gold coupon treasury notes held to be "promissory notes": Speyer v. Inland Rev. Commissioners [1906] A. C. 246.

The following instruments have been held not to be valid promissory notes:—

1. "Three months after date, pay to the order of T. £228, for value received." Held not to be a note, for want of a promise, and not a bill, because addressed to no drawee: Forward v. Thompson, 12 U. C. Q. B. 103 (1853). Not valid promissory notes.

2. An instrument in the form of a note but under the seal of the maker: Wilson v. Gates, 16 U. C. Q. B. 278 (1858).

3. An instrument in the form of a note payable to bearer, but with a condition: Campbell v. McKinnon, 18 U. C. Q. B. 612 (1859).

4. "Four months after date I promise to pay to W. H. or order $1,261, value received. This note to be held as collateral security. S. J. M.": Hall v. Merrick, 40 U. C. Q. B. 566 (1877); Sutherland v. Patterson, 4 O. R. 565 (1881).

5. An instrument in the form of a promissory note, but with a blank left for the payee's name and not filled up: Reg. v. Cormack, 21 O. R. 213 (1891).

6. "To George Trimble: We hereby undertake to pay to the executors of the late J. D. King the sum of $375 on a mortgage they hold against Royal Hotel property, Streetsville," delivered to Trimble, is not a promissory note in his hands: Trimble v. Miller, 22 O. R. 500 (1892).

7. A letter acknowledging receipt of money "as a loan, subject to be returned when demanded, with interest": Whishaw v. Gilmour, 6 L. C. J. 319 (1862).

8. A receipt in the following form:—"Received from Mrs. A. a loan of $800, to be returned when required": DeSola v. Ascher, 17 R. L. 315 (1889).

9. Under C. C. Arts. 2314 and 2315, before the Act of 1890, a promissory note to the order of the maker, and not indorsed by him: Trenholme v. Contu, Q. R. 2 Q. B. 387 (1893).

10. An indenture under the hands and seals of the parties; the form showing that the parties did not intend the instrument to be a promissory note: Zampino v. Blanchieri, Q. R. 24 S. C. 265 (1903).

11. "I, J. C., promise to pay A. or order £50 at 6 months' notice." Signed, "J. C. or else H. B." is a valid note of J. C.,

§ 176 bnt not of H. B., who only promises to pay if J. C. does not: Ferris v. Bond, 4 B. & Ald., 679 (1821).

Not valid notes.

12. A banker's deposit receipt for money "to account for demand:" Hopkins v. Abbott, L. R. 19 Eq. 222 (1875).

Endorsed by maker.

2. An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker. 53 V., c. 33, s. 83 (2). Imp. Act, s. 84 (2).

When such a note is indorsed in blank it becomes a note payable to bearer: Burns v. Harper, 6 U. C. Q. B. 300 (1849); Wallace v. Henderson, 7 U. C. Q. B. 88 (1849); Ennis v. Hastings, 9 N. B. (4 Allen) 482 (1860); Hodge v. Williams, 2 Ex. 13 (1848); Brown v. De Winton, 6 C. B. 336 (1848); Masters v. Baretto, 8 C. B. 433 (1849). If indorsed specially it becomes a note payable to the indorsee: Gay v. Lander, 6 C. B. 336 (1848); Moses v. Lawrence County Bank, 149 U. S. 298 (1892).

Pledge.

Invalidity.

3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. 53 V., c. 33, s. 82 (3). Imp. Act, s. 84 (3).

This sub-section is a modification of the rule in section 17 (2), that an instrument which orders anything to be done in addition to the payment of money, is not a bill. See Chesney v. St. John, 4 Ont. A. R. 150 (1879); Wise v. Charlton, 4 A. & E. 786 (1836); Fancourt v. Thomas, 8 Q. B. 312 (1846).

Another modification is that which allows a clause to be inserted, where there are two or more parties to a note bearing the relation of joint debtors or of principal and surety, allowing time to be given, or arrangements to be entered into with one without releasing the other or others: Yates v. Evans, 61 L. J. Q. B. 446 (1892); Kirkwood v. Carroll, [1903] 1 K. B. 531. See pp. 55 and 56.

There has also been a conflict of authority as to whether lien notes such as are frequently taken for implements and

other articles, providing that the title to the articles shall remain in the vendors until the note is paid, are negotiable promissory notes. For cases on both sides, see illustration No. 3, p. 54. § 176

Where collateral security is given with a note, the right to such collateral goes with the note: Central Bank v. Garland, 20 C. R. 112 (1890); Vezina v. Maltais, 10 Rev. de Jur. 301 (1894). See Cochrane v. Boucher, 3 O. R. at p. 472 (1883). This is the law in France: Nougnier, § 715.

The creditor has a right to hold the securities even after the remedy on the note is barred by the Statute of Limitations: Wiley v. Ledyard, 10 Ont. P. R. 182 (1883).

When a note on its face contains a statement that it is given as collateral security, it is not a promissory note: Hall v. Merrick, 40 U. C. Q. B. 566 (1877): Sutherland v. Patterson, 4 O. R. 565 (1881).

The contrary has been held in Australia. In Lipscomb v. Matton, 15 N. S. W. R. (Law) 362 (1894), it was decided that the words, "this being collateral security to a mortgage given," etc., did not import a condition that the promissory note was only payable in the event of the mortgage not being paid.

177. A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note. Inland note.

2. Any other note is a foreign note. 53 V., c. 33, s. 82 (4). Imp. Act, s. 83 (4). Foreign note.

The Imperial Act uses the words "within the British Islands."

If dated abroad and payable in Canada, a note would still be an inland note if actually made or issued in Canada. On the other hand, if dated in Canada and payable there, it would be an inland note, although actually made or issued abroad. The distinction is of consequence for the purposes of protest. An inland note need not be protested except in

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Inland or foreign.

Quebec, notice of dishonour being sufficient to bind e dorsers in the other provinces: ss. 113 and 186. To bi the endorsers of a foreign note protest is necessary in a part of Canada: s. 187.

A note dated in Halifax, N.S., and payable there, is a inland note, although made in France: Merchants' Bank Stirling, 13 N. S. (1 R. & G.) 439 (1880).

See section 25 relating to inland bills and the not thereon.

Delivery.

178. A promissory note is inchoate and incom plete until delivery thereof to the payee o bearer. 53 V., c. 33, s. 83. Imp. Act, s. 84.

This was the old law: Chapman v. Cottrell, 3 H. & C. 5 (1865). Delivery is necessary to give effect to any contra on a bill or note: s. 39.

It becomes a note on delivery to the second party to Delivery is the transfer of possession, actual or constructi from one person to another: s. 2 (*f*). The nature o th delivery necessary to give effect to a note is set out in se tion 40.

Joint and several note.

179. A promissory note may be made by tw or more makers, and they may be liable thereo jointly, or jointly and severally, according to it tenor. 53 V., c. 33, s. 84 (1). Imp. Act, s. 85 (1

This section brings up some interesting questions o account of the difference between the law of Quebec an that of the other provinces as to the nature of a joi contract, or joint liability, as distinguished from that whi is joint and several.

Joint liability in Quebec.

Under the French law, in force in Quebec, where sever persons are jointly liable for a debt, each of them is liab for an equal fractional part to the creditor, whatever may their respective rights as against each other. Thus, if tw are jointly bound, each is liable for one-half: if there a

three, each is liable for one-third, and so on; and no one of s 179
them by the death of his co-debtor or otherwise becomes
liable for more, the liability of the deceased passing to his In Quebec.
local representatives. The advantage to a creditor in having a joint contract instead of so many separate contracts is that he may sue all in one action, obtaining a separate condemnation of each for his equal share. See Pothier on Obligations, No. 165; 17 Laurent, Nos. 274, 280. An obligation is presumed to be joint, unless expressly declared to be joint and several. This rule does not apply to commercial transactions, where the presumption is in favour of the liability being joint and several: C. C. Art. 1105.

Under English law, on the other hand, each joint debtor In the other
is liable to the creditor for the whole. If one dies, his re- Provinces.
presentatives are not liable for any part to the creditor. If the creditor does not sue all who are alive and in the country, those who are sued might, upon a plea in abatement, under the old system of pleading, or by a motion under the Judicature Act, have proceedings stayed, until the living joint debtors who are in the country are made parties. A judgment taken against some of the joint debtors, even without satisfaction, frees the others from all liability: King v. Hoare, 13 M. & W. 494 (1844)); Kendall v. Hamilton, 4 App. Cas. 504 (1879); Hammond v. Schofield, [1891] 1 Q. B. 453; Hoare v. Niblett, [1891] 1 Q. B. 781; Toronto v. Maclaren, 14 Ont. P. R. 89 (1890); McDonald v. McGillis, 33 N. S. 244 (1900); Leake on Contracts, p. 303.

Where some of a number of joint and several makers of a note are infants, judgment may be given against those of age: Burgess v. Merrill, 4 Taunt. 468 (1812); Park v. Pullishy, 3 Alta. 340 (1911).

In Ontario by R. S. O. c. 133, s. ..., in Manitoba by R. Joint
S. M. c. 200, s. 61, and in the N. W. Territories by the debtors.
Trustee Ordinance, 1903, s. 34, the common law rule as to joint debtors has been modified by providing that in case one or more of them dies his or their representatives may be proceeded against as if the contract had been joint and several.

§ 179

Joint liability.

If a note is on its face "joint," and not joint and several, the law would differ as above, according to whether it is a Quebec note or not. The note would be interpreted according to the law of the place where it was made: s. 161; that is, where it was delivered to the payee or bearer: s. 178.

Where a note begins "We promise" and is signed by a partnership and also by the partners individually, the liability is joint and several: Gordon v. Matthews, 19 O. L. R. 564 (1909).

In the Province of Quebec partners in a civil or non-commercial partnership, are jointly liable for the debts of the firm in equal shares, although their shares in the partnership are unequal. In commercial partnerships they are liable jointly and severally: C. C. Art. 1851.

In Drouin v. Gauthier, Q. R. 12 K. B. 442 (1903), the Superior Court condemned the members of a firm of advocates jointly and severally on a firm note, under Art. 1105, C. C., on the ground that it was a commercial matter. This was reversed in appeal, on the ground that a legal partnership is a civil not a commercial partnership, and that under section 152 (2) the firm signature was equivalent to the signature of all the partners. Their liability was consequently held to be merely joint and not joint and several.

Joint and several liability.

A joint and several liability is substantially the same in English and French law. Each of the debtors is liable for the full amount, and on his death his liability descends to his representatives. Payment by one discharges the liability of the others to the creditor. The debtor who has paid may have his right of contribution against his co-debtors. A judgment against one maker is no bar to proceedings against the others: Re Davison, 13 Q. B. D. at p. 53 (1884).

In Quebec if one or more are sued but not all, those who are sued have no right to delay the plaintiff by having the others called in: Durocher v. Lapalme, M. L. R. 1 S. C. 494 (1885); Block v. Lawrence, ibid. 2 S. C. 279 (1886).

Contra, Beaulieu v. Demers, 5 R. L. 244 (1874); Demers v. Harvey, Q. R. 5 S. C. 1 (1893). § 179

Where one or two joint makers of a note signs for the accommodation of the other, their relation is that of principal and surety, and the prescription of five years does not apply: Cullen v. Bryson, Q. R. 2 S. C. 36 (1892).

Making a joint note joint and several is a material alteration and renders it void: illustration No. 9, p. 391. So also is adding a maker after issue: illustration No. 11, ibid.

2. Where a note runs 'I promise to pay,' and is signed by two or more persons, it is deemed to be their joint and several note. 53 V., c. 33, s. 84 (2). Imp. Act, s. 85 (2). Individual promise.

An illustration of the application of this sub-section is found in Congregation of Roumanian Jews v. Backman, Q. R. 31 S. C. 23 (1906).

It had long been recognized as law in England: March v. Ward, Peake, 177 (1792); Clark v. Blackstock, Holt N. P. 474 (1816); Ex parte Buckley, 14 M. & W. 469 (1845). And in the United States: Monson v. Drakely, 40 Conn. 552 (1873); Hemmenway v. Stone, 7 Mass. 58 (1810); Partridge v. Colby, 19 Barb. (N. Y.) 248 (1855); Ely v. Clute, 19 Hun (N. Y.) 35 (1879). As also in Ontario: Creighton v. Fretz, 26 U. C. Q. B. 627 (1867).

In Cook v. Dodds, 6 O. L. R. 608 (1903), the representatives of a deceased joint maker of a note were sued. They claimed that the liability being joint did not survive the death, and that a provincial statute could not vary the Bills of Exchange Act. It was held that the Dominion Act did not deal with the consequences which flow from a joint or joint and several liability; but that this was to be determined by the law of the province where the liability was sought to be enforced, and that R. S. O. c. 133, s. 16, above referred to (then R. S. O. c. 129, s. 15) governed. Joint liability.

In the province of Quebec in the case of Crépeau v. Beauchesne, Q. R. 14 S. C. 495 (1898), one of two joint

§ 179

Joint and several liability.

makers was held liable for the whole amount of a note, having incurred a joint liability as understood in Engl law. In a later case, Noble v. Forgrave, Q. R. 17 S. C. 23 (1899), it was held that section 8 of the amending Act 1891 (sec. 10 of the present Act), had introduced into Quebec the law of England on this point, modifying, as bills and notes, the provisions of Article 1105 of the Civ Code, which declares that in commercial matters the lia ity is presumed to be joint and several. The two mak were consequently condemned jointly, that is, each for one half. Before the Act the decisions in Quebec on the poi were conflicting. After the abolition of the distinction be tween traders and non-traders with regard to negotiable notes, it was generally considered that every negotiable no was a commercial transaction, and that under Art. 1105 C. C., the makers were jointly and severally liable: Perrault Bergevin, 11 R. L. 604 (1886). In Malhiot v. Tessier, 2 R. L. 625 (1870), however, it was held that two farmers who had signed a note were liable only jointly, and this doctrine has been confirmed by Dronin v. Gauthier, cited below and fol lowed in Dagneau v. Décaire, 5 Que. P. R. 141 (1906), where a husband and wife, non-traders, signed a note to gether, it was held that their obligation was joint, and not joint and several, and the wife not being liable on account of the Code prohibiting her from binding herself with her husband, he alone was liable, and only for half the note.

Under English law, a note signed by several makers not partners, which reads "we promise," is joint: Byles, 2 9; Chalmers, p. 298; 1 Daniel, § 94; White v. Tyndall, 13 A. C. 263 (1888). The liability of partners is also joint, but the law gives a remedy against the assets of a deceased partner, thus modifying the general law in this respect Kendall v. Hamilton, 4 App. Cas. 504 (1879).

Demand note presentment.

180. Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

Reasonable time.

2. In determining what is a reasonable time, regard shall be had to the nature of the instru-

ment, the usage of trade, and the facts of the particular case. 53 V., c. 33, s. 85 (1), (2). Imp. Act, s. 86 (1), (2). § 180 — Presentment.

A note payable on demand is one which is expressed to be payable on demand or on presentation, or in which no time for payment is expressed. Also, where a note is endorsed when it is overdue it shall, as to such endorser, be deemed to be payable on demand: ss. 23 and 186.

When a note is presented for payment it shall be exhibited to the maker: s. 85 (3); by the holder or some person authorized to receive payment on his behalf: s. 87; at the proper place: s. 88.

For special provisions as to the presentment of a note, see ss. 183 and 184.

As to what is a reasonable time, see the notes on pp. 217 and 218.

The rules as to demand bills and cheques, however, are not always applicable to a demand note, especially where it has been delivered as a collateral or continuing security: s. 181.

181. If a promissory note payable on demand, which has been endorsed is not presented for payment within a reasonable time, the endorser is discharged: Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security. 53 V., c. 33, s. 85 (1). Imp. Act, s. 86 (1). Endorser discharged. Security.

As to a demand note and reasonable time, see the notes to the preceding section and section 77.

The contract of the endorser is that the maker will pay on presentment according to the tenor of the note: and if

§ 181 the maker does not do so, he himself will, if the requis proceedings on dishonour are duly taken: s. 133.

Proviso. The proviso of this section is not in the Imperial A or the Negotiable Instruments Law; but the principle is accordance with the law of both countries. "A promisso note payable on demand is often intended to be a continuin security, it is quite unlike a cheque which is intended to b presented speedily:" per Parke, B., in Brooks v. Mitche 9 M. & W. at p. 15 (1841). See also Cripps v. Davis, 12 M & W. 165 (1843); Bartram v. Caddy, 9 A. & E. 275 (183 Leith Banking Co. v. Walker, 14 Sess. Cas. 332 (1836) Morgan v. United States, 113 U. S. 501 (1884); Patriar v. Kammerer, 1 O. W. R. 425 (1902).

Where a demand note is payable with interest, this ha been considered as an indication that an early presentme was not contemplated: Beaudry v. Renaud, 8 R. J. 19 (1902); Thorne v. Scovil, 1 N. B. (2 Kerr) 557 (1841 Commercial Bank v. Allan, 10 Man. 330 (1894); Vreelan v. Hyde, 2 Hall (N. Y.) 463 (1829); Seaver v. Lincoln, 2 Pick. (Mass.) 267 (1838); Merritt v. Todd, 23 N. Y. 2 (1861); Parker v. Stroud, 31 Hun (N. Y.) 578 (1884

Endorsed demand note. In the Chartered Mercantile Bank v. Dickson, L. R. P. C. 574 (1871), it was held that where a demand note wa indorsed Feb. 16th, but the payment of which was not co templated at any immediate or specific date, but was intende as a continuing security, the indorser was not discharged b the fact that it was not presented to the payee until Decem ber 14th.

Security. In Dandurand v. Roulier, 33 L. C. J. 167 (1889 where defendant indorsed a demand note March 28th, 188 for the maker, a friend whom he knew to be bankrupt, an the note was not protested until August 28th, 1888, the in dorser was not discharged, as he was not injured but rathe benefited by the delay, $50 having been paid September 27th 1887, and the maker's circumstances having improved in th meantime. In this case interest was allowed only from demand.

In Merchants' Bank v. Whitfield, 2 Dorion 157 (1881), where the directors of a joint stock company indorsed a note of the company, which was given to the bank as a continuing security, and it was held for twenty seven months before payment was demanded, it was held that the indorsers were not discharged. s. 181

A demand note was made and indorsed on the 25th of August, 1891, but not presented for payment until the 7th of May, 1894. The indorser was held to be discharged by the delay: Banque du Peuple v. Démoncourt, Q. R. 10 S. C. 128 (1896).

In an action against the indorser of a demand note, a demand made three months after date was held not to be within a reasonable time under section 131 of the Negotiable Instruments Law and the law merchant: Merritt v. Jackson, 181 Mass. 69 (1902).

Where a demand note was not negotiated within ten days after its issue, presentation for payment within ten months was held to be sufficient to hold the indorser under section 131 of the Negotiable Instruments Law: Schlesinger v. Schultz, 96 N. Y. Supp. 385 (1905).

182. Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 53 V., c. 33, s. 85 (3). Imp. Act, s. 86 (3). Not deemed overdue.

A bill payable on demand or a cheque is deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice, when it appears on its face to have been in circulation for an unreasonable length of time: s. 70 (2). What is a reasonable time is a mixed question of law and fact to be determined by the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

§ 182

Defect of title.

The title to a note is defective when it has been o tained by fraud, duress, or force, or fear, or other unlawf means, or for an illegal consideration, or when negotiated breach of faith, or under such circumstances as amount fraud: s. 56 (2).

For illustrations of the rule laid down in this sectio see Northern Crown Bank v. International Electric Co., 2 O. L. R. 57 (1911); Molsons Bank v. Parent, 18 R. L. N S. 158 (1910); Barough v. White, 4 B. & C. 325 (1825) Brooks v. Mitchell, 9. M. & W. 15 (1841); Glassock Balls, 24 Q. B. D. at p. 15 (1889); Wethey v. Andrews Hill (N. Y.) 582 (1842); Losee v. Dunkins, 7 Johns. (N Y.) 70 (1810); Herrick v. Wolverton, 11 N. Y. 581 (1870 Morey v. Wakefield, 11 Vt. 24 (1868); Rhodes v. Seymo 36 Conn. 6 (1869). See also the cases under the preceding section.

On demand with interest.

A promissory note payable on demand with interest a present debt, and "at maturity" as soon as given. A writ ten renunciation thereof by the holder, in order to meet requirements of section 61, must be an actual renunciation and a paper written at the dictation of a dying man, the such note then mislaid should be destroyed when found, not sufficient: Re George, Francis v. Bruce, 44 Ch. D. 62 (1890).

It is necessary before action to give notice of dishonor to an indorser of a demand note: Royal Bank v. Kirk, 1 B. C. R. 4 (1907).

Present-ment, where.

183. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

Liability of maker.

2. In such case the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court.

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3. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable. 53 V., c. 33, s. 86 (1). Imp. Act, s. 87 (1).

Note payable generally

Imperial Act

The corresponding section in the Imperial Act, 87 (1), reads as follows:—"Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case presentment for payment is not necessary in order to render the maker liable."

This section embodies what was the law in England before the Act: Sanderson v. Bowes, 14 East, 500 (1811); Spindler v. Grellett, 1 Ex. 381 (1847); Sands v. Clarke, 8 C. B. 751 (1849); Vander Donet v. Thellusson, 8 C. B. 812 (1849). Under the Imperial Act, where a note is in the body of it made payable at a particular place, presentment for payment at that place is necessary in order to render the maker liable, although such place was inserted merely to give jurisdiction to a particular court: Josolyne v. Roberts, [1908] 2 K. B. 349.

Former Canadian law.

In Prince Edward Island and Ontario, before the Act of 1890, a promissory note, like a bill of exchange in England, required to be presented at the place indicated, only in case the words "and not otherwise or elsewhere" were added: R. S. C. (1886) c. 123, ss. 9, 16. In Nova Scotia the old law required the presentation of such a note: Pigeon v. Moore, 23 N. S. 246 (1891).

In Quebec such added words were not necessary to require presentment of a note payable at a particular place named in the note: but the maker was liable even if not there presented. If he was sued before presentation it was a mere question of costs.

Liability of maker.

The bill, as introduced in the Canadian Parliament, followed the section of the Imperial Act above quoted, but the words "in order to render the maker liable" were struck out, and it was put in the present form in the Senate to make the Quebec law on the point applicable to the whole of Canada.

§ 183

Conflicting decisions.

There have been conflicting decisions under the Act as to whether the changes in this section have really made our law different from that of England on this point.

In Ontario, in Merchants' Bank v. Henderson, 28 O. R. p. 365 (1897), a Divisional Court case, Armour, C.J., was of opinion that the maker might be sued without presentment at the risk of the plaintiff being liable for costs in case the maker showed he had the money at the particular place at maturity and thereafter; and this was approved and followed by Riddell, J., in Freeman v. Canadian Guardian Ins. Co., 17 O. L. R. at p. 302 (1908). To the same effect is the decision of Lemieux, J., in Eastern Townships Bank v. Woodward, 6 Que. P. R. 458 (1904); of the Supreme Court P. E. I. in Sinclair v. Deacon, 7 E. L. R. 222 (1909); of Cameron, J.A., in Robertson v. N. W. Register Co., 19 Man. 402 (1910); of Walsh, J., in Union Bank v. MacCullough, 4 Alta. 371 (1912), and of the full Court of Saskatchewan in Canadian Bank of Commerce v. Bellamy, 33 W. L. R. 8 (1915).

On the other hand, in Nova Scotia, the full Court has held that, notwithstanding the intention of the Senate and the Quebec jurisprudence, presentment at the place named in the note must be alleged and proved: Clayton v. McDonald, 25 N. S. 446 (1893); Warner v. Symon-Kaye, 27 N. S. 340 (1894); Albert v. Marshall, 48 N. S. 34 (1913). A Divisional Court held the same in Croft v. Hamlin, 2 B. C. R. 333 (1893). It is to be hoped that this point may soon be definitely settled by the Supreme Court, and the intention of Parliament carried out.

A note made payable to the order of C. at Halifax" is payable at a particular place within the meaning of this section: Cunard v. Simon-Kaye, 27 N. S. 344 (1894). If made payable at a bank named, the local office of the bank in the place where the bill is dated is meant, and not the head office of the bank: Commercial Bank v. Bissett, 7 Man. 586 (1891); Canada Paper Co. v. Gazette Pub. Co., 32 N. B. 685 (1893). A note payable "at any bank" means any bank in the place where the note is dated: Baldwin v. Hitchcock, 12 N. B. (1 Hun) 310 (1869).

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Presentment for payment.

In presenting a note for payment, it should be produced and exhibited; but if it is held at the place of payment on the day it matures, no formal presentment is necessary. See ante, p. 259; also Fullerton v. Bank of U. S., 1 Peters (U. S.) 604 (1828); Bank of U. S. v. Carneal, 2 ibid. 543 (1829); Chicopee Bank v. Philadelphia Bank, 8 Wall. (U. S.) 611 (1869); Woodbridge v. Brigham, 13 Mass. 556 (1816); Bank of Syracuse v. Hollister, 17 N. Y. 46 (1858).

If the maker had funds at the place of payment on the day of maturity, and they were left there and finally lost through the neglect of the holder to present the note, as, for instance, by the failure of a bank, the maker would be discharged at least to the extent of the loss.

The present section deals only with presentment of a note in so far as it affects the liability of the maker, the next section as it affects an endorser.

No place named.

The third sub-section is in harmony with the general rule of the common law, that where no place of payment is named, it is the duty of the debtor to seek out the creditor, and that no presentment is necessary as against the maker: Price v. Mitchell, 4 Camp. 200 (1815); Exon v. Russell, 4 M. & S. 507 (1816); Grant v. Heather, 2 Man. 201 (1885); Canadian Co-operative Co. v. Tranmiczek, 1 Sask. 143 (1908).

ILLUSTRATIONS.

1. In an action against the maker a plea of want of presentment is of no avail, unless he allege and prove he had funds at the place named to meet it: Mount v. Dunn, 4 L. C. R. 348 (1854); Rice v. Bowker, 3 L. C. R. 305 (1853). See O'Brien v. Stevenson, 15 L. C. R. 265 (1865).

2. Where action was brought on a note payable generally, five months after its maturity without demand of payment, and defendant pleaded and proved that he had money ready to pay it at maturity, plaintiff was refused costs: Mineault v. Lajoie, 9 R. L. 382 (1877).

3. Where action was brought on a demand note without presenting it for payment, and defendant paid the money into Court, plaintiff was condemned to pay costs: Archer v. Lortie, 3 Q. L. R. 159 (1877); Dorion v. Benoit, 2 L. N. 171 (1879); Lessard v. Genest, Ramsay A. C. 86 (1883).

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Liability of maker.

4. The demand of payment of a note must be accompanied by a tender of it to the maker. Such demand of payment cannot be made publicly at the church door, immediately after divine service, either on a Sunday or a feast of obligation: De la Chevrotière v. Guilmet, 9 L. N. 412 (1886).

5. Where a note was, in the body of it, made payable at a particular place, a presentment there at any time before action is sufficient to charge the maker: Miller v. Dodge, 23 N. S. 191 (1891); Gordon v. Kerr, 25 Rettie (4th series) 570 (1898).

6. A note payable at a particular place named at the foot or in the margin need not be presented for payment, as against the maker: Grant v. Heather, 2 Man. 201 (1885); Price v. Mitchell, 4 Camp. 200 (1815); Exon v. Russell, 4 M. & S. 507 (1816); Mullick v. Radakissen, 9 Moore P. C. at p. 70 (1854).

7. Where two joint makers stand to the knowledge of the holder in the relation to each other of principal debtor and surety, the latter is not released for a want of presentment and notice of dishonor: Gardner v. Shaver, (Man.), 13 C. L. T. 287 (1893).

8. The statement that a note was "duly presented" means that it was presented at the time and place at which it was made payable: Union Bank v. Wurtzburg, 9 B. C. 160 (1902).

9. The holder of a demand note payable generally may sue the maker without proving presentment or demand: Norton v. Ellam, 2 M. & W. at p. 464 (1837); Dodd v. Gill, 3 F. & F. 261 (1862).

10. The drawer of a cheque, the maker of a promissory note, or the acceptor of a bill of exchange payable at a particular place, and not elsewhere, has no right to insist on immediate presentment at that place: Mullick v. Radakissen, 9 Moore P. C. 70 (1854).

11. Across the face of a note there was written the following: "Payable at the London and Provincial Bank," which was signed by the maker. Held, that the note was not "in the body of it" made payable at a particular place: Stevenson v. Brown, 18 T. L. R. 268 (1902).

As to endorser.

184. Presentment for payment is necessary in order to render the endorser of a note liable. 53 V., c. 33, s. 86 (2). Imp. Act, s. 87 (2).

Presentment is necessary in such case because the contract of the endorser is that the maker will pay on presentment according to the tenor of the note, and failing this, he himself will do so, if the requisite proceedings on dishonour are duly taken: s. 133.

Presentment for payment.

The rules as to presentment of bills for payment, in section 85 and the following sections, are applicable to notes except in so far as they are modified in this part of the Act: s. 186.

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See the notes and illustrations under these sections. Also Siddall v. Gibson, 17 U. C. Q. B. 98 (1858); Saunderson v. Judge, 2 H. Bl. 510 (1795); Roche v. Campbell, 3 Camp. 247 (1812); Britt v. Lawson, 15 Hun (N. Y.) 123 (1878).

Place where.

2. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an endorser liable.

What sufficient.

3. Where a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. 53 V., c. 33, s. 86 (3). Imp. Act, s. 87 (3).

Place named.

Where a place of payment is named in the body of a note, it is part of the contract, and unless it is presented there and notice of dishonour given, the terms on which the indorser made himself conditionally liable have not been complied with: O'Brien v. Stevenson, 15 L. C. R. 265 (1865); Howes v. Bowes, 16 East, 112 (1812).

If merely indicated.

Where, however, it is merely indicated in a foot note, or the like, it was a disputed point in England and the United States, as well as in Canada, before the existing Acts were passed, whether it was a part of the contract. In the United States, the weight of authority would appear to have been in favor of the affirmative; and in England and Canada in favor of the negative. See Trecothick v. Edwin, 1 Stark. 468 (1816); Jones v. Fales, 1 Mass. 211 (1808); Platt v. Smith, 11 Johns. (N.Y.) 368 (1817); Woodworth v. Bank of America, 19 Johns. 391 (1822). Dewey v. Reed, 40 Barb. (N.Y.) 17 (1863); 2 Daniel, § 1383; Contra, Cunard v. Tozer, 4 N. B. (2 Kerr) 365 (1844); Price v. Mitchell, 4 Camp. 200 (1815); Exon v. Russell, 4 M. & S. 505 (1816); Masters v. Baretto, 8 C. B. 433 (1819); Hill v. Cooley, 46 Penn. St. 259 (1863).

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Sub-section 3 recognizes such a memorandum, but apparently not as part of the contract, as presentment at the place indicated is made optional and not obligatory.

Maker.

185. The maker of a promissory note, by making it,—

Engagement.

(*a*) engages that he will pay it according to its tenor;

Estoppel.

(*b*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 33, s. 87. Imp. Act, s. 88.

Liability of maker.

The position of the maker of a note is similar in most respects to that of the unconditional acceptor of a bill: s. 186 (2). So far as the instrument itself speaks, he executes it of his own volition and not because required by some other person. He is, from its inception, the primary debtor; the endorsers being ordinarily only secondarily liable until after dishonour and notice. See section 128 as to the engagement of the acceptor of a bill, which is the same in terms, but different in effect, as the undertaking of the acceptor may be qualified or conditional, whereas that of the maker must be absolute and unconditional.

As agent.

The question frequently arises whether the maker note who purports to sign as agent, attorney, or in some other representative capacity, is personally liable on the note. As pointed out at p. 106, the acceptor of a bill has frequently been held personally liable under a form of signature which might not bind him personally as the maker of a note. This is usually on account of the mode in which the bill is addressed to him as drawee. See also sections 51 and 52, and the notes and illustrations thereon.

Holder in due course.

A holder in due course has been defined in section 56. The estoppel in his favor in clause (*b*) is the same as that against the acceptor of a bill in section 129 (*c*). The omission of the words "but not the genuineness or validity of his endorsement" do not affect the meaning as the estoppel

would not be extended beyond its terms, even if the maker actually made the note after it had been endorsed. The reason for this estoppel is that the maker by issuing a note in this form has in effect made these representations to the person who becomes such a holder, and after it is acted upon, he cannot be allowed to claim the contrary. See Perkins v. Beckett, 29 U. C. C. P. 395 (1878); Canadian Bank of Commerce v. Rogers, 23 O. L. R. 109 (1911); Taylor v. Croker, 4 Esp. 187 (1803); Drayton v. Dale, 2 B. & C. 293 (1823); Smith v. Marsack, 6 C. B. 486 (1848); Lane v. Krekle, 23 Iowa, 404 (1867); Wolke v. Kuhne, 109 Ind. 313 (1886). § 185

The payee of a note whose name has been filled in after delivery may be the party to whom it is negotiated, and may thereby become a holder in due course: Lilly v. Farrar, Q. R. 17 K. B. 554 (1908).

186. Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. Application of Act to notes.

2. In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order. 53 V., c. 33, s. 88 (1), (2). Imp. Act, s. 89 (1), (2). Terms corresponding.

The provisions of the Act relating to bills of exchange are found in Part II. The modifications set out in the second sub-section are probably not exhaustive. The principal provisions of this Part which modify those of Part II. in so far as notes are concerned, appear to be those contained in sections 176, 179, 180, 181, 182, 183 and 184.

3. The provisions of this Act as to bills relating to,— Provisions inapplicable.

(*a*) presentment for acceptance:

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(*b*) acceptance;

Provisions inapplicable.

(*c*) acceptance *supra* protest;

(*d*) bills in a set;

do not apply to notes. 53 V., c. 33, s. 88 (3). Imp. Act, s. 89 (3).

This list is not exhaustive. To the sections comprised under the foregoing heads must be added those coming under sub-sections 1 and 2, and others that from their very nature are inapplicable.

The following are the sections coming under the various heads above named:—

(*a*) Sections 75 to 84 inclusive.

(*b*) Sections 355 to 39 inclusive except the proviso to the latter section.

(*c*) Sections 147 to 155 inclusive.

(*d*) Sections 158 and 159.

No portion of Part III. relating to cheques is made applicable to promissory notes, nor do sections 7 and 8 of Part I. apply to them.

Protest of foreign notes.

187. Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers. 53 V., c. 33, s. 88 (4). Imp. Act, s. 89 (4).

A foreign note is one which is either payable without Canada or which is both dated and actually made without Canada: see. 177. The Imperial Act has not the words "except for the preservation of the liabilities of endorsers." The addition of these words puts foreign notes on the same footing as foreign bills in Canada as to protest: see. 112

OTHER NEGOTIABLE INSTRUMENTS

Bill, notes and cheques.

The Bills of Exchange Act treats only of bills, cheques and notes. The single exception to this is section 7, which declares that the provisions of the Act as to crossed cheques shall apply to a warrant for payment of dividend. This section was necessary for bank dividend warrants, as they are not cheques, drawer and drawee being the same person. Dividend warrants drawn by a corporation on its bank would be cheques under the Act, independently of section 7. There are certain other instruments which represent money, and which by commercial usage or by legislation are gradually acquiring the full measure of negotiability which belongs to bills and notes. This process is very clearly described in the judgment of Cockburn, C.J., in the case of Goodwin v. Robarts, L. R. 10 Ex. 337 (1875).

Negotiable instrument.

A negotiable instrument, strictly so called, is one representing on its face a certain sum of money, which may be transferred by indorsement and delivery, or by delivery alone, so that the holder for the time being has a right to sue upon it in his own name; and if he is a bona fide holder for value before maturity, he may demand the full amount of the face of the instrument. See Crouch v. Credit Foncier, L. R. 8 Q. B. at p. 381 (1873), Simmons v. London Joint Stock Bank, [1891] 1 Ch. at p. 291, and Edelstein v. Schuler, [1902] 2 K. B. at p. 154.

Bank Notes.—Bank notes are promissory notes payable to bearer on demand. They may be issued only by chartered banks, and no note shall be for less than five dollars, or for any sum that is not a multiple of five dollars: Bank Act, 1913, s. 61. They circulate as cash, are not deemed to be overdue, and are not discharged by coming into the hands of the bank, but may be re-issued. They are not subject to the statutes of limitation or prescription, at least until after demand and dishonor.

Dominion Notes.—These notes, issued under 5 G. IV, c. 4, are in form promissory notes payable on demand, but they do not strictly come within the definition of section 17, as the Dominion of Canada, the maker, is not a "person" under the Interpretation Act. They have all the qualities of negotiable notes and bank notes, and are besides a legal tender.

Bon or I. O. U.—There were conflicting decisions in England as to whether an I. O. U. was a negotiable instrument. It is now well settled that if the instrument is a simple I. O. U. and contains no promise to pay, it is a mere acknowledgment of the debt, and is not negotiable: Gould v. Combs, 1 C. B. 543 (1845); Fessenmayer v. Adcock, 16 M. & W. 149 (1847); Byles, p. 48. If, however, it contains a promise to pay, it is a note, and the following was held to be sufficient: "11th Oct., 1831, I. O. U. £20, to be paid on the 22nd inst. W. B.": Brooks v. Elkins, 2 M. & W. 74 (1836).

In Canada, the decisions have not been uniform. In Palmer v. McLennan, 22 U. C. C. P. 565 (1873), the following was held not to be a note: "Good to Mr. Palmer for $850 on demand." In Gray v. Worden, 29 U. C. Q. B. 535 (1870), "Due J. G. or bearer $182, in Canada bills, payable in 14 days." was held to be a sufficient promise to make it a note.

In Quebec, a simple bon, "Good on demand," has been recognized as a negotiable note: Hall v. Bradbury, 1 Rev. de Lég. 180 (1845); Beandry v. Laflamme, 6 L. C. J. 307 (1862); Cridiford v. Bulmer, M. L. R. 4 Q. B. 293 (1886); Désy v. Daly, Q. R. 12 S. C. 183 (1897); but not a mere certificate of indebtedness: Dasylva v. Dufour, 16 L. C. R. 294 (1866).

In France and most of the United States, these instruments are recognized as negotiable, and the introduction of such words as "payable," "good to," "order," "bearer," "demand," or a due date, have been accepted as sufficient evidence of a promise to pay, or that the instrument should be negotiable. See Sackett v. Spencer, 29 Barb. (N. Y.)

180 (1859); Hussey v. Winslow, 59 Me. 170 (1870); Franklin v. March, 6 N. H. 364 (1833); Kimball v. Huntington, 10 Wend. (N. Y.) 675 (1833).

The change in the law of Canada by which notes payable to a person, without "order" or "bearer," are made negotiable, will no doubt lead to more general recognition of these bons as negotiable instruments.

Exchequer and Treasury Bills.—These bills now issued under the Imperial Acts of 1866, 1877 and 1889, have long been recognized as negotiable: Wookey v. Pole, 1 B. & Ald. 1 (1820). They are issued with the name of the payee in blank. In this form, they are transferable by delivery; when filled up, they become payable to order: Miller v. Race, 1 Smith's Leading Cases (11th ed.), at p. 473.

Foreign Government Bonds.—In the English Courts, the question of the negotiability of these instruments has often come up. The question to be decided has been held in these cases to be whether they were treated as negotiable in the English money market, if consistent with what appeared on their face, and not simply whether they were made payable to order or bearer, or whether they were considered to be negotiable in foreign countries: See Glyn v. Baker, 13 East. 509 (1811)—East India Bonds: Gorgier v. Mieville, 3 B. & C. 45 (1824)—Prussian Government Bonds: Lang v. Smyth, 2 Bing. 284 (1831)—Neapolitan Bonds: Atty.-Gen. v. Bouverie, 5 M. & W. at p. 190 (1838)—Russian and Danish Bonds: Heseltine v. Siggers, 1 Ex. 856 (1848)—Spanish Stock; Picker v. London and County Bank, 18 Q. B. D. at p. 516 (1887)—Prussian Government Bonds. The course of the jurisprudence is in the direction of favoring the negotiability of such instruments.

Municipal Debentures.—In 1855, by the Act 18 Vict. c. 80, municipal debentures issued in Upper and Lower Canada, payable to bearer, were declared to be transferable by delivery, and those payable to any person or order by indorsement, the holder for the time being having the right to sue in his own name, and his title not being liable to be impeached if he was a bona fide holder for value without notice.

Similar provisions are found in the municipal Acts now in force in most of the provinces. See R. S. O. c. 192, ss. 287 to 295, and R. S. O. c. 109, s. 50; R. S. Q. Arts. 5900 and 5901; C. S. N. B. c. 169; R. S. Man. c. 133, ss. 426 to 443; Cons. Ord. N. W. T. c. 70, ss. 212 to 218; R. S. Sask. c. 146, s. 6; R. S. B. C. c. 170, s. 165.

The negotiability of municipal debentures may be restrained by inserting a provision requiring registration in the books of the corporation, for which most Acts provide; or by inserting words prohibiting transfer: s. 21.

They are usually issued for a term of years, with interest coupons attached; but frequently payable by equal annual instalments of principal and interest. The debentures are under the seal of the corporation. It has been thought that on account of their being under seal they would not be treated as promissory notes, but in view of section 5 of the Act, this would no longer be an objection. The coupons are generally in the form of ordinary promissory notes signed by one or both of the officers who execute the debentures. Debentures are usually issued for $100 each or any larger sum.

In Ontario, such debentures have been held to be negotiable, and bona fide holders for value have been protected: Anglin v. Kingston, 16 U. C. Q. B. 121 (1857); Trust and Loan Co. v. Hamilton, 7 U. C. C. P. 98 (1857); Crawford v. Cobourg, 21 U. C. Q. B. 113 (1861); Sceally v. McCallum, 9 Grant, 431 (1862).

In Quebec, they have been held to be negotiable like promissory notes, and in suing might be declared upon as such: Eastern Townships Bank v. Compton, 7 R. L. 446 (1871). See also Corporation of Roxton v. E. T. Bank, Ramsay A. C. 240 (1882); Macfarlane v. St. Césaire, M. L. R. 2 Q. B. 160 (1886); St. Césaire v. Macfarlane, 14 S. C. Can. 738 (1887); County of Ottawa v. M. O. & W. Ry. Co., ibid. 193 (1886); Pontiac v. Ross, 17 S. C. Can. 406 (1890).

So, also, as to school debentures in New Brunswick: Robinson v. School Trustees of St. John, 34 N. B. 503 (1898).

In the United States, such municipal bonds, negotiable in form, notwithstanding they are under seal, are clothed with all the attributes of commercial paper, pass by delivery or indorsement, and are not subject to equities (where the power to issue them exists) in the hands of holders for value before maturity without notice: 1 Dillon, Municipal Corporations, 5th ed., §§ 486, 513. See Cromwell v. Sac Co., 96 U. S. 51 (1877).

Where the power to issue debentures for a given purpose exists, but there has been some irregularity in connection with the passing of the by-law or non-compliance with certain directions, the corporation is estopped from denying the validity of the debentures in the hands of a bona fide holder: Webb v. Commissioners of Herne Bay, L. R. 5 Q. B. 642 (1870); Confederation Life v. Howard, 25 O. R. 197 (1894); Board of Knox Co. v. Aspinwall, 21 Howard (U.S.) 539 (1858); Supervisors v. Schenck, 5 Wallace (U.S.) 772 (1865); Pendleton County v. Amy, 13 Wallace (U.S.) 297 (1871).

Where, however, the debenture refers to a by-law and the by-law on its face shows that it is for a purpose not authorized by law, the debenture is invalid: Confederation Life v. Howard, 25 O. R. 197 (1894); Wiltshire v. Surrey, 2 B. C. R. 79 (1891); Marsh v. Fulton County, 10 Wallace (U. S.) 676 (1870).

Money paid for worthless debentures can be recovered back, as money paid without consideration, or for a consideration that has failed: Straton v. Rastall, 2 T. R. 366 (1788); Young v. Cole, 3 Bing. N. C. 724 (1837); Confederation Life v. Howard, 25 O. R. 197 (1894).

Decisions conflict as to whether coupons are entitled to grace. The weight of authority is in favor of their being payable on the very day of maturity without grace: 2 Daniel, §§ 1499*a*, 1505.

Coupons dishonored bear interest from their maturity: C. C. 1069, 1077. Coupons, negotiable in form, may be

sued upon, even when detached from the bonds to which they belong: Connolly v. Montreal P. & J. Ry. Co., Q. R. 20 S. C. 1 (1901).

Debentures of other Corporations.—Most railway and other commercial companies incorporated by special Dominion or Provincial Acts are authorized to issue bonds or debentures to a certain extent, which form a first charge on the undertaking. Companies incorporated by Dominion Letters Patent may also issue bonds or debentures for borrowed money: R. S. C. c. 79, s. 69. It is not as yet well settled whether they are negotiable instruments in the full sense of that term. In Ontario, by R. S. O. c. 109, s. 50, bonds and debentures of corporations, if payable to bearer, are transferable by delivery, and if to order by indorsement and delivery, and the holder may sue in his own name; but the Act is silent as to whether they are free from the equities attaching to them, if transferred before maturity; but it would probably be so held. Other provinces have similar provisions.

See Bank of Toronto v. Cobourg P. & M. Ry. Co., 7 O. R. 1 (1884), where bonds are compared to promissory notes; and Desrosiers v. Montreal P. & B. Ry. Co., 6 L. N. 388 (1883), as to coupons.

In England, such bonds and debentures of both home and foreign companies have frequently come before the Courts. Even when they were made payable to order or bearer, the transferee has sometimes been denied the right to sue in his own name, although as a general rule the company which has issued such securities has been held to be estopped from denying their negotiability. The course of the jurisprudence has been towards placing such instruments more nearly on the same footing as bills and notes. The case of Sheffield v. London Joint Stock Bank, 13 A. C. 333 (1888), in the House of Lords, was understood to have somewhat restricted their negotiability. This interpretation was put upon it in Simmons v. London Joint Stock Bank, [1891] 1 Ch. 270; but the House of Lords, in reversing this latter decision, explained that the Sheffield judgment was

based upon the particular facts of that case: [1892] A. C. 201.

In Bechuanaland Exploration Co. v. London Trading Bank, [1898] 2 Q. B. 658, the cases were carefully reviewed and it was held that the negotiability of debentures might be established by evidence of modern commercial usage and that Crouch v. Credit Foncier, in so far as it held the contrary, must be considered to be overruled by Goodwin v. Robarts, L. R. 10 Ex. 337 (1875), and Rumball v. Metropolitan Bank, 2 Q. B. D. 194 (1877). In Edelstein v. Schuler, [1902] 2 K. B. 144 it was laid down that ordinary bonds payable to bearer were negotiable instruments, and that it is not now necessary to tender evidence to this effect, as the Courts will take judicial notice of that fact.

Where an agent in possession of debentures of a corporation, payable to bearer, which are past due, [illegible] on which interest is being paid in accordance with a spe[illegible] statute, pledges them for an advance for himself, the fact that they are past due does not destroy their negotiable character. Neither the fact that the bonds had been marked as exhibits in a certain case in which the owner was a party, nor the pledgee's knowledge of the insolvency of the agent was sufficient notice of defects in the pledgor's title. The owner of the bonds having enabled the agent to transfer them by delivery, was held to be estopped from asserting his title to the detriment of a bona fide holder for value. In an ordinary case a party taking negotiable paper after dishonour, takes it subject, not only to the equities of prior parties, but also to those of all parties having an interest therein: Young v. Macnider, 25 S. C. Can. 272 (1895).

It will be seen from the reports of these cases that holders have been allowed in certain instances higher rights on account of the companies being insolvent, and in others, parties on account of their own conduct or representations have been stopped from denying the negotiability of instruments which might not have been held to be negotiable in other circumstances.

In the United States, such bonds, as well as those issued by the Federal and State Governments and by municipal

ties, if made payable to order or bearer, are generally considered to be negotiable in the highest sense of that term, as are also the interest coupons: 2 Daniel, §§ 1486-1517*a*.

On account of having the latter attached, they are frequently called "coupon bonds." If the bond is secured by a mortgage this covers the coupon and interest on it if not paid on presentation at maturity. Neither the mortgage security nor the informal nature of the coupons prevents their being negotiable instruments: 2 Daniel, supra; Venables v. Baring, [1892] 3 Ch. 527.

Company Shares or Stock.—Where certificates are issued to represent such shares or stock, they have not been generally recognized in England as being negotiable. See Swan v. N. B. Australasian Co., 2 H. & C. 175 (1863); France v. Clark, 26 Ch. D. 257 (1884); London County Bank v. River Plate Bank, 20 Q. B. D. 232 (1887); Sheffield v. London Joint Stock Bank, 13 App. Cas. 333 (1888); Williams v. Cady, 15 App. Cas. 267 (1890).

The same rule has obtained in Ontario. Even when a certificate contains the clause "Transferable only on the surrender of this certificate," a transferee of the certificate has no title against a subsequent transferee without surrender of the certificate, who in good faith has his transfer first recorded in the books of the company: Smith v. Walkerville Co., 23 Ont. A. R. 95 (1896).

Where, however, the owner signs a blank assignment on the certificate, a bona fide holder for value may be able to acquire rights against such owner: Smith v. Rogers, 30 O. R. 256 (1899).

In the United States, they are not considered to be negotiable; but are said to be "quasi-negotiable" or assignable, being generally subject to certain restrictions in the charter or by-laws of the company. See 2 Daniel, §§ 1708, 1709.

In Rumball v. Metropolitan Bank, supra, however, scrip certificates for shares in favor of bearer were held on the authority of Goodwin v. Robarts, 1 App. Cas. 476 (1876).

to be negotiable instruments transferable by mere delivery. In Webb v. Alexandria Water Co., 21 T. L. R. 572 (1905), it was held on the authority of the last-named case, that share warrants in favor of bearer under sections 27, 28, and 29 of the Companies Act, 1867, were negotiable.

Bank Deposit Receipts.—The instruments of this character which were in question in the earlier Canadian cases had not the words "bearer" or "order," and it was held that the holder could not recover in his own name. See Mander v. Royal Canadian Bank, 20 U. C. C. P. 125 (1869); Bank of Montreal v. Little, 17 Grant. 313 (1870); Lee v. Bank of B. N. A., 30 U. C. C. P. 255 (1879). These cases were followed by Maclennan, J.A., in Armour v. Imperial Bank, 15 C. L. T. (Ont.) 391 (1895). In Voyer v. Richer, 13 L. C. J. 213 (1869), the Quebec Courts held that even where the receipt was payable to order, it was not negotiable. In the Privy Council, L. R. 5 P. C. 461 (1874), it was said there was "high authority in favor of considering it to be negotiable," but the case was decided on another ground. In Re Central Bank, 17 O. R. 574 (1889), it was held that the bank which had issued such a receipt payable to order was estopped from denying its negotiable character.

The omission of the words "order or bearer" and making a receipt to the depositor without words prohibiting transfer would not alone be sufficient to prevent its being negotiable: sec. 22. Printing "Not negotiable" distinctly on the face of the instrument is sufficient: Re Commercial Bank, 11 Man. 494 (1897). If a bank gives a receipt with a promise to pay, that meets the requirements of the definition of a promissory note in section 176, it would be held liable as on a negotiable note or on the ground of estoppel, as a bank may make a negotiable note: R. S. C. c. 1, s. 30; Bills of Exchange Act, sec. 47. Indeed, every bill, draft, or dividend warrant which it issues upon itself or one of its branches may be treated as a promissory note: sec. 26.

When such receipts are not negotiable, they do not pass by delivery or endorsement; but may be assigned or transferred in accordance with the provincial law.

Deposit receipts are said not to be negotiable in England: Hart on Banking, 2nd ed., p 560; Paget, 2nd ed., p. 30. It appears, however, from the cases cited in support of this doctrine, that the instruments in question were marked "Not transferable," and one of them was not even for a sum certain: In re Dillon, 44 Ch. D. 70 (1890); In re Griffin, [1899] 1 Ch. 408. Another difficulty there is that stated by Paget, namely, that to issue a receipt payable to bearer on demand, would probably be an infringement of the Bank Charter Act—something that does not exist under our Act.

Such instruments have been treated as negotiable in the United States, except in Pennsylvania, where, since its adoption of the Negotiable Instruments Law, the general rule would be followed.

Letters of Credit.—A letter of credit is an open letter of request whereby one person (usually a merchant or banker) requests some other person or persons to advance moneys or give credit to a third person named therein, for a certain amount, and promises that he will repay the same to the person advancing the same, or accept bills drawn upon himself, for the like amount.

They are not negotiable instruments: Orr v. Union Bank, 1 Macq. H. L., at p. 523 (1854); British Linen Co. v. Caledonia Ins. Co., 4 Macq. 107 (1861); Union Bank of Canada v. Cole, 47 L. J. C. P. 100 (1877). The Provincial Secretary of Quebec wrote a letter to a government contractor that money would be voted at the ensuing session on his contract, which would be paid to any person to whom he might indorse the letter. He indorsed the letter to a bank for advances on his contract, and the money was voted by the Legislature. It was held by the Supreme Court of Canada that this "letter of credit" was not a negotiable instrument under the Bills of Exchange Act or the Bank Act, and that the bank could not recover upon it from the Government: Jacques Cartier Bank v. The Queen, 25 S. C. Can. 84 (1895).

A telegram, "May draw to extent of $500, if necessary," is an open letter of credit and is not affected by a private arrangement that the draft of the party addressed was to be accompanied by bills of lading and a policy of insurance when this was not expressed on the face of the letter of credit: Merchants' Bank v. Winter, Nfld. Rep. 1898, p. 30.

A circular note is a letter of credit on which the person in whose favor it is granted carries with him a letter containing the signature to be shown to the correspondents of the bank to whom the note may be presented. This is called a letter of indication. When the circular notes were lost, indemnity was ordered, as it was not enough to tender the letter of indication alone: Conflans Stone Quarry Co. v. Parker, L. R. 3 C. P. 1.

A Post Office Money Order is not a negotiable instrument: Fine Art Society v. Union Bank, 17 Q. B. D. at p. 713 (1886).

SCHEDULE

See Section 125.

Form A.

NOTING FOR NON-ACCEPTANCE.

(*Copy of Bill and Endorsements.*)

On the , 19 , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of and I received for answer " ."

The said bill is, therefore, noted for non-acceptance.

A. B.,
Notary Public.

(*Date and place.*) 19 .

Due notice of the above was by me served upon { A.B., / C.D., } the { drawer. / endorser, } personally, on the day of (or, at his residence, office or usual place of business) in , on the day of (*or* by depositing such notice, directed to him, at , in His Majesty's post office in the city [town *or* village], on the day of , and prepaying the postage thereon.

A. B.,
Notary Public.

(*Date and place.*) 19 .

53 V. c. 33, sch., form A.

FORM B.

PROTEST FOR NON-ACCEPTANCE FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of Bill and Endorsements.*)

On this day of , in the year 19 , I, A. B., notary public for the province of , dwelling at , in the province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { drawee / acceptor } thereof personally (*or,* at his residence, office *or* usual place of business) in, , and, speaking to himself (*or* his wife, his clerk, *or* his servant, &c.), did demand { acceptance / payment } thereof unto which demand { he / she } answered: " ."

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

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V. c. 33, sch., form B.

FORM C.

PROTEST FOR NON-ACCEPTANCE OF FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(*Copy of Bill and Endorsements.*)

On this day of , in the year 19 , I, A. B., notary public for the province of , dwelling

at , in the province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { drawee / acceptor } thereof, at , being the stated place where the said bill is payable, and there, speaking to , did demand { acceptance / payment } of the said bill; unto which demand he answered: " ."

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

All of which I attest by my signature.
(Protested in duplicate.)

A. B.,
Notary Public.

53 V. c. 33, sch., form C.

Form D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED, FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words "and afterwards on," etc., *continuing as in the last preceding form, but introducing between the words* "did" *and* "exhibit" *the word* "again," *and, in a parenthesis, between the words* "written" *and* "unto" *the words:* "and which bill was by me duly noted for non-acceptance on the day of ."

But if the protest is not made by the same notary, then it should follow a copy of the original bill and endorsements and noting marked on the bill—and then in the protest, introduce, in a parenthesis, between the words "written" *and* "unto," *the words:* "and which bill was on the day of , by , notary public for the Province of , noted for non-acceptance, as appears by his note thereof marked on the said bill."

53 V. c. 33, sch., form D.

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(Copy of Note and Endorsement.)

On this day of , in the year 19 , I, A. B., notary public for the province of , dwelling at , in the province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (*or*, at his residence, office, *or* usual place of business), in , and speaking to himself (*or* his wife, his clerk *or* his servant, etc.), did demand payment thereof: unto which demand { he / she } .

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V. c. 33, sch., form E.

Form F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(*Copy of Note and Endorsements.*)

On this day , in the year 19 , I, A. B., notary public for the province of , dwelling at , in the province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, at , being the stated place where the said note is payable, and there, speaking to , did demand payment of the said note, unto which demand he answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V. c. 33, sch., form F.

Form G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(*Place and Date of Noting or of Protest.*)

1st.

To P. Q. (*the drawer*),

at

Sir,

Your bill of exchange for $, dated at the , upon E. F., in favor of C. D., payable days

after { sight, / date. } was this day, at the request of

duly { noted / protested } by me for { non-acceptance. / non-payment.

A. B.,
Notary Public.

(*Place and Date of Noting or of Protest.*)

2nd.

To C. D. (*endorser*),
(*or* F. G.)

at

Sir,

Mr. P. Q.'s bill of exchange for $, dated at , the , upon E. F., in your favor (*or* in favor of C. D., payable days after { sight / date, } and by you endorsed was this day, at the request of

duly { noted / protested } by me for { non-acceptance. / non-payment. }

A. B.,
Notary Public.

53 V. c. 33, sch., form G.

Form H.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(*Place and Date of Protest.*)

To

at

Sir.

Mr. P. Q.'s promissory note for $, dated at , the payable { days / months / on—— } after date to { you / E. F. } or order, and endorsed by you, was this day, at

the request of , duly protested by me for non-payment.

A. B.,
Notary Public.

FORM I.

NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR OF NON-PAYMENT OF A NOTE.

(To be subjoined to the Protest.)

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by law, of the foregoing protest for { non-acceptance / non-payment } of the { bill / note } thereby protested upon { P. Q., / C. D., } the { drawer, / endorsers, } personally, on the day of (*or*, at his residence, office, *or* usual place of business) in , on the day of : (*or*, by depositing such notice, directed to the said { P. Q., / C. D., } at , in His Majesty's post office in , on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last-mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

53 V. c. 33, sch., form I.

FORM J.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(Copy of Bill or Note and Endorsements.)

On this day of , in the year 19 , I, N. O., one of His Majesty's justices of the peace for the district

(*or* county, etc.), of , in the province of . dwelling at (*or* near) the village of , in the said district, there being no practising notary public at or near the said village (*or any other legal cause*), did, at the request of , and in the presence of , well known unto me, exhibit the original { bill, / note, } whereof a true copy is above written, unto P. Q., the { drawer / acceptor / promisor } thereof, personally (*or* at his residence, office *or* usual place of business) in . and speaking to himself (his wife, his clerk *or* his servant, etc.), did demand { acceptance / payment } thereof, unto which demand { he / she } answered: " ."

Wherefore I, the said justice of the peace, at the request aforesaid, have protested, and by these presents do protest against the { drawer and endorsers / promisor and endorsers / acceptor, drawer and endorsers } of the said { bill, / note, } and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance / payment } of the said { bill. / note. }

All which is by these presents attested by the signature of the said (*the witness*) and by my hand and seal.

(Protested in duplicate.)

ignature of the witness).
(*Signature and seal of the J. P.*).

53 V. c. 33, sch., form J.

APPENDIX I

FORMS.

No. 1.

INLAND BILL OF EXCHANGE—S. 25.

$475.50.

Toronto, 1st October, 1915.

Three months after date pay to the order of E. F. & Co., four hundred and seventy-five dollars and fifty cents, value received.

A. B.

To Messrs. C. D. & Co.,
Montreal.

No. 2.

FOREIGN BILL OF EXCHANGE.—S. 25.

Exchange for £200 Stg.

Toronto, 1st October, 1915.

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

A. B.

To the Bank of Montreal,
London, Eng.

No. 3.

FOREIGN BILL OF EXCHANGE. Ss. 25, 28.

£100.

Liverpool, 25th September, 1915.

Sixty days after date pay to our order one hundred pounds, value received, at current rate of exchange for banker's sight draft on London.

C. D. & Co.

To Messrs. A. B. & Son,

Toronto.

No. 4.

FOREIGN BILL OF EXCHANGE. Ss. 25, 28.

$500.

Chicago, [illegible], 1915.

Thirty days after date pay to the order of the First National Bank five hundred dollars, with exchange on New York, value received, and charge to account of

The A. B. Co.,

Per C. D., Manager.

To E. F. & Co.,

Toronto.

No. 5.

CHEQUE CROSSED GENERALLY —NEGOTIABLE.—S. 168.

$250.00.

Montreal, 1st October, 1915.

To the Merchants Bank.

Pay to E. F., or order, two hundred and fifty dollars.

A. B.

No. 6.

CHEQUE CROSSED SPECIALLY.—NOT NEGOTIABLE.
Ss. 168, 169.

Toronto, 1st October, 1915.

$575.

To the Canadian Bank of Commerce.

Pay to E. F., or order, five hundred and seventy-five Dollars.

A. B.

No. 7.

INLAND PROMISSORY NOTE.—S. 177.

$250.00.

Toronto, 23rd September, 1915.

DUE 27TH DECEMBER.

Three months after date I promise to pay to the order of E. F., at the Molsons Bank, Montreal, two hundred and fifty dollars, value received.

A. B.

No. 8.

FOREIGN PROMISSORY NOTE.—S. 177.

Montreal, 31st October, 1915.

DUE 30TH NOVEMBER.

$500.

One month after date I promise to pay to the order of P. S., at the First National Bank, New York, five hundred Dollars, value received.

A. B.

No. 9.

NOTARIAL NOTE, *en brevêt*.—SEE P. 319.

On the first day of April, one thousand nine hundred and fifteen, before Mtre. Jacques Cartier Leclere, the undersigned Notary Public for the Province of Quebec, residing in the Parish of Notre Dame, in the district of Montreal, personally appeared Jean Baptiste Deschamps dit Sarrasin, farmer, and Louis Dubois, son of Pierre, lumberman, both of said parish, who acknowledged themselves to be indebted to Napoleon Leriche, of the village of St. Mathieu, in the said district, capitalist, in the sum of one hundred dollars, value received, which sum they promise jointly and severally to pay to said Napoleon Leriche, or order, in one year from the date hereof with interest at the rate of eight per cent., and with interest at the same rate on interest and principal if not paid when due.

Whereof Acte required and granted en brevêt

Thus done and passed in the office of said notary, the day, month and year first above written, and after reading

hereof the said Sarrasin has signed, and the said Dubois has declared he cannot write his name and has made his mark, the whole in the presence of said notary who has signed.

J. C. Leclerc, N. P. J. B. Sarrasin,

his
Louis **X** Dubois
mark.

No. 10.

NOTARIAL ACT OF HONOUR.—S. 154.

On the first day of October, one thousand nine hundred and fifteen, I, John Smith, Notary Public for the Province of Ontario, dwelling at the City of Toronto, in said Province, do hereby certify that the original bill of exchange for five hundred dollars annexed to the protest thereof on the other side hereof written, was this day exhibited to C. D., of Toronto, agent, who declared before me, that he would pay the amount of the said bill and protest charges for the honour of A. B., the last indorser thereof, holding the drawer and indorsers and all other persons responsible to him, the said C. D., for the said sum and for all interest, damages and expenses. I have, therefore, granted this notarial act of honour accordingly.

Which I attest,

[Seal] John Smith, N.P.

APPENDIX II.

THE NEGOTIABLE INSTRUMENTS LAW

The following is the text of the Negotiable Instruments Law, enacted by the State of New York in 1897.

It was also adopted with slight changes in the following 46 States, Territories, etc., in the years indicated:—Alabama (1907), Alaska (1912), Arizona (1901), Arkansas (1913), Colorado (1897), Connecticut (1897), District of Columbia (1899), Delaware (1911), Florida (1897), Hawaii (1907), Idaho (1903), Illinois (1907), Indiana (1913), Iowa (1902), Kansas (1905), Kentucky (1904), Louisiana (1904), Maryland (1898), Massachusetts (1898), Michigan (1905), Minnesota (1913), Missouri (1905), Montana (1903), Nebraska (1905), Nevada (1907), New Hampshire (1909), New Jersey (1902), New Mexico (1907), North Carolina (1899), North Dakota (1899), Ohio (1902), Oklahoma (1909), Oregon (1899), Pennsylvania (1901), Philippine Islands, Rhode Island (1899), South Carolina (1914), South Dakota (1913), Tennessee (1889), Utah (1899), Vermont (1912), Virginia (1898), Washington (1899), West Virginia (1907), Wisconsin (1899), Wyoming (1905).

1. Short title.—This Act shall be known as The Negotiable Instruments Law.

2. Definitions and meaning of terms.—In this Act unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

3. Person primarily liable on instrument.—The person "primarily" liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "secondarily" liable.

4. Reasonable time, what constitutes. — In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

5. Time, how computed; when last day falls on holiday. —Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

6. Application of chapter.—The provisions of this Act do not apply to negotiable instruments made and delivered prior to the passage hereof.

7. Law merchant; when governs.—In any case not provided for in this Act the rules of the law merchant shall govern.

ARTICLE II.—FORM AND INTERPRETATION.

20. Form of negotiable instrument.—An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand or at a fixed or determinable future time.
4. Must be payable to order or bearer; and
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

21. Certainty as to sum; what constitutes. — The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

1. With interest; or
2. By stated instalments; or
3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at a current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

22. When promise is unconditional.—An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with;

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

23. Determinable future time; what constitutes. — An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

24. Additional provisions not affecting negotiability.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which;

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

25. Omissions; seal; particular money.—The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

26. When payable on demand.—An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

27. When payable to order.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or some of several payees; or

6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

28. When payable to bearer.—The instrument is payable to bearer:

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

29. Terms when sufficient.—The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

30. Date, presumption as to.—When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

31. Ante-dated and post-dated.—The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

32. When date may be inserted.—When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

33. Blanks; when may be filled.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

34. Incomplete instrument not delivered.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

35. Delivery; when effectual; when presumed. — Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shewn to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, valid and intentional delivery by him is presumed until the contrary is proved.

36. Construction where instrument is ambiguous. — Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount:

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;
3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;
4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;
5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either at his election;
6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;
7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed jointly and severally liable thereon.

37. Liability of person signing in trade or assumed name.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

38. Signature by agent; authority; how shown. — The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

39. Liability of person signing as agent, etc.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

40. Signature by procuration; effect of.—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

41. Effect of indorsement by infant or corporation. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

42. Forged signature; effect of. — Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under

such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

ARTICLE III CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

50. Presumption of consideration. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

51. Consideration, what constitutes. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

52. What constitutes holder for value. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

53. When lien on instrument constitutes holder for value.—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

54. Effect of want of consideration. Absence or failure of consideration is matter of defence as against any person not a holder in due course; and partial failure of consideration is a defence pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

55. Liability of accommodation party.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

ARTICLE IV.—NEGOTIATION.

60. What constitutes negotiation. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

61. Indorsement; how made. — The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

62. Indorsement must be of entire instrument. — The indorsement must be an indorsement of the entire instrument. An

indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

63. Kinds of indorsement.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional.

64. Special indorsement; indorsement in blank. — A special indorsement specifies the person to whom, or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

65. Blank indorsement; how changed to special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

66. When indorsement restrictive.—An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

67. Effect of restrictive indorsement: rights of indorsee.—A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

68. Qualified indorsement.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

69. Conditional indorsement. — Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

70. Indorsement of instrument payable to bearer. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

71. Indorsement where payable to two or more persons. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the other.

72. Effect of instrument drawn or indorsed to a person as cashier.—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer: and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

73. Indorsement where name is misspelled, et cetera. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding if he think fit, his proper signature.

74. Indorsement in representative capacity. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

75. Time of indorsement; presumption. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

76. Place of indorsement; presumption. — Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

77. Continuation of negotiable character. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

78. Striking out indorsement.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

79. Transfer without indorsement; effect of. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

80. When prior party may negotiate instrument. — Where an instrument is negotiated back to a prior party, such

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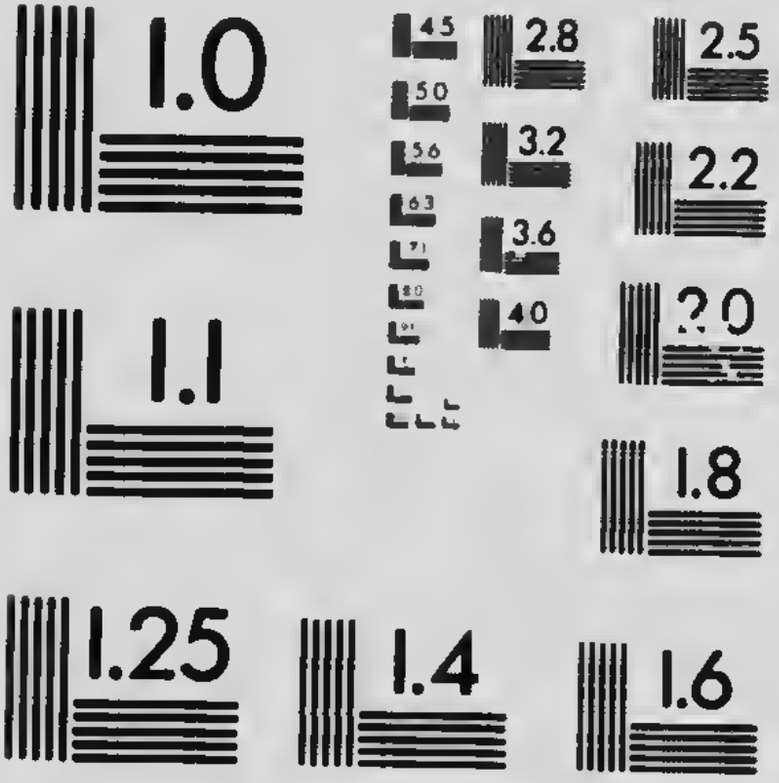
(ANSI and ISO TEST CHART No. 2)



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party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

ARTICLE V.—RIGHTS OF HOLDER.

90. Right of holder to sue; payment.—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

91. What constitutes a holder in due course.—A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such were the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

92. When person not deemed holder in due course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

93. Notice before full amount paid.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

94. When title defective.—The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for any illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

95. What constitutes notice of defect.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

96. Rights of holder in due course.—A holder in due course holds the instrument free from any defect of title of prior parties and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

97. When subject to original defenses.—In the hands of any holder other than a holder in due course, negotiable instrument

is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

98. Who deemed holder in due course.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who becnme bound on the instrument prior to the acquisition of such defective title.

ARTICLE VI.—LIABILITIES OF PARTIES.

110. Liability of maker.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

111. Liability of drawer.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

112. Liability of acceptor.—The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
2. The existence of the payee and his then capacity to indorse.

113. When person deemed indorser.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

114. Liability of irregular indorser.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties;
2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer;
3. If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

115. Warranty where negotiation by delivery, et cetera.—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;
2. That he has a good title to it;
3. That all prior parties had capacity to contract;
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

116. Liability of general indorser.—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matter and things mentioned in subsections one, two and three of the next preceding section; and
2. That the instrument is at the time of his indorsement valid and subsisting. And in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

117. Liability of indorser where paper negotiable by delivery.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

118. Order in which indorsers are liable.—As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

119. Liability of agent or broker.—Where a broker or other agent negotiates an instrument, he incurs all the liabilities prescribed by section one hundred and fifteen of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

ARTICLE VII.—PRESENTMENT FOR PAYMENT.

130. Effect of want of demand on principal debtor.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity and has funds there available for that purpose, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

131. Presentment where instrument is not payable on demand.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

132. What constitutes a sufficient presentment.—Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;
2. At a reasonable hour on a business day;
3. At a proper place as herein defined;
4. To a person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

133. Place of presentment.—Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;
2. Where no place of payment is specified, but the addresses of the person to make payment is given in the instrument and it is there presented;
3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
4. In any other case if presented to the person to make payment where he can be found, or if presented at his last known place of business or residence.

134. Instrument must be exhibited.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

135. Presentment where instrument payable at bank.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

136. Presentment where principal debtor is dead.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

137. Presentment to persons liable as partners.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

138. Presentment to joint debtors. — Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

139. Where presentment not required to charge the drawer.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

140. When presentment not required to charge the indorser.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

141. When delay in making presentment is excused.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

142. When presentment may be dispensed with.—Presentment for payment is dispensed with:

1. Where, after the exercise of reasonable diligence, presentment as required by this Act cannot be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment express or implied.

143. When instrument dishonored by non-payment.—The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or
2. Presentment is excused and the instrument is overdue and unpaid.

144. Liability of person secondarily liable, when instrument dishonored.—Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

145. Time of maturity.—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

146. Time; how computed.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding

the day from which the time is to begin to run, and by including the date of payment.

147. Rule where instrument payable at bank. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

148. What constitutes payment in due course. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

ARTICLE VIII.—NOTICE OF DISHONOR.

160. To whom notice of dishonor must be given. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

161. By whom given.—The notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

162. Notice given by agent. Notice of dishonor may be given by an agent either in his name or in the name of any party entitled to give notice, whether that party be his principal or not.

163. Effect of notice given on behalf of holder. Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

164. Effect where notice is given by a party entitled thereto.—Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

165. When agent may give notice. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

166. When notice sufficient.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

167. Form of notice.—The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

168. To whom notice may be given.—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

169. Notice where party is dead.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

170. Notice to partners.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

171. Notice to persons jointly liable. — Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

172. Notice to bankrupt.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

173. Time within which notice must be given.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this Act.

174. Where parties reside in same place.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;
2. If given at his residence, it must be given before the usual hours of rest on the day following;
3. If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

175. Where parties reside in different places.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times;

1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter;
2. If given otherwise than through the post office, then within the time that notice would have been received in due course

of mail, if it had been deposited in the post office within the time specified in the last subdivision.

176. When sender deemed to have given due notice. — Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

177. Deposit in post office; what constitutes. Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter-box under the control of the Post Office Department.

178. Notice to subsequent party; time of. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

179. Where notice must be sent. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or
2. If he live in one place, and have his place of business in another, notice may be sent to either place; or
3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

180. Waiver of notice.—Notice of dishonor may be waived, either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied

181. When affected by waiver.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

182. Waiver of protest.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only for a formal protest, but also of presentment and notice of dishonor.

183. When notice is dispensed with.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

184. Delay in giving notice; how excused. — Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable

to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

185. When notice need not be given to drawer.—Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;
2. Where the drawee is a fictitious person or a person not having capacity to contract;
3. Where the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.

186. When notice need not be given to indorser.—Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation.

187. Notice of non-payment where acceptance refused.—Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

188. Effect of omission to give notice of non-acceptance.—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

189. When protest need not be made; when must be made.—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be, but protest is not required, except in the case of foreign bills of exchange.

ARTICLE IX.—DISCHARGE OF NEGOTIABLE INSTRUMENTS.

200. Instrument; how discharged.—A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.
2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

201. When persons secondarily liable on, discharged. A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

202. Right of party who discharges instrument. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

203. Renunciation by holder. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute or unconditional renunciation of his rights against the principal debtor made at or before the maturity of the instrument, discharges the instrument. But a renunciation does not effect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

204. Cancellation; unintentional; burden of proof. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

205. Alteration of instrument; effect of.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party

to the alteration, he may enforce payment thereof according to its original tenor.

206. What constitutes a material alteration.—Any alteration which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material effect of the instrument in any respect, is a material alteration.

ARTICLE X. BILLS OF EXCHANGE; FORM AND INTERPRETATION.

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

211. Bill not an assignment of funds in hands of drawee.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

212. Bill addressed to more than one drawee.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

213. Inland and foreign bills of exchange.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

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

215. Referee in case of need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

ARTICLE XI. ACCEPTANCE OF BILLS OF EXCHANGE.

220. Acceptance; how made, et cetera. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than in the payment of money.

221. Holder entitled to acceptance on face of bill. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

222. Acceptance by separate instrument. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it was shown and who, on the faith thereof, receives the bill for value.

223 Promise to accept; when equivalent to acceptance. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

224. Time allowed drawee to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

225. Liability of drawee retaining or destroying bill. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

226. Acceptance of incomplete bill. A bill may be accepted before it has been signed by the drawer; or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

227. Kinds of acceptance. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

228. What constitutes a general acceptance. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

229. Qualified acceptance. — An acceptance is qualified which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.
3. Local, that is to say, an acceptance to pay only at a particular place;
4. Qualified as to time;
5. The acceptance of some one or more of the drawees, but not of all.

230. Rights of parties as to qualified acceptance.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly, or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

ARTICLE XII.—PRESENTMENT OF BILLS OF EXCHANGE FOR ACCEPTANCE.

240. When presentment for acceptance must be made.—Presentment for acceptance must be made:

1. Where the bill is payable after sight or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
2. Where the bill expressly stipulates that it shall be presented for acceptance; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

241. When failure to present releases drawer and indorser.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

242. Presentment; how made.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;
2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

243. On what days presentment may be made. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections one hundred and thirty-two and one hundred and forty-five of this Act. When Saturday is not otherwise a holiday presentment for the acceptance may be made before twelve o'clock noon on that day.

244. Presentment when time is insufficient. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

245. Where presentment is excused. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead or has absconded, or is a fictitious person or a person not having capacity to contract by bill;
2. Where after the exercise of reasonable diligence, presentment cannot be made;
3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

246. When discharged by non-acceptance. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
2. When presentment for acceptance is excused and the bill is not accepted.

247. Duty of holder where bill not accepted. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

248. Rights of holder where bill not accepted. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.

ARTICLE XIII.—PROTEST OF BILLS OF EXCHANGE.

260. In what cases protest necessary.—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance and where such a bill which has not previously been dishonored by non-acceptance is dis-

honored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

261. Protest; how made.—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof:
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

262. Protest; by whom made.—Protest may be made by:

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

263. Protest; when to be made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

264. Protest; where made.—A bill must be protested at the place where it is dishonored, except that when a bill is drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment, to or demand on, the drawee is necessary.

265. Protest both for non-acceptance and non-payment.—A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

266. Protest before maturity where acceptor insolvent.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

267. When protest dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

268. Protest where bill is lost, et cetera.—Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof

ARTICLE XIV.—ACCEPTANCE OF BILLS OF EXCHANGE FOR HONOR.

280. When bill may be accepted for honor. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

281. Acceptance for honor; how made. An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

282. When deemed to be an accepance for honor of the drawer.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

283. Liability of acceptor for honor. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

284. Agreement of acceptor for honor. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

285. Maturity of bill payable after sight; accepted for honor.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

286. Protest of bill accepted for honor, et cetera.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

287. Presentment for payment to acceptor for honor; how made.—Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;
2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and seventy-five.

288. When delay in making presentment is excused.—The provisions of section one hundred and forty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

289. Dishonor of bill by acceptor for honor.—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

ARTICLE XV.—PAYMENT OF BILLS OF EXCHANGE FOR HONOR.

300. Who may make payment for honor.—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

301. Payment for honor; how made. — The payment for honor supra protest in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

302. Declaration before payment for honor.—The notarial act of honor must be founded on a declaration of the payer for honor, or by his agent in that behalf declaring his intention to pay the bill for honor, and for whose honor he pays.

303. Preference of parties offering to pay for honor.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

304. Effect on subsequent parties where bill is paid for honor.—Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

305. Where a holder refuses to receive payment supra protest.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

306. Rights of payer for honor.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE XVI.—BILLS IN A SET.

310. Bills in sets constitute one bill.—Where a bill is drawn in a set, each part of the set being numbered and containing reference to the other parts, the whole of the parts constitute one bill

311. Rights of holders where different parts are negotiated.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

312. Liability of holder who indorses two or more parts of a set to different persons.—Where the holder of a set indorses two or more parts to different persons he is liable on every such part and every endorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

313. Acceptance of bills drawn in sets. The acceptance may be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

314. Payment by acceptor of bills drawn in sets. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

315. Effect of discharging one of a set.—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

ARTICLE XVII.—PROMISSORY NOTES AND CHECKS.

320. Promissory note defined.—A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

321. Check defined.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

322. Within what time a check must be presented.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

323. Certification of check; effect of.—Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

324. Effect where the holder of check procures it to be certified.—Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

325. When check operates as an assignment.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

ARTICLE XVIII.—NOTES GIVEN FOR A PATENT RIGHT AND FOR A SPECULATIVE CONSIDERATION.

330. Negotiable instruments given for patent rights.—A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented must contain the words "given for a patent right" prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article.

331. Negotiable instruments for speculative consideration.—If the consideration of a promissory note to other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time, in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, "given for a speculative consideration," or other words clearly showing the nature of the consideration, must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note or instrument in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder.

332. How negotiable bonds are made not negotiable.—The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this State, but not registered in pursuance of any State law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

ARTICLE XIX.—LAWS REPEALED; WHEN TO TAKE EFFECT.

340. Laws repealed.—The laws or parts thereof specified in the schedule hereto annexed are hereby repealed.

341. When to take effect.—This chapter shall take effect on the first day of October, eighteen hundred and ninety-seven.

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9 Wm. III., c. 17, p. 400.
3 & 4 Anne, c. 8, pp. 361, 400.
3 & 4 Anne, c. 9, pp. 12, 15, 110, 127.
9 Anne, c. 14, p. 239.
12 Geo. II., c. 28, p. 239.
14 Geo. III., c. 83, p. 8.
15 Geo. III., c. 51, pp. 10, 33.
17 Geo. III., c. 30, pp. 10, 33.
1 & 2 Geo. IV., c. 78, pp. 110, 111, 118, 119.
19 & 20 Vict. c. 25, p. 441.
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24 & 25 Vict. c. 98, p. 444.
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37 & 38 Vict. c. 62, p. 135.
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41 & 42 Vict. c. 13, pp. 110, 111.
45 & 46 Vict. c. 61, Bills of Exchange Act, 1882, pp. 3, 4, 6, 18, 32, and under various sections of the Canadian Act.
6 Edw. VII., c. 17, pp. 3, 450, 451.

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7 Vict. c. 16, p. 142.
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35 Vict. c. 10, p. 132.
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47 Vict. c. 38, p. 38.
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63-64 Vict. c. 29, p. 345.
4-5 Edw. VII., c. 3, p. 16.
4-5 Edw. VII., c. 27, p. 16.
4-5 Edw. VII., c. 42, p. 16.
6 Edw. VII., c. 27, p. 89.

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9-10 Edw. VII., c. 14, p. 50.
3-4 Geo. V., c. 9, pp. 91, 314, 423, 455, 477.
3-4 Geo. V., c. 42, p. 423.
5 Geo. V., c. 4, p. 478.
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2 Geo. IV., c. 12, p. 10.
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7 Wm. IV., c. 5, pp. 10, 8[illegible]
12 Vict. c. 76, pp. 10, 207.
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14-15 Vict. c. 94, p. 10.
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47 Vict. c. 19, p. 138.
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3 Edw. VII., c. 19, p. 479.
9-10 Edw. VII., c. 14, p. 50.
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25 Geo. III., c. 2, p. 8.
34 Geo. III., c. 2, p. 8.
12 Vict. c. 22, pp. 9, 111, 118, 219, 364.
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54 Vict. c. 35, p. 435.
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17 Geo. III., c. 5, p. 83.
20 Geo. III., c. 3, p. 89.
6 Wm. IV., c. 3, p. 13.
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