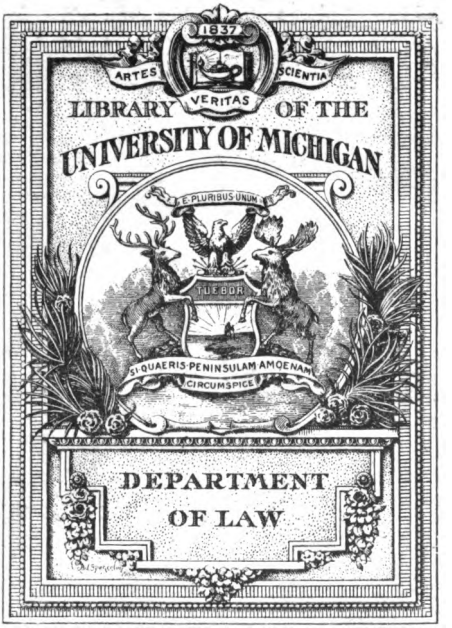

THE

NEGOTIABLE INSTRUMENTS LAW

FOR

NEW YORK, MASSACHUSETTS, CONNECTICUT, RHODE ISLAND, MARYLAND, TENNESSEE, VIRGINIA, NORTH CAROLINA, FLORIDA, WISCONSIN, COLORADO, WASHINGTON, OREGON, UTAH, NORTH DAKOTA, DISTRICT OF COLUMBIA.

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ST. PAUL, MINN.:
KEEFE-DAVIDSON LAW BOOK CO.
1900

PREFACE

It is intended that this book shall be a practical working handbook of the law of negotiable instruments wherever the so-called Negotiable Instruments Laws have been adopted.

Whatever may be the merits or demerits of a general codification of the laws, it is certain that a uniform code covering the law of negotiable instruments is of great benefit to the legal profession and to the business world generally. In attempting to insure the desired uniformity, the Negotiable Instruments Laws have changed the rules of law materially in some of the States. All of such changes are carefully noted in this work, which purports to consider every provision of every one of the Negotiable Instruments Laws.

These Laws do not, however, purport to cover exhaustively all the rules of law governing negotiable instruments, but provide that all cases not covered thereby shall be governed by the rules of the law merchant. It is necessary then, that a handbook on negotiable instruments, intended for use in any one or all of the states where these Laws have been adopted, shall consider not only the provisions of the Laws themselves, but also the important omitted rules of the law merchant which are of a general nature. These rules have been incorporated into this work to an

extent not inconsistent with its character as a brief and practical treatise.

In order to consider properly this combination of statute and common law, and to bring out emphatically the differences between the various Negotiable Instruments Laws, which are unfortunately not uniform either in section numbering or in subject matter, it was found necessary to treat the whole matter analytically rather than in the order found in any one of the Negotiable Instrument Laws.

The courts, notably those of New York, have already construed several provisions of the Negotiable Instruments Laws. All decisions on these Laws up to May 1st, 1900, have been incorporated into this work; so, also, have all decisions of the English law courts which affect corresponding provisions of the Bills of Exchange Act, 1882.

The original draft of the Negotiable Instruments Law, as submitted by the Commissioners on uniform State legislation will be found in the Appendix, together with a table to facilitate the finding of parallel sections of the various Laws, and a table of the statutes expressly repealed by them.

These features, it is hoped, will make this work serviceable, not only to the practicing lawyer, but also to the merchant and the banker, and to any person having occasion to execute, transfer or in any way handle negotiable paper.

A. W. S.

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CHAPTER I.

General Nature, Scope, and Application of the Negotiable Instruments Laws.

§ 1. Nature and Purpose—Codification of Rules Governing Negotiable Instruments.
§ 2. Titles of Laws—Negotiable Instruments only.
§ 3. Application of Laws—No Retroactive Effect.
§ 4. When Laws Take Effect.
§ 5. Law Merchant Governs in Cases not Provided for.
§ 6. Laws Repealed.

§ 1. Nature and Purpose—Codification of Rules Governing Negotiable Instruments.

The national conference of commissioners on uniform state laws, a body composed of commissioners from twenty-nine states and two territories, submitted to the various legislatures and to congress a draft for a uniform law governing negotiable instruments. This draft, which is a codification of the principle rules of law governing negotiable instruments, has been adopted, with some modifications, in fifteen states and in the District of Columbia.[1] It is obvious that the purpose of this legislation is to secure throughout the United States uniformity in the rules of law governing commercial paper.

[1]For list of states in which the Negotiable Instruments Laws have been adopted, see Appendix

§ 2. Titles of Laws—Negotiable Instruments only.

The negotiable instruments laws, as passed in the various states, have almost uniformly adopted the short title, "Negotiable Instruments Law."[2] This title, when taken with the provisions that the words "bill," "note," and "instrument" shall mean, respectively, bill of exchange, negotiable promissory note, and negotiable instrument,[3] excludes nonnegotiable instruments. Such instruments are still governed by the rules of the common law, or by the statutes specially applicable to them.

It will thus be seen that, as soon as nonnegotiability is established by applying the tests laid down in the sections prescribing the proper form of negotiable instruments, that fact will preclude the application of any of the

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[2]Neg. Inst. Laws N. Y., R. I. (§ 1); Md. (§ 13); Colo., N. C., N. D., Or., Utah, Va. (§190); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. I, sections not numbered).

Massachusetts and Washington are the exceptions, and the title of the law in those states is "The Negotiable Instruments Act" (§ 190).

[3]Neg. Inst. Laws N. Y., R. I. (§ 2); Md. (§ 14); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va. (§ 191); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. I, sections not numbered).

Negotiability and assignability distinguished, see post, §§ 141-145.

other sections of the negotiable instruments laws to the instrument in question.

§ 3. Application of Laws—No Retroactive Effect.

The negotiable instruments laws do not apply to instruments made and delivered prior to their passage.[4] Had this provision been omitted, the courts doubtless would have construed the laws to be inapplicable to instruments delivered before their passage, under the general rule that a statute will not be given a retroactive effect.[5]

To determine what constitutes a delivery prior to the passage of one of these laws, we must look to the definition of "delivery" given in such laws. It is there defined as a "transfer of possession, actual or constructive, from one person to another."[6] Possession then by the payee, before the passage of one of these laws, would be prima facie evidence of delivery before that time.[7]

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[4]Neg. Inst. Laws N. Y., R. I. (§ 6); Md. (§ 18); Or. (§ 1911); Colo., Mass. N. C., N. D., Utah, Va. (§ 195); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. I, sections not numbered).

[5]Parkinson v. Brandenburgh, 35 Minn. 294; Fife v. City of Oshkosh, 89 Wis. 540.

[6]Neg. Inst. Laws N. Y., R. I. (§ 2); Md. (§ 14); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 191); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. I, sections not numbered).

The effect of this provision has been considered by the courts in New York, where it has been held that the subsequent provision that notes payable to the order of the maker must be indorsed by him[8] does not apply to a note negotiated before the passage of the law,[9] and that questions of demand and notice relating to an instrument protested before the passage of the law are not governed thereby.[10]

§ 4. When Laws Take Effect.

The time for the negotiable instruments laws to take effect is, of course, different in the different states.[11] In some of the states

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[7]Mahon's Adm'r v. Sawyer, 18 Ind. 73; Newcombe v. Fox, I App. Div. 389; Kidder v. Horrobin, 72 N. Y. 159; Woodford v. Dorwin, 3 Vt. 82; Mitchell v. Conley, 8 Eng. 414.

For a discussion of the question of delivery, see post, §§ 26-28.

[8]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 184); R. I. (§ 192); Md. (§ 203); N. Y. (§ 320); Wis. (§ 1684).

[9]Odell v. Clyde, 23 Misc. Rep. 734.

[10]University Press v. Williams, 28 Misc. Rep. 55. See, also, McMoran v. Lange, 48 N. Y. Supp. 1000.

[11]Connecticut, April 5, 1897; Colorado, July 19, 1897; Florida, August 3, 1897; New York, October 1, 1897; Massachusetts, January 1, 1898; Maryland, June 1, 1898; Virginia, July 1, 1898; North Carolina, March 8, 1899; Washington, March 22,

the law takes effect from and after its passage, and in others it takes effect on a specified day after, or on the expiration of a specified period after passage.[12]

Where the law takes effect at a date different from the date of its passage, the question whether instruments executed and delivered between the time of the passage of the law and the time it took effect are governed thereby, is important. In a case where a certain provision of a statute was to take effect in "April next," the court said that a statute must be "understood as beginning to speak at the moment it became a law, and not before. It must have the same construction as if passed on the day when it took effect;"[13] and Cooley, J., in a case involving a statute which, un-

1899; District of Columbia, April 3, 1899; Wisconsin, May 15, 1899; Tennessee, May 16, 1899; Oregon, May 19, 1899; Utah, July 1, 1899; North Dakota, July 1, 1899; Rhode Island, July 1, 1899.

[12]Neg. Inst. Laws D. C. (§ 191); N. C., Utah (§ 197); Mass. (§ 198); N. Y. (§ 431); Wis. (§ 3, immediately following §§ 1684-6).

[13]Rice v. Ruddiman, 10 Mich. 125. See, also, Charless v. Lamberson, 1 Iowa, 435, where a statute for the protection of homesteads, which made them liable for all debts contracted prior to its passage, was held to mean "prior to its taking effect," although that period was some time after its enactment.

der the constitution of Michigan, took effect 90 days from the end of the session at which it was passed, the legislature not having otherwise directed, said: "When the legislature, for reasons satisfactory to them, decide to postpone the period for the statute to come into operation, to a later period, it is to be presumed, nothing appearing to the contrary, that in the particular case it was deemed important that more time be allowed for citizens to ascertain the proposed changes, and to become acquainted with their bearings. The time thus allowed is the reasonable time fixed by the legislature to bring knowledge of the law home to the parties interested, before they are required to govern their actions by it."[14] This case held that such a statute, between the time of its passage and the time it was to take effect, was not even notice to persons to be affected by it.

Under these decisions, and the general rule that an instrument is governed by the law in force at the time it was executed,[15] it

[14]Price v. Hopkin, 13 Mich. 318. See, also, People v. Johnston, 6 Cal. 674; Bond v. Dolby, 17 Neb. 491.

[15]Duerson's Adm'r v. Alsop. 27 Grat. 229; Barlow v. Gregory, 31 Conn. 261; Cook v. Mutual Ins. Co., 53 Ala. 37.

is clear that negotiable instruments executed and delivered between the passage of one of the negotiable instruments law and the time fixed for it to take effect are not governed thereby.

§ 5. Law Merchant Governs in Cases not Provided for.

In cases not provided for in the negotiable instruments laws, the rules of the law merchant govern.[16] Obviously, any prior statute repealed by any one of the negotiable instruments laws is not included in the term "law merchant," as here used.[17] The term, then, must be given its primal meaning, which is a code or system of rules arising out of the usages and customs of trade.

The exigencies of trade required something more elastic than a purely cash basis for business transactions. A credit basis which treated the evidence of indebtedness as an ordinary contract, and allowed a transferee no greater rights than his transferror,—in other words, saddled upon him all equities and defenses to which the contract was subject be-

[16]Neg. Inst. Laws N. Y., R. I. (§ 7); Md. (§ 19); Or. (§192); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 196); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. I, sections not numbered).

[17]See table of repealed acts in Appendix.

tween the original parties,—would not tend to increase trade to any great extent; so a more extended credit system arose by custom among merchants, which allowed certain evidences of indebtedness to be transferred free from all prior equities, to persons who took in due course of business, without notice, and in good faith.

Bills of exchange were always within the custom of merchants, and all dispute as to the status of promissory notes was settled by the statute (3 & 4 Anne, c. 9, § 1), which placed them on the same basis as bills of exchange.[18]

[18]This statute provided, inter alia, that "all notes in writing whereby any person shall promise to pay to any other person, his order, or unto bearer, any sum of money mentioned in the note, * * * shall be assignable or indorsable over in the same manner as inland bills of exchange are according to the custom of merchants; * * * and that any person to whom such note is indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, may maintain his action for such sum of money either against the person who assigned the note, or against any of the persons who indorsed the same, in like manner as in cases of inland bills of exchange." It was repealed by the Bills of Exchange Act 1882 (45 & 46 Vict. c. 61). The provisions of the statute of Anne are, however, reaffirmed in the Bills of Exchange Act, section 89 of

The rules of the law merchant and the decisions of the English courts affecting them, together with the English statutes affirming or modifying these rules and decisions, formed part of the system of law which the American colonies adopted after the Revolution, and are now generally considered as a part of the common law.[19]

§ 6. Laws Repealed.

In some of the states, the negotiable instruments law has expressly repealed a schedule of prior statutes relating to negotiable instruments, and in others it has repealed generally all inconsistent acts.[20] Where no express repeal is stated, prior inconsistent and repugnant acts are repealed by implication.[21]

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which provides that, with the exceptions therein noted, the provisions of such Bills of Exchange Act touching bills of exchange shall apply also to promissory notes.

[19]Cook v. Renick, 19 Ill. 598; Platt v. Eads, 1 Blackf. 80; Board Com'rs Bartholomew Co. v. Bright, 18 Ind. 93. The law merchant is presumed to be in force in the state until the contrary is shown. Hudson v. Matthews, 1 Morris (Iowa) 94, 128.

[20]See table of repealed acts in Appendix.

[21]People v. Palmer, 52 N. Y. 83; Wood v. Oakley, 11 Paige, 403; Grant County v. Sels, 5 Or. 243; Greeley v. City of Jacksonville, 17 Fla. 174.

As the negotiable instruments laws purport to revise and codify the rules and statutes relating to negotiable instruments, they repeal also all prior statutes on the subject, though such statutes are not inconsistent with the provisions of the negotiable instruments laws.[22] The reason for this rule is that there is a "reasonable inference that the legislature cannot be supposed to have intended that there should be two distinct enactments, embracing the same subject matter, in force at the same time."[23] The question is one of legislative intent, and if the new lesgislation was intended as a substitute for the old, the old is repealed by implication.[24] This rule is of general application, though the provisions of the prior statutes have not been embodied in the codification.[25]

[22]Commonwealth v. Kelliher, 12 Allen, 480; Cahall v. Citizens' Mut. Bldg. Ass'n, 61 Ala. 232; Bartlet v. King, 12 Mass. 536.

[23]Commonwealth v. Kelliher, supra.

[24]State v. Harris, 10 Iowa, 441; County Com'rs of Prince George's Co. v. Commissioners of Laurel, 51 Md. 457; Barker v. Bell, 46 Ala. 216.

[25]Rutland v. Mendon, 1 Pick. 154; Pingree v. Snell, 42 Me. 53.

CHAPTER II.

Definitions and Special Provisions Relating to Bills, Notes and Checks.

§ 7. Bills of Exchange.
§ 8. Same—Bills in Sets.
§ 9. Same—Several Drawees.
§ 10. Same—Inland and Foreign Bills.
§ 11. Same—Name of Referee in Case of Need may be Inserted.
§ 12. Promissory Notes.
§ 13. Checks.

§ 7. Bills of Exchange.

The generally accepted form of a bill of exchange is embodied in the definition given in the negotiable instruments laws, viz.: "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."[1] This definition is amply sustained by the authorities,[2] and its different substan-

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 126); R. I. (§ 134); Md. (§ 145); N. Y. (§ 210); Wis. (§ 1680).

When bill may be treated as promissory note, see post, § 97.

[2]Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Biesenthall v. Williams, 1 Duv. 329, 85 Am. Dec.

tive elements, considered as essentials to negotiability, are discussed in a later chapter of this work.[3]

The terms "bill of exchange" and "draft" are interchangeable, but the latter term is used more generally to designate inland than foreign bills.[4]

§ 8. Same—Bills in Sets.

It is customary to draw a foreign bill of exchange in a set of two or three,—usually three. One of the set recites that it is the "first of exchange," and orders payment to be made if the "second and third (are) unpaid," another that it is the "second of exchange, first and third unpaid," and the third that it is the "third of exchange, first and second unpaid."[5] If each part is thus

629; Luff v. Pope, 5 Hill, 414; Newman v. Frost, 52 N. Y. 422; Henderson v. Pope, 39 Ga. 361; Rice v. Ragland, 10 Hump. 545, 53 Am. Dec. 737.

[3]Chapter IV.

[4]Cole v. Dalton, 6 Daly, 484.

[5]Where eight blank acceptances, four of which were designated "First of exchange (second unpaid)," and four "second or exchange (first unpaid)," were sent to a correspondent, who filled the blanks, and negotiated them as separate bills, a purchaser of one of the bills was not charged with notice that it was one of a set by the presence of the words "Second of exchange, first un-

numbered, and refers to the other parts, all the parts constitute one bill.[6]

§ 9. Same—Several Drawees.

A bill of exchange "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."[7] This provision of the negotiable instruments laws seems to render a bill addressed to two or more drawees in the alternative or in succession not only nonnegotiable, but invalid. By another provision, instruments payable to the order of "one or some of several payees"

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paid," and the acceptor was liable. Bank of Pittsburgh v. Neal, 22 How. 96.

Payment of bills drawn in sets, see port, § 260.

[6]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass. N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 178); R. I. (§ 186); Md. (§ 197); N. Y. (§ 310); Wis. (§ 1681-35).

Durkin v. Cranston, 7 Johns. 442; Miller v. Hackley, 5 Johns. 375.

Making a check in duplicate, see post, § 13.

[7]Neg. Inst. Laws Colo., Conn., D. C., Fla. Mass., N. C., N. D., Or. Tenn., Utah, Va., Wash. (§128); R. I. (§ 136); Md. (§ 147); N. Y. (§ 212); Wis. (§ 1680b).

The words "or in succession" are not in the Wisconsin Negotiable Instruments Law.

The word "or" before "determinable" was omitted in the law as first adopted in New York, but the omission was supplied by amendment. Laws 1898, c. 336, § 25.

are payable to order, and are negotiable.[8] How the courts will harmonize these apparently inconsistent provisions, remains to be seen.

§ 10. Same—Inland and Foreign Bills.

An inland bill is one which is, or on its face purports to be, both drawn and payable within the same state, and any other is a foreign bill.[9] Thus, a bill drawn by one resident of a state upon another resident of the same state is an inland bill,[10] and so is one drawn in one city of a state, and payable in another city of the same state.[11] But a bill drawn in one state by a resident thereof, on a resident of another state, and payable in the latter state, is a foreign bill.[12]

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[8]Neg. Inst. Laws Conn., Colo., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 8); R. I. (§ 16); Md., N. Y. (§ 27); Wis. (§ 1675-8).

See, also, post, § 54, and notes.

[9]Neg Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§129); R. I. (§ 137); Md. (§ 148); N. Y. (§ 213); Wis. (§ 1680).

Damages allowable on protested foreign bill, see post, § 221.

[10]Kaskaskia Bridge Co. v. Shannon, 1 Gilm. 15.

[11]Young v. Bennett, 7 Bush, 474.

[12]Knickerbocker Life Ins. Co. v. Pendleton, 112 U. S. 696; Buckner v. Finley, 2 Pet. 586; Joseph v. Salomon, 19 Fla. 623; Ticonic Bank v. Stackpole,

It will thus be seen that, in determining whether a bill is inland or foreign, the various states of the Union are considered as foreign to each other.

§ 11. Same—Name of Referee in Case of Need may be Inserted.

The drawer or any indorser may insert in a bill of exchange the name of the person to whom the holder may resort in case of need, —that is, if the bill is dishonored for nonacceptance or nonpayment.[13] It is optional with the holder to resort to this referee in

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41 Me. 302; Commercial Bank of Kentucky v. Varnum, 49 N. Y. 269; Phoenix Bank v. Hussey, 12 Pick. 483; Ocean Nat. Bank v. Williams, 102 Mass. 141; Aborn v. Bosworth, 1 R. I. 401; Gardner v. Bank of Tennessee, 1 Swan, 420; Brown v. Ferguson, 4 Leigh, 37, 39.

[13]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or. Tenn., Utah, Va., Wash. (§ 131); R. I. (§ 139); Md. (§ 150); N. Y. (§ 215); Wis. (§ 1680e).

A drawee in "case of need" of a draft for the price of goods, who pays the draft, has a special property in the goods, though ownership remains in the consignor. Basche v. Philips, 155 Pa. St. 103.

By amendment in New York, the word "drawee" in the headline of the original law was changed to "referee." Laws 1898, c. 336, § 24.

Payment of bills of exchange supra protest or for honor, see post, §§ 261-267.

case of need,[14] but if the holder does resort to such referee, and the latter pays, he has recourse against the drawer for the full amount.[15]

§ 12. Promissory Notes.

A "negotiable promissory note," as defined by the negotiable instruments laws, is "an unconditional promise 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."[16] This definition embodies the elements of a negotiable instrument, as set forth in other sections.[17]

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[14]Same sections of the Negotiable Instruments Laws as last above cited.

This seems to change the law. See 1 Daniel, Neg. Inst. § 111.

[15]Chit. Bills, 186; Story, Bills, § 65.

[16]Neg Inst Laws Colo., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 184); R. I. (§ 192); Md. (§ 203); N. Y. (§ 320); Wis. (§ 1684).

When bill may be treated as promissory note, see post, § 97.

Judge Story's definition, "A promissory note is a written engagement by one person to pay another person therein named, absolutely and unconditionally, a certain sum of money at a time specified therein," is quoted with approval in Cayuga County Nat. Bank v. Purdy, 56 Mich. 6, and Walker v. Thompson, 108 Mich. 686. See, also, cases cited in last-mentioned case.

The further provision that, "where a note is drawn to the maker's own order, it is not complete until indorsed by him,"[18] changes the law; such instruments having been heretofore considered as payable to bearer,[19] and complete without such indorsement.

§ 13. Checks.

The main distinguishing features of a check are that it is drawn on a bank, and is payable on demand.[20] A check payable at a designated future time, or at a certain period after date, is a bill of exchange.[21] The de-

[17]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1); R. I. (§ 9); Md., N. Y. (§ 20); Wis. (§ 1675-1).

See, also, Chapter IV.

[18]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§184); R. I. (§ 192); Md. (§ 203); N. Y. (§ 320); Wis. (§ 1684).

[19]See post, §§ 56-59.

[20]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 185); R. I. (§ 193); Md. (§ 204); N. Y. (§ 321); Wis. (§ 1684-1).

Morrison v. Bailey, 5 Ohio St. 13.

It is essential to a check that it be payable on demand. Harrison v. Nicollet Nat. Bank, 41 Minn. 488, 5 L. R. A. 746.

[21]Georgia Nat. Bank v. Henderson, 46 Ga. 487; Merchants' Bank v. Woodruff, 6 Hill, 174; Hawley v. Jette, 10 Or. 31; Brown v. Lusk, 4 Yerg. 210; Harrison v. Nicollet Nat. Bank, supra. Contra,

cisions on this point generally involve the question of right to days of grace. Though such days have been abolished by most of the negotiable instruments laws,[22] it is clear that an instrument payable otherwise than on demand is not properly a "check," within the meaning of the definition of such instrument in these laws. Checks are defined by them as bills of exchange payable on demand, and the provisions relating to such bills are, with certain exceptions, made applicable to checks.[23]

A check may be made in duplicate, like a foreign bill of exchange,[24] but is not a foreign bill, though drawn by a bank in one state on a bank in another state.[25].

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see Way v. Towle, 155 Mass. 374; Andrew v. Blachly, 11 Ohio St. 89; Westminster Bank v. Wheaton, 4 R. I. 30.

[22]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 85); R. I. (§ 93); Md. (§ 104); N. Y. (§ 145); Wis. (§ 1678-15).

[23]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 185); R. I. (§ 193); Md. (§ 204); N. Y. (§ 321); Wis. (§ 1684-1).

This is declaratory of the law in some of the states. Laird v. State, 61 Md. 309; Henshaw v. Root, 60 Ind. 220; Planters' Bank v. Merritt, 7 Heisk. 177; Purcell v. Allemong, 22 Grat. 739.

See, also, Rogers v. Durant, 140 U. S. 298.

[24]Merchants' Nat. Bank v. Ritzniger, 118 Ill. 484.

[25]Merchants' Nat. Bank v. Ritzniger, supra.

CHAPTER III.

Execution and Delivery.

§ 14. Instruments must be in Writing.
§ 15. Date not Necessary—Presumptions.
§ 16. Same—Rebuttal of Presumptions.
§ 17. Instruments may be Antedated or Post-dated.
§ 18. Holder has Prima Facie Authority to Fill Blanks.
§ 19. Date may be Inserted by Holder.
§ 20. Instruments Signed and Delivered in Blank.
§ 21. Instruments must be Signed by Maker or Drawer—Signature in Trade or Assumed Name.
§ 22. Same—Liability of Maker or Drawer.
§ 23. Signature by Agent—Authority.
§ 24. Same—When Agent Personally Liable.
§ 25. Same—Signature by Procuration is Notice of Limited Authority.
§26. Delivery Essential to Completion of Instrument.
§27. Sufficiency of Delivery—Conditional Delivery.
§ 28. When Delivery Presumed.

§ 14. Instruments must be in Writing.

A negotiable instrument must, of course, be in writing.[1] While it is not safe to write a bill or note in pencil because of the danger of erasures and alterations, one written in

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1); R. I. (§ 9); Md., N. Y. (§ 20); Wis. (§ 1675-1).

pencil is valid and negotiable,[2] at least so long as it is legible.[3] It is not necessary, however, that the instrument be written out in either ink or pencil, for printed forms of bills and notes have come into such common use that the negotiable instruments laws have recognized the custom by providing that "writing" shall include print.[4]

§ 15. Date not Necessary—Presumptions.

A negotiable instrument need not be dated,[5] for if the instrument is not dated, it will be considered to be dated as of the time when it

[2]Reed v. Roark, 14 Tex. 329.

An indorsement may be written in pencil. Brown v. Butchers' & Drovers' Bank, 6 Hill, 443; Closson v. Stearns, 4 Vt. 11.

[3]Reed v. Roark, supra.

[4]Neg. Inst. Laws Md., N. Y., R. I. (§ 2); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 191); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

See, also, Farmers' Bank of Kentucky v. Ewing, 78 Ky. 264; Zimmerman v. Rote, 75 Pa. St. 188.

[5]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 6); R. I. (§ 14); Md., N. Y. (§ 25); Wis. (§ 1675-6).

See, also, Michigan Ins. Co. v. Estate of Leavenworth, 30 Vt. 11; McSparran v. Neeley, 91 Pa. St. 17; Archer v. Claflin, 31 Ill. 306; Husbrook v. Wilder, 1 Pin. 645. A defective date, consisting merely of the figures "1887," does not invalidate an order. Wold v. Eliot Five Cent Sav. Bank, 158 Mass. 339.

was issued.[6] Where, however, the instrument is dated, the date given is prima facie the true date of the making or drawing of the instrument,[7] and the burden of proof to show a mistake in the date of a note in suit is on the defendant.[8] Thus, where a statute made certain notes void if issued after a certain day, notes dated before that day are presumed to have been issued before that time, and the burden is on the defendant to show otherwise.[9]

§ 16. Same—Rebuttal of Presumptions.

This presumption is not conclusive, and may be rebutted by evidence that the date given is not the true date.[10] Parol evidence is admissible to show a mistake in date as between the original parties,[11] on the theory

[6]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 17); R. I. (§ 25); Md., N. Y. (§ 36); Wis. (§ 1675-17).

[7]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or. Tenn., Utah, Va., Wash. (§ 11); R. I. (§ 19); Md., N. Y. 30); Wis. (§ 1675-11).

See, also, Bayley v. Taber, 6 Mass. 451; Cowing v. Altman, 71 N. Y. 435; Kinsely v. Sampson, 100 Ill. 573.

[8]Towles v. Williams, 2 Rich. 562.

[9]Bayley v. Taber, 6 Mass. 451.

[10]Bank of Cumberland v. Mayberry, 43 Me. 198.

[11]Biggs v. Piper, 86 Tenn. 589; Drake v. Rogers, 32 Me. 524; Barlow v. Buckingham, 68 Iowa, 169.

that the date is only descriptive,[12] but the mistake, to be available, should be pleaded.[13] Thus it may be shown, in an action by a bank on a note in the handwriting of the bank's cashier, that he was not in the employ of the bank until after the date of the note,[14] and a note dated "1888" may be shown to have been executed in 1882.[15]

§ 17. Instruments may be Antedated or Postdated.

Antedating or postdating an instrument does not affect its validity unless done for an illegal or fraudulent purpose.[16] One to whom an antedated or postdated instrument is delivered acquired title thereto as of the date of the delivery.[17] One prejudiced by

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See, also, Cowing v. Altman, 71 N. Y. 435.

Parol evidence is admissible also when the date is ambiguous or illegible. Fenderson v. Owen, 54 Me. 372, 92 Am. Dec. 551.

[12]Dean v. DeLezardi, 2 Cush. (Miss.) 424.

[13]Almich v. Downey, 45 Minn. 460.

[14]Hauerwas v. Goodloe, 101 Ala. 162.

[15]Barlow v. Buckingham, supra.

[16]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 12); R. I. (§ 20); Md., N. Y. (§ 31); Wis. (§ 1675-12).

Brewster v. McCardel, 8 Wend. 478; Gray v. Wood, 2 Har. & J. 328; Ohio Life Ins. & Trust Co. v. Winn, 4 Md. Ch. 253; Richter v. Selin, 8 Serg. & R. 425.

the antedating or postdating may show the actual time of delivery, and the instrument will be given effect from that time.[18] An instrument antedated to evade a statute is invalid.[19]

§ 18. Holder has Prima Facie Authority to Fill Blanks.

Prima facie authority is conferred on the person in possession of a negotiable instrument, to fill up the blanks therein if the instrument is wanting in any material particular.[20] Thus the holder of a negotiable instrument may insert his own name in a blank space left for the name of the payee,[21] and may fill a blank left for the time,[22] or the

[17]Same sections of Negotiable Instruments Laws as last above cited.

[18]Baldwin v. Freydendall, 10 Bradw. 106.

[19]Williams' Ex'rs v. Williams, 15 N. J. Law, 255, where an attempt was made to evade the usury laws; Bayley v. Taber, 5 Mass. 286, where a note was antedated to avoid a statute prohibiting the issuance of such notes after a certain date.

[20]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 14); R. I. (§ 22); Md., N. Y. (§ 33); Wis. (§ 1675-14).

[21]Boyd v. McCann, 10 Md. 118; Thompson v. Rathbun, 18 Or. 202. So of a note entirely blank. See Mitchell v. Culver, 7 Cow. 336.

[22]McGrath v. Clark, 56 N. Y. 34; Johns v. Harrison, 20 Ind. 317.

place,[23] of payment, or for the amount payable.[24] Authority to fill a blank left for the amount in a draft which is limited to a fixed sum does not authorize the insertion of a larger amount on payment of an additional consideration.[25] But authority given by a surety, on signing a note, and delivering it to the principal, to fill up a blank left for the amount with the amount of the debt, empowers the creditor to fill the blank with the true amount of the debt, regardless of the representations of the principal to the surety as to the amount.[26]

If there is an indication on the instrument of the amount for which it is to be made payable, as where the intended amount is expressed in figures on the margin, such figures limit the amount to be inserted in the blank in the body of the instrument.[27]

[23]Redlich v. Doll, 54 N. Y. 234; Winter v. Pool, 104 Ala. 580.

[24]As to authority to add interest clause or fill up blanks left for interest clause, see Hoopes v. Collingwood, 10 Colo. 107; First Nat. Bank v. Carson, 60 Mich. 432; McGrath v. Clark, supra; Farmers' Nat. Bank v. Thomas, 79 Hun, 595; Weyerhauser v. Dunn, 100 N. Y. 150.

[25]Clower v. Wynn, 59 Ga. 246.

[26]Eichelberger v. Old Nat. Bank, 103 Ind. 401.

[27]Hall v. Bank of the Commonwealth, 3 Dana, 258.

§ 19. Date may be Inserted by Holder.

Any holder of an instrument payable at a fixed period after date, but not dated, may insert therein the true date of its issuance.[28] Ordinarily, the true date must be inserted,[29] but 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 will be regarded as the true date.[30]

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[28]Neg. Inst. Laws Colo., Conn., D., C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 13); R. I. (§ 21); Md., N. Y. (§ 32); Wis. (§ 1675-13).

The payee of a note delivered with the place for the date left blank has no implied authority to antedate the instrument. Goodman v. Simonds, 19 Mo. 106; Emmons v. Meeker, 55 Ind. 321.

If a date prior to the delivery of the instrument is inserted in a note payable two years from date, it avoids the note. Inglish v. Breneman, 5 Pike, 377.

Where the month is given, the holder may fill the blank for the day of the month with any date within the month. Page v. Morrell, 3 Keyes, 117, 3 App. Dec. 433.

For authority to insert date on accommodation paper, see Androscoggin Bank v. Kimball, 10 Cush. 373; Mitchell v. Culver, 7 Cow. 336.

Inserting date of acceptance, see post, chapter VIII, note 39.

[29]Miles v. Major, 2 J. J. Marsh, 153.

[30]Same sections of Negotiable Instruments Laws as last above cited.

§ 20. Instruments Signed and Delivered in Blank.

Where a blank paper is signed and delivered by the signer with intent that it shall be converted into a negotiable instrument, a holder has prima facie authority to fill it up as such for any amount.[31] The rule thus broadly stated is limited by another rule which requires that a paper so signed and delivered shall be filled up strictly in accordance with the authority given, and within a reasonable time, in order to render it enforceable against one who became a party

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[31]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 14); R. I. (§22); Md., N. Y. (§ 33); Wis. (§ 1675-14).

In the Wisconsin Negotiable Instruments Law, the words "prima facie" are left out, and the statute reads: "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 an authority' to fill it up as such for any amount."

In the Negotiable Instruments Law as first adopted in New York, the words "prima facie" were printed in italics, but this was changed by amendment, doubtless on the theory that, by the use of italics, such words were unduly emphasized. Laws 1898, c. 336, § 4.

A check properly signed and complete on its face is presumed to have been complete when delivered. Hensel v. Chicago, St. P., M. & O. R'y Co., 57 Minn. 88.

to the paper before its completion.[32]

After an instrument signed and delivered in blank, has been completed, it relates back to the time of the original delivery, and a second delivery is not necessary.[33]

§ 21. Instruments must be Signed by Maker or Drawer—Signature in Trade or Assumed Name.

A negotiable instrument must be signed by the maker or drawer;[34] and it is a general rule that no person is liable on an instrument whose signature does not appear thereon.[35]

It is much the safer practice for the maker or drawer to sign his name in full; but a signature by means of initials,[36] or by an abbreviation of the name of the maker,[37] or

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[32]Same sections of Negotiable Instruments Laws as last above cited.

[33]Davidson v. Lanier, 4 Wall. 447.

[34]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1); R. I. (§ 9); Md., N. Y. (§ 20); Wis. (§ 1675-1).

See, also, May v. Miller, 27 Ala. 515.

[35]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 18); R. I. (§ 26); Md., N. Y. (§ 38); Wis. (§ 1675-18).

Brown v. Parker, 7 Allen, 337; Bolles v. Walton, 2 E. D. Smith, 164; Pentz v. Stanton, 10 Wend. 271.

[36]Palmer v. Stephens, 1 Denio, 471.

[37]See Kemp v. McCormick, 1 Mont. 420.

by the use of figures,[38] or by a mark,[39] is sufficient, if intended as a signature. One signing in a trade or assumed name is liable to the same extent as if he had signed in his own name.[40]

The position of the signature is not material if it is clear that it was placed on the paper in the capacity of maker or drawer.[41] But if it is not clear, from the position of the signature, in what capacity the person making the same intended to sign, he is now considered as an indorser.[42] Under this rule, if a bill is drawn to the order of the drawer, one who writes his name across the face of the instrument is an indorser, not an acceptor.[43]

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[38]Brown v. Butchers' & Drovers' Bank, 6 Hill, 443.

[39]Gervais v. Baird, 2 Brev. 37; Willoughby v. Moulton, 47 N. H. 205; Shank v. Butsch, 28 Ind. 19; Handyside v. Cameron, 21 Ill. 588; Hilborn v. Alford, 22 Cal. 482.

[40]Same sections of Negotiable Instruments Laws last above cited.

Jewett v. Whalen, 11 Wis. 124, 129.

[41]Taylor v. Dobbins, 1 Strange, 399; Quin v. Sterne, 26 Ga. 223; Lincoln v. Hinzey, 51 Ill. 435; Lampkin v. State, 105 Ala. 1.

[42]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 17); R. I. (§ 25); Md., N. Y. (§ 36); Wis. (1675-17).

[43]Walton v. Williams, 44 Ala. 347.

§ 22. Same—Liability of Maker or Drawer.

The liability of the maker of a negotiable instrument, based on the mere fact of its execution by him, is measured by the promise contained therein, which is that he will pay the instrument according to its tenor.[44] By

[44]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 60); R. I. (§ 68); Md. (§ 79); N. Y. (§ 110); Wis. (§ 1677).

A collateral agreement that the maker shall not be personally liable on the instrument according to its tenor is not a defense. Armstrong v. Scott, 36 Fed. 63; Hirsch v. Oliver, 91 Ga. 554; Hodgkins v. Moulton, 100 Mass. 309; Cumings v. Kent, 44 Ohio St. 92; Reed v. Nicholson, 37 Mo. App. 646. But an agreement that a note signed by trustees of the school district shall be the note of the district is a good defense to an action against the trustees individually. Bingham v. Stewart, 14 Minn. 214. An agreement between the maker and the president of the payee bank that the maker shall not be liable is a good defense to an action by a receiver of the bank. Higgins v. Ridgway, 153 N. Y. 130.

The question of the liability of the maker to garnishment at the instance of a creditor of the payee, before maturity, is important. The rule is that, in the absence of specific statute allowing it, the maker of a negotiable note is not subject to garnishment at the instance of a creditor of the payee before maturity of the note, "because, if this be done, he is liable to be made to pay the same debt twice over; and we find no authority for

making the instrument, he also admits the existence of the payee, and his then capacity to indorse.[45]

The drawer also 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 steps on dishonor duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.[46]

The drawer may, however, insert in the instrument a stipulation negativing or limiting

holding that the rule is different when he executed the note with the knowledge that it is the purpose of the payee to place the fund beyond the reach of his creditors. Willis v. Heath, 75 Tex. 124.

[45]Same sections of Negotiable Instruments Laws as last above cited.

Instruments payable to the order of a fictitious person are payable to bearer. See post, § 57.

[46]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 61); R. I. (§ 69); Md. (§ 80); N. Y. (§ 111); Wis. (§ 1677-1).

The drawer is discharged where the payee transmits the draft by mail, and fails to discover its loss for six months. Bank of Gilby v. Farnsworth (N. D.) 72 N. W. 901. But a promise by the drawer to pay made with knowledge of the facts, is a waiver of his right to such discharge. Id.

his own liability to the holder;[47] the theory being that an express stipulation of this kind conveys to the holder actual notice of the limitation of liability. By virtue of this provision, an instrument may be drawn "without resource" on the drawer.

§ 23. Signature by Agent—Authority.

The signature of any party to a negotiable instrument may be made by a duly authorized agent. No particular form of appointment is necessary, and the authority of the agent may be established as in other cases of agency.[48]

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[47]Same sections of Negotiable Instruments Laws as last above cited.

For various agreements qualifying or limiting the liability of the maker or drawer, see Collins v. Seay, 35 Ala. 347; King v. King, 69 Ind. 467; Montgomery v. Page, 29 Or. 320; Commercial Bank v. Hart, 10 Wash. 303. See, also, cases cited in note 44, supra.

[48]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 19); R. I. (§ 27); Md., N. Y. (§ 38); Wis. (§ 1675-19).

See Conroe v. Case, 74 Wis. 85.

As to ratification of unauthorized signature, see Bartlett v. Tucker, 104 Mass. 336; Howard v. Duncan, 3 Lans. 174; Paul v. Berry, 78 Ill. 158; First Nat. Bank v. Badger Lumber Co., 54 Mo. App. 327; Bell v. Waudby, 4 Wash. 743; Ballston Spa Bank v. Marine Bank, 16 Wis. 120.

§ 24. Same—When Agent Personally Liable.

Where the instrument shows either in the body thereof, or by means of words added after the signature, that it was signed for or on behalf of a principal, or in a representative capacity, the signer is not personally liable if he was duly authorized; but the mere addition of words describing the signer as an agent, or as acting in a representative capacity, without disclosing his principal, will not relieve the signer from personal liability.[49]

It follows from this rule that the ostensible agent, in case he is not authorized to sign the instrument, is directly liable on the instrument itself to the holder,[50] and is also so liable in case he attempts to sign as agent, and fails to properly designate the principal, and faith is given to the paper as his personal contract. Thus the word "agent," or a similar word, not disclosing the nature of the agency, or the name of the principal, added after the signature, is merely descriptio personae, and the signer is personally liable.[51] But if the principal is plainly dis-

[49]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 20); R. I. (§ 28); Md., N. Y. (§ 39); Wis. (§ 1675-20).

[50]Frankland v. Johnson, 147 Ill. 520.

closed in the body of the instrument, one signing in a representative capacity, or as agent, is not personally liable, [52] though the signature has no words indicating agency.[53] Where the instrument recites a promise by the principal to pay, and is signed by one as agent, proof that the ostensible agent had no

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[51] Pease v. Pease, 35 Conn. 131; Bedford Commercial Ins. Co. v. Covell, 8 Metc. 442; San Bernardino Nat. Bank v. Anderson (Cal.) 32 Pac. 168; Brunswick-Balke-Collender Co. v. Boutell, 45 Minn. 21; Pentz v. Stanton, 10 Wend. 271; Cortland Wagon Co. v. Lynch, 82 Hun, 173; Casco Nat. Bank v. Clark, 139 N. Y. 307; Lyons v. Miller, 6 Grat. 427; Bickford v. First Nat. Bank, 42 Ill. 238.

The addition of the word "executor" or "administrator," or the character "adm'r" or "adm'x," to the signature, does not relieve the signer from personal liability. Jenkins v. Phillips, 58 N. Y. Supp. 788; Boyd v. Johnston, 89 Tenn. 284; Tassey v. Church, 4 Watts & S. 346; White v. Thompson, 79 Me. 207; Hosteller v. Hoke, 17 Kan. 81; Morehead Banking Co. v. Morehead, 116 N. C. 410.

[52] Whitney v. Inhabitants of Stow, 111 Mass. 368; Haskell v. Cornish, 13 Cal. 45; Little v. Bailey, 87 Ill. 239.

In Vliet v. Simonton (N. J. Sup.) 43 Atl. 738, persons signing as "trustees," a note which recited that "the trustees of M. Grange, No. 114," promise to pay, were held personally liable. To same effect, see Day v. Ramsdell, 90 Iowa, 731.

[53] Chipman v. Foster, 119 Mass. 189.

authority to sign will render him personally liable.[54]

§ 25. Same—Signature by Procuration is Notice of Limited Authority.

A signature by "procuration" operates as notice that the authority of the agent is limited; and the principal is bound only in case the agent, in so signing, acted within the actual scope of his authority.[55]

§26. Delivery Essential to Completion of Instrument.

The contract evidenced by a negotiable instrument is not complete, and is revocable until delivery of the instrument for the purpose of giving effect thereto.[56] So, if the

[54]Frankland v. Johnson, 147 Ill. 520, where the note recited that the "Western Seaman's Friend Society agrees to pay," and was signed "B. Frankland, Gen. Supt.," and the signer was held to a personal liability, it appearing that he had no authority to bind the society, and that it was the intention of the parties that he be personally liable.

[55]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 21); R. I. (§ 29); Md., N. Y. (§ 40); Wis. (§ 1675-21).

This provision was taken verbatim from the English "Bills of Exchange Act 1882" (45 & 46 Vict. c. 61), § 25.

See North River Bank v. Aymar, 3 Hill, 262.

[56]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 16); R. I. (§ 22); Md., N. Y. (§ 35); Wis. (§ 1675-16).

maker destroy the instrument after signature, but before delivery, no recovery can be had thereon by the payee as upon a lost instrument.[57] Nor can a recovery be had where a delivery was obtained by force or fraud.[58]

§ 27. Sufficiency of Delivery—Conditional Delivery.

As against all parties except a bona fide holder, a delivery, to be effectual, must be made by or under the authority of the person making, drawing, accepting, or indorsing; and in such case the delivery may be shown to be conditional, and for a specific purpose, and not for the purpose of transferring the property in the instrument.[59] An instrument taken by the payee without the maker's consent is ineffectual for want of delivery.[60]

A delivery to the payee in a sealed enve-

Wells Fargo & Co. v. Vansickle, 64 Fed. 944; Palmer v. Poor, 121 Ind. 135; Devries & Co. v. Shumate, 53 Md. 211; Cowing v. Altman, 71 N. Y. 435; Chipman v. Tucker, 38 Wis. 43; Roberts v. McGrath, 38 Wis. 52; Wright v. Smith, 81 Va. 777; Hoit v. McIntire, 50 Minn. 466.

[57] Sheehan v. Crosby, 58 Ind. 205.

[58] Burson v. Huntington, 21 Mich. 415.

[59] Same sections of Negotiable Instruments Laws as last above cited.

[60] Hatton v. Jones, 78 Ind. 466; Roberts v. McGrath, 38 Wis. 52; Dodd v. Dunne, 71 Wis. 578.

lope,[61] or by mailing the instrument to him,[62] is sufficient, and a sufficient constructive delivery takes place where the instrument is left in a place accessible to the payee.[63]

That a conditional delivery may be shown except as against a bona fide holder is well established.[64]

§ 28. When Delivery Presumed.

Where the instrument is no longer in possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved,[65] and possession by the payee or a party other than the signer is prima facie evidence of delivery,[66] but possession by a sister of the payee is not sufficient to raise the pre-

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[61] Worth v. Case, 42 N. Y. 362.

[62] Barrett v. Dodge, 16 R. I. 740; Kirkman v. Bank of America, 2 Cold. 397.

[63] Norton v. Norton, 1 N. Y. Supp. 552; Babcock v. Benson, 58 Hun, 601.

[64] Burke v. Dulaney, 153 U. S. 228; Zimmerman v. Adee, 126 Ind. 15; Devries v. Shumate, 53 Md. 211; Watkins v. Bowers, 119 Mass. 383; Bernhard v. Brunner, 4 Bosw. 528; Bookstaver v. Jayne, 60 N. Y. 146; Garfield Nat. Bank v. Colwell, 57 Hun, 169; French v. Wallack, 12 N. Y. St. Rep. 159. But see Mead v. National Bank of Pawling, 89 Hun, 102.

[65] Same sections of Negotiable Instruments Laws as last above cited.

sumption.[67] This presumption from possession by the payee may be rebutted by evidence that the delivery was on a contingency which had not happened.[68]

[66]Bellows v. Folsom, 4 Rob. (N. Y.) 43; Garrigus v. Home, F. & F. Missionary Soc., 3 Ind. App. 91.

[67]Gordon v. Adams, 127 Ill. 223.

[68]Hurt v. Ford (Mo.) 36 S. W. 671.

CHAPTER IV.

Essentials of Negotiability.

A. In General, §§ 29-34.
B. The Promise or Order in General, §§ 35-39.
C. Unconditional and Unrestricted Nature of Promise or Order, §§ 40-47.
D. Necessity of Words of Negotiation, §§ 48-49.
E. What Instruments Payable to Order, §§ 50-55.
F. What Instruments Payable to Bearer, §§ 56-59.
G. Certainty as to Parties, §§ 60-63.
H. Certainty as to Sum Payable, §§ 64-69.
I. Certainty as to Time of Payment, §§ 70-78.
J. Certainty as to Place of Payment, §§ 79-80.
K. Promise or Order to Pay "Money," §§ 81-86.

A. In General.

§ 29. Matters Necessary to Valid Execution of Instrument.
§ 30. Statement of Consideration—Not Necessary.
§ 31. Same—Particular Statement Does not Destroy Negotiability.
§ 32. Same—Statement Required by Special Statutes.
§ 33. Seal does not Destroy Negotiability.
§ 34. Language of Laws—Substantial Compliance.

§ 29. Matters Necessary to Valid Execution of Instrument.

There are certain essentials of negotiability, such as a written instrument, and a signature by the maker or drawer, which are primarily essentials to the valid execution of

the instrument, and such questions, together with questions relating to the necessity of placing a date on a negotiable instrument, are considered in the chapter on "Execution and Delivery," because more properly falling under that heading.

§ 30. Statement of Consideration—Not Necessary.

The negotiability of an instrument is not affected by the fact that it does not specify the value given, or that any value was given.[1] This rule is merely a specific application of the general rule that a consideration for a negotiable instrument is presumed,[2] and is declaratory of the law; for, in the absence of statute, it has been uniformly held that the words "value received," or their equivalent are not necessary to negotiability.[3]

§ 31. Same—Particular Statement Does not Destroy Negotiability.

Though it is not necessary to state that there was a consideration for an instrument in order to render it negotiable, one which

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 6); R. I. (§ 14); Md., N. Y. (§ 25); Wis. (§ 1675-6).

[2]See post, § 87.

[3]Archer v. Claflin, 31 Ill. 306; Benjamin v. Tillman, 2 McLean, 213; Coursin v. Ledlie's Adm'r, 31 Pa. St. 506.

contains a statement of the particular transaction giving rise to the instrument is not thereby rendered nonnegotiable.[4] Thus, a promise to pay a stated sum for the privilege of placing advertising signs in street cars[5] is negotiable; and a statement that the note was given for insurance,[6] or for personal property,[7] or for rent,[8] does not destroy its negotiability.

§ 32. Same—Statement Required by Special Statutes.

The negotiable instruments laws provide

[4]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 3); R. I. (§ 11); Md., N. Y. (§ 22); Wis. (§ 1675-3).

Newton Wagon Co. v. Dier, 10 Neb. 284; Hereth v. Meyer, 33 Ind. 511; Doherty v. Perry, 38 Ind. 15; Bank of Sherman v. Apperson & Co., 4 Fed. 25; First Nat. Bank of Salisbury v. Michael, 96 N. C. 503.

Conditional sale note not negotiable, see post, § 45.

[5]Siegel v. Chicago Trust & Sav. Bank, 131 Ill. 569. See, also, Chase v. Senn, 13 N. Y. Supp. 266.

[6]American Ins. Co. v. Gallahan, 75 Ind. 168; Kirk v. Dodge Co. Mut. Ins. Co., 39 Wis. 138; Union Ins. Co. v. Greenleaf, 64 Me. 123; Taylor v. Curry, 109 Mass. 36.

[7]Collins v. Bradbury, 64 Me. 37. See, also, Preston v. Whitney, 23 Mich. 260.

Conditional sale note not negotiable, see post, § 45.

[8]Buchanan v. Wren, 10 Tex. Civ. App. 560.

that nothing in the section relating to setting out the consideration shall repeal any statute requiring the nature of the consideration to be stated in the instrument.[9] These provisions refer to such statutes as that of Wisconsin, which provides that notes taken by any fire insurance company for the issuance of a policy shall have written in the body thereof the words, "given in payment for a policy of insurance, and, if transferred before or after maturity, shall remain subject to all defenses,"[10] and the statute of New York, which requires notes given for a patent right to contain the words, "given for a patent right," and one given for the purpose of speculation in farm products to state that it is "given for a speculative consideration."[11]

At one time there was considerable doubt as to the constitutionality of a statute requiring notes given for patent rights to recite that fact, but such statutes are now generally considered as constitutional.[12]

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[9]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 6); R. I. (§ 14); Md., N. Y. (§ 25); Wis. (§ 1675-6).

[10]Rev. St. 1878, § 1944. This section was not repealed by the negotiable instruments law.

[11]Neg. Inst. Law, §§ 330, 331.

[12]New v. Walker, 108 Ind. 365; Herdle v.

§ 33. Seal does not destroy Negotiability.

The old common-law rule that a seal placed on an instrument renders it a specialty, and hence nonnegotiable, is still in force, except as modified or abolished by statute.[13] Corporate paper is an exception to the general rule, and is not rendered nonnegotiable at common law by the presence of the corporate seal;[14]

Roessler, 109 N. Y. 127. A similar statute was held unconstitutional in Minnesota, as an attempt to regulate the sale of patent rights granted pursuant to acts of Congress. Crittenden v. White, 23 Minn. 24.

[13]Rawson v. Davidson, 49 Mich. 607; Lewis v. Wilson, 5 Blackf. 370; Brown v. Jordahl, 32 Minn. 135. But see Laws Minn. 1899, c. 86, abolishing private seals, and providing that the addition of such a seal shall not affect the character of an instrument in any respect.

[14]Corporate bonds, see American Nat. Bank v. American Wood-Paper Co. (R. I.) 32 Atl. 305; Evertson v. National Bank of Newport, 66 N. Y. 14.

Interest coupons detached from negotiable bonds are negotiable. International Imp. Fund Trustees v. Lewis, 34 Fla. 424; Evertson v. National Bank of Newport, supra; Nashville v. First Nat. Bank, 1 Baxt. 402.

Corporate notes, see Jackson v. Myers, 43 Md. 452, where there was a printed representation of the corporate seal on the face of the note; Chase Nat. Bank v. Faurot, 72 Hun, 373, 149 N. Y. 532, and Weeks v. Esler, 143 N. Y. 374, in which sealed corporate notes were held negotiable, in the absence of any showing that the parties intended to

the theory being, generally, that the affixing of the corporate seal is a necessary part of the execution of the instrument.[15]

The common-law rule has been abolished by the negotiable instruments laws by an express provision that an instrument is negotiable, though it bears a seal.[16]

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affix seals; Mackay v. St. Mary's Church, 15 R. I. 121, where a corporate note, sealed, but not with the corporate seal, was held negotiable.

The New York negotiable instruments law (section 332) provides that the owner or holder of any corporate municipal bond or obligation issued and payable within the state, but not registered, may make such bond or obligation, or the interest coupon accompanying it, nonnegotiable by subscribing his name to a statement indorsed thereon, that such bond, obligation, or coupon is his property.

[15]But see Union Bank v. Ridgely, 1 Har. & G. 324 (413); Bank of Columbia v. Patterson, 7 Cranch, 305.

[16]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 6); R. I. (§ 14); Md., N. Y. (§ 25); Wis. (§ 1675-6).

Of the states that have adopted the negotiable instruments law, the following previously had statutes making sealed instruments negotiable: Colo. (Gen. Laws, p. 110, § 91); Mass. (Pub. St. c. 77, § 4); N. C. (Code, § 41; Pate v. Brown, 85 N. C. 166. But see Borden v. Southerland, 70 N. C. 528; Spense v. Tapscott, 93 N. C. 246); Tenn. (Ann. Code, § 3506).

In the following sealed instruments were for-

It follows that, where the negotiable instruments laws are in force, the distinction and refinements made by the courts in determining what constitutes a seal[17] are useless learning, so far as the question of negotiability is concerned.

§ 34. Language of Laws—Substantial Compliance.

While the negotiable instruments laws provide that an instrument, to be negotiable, "must conform" to certain specific requirements, a strict following of the language of the laws is not required, but any terms are

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merly assignable merely, subject to defense: Md. (Pub. Gen. Laws, art. 8, §§ 3, 9); Va. (Code, § 2860); Wis. (Sanb. & B. Ann. St. §§ 2605, 2606); D. C. (Comp. St. c. 6, § 3).

The negotiable instruments law changes the rule in Oregon. See D. M. Osborne & Co. v. Hubbard, 20 Or. 318.

[17]Clegg v. Lemessurier, 15 Grat. 108; Andrews v. Herriot, 4 Cow. 508; Bates v. Boston & N. Y. Cent. R. Co., 10 Allen, 251; Duncan v. Duncan, 1 Watts, 322; D. M. Osborne & Co. v. Hubbard, 20 Or. 318.

In Minnesota, an instrument, otherwise a negotiable promissory note, but having the word "Seal" in brackets opposite the name of the maker, was held to be a sealed instrument, and not negotiable, though there was no reference to the seal in the body of the note. Brown v. Jordahl, 32 Minn. 135.

sufficient which clearly indicate an intention to conform to the statutory requirements.[18]

B. The Promise or Order in General.

§ 35. What Constitutes Promise or Order—Acknowledgments and Due Bills.
§ 36. Same—Warehouse Receipts and Bills of Lading.
§ 37. Same—Certificates of Deposit.
§ 38. Same—Receivers' Certificates.
§ 39. Same—Bank Pass Books.

§ 35. What Constitutes Promise or Order—Acknowledgments and Due Bills.

What constitutes a "promise" sufficient to make an instrument a promissory note has been a frequent subject of judicial investigation. In the absence of statute, it has generally been held that an acknowledgment of indebtedness, either in the form of a duebill or an "I. O. U.," does not contain a sufficient promise, and in fact is not a new obligation, but merely new evidence of the old debt.[19] Where a writing contains nothing more than a bare acknowledgment of a debt, it does

[18]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§10); R. I. (§ 18); Md., N. Y. (§ 29); Wis. (§ 1675-10).

Construction of ambiguous instruments, see post, § 91.

[19]Gray v. Bowden, 23 Pick. 282; Gay v. Rooke, 151 Mass. 115; Pepoon v. Stagg & Co., 1 Nott & McC. 102; Currier v. Lockwood, 40 Conn. 349. ..

not, in legal construction, import an express promise to pay.[20] The doctrine of implied promise has, however, been applied to sustain the negotiability of instruments of this nature.[21] So it has been held that an instrument reciting "good to R. C., or order, for thirty dollars borrowed money," contained a sufficient promise, and was negotiable.[22] Also that one in the words "due A on corn, $525," was negotiable.[23] A promise to be "accountable" is equivalent to a promise to pay,[24] but a mere statement that "I owe the estate of W." a certain sum is not a negotiable promissory note.[25]

The sufficiency of the "order" in a bill of exchange is governed by similar principles, and a direction to "please let the bearer have $50. I will arrange it with you this noon," was held to be a bill of exchange, and not a mere covenant.[26] But a direction to "credit

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[20]Smith v. Allen, 5 Day, 337.

[21]Anderson v. Pearce, 36 Ark. 293; Lee v. Balcom, 9 Colo. 216; Smith v. Allen, 5 Day, 337; Harrow v. Dugan, 6 Dana, 341.

[22]Franklin v. March, 6 N. H. 364. But see Brown v. Gilman, 13 Mass. 158.

[23]Jaquin v. Warren, 40 Ill. 459.

[24]Morris v. Lee, 1 Strange, 629.

[25]Bowles v. Lambert, 54 Ill. 237.

A., or bearer, $30, and I will pay you," does not constitute a good bill.[27]

§ 36. Same—Warehouse Receipts and Bills of Lading.

Warehouse receipts and bills of lading are usually treated as quasi negotiable instruments, on the ground that they do not contain a sufficiently definite promise, and are not payable in money.[28] In New York, receipts issued by certain warehouse and storage companies are still negotiable, for the statute giving them negotiability[29] was not repealed by the negotiable instruments laws. In Wisconsin, warehouse receipts, bills of lad-

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[26]Biesenthall v. Williams, 1 Duv. 329, 85 Am. Dec. 629.

The word "please," or words of similar import, do not affect the negotiability of the bill. Wheatley v. Strobe, 12 Cal. 92, 73 Am. Dec. 522; Jarvis v. Wilson, 33 Am. Rep. 18; Biesenthall v. Williams, supra; Mehlberg v. Tisher, 24 Wis. 607.

[27]Wooley v. Sergeant, 8 N. J. Law, 262.

[28]But see Canadian Bank of Commerce v. McCrea, 106 Ill. 281.

[29]Laws N. Y. 1858, c. 336, § 6 (Laws 1872, c. 881, § 6; 2 Rev. St. 1875, p. 230, § 6). See Hanover Nat. Bank v. American Dock & T. Co., 148 N. Y. 612, citing 143 N. Y. 559; Corn Exchange Bank v. Same, 149 N. Y. 174. The instruments are transferable without indorsement. Mechanics' Bank of Canada v. Union Ry. & Transp. Co., 69 N. Y. 373.

ing, and railroad receipts are negotiable, unless the words "not negotiable" are plainly written, printed, or stamped on the face of the instrument.[30]

§ 37. Same—Certificates of Deposit.

A certificate of deposit payable to the order of the depositor is negotiable,[31] and its negotiability is not affected by the fact that a demand is necessary before an action can be maintained on it.[33] One not containing a promise to pay is not negotiable, as it is nothing more than a receipt for the money deposited.[33] But a certificate of deposit payable to the order of a named person at six months, with interest, is a negotiable promissory note.[34]

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[30]Rev. St. 1878, §§ 1676, 4194, 4425. The negotiable instruments laws (section 1675-1, subd. 5) has specially saved these sections from repeal.

[31]Birch v. Fisher, 51 Mich. 36; First Nat. Bank of Rapid City v. Security Nat. Bank, 34 Neb. 71; Pardee v. Fish, 60 N. Y. 265; Baker v. Leland, 9 App. Div. 365; Maxwell v. Agnew, 21 Fla. 154; Johnson v. Henderson, 76 N. C. 227; Lindsey v. McClelland, 18 Wis. 481.

Effect of provision for return of certificate, see infra, note 47.

[32]Pardee v. Fish, supra.

[33]Hotchkiss v. Mosher, 48 N. Y. 482.

[34]Bank of Orleans v. Merrill, 2 Hill, 295; Beardsley v. Webber, 104 Mich. 88.

§ 38. Same—Receivers' Certificates.

A receiver's certificate is not negotiable since it lacks several of the essential elements of negotiability.[35] One which contains no express promise to pay, but merely acknowledges an indebtedness, payable out of a particular fund, is not negotiable;[36] nor is one which, on its face, recites that it was issued under a special order of court.[37]

§ 39. Same—Bank Pass Books.

A pass book issued by a savings bank is not a negotiable instrument,[38] though a by-law of the bank, assented to by depositors, provides that the pass books shall be transferable to order.[39] An order signed by a depositor, directing payment to a third person, does not make the books negotiable,[40] and an assignee of the book cannot sue thereon in his own name.[41] On the same theory, an order on a savings bank which recites that the pass book

[35]Turner v. Peoria & S. R. Co., 95 Ill. 134.

[36]Union Trust Co. v. Chicago & L. H. R. Co., 7 Fed. 513.

[37]Montreal Bank v. Chicago, C. & W. R. Co., 48 Iowa, 518.

[38]Smith v. Brooklyn Sav. Bank, 101 N. Y. 508.

[39]Witte v. Vincenot, 43 Cal. 325.

[40]McCaskill v. Connecticut Sav. Bank, 60 Conn. 300, 13 L. R. A., 737.

[41]Howard v. Windham Co. Sav. Bank, 40 Vt. 597.

must accompany the order is not negotiable.[42]

C. Unconditional and Unrestricted Nature of Promise or Order.

§ 40. Promise must be Unconditional.
§ 41. Reference to Particular Fund or Account for Reimbursement.
§ 42. Instruments Payable out of Particular Fund —Not Negotiable.
§ 43. Same—Municipal Warrants and Orders.
§ 44. Provision for Sale of Collateral Securities.
§ 45. Conditional Sale Notes—Not Negotiable.
§ 46. Judgment Notes—Negotiable.
§ 47. Instruments Waiving Statutory Rights—Negotiable.

§ 40. Promise must be Unconditional.

The nature and purpose of commercial paper require the enforcement of the rule that it must be payable unconditionally. Though the courts differ somewhat in the application of the rule to particular instruments, they uniformly uphold the rule itself.[43] Thus, an order directing payment out of any money the drawee might obtain in a certain suit is not

[42]White v. Cushing, 88 Me. 339.

[43]Carnahan v. Pell, 4 Colo. 190; Jennings v. First Nat. Bank, 13 Colo. 417; First Nat. Bank of Webster v. Alton, 60 Conn. 402; Coolidge v. Ruggles, 15 Mass. 387; Grant v. Wood, 12 Gray, 220; Cook v. Satterlee, 6 Cow. 108; Shelton v. Bruce, 9 Yerg. 24; First Nat. Bank of Stillwater v. Larsen, 60 Wis. 206.

negotiable;[44] so, also, a promise to pay, provided a railroad be built to a certain place by a certain time.[45] Where payment is contingent on whether the payee, before maturity, shall pay a certain mortgage, the instrument is not negotiable.[46]

As to the effect of a provision for payment "on return" of the instrument or of other intruments, there is a conflict of opinion; the weight of authority treating an instrument with such a provision as unconditional and negotiable.[47]

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[44]Waters v. Carleton, 4 Port. 205.

[45]Eldred v. Malloy, 2 Colo. 320.

[46]Hays v. Gwin, 19 Ind. 19.

[47]Certificates of deposit providing for payment on return of the certificates are negotiable. Fellspoint Sav. Inst. v. Weedon, 18 Md. 320; Kirkwood v. Exchange Nat. Bank, 40 Neb. 497; Bellows Falls Bank v. Rutland Co. Bank, 40 Vt. 377. But, contra, see O'Neill v. Bradford, 1 Pin. 390; Lebanon Bank v. Mangan, 28 Pa. St. 452; Patterson v. Poindexter, 6 Watts & S. 227.

A receipt providing for payment on its return is negotiable. Frank v. Wessels, 64 N. Y. 155.

A note providing that it shall be surrendered to the maker on payment of the note to the payee is not negotiable. Hubbard v. Moseley, 11 Gray, 170. Nor is a note given for stock which provides for payment on surrender of the stock. Van Zandt v. Hopkins, 151 Ill. 248. Nor is an instrument negotiable, payment of which is conditioned on the

The negotiable instruments laws follow the rule of the law merchant, and provide that an instrument, to be negotiable, must contain an unconditional promise.[48]

§ 41. Reference to Particular Fund or Account for Reimbursement.

An indication of a particular fund, out of which reimbursement is to be made, or a particular account which is to be debited with the amount, does not render an instrument conditional.[49] So, an order to "pay to A. $40, and charge same against whatever amount may be due me for my share of fish," caught on a certain schooner,[50] and one in which the direction was to "charge the amount against me, and (sic) of my mother's estate,"[51] are negotiable. In the case last mentioned, the

return of the maker's guarantee of a certain note. Smilie v. Stevens, 39 Vt. 315.

[48]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1); R. I. (§ 9); Md., N. Y. (§ 20); Wis. (§ 1675-1).

[49]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 3); R. I. (§ 11); Md., N. Y. (§ 22); Wis. (§ 1675-3).

Receivers' certificates not negotiable, see ante, § 38.

[50]Redman v. Adams, 51 Me. 429. See, also, Corbett v. Clark, 45 Wis. 403, where the instrument was made payable "out of my share of the grain."

[51]Schmittler v. Simon, 101 N. Y. 554.

court said: "While the point is not free from doubt, we think a reasonable construction of the draft favors the conclusion that it (the fund) is mentioned only as a source of reimbursement." On the same theory, a promise to pay "out of any property I may possess"[52] is negotiable, and a direction to "charge my salary account"[53] does not render an instrument nonnegotiable.

In a recent Alabama case, a stipulation in a note that "the makers and indorsers of this note * * * authorize said bank to appropriate on this note, whether due or not, at any time at its option, without notice or legal proceedings, any money which they, or any one or more of them, may have jointly or severally in said bank, on deposit or otherwise," was held not to destroy negotiability.[54]

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[52]Chickering v. Greenleaf, 60 N. H. 51.

An indorsement made by the maker of a note on the back of the instrument, that he is the owner of a stated amount of real and personal property, does not destroy negotiability. Hudson v. Emmons, 107 Mich. 549.

[53]Shaver v. Western Union Telegraph Co., 57 N. Y. 459.

[54]Louisville Banking Co. v. Gray (Ala.) 36 So. 205.

§ 42. Instruments Payable out of Particular Fund —Not Negotiable.

An instrument payable out of a particular fund is conditional, and is not negotiable.[55] The distinction here made by the decisions and by the negotiable instruments laws, between instruments payable out of a particular fund and instruments merely referring to such fund for reimbursement, is close, but is logically sound. It is clear that an instrument payable out of a particular fund is not payable "in any event," but depends for payment on the existence of such a fund, and its sufficiency at the time fixed for payment. So it has been held that an instrument payable out of "the growing substance" of the drawer,[56] or out of "money in his hands belonging to me,"[57] is not negotiable, nor are instruments payable out of the proceeds of a sale of certain named property,[58] nor an

[55]Same sections of negotiable instruments laws as last above cited.

See, also, Tradesmen's Nat. Bank of Philadelphia v. Green, 57 Md. 602; Harriman v. Sanborn, 43 N. H. 128; Parker v. City of Syracuse, 31 N. Y. 376; Cook v. Satterlee, 6 Cow. 108.

[56]Josselyn v. Lacier, 10 Mod. 294.

[57]Averett's Adm'r v. Booker, 15 Grat. 165.

[58]Virginia v. Turner, 1 Cranch. C. C. 261; De Forest v. Frary, 6 Cow. 151; Lowery v. Steward, 25 N. Y. 239; Jackson v. Tilghman, 1 Miles, 31.

order in the form: "Please pay to the order of W. $600,— the same to be the last $600 due me on my contract,—and charge the same to my account."[59] But a note payable on a certain day, "or before, if made out of the sale" of specified property, is negotiable,[60] since it is payable absolutely on the day fixed, if not paid before.

§ 43. Same—Municipal Warrants and Orders.

Municipal warrants and orders are not negotiable.[61] If not made payable out of a particular fund, they are sometimes treated as negotiable,[62] but are not considered as commercial paper, in the strict sense of the term.[63] Where, however, a municipal warrant is payable out of "any funds belonging to the city, not before specially appropriated," and is chargeable to the "general city funds," it is negotiable.[64]

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[59] Woodward v. Smith (Wis.) 80 N. W. 440.

[60] Walker v. Woollen, 54 Ind. 164; Noll v. Smith, 64 Ind. 511; Charlton v. Reid, 61 Iowa, 166; Kiskadden v. Allen, 7 Colo. 206.

[61] Stanton v. Shipley, 27 Fed. 498; Read v. City of Buffalo, 67 Barb. 526; Goose River Bank v. Willow Lake School Tp., 1 N. D. 26.

[62] See Floyd Co. Com'rs v. Day, 19 Ind. 450; Brownlee v. Madison Co. Com'rs, 81 Ind. 186.

[63] Furgerson v. Staples, 82 Me. 159.

[64] Bull v. Sims, 23 N. Y. 570.

By the negotiable instruments law of Wisconsin, no order drawn on or accepted by the treasurer of any county, town, city, village, or school district is negotiable, no matter in what form it is drawn, unless it is expressly made negotiable by law.[65]

In some cases negotiability is denied to municipal warrants and orders on the ground that municipal officers are not authorized to execute negotiable instruments.[66]

The nature of municipal warrants is well stated in Mayor v. Ray, as follows: "Vouchers for money due, certificates of indebtedness for services rendered or for property furnished for the uses of the city, orders or drafts drawn by one city officer upon another, or any other device of the kind used for liquidating the amounts legitimately due to public creditors, are, of course, necessary instruments for carrying on the machinery of municipal administration, and for anticipating the collection of taxes. But to invest such docu-

[65] Neg. Inst. Law, § 1675-1, subd. 5.

[66] Dana v. San Francisco, 19 Cal. 490 (county scrip or warrants); Camp v. Knox Co., 3 Lea, 199; People v. Supervisors, 11 Cal. 170, where it was held that a county auditor cannot give to a county warrant "the form and qualities" of a bill of exchange.

ments with the character and incidents of commercial paper, so as to render them in the hands of bona fide holders, absolute obligations to pay, however irregularly or fraudulently issued, is an abuse of their true character and purpose. It has the effect of converting a municipal organization into a trading company, and puts it in the power of corrupt officials to involve a political community in irretrievable bankruptcy."[67]

§ 44. Provision for Sale of Collateral Securities.

The negotiable character of an instrument otherwise negotiable is not affected by a provision which authorizes the sale of collateral securities if the instrument be not paid at maturity.[68] So, a recital that the maker has deposited certain certificates as collateral does not destroy negotiability,[69] nor a recital that, on nonpayment, the holder may sell the col-

[67]Mayor v. Ray, 19 Wall. 468. See, also, Police Jury v. Britton, 15 Wall. 566; State v. Cook, 43 Neb. 318.

[68]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 5); R. I. (§ 13); Md., N. Y. (§ 24); Wis. (§ 1675-5).

See, also, Arnold v. Rock River Val. Ry. Co., 5 Duer, 207; National Bank v. Gary, 18 S. C. 282; Perry v. Bigelow, 128 Mass. 129; Bank of Carroll v. Taylor, 67 Iowa, 572.

[69]Towne v. Rice, 122 Mass. 67.

lateral, and apply the proceeds to "payment and necessary charges."[70] But a contract in an instrument for the payment of money, that the payee may sell certain warehouse receipts given as collateral, and, if they depreciate in value, may sell them before the instrument would otherwise become due, in which case the proceeds, less expenses, shall be applied in payment or part payment of the debt, and that any deficiency shall become due forthwith, renders the instrument nonnegotiable, the court, saying: "We find that such alternative contract introduces two elements of uncertainty in the instruments, to wit, in the sum payable in case any sum becomes due before the time first specified in the instrument, and in the time when the same shall so become due."[71]

Under the corresponding provision of the English Bills of Exchange Act 1882 (45 &

[70]Valley Nat. Bank of Chambersburg v. Crowell, 148 Pa. St. 284.

Notes which are themselves given as collateral security are not negotiable. American Nat. Bank v. Sprague, 14 R. I. 410; Haskell v. Lambert, 82 Mass. 592; Costelo v. Crowell, 127 Mass. 293.

[71]Continental Nat. Bank v. Wells, 73 Wis. 332, citing Morgan v. Edwards, 53 Wis. 599; First Nat. Bank v. Larsen, 60 Wis. 206; Cushman v. Haynes, 20 Pick. 132.

46 Vict. c. 61, § 83, subd. 3), that a note "is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof," it has been held that a note containing more than is there referred to is not a promissory note, and that hence a note providing for payment of a sum certain in instalments, default in payment of any one instalment to mature the whole, and containing the clause, "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," is not a promissory note, and cannot be declared on as such by an indorsee.[72]

§ 45. Conditional Sale Notes—Not Negotiable.

A provision in a note, otherwise negotiable, that the title to the property for which it was given shall remain in the vendor until the note is paid, has generally been held not to destroy negotiability;[73] but the rule is

[72]Kirkwood v. Smith [1895] 1 Q. B. Div. 582.

[73]Chicago Ry. Equip. Co. v. Merchants' Nat. Bank, 136 U. S. 268; First Nat. Bank of Montgomery v. Slaughter, 98 Ala. 602; Mott v. Havana Nat. Bank, 22 Hun, 354; W. W. Kimball Co. v. Mellon, 80 Wis. 133; Choate v. Stevens, 43 L. R. A. 277, changing rule in Michigan. See Wright v. Traver, 73 Mich. 493.

otherwise in some of the states.[74] In New York it has already been decided that such a note is not negotiable under the negotiable instruments laws.[75]

The reason for treating a conditional sale note as nonnegotiable is stated by Cornell, J., in Third Nat. Bank v. Armstrong as follows: "If, prior to any default on the part of the defendant (maker), the company (payee) had retaken possession of the property, and disposed of it, so that, upon the maturity of the defendant's obligation, an observance of the condition on its part had become impossible, there can be no doubt that, under such circumstances, no action could have been maintained on his promise."[76]

§ 46. Judgment Notes—Negotiable.

A provision in a note authorizing a confession of judgment thereon if it is not paid at maturity, or a warrant or power of attorney to confess judgment attached to the note, makes the instrument what is commonly called a "judgment note," but does not affect

[74]South Bend Iron Works v. Paddock, 37 Kan. 510; Third Nat. Bank v. Armstrong, 25 Minn. 530; Stevens v. Johnson, 28 Minn. 172.

[75]Third Nat. Bank of Buffalo v. Spring, 28 Misc. Rep. 9.

[76]Third Nat. Bank v. Armstrong, 25 Minn. 530.

its negotiability.[77] It seems, however, that the warrant of attorney must authorize a confession of judgment in favor of the "holder" or the "legal holder," or the instrument will not be negotiable.[78] The provision should be definite, and a note payable in ninety days, containing a power of attorney to confess judgment "at any time hereafter," is not negotiable.[79] An illegal provision for a confession of judgment does not render a note nonnegotiable.[80].

§ 47. Instruments Waiving Statutory Rights—Negotiable.

The negotiability of an instrument otherwise negotiable is not destroyed by a provision which waives the benefit of any law intended for the advantage or protection of the obligor.[81] This provision of the negoti-

[77]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 5, subd. 2); R. I. (§ 13, subd. 2); Md., N. Y. (§ 24, subd. 2); Wis. (§ 1675-5, subd. 2).

See, also, Kemp v. Klaus, 8 Neb. 24; Osborn v. Hawley, 19 Ohio, 130. Contra, see Sweeney v. Thuckstun, 77 Pa. St. 131.

[78]Ream v. Merchants' Nat. Bank, 2 Ohio Cir. Ct. Rep. 43.

[79]Richards v. Barlow, 140 Mass. 218.

[80]Tolman v. Janson (Iowa) 76 N. W. 732.

[81]Subdivision 3, same sections of negotiable instruments laws as last above cited.

able instruments laws relates to instruments which contain a waiver of the benefit of appraisement, stay, exemption, or homestead laws. The theory upon which the negotiability of instruments of this nature rests is that such provisions do not in any way clog negotiation, but rather expedite it by giving additional value to the instruments.[82] A waiver of statutory requirements as to notice of protest and diligence in bringing suit also falls within this section.[83] In Wisconsin, the negotiable instruments law limits the effect of this section by providing that nothing therein shall authorize a waiver of exemptions from execution;[84] and in North Carolina, the negotiable instruments law provides that nothing in the law shall authorize

See, also, Schlesinger v. Arline, 31 Fed. 648; Hughitt v. Johnson, 28 Fed. 865; Lyon v. Martin, 31 Kan. 411.

[82]Zimmerman v. Anderson, 67 Pa. St. 421. But see Overton v. Tyler, 3 Pa. St. 346.

[83]See Hegeler v. Comstock, 1 S. D. 138, where the provision was that the indorsers, signers, and guarantors severally waive presentment, protest, notice, and diligence in bringing suit, but where the note was held nonnegotiable for uncertainty as to the amount payable, and for containing contracts other than for the payment of money, in violation of Comp. Laws, § 4462.

[84]Neg. Inst. Law, § 1675-5, subd. 5.

the enforcement of a stipulation waiving exemptions, though the mention of such a stipulation in an instrument shall not affect its negotiability.[85]

D. Necessity of Words of Negotiation.

§ 48. Instrument must be Payable to "Order" or "Bearer."
§ 49. Negotiable Words may be Supplied by Indorsement.

§ 48. Instrument must be Payable to "Order" or "Bearer."

It is a fixed rule of the law merchant that an instrument, to be negotiable, must be payable to order or to bearer, or contain words of like import;[86] and the negotiable instruments laws have adopted the rule.[87] Under this rule, it is clear that an instrument payable to a named payee "only" is not negoti-

[85]Neg. Inst. Law, § 197.

[86]Backus v. Danforth, 10 Conn. 297; Yingling v. Kohlhass, 18 Md. 148; Maule v. Crawford, 14 Hun, 193; Albright v. Griffin, 78 Ind. 182; Carruth v. Walker, 8 Wis. 103.

[87]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§§ 1, 184); R. I. (§§ 9, 192); Md., N. Y. (§§ 20, 320); Wis. (§§ 1675-1, 1684).

This changes the rule in Colorado (see Rev. St. c. 1084, and Thackaray v. Hanson, 1 Colo. 365), and in North Carolina (see Code, § 41).

able,[88] nor is one payable to named payees "or their collector."[89]

A bill of exchange not containing the words "order or bearer," though not negotiable, is valid.[90]

§ 49. Negotiable Words may be Supplied by Indorsement.

Where an instrument is nonnegotiable for lack of the words "order" or "bearer," an indorsement supplying the words makes the instrument negotiable from that time.[91]

E. What Instruments Payable to Order.

§ 50. Instruments Payable to the Order of Payee Who is not Maker or Drawer.
§ 51. Instruments Payable to the Order of Maker or Drawer.
§ 52. Instruments Payable to the Order of Drawee.
§ 53. Instruments Payable to the Order of Two or More Payees Jointly.
§ 54. Instruments Payable to the Order of One or Some of Several Payees.
§ 55. Instruments Payable to the Order of the Holder of an Office.

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[88] Hackney v. Jones, 3 Humph. 612. See, also, Backus v. Danforth, 10 Conn. 297.

[89] Noxon v. Smith, 127 Mass. 485.

[90] Mehlberg v. Tisher, 24 Wis. 607.

[91] Carruth v. Walker, 8 Wis. 103; Brenzer v. Wightman, 7 Watts & S. 264; Bay v. Freazer, 1 Bay, 66.

§ 50. Instruments Payable to the Order of Payee Who is not Maker or Drawer.

An instrument is payable to order when it is drawn payable to the order of a specified person, or to him or his order.[92] It may be drawn payable to the order of a payee who is not the maker or drawer.[93]

§ 51. Instruments Payable to the Order of Maker or Drawer.

The negotiable instruments laws provide that an instrument payable to the order of the drawer or maker is payable to order.[94] This rule, when taken with the rule previously considered, that a note payable to the order of the maker is not complete until indorsed by him,[95] changes the law; for heretofore instruments payable to the order of the maker were payable to bearer,[96] and passed by delivery.[97]

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[92]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 8); R. I. (§ 16); Md., N. Y. (§ 27); Wis. (§ 1675-8).

[93]Subdivision 1, same sections of negotiable instruments laws as last above cited.

[94]Subdivision 2, same sections of negotiable instruments laws as last above cited.

[95]See ante, § 12, and notes.

[96]Irving Nat. Bank v. Alley, 79 N. Y. 536; Bank of Winona v. Wofford, 71 Miss. 711; Main v. Hilton, 54 Cal. 110.

[97]Bank of Lassen Co. v. Sherrer, 108 Cal. 513;

In some of the states, the matter has been regulated by statutes which have generally made such paper equivalent to paper payable to bearer.[98] In other states, the rule as to the necessity of the maker's indorsement on an instrument payable to his order is the same as that established by the negotiable instruments laws.[99]

§ 52. Instruments Payable to the Order of Drawee.

Instruments payable to the order of the drawee are now expressly made payable "to order," and are negotiable.[100]

O'Connor v. Clarke (Cal.) 44 Pac. 482; Irving Nat. Bank v. Alley, supra; Jones v. Shapera, 57 Fed. 457; Thompson v. Perrine, 106 U. S. 589.

[98]As against the maker, such instruments are by statutes in the following states made equivalent to instruments payable to bearer: Cal. (Civ. Code, §§ 8101, 8102); Idaho (Rev. St. § 3446); Mich. (How. Ann. St. § 1580); Minn. (Gen. St. 1894, § 2236); Mo. (Rev. St. § 735); Nev. (Gen. St. § 4885); Wyo. (Laws 1888, c. 70, art. 2, § 13).

Statutes of like import in the following states are repealed by the Negotiable Instruments Laws: Or. (Ann. Laws, §§ 3188, 3191); N. Y. (Rev. St. pt. 2, c. 4, tit. 2, § 5); N. D. (Rev. Code, §§ 4864, 4865); Wis. (Sanb. & B. Ann. St. § 1579).

[99]Lea v. Branch Bank at Mobile, 8 Port. 119; Lapeyre v. Weeks, 28 La. Ann. 664; Heywood v. Wingate, 14 N. H. 73.

[100]Neg. Inst. Laws Colo., Conn., D. C., Fla.,

§ 53. Instruments Payable to the Order of Two or More Payees Jointly.

Instruments payable to the order of two or more payees jointly are payable to order.[101] Thus an instrument payable to "steamboat J and owners" has been held negotiable;[102] but a note payable to a named payee "et al." is not negotiable,[103] since it is not sufficiently certain as to the additional payee.

§ 54. Instruments Payable to the Order of One or Some of Several Payees.

Instruments payable to the order of one or some of several payees have heretofore been considered nonnegotiable, e. g. a note payable to "A. or B.,"[104] or one payable to named payees "or their collector;"[105] but now, under the negotiable instruments laws, such instruments are negotiable.[106]

Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 8, subd. 3); R. I. (§ 16, subd. 3); Md., N. Y. (§ 27, subd. 3); Wis. (§ 1675-8, subd. 3).

[101] Subdivision 4, same sections of negotiable instruments laws as last above cited.

[102] Moore v. Anderson, 8 Ind. 18. See, also, Wood v. Wood, 16 N. J. Law, 428.

[103] Gordon v. Anderson, 83 Iowa, 224, 12 L. R. A. 483.

[104] Carpenter v. Farnsworth, 106 Mass. 561; Musselman v. Oakes, 19 Ill. 81.

[105] Noxon v. Smith, 127 Mass. 485.

§ 55. Instruments Payable to the Order of the Holder of an Office.

An instrument payable to the order of the holder of an office for the time being is now payable "to order," and is negotiable.[107] An instrument expressly payable to a trustee has hitherto been deemed nonnegotiable. Thus it has been held that a note payable to a trustee or his order, and afterwards sold by him to a bank, was not "commercial paper," and that, as between the bank and the cestui que trust, the former was charged with notice that the transfer was in fraud of the trust.[108] In New York, however, an instrument payable to the trustees of a corporation, "or their successors in office, or order," is negotiable.[109] Notes payable to sheriffs, which show that they were given for the price of property

[106]Subdivision 5, same sections of negotiable instruments laws as last above cited.

For conflict in provisions of negotiable instruments laws, see ante, § 54.

[107]Subdivision 6, same sections of negotiable instruments laws as last above cited.

[108]Third Nat. Bank v. Lange, 51 Md. 138. See, also, McMasters v. Dunbar, 2 La. Ann. 577, in which it was held, following Nicholson v. Chapman, 1 La. Ann. 223, that a note payable on its face to the order of a tutor of minors carries notice that the obligation belongs to the minors.

[109]Davis v. Garr, 2 Seld. 124.

sold at a judicial sale, carry on their face notice that such officers took in their official capacity,[110] but the mere word "Sheriff" or the designation "Shff." does not show that the money was payable to the sheriff in such capacity.[111]

F. What Instruments Payable to Bearer.

§ 56. Instruments Expressly Payable to Bearer.
§ 57. Instruments Payable to Fictitious or Nonexistent persons.
§ 58. Instruments in which Payee is not a "Person."
§ 59. Instruments Indorsed in Blank.

§ 56. Instruments Expressly Payable to Bearer.

It seems axiomatic to state that instruments expressly made payable to bearer, or to a person named therein, "or bearer," are payable to bearer, yet the negotiable instruments laws, to be explicit, enumerate instruments so payable as bearer paper.[112]

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[110] Ranney v. Brooks, 20 Mo. 105; Renshaw v. Wills, 38 Mo. 201.

[111] Powell v. Morrison, 35 Mo. 244; Fletcher v. Schaumburg, 41 Mo. 50.

[112] Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 9, subds. 1, 2); R. I. (§ 17, subds. 1, 2); Md., N. Y. (§ 28, subds. 1, 2); Wis. (§ 1675-9, subds. 1, 2).

A note payable to a certain person, or "holder," etc., is payable to bearer. Putnam v. Crymes, 1 McMul. 9.

§ 57. Instruments Payable to Fictitious or Nonexistent persons.

Bills or notes made payable to the order of a fictitious or nonexistent person, if such fact was known to the person making it so payable, are payable to bearer.[113] Notes payable to fictitious persons have generally been treated as payable to bearer,[114] and the negotiable instruments laws, by using the word "instrument," include bills of exchange. Hitherto a bill payable to the order of a fictitious person could not be treated as payable to bearer unless the fact that the payee was fictitious was known to the acceptor, as well as to the drawer.[115]

The doctrine that a check or bill made payable to a fictitious person is payable to bearer, and negotiable without indorsement, if the fictitious character of the payee was known to the parties, originated in England;

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[113] Subdivision 3, same sections of negotiable instruments laws as last above cited.

[114] Same subdivisions and sections of negotiable instruments laws as last above cited.

Lane v. Kreckle, 22 Iowa, 399; Anderson v. Dundee State Bank, 20 N. Y. Supp. 511; Forbes v. Espy, 21 Ohio St. 474. And see Farnsworth v. Drake, 11 Ind. 101.

[115] Hunter v. Blodgett, 2 Yeates, 480. But see 1 Daniel, Neg. Inst. p. 118.

and in each of the cases holding the doctrine, the decision was based on the fact that the acceptor knew, at the time of his acceptance, that the instrument was payable to a fictitious person.[116]

If the drawer or maker of an instrument did not know that the payee was a fictitious or nonexistent person, and did not intend to make the paper payable to such person, paper payable to the order of such person cannot be treated as payable to bearer, for the intention of the maker or drawer is the test.[117] Thus, where plaintiff was induced by fraud to purchase a note by the pretended agent of a fictitious person, and gave to such agent therefor a check payable to such fictitious person, and the agent indorsed the check with the name of the fictitious payee and his own name, and it was paid to him by the bank on

[116] Tatlock v. Harris, 3 Term. R. 174, 180; Vere v. Lewis, Id. 182; Minet v. Gibson, Id. 481; Gibson v. Minet, 1 H. Bl. 569; Gibson v. Hunter, 2 H. Bl. 187.

[117] Shipman v. Bank of the State of New York, 126 N. Y. 318. See, also, Armstrong v. Pomeroy Nat. Bank, 46 Ohio St. 512; Foster v. Shattuck, 2 N. H. 446.

As to estoppel of maker not knowing that payee was a fictitious firm, see Ort v. Fowler, 31 Kan. 478.

which it was drawn, it was held that plaintiff, having been ignorant of the fictitious character of the payee, and not having been negligent, could recover the amount of the check from the bank.[118]

The provision of the English Bills of Exchange Act 1882, touching this question (45 and 46 Vict. c. 61, § 7, subd. 3), is that, "where the payee is a fictitious or nonexisting person, the bill may be treated as payable to bearer." This provision has been considered in two important cases, which are pertinent here. The first case was one where a clerk in plaintiff's employ forged the name of a foreign correspondent of plaintiff as drawer of a bill on plaintiff, and procured genuine acceptances from plaintiff by means of the similarity of the bill to bills previously drawn on plaintiff by such correspondent, and by the use of counterfeit letters of advice, and forged the name of the payee, and cashed the bill at the defendant bank. It was held that "fictitious," within the meaning of the above subdivision, meant "fictitious" within the knowledge of the person sought to be charged; that the payee in this case was not a fictitious person, within the provision; that plaintiff

[118] Armstrong v. Pomeroy Nat. Bank, supra.

was not guilty of negligence; and that the bank was consequently liable.[119] The second case was one where plaintiffs' clerk induced them by fraud to draw checks in favor of a nonexistent person for pretended services by such person, and thereafter forged the indorsement of such person, and negotiated the checks to defendant, a bona fide holder, to whom they were paid by plaintiff. It was held that the payee was a "fictitious and nonexisting" person, within the meaning of the above subdivision, though plaintiffs supposed, at the time the checks were drawn, that he was a real person, and that, the paper being payable to bearer, plaintiffs could not recover against defendant in an action for money paid under a mistake of fact.[120]

§ 58. Instruments in which Payee is not a "Person."

When the name of the payee does not purport to be the name of any person, as in case of instruments drawn payable to an "estate,"[121] or to "expenses," or to "bills pay-

[119] Vagliano Bros. v. Bank of England, 22 Q. B. Div. 103, affirmed 23 Q. B. Div. 243.

[120] Clutton v. Attenborough [1895] 2 Q. B. Div. 306; affirmed, Id. 707.

[121] Scott v. Parker, 5 N. Y. Supp. 753; Lewinsohn v. Kent, 33 N. Y. Supp. 826.

able,"[122] or to "cash," the paper is payable to bearer.[123]

§ 59. Instruments Indorsed in Blank.

Another class of instruments payable to bearer is composed of instruments indorsed in blank. This is true in case the only indorsement is in blank, and also in case only the last indorsement is in blank.[124]

G. Certainty as to Parties.

§ 60. Payee must be Named or Indicated with Reasonable Certainty.
§ 61. Same—Place for Payee's Name Blank.
§ 62. Same—Parol Evidence of Mistake.
§ 63. Drawee must be Named or Indicated with Reasonable Certainty.

§ 60. Payee must be Named or Indicated with Reasonable Certainty.

Where the instrument is payable to order, the payee must be named or otherwise indicated with reasonable certainty.[125] This re-

[122]Willets v. Phoenix Bank, 2 Duer, 121.

[123]Subdivision 4, same sections of negotiable instruments laws as last above cited.

[124]Subdivision 5, same sections of negotiable instruments laws as last above cited.

Curtis v. Sprague, 51 Cal. 239; Morris v. Preston, 93 Ill. 215; McDonald v. Bailey, 14 Me. 101; Mitchell v. Hyde, 12 How. Prac. 460; Greneaux v. Wheeler, 6 Tex. 515; French v. Barney, 1 Ired. 219.

[125]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash.

quirement is not new.[126] The designation is sufficient if the payee, though not named, can be readily ascertained from the instrument.[127]

Where a note is made payable to the order of the person who shall thereafter indorse it,[128] the designation is sufficient, and so is one payable to "the heirs" of a certain person;[129] but one payable to the "estate" of a deceased person does not sufficiently designate the payee;[130] nor does one payable to named payees "et al."[131]

An instrument in the form, "Good for one hundred and twenty-six dollars on demand,"

(§8, subd. 6); R. I. (§ 16, subd. 6); Md., N. Y. (§ 27, subd. 6); Wis. (§ 1675-8, subd. 6).

An instrument purporting to be a check which is payable "to the order of, on sight," no payee being named, and no space being left for a name, is not a check. McIntosh v. Lytle, 26 Minn. 336.

[126]Tittle v. Thomas, 30 Miss. 122; Moody v. Threlkeld, 13 Ga. 55; Evertson v. National Bank of Newport, 66 N. Y. 14.

[127]Culver v. Marks, 122 Ind. 554.

[128]United States v. White, 2 Hill, 59. See, also, Rich v. Starbuck, 51 Ind. 87.

[129]Cox v. Belthoover, 11 Mo. 142. See, also, Bacon v. Fitch, 1 Root, 181.

[130]Lyon v. Marshall, 11 Barb. 241; Wayman v. Torreyson, 4 Nev. 124, holding that the payee must be in esse at the time the instrument takes effect.

[131]Gordon v. Anderson, 83 Iowa, 224.

is not negotiable because no payee is named, but "is nothing more than a memorandum between the parties to it, to operate as a promise to pay money, as a receipt for money, or as proof of a sum of money to be accounted for, according to the evidence offered, to show the intention of both parties when it is made."[132]

§ 61. Same—Place for Payee's Name Blank.

The rule that the payee must be named or indicated with reasonable certainty would seem to do away with the doctrine that, where the place for the payee's name is blank, the instrument is payable to bearer, and is negotiable,[133] especially since this kind of paper is not enumerated with the instruments made payable to bearer.[134]

Under the English Bills of Exchange Act 1882 (45 & 46 Vict. c. 61, § 7), providing that, where a bill is not payable to bearer, "the payee must be named, or otherwise indicated therein with reasonable certainty,"

[132]Brown v. Gilman, 13 Mass. 158.

[133]Dinsmore v. Duncan, 57 N. Y. 573; Prewitt v. Chapman, 6 Ala. 86.

[134]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 9); R. I. (§ 17); Md., N. Y. (§ 28); Wis. (§ 1675-9).

when construed with the provision defining a bill (section 3) as it is defined in the negotiable instruments laws, and the provision that a bill may be drawn payable to, or to the order of, the drawer (section 5), an instrument payable to "———————— order," there being no "or" before "order," means payable to "my order," that is, to the order of the drawer, and, after indorsement by the drawer, is a valid bill of exchange, though the blank is never filled.[135]

§ 62. Same—Parol Evidence of Mistake.

If there was a mistake in the name of the payee, or the instrument is ambiguous in that particular, parol evidence is admissible to show the true intent of the parties.[136] This rule applies both where the mistake is in the spelling,[137] and where the instrument is made out in the name of one not intended as payee.[138]

§ 63. Drawee must be Named or Indicated with Reasonable Certainty.

Where the instrument is addressed to a

[135]Chamberlain v. Young [1893] 2 Q. B. Div. 206.

[136]Medway Cotton Manufactory v. Adams, 10 Mass. 360; Leaphardt v. Sloan, 5 Blackf. 278.

[137]Williams v. Baker, 67 Ill. 238; Jacobs v. Benson, 39 Me. 132.

[138]Hall v. Tufts, 18 Pick. 455. See, also, New York African Soc. v. Varick, 13 Johns. 38.

drawee, he must be named or otherwise indicated therein with reasonable certainty.[139] This rule is declatory of the law merchant.[140] Where a bill does not name any drawee it has been held that it will be considered as drawn by the drawer on himself.[141]

H. Certainty as to Sum Payable.

§ 64. Provision for Interest does not Render Amount Uncertain.
§ 65. Instrument Payable in Instalments is not Uncertain.
§ 66. Same—Effect of Provision that Default shall Hasten Maturity.
§ 67. Provision for Exchange does not Create Uncertainty.
§ 68. Provision for Costs or Attorneys' Fees does not Create Uncertainty.
§ 69. Provision for Payment of Taxes or Charges Renders Instrument Uncertain.

§ 64. Provision for Interest does not Render Amount Uncertain.

An instrument, to be negotiable, must contain a promise or order to pay a sum "cer-

[139]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1, subd. 5); R. I. (§ 9, subd. 5); Md., N. Y. (§ 20, subd. 5); Wis. (§ 1675-1, subd. 5).

[140]See Watrous v. Halbrook, 39 Tex. 572; Prewitt v. Chapman, supra.

[141]Funk v. Babbitt, 156 Ill. 408.

Option to treat instrument as bill or note, see post, § 97.

tain."[142] This provision is elucidated by another, stating that the sum payable is a sum certain, although it is to be paid with interest.[143] It is usual to provide for payment of interest in promissory notes, and there is no reason why the notes should not still be negotiable if the provisions for interest state a fixed rate for a definite time. A provision for payment of interest on interest to maturity,[144] or even for usurious interest[145] does not render a note nonnegotiable. But a note payable to A. or bearer, "with interest the same as savings banks pay,[146] is not negotiable; nor is one which is payable on or before two years, with interest at a fixed rate, but

[142]Subdivision 2, same sections of negotiable instruments laws as last above cited.

A note payable to an insurance company for "$271.25, with such additional premium as may arise on policy No. 50, issued at the Calais agency," is not negotiable. Dodge v. Emerson, 34 Me. 96. See, also, Cushman v. Haynes, 20 Pick. 132.

[143]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 2, subd. 1); R. I. (§ 10, subd. 1); Md., N. Y. (§ 21, subd. 1); Wis. (§ 1675-2, subd. 1).

[144]Gilmore v. Hirst, 56 Kan. 626.

[145]Goodin v. Buhler, 57 Mo. App. 63.

[146]Whitwell v. Winslow, 124 Mass. 343.

which provides that it shall not draw interest if paid within one year.[147] A note providing for a fixed rate of interest if it is paid at maturity, but at a greater rate if not so paid, is negotiable.[148]

§ 65. Instrument Payable in Instalments is not Uncertain.

An instrument otherwise negotiable is not rendered nonnegotiable by a provision for payment in definite instalments.[149] It has

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[147]Lamb v. Storey, 45 Mich. 488.

[148]Towne v. Rice, 122 Mass. 67; Crump v. Berdan, 97 Mich. 293; Hollinshead v. John Stuart & Co. (N. D.) 77 N. W. 89, and cases cited.

In Minnesota the provision for additional interest after maturity is rejected as a penalty. Smith v. Crane, 33 Minn. 144. Also in South Dakota. Merrill v. Hurley, 6 S. D. 592, distinguishing Hegeler v. Comstock, 1 S. D. 138, 8 L. R. A. 393. See, also, De Hass v. Roberts, 59 Fed. 853.

A stipulation on the margin of a note that it is to be "discounted at 12 per cent. if paid before maturity" renders the note uncertain as to the amount payable and destroys negotiability. National Bank of Commerce v. Feeney (S. D.) 80 N. W. 186.

[149]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 2, subd. 2); R. I. (§ 10, subd. 2); Md., N. Y. (§ 21, subd. 2); Wis. (§ 1675-2, subd. 2).

See, also, Van Buskirk v. Day, 32 Ill. 260; Ewer v. Meyrick, 1 Cush. 16; Wright v. Irwin, 33 Mich. 32; Chase v. Behrman, 10 Daly, 344; Chase v.

even been held that a promise to pay a certain sum to a corporation in such instalments as its directors may require is negotiable,[150] on the theory that the instalments are in such case payable on demand. But a promise to pay "at such times and in such articles as the payee may need for her support" is not negotiable.[151]

§ 66. Same—Effect of Provision that Default shall Hasten Maturity.

Where an instrument is otherwise negotiable, it is not rendered nonnegotiable by a provision for payment by stated instalments, with a further provision that, on default in payment of any instalment, or of interest, the whole shall become due.[152]

Senn, 13 N. Y. Supp. 266. But see Chase v. Kellogg, 13 N. Y. Supp. 351.

[150] White v. Smith, 77 Ill. 351. See, also, President, etc., of Goshen & Minisink Turnpike Road v. Hurtin, 9 Johns. 217; Washington Co. Mut. Ins. Co. v. Miller, 26 Vt. 77.

[151] Corbitt v. Stonemetz, 15 Wis. 170, 186.

[152] Subdivision 3, same sections of negotiable instruments laws as last above cited.

Hollinshead v. John Stuart & Co. (N. D.) 77 N. W. 89, citing Chicago Railway Equipment Co. v. Merchants' Bank, 136 U. S. 268; Merrill v. Hurley (S. D.) 62 N. W. 958; Wilson v. Campbell (Mich.) 68 N. W. 278; Ernst v. Steckman, 74 Pa. St. 13; Cisne v. Chidester, 85 Ill. 523; Walker v. Woollen, 54 Ind. 164; De Hass v. Roberts, 59 Fed. 853.

This provision is illustrated by a case in which it was held that the negotiability of a note which was one of a series, and referred to a contract, was not destroyed by a provision in the contract that the whole series should become payable at the option of the payee on default in payment of any one of the notes.[153] But a provision that the whole amount shall become due whenever the payee deems himself insecure,[154] renders a note non-negotiable. So, also, it has been held that a note payable in instalments is made non-negotiable by a provision that the whole amount shall become due on default of any payment, and that the holder could collect the same, with ten per cent for expenses, or could sell the property for which the note was given, and that, if there was any deficiency after sale, the maker would pay it on demand.[155]

Ordinarily, a note is not made nonnegotiable by a provision that the holder may declare the whole amount due on default in payment of any instalment of interest.[156]

[153] Markey v. Corey, 108 Mich. 184.

[154] Smith v. Marland, 59 Iowa, 645; First Nat. Bank v. Bynum, 84 N. C. 24. Contra, see Heard v. Dubuque Co. Bank, 8 Neb. 10.

[155] W. W. Kimball Co. v. Mellon, 80 Wis. 133.

§ 67. Provision for Exchange does not Create Uncertainty.

The negotiable instruments laws have taken a stand apparently against the weight of authority by providing that the sum payable is certain, though the instrument is payable "with exchange, whether at a fixed rate or at the current rate."[157] Instruments with such provisions have heretofore, in most jurisdictions, been considered as nonnegotiable.[158] So, where the provision is for "exchange and

[156]Stark v. Olson, 44 Neb. 646; Merrill v. Hurley, 6 S. D. 592; Phelps v. Sargent, 69 Minn. 118; American Nat. Bank v. American Wood-Paper Co., 19 R. I. 149. See, also, cases cited in note 151, supra.

[157]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 2, subd. 4); R. I. (§ 10, subd. 4); Md., N. Y. (§ 21, subd. 4); Wis. (§ 1875-2, subd. 4).

The negotiable instruments laws change the rule in District of Columbia, North Carolina, and Wisconsin. See Russell v. Russell, 1 McA. 263; First Nat. Bank v. Bynum, 84 N. C. 24; Morgan v. Edwards, 53 Wis. 599; First Nat. Bank of Stillwater v. Larsen, 60 Wis. 206; Peterson v. Stoughton State Bank, 78 Wis. 113.

[158]Windsor Sav. Bank v. McMahon, 38 Fed. 283, 3 L. R. A. 192; Hughitt v. Johnson, 28 Fed. 865; Culbertson v. Nelson, 93 Iowa, 187, 27 L. R. A. 222; Read v. McNulty, 12 Rich. Law, 445. Contra, see Clauser v. Stone, 29 Ill. 114; Hastings v. Thompson, 54 Minn. 184, 21 L. R. A. 178.

costs of collection,"[159] or for exchange on a place different from the place of payment,[160] the instruments have been considered non-negotiable. But an instrument payable at the place where it is drawn is negotiable, though it provides for exchange, the provision in such case being nugatory.[161]

§ 68. Provision for Costs or Attorneys' Fees does not Create Uncertainty.

Negotiability is not destroyed by a provision in the instrument for payment of costs of collection or an attorney's fee, in case payment shall not be made at maturity.[162] The courts in the various states have been nearly evenly divided on the question of the negotiability of instruments with such provisions. If the weight of authority can be said to be one way, it probably leans toward the rule as stated here.[163]

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[159]Second Nat. Bank of Aurora v. Basuier, 65 Fed. 58; Nicely v. Commercial Bank of Union City, 15 Ind. App. 563.

[160]Read v. McNulty, supra; Flagg v. School Dist. No. 70, 4 N. D. 30, 25 L. R. A. 363.

[161]Hill v. Todd, 29 Ill. 101; Christian Co. Bank v. Goode, 44 Mo. App. 129; Orr v. Hopkins, 3 N. M. 45.

[162]Subdivision 5, same sections of negotiable instruments laws as last above cited.

[163]That such instruments are negotiable has been decided in the following cases: Louisville

The federal courts have uniformly held that provisions for costs of collection and attorneys' fees do not destroy negotiability.[164]

Banking Co. v. Gray (Ala.) 26 So. 205; First Nat. Bank v. Slaughter, 98 Ala. 602; Stapleton v. Louisville Banking Co., 95 Ga. 802; Jones v. Crawford (Ga.) 33 S. E. 51; Dorsey v. Wolff, 142 Ill. 589, 18 L. R. A. 428; Proctor v. Baldwin, 82 Ind. 370; Shenandoah Nat. Bank v. Marsh, 89 Iowa, 273; Gilmore v. Hirst, 56 Kan. 626; Clifton v. Bank of Aberdeen (Miss.) 23 So. 394; Benn v. Kutzschau, 24 Or. 28; Oppenheimer v. Farmers' & Mechanics' Bank, 97 Tenn. 19; Second Nat. Bank v. Anglin, 6 Wash. 403; Salisbury v. Stewart, 15 Utah, 308; Stadler v. First Nat. Bank of Helena (Mont.) 56 Pac. 111.

That such instruments are not negotiable has been decided in the following cases: Adams v. Seaman, 82 Cal. 636, 7 L. R. A. 224, in which the provision considered was for a five per cent fee on the accrued principal and interest in case of suit; Maryland Fertilizing & Manuf'g Co. v. Newman, 60 Md. 584; Cayuga County Nat. Bank v. Purdy, 56 Mich. 6; Altman v. Rittershofer, 68 Mich. 287; Jones v. Radatz, 27 Minn. 240; First Nat. Bank v. Gay, 71 Mo. 627; First Nat. Bank v. Bynum, 84 N. C. 24; First Nat. Bank of Decorah v. Laughlin, 4 N. D. 391; Johnston v. Speer, 92 Pa. St. 227; First Nat. Bank of Stillwater v. Larsen, 60 Wis. 206; Peterson v. Stoughton State Bank, 78 Wis. 113.

It will be seen from the above decisions that the negotiable instruments laws have affirmed the rule previously in force in Oregon, Tennessee, Washington, and Utah; but has changed the rule

Where a stipulation for attorneys' fees is forbidden by statute, such a stipulation is surplusage, and does not destroy negotiability.[165] The negotiable instruments law of North Carolina provides that nothing in the act shall allow enforcement of the provision for costs of collection or attorneys' fees, though the provision does not affect negotiability.[166]

Where the provision for an attorney's fee is void as a provision for a penalty, it does not destroy negotiability.[167]

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previously in force in Maryland, North Carolina, North Dakota, and Wisconsin.

[164]Wilson Sewing Mach. Co. v. Moreno, 7 Fed. 806; Adams v. Addington, 16 Fed. 89; Schlesinger v. Arline, 31 Fed. 648; Farmers' Nat. Bank v. Sutton Manuf'g Co., 52 Fed. 191, 17 L. R. A. 595.

[165]Chandler v. Kennedy, 8 S. D. 56, the statute involved being Laws 1889, c. 16, § 1.

Conditional agreements for attorneys' fees are void in Indiana (Rev. St. 1881, § 5518), but unconditional stipulations for such fees are valid. Garver v. Pontious, 66 Ind. 191; Tuley v. McClung, 67 Ind. 10; Harvey v. Baldwin, 124 Ind. 59. The Indiana statute does render void an agreement to pay attorneys' fees on the implied condition that they shall be payable only in case of dishonor. Farmers' Nat. Bank v. Sutton Manuf'g Co., supra.

[166]Neg. Inst. Law, § 197.

[167]Boozer v. Anderson, 42 Ark. 167; Bullock v. Taylor, 39 Mich. 137; Rixy v. Pearre, 89 Va. 113. But see Neg. Inst. Law Va. (§ 2, subd. 5).

The reason why the ordinary provision for an attorney's fee does not destroy negotiability is given by Magruder, J., in Dorsey v. Wolff, as follows: "The promise to pay the attorney's fee is a promise to do something after the note matures. It does not affect the character of the note before or up to the time of its maturity, either as to certainty in the amount to be paid, or fixedness in the date of payment, or definiteness in the the description of the person to whom the payment is to be made."[168] The court in this case states, however, that a provision for attorneys' fees so worded as to render the amount payable at maturity uncertain would destroy negotiability. The same reason is given in a leading Iowa case, where the court said: "When they (the notes in suit) matured, no inquiry was necessary to be made as to facts not apparent on the face of the notes, in order to fix the amount due. Recovery could have been had upon the notes themselves, without other evidence. The agreement for the payment of attorneys' fees in no sense increased the amount of money payable when the notes fell due, and we are

[168]Dorsey v. Wolff, 142 Ill. 589.

unable to see that it rendered that amount uncertain in the least degree."[169]

§ 69. Provision for Payment of Taxes or Charges Renders Instrument Uncertain.

The negotiable instruments laws do not expressly provide for instruments containing provisions for payment of taxes or charges; but, under the law merchant, which is to control in cases not provided for,[170] such provisions render an instrument nonnegotiable.[171] Thus, where a provision in a note was for the payment of all taxes and charges that might be levied on the note, or on a mortgage which it secured, or on the principle or interest money, the instrument was not negotiable.[172] Also, where a note referred to a mortgage which required payment of all taxes and assessments before they became delinquent, in default of which the note should become immediately due and payable, the note was not negotiable.[173]. But in a recent

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[169] Sperry v. Horr, 32 Iowa, 184.

[170] See ante, § 5.

[171] Walker v. Thompson, 108 Mich. 686; Carmody v. Crane, 110 Mich. 508; Howell v. Todd, Fed. Cas. No. 6783.

[172] Farquhar v. Fidelity Ins. Co., Fed. Cas. No. 4676.

[173] Wistrand v. Parker (Kan. App.) 52 Pac. 59.

Colorado case it was held that where the maker of a note, negotiable on its face, executed at the same time a deed of trust to secure it, a covenant in such deed that, on default in payment of taxes by the grantor, the grantee might pay them, in which case the amount thereof should be added to the debt, the provision as to taxes did not render the amount uncertain.[174]

I. Certainty as to Time of Payment.

§ 70. Must be Payable on Demand, or at Fixed or Determinable Future Time.
§ 71. Instruments Payable on Demand, at Sight, or on Presentation.
§ 72. Instruments not Stating Time of Payment.
§ 73. Instruments Issued, Accepted, and Indorsed when Overdue.
§ 74. Instruments Payable at Fixed Period after Date or Sight.
§ 75. Instruments Payable "on or Before" a Fixed or Determinable Future Time Specified Therein.
§ 76. Instruments Payable on or at a Fixed Period after Event Certain.
§ 77. Instruments Payable on Contingency.
§ 78. Instruments Payable at Fixed Period after Date or Sight, though Payable before then on a Contingency.

§ 70. Must be Payable on Demand, or at Fixed or Determinable Future Time.

In order that an instrument may be nego-

[174] Frost v. Fisher (Colo. App.) 58 Pac. 872.

tiable, it must be payable on demand or at a fixed or determinable future time.[175]

§ 71. Instruments Payable on Demand, at Sight, or on Presentation.

Instruments payable on demand, at sight, or on presentation are payable on demand.[176] A note is payable on demand when made payable at the maker's "convenience,"[177] or "at any time called for,"[178] or "on demand, with interest after four months,"[179] or when made payable on the "first day of March," without naming the year,[180] or when made payable "on demand, with interest within six months from date."[181]

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[175]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1); R. I. (§ 9); Md., N. Y. (§ 20); Wis. (§ 1675-1).

[176]Neg. Inst. Laws, Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 7, subd. 1); R. I. (§ 15, subd. 1); Md., N. Y. (§ 26, subd. 1); Wis. (§ 1675-7, subd. 1).

[177]Colgate v. Buckingham, 39 Barb. 177, where the instrument was payable "at such time or times as the directors required." Smithers v. Junker, 41 Fed. 101; Gaytes v. Hibbard, 5 Biss. 99.

[178]Bowman v. McChesney, 22 Grat. 609.

[179]Newman v. Kittelle, 13 Pick. 418 (note Wright v. Fisher, page 419).

[180]Collins v. Trotter, 81 Mo. 275.

[181]Jillson v. Hill, 4 Gray, 316. See, also, Gove v. Downer, 59 Vt. 139.

The majority of the negotiable instruments laws place "demand" and "at sight" paper on the same basis, and in those states where days of grace have been abolished there is no practical difference between instruments payable on demand and those payable at sight.[182]

§ 72. Instruments not Stating Time of Payment.

Instruments failing to state a time for payment are payable on demand. This is the rule of the law merchant,[183] and of the negotiable instruments laws.[184]

Where no time of payment is given, parol evidence is admissible to show a contemporaneous oral agreement fixing the time.[185]

§ 73. Instruments Issued, Accepted, or Indorsed when Overdue.

Where an instrument is issued, accepted,

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[182]See post, § 206.

[183]Keyes v. Fenstermaker, 24 Cal. 329; Bacon v. Page, 1 Conn. 404; Green v. Drebilbis, 1 G. Greene, 552; Porter v. Porter, 51 Me. 376; Herrick v. Bennet, 8 Johns. 374; Ervin v. Brooks, 111 N. C. 358; Dodd v. Denny, 6 Or. 156; Messmore v. Morrison, 172 Pa. St. 300; Husbrook v. Wilder, 1 Pin. 643.

[184]Subdivision 2, same sections of negotiable instruments laws as last above cited.

McLeod v. Hunter, 29 Misc. Rep. 558 (decision under the Negotiable Instruments Law).

[185]Horner v. Horner, 145 Pa. St. 258; Ross v. Espy, 66 Pa. St. 481.

or indorsed when overdue, it is as regards the person so issuing, accepting, or indorsing, payable on demand.[186] As to an indorsement after the paper is overdue, the rule here stated is the one in force in the federal courts.[187] It has also been generally adopted by the state courts.[188] The indorsement after maturity is considered as the making of a new instrument payable on demand.[189] But it has been held that, where an instrument has been transferred after dishonor the original demand on the maker and notice to the indorser inure to the benefit of subsequent holders, and they need not make demand or give notice anew.[190]

[186] Same subdivision and sections of negotiable instruments laws as last above cited.

[187] Cox' Adm'r v. Jones, 2 Cranch, C. C. 370; Stewart v. French, 2 Cranch, C. C. 300.

[188] Branch Bank at Montgomery v. Gaffney, 9 Ala. 153; Jones v. Robinson, 11 Ark. 504; Levy v. Drew, 14 Ark. 334; Beer v. Clifton, 98 Cal. 323; Bishop v. Dexter, 2 Conn. 419; Graul v. Strutzel, 53 Iowa, 712; Goodwin v. Davenport, 47 Me. 112; Colt v. Barnard, 18 Pick. 260; Van Hoesen v. Van Alstyne, 3 Wend. 75, 79; Leavitt v. Putnam, 1 Sandf. 199; Bassenhorst v. Wilby, 45 Ohio St. 333; Smith v. Caro, 9 Or. 278; Tyler v. Young, 30 Pa. St. 143; Rosson v. Carroll, 90 Tenn. 90; Corwith v. Morrison, 1 Pin. 489.

[189] Bishop v. Dexter, 2 Conn. 419; Coleman v. Dunlap, 18 S. C. 591.

[190] French v. Jarvis, 29 Conn. 347.

§ 74. Instruments Payable at Fixed Period after Date or Sight.

An instrument is payable at a fixed or determinable future time which is expressed to be payable at a fixed period after date or sight.[191] Under the law merchant, an instrument payable "six ——— after date" is not so uncertain as to be void,[192] nor is one payable "twenty-four after date,"[193] and, under the negotiable instruments laws, such instruments would be negotiable if there is anything on them from which the period of time intended can be ascertained. A bill payable five days "after sight" is payable five days after acceptance, and not five days after presentment.[194]

§ 75. Instruments Payable "on or Before" a Fixed or Determinable Future Time Specified Therein.

Paper payable "on or before" a fixed date is payable on such date, and is negotiable un-

[191]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 4, subd. 1); R. I. (§ 12, subd. 1); Md., N. Y. (§ 23, subd. 1); Wis. (§ 1675-4, subd. 1).

[192]Nichols v. Frothingham, 45 Me. 220. See, also, Weems v. Parker, 60 Ill. App. 167, where it was held that "ninety ——— after date" means 90 days after date.

[193]Conner v. Routh, 7 How. (Miss.) 176.

[194]Mitchell v. Degrand, 1 Mason, 176.

der both the law merchant[195] and the negotiable instruments laws.[196] The same rule applies to paper payable "on or by the first of March,"[197] or simply "by a certain date.[198]

§ 76. Instruments Payable on or at a Fixed Period after Event Certain.

Instruments payable on or at a fixed period after the occurance of a specified event, which is certain to happen, though the time of happening be uncertain, are sufficiently certain as to time.[199] The death of the maker of the note being certain to take place, a note promising to pay a certain sum, "to be allowed at my decease,"[200] is negotiable, and so is one payable "60 days after my death;"[201] also one payable "on demand after my decease."[202] But instruments payable when the

[195]Mattison v. Marks, 31 Mich. 421; First Nat. Bank of Springfield v. Skeen, 101 Mo. 683; Jordan v. Tate, 19 Ohio St. 586.

[196]Subdivision 2, same sections of negotiable instruments laws as last above cited.

[197]See Massie v. Belford, 68 Ill. 290.

[198]Preston v. Dunham, 52 Ala. 217.

[199]Subdivision 3, same sections of negotiable instruments laws as last above cited.

[200]Martin v. Stone, 67 N. H. 367.

[201]Crider v. Shelby, 95 Fed. 212.

[202]Bristol v. Warner, 19 Conn. 7. See, also, Carnwright v. Gray, 127 N. Y. 92; Hegeman v. Moon. 131 N. Y. 462.

person shall become of age,[203] or be elected to a certain office,[204] or when a certain estate shall be settled up,[205] are not negotiable.

§ 77. Instruments Payable on Contingency.

Instruments payable on a contingency are not certain, and hence are not negotiable, and the happening of the contingency does not cure the defect.[206] Instruments of this kind are illustrated by the last three illustrations used in the preceding section, and the happening of the contingency in any of those cases, i. e. the becoming of age, or the election to the office, or the settling up of the estate, would not cure the defect, or render the instrument negotiable from that time.[207]

§ 78. Instruments Payable at Fixed Period after Date or Sight, though Payable before then on a Contingency.

It has been a recognized rule that instruments payable at a fixed period after date or

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[203]Kelley v. Hemmingway, 13 Ill. 604, distinguishing Goss v. Nelson, 1 Burrows, 227.

[204]Cooper v. Brewster, 1 Minn. 94 (Gil. 73).

[205]Husband v. Epling, 81 Ill. 172.

[206]Same subdivisions and sections of negotiable instruments laws as last above cited.

[207]Kelley v. Hemmingway, supra. See, also, Chicago Railway Equipment Co. v. Merchants' Bank, 136 U. S. 268.

sight, though payable before then on a contingency, are sufficiently certain to be negotiable. Thus, one payable on a fixed day, "or when he completes" a certain building, is negotiable.[208] Also an instrument payable at a fixed time after date, "or before, if realized out of the sale" of certain property.[209] The Wisconsin negotiable instruments law specially provides for instruments of this class, and makes them negotiable.[210] No express provision for them is made in the negotiable instruments law as adopted in the other states.

J. Certainty as to Place of Payment.

§ 79. Place of Payment Need not be Stated.
§ 80. Place not Stated—Instrument Payable at Residence or Place of Business.

§ 79. Place of Payment Need not be Stated.

It is not necessary to the validity or negotiability of an instrument that it should

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[208]Stevens v. Blunt, 7 Mass. 240. See, also, Goodloe v. Taylor, 3 Hawks, 458.

[209]Walker v. Woollen, 64 Ind. 164; Noll v. Smith, 64 Ind. 511; Charlton v. Reed, 61 Iowa, 166. But see Stultz v. Silva, 119 Mass. 137, where an instrument promising to pay a certain sum in a year and a half, "or sooner, at the option of the mortgagor," was held to be nonnegotiable.

[210]Neg. Inst. Law, §1675-4, subd. 4.

state the place where it is payable.[211] While this is the general rule, as well as the rule of the negotiable instruments laws, there are some states in which an instrument is not negotiable unless it is payable at a bank or a banking house.[212] Where the statutory requirement is that the instrument be made payable at a particular bank within the state, it is not negotiable if made payable at a bank in another state;[213] nor if made payable at "either of the banking houses" in a certain city in the state.[214]

§ 80. Place not Stated—Instrument Payable at Residence or Place of Business.

Where a place of payment is named, the

[211]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 6, subd. 3); R. I. (§ 14, subd. 3); Md., N. Y. (§ 25, subd. 3); Wis. (§ 1675-6, subd. 3).

See, also, Bank of America v. Woodworth, 18 Johns. 315; Bank of Newberry v. Richards, 35 Vt. 381.

[212]Alabama (Code, §§ 1765, 2594); Indiana (Horner's Rev. St. 1881, § 5506); Kentucky (St. § 483); West Virginia (Code, c. 99, § 7).

The Virginia statute (Code, §2849, Code 1873, c. 141, § 7) was repealed by the negotiable instruments law.

[213]See Bank of Marietta v. Pindall, 2 Rand. 465. See preceding note as to repeal of statute on which this decision was based.

[214]Freeman's Bank v. Ruckman, 16 Grat. 126. See, also, Smith v. Robinson, 11 Ala. 270.

instrument is payable there;[215] but if no place of payment is named, the instrument is payable at the usual place of business or the residence of the person who is to make payment, or at any place where such person can be found.[216]

K. Promise or Order to Pay "Money."

§ 81. Instruments must be Payable in Money.
§ 82. Instruments may be Payable in Particular Kind of Current Money.
§ 83. Instruments Payable in Services or Merchandise—Instruments Payable in Alternative.
§ 84. Same—Warehouse Receipts.
§ 85. Instruments Promising to do Something in Addition to Payment of Money.
§ 86. Instruments Giving Holder Election to Require Something to be done in Lieu of Payment in Money.

§ 81. Instruments must be Payable in Money.

The requirement of the negotiable instruments laws that the promise shall be to pay

[215]For construction of various instruments, where the place of payment given was ambiguous, see Miller v. Powers, 16 Ind. 410; Lane v. Union Nat. Bank, 3 Ind. App. 299; Hazard v. Spencer, 17 R. I. 561.

[216]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C. N. D., Or, Tenn., Utah, Va., Wash. (§ 73); R. I. (§ 81); Md. (§ 92); N. Y. (§ 133); Wis. (§ 1678-3).

Place of presentment where no place is stated, see post, § 200.

a sum certain in "money"[217] is declaratory of the law.[218]

§ 82. Instruments may be Payable in Particular Kind of Current Money.

The negotiable character of an instrument is not affected by the fact that it designated a particular kind of current money in which payment is to be made.[219] Thus an instrument is payable in money if payable in "pounds sterling,"[220] or in "cash notes,"[221] or in "gold dollars,"[222] or in "Mex. silv. dollars;"[223] but is not payable in money if payable in "bank stock,"[224] or in "current bank notes,"[225] or in "current funds,"[226] or in "cur-

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[217]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 1, subd. 2); R. I. (§ 9, subd. 2); Md., N. Y. (§ 20, subd. 2); Wis. (§ 1675-1, subd. 2).

[218]Hodges v. Clinton, 1 N. C. 79; Fry v. Rousseau, 3 McLean, 106.

[219]Neg. Inst. Laws Colo, Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 6, subd. 5); R. I. (§ 14, subd. 5); Md., N. Y. (§ 25, subd. 5); Wis. (§ 1675-6, subd. 5).

[220]King v. Hamilton, 12 Fed. 478.

[221]See Ward v. Lattimer, 2 Tex. 245.

[222]Chrysler v. Renois, 43 N. Y. 209.

[223]Hogue v. Williamson, 85 Tex. 553, 20 L. R. A. 481.

[224]Markley v. Rhodes, 59 Iowa, 57.

rency."[227] A note payable at New York "in New York funds, or their equivalent," is not negotiable because "the term 'New York funds,' it is presumed, may embrace stocks, bank notes, specie, and every description of currency which is used in commercial transactions."[228] But a note payable in "bank notes current in the city of New York" has been held negotiable;[229] so, also, a note payable in "York State bills or specie."[230]

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[225]Little v. Phenix Bank, 7 Hill, 359; State v. Carpenting, 10 Ired. 58; Wolfe v. Tyler, 1 Heisk. 313. So of a note payable in "bank bills." Jones v. Fales, 4 Mass. 245; Childress v. Stuart, Peck. 276; Deberry v. Darnell, 5 Yerg. 451, where an instrument payable in "North Carolina bank notes" was held negotiable.

[226]Johnson v. Henderson, 76 N. C. 227; Lindsey v. McClelland, 18 Wis. 481, 505; Wright v. Hart, 44 Pa. St. 454. Contra, see Bull v. Bank of Kasson, 123 U. S. 105.

Parol evidence is admissible to show that the parties intended to pay in money. Haddock v. Woods, 46 Iowa, 433. An instrument payable in "current funds" may be shown by evidence of custom to be payable in money. American Immigrant Co. v. Clark, 47 Iowa, 671.

[227]Ruidskoff v. Barrett, 11 Iowa, 172. Contra, see Butler v. Paine, 8 Minn. 324 (Gil. 284).

[228]Hasbrook v. Palmer, 2 McLean, 10, criticising Keith v. Jones, and Judah v. Harris, infra.

[229]Keith v. Jones, 9 Johns. 120.

[230]Judah v. Harris, 19 Johns. 144.

Instruments payable in foreign money have been held negotiable,[231] but one payable in New York "in Canada money" has been held nonnegotiable.[232]

§ 83. Instruments Payable in Services or Merchandise—Instruments Payable in Alternative.

Instruments payable in services,[233] or in merchandise,[234] or in the alternative in money or merchandise,[235] or in money or bank stock,[236] are not negotiable.

§ 84. Same—Warehouse Receipts.

An exception to the rule that instruments payable in merchandise are not negotiable is found in the case of warehouse receipts which are negotiable in some states.[237]

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[231] See Singer v. Stimpson, 8 Mass. 260.

[232] Thompson v. Sloan, 23 Wend. 71.

[233] Ransom v. Jones, 2 Ill. 291; Prather v. McEvoy, 8 Mo. 661; Quimby v. Meruitt, 11 Humph. 439.

[234] Peddicord v. Whittam, 9 Iowa, 471; Gushee v. Eddy, 11 Gray, 502; Coyle's Ex'r v. Satterwhite's Adm'r, 4 T. B. Mon. 124; Tibbets v. Gerrish, 25 N. H. 41; Brown v. Richardson, 20 N. Y. 472; Rhodes v. Lindly, 3 Ohio, 51.

[235] Thompson v. Gaylord, 3 N. C. 326; Looney v. Pinckston, 1 Tenn. 383; Lawrence v. Dougherty, 5 Yerg. 435.

[236] Alexander v. Oaks, 2 Dev. & B. 513.

[237] See ante, § 36.

§ 85. Instruments Promising to do Something in Addition to Payment of Money.

An instrument which contains an order or promise to do any act in addition to payment of money is not negotiable.[238] Thus an instrument which, in addition to a promise to pay money for the hire of a slave, promised to furnish the slave with clothing, is not negotiable.[239] But an order written under a note as follows: "Levi Mason, Esq.: Please pay the above note, and hold it against me in our settlement,"—is a good bill of exchange, as "the retaining of the note as a voucher is no more the performance of another act beside the payment of the money than the retaining the order itself for the same purpose."[240]

§ 86. Instruments Giving Holder Election to Require Something to be done in Lieu of Payment in Money.

A provision of this nature does not destroy negotiability.[241] The point is illustrated by cases in which the holder was authorized to

[238]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 5); R. I. (§ 13); Md., N. Y. (§ 24); Wis. (§ 1675-5).

[239]Havens v. Potts, 86 N. C. 31. See, also, Austin v. Burns, 16 Barb. 643.

[240]Leonard v. Mason, 1 Wend. 522.

take corporate stock[242] or merchandise[243] in lieu of money.

Instruments with a provision of this kind must be distinguished carefully from the instruments considered in section 83 of this work, wherein the option is in favor of the maker, allowing him to pay in the alternative.

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[241] Subdivision 4, same sections of negotiable instruments laws as last above cited.

[242] Hodges v. Shuler, 22 N. Y. 114.

[243] Hosstatter v. Wilson, 36 Barb. 307.

CHAPTER V.

Consideration.

§ 87. Consideration is Presumed.
§ 88. Sufficiency of Consideration.
§ 89. Effect of Want or Failure of Consideration.
§ 90. Accommodation Paper.

§ 87. Consideration is Presumed.

One of the most important differences between negotiable and nonnegotiable instruments is that a consideration for the former is presumed,[1] while the consideration for the latter must be proved.[2] Under this rule,

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 24); R. I. (§ 32); Md. (§ 43); N. Y. (§ 50); Wis. (§ 1675-50).

It has already been held in New York under these sections that a bank cannot presume that a check deposited with it was issued for value. Riverside Bank v. Woodhaven Junction Land Co., 54 N. Y. Supp. 266.

See, also, cases cited in note 4, infra.

On shifting of the burden of proof, see Perley v. Perley, 144 Mass. 104.

Consideration for indorsement or transfer, see post, § 150.

Purchase for value, essential of purchase in due course, see post, § 179.

[2]Bristol v. Warner, 19 Conn. 7; Courtney v. Doyle, 10 Allen, 122; Averett's Adm'r v. Booker, 15 Grat. 163, 76 Am. Dec. 203.

The doctrine heretofore in force in New York as shown by the decisions in Carnwright v. Gray,

every person whose signature appears on a negotiable instrument is presumed to have become a party thereto for value.[3]

There is a presumption not only that a negotiable instrument was based on a consideration, but that it was based on a sufficient consideration;[4] and this presumption applies

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127 N. Y. 92, Kimball v. Huntington, 10 Wend. 675, and President, etc., of Goshen & M. Turnpike Road v. Hurtin, 9 Johns. 217, that a consideration for a nonnegotiable instrument is presumed, is now nullified by the provisions of the Negotiable Instruments Law.

In Colorado the rule as to consideration for a transfer of a nonnegotiable instrument has not been changed by the Negotiable Instruments Law, for it was already the rule in that state that a transferee of a nonnegotiable note takes only the rights of the prior holder, and any defense good against such holder is good against him. Mulligan v. Smith (Colo. App.) 57 Pac. 731.

Want of consideration may be shown in an action on a nonnegotiable instrument, though the consideration is mentioned in the instrument itself as executed, for such admission is in the nature of a receipt, and is only prima facie evidence of consideration. Mulligan v. Smith, supra.

[3]Same sections of Negotiable Instruments Laws as last above cited.

[4]Younglove v. Cunningham (Cal.) 43 Pac. 755; Perot v. Cooper, 17 Colo. 80; Bristol v. Warner, 19 Conn. 7; Lines v. Smith, 4 Fla. 47; Whitney v. Clary, 145 Mass. 156; Hegeman v. Moon, 131 N. Y. 462; Carnwright v. Gray, 127 N. Y. 92, 12 L. R.

alike to instruments expressing "value received"[5] and to those not expressing a consideration.[6]

It is also presumed that the consideration was legal,[7] and a maker denying liability or defending on the ground of the illegality of the consideration has the burden of showing such illegality.[8]

The presumption of consideration is not conclusive, and may be rebutted;[9] but the rebutting evidence, to be effectual, must show an actual want of consideration.[10]

A. 845; Campbell v. McCormac, 90 N. C. 491; Wilson v. Wilson, 26 Or. 315; First Nat. Bank v. Foote, 12 Utah, 157; Du Pont v. Beck, 81 Ind. 271; Perley v. Perley, 144 Mass. 104; Nichols & Shepard Co. v. Dedrick, 61 Minn. 513; Conmey v. Macfarlane, 97 Pa. St. 361.

[5]Gamewell v. Mosely, 11 Gray, 173; Howell v. Wright, 41 Hun, 167; Stronach v. Bledsoe, 85 N. C. 473.

[6]See cases cited in note 4, supra.

Statement of consideration not necessary to negotiability, see ante, § 30.

[7]Cundiff v. Campbell, 40 Tex. 142.

[8]Wyman v. Fiske, 3 Allen, 238, 80 Am. Dec. 66; Brigham v. Potter, 14 Gray, 522; Pixley v. Boynton, 79 Ill. 351; Hapgood v. Needham, 59 Me. 442.

[9]Carrol v. Peters, 1 McGloin, 88.

[10]Black River Sav. Bank v. Edwards, 10 Gray, 387; White v. Davis, 62 Hun, 622.

§ 88. Sufficiency of Consideration.

It is a general rule that any consideration which will support any other simple contract will sustain a negotiable instrument.[11] Thus, money or services,[12] a waiver of legal rights,[13] or a forbearance to enforce such rights,[14] constitutes a sufficient consideration for a negotiable instrument. Taking a negotiable instrument for an antecedent or pre-existing debt involves a forbearance on the part of the creditor, and such a debt constitutes value, both for instruments payable on demand, and those payable at a future time.[15]

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[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 25); R. I. (§ 33); Md. (§ 44); N. Y. (§ 51); Wis. (§ 1675-51).

[12]Miller v. McKenzie, 95 N. Y. 575; Ould v. Myers, 23 Grat. 383.

[13]Sykes v. Lafferry, 27 Ark. 407; Byington v. Simpson, 134 Mass. 145, 45 Am. Rep. 314; Montgomery v. Morris, 32 Ga. 173.

[14]Hindert v. Schneider, 4 Ill. App. 203; Austell v. Rice, 5 Ga. 472; Robinson v. Gould, 11 Cush. 55; Mechanics' & Farmers' Bank v. Wixson, 42 N. Y. 438.

[15]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 25); R. I. (§ 33); Md. (§ 44); N. Y. (§ 51); Wis. (§ 1675-51).

Consideration for indorsement or transfer, see post, § 150.

Purchase for value, essential of purchase in due course, see post, § 179.

The provision of the negotiable instruments laws that an antecedent or pre-existing debt constitutes value follows the rule in force in the federal courts,[16] and the rule previously in force in some of the states,[17] but changes the rule in others.[18].

A consideration passing to one of several joint makers will sustain the instrument as against the others.[19]

Mere inadequacy of consideration, without fraud, is no defense,[20] unless the inadequacy is so great as to be itself a badge of fraud.[21]

[16]Railroad Co. v. National Bank, 102 U. S. 14; Swift v. Tyson, 16 Pet. 1.

[17]Roberts v. Hall, 37 Conn. 205; Leach v. Lewis, 1 McArthur, 112; Cecil Bank v. Heald, 25 Md. 562; Maitland v. Citizens' Nat. Bank, 40 Md. 540; Wooley v. Cobb, 165 Mass. 503; Reddick v. Jones, 6 Ired. 107; Dunham v. Peterson, 5 N. D. 414; Red River Valley Nat. Bank v. North Star Boot & Shoe Co. (N. D.) 79 N. W. 880; Knox v. Clifford, 38 Wis. 651; Wilkie v. Chandon, 1 Wash. 355.

[18]Coddington v. Bay, 20 Johns. 637; Comstock v. Hier, 73 N. Y. 269; Benjamin v. Rogers, 126 N. Y. 60; King v. Doolittle, 1 Head, 77; Ferress v. Tabel, 87 Tenn. 386, 3 L. R. A. 414.

[19]McAfee v. Glen Mary Coal & Coke Co., 97 Ala. 709; Westphal v. Nevills, 92 Cal. 545; Isaack v. Porter, 2 A. K. Marsh, 452; Hoxie v. Hodges, 1 Or. 251; Rutland v. Brister, 53 Miss. 683.

[20]Lewis v. Woodfolk, 2 Baxt. 25; Boggs v. Wann, 58 Fed. 681.

[21]Jones v. Degge, 84 Va. 685.

On the theory that mutual promises sustain each other, one promissory note is a sufficient consideration for another given for it,[22] and a bill of exchange is a sufficient consideration for a note given in exchange,[23] and a check is a sufficient consideration for a bill.[24]

§ 89. Effect of Want or Failure of Consideration.

Under the law merchant, want[25] or failure[26] of consideration may be shown as between the original parties, and a partial failure may be shown as a defense pro tanto, if it is of a definite or liquidated amount of the whole consideration.[27]

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[22]Rice v. Grange, 131 N. Y. 149, affirming 60 Hun, 583; Wilson v. Denton, 82 Tex. 531; Higginson v. Gray, 6 Metc. 212; Dockray v. Dunn, 37 Me. 442.

[23]Newman v. Frost, 52 N. Y. 422.

[24]Mayer v. Heidelbach, 4 N. Y. Supp. 529.

[25]Litchfield Bank v. Peck, 29 Conn. 384; Radcliffe v. Biles, 94 Ga. 480; Beall v. Pearre, 12 Md. 550; Hill v. Buckminister, 5 Pick. 391; Slade v. Halstead, 7 Cow. 322; Southerland v. Whitaker, 5 Jones Law, 5; Knowles v. Knowles, 128 Ill. 110.

[26]Hawks v. Truesdell, 12 Allen, 564; Bookstaver v. Jayne, 60 N. Y. 146; Washburn v. Picot, 3 Dev. 390.

[27]Pulsifer v. Hotchkiss, 12 Conn. 234; Allen v. Bank of U. S., 20 N. J. Law, 620; Payne v. Cutler, 13 Wend. 605. In some cases it has been held that a partial unliquidated failure of consideration may be shown as between the original parties, in mitigation of damages. Davis v. Wait, 12 Or. 425;

The negotiable instruments laws, by providing that the absence or failure of consideration is matter of defense as against any person not a holder in due course, and that a partial failure of consideration is a defense pro tanto, "whether the failure is an ascertained and liquidated amount or otherwise,"[28] have advanced somewhat beyond the rule of the law merchant.

In this connection it must be remembered that, since a person who obtains possession of an instrument improperly or irregularly—for example, one who obtains possession of an instrument payable on demand which has been negotiated an unreasonable time after its issuance—is not a holder in due course,[29] the defense of want or failure of consideration is good as against him.

Christy v. Ogle, 33 Ill. 295. And see Beall v. Pearre, supra.

[28]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 28); R. I. (§ 36); Md. (§ 47); N. Y. (§ 54); Wis. (§ 1675-54).

This affirms the rule existing in Oregon. Davis v. Walt, supra. See, also, Edwards v. Porter, 2 Cold. 42. It changes the rule in North Carolina. See Evans v. Williamson, 79 N. C. 86; Washburn v. Picot, 3 Dev. 390.

[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 53);

A note wholly without consideration is not evidence of any indebtedness between the original parties;[30] but equity will not grant relief on the ground of a want of consideration, unless there is danger that the instrument may be held outstanding until evidence of want of consideration cannot be produced in an action at law.[31]

The right to set up the defense of want or failure of consideration may be lost by acts or omissions amounting in law to a waiver or to an estoppel.[32]

§ 90. Accommodation Paper.

An accommodation bill or note within the law merchant is one made, accepted, or indorsed without consideration, to enable the payee or holder to obtain money or credit on the strength of the name of the maker, acceptor, or indorser.[33] The negotiable instru-

R. I. (§ 61); Md. (§ 72); N. Y. (§ 92); Wis. (§ 1676-23).

[30]Hildeburn v. Curran, 65 Pa. St. 59.

[31]Metler's Adm'rs v. Metler, 18 N. J. Eq. 270.

[32]McCreary v. Parsons, 31 Kan. 447; Howard v. Palmer, 64 Me. 86; Edison General Electric Co. v. Blount, 96 Ga. 272; Morrill v. Prescott, 64 N. H. 505; Horton v. Arnold, 18 Wis. 223. See, also, Longmire v. Fain, 89 Tenn. 393.

[33]Pollard v. Huff, 44 Neb. 892; Jefferson Co. v. Burlington & M. R. Co., 66 Iowa, 385, citing 1 Dan-

ments laws define accommodation paper in practically the same language.[34]

Whether a signature was placed on negotiable paper for the purpose of accommodation must be determined ordinarily from the circumstances of each particular case.[35] A

iel Neg. Inst. § 189.

Corporations cannot become accommodation parties. Fox v. Rural Home Co., 90 Hun, 365; Aetna Nat. Bank v. Charter Oak Life Ins. Co., 50 Conn. 167; Hall v. Auburn Turnpike Co., 27 Cal. 255.

Liability of accommodation party to holder for value, see post, § 179.

[34]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 29); R. I. (§ 37); Md. (§ 48); N. Y. (§ 55); Wis. (§ 1675-55).

In the Negotiable Instruments Law as first adopted in New York the headline to this section read, "Liability of accommodation indorser;" but the word "indorser" was changed to "party" by amendment. Laws 1898, c. 336, § 22.

[35]The following recent cases decide whether certain paper was or was not accommodation paper: Messmore v. Meyer, 56 N. J. Law, 31; Capital City State Bank v. Des Moines Cotton-Mill Co., 84 Iowa, 561; Lockwood v. Twitchell, 146 Mass. 623; Adams v. Kennedy, 175 Pa. St. 160.

Indorsements in the following cases were held to be for accommodation: National Bank of Commerce v. Atkinson, 55 Fed. 465; Ætna Nat. Bank v. Charter Oak Life Ins. Co., 50 Conn. 167; Robertson v. Rowell, 158 Mass. 94; Fox v. Rural Home

note made to enable the payee to raise money on the credit of the signer's name will not be presumed to be accommodation paper, if the maker was indebted to the payee on open account, in an amount equal to the face of the note.[36] Nor does the making and delivering of one note in exchange for another constitute either of the instruments accommodation paper, though the exchange was mutually convenient to the parties.[37]

The original payee of paper executed for his benefit and accommodation cannot recover thereon against the accommodation maker;[38]

Co., 90 Hun, 365; Newbold v. Boraef, 155 Pa. St. 227.

[36]Long v. Gieriet, 57 Minn. 278.

Where the maker presents for discount paper payable to his own order, and indorsed by another, the latter is presumed to be an accommodation indorser. Stall v. Catskill Bank, 18 Wend. 466; Erwin v. Shaffer, 9 Ohio St. 43; Overton v. Hardin, 6 Cold. 375. See, also, further, on the question of presumption and burden of proof, Clay City Nat. Bank v. Halsey, 70 Fed. 567; First Nat. Bank v. Alton, 60 Conn. 402; Conselyea v. Swift, 103 N. Y. 604; National Bank v. Bradley, 117 N. C. 526; Murphy v. Gumaer (Colo. App.) 55 Pac. 951.

[37]Farber v. National Forge & I. Co., 140 Ind. 54; Williams v. Banks, 11 Md. 198; Whittier v. Eager, 1 Allen, 499; Rice v. Grange, 131 N. Y. 149.

See, also, supra, note 22.

[38]Moore v. Maddock, 33 Mo. 575; Coghlin v. May, 17 Cal. 515.

for accommodation paper has no validity until it has been discounted or has passed into the hands of a holder for value.[39] Until such discounting or transfer takes place the maker may withdraw from and rescind his engagement.[40]

[39]Second Nat. Bank v. Howe, 40 Minn. 390; Tufts v. Shepherd, 49 Me. 312; Macy v. Kendall, 33 Mo. 164; Smiths Ex'rs v. Wyckoff, 3 Sandf. Ch. 77.

[40]Second Nat. Bank v. Howe, supra; Downes v. Richardson, 5 Barn. & Ald. 674; Whitworth v. Adams, 5 Rand. 342; Berkeley v. Tinsley, 88 Va. 1001.

CHAPTER VI.

Construction and Operation.

§ 91. Ambiguity as to Amount—Words Control Figures.
§ 92. Conflict between Writing and Printing—Writing Controls.
§ 93. Memoranda Made before Delivery are Part of Contract.
§ 94. Several Instruments may be Construed Together.
§ 95. Interest Clause.
§ 96. Parties—Joint and Several Liability.
§ 97. When Bill may be Treated as Promissory Note.
§ 98. Negotiable Bill does not Operate as Assignment—Bill or Order on Particular Fund does so Operate.
§ 99. Check does not Operate as Assignment.

§ 91. Ambiguity as to Amount—Words Control Figures.

The general rule for construction of contracts, that words control figures in case of a discrepancy, applies to negotiable instruments.[1] Thus, where marginal figures and the written words expressing the amount differ, evidence that the bill was negotiated for

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 17, subd. 1); R. I. (§ 25, subd. 1); Md., N. Y. (§ 36, subd. 1); Wis. (§ 1675-17, subd. 1).

See, also, Poorman v. Mills, 39 Cal. 345; National Bank of Rockville v. Second Nat. Bank, 69 Ind. 479.

the amount expressed in the figures is not admissible.[2] If, however, the words are ambiguous and the figures certain, reference may be had to the figures to fix the amount.[3] Thus, where the place for the amount in the body of an instrument in the form of a note is blank, but the word "dollars" follows the blank, and the figures "$147.70" appear in the margin, the figures "should be taken as the amount which the obligor intended to obligate himself to pay, and the obligation enforced accordingly."[4]

§ 92. Conflict between Writing and Printing—Writing Controls.

Another general rule governing contracts, which applies to negotiable instruments, is that, in case of a conflict between the written and the printed portions of an instrument, the written provisions prevail.[5]

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[2]Smith v. Smith, 1 R. I. 398.

[3]Subdivision 1, same sections of the negotiable instruments laws as last above cited.

So, too, where the words are illegible, Riley v. Dickens, 19 Ill. 29; or where there are no words expressing the amount, Wittey v. Michigan Mut. Life Ins. Co. 123 Ind. 411; or the words are misspelled, Burnham v. Allen, 1 Gray, 496.

Option of holder to treat ambiguous instrument as bill or note, see post, § 97.

[4]Wittey v. Michigan Mut. Life Ins. Co., 123 Ind. 411.

§ 93. Memoranda Made before Delivery are Part of Contract.

Memoranda on the face or back of the instrument, whether signed or not, if made at the time of delivery and material to the contract, are part of the instrument, and parol evidence is admissible to show the circumstances under which they were made. This is a generally accepted rule of the law merchant,[6] and has been incorporated into the negotiable instruments law in Wisconsin.[7]

§ 94. Several Instruments may be Construed Together.

The Wisconsin negotiable instruments law has added another general rule of construction not found in the law as adopted in other states. It is to the effect that where several writings are executed at or about the same time, as parts of the same transaction, intended to accomplish the same object, they may be construed together as one instrument

[5]Subdivision 4, same sections of the negotiable instruments laws as last above cited.

[6]Van Zandt v. Hopkins, 151 Ill. 248; Specht v. Berndorf (Neb.) 42 L. R. A. 429; Seymour v. Farquhar, 93 Ala. 292; Franklin Sav. Inst. v. Reed, 125 Mass. 365; Barnard v. Cushing, 4 Metc. 230; Blake v. Coleman, 22 Wis. 415. But see Howry v. Eppinger, 34 Mich. 30.

[7]Section 1675-10.

as to all parties having notice thereof.[8] Under this rule, as to one not a bona fide holder, a contemporaneous written agreement may be shown to be part of the contract.[9] A note and the mortgage securing it are to be construed together as one instrument.[10]

§ 95. Interest Clause.

If a negotiable instrument provides for interest, but fails to specify the date from which the interest shall run, interest runs from the date of the instrument, if it is dated, and, if it is not dated, from the time of its

[8]Subdivision 8, § 1675-17.

Parts of bill drawn in a set form one bill. See ante, § 8.

[9]Wood v. Ridgeville College, 114 Ind. 320; Montgomery v. Hunt, 93 Ga. 438; Carrington v. Waff, 112 N. C. 115; Traders' Nat. Bank v. Smith (Tex. Civ. App.) 22 S. W. 1056; Reed v. Cassatt, 153 Pa. St. 156. But see Coffin v. Grand Rapids Hydraulic Co., 136 N. Y. 655.

A contemporary written agreement between the maker and the payee, given as part of the consideration of the note, and modifying the time of payment, may be shown as between the maker and a holder with notice of the agreement; as, where the note was payable 13 months after date, and the written agreement was that it was not to be payable until the payee sold, or caused to be sold, certain goods for the maker. Jacobs v. Mitchell, 46 Ohio St. 601.

[10]Brownlee v. Arnold, 60 Mo. 79; Muzzy v. Knight, 8 Kan. 456.

issuance.[11] The latter part of the rule is a logical outcome of the rule that an undated instrument takes date from the time of its issuance.[12] Where a note secured by mortgage is ambiguous as to the time from which interest is to run, the uncertainty is removed by definite terms in the mortgage.[13]

A note payable on demand draws interest from date.[14] So, also, a note not expressing any time of payment.[15]

It is often the case that the word "interest" is not used; but the instrument will be construed to be interest-bearing if it is clear from an inspection of it that such was the intent of the parties. Thus, the words "at six per cent" mean interest at the rate of six per

[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 17, subd. 2); R. I. (§ 25, subd. 2); Md., N. Y., (§ 36, subd. 2); Wis. (§ 1675-17).

This is declaratory of the law. See Salazar v. Taylor, 18 Colo. 538; Campbell P. P. & M. Co. v. Jones, 79 Ala. 475; Smith v. Goodlett, 92 Tenn. 230; Miller v. Cavanaugh, 99 Ky. 377.

[12]See ante, § 15.

[13]Stanton v. Caffee, 58 Wis. 261; Prichard v. Miller, 86 Ala. 500.

[14]Packer v. Roberts, 40 Ill. App. 613; Gaylord v. Van Loan, 15 Wend. 308. But see Hunter v. Wood, 54 Ala. 71.

[15]Collier v. Gray, 1 Overt. 110; Husbrook v. Wilder, 1 Pin. 643.

cent.,[16] and the words "at 10 per cent." indicate that the instrument is interest-bearing.[17] The word "use" is equivalent to "interest,"[18] and the expression "Int. @ 6% p. a." indicates that the instrument bears interest at the rate of six per cent. per annum.[19]

§ 96. Parties—Joint and Several Liability.

Where two or more persons sign an instrument containing the words "I promise to pay," they are jointly and severally liable. This is the rule of the law merchant[20] and of the negotiable instruments laws.[21] Such expressions as "I or we promise to pay,"[22] or "We or either of us promise to pay,"[23] also create a joint and several liability in case

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[16]Durant v. Murdock, 3 App. D. C. 114.

[17]Thompson v. Hoagland, 65 Ill. 310.

[18]Cisne v. Chidester, 85 Ill. 523; McClellan v. Morris, Kirby, 145.

[19]Belford v. Beatty, 145 Ill. 414, affirming 46 Ill. App. 539.

[20]Monson v. Drakeley, 40 Conn. 552; Hemmenway v. Stone, 7 Mass. 58; Partridge v. Colby, 19 Barb. 248; Arbuckle v. Templeton, 65 Vt. 205; Dill v. White, 52 Wis. 456.

[21]Subdivision 1, same sections of the negotiable instruments laws as last above cited.

[22]Harris v. Coleman & A. White Lead Co., 58 Ill. App. 366.

[23]Pogue v. Clark, 25 Ill. 295. But see Harvey v. Irvine, 11 Iowa, 82.

more than one sign. A note signed by two, and containing the words "We promise to pay," is the simplest illustration of an instrument creating merely a joint liability.[24]

§ 97. When Bill may be Treated as Promissory Note.

Where the drawer and the drawee is the same person—that is, where the drawer draws on himself—the holder may, at his option, treat the instrument as a bill or as a note.[25] This rule is well illustrated by the case of Funk v. Babbitt, where the instrument was in the form: "$350.00, Bloomington, Ill., April 23, 1891. Thirty days after date, pay to the order of E. D. Babbitt three hundred and fifty dollars, for value received. Funk & Lackey;" and the court said: "The firm drew bills, but did not address them to any third person or persons, and it is therefore

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[24]Barnett v. Juday, 38 Ind. 86.

[25]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 130); R. I. (§ 138); Md. (§ 149); N. Y. (§ 214); Wis. (§ 1680d).

This is also the rule of the law merchant. See Wardens, etc., of St. James Church v. Moore, 1 Ind. 289; Hasey v. White Pidgeon Beet-Sugar Co., 1 Doug. 193; McCandlish v. Cruger, 2 Bay, 377. See, also, Commonwealth v. Butterick, 100 Mass. 12; Burnheisel v. Field, 17 Ind. 609.

to be regarded that they were, in legal effect, addressed to themselves, as drawees, and the signature of the firm to the several bills bound the firm both as drawers and acceptors;" and that, "the drawers and drawees being the same, the bills are in legal effect promissory notes, and may be treated as such, or as bills, at the holder's option."[26]

He has this option also in case the drawee is a fictitious person, or one without capacity to contract,[27] and in case the instrument is so ambiguous that there is doubt whether it is a bill or a note.[28]

§ 98. Negotiable Bill does not Operate as Assignment—Bill or Order on Particular Fund does so Operate.

A negotiable bill of exchange does not of itself operate as an assignment of funds in

[26]Funk v. Babbitt, 156 Ill. 408.

[27]Same sections of the negotiable instruments laws as last above cited.

See, also, Cork v. Bacon, 45 Wis. 192, where it was held that erasing part of the name of a bank on a check and writing in the name of another bank, did not make the latter a fictitious drawee.

[28]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 17, subd. 5); R. I. (§ 25, subd. 5); Md. N. Y. (§ 36, subd. 5); Wis. (§ 1675-17, subd. 5).

For liability of drawer of instrument in form of note, but addressed to, and accepted by, a third person, see Funk v. Babbitt, 156 Ill. 408.

the hands of the drawee, and the drawee is not liable thereon until he accepts it.[29] If, however, a bill is drawn on a particular fund,[30] it operates as an equitable assignment[31] in toto or pro tanto, as the case may be; and the same rule applies to an order payable out of a particular fund.[32] If the order does not designate the fund, an equit-

[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 127); R. I. (§ 135); Md. (§ 146); N. Y. (§ 211); Wis. (§ 1680a).

Bosworth v. Jacksonville Nat. Bank, 64 Fed. 615; Meldrum v. Henderson, 7 Colo. App. 256, 43 Pac. 148; Exchange Bank v. Sutton Bank, 78 Md. 577; Whitney v. Eliot Nat. Bank, 137 Mass. 351; Lynch v. First Nat. Bank, 107 N. Y. 179; Holbrook v. Payne, 151 Mass. 383. But see Howell v. Boyd Manuf'g Co., 116 N. C. 806.

[30]Bills of this kind are not negotiable. See ante, §§ 42, 43.

[31]Kahnweiler v. Anderson, 78 N. C. 133; Robbins v. Bacon, 3 Me. 346; Ballou v. Boland, 14 Hun, 355. But see Grammel v. Carmer, 55 Mich. 201.

[32]Lewis v. Berry, 64 Barb. 593; Lawrence Nat. Bank v. Kowalsky, 105 Cal. 41; Central Nat. Bank v. Spratlen, 7 Colo. App. 430; Lee v. Robinson, 15 R. I. 369; Shenandoah Val. R. Co. v. Miller, 80 Va. 821.

Also where order was against specific account for work, labor and material. Brill v. Tuttle, 81 N. Y. 454; City of Seattle v. Liberman, 9 Wash. 276; Christmas v. Russell, 14 Wall. 69, 84; McDaniel v. Maxwell, 21 Or. 202.

able assignment takes place if it is designated by a subsequent parol agreement.[33]

Under this provision of the negotiable instruments laws (that a draft does not operate as an assignment of the fund), when construed with Laws N. Y. 1892, c. 689, § 115, providing that in an action against a savings bank by a depositor the bank must pay the fund into court if it is claimed by a third person, and Code N. Y. § 820, providing that a defendant against whom an action on contract or to recover a chattel is brought may have a person who demands the same thing substituted as defendant, a savings bank sued on a draft cannot pay the amount into court and have a claimant of the fund substituted as defendant, because the action is not by a depositor, within the meaning of the statute, nor is it on a contract with the bank, nor is it one to recover a chattel.[34]

§ 99. Check does not Operate as Assignment.

The same rule which applies to bills of exchange in general also applies to checks, and a check of itself does not operate as an

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[33]McDaniel v. Maxwell, supra.

Effect of acceptance of bill, see post, § 113.

[34]Master v. Bowery Sav. Bank (1900) 63 N. Y. Supp. 964.

assignment of any part of the funds to the credit of the drawer in the bank, and the bank is not liable to the holder unless it accepts or certifies the check.[35] This rule of the negotiable instruments laws follows the weight of authority,[36] but changes the law in some of the states.[37] As between the drawer and the payee or his transferee, it has heretofore been generally held that a check operates as an equitable assignment,[38] and the above rule of the negotiable instruments laws undoubtedly means that, as against the

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[35]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 189); R. I. (§ 197); Md. (§ 208); N. Y. (§ 325); Wis. (§ 1684-5).

[36]Georgia Seed Co. v. Talmadge, 96 Ga. 254; Colorado Nat. Bank v. Boettcher, 5 Colo. 185; Exchange Bank v. Sutton Bank, 78 Md. 577, 23 L. R. A. 173; Bank of Antigo v. Union Trust Co., 149 Ill. 343; Carr v. National Security Bank, 107 Mass. 45; First Nat. Bank v. Clark, 134 N. Y. 368; Akin v. Jones, 93 Tenn. 353, 25 L. R. A. 523.

[37]See Hawes v. Blackwell, 107 N. C. 196; Bell v. Alexander, 21 Grat. 1.

In several of the states the rule is different from that of the Negotiable Instruments Laws. See Springfield Marine & Fire Ins. Co. v. Peck, 102 Ill. 265; Farmers' Bank & T. Co. v. Newland, 97 Ky. 464; Morrison v. McCartney, 30 Mo. 183.

[38]Deener v. Brown, 1 McArthur, 350; Hawes v. Blackwell, supra; Pease v. Landauer, 63 Wis. 20.

bank, a check does not operate as an equitable assignment.

Where, however, money has been deposited in a bank for the benefit of the person who afterwards becomes payee of a check thereon, and the bank has notice of his rights, the check operates as an equitable assignment to him.[39]

[39] Van Allen v. American Nat. Bank, 3 Lans. 517; Hemphill v. Yerkes, 132 Pa. St. 545.

CHAPTER VII.

Presentment of Bills of Exchange for Acceptance.

§ 100. Necessity of Presentment for Acceptance.
§ 101. Same—Presentment Excused in Certain Cases.
§ 102. Presentment of Bills Drawn in Sets.
§ 103. Holder must Present or Negotiate within Reasonable Time.
§ 104. By Whom Presentment must be Made—Holder or His Agent.
§ 105. To Whom Presentment must be Made—Drawee or his Agent.
§ 106. Same—Bill Addressed to Two or More Drawees not Partners.
§ 107. Same—Bankruptcy or Insolvency of Drawee.
§ 108. Time of Presentment for Acceptance.
§ 109. Same—Rule Where Time is Insufficient.
§ 110. Place of Presentment for Acceptance.
§ 111. Dishonor by Nonacceptance.
§ 112. Same—Rights and Duties of Holder.

§ 100. Necessity of Presentment for Acceptance.

Where a bill is payable after sight, it must be presented for acceptance in order to fix the time of maturity, and, in all cases where the time of maturity can be fixed only by presentment, a presentment must be made.[1]

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va. Wash. (§ 143); R. I. (§ 151); Md. (§ 162); N. Y. (§ 240); Wis. (§ 1681).

Bills payable at sight fall within the operation of this rule,[2] but bills payable on demand or at a certain period after date, do not fall within the rule, and it is not necessary to present them for acceptance.[3] A check, being a bill payable on demand,[4] need not be presented for acceptance,[5] but may, of course, be presented for certification, which is equivalent to acceptance.[6]

Presentment for acceptance is necessary in case the bill is payable elsewhere than at the residence or place of business of the drawee,[7] and in case the bill itself expressly stipulates that it shall be presented for acceptance.[8]

Austin v. Rodman, 1 Hawks. 194, 9 Am. Dec. 630; Commercial Bank v. Perry, 10 Rob. 61, 43 Am. Dec. 168.

[2]Austin v. Rodman, supra; Hart v. Smith, 15 Ala. 807; Montelius v. Charles, 76 Ill. 303; Allen v. Suydam, 20 Wend. 321; Bumont v. Pope, 7 Blackf. 367.

[3]Townsley v. Sumrall, 2 Pet. 170, 178; Fall River Union Bank v. Willard, 5 Metc. 216; Sweet v. Swift, 65 Mich. 90; House v. Adams, 48 Pa. St. 261. But see Allen v. Suydam, supra.

[4]See ante, § 13.

[5]Lester v. Given, 8 Bush, 357.

[6]See post, § 128.

[7]Subdivision 3, same sections of negotiable instruments laws as last above cited.

[8]Subdivision 2, same sections of negotiable instruments laws as last above cited.

§ 101. Same—Presentment Excused in Certain Cases.

Presentment for acceptance is excused, and the bill may be treated as dishonored for nonacceptance, where the drawee is dead, or has absconded, or is a fictitious person, or a person without capacity to execute the bill, or where, after the exercise of reasonable diligence, presentment cannot be made, or where the presentment was irregular, but acceptance was refused on other grounds.[9]

Presentment is not necessary to charge one who, before the bill was drawn, promised unconditionally, in writing, to accept it.[10]

§ 102. Presentment of Bills Drawn in Sets.

Where a bill is drawn in a set, presentment of any one part for acceptance is sufficient;[11] and it will not be presumed that the drawee will accept more than one part.[12]

§ 103. Holder must Present or Negotiate within Reasonable Time.

The holder of any bill which must be presented for acceptance must either present it

[9]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or. Tenn., Utah, Va., Wash. (§ 148); R. I. (§ 156); Md. (§ 167); N. Y. (§ 245); Wis. (§ 1681-5).

[10]Whilden v. Merchants' & Planters' Nat. Bank, 64 Ala. 1.

[11]Walsh v. Blatchley, 6 Wis. 413.

[12]Commercial Bank v. Routh, 7 La. Ann. 128.

or negotiate it within a reasonable time; otherwise, the drawee and all indorsers will be discharged.[13]

What constitutes a reasonable time depends upon the nature of the instrument, the usages of trade, and the circumstances of the case.[14] A bill payable four months from date was presented for acceptance within a reasonable time where presented some five weeks before maturity;[15] and presentment of a bill drawn in Georgia, payable in New York sixty days after sight, within two months and a half after the bill was drawn, was within a reasonable time.[16] A foreign

[13]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 144); R. I. (§ 152); Md. (§ 163); N. Y. (§ 241); Wis. (§ 1681-1).

[14]Neg. Inst. Laws N. Y. R. I. (§ 5); Md. (§ 16); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 193); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

Fugitt v. Nixon, 44 Mo. 295; Smith v. Janes, 20 Wend. 192; Wallace v. Agry, 5 Mason, 118.

[15]Bachellor v. Priest, 12 Pick. 399.

[16]Robinson v. Ames, 20 Johns. 146. But see Phoenix Ins. Co. v. Allen, 11 Mich. 501, where a delay of 21 days was held unreasonable, and Aymar v. Beers, 7 Cow. 705, where a delay of 29 days was excusable because of distance and the illness of the payee.

Delay in the mails is not chargeable to a holder

bill which is payable a certain number of days after sight need not be sent directly to the drawee for acceptance, but may be sent in the manner sanctioned by the customs of trade existing at the time, and, if such is the custom, may be sent to a broker in another country for negotiation, and presentment will be in time if made in the usual course of trade and not unreasonably delayed.[17] An indorser for the accommodation of the drawer is not discharged by the fact that presentment is not made until maturity, where the bill was negotiated by the drawer under an agreement, to which the indorser was not privy, that the bill should not be presented until that time.[18]

The drawer may waive presentment to the drawee by notifying the drawee not to pay.[19] A waiver of acceptance by the drawer puts him in the same position as if the bill had been presented and acceptance refused.[20]

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who has sent bill for acceptance within a proper time. Walsh v. Blatchley, 6 Wis. 413.

See, also, generally, on subject of reasonable time, Prescott Bank v. Caverly, 7 Gray, 217; Gowen v. Jackson, 20 Johns. 176.

[17] Wallace v. Agry, 4 Mason, 336. See, also, on effect of custom and usage. Jordan v. Wheeler, 20 Tex. 698.

[18] Fall River Union Bank v. Willard, 5 Metc. 216.

§ 104. By Whom Presentment must be Made—Holder or His Agent.

Presentment for acceptance must be made by the holder or by one duly authorized to present the bill on his behalf.[21] It may be, and usually is, made by a notary on behalf of the holder.[22]

§ 105. To Whom Presentment must be Made—Drawee or his Agent.

It is a general rule that presentment for acceptance must be made to the drawee or to some person authorized to accept or refuse acceptance on his behalf.[23] If possible, presentment should be made to the drawee personally.[24] If he is dead, presentment

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[19]Neederer v. Barber, Fed. Cas. No. 10,079.

[20]Carson's Adm'rs v. Russell, 26 Tex. 452.

[21]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 145); R. I. (§ 153); Md. (§ 164); N. Y. (§ 242); Wis. (§ 1681-2).

[22]Wiseman v. Chiappella, 23 How. 368; Whaley v. Houston, 12 La. Ann. 585; Stainback v. Bank of Virginia, 11 Grat. 260.

[23]Same sections of negotiable instruments laws as last above cited.

In some of the negotiable instruments laws these sections required presentment to be made to the "drawer," but the obvious error was corrected in the Rhode Island law (§ 153), and by amendment in New York (Laws 1898, c. 336, § 30).

Cheek v. Roper, 5 Esp. 175.

may be made to his personal representative,[25] but, though advisable for purposes of protest, it is not necessary to make presentment in such case.[26]

§ 106. Same—Bill Addressed to Two or More Drawees not Partners.

If a bill is addressed to two or more drawees who are partners, presentment to one of them is, of course, sufficient;[27] but, if such drawees are not partners, presentment must be made to them all, unless one has authority to accept or to refuse acceptance for all, in which case presentment to him is sufficient.[28]

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[24]Wiseman v. Chiappella, supra; Sharpe v. Drew, 9 Ind. 281.

But presentment to a clerk of the drawee at his office, the drawee being absent, is sufficient. Whaley v. Houston, supra; Stainback v. Bank of Virginia, supra.

The mere absence of the drawee of a bill payable after date, when called on for an acceptance, is not a refusal to accept. Bank of Washington v. Triplett, 1 Pet. 25. See, also, Bank of Red Oak v. Orvis, 42 Iowa, 691.

[25]Subdivision 2, same sections of negotiable instruments laws as last above cited.

[26]See ante, § 101.

[27]Mt. Pleasant Branch of State Bank v. McLeran, 26 Iowa, 306.

[28]Subdivision 1, same sections of negotiable instruments laws as last above cited.

§ 107. Same—Bankruptcy or Insolvency of Drawee.

Analagous to the rule that notice of dishonor may be given to the assignee of an insolvent party to commercial paper,[29] is the rule that, if the drawee is a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment for acceptance may be made to him or his trustees or assignees.[30] It will be seen that the rule is in the alternative, and presentment to either will be good.

§ 108. Time of Presentment for Acceptance.

Presentment for acceptance must be made before the bill is overdue, at a reasonable hour on a business day.[31] The rules governing presentment for payment govern present-

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[29]Callahan v. Bank of Kentucky, 82 Ky. 231; American Nat. Bank v. Junk Bros. L. & M. Co., 94 Tenn. 624. But see House v. Vinton Nat. Bank, 43 Ohio St. 346.

[30]Subdivision 3, same sections of negotiable instruments laws as last above cited.

[31]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 145); R. I. (§ 153); Md. (§ 164); N. Y. (§ 242); Wis. (§ 1681-2).

The rule in Dana v. Sawyer, 22 Me. 244, that a presentment for payment at or about midnight is not at a reasonable hour, would doubtless apply by analogy to a presentment for acceptance.

ment for acceptance in this respect.[32] But presentment, two days before maturity, of an unaccepted sight draft indorsed, "Accepted. Payable at F. & M. Bank," is conclusively presumed to be a presentment for acceptance, and not a presentment for payment.[33]

Where Saturday is not otherwise a holiday, presentment may be made before twelve o'clock on that day.[34]

§ 109. Same—Rule Where Time is Insufficient.

If a 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 of its maturity, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.[35]

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[32]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 146); R. I. (§ 154); Md. (§ 165); N. Y. (§ 243); Wis. (§ 1681-3).

See, also, post, §§ 194-199.

[33]Burrus v. Life Ins. Co. (N. C.) 32 S. E. 323.

[34]Same sections of negotiable instruments laws as last above cited.

[35]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 147);

§ 110. Place of Presentment for Acceptance.

If a bill is one which requires a presentment for acceptance, and indicates a place where such presentment is to be made, a presentment should, of course, be made at that place. If a place of payment is named in the bill, presentment for acceptance may be made there.[36] It must be remembered, however, that, other features requiring presentment being absent, presentment for acceptance is no longer necessary if the bill is drawn payable at the residence or place of business of the drawee.[37]

R. I. (§ 155); Md. (§ 166); N. Y. (§ 244); Wis. (§ 1681-4). But see First Nat. Bank v. Price, 52 Iowa 570.

[36]Wolfe v. Jewett, 5 La. 614.

The charter of Greater New York (§§ 1499-1504, inclusive) provides that, whenever the board of health shall publicly designate any part of the city as the seat of a contagious or infectious disease, persons or firms doing business within the infected district shall designate in a register, to be kept by the city clerk, a place outside of the said district, but within the city, at which presentment of bills and notes may be made. If no registry is made, presentment may be made to the city clerk, and notice of protest served by depositing it in one of the postoffices in said city.

[37]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 143, subd. 3); R. I. (§ 151, subd. 3); Md. (§ 162, subd. 3); N. Y. (§ 240, subd. 3); Wis. (§ 1681, subd. 3).

§ 111. Dishonor by Nonacceptance.

If a bill is duly presented for acceptance, and acceptance is refused or cannot be obtained, the bill is dishonored for nonacceptance.[38] It is also dishonored when presentment for acceptance is excused, for the reasons given in section 101, ante, and the bill is not accepted.[39]

§ 112. Same—Rights and Duties of Holder.

Where a bill is dishonored by nonacceptance, the holder has an immediate right of recourse against the drawers and indorsers without presenting the bill for payment;[40] but this right is lost if, after the bill has been duly presented for acceptance, and has not been accepted within the prescribed time, the holder does not treat the bill as dishonored by nonacceptance, and protest it accordingly.[41]

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[38]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 149); R. I. (§ 157); Md. (§ 168); N. Y. (§ 246); Wis. (§ 1681-6).

[39]Same sections of Negotiable Instruments Laws as last above cited.

[40]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 151); R. I. (§ 159); Md. (§ 170); N. Y. (§ 248); Wis. (§ 1681-8).

[41]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 150);

The liability of the drawers and indorsers being once fixed by a proper protest for non-acceptance, coupled with a proper notice, the right to recover against them is complete.[42]

R. I. (§ 158); Md. (§ 169); N. Y. (§ 247); Wis. (§ 1681-7).

[42]Wallace v. Agry, 4 Mason, 336; Pendleton v. Knickerbocker Life Ins. Co., 5 Fed. 238; Sterry v. Robinson, 1 Day, 11; Pecquet v. Mager, 7 La. 418; Lenox v. Cook, 8 Mass. 460; Plato v. Reynolds, 27 N. Y. 586; Carson v. Russell, 26 Tex. 452.

CHAPTER VIII.

Acceptage of Bills of Exchange.

§ 113. Acceptance Necessary to Charge Drawee.
§ 114. Nature and Form of Acceptance—Revocation.
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§ 120. Implied Acceptance—Retention or Destruction of Bill by Drawee.
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§ 113. Acceptance Necessary to Charge Drawee.

The rule that the drawee is not liable on a bill unless and until he accepts it[1] is a

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass.,

logical outcome of the rule that a bill does not, of itself, operate as an assignment of funds in the hands of the drawee.[2] Before acceptance, there is no liability on the part of the drawee, because there is no privity of contract between him and any of the other parties to the bill, and he is a stranger to the transaction.[3]

§ 114. Nature and Form of Acceptance—Revocation.

A contract relation between the drawee and the other parties to a bill is first effected by the acceptance of the bill by the drawee, as that is the signification of his assent to

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N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 127); R. I. (§ 135); Md. (§ 146); N. Y. (§ 211); Wis. (§ 1680a).

Luff v. Pope, 5 Hill, 413.

[2]See ante, § 98.

[3]Colorado Bank v. Boettcher, 5 Colo. 185; Luff v. Pope, supra; Bailey v. Southwestern Railroad Bank, 11 Fla. 266; Bullard v. Randall, 1 Gray, 605; Kimball v. Donald, 20 Mo. 577; Hankin v. Squires, 5 Biss. 186; Northumberland Bank v. McMichael, 106 Pa. St. 460.

The same is true of an order. Woodruff v. Hensel, 5 Colo. App. 103; Weinstock v. Bellwood, 12 Bush, 139; Reiley v. Daly, 159 Pa. St. 605. But see Gurnee v. Hutton, 63 Hun, 197, and Brem v. Covington, 104 N. C. 589, where orders were held to be equitable assignments, and the drawees to be liable without acceptance.

the order of the drawer.[4] By this assent or acceptance, the drawee undertakes to pay the bill at maturity,[5] in money.[6] To the binding, however, an acceptance must be completed by delivery or notification.[7]

An acceptance may be revoked before the delivery of the accepted bill;[8] but a drawee cannot revoke his acceptance, on discovering the insolvency of the drawer, after having indorsed his acceptance on the bill and re-delivered it to the agent of the holder, though he has no funds of the drawer in his hands.[9]

[4]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 132); R. I. (§ 140); Md. (§ 151); N. Y. (§ 220); Wis. (§ 1680f).

[5]Hoffman v. Bank of Milwaukee, 12 Wall. 181.

[6]Same sections of Negotiable Instruments Laws as last above cited.

[7]Neg. Inst. Laws N. Y., R. I. (§ 2); Md. (§ 14); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 191); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

If an acceptance is dated, the date given is prima facie the true date of the acceptance. Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va. Wash. (§ 11); R. I. (§ 19); Md., N. Y. (§ 30); Wis. (§ 1675-11).

[8]Cox v. Troy, 5 Barn. & Ald. 474.

[9]Trent Tile Co. v. Ft. Dearborn Nat. Bank of Chicago, 54 N. J. Law, 33, distinguishing Cox v. Troy, supra.

§ 115. Same—Must be in Writing and Signed by Drawee.

An oral acceptance of a bill is good, in the absence of a statute requiring a written one.[10] But in the states that have adopted the negotiable instruments law,[11] and in many

[10]Heitschmidt v. McAlpin, 59 Ill. App. 231; Spurgeon v. Swain, 13 Ind. App. 188; Pierce v. Kittredge, 115 Mass. 374; Spaulding v. Andrews, 48 Pa. St. 411.

An oral acceptance is not within the statute of frauds. Walton v. Mandeville (Iowa) 5 N. W. 776. On a rehearing of the case last cited (56 Iowa, 597) it was held that, if the drawee has no funds of the drawer on hand, his oral acceptance is within the statute, as a promise to pay the debt of another. To same effect see Pike v. Irwin, 1 Sandf. 14; Manley v. Geagan, 105 Mass. 445.

Oral promise to accept, see post, § 118.

[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 132); R. I. (§ 140); Md. (§ 151); N. Y. (§ 220); Wis. (§ 1680f).

The Negotiable Instruments Laws adopted in some of the states provide that the acceptance must be signed by the "drawer." This palpable error is corrected in the Rhode Island Law (§ 140), and by amendment in New York (Laws 1898, c. 336, § 27).

Previously an oral acceptance was good in Connecticut (Jarvis v. Wilson, 46 Conn. 90); Massachusetts (Pierce c. Kittredge, supra); New York, prior to Rev. St. pt. 2, c. 4, tit. 2, § 6 (Leonard v. Mason, 1 Wend. 522; Ontario Bank v. Worthington, 12 Wend. 593, and Johnson v. Clark, 39 N. Y.

other states, the acceptance must be in writing, and signed by the drawee.[12]

The best form of a general acceptance consists of the word "Accepted" written across the face of the bill, followed by the signature of the drawee; but the signature alone is a sufficient written acceptance,[13] and other words than the word "Accepted" will suffice if the intention is to accept the bill.[14] The court in Spear v. Pratt, in holding that there is a sufficient acceptance where the drawee

216); and North Carolina (Short v. Blount, 99 N. C. 49).

The Negotiable Instruments Law affirms the rule previously existing in Oregon. Hill's Ann. Laws, § 3194; Erickson v. Inman, Poulson & Co., 54 Pac. 949.

[12]Alabama (Code, §§ 2101, 2102); California (Civ. Code, § 3193); Maine (Rev. St. c. 32, § 10); Michigan (How. Ann. St. § 1583); Missouri (Rev. St. 1889, § 719. See Harberle v. O'Day, 61 Mo. App. 390); Pennsylvania (Act May 10, 1881, P. L. 17). But in Pennsylvania the acceptor only can take advantage of the statute. Ulrich v. Hower, 156 Pa. St. 414.

[13]Fowler v. Gate City Nat. Bank, 88 Ga. 29; Kaufman v. Barringer, 20 La. Ann. 419; Mechanics' Bank v. Yager, 62 Miss. 529; Wheeler v. Webster, 1 E. D. Smith (N. Y.) 1; Spear v. Pratt, 2 Hill, 582.

[14]Spear v. Pratt, supra; Vanstrum v. Liljengren, 37 Minn. 191; Cortelyou v. Maben, 22 Neb. 697.

writes his name across the face of the bill, states that "any words written by the drawee on a bill, not putting a direct negative upon its request, as 'Accepted,' 'Presented,' 'Seen,' the day of the month, or a direction to a third person to pay it, is prima facie a complete acceptance by the law merchant."[15]

§ 116. Same—Acceptance on Face of Bill or on Separate Instrument.

The holder, on presenting a bill for acceptance, may require that the acceptance be written on the bill, and may treat the bill as dishonored if this is refused.[16] An acceptance written on a paper other than the bill itself binds the acceptor only in favor of one to whom it is shown, and who, on the faith thereof, receives the bill for value.[17]

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[15]Spear v. Pratt, 2 Hill, 582.

[16]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 133); R. I. (§ 141); Md. (§ 151); N. Y. (§ 221); Wis. (§ 1680g).

[17]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 134); R. I. (§ 142); Md. (§ 152); N. Y. (§ 222); Wis. (§ 1680h).

See, also, Fairchild v. Feltman, 32 Hun, 398.

Acceptance may be made by telegraph. In re Armstrong, 41 Fed. 381; Garrettson v. North Atchison Bank, 7 L. R. A. 428; Henrietta Nat. Bank v. State Nat. Bank, 80 Tex. 648.

§ 117. Consideration for Acceptance.

It is presumed that an acceptance was based on a sufficient consideration;[18] for the acceptance, of itself, operates as an admission that the drawee has funds of the drawer in his hands.[19] This presumption may be rebutted by evidence as to the relations and dealings of the parties.[20]

A present existing debt of the drawee to the drawer is a sufficient consideration for an acceptance by the former;[21] and so is a debt due from the drawee to a third person.[22] A shipment of merchandise by the debtor to the drawee is a sufficient consideration for an acceptance by the latter of an order in favor of the creditor for the proceeds of the goods;[23] and the transfer to the acceptor of a bill of

[18]Mechanics' Bank v. Livingston, 33 Barb. 458.

[19]State Bank v. Clark, 1 Hawks, 36; Gillilan v. Myers, 31 Ill. 525; Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Byrd v. Bertrand, 2 Eng. 321; Alvord v. Baker, 9 Wend. 323; Richardson v. Carpenter, 46 N. Y. 660; Raborg v. Peyton, 2 Wheat. 385.

[20]Parks v. Nichols, 20 Ill. App. 143; Hidden v. Waldo, 55 N. Y. 295.

[21]First Nat. Bank v. Snell, 32 Iowa, 167; Fisher v. Beckwith, 19 Vt. 31, 46 Am. Dec. 174.

[22]Arnold v. Sprague, 34 Vt. 402.

[23]H. G. Olds Wagon-Works v. Coombs, 124 Ind. 62.

lading is a sufficient consideration for his acceptance, though the cargo covered by the bill was practically worthless.[24] Services rendered by plaintiff at the request of defendant, in procuring the withdrawal of a contractor's objections to plaintiff's account for materials furnished for a building on which defendant was loaning money, is a sufficient consideration for an acceptance by defendant of an order from the contractor for the value of such materials;[25] and forbearance to file a mechanic's lien against a building belonging to the drawer is a sufficient consideration for an acceptance by the drawee.[26]

As between the payee and the acceptor, the acceptor cannot set up a want of consideration,[27] and one of several joint acceptors cannot defeat a recovery as to himself by showing that his acceptance was for accommodation, and was made after the others had accepted.[28]

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[24] Kelly v. Lynch, 22 Cal. 661.

[25] Nesbit v. Bendheim, 15 N. Y. Supp. 300.

[26] Flanagan v. Mitchell, 16 Daly, 223.

[27] Townsley v. Sumrall, 2 Pet. 170; Iselin v. Chemical Nat. Bank, 16 Misc. Rep. 437; Grant v. Ellicott, 7 Wend. 227; Meyer v. Beardsley, 30 N. J. Law, 236.

§ 118. Written Promise to Accept.

An unconditional written promise to accept a bill before it is drawn operates as an acceptance in favor of every person who, on the faith thereof, receives the bill for value.[29] In the words of Chief Justice Marshall: "The prevailing inducement for considering a promise to accept as an acceptance is that credit is thereby given to the bill. Now this credit is given as entirely by a letter written

[28]McNabb v. Tally, 27 La. Ann. 640.

[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 135); R. I. (§ 143); Md. (§ 154); N. Y. (§ 223); Wis. (§ 1680i).

As to what constitutes a promise to accept, see North Atchison Bank v. Garrettson, 51 Fed. 168; First Nat. Bank v. Clark, 61 Md. 400; Burke v. Utah Nat. Bank, 47 Neb. 247; Merchants' Nat. Bank of Canada v. Griswold, 72 N. Y. 472; Union Bank v. Shea (Minn.) 58 N. W. 985.

Under the Missouri statute (Rev. St. § 535), which is the same as the Negotiable Instruments Laws on this point, it has been held that a letter from the drawer to the acceptor directing him to send a renewal, and draw on the writer at sight for the amount of the first bill at maturity, operated as an actual acceptance of the sight draft. Adoue v. Fox, 30 Mo. App. 98. See, also, Valle v. Cerre, 36 Mo. 575.

Heretofore an oral promise to accept was good. Kelley v. Greenough, 9 Wash. 659; Williams v. Winans, 14 N. J. Law, 339.

before the date of the bill as by one written afterwards."[30] The court adds: "This court is of opinion that a letter written within a reasonable time before or after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance binding the person who makes the promise."

The fact that a bill is taken on the faith of a promise to accept it, made before it was drawn, constitutes a sufficient consideration for the promise to accept.[31]

A written promise to accept and pay a draft "for stock" is not conditional,[32] nor is a promise to accept "on the terms you propose;"[33] but a promise to accept drafts against "particularly described shipments" is conditional;[34] and so is a promise to accept an order if the order is not revoked.[35]

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[30] Coolidge v. Payson, 2 Wheat. 66. See, also, Steman v. Harrison, 42 Pa. St. 49.

[31] Pillans v. Van Mierof, 3 Burrows, 1669.

[32] Coffman v. Campbell, 87 Ill. 98.

[33] Parker v. Greele, 2 Wend. 545.

[34] Germania Nat. Bank v. Taaks, 101 N. Y. 442.

[35] Shaver v. W. U. Tel. Co., 57 N. Y. 459.

To operate as an acceptance, the promise to accept a bill must describe the bill sufficiently for identification;[36] and one who promises in advance to accept a bill of exchange is bound upon such promise only in case the bill in its terms conforms to the terms of his offer.[37] Thus, a telegraphic offer to accept and pay a draft for $2,000 is not an acceptance of a draft for that amount "with exchange on New York."[38]

§ 119. Drawee must Accept within Twenty-Four Hours after Presentment.

What constitutes a reasonable time after presentment for the drawee to decide on acceptance or not is now definitely fixed by the negotiable instruments laws at twenty-four hours.[39]. The acceptance, when given, takes date as of the day of presentment.[40]

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[36]Ulster Co. Bank v. McFarlan, 3 Denio, 553; First Nat. Bank v. Clark, 61 Md. 400; Boyce v. Edwards, 4 Pet. 111.

[37]Lindley v. First Nat. Bank of Waterloo, 76 Iowa, 629; Brinkman v. Hunter, 73 Mo. 172; Ulster Co. Bank v. McFarlan, 5 Hill, 432; Gates v. Parker, 43 Me. 544; Murdock v. Mills, 11 Metc. 5.

[38]Lindley v. First Nat. Bank of Waterloo, supra.

[39]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 136); R. I. (§ 144); Md. (§ 155); N. Y. (§ 224); Wis. (§ 1680j).

Heretofore in Massachusetts and Rhode Island

§ 120. Implied Acceptance—Retention or Destruction of Bill by Drawee.

An exception to the rule that the acceptance must be in writing and signed by the drawee is found in the rule that, if a drawee to whom a bill is delivered for acceptance destroys it, 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 not accepted, he will be deemed to have accepted it.[41]

This rule requires some affirmative tortious act on the part of the drawee, and a mere retention of the instrument beyond the proper time will not amount to an accept-

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the drawee had until two o'clock of the day following presentment for acceptance. Pub. St. Mass. 1882, c. 77, § 17; Gen. St. R. I. c. 166, § 5.

Where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert the true date of the acceptance and the instrument shall be payable accordingly. Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 13); R. I. (§ 21); Md., N. Y. (§ 32); Wis. (§ 1675-13).

[40]Same sections of Negotiable Instruments Laws as last above cited.

[41]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 137); R. I. (§ 145); Md. (§ 156); N. Y. (§ 225); Wis. (§ 1680k).

ance.[42] This construction of the rule is expressly recognized by the negotiable instruments law as adopted in Wisconsin.[43] But a retention of the instrument, coupled with a written statement by the drawee, in a letter to the payee, that it "will be disposed of in some way or other when I am there," amounts to an acceptance.[44]

§ 121. Acceptance of Incomplete, Overdue or Dishonored Bill.

A bill may be accepted before it is signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored, by a refusal to accept or pay.[45] But when a bill payable after sight is dishonored by nonacceptance, and the drawee

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[42]Colorado Nat. Bank v. Boettcher, 5 Colo. 185; Holbrook v. Payne, 151 Mass. 383; Short v. Blount, 99 N. C. 49; Matteson v. Moulton, 79 N. Y. 627. This decision was based on 1 Rev. St. N. Y. p. 769, § 11, which is identical with the rule of the Negotiable Instruments Laws given in the text. The Missouri statute (Rev. St. § 724) is the same, and has been construed in the same way. Dickenson v. Marsh, 57 Mo. App. 566.

[43]Neg. Inst Law, § 1680k.

[44]Hough v. Loring, 24 Pick. 254.

[45]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 138); R. I. (§ 146); Md. (§ 157); N. Y. (§ 226); Wis. (§ 1680l).

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.[46]

§ 122. General Unqualified Acceptance.

An acceptance of the order of the drawer without qualification, and according to the tenor of the bill, is a general acceptance.[47]

§ 123. Same—Acceptance to Pay at Particular Place.

Whatever may have been the rule heretofore, it is now provided by the negotiable instruments laws than 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.[48]

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[46]Same sections of Negotiable Instruments Laws as last above cited.

[47]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 139); R. I. (§ 147); Md. (§ 158); N. Y. (§ 227); Wis. (§ 1680m).

Acceptance qualified in form construed to be general, see post, § 125.

[48]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 140); R. I. (§ 148); Md. (§ 159); N. Y. (§ 228); Wis. (§ 1680n).

Wallace v. McConnell, 13 Pet. 136; Bank of U. S. v. Smith, 11 Wheat. 172.

§ 124. Qualified Acceptance.

Any acceptance which varies the effect of the bill as drawn is a qualified acceptance.[49] Thus, an acceptance to pay part only of the sum named in the bill,[50] and an acceptance to pay only at a particular place,[51] and an acceptance by one or more of several drawees, less than all,[52] are qualified acceptances. So, also, is one which is specifically qualified or limited as to time.[53]

The provisions of the English Bills of Exchange Act 1882 (45 and 46 Vict. c. 61, § 19) are the same as those of the negotiable instruments laws, and under them it has

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[49]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 139); R. I. (§ 147); Md. (§ 158); N. Y. (§ 227); Wis. (§ 1680m).

[50]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 141, subd. 2); R. I. (§ 149, subd. 2); Md. (§ 160, subd. 2); N. Y. (§ 229, subd. 2); Wis. (§ 1680o, subd. 2).

Phillips v. Frost, 29 Me. 77. But see Peterson v. Hubbard, 28 Mich. 197.

[51]Subdivision 3, same sections of Negotiable Instruments Laws as last above cited.

[52]Subdivision 5, same sections of Negotiable Instruments Laws as last above cited.

[53]Subdivision 4, same sections of Negotiable Instruments Laws as last above cited.

Vanstrum v. Liljengren, 37 Minn. 191.

been held that where a bill was drawn by L. D. F. payable "to the order of L. D. F.," and the drawees struck out the word "order," and accepted "in favor of L. D. F. only, payable at the Alliance Bank, London," the acceptance did not vary the effect of the bill as drawn, and hence was not a qualified acceptance, but was a general acceptance. The court in this case said that the words "accepted in favor of L. D. F." indicated an acceptance "of a bill of which F. is the drawer or payee," and that the mercantile effect of the bill was not altered by adding the word "only," as it indicated merely "that the acceptance is of a bill of which F. is the only drawer."[54]

§ 125. Same—Conditional Acceptance.

The most common form of qualified acceptance is the conditional acceptance, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.[55] An acceptance is conditional if it is to pay "according to contract,"[56] or on the

[54]Decroix, Verley et Cie v. Meyer & Co., 25 Q. B. Div. 343.

[55]Subdivision 1, same sections of Negotiable Instruments Laws as last above cited.

Conditional promise to accept, see ante, § 118.

[56]Haseltine v. Dunbar, 62 Wis. 162.

completion of a building according to contract,[57] or to pay when in funds,[58] or out of a particular fund.[59]

The condition must be expressed.[60] Sometimes an acceptance expressly conditional in form is not such in fact, but is an absolute unqualified acceptance.[61]

The condition may be subsequently waived by the acceptor.[62]

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[57]Newhall v. Clark, 3 Cush. 376; Somers v. Thayer, 115 Mass. 163; Greene v. Duncan, 37 S. C. 239. But see Hughes v. Fisher, 10 Colo. 383.

[58]Campbell v. Pettengill, 7 Me. 126; Hunt v. Williams, 15 R. I. 595; Owen v. Iglandor, 4 Cold. 15; Lawrence v. Phipps, 67 Hun, 61.

Acceptance when "in funds" means cash funds. Campbell v. Pettengill, supra.

The acceptor is liable when the money is placed to his credit, though he has not actually received it. Wallace v. Douglas, 116 N. C. 659. He must pay out of the first funds of the drawer that he receives. Wintermute v. Post, 24 N. J. Law, 420; Perry v. Harrington, 2 Metc. 368.

[59]Flanagan v. Mitchell, 16 Daly, 223. See also, Robinson v. Gray, 17 Misc. Rep. 341; Hazelton Mercantile Co. v. Union Imp. Co., 143 Pa. St. 573.

[60]Coffman v. Campbell, 87 Ill. 98; Haines v. Nance, 52 Ill. App. 406.

[61]Cowan v. Hallack, 9 Colo. 572; Brabazon v. Seymour, 42 Conn. 551, where a conditional acceptance was held to become absolute on fulfillment of the condition.

[62]Hough v. Loring, 24 Pick. 254

§ 126. Same—Rights of Parties.

The holder has a right to a general unqualified acceptance by the drawee, and may refuse to take a qualified acceptance, and may treat the bill as dishonored by nonacceptance if he does not obtain an unqualified acceptance.[63]

Unless the drawer and indorsers have authorized or assented to the taking of a qualified acceptance, they are discharged from liability in case one is taken;[64] but, if a drawer or indorser is notified of a qualified acceptance, he must express his dissent to the holder within a reasonable time, or he will be deemed to have assented to such acceptance.[65]

§ 127. Acceptance of Bill Drawn in Sets.

Where a bill is made out in a set, the acceptance may be written on any part, but

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The acceptor cannot, after defeating the condition by his own acts, set it up as a defense to an action on the acceptance. Risley v. Smith, 64 N. Y. 576; Herter v. Goss & E. Co., 57 N. J. Law, 42.

[63]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 142); R. I. (§ 150); Md. (§ 161); N. Y. (§ 230); Wis. (§ 1680p).

Shakelford v. Hooker, 54 Miss. 716.

[64]Same sections of Negotiable Instruments Laws as last above cited.

[65]Same sections of Negotiable Instruments Laws as last above cited.

must be written on one part only.[66] But if the drawee accept more than one part, and they are thereafter negotiated to different holders in due course, the drawee is liable on each part accepted, as on a separate bill.[67] Where the first and second of a set are accepted, the drawer is liable on both, if he authorized or ratified the negotiation, and there was no collusion between the acceptor and the holders.[68]

§ 128. Certification of Check Equivalent to Acceptance.

The certification of a check by the bank on which it is drawn is equivalent to an acceptance.[69] By certifying a check on a deposit with it, a bank estops itself to deny the existence of the drawer, the genuineness of his signature, and the sufficiency of funds to pay the check, and promises to pay it on

[66]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 181); R. I. (§ 189); Md. (§ 200); N. Y. (§ 313); Wis. (§ 1681-38).

[67]Same sections of Negotiable Instruments Laws as last above cited.

See, also, Bank of Pittsburgh v. Neal, 22 How. 96.

[68]Wright v. McFall, 8 La. Ann. 120.

[69]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 187); R. I. (§ 195); Md. (§ 206); N. Y. (§ 323); Wis. (§ 1684-3).

demand.[70] The bank, by certifying a check, admits also the existence of the payee, and his then capacity to indorse the check.[71] But a bank is not liable on a check certified by it and payable to order, where it is cashed by another bank without the indorsement of the payee.[72]

The certification or acceptance of a check must now be in writing, but at common law an oral acceptance was sufficient.[73]

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[70]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 62); R. I. (§ 70); Md. (§ 81); N. Y. (§ 112); Wis. (§ 1677-2).

Marine Nat. Bank v. National City Bank, 59 N. Y. 67; Willets v. Phoenix Bank, 2 Duer, 121.

[71]Same sections of Negotiable Instruments Laws as last above cited.

But see First Nat. Bank v. Northwestern Nat. Bank, 152 Ill. 296.

[72]Goshen Nat. Bank v. Bingham, 118 N. Y. 349.

[73]Farmers' & Mechanics' Bank v. Dunbier, 32 Neb. 487.

An oral promise to pay by a drawee bank, in which the drawer has no funds, is within the statute of frauds. Morse v. Massachusetts Nat. Bank, Fed. Cas. No. 9,857. See, also, cases cited in note 8 of this chapter.

*A promise by telegraph to pay a check is a good certification. Henrietta Nat. Bank v. State Nat. Bank, 80 Tex. 648.

§ 129. Same—Certification Procured by Holder Discharges Drawer and Indorsers.

Where the drawer of a check procures its certification by the bank, he still remains liable;[74] but, where the holder obtains the certification, the drawer and all prior indorsers are discharged from liability.[75]

§ 130. Liability of Acceptor.

The drawee of a bill, who, as we have seen, is a mere stranger without liability before acceptance,[76] becomes on acceptance a principal debtor,[77] and engages to pay the bill ac-

[74]Minot v. Russ, 156 Mass. 458.

See, also, Rounds v. Smith, 42 Ill. 245; Brown v. Leckie, 43 Ill. 497; First Nat. Bank v. Whitman, 94 U. S. 343; Metropolitan Nat. Bank v. Jones (Ill.) 27 N. E. 533; Larsen v. Breene, 12 Colo. 480; Andrews v. German Nat. Bank, 9 Heisk. 211.

The drawer remains liable if the certification was made before delivery to the payee at the latter's request. Borne v. First Nat. Bank, 123 Ind. 78.

[75]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 188); R. I. (§ 196); Md. (§ 207); N. Y. (§ 324); Wis. (§ 1684-4).

First Nat. Bank of Jersey City v. Leach, 52 N. Y. 350; Thomson v. Bank of British North America, 82 N. Y. 1; Girard Bank v. Bank of Pennsylvania Tp., 39 Pa. St. 92.

[76]See ante, § 113.

[77]Capital City Ins. Co. v. Quinn, 73 Ala. 558; Parmelee v. Williams, 72 Ga. 42; Trimble v. City

cording to the tenor of the acceptance.[78] By the acceptance the acceptor also admits the existence of the drawer and the genuineness of his signature,[79] and his capacity[80] and au-

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Nat. Bank (Ky.) 15 S. W. 853; Green v. Goings, 7 Barb. 652. But see Canadian Bank of Commerce v. Coumbe, 47 Mich. 358, where it was held that a payee with notice that an acceptance was for accommodation cannot treat the acceptor as a principal debtor, but can treat him as a surety only. As a general rule, an accommodation acceptor is considered to be a surety as between himself and the drawer. Child v. Eureka Powder Works, 44 N. H. 354; In re Babcock, Fed. Cas. No. 696.

[78]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 62); R I. (§ 70); Md. (§ 81); N. Y. (§ 112); Wis. (§ 1677-2).

See cases cited in note 37, supra; Greene v. Duncan, 37 S. C. 239.

Damages recoverable on protest of foreign bill, see post, § 221.

[79]Same sections of Negotiable Instruments Laws as last above cited.

Price v. Neal, 3 Burrows, 1354; United States Bank v. Bank of Georgia, 10 Wheat. 333, 6 Lany. Ed. 334; White v. Continental Nat. Bank, 64 N. Y. 316; Holt v. Ross, 54 N. Y. 472; Star Fire Ins. Co. v. New Hampshire Nat. Bank, 60 N. H. 442.

[80]Same sections of Negotiable Instruments Laws as last above cited.

Acceptor of bill drawn by married woman is estopped to deny her competency. Cowton v. Wickersham, 54 Pa. St. 302.

thority[81] to draw the instrument; the existence of the payee and his then capacity to indorse;[82] and the existence of funds of the drawer in his hands.[83]

The acceptor is liable as well to a holder who took before the acceptance as to one who took after,[84] and is not discharged by failure of the holder to sue the drawer,[85] or by a refusal of the holder to allow the acceptor to take up the bill at maturity.[86]

The acceptor cannot show that his acceptance, absolute on its face, was in fact conditional;[87] nor can he show, as against the

[81]Same sections of Negotiable Instruments Laws as last above cited.

[82]Same sections of Negotiable Instruments Laws as last above cited.

[83]This provision is not in the Negotiable Instruments Laws, but is a general rule of law. See cases cited in note 19, supra, and Bradley v. McClellan, 3 Yerg. 301; Jordan v. Tarkington, 4 Dev. 357.

[84]Heuertematte v. Morris, 101 N. Y. 63; Iselin v. Chemical Nat. Bank, 16 Misc. Rep. 437; Credit Co. v. Howe Machine Co., 54 Conn. 357; Arpin v. Owens, 140 Mass. 144.

[85]Diversy v. Moor, 22 Ill. 331.

[86]Williams v. Theodore, 34 La. Ann. 89. But see First Nat. Bank v. Day, 64 Iowa, 118, where the acceptor was held to be discharged by an agreement not to sue him.

[87]Flournoy v. First Nat. Bank, 79 Ga. 810.

payee, a subsequent agreement between himself and the drawer modifying the terms of the acceptance.[88] If the drawee accepts unconditionally while in funds, he cannot show, as against the payee, that the drawer had previously assigned the funds, the payee having been ignorant of the assignment at the time he took the bill.[89]

If the drawee accepts, in his individual capacity, a bill drawn on him as agent or other representative, he becomes personally liable;[90] but an acceptance, in a representative capacity, of a bill drawn on the drawee as an individual, negatives an intent to become personally liable, and is not a sufficient acceptance of the bill.[91]

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[88]Mason v. Graff, 35 Pa. St. 448.

[89]Tucker v. Welsh, 17 Mass. 160, 9 Am. Dec. 137.

[90]Arnold v. Sprague, 34 Vt. 402; Taber v. Cannon, 8 Metc. 456; Lallerstedt v. Griffin, 29 Ga. 708.

[91]Walker v. Bank of State of New York, 13 Barb. 636.

Directors of a corporation whose charter does not give authority to accept bills of exchange are personally liable on their acceptances purporting to be for the company. West London Commercial Bank v. Kitson, L. R. 13 Q. B. Div. 360.

CHAPTER IX.

Acceptance of Bills of Exchange for Honor.*

§ 131. When Bill may be Accepted for Honor.
§ 132. Acceptance for Honor—How Made.
§ 133. When Deemed to be an Acceptance for Honor of the Drawer.
§ 134. Liability of Acceptor for Honor.
§ 135. Agreement of Acceptor for Honor.
§ 136. Maturity of Accepted Bill Payable after Sight.
§ 137. Protest of Bill Accepted for Honor.
§ 138. Presentment for Payment to Acceptor for Honor—How Made.
§ 139. When Delay in Making Presentment is Excused.
§ 140. Dishonor of Bill by Acceptor for Honor.

§ 131. When Bill may be Accepted for Honor.

Where a bill of exchange has been protested for dishonor by nonacceptance, 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

*As acceptances for honor are not common, and the Negotiable Instruments Laws exhaustively cover the rules relating to such acceptances, the text of such laws is used verbatim in this chapter.

the bill is drawn.[1] 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.[2]

§ 132. 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.[3]

§ 133. When Deemed to be an Acceptance for Honor of the Drawer.

Where an acceptance for honor does not expressly state for whose honor it is made, it

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[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 161); R. I. (§ 169); Md. (§ 180); N. Y. (§ 280); Wis. (§1681-18).

The word "for" between the words "person" and "whose" was omitted from the original draft of the law as adopted in New York, but was supplied by amendment. Laws 1898, c. 336, § 28.

An acceptance for honor may be made at the instance of, and under the guaranty of, the drawee. Konig v. Bayard, 1 Pet. 250.

[2]Same sections of Negotiable Instruments Laws as last above cited.

[3]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 162); R. I. (§ 170); Md. (§ 181); N. Y. (§ 281); Wis. (§ 1681-19).

is deemed to be an acceptance for the honor of the drawer.[4]

§ 134. 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.[5]

§ 135. 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 not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment, and notice of dishonor given to him.[6]

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[4]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 163); R. I. (§ 171); Md. (§ 182); N. Y. (§ 282); Wis. (§ 1681-20).

[5]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 164); R. I. (§ 172); Md. (§ 183); N. Y. (§ 283); Wis. (§ 1681-21).

An acceptor for the honor of the first indorser may require the holder to indorse the bill to such acceptor. Freeman v. Perot, Fed. Cas. No. 5,087.

[6]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 165); R. I. (§ 173); Md. (§ 184); N. Y. (§ 284); Wis. (§ 1681-22).

§ 136. Maturity of Accepted Bill Payable after Sight.

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance, and not from the date of the acceptance for honor.[7]

§ 137. Protest of Bill Accepted for Honor.

Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.[8]

§ 138. 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 nonpayment was made, it must be presented not later than the day following its maturity.[9]

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[7]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 166); R. I. (§ 174); Md. (§ 185); N. Y. (§ 285); Wis. (§ 1681-23).

[8]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 167); R. I. (§ 175); Md. (§ 186); N. Y. (§ 286); Wis. (§ 1681-24).

[9]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass.,

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 104.[10]

§ 139. When Delay in Making Presentment is Excused.

The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.[11]

N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 168, subd. 1); R. I. (§ 176, subd. 1); Md. (§ 187, subd. 1); N. Y. (§ 287, subd. 1); Wis. (§ 1681-25, subd. 1).

[10]Subdivision 2, same sections of Negotiable Instruments Laws as last above cited.

The section referred to in the text is the proper one for the Negotiable Instruments Laws of Colorado, Connecticut, District of Columbia, Florida, Massachusetts, North Carolina, North Dakota, Oregon, Tennessee, Utah, Virginia, and Washington, but should be section 112 of the Rhode Island law, section 122 of the Maryland law, section 175 of the New York law, and section 1678-34 of the Wisconsin law. The law as first adopted in New York has been amended so that the reference is now to section 175 of that law. Laws 1898, c. 336, § 18. The sections referred to are treated in section 240 of this work.

[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 169); R. I. (§ 177); Md. (§ 188); N. Y. (§ 288); Wis. (§ 1681-26).

The section referred to in the text is the proper one for the Negotiable Instruments Laws of Colo-

§ 140. Dishonor of Bill by Acceptor for Honor.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.[12]

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rado, Connecticut, District of Columbia, Massachusetts, North Carolina, North Dakota, Oregon, Tennessee, Utah, Virginia, and Washington, but should be section 89 of the Rhode Island law, section 100 of the Maryland law, section 141 of the New York law, and section 1678-11 of the Wisconsin law. The law as first adopted in New York has been amended so that the reference is now to section 141 of that law. Laws 1898, c. 336, § 19. The sections referred to are treated in section 199 of this work.

[12]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 170); R. I. (§ 178); Md. (§ 189); N. Y. (§ 289); Wis. (§ 1681-27).

CHAPTER X.

Indorsement and Transfer.

A. Indorsement and Transfer in General, §§ 141-168.
B. Liability of Indorser or Assignor, §§ 169-175.
C. Bona Fide Holders, §§ 176-189.

A. Indorsement and Transfer in General.

§ 141. "Negotiability" and "Assignability" Distinguished—General Scope of Terms.
§ 142. Same—Notice to Debtor.
§ 143. Same—Equities and Defenses Available.
§ 144. Same—Suit in Name of Transferee.
§ 145. Same—Presumption of Consideration.
§ 146. What Constitutes Negotiation — Indorsement or Delivery.
§ 147. Formal Requisites of Indorsement.
§ 148. Indorsement must be of Entire Instrument.
§ 149. When Person Deemed to be Indorser.
§ 150. Consideration for Indorsement or Transfer.
§ 151. Special Indorsement—Indorsee must Indorse.
§ 152. Blank Indorsement—Title Passes by Delivery.
§ 153. Same—Blank Indorsement Made Special.
§ 154. Restrictive Indorsement—Preventing Further Negotiation.
§ 155. Same—Creating Agency or Trust.
§ 156. Same—Rights of Indorsee.
§ 157. Qualified Indorsement — "Without Recourse."
§ 158. Conditional Indorsement—Rights of Subsequent Indorsees.

§ 159. Instruments Payable to Bearer, Specially Indorsed, Pass by Delivery.
§ 160. All Joint Payees or Indorsees must Indorse—Partners.
§ 161. Indorsement by Agent or in Representative Capacity.
§ 162. Same—Indorsement by or to Cashier or Other Fiscal Officer.
§ 163. Time and Place of Indorsement—Presumptions.
§ 164. Negotiability Continues until Restrictive Indorsement or Discharge.
§ 165. Negotiation of Bills Drawn in Sets.
§ 166. Striking out Indorsements.
§ 167. Transfer, without Indorsement, of Instrument Payable to Order.
§ 168. When prior party may Reissue and Negotiate Instrument.

§ 141. "Negotiability" and "Assignability" distinguished—General Scope of Terms.

The first great difference between these terms is one of scope; the term "assignability" being much the broader term. Generally speaking, any contract, whether executory[1] or executed,[2] is assignable, if it is not of a purely personal nature,[3] and is not based on

[1]La Rue v. Groezinger, 84 Cal. 281; Macomber v. Parker, 14 Pick. 497; Rochester Lantern Co. v. Stiles & Parker Press Co., 135 N. Y. 209.

[2]Byar's Garnishees v. Griffin, 31 Miss. 603; Smith v. Hubbard, 85 Tenn. 306.

[3]Wheeler v. Whann Co., 64 Fed. 664; Fitch v. Brockmon, 3 Cal. 348; Edison v. Babka, 111 Mich. 235; Nixon v. Zuricalday, 2 Misc. Rep. 541.

personal trust and confidence;[4] but the only contracts that are negotiable are those complying with the requirements set out in chapter IV of this work.

§ 142. Same—Notice to Debtor.

Another distinguishing feature is found in the fact that a complete binding transfer of a negotiable instrument may take place without notice to the debtor, while a transfer of a nonnegotiable chose in action is ineffectual as against the debtor without notice to him.[5]

§ 143. Same—Equities and Defenses Available.

Furthermore, an assignee of a nonnegotiable chose in action acquires only the title and rights of his assignor,[6] and takes at least

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[4]Arkansas Valley Smelting Co. v. Belden Min. Co., 127 U. S. 379. But see Rice v. Gibbs, 33 Neb. 460; Jenkins v. Columbia Land & Imp. Co., 13 Wash. 502.

[5]Adams v. Leavens, 20 Conn., 73; Merchants' & Mechanics' Bank v. Hewitt, 3 Iowa, 93, 66 Am. Dec. 49; Robinson v. Marshall, 11 Md. 251; Nichols v. Hooper, 61 Vt. 295. The weight of authority, however, seems to be to the contrary. See Jones v. Lowery Banking Co., 104 Ala. 252; Thayer v. Daniels, 113 Mass. 129; Allyn v. Allyn, 154 Mass. 570; Lewis v. Bush, 30 Minn. 244; Board of Education v. Duparquet, 50 N. J. Eq. 234; Richardson v. Ainsworth, 20 How. Prac. 521; Callanan v. Edwards, 32 N. Y. 483.

subject to all equities and defenses available between the original parties, and in many jurisdictions to all equities and defenses,[7] while a bona fide transferee of a negotiable instrument may acquire a better title than that of his transferror,[8] and takes free from all prior equities and defenses,[9] except such defenses as forgery[10] and want of capacity in the maker or drawer,[11] which go to the very essence of the contract. The rights of bona fide holders are considered later in this chapter.

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[6]Beecher v. Buckingham, 18 Conn. 110; Jack v. Davis, 29 Ga. 219; Shufeldt v. Gillilan, 124 Ill. 460; Wagner v. Winter, 122 Ind. 57; Davis v. Bechstein, 69 N. Y. 440; Mulligan v. Smith (Colo. App.) 57 Pac. 731; Seligman v. Ten Eyck's Estate, 49 Mich. 104.

[7]Commercial Nat. Bank v. Burch, 141 Ill. 519; Stewart v. Wilson, 5 Dana (Ky.) 50; Hampson v. Owens, 55 Md. 583; Ayres v. Campbell, 9 Iowa, 213; Blydenburgh v. Thayer, 1 Abb. Dec. 156, 34 How. Prac. 88.

[8]United States v. Read, 2 Cranch. C. C. 159; Sinclair v. Piercy, 5 J. J. Marsh, 63; Wheeler v. Guild, 20 Pick. 545, 32 Am. Dec. 231; Commercial Nat. Bank v. Burch, supra.

[9]See post, § 184.

[10]Mersman v. Werges, 3 Fed. 378; Camp v. Carpenter, 52 Mich. 375; Butler v. Carns, 37 Wis. 61.

See, also, post, chapter XIV.

[11]See post, § 184.

§ 144. Same—Suit in Name of Transferee.

Closely related to the last-named distinction is another which existed when an assignee of a nonnegotiable chose in action could not sue at law in his own name, but could sue only in the name of his assignor.[12] This rule has long since been abolished, and now an assignee of a nonnegotiable, as well as the transferee of a negotiable, instrument, may sue at law or in equity in his own name.[13]

The negotiable instruments laws give this right to the "holder,"[14] who is defined to be "the payee or indorsee of a bill or note, who

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[12]Pollard v. Somerset Mut. Fire Ins. Co., 42 Me. 221; Leighton v. Preston, 9 Gill. 201; Amherst Academy v. Cowls, 6 Pick. 427.

[13]Fuller v. Arnold, 98 Cal. 522; Young v. Kelly, 3 App. Cas. D. C. 296; City of Carlyle v. Carlyle Water, Light & Power Co., 140 Ill. 445.

[14]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 51); R. I. (§ 59); Md. (§ 70); N. Y. (§ 90); Wis. (§ 1676-21).

Under the Negotiable Instruments Laws, the right to sue includes the right to interpose a set-off or counter claim. Neg. Inst. Laws N. Y., R. I. (§ 2); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 191); Wis. (§ 1675); Conn., Fla., D. C., Tenn. (art. 1, sections not numbered).

is in possession of it, or the bearer thereof."[15] As was said in a well-considered case on this point: "Any one in possession of a note indorsed in blank is prima facie the holder, and may sue upon it, until his right is disproved. It is no defense to an action on such paper that the property in it is in another, and not in plaintiff. All that is required of the plaintiff, in the first instance, is to present the note; its possession being prima facie evidence of his ownership of the note and his right to sue. It is only after the defendant has adduced evidence that the note was obtained by undue means, such as fraud, duress, theft, or the like, that the plaintiff is called upon to offer other facts in support of his title."[16]

§ 145. Same—Presumption of Consideration.

The last important distinction between the terms "negotiability" and "assignability" is that a consideration for a negotiable instrument is presumed, while the consideration of a nonnegotiable instrument must be proved. These questions are treated at some length in chapter V. of this work.

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[15]Same sections of Negotiable Instruments Laws as last above cited.

[16]Munford v. Weaver, 18 R. I. 801.

§ 146. What Constitutes Negotiation — Indorsement or Delivery.

An instrument is said to be negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder thereof.[17]. Though instruments payable to bearer [18] and those payable to order[19] are each negotiable, the former are negotiated by delivery,[20] while the latter are negotiated by indorsement of the holder completed by delivery.[21]

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[17]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 30); R. I. (§ 38); Md. (§ 49); N. Y. (§ 60); Wis. (§ 1676).

[18]See ante, § 48.

[19]See ante, § 48.

[20]Same sections of Negotiable Instruments Laws as last above cited.

[21]Same sections of Negotiable Instruments Laws as last above cited.

A delivery is necessary to complete a transfer by indorsement. Spencer v. Carstarphen, 15 Colo. 445; Middleton v. Griffith, 57 N. J. Law, 442; Howe v. Ould, 28 Grat. 1; Clark v. Sigourney, 17 Conn. 511, where the payee died after having placed his name on the back of a note, but before delivery to the intended transferee, and it was held that there was no indorsement.

Under the definition of "indorsement," as given in the Negotiable Instruments Laws, a delivery is essential to a complete indorsement. Neg. Inst. Laws N. Y., R. I. (§ 2); Md. (§ 14); Or. (§ 190);

§ 147. Formal Requisites of Indorsement.

An indorsement must be written on the instrument itself or on a paper attached thereto.[22] An indorsement is usually and properly written on the back of the instrument,[23] but, if intended as an indorsement, may be written on any part of the instrument.[24] The propriety of an indorsement on an attached paper or "allonge" is well established.[25] The

Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 191); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

[22]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 31); R. I. (§ 39); Md. (§ 50); N. Y. (§ 61); Wis. (§ 1671-1).

It must be in writing. Third Nat. Bank v. Clark, 23 Minn. 263.

[23]Marion & M. Gravel Road Co. v. Kessinger, 66 Ind. 549.

[24]Richards v. Warring, 39 Barb. 42; Haines v. Dubois, 30 N. J. Law, 259; Arnot's Adm'r v. Symonds, 85 Pa. St. 99; Shain v. Sullivan, 106 Cal. 208.

[25]Fountain v. Bookstaver, 141 Ill. 461; Folger v. Chase, 18 Pick. 63; Crosby v. Roub, 16 Wis. 616.

It is not necessary that it be physically impossible to place the indorsement on the instrument itself in order to sustain one placed on an allonge. Crosby v. Roub, supra.

The indorsement cannot be made on a separate unattached paper. Traders' Deposit Bank v. Chiles, 14 Ky. Law Rep. 617. A mortgage not attached to the note is not an allonge. Doll v. Hol-

signature of the indorser without other words is a sufficient indorsement,[26] and so is such signature coupled with a written guaranty of payment and a waiver of demand and notice.[27]

Where the name of the payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.[28]

§ 148. Indorsement must be of Entire Instrument.

An indorsement must be of the entire in-

lenbeck, 19 Neb. 639. But see Crosby v. Roub, supra, where it was held that a recital in a railroad mortgage bond that the railroad company transferred the note and mortgage to a certain person was a sufficient indorsement of the note to such person.

[26]Same sections of Negotiable Instruments Laws as last above cited.

This signature may be in pencil. Brown v. Butchers' & Drovers' Bank, 6 Hill, 443; Closson v. Stearns, 4 Vt. 11; Cooper v. Bailey, 52 Me. 230.

The characters "1, 2, 8" in pencil form a sufficient indorsement. Brown v. Butchers' & Drovers' Bank, supra. See, also, Finch v. DeForest, 16 Conn. 445.

[27]Buck v. Davenport Sav. Bank, 29 Neb. 407; Phelps v. Church, 65 Mich. 231.

[28]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 43); R. I. (§ 51); Md. (§ 62); N. Y. (§ 73); Wis. (§ 1675-2).

strument; and one which purports to transfer a part only of the amount payable, or to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument.[29] The same rule applies to an attempted assignment of part.[30] But an instrument which has been paid in part may be indorsed as to the residue.[31]

§ 149. When Person Deemed to be Indorser.

One placing his signature on an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he

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[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 32); R. I. (§ 40); Md. (§ 51); N. Y. (§ 62); Wis. (§ 1675-2).

That an indorsement of part does not pass title, see Frank v. Kaigler, 36 Tex. 305; Bibb v. Skinner, 2 Bibb, 57; Hughes v. Kiddell, 2 Bay, 324.

Heretofore, an indorsement to two persons transferred a half interest to each. Herring v. Woodhull, 29 Ill. 92; Flint v. Flint, 6 Allen, 34.

[30]Martin v. Hayes, 1 Busb. 423; Lindsay v. Price, 33 Tex. 280; Douglass v. Wilkeson, 6 Wend. 637. But see Cole v. Tuck, 108 Ala. 227, where it was held that a payee who indorses for a limited amount cannot be held liable for attorneys' fees in addition to such amount.

[31]Same sections of Negotiable Instruments Laws as last above cited.

See Barnett v. Spencer, 4 Blackf. 206; Bledsoe v. Fisher, 2 Bibb, 471.

clearly indicates by appropriate words his intention to be bound in some other capacity.[32]

§ 150. Consideration for Indorsement or Transfer.

The rule that a consideration for a negotiable instrument is presumed[33] extends to a transfer of the instrument, and a consideration for an indorsement is presumed.[34] A consideration for an assignment of a negotiable instrument is also presumed.[35]

Since an antecedent or pre-existing debt constitutes value within the meaning of the negotiable instrument laws,[36] such a debt is a sufficient consideration for an indorsement or an assignment of a negotiable instrument.[37]

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[32]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 63); R. I. (§ 71); Md. (§ 82); N. Y. (§ 113); Wis. (§ 1677-3).

Liability of irregular indorser, see post. § 170.

[33]See ante, § 87.

[34]Gwyn v. Lee, 1 Md. Ch. 445; Connerly v. Planters' & Merchants' Ins. Co., 66 Ala. 432; Pratt v. Adams, 7 Paige, 615; Owens v. Snell, 29 Or. 483. See, further, on question of consideration for indorsement, Bucklen v. Johnson, 19 Ind. App. 406; Frederick v. Winans, 51 Wis. 472.

[35]Grimes v. McAninch, 9 Ind. 278.

[36]See ante, § 88.

[37]See Rogers v. Gallagher, 49 Ill. 182, 95 Am. Dec. 583.

§ 151. Special Indorsement—Indorsee must Indorse.

An indorsement may be special;[38] that is, it may specify the person to whom or to whose order the instrument is to be payable.[39] A special indorsement, as thus defined, is the same as what is commonly called an indorsement in full.[40]

The indorsement of the person to whom the instrument is specially indorsed is necessary to the further negotiation of the paper.[41]

§ 152. Blank Indorsement—Title Passes by Delivery.

An indorsement may be in blank;[42] that

Consideration as affecting bona fide holders, see post, § 179.

[38]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 33); R. I. (§ 41); Md. (§ 52); N. Y. (§ 63); Wis. (§ 1676-3).

[39]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 34); R. I. (§ 42); Md. (§ 53); N. Y. (§ 64); Wis. (§ 1676-4).

As to what is a special indorsement, see Rice v. Stearns, 3 Mass. 225; Reamer v. Bell, 79 Pa. St. 292.

[40]Kilpatrick v. Heaton, 3 Brev. 92.

[41]Same sections of Negotiable Instruments Laws as last above cited.

Grimes v. Piersol, 25 Ind. 246.

[42]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 33);

is, it need not specify an indorsee.[43]. Instruments so indorsed are payable to bearer and pass by delivery.[44]

§ 153. Same—Blank Indorsement Made Special.

In some jurisdictions, where the first indorsement is in blank, the instrument is transferable by delivery, though there is a subsequent special or full indorsement;[45] but the rule of the negotiable instruments laws is that the holder may convert a blank indorsement into a special or full indorsement by writing over the signature of the indorser any contract consistent with the character of the indorsement.[46]

R. I. (§ 41); Md. (§ 52); N. Y. (§ 63); Wis. (§ 1676-3).

[43]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 34); R. I. (§ 42); Md. (§ 53); N. Y. (§ 64); Wis. (§ 1676-4).

[44]Same sections of Negotiable Instruments Laws as last above cited.

Parol evidence is not admissible to show that one who indorsed in blank was not to be liable as indorser. Charles v. Denis, 42 Wis. 56.

[45]Mitchell v. Fuller, 15 Pa. St. 268; Watervliet Bank v. White, 1 Denio, 608; Habersham v. Lehman, 63 Ga. 380.

[46]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 35); R. I. (§ 43); Md. (§ 54); N. Y. (§ 65); Wis. (§ 1676-5).

This rule authorizes the holder to fill up a blank indorsement with a special indorsement to himself,[47] and is applicable to an indorsement in blank without recourse.[48] It does not, however, authorize the holder to insert over the signature of the indorser, without his knowledge or consent, a special contract of guaranty.[49] Nor does it authorize the holder to write in a consideration for the indorsement,[50] or a waiver of demand and notice,[51] or anything that will change the relation of the parties[52] or the nature of the indorsement.[53]

As to right of holder to fill blank indorsement, see Condon v. Pearce, 43 Md. 83.

[47]Lucas v. Byrne, 35 Md. 485; Lyon v. Ewings, 17 Wis. 63; Metcalf v. Yeaton, 51 Me. 198; Illinois Conference v. Plagge, 177 Ill. 431.

[48]Lyon v. Ewings, supra. But see Catlin v. Jones, 1 Bin. 130.

[49]Belden v. Hann, 61 Iowa, 42, where the guarantee was held to be void, and the indorser still entitled to notice of dishonor and protest.

[50]Hood v. Robbins, 98 Ala. 484.

[51]Catlin v. Jones, 1 Pin. 130; Kimbro v. Lamb. 4 Hump. 95, 40 Am. Dec. 628.

[52]Comparree v. Brockway, 11 Hump. 355; Morrison v. Smith, 13 Mo. 234, 53 Am. Dec. 145.

[53]Christian County Bank v. Goode, 44 Mo. App. 129.

§ 154. Restrictive Indorsement—Preventing Further Negotiation.

An indorsement may also be restrictive.[54] It is restrictive if it prevents further negotiation of the instrument.[55] Thus, an indorsement to a named person "only" is restrictive,[56] and so is one to pay the money for any particular purpose.[57] But the mere absence of the words "order" or "bearer," or other words implying power to negotiate does not make an indorsement restrictive.[58]

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[54]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 33); R. I. (§ 41); Md. (§ 52); N. Y. (§ 63); Wis. (§ 1676-3).

[55]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 36); R. I. (§ 44); Md. (§ 55); N. Y. (§ 66); Wis. (§ 1676-6).

[56]Power v. Finnie, 4 Call, 411.

[57]White v. National Bank, 102 U. S. 658, where the indorsement "Pay to A, or order, for account of B," was held to make A merely the agent of B for the collection of the instrument. See, also, Hook v. Pratt, 78 N. Y. 371.

Indorsement for deposit, see Ditch v. Western Nat. Bank, 79 Md. 192, 23 L. R. A. 164; Johnson v. Donnell, 90 N. Y. 1; Freeman v. Exchange Bank, 87 Ga. 45.

Indorsements to "A, or order, for account B," see People's Bank v. Jefferson County Sav. Bank, 106 Ala. 524; Blaine v. Bourne, 11 R. I. 119; Armour Bros. Banking Co. v. Riley County Bank, 30 Kan. 163.

§ 155. Same—Creating Agency or Trust.

An indorsement is also restrictive if it makes the indorsee the agent of the indorser.[59] Under this rule fall indorsements for collection,[60] and it should be remembered, in this connection, that a bank or other agent for collection, on indorsing the instrument, becomes liable in all respects as a general indorser.[61]

An indorsement is also restrictive if it

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[58]Subdivision 3 of same sections of Negotiable Instruments Laws as last above cited.

[59]Subdivision 2 of same sections of Negotiable Instruments Laws as last above cited.

[60]Ward v. Smith, 7 Wall. 447; Commercial Bank v. Armstrong, 148 U. S. 50; Claflin v. Wilson, 51 Iowa, 15; Merchants' Nat. Bank v. Hanson, 33 Minn. 40; National Butchers' & Drovers' Bank v. Hubbell, 117 N. Y. 384; Bowman v. First Nat. Bank, 9 Wash. 614; Mechanics' Bank v. Valley Packing Co., 70 Mo. 643; Blakeslee v. Hewett, 76 Wis. 341; Peoples' Bank v. Jefferson County Sav. Bank, supra, where the effect of canceling a restrictive indorsement for collection, and placing an absolute indorsement on the paper, is considered.

An unrestricted indorsement, intended for collection, does not render the indorser liable to a subsequent holder under indorsements "for collection." Freeman's Nat. Bank v. National Tube-Works, 151 Mass. 413, 8 L. R. A. 42.

[61]See post, § 169.

vests the title in the indorsee in trust for, or to the use of, some other person.[62]

§ 156. Same—Rights of Indorsee.

Under a restrictive indorsement the indorsee may receive payment of the instrument,[63] bring any action the indorser could bring,[64] and transfer his rights as such in-

[62]Subdivision 3 of same sections of Negotiable Instruments Laws as last above cited.

Hook v. Pratt, 78 N. Y. 371, where the indorsement was to "pay to the order of Mrs. Mary Hook * * * for the benefit of her son Charlie."

[63]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 37, subd. 1); R. I. (§ 45, subd. 1); Md. (§ 56, subd. 1); N. Y. (§ 67, subd. 1); Wis. (§ 1676-7, subd. 1).

Payment to indorsee for collection is good. King v. Fleece, 7 Heisk. 273; Padfield v. Green, 85 Ill. 529.

[64]Subdivision 2 of same sections of Negotiable Instruments Laws as last above cited.

An indorsee for collection may sue in his own name. McCallum v. Driggs, 35 Fla. 277; Wilson v. Tolson, 79 Ga. 137; Moore v. Hall, 48 Mich. 143; Roberts v. Parrish, 17 Or. 583; Cross v. Brown, 19 R. I. 220; King v. Fleece, supra. But see Black v. Enterprise Ins. Co., 33 Ind. 223; Rock County Nat. Bank v. Hollister, 21 Minn. 385, where such indorsee was held not to be the "real party in interest." In Minnesota Thresher Manuf'g Co. v. Heipler, 49 Minn. 395, it was held that the payee of a draft was the real party in interest, though there was an agreement between him and the drawer that he took it for collection. See, also, Eaton v. Alger, 47 N. Y. 345.

dorsee where the form of the indorsement authorizes him to do so.[65] But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.[66]

§ 157. Qualified Indorsement — "Without Recourse."

An indorsement may be qualified.[67] An indorsement "without recourse,"[68] or in words of similar import,[69] is qualified.

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[65]Subdivision 3 of same sections of Negotiable Instruments Laws as last above cited.

See Brook v. Vannest, 58 N. J. Law, 162.

[66]Same subdivisions and sections of Negotiable Instruments Laws as last above cited.

Leary v. Blanchard, 48 Me. 269.

Rights under indorsement for collection, see Bank of Metropolis v. First Nat. Bank, 19 Fed. 301; Central Railroad v. First Nat. Bank of Lynchburg, 73 Ga. 383; Claflin v. Wilson, 51 Iowa, 15.

[67]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 33); R. I. (§ 41); Md. (§ 52); N. Y. (§ 63); Wis. (§ 1676-3).

[68]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 38); R. I. (§ 46); Md. (§ 57); N. Y. (§ 68); Wis. (§ 1676-8).

Doom v. Sherwin, 20 Colo. 234; Cross v. Hollister, 47 Kan. 652; Johnson v. Williard, 83 Wis. 420; President of Fitchburg Bank v. Greenwood, 2 Allen, 434; Hayden v. Strong, 23 Hun, 527.

[69]Same sections of Negotiable Instruments Laws as last above cited.

See Markey v. Corey, 108 Mich. 184.

A qualified indorsement makes the indorser a mere assignor of the title to the instrument,[70] but does not impair its negotiability.[71]

In the absence of special contract, the obligations of a transferrer of negotiable paper by an indorsement "without recourse" are "substantially the same as those of a transferrer of such paper when payable to bearer by delivery merely. It is a clear and well-settled doctrine that such a transfer does not make the party liable as indorser. When he indorses 'without recourse' * * * he ceases to be a party to the paper. He cannot be made liable as a party to or upon the instrument."[72] He still remains liable, however, on the implied warranties which accompany a transfer of bearer paper by delivery.[73]

[70] Same sections of Negotiable Instruments Laws as last above cited.

Brotherton v. Street, 124 Ind. 599.

[71] Same sections of Negotiable Instruments Laws as last above cited.

[72] Watson v. Chesire, 18 Iowa, 202, 87 Am. Dec. 382. See, also, Rice v. Stearns, 3 Mass. 225; Otis v. Cullum, 92 U. S. 447; Hannum v. Richardson, 48 Vt. 508; Drennan v. Bunn, 124 Ill. 175; Palmer v. Courtney, 32 Neb. 773.

[73] Watson v. Chesire, supra.

For implied warranties, where negotiation is by delivery or qualified indorsement, see post, § 171.

As between successive indorsers it may be shown by parol to which the words "without recourse" apply.[74]

§ 158. Conditional Indorsement—Rights of Subsequent Indorsees.

An indorsement may also be conditional.[75] The person required to pay may disregard the condition, and pay to the indorsee or his transferee, whether the condition has been performed or not.[76] 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.[77]

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[74]Corbett v. Fetzer, 47 Neb. 269.

[75]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 33); R. I. (§ 41); Md. (§ 52); N. Y. (§ 63); Wis. (§ 1676-3).

[76]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 39); R. I. (§ 47); Md. (§ 58); N. Y. (§ 69); Wis. (§ 1676-9).

This changes the old rule as it existed in England. See Robertson v. Kensington, 4 Taunt. 30, where the indorsement was to pay C., or order, "upon my name appearing in the Gazette as ensign in any regiment of the line between the 1st and 64th, if within two months from date," and it was held that a payment to a subsequent indorsee was made at the risk of the condition being unfulfilled.

§ 159. Instruments Payable to Bearer, Specially Indorsed, Pass by Delivery.

Where an instrument payable to bearer is specially indorsed, it may nevertheless be negotiated by delivery.[78] The person so specially indorsing is liable as indorser to such holders only as make title through his indorsement.[79]

§ 160. All Joint Payees or Indorsees must Indorse—Partners.

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.[80] But title will pass where one of

[77]Same sections of Negotiable Instruments Laws as last above cited.

[78]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 40); R. I. (§ 48); Md. (§ 59); N. Y. (§ 70); Wis. (§ 1676-10).

Such is the rule of the law merchant also. Habersham v. Lehman, 63 Ga. 380; Johnson v. Mitchell, 50 Tex. 212; Watervliet Bank v. White, 1 Denio, 608; Mitchell v. Fuller, 15 Pa. St. 268.

[79]Same sections of Negotiable Instruments Laws as last above cited.

[80]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 41); R. I. (§ 49); Md. (§ 60); N. Y. (§ 71); Wis. (§ 1676-11).

Ryhiner v. Feickert, 92 Ill. 305; Foster v. Hill, 36 N. H. 526.

two joint indorsees indorses to the other,[81] or where one of two joint payees indorses to a stranger, who in turn indorses to the other payee.[82]

One partner may indorse for the firm,[83] and all the partners may indorse to one of their number.[84]

§ 161. Indorsement by Agent or in Representative Capacity.

An indorsement may be made by an agent,[85] and the authority of the agent may be in writing or by parol.[86] An authority to indorse, given by the payee of an order while competent, may be exercised by the person to whom it was given, after the payee has become incompetent.[87] Lawful possession of a negotiable instrument,[88] or possession with

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[81] Logue v. Smith, Wright, 10.

[82] See McLeod v. Snyder, 110 Mo. 298.

[83] Childress v. Emory, 8 Wheat. 642.

[84] Merrill v. Guthrie, 1 Pin. 435; Manegold v. Dulau, 30 Wis. 541.

[85] Northampton Bank v. Pepoon, 11 Mass. 288; Fountain v. Bookstaver, 141 Ill. 461; Bettis v. Bristol, 56 Iowa, 41.

[86] Fountain v. Bookstaver, supra; Bettis v. Bristol, supra; Cooper v. Bailey, 52 Me. 230. See, also, Second Nat. Bank v. Martin, 82 Iowa, 442; First Nat. Bank v. Loyhed, 28 Minn. 396.

[87] Mills v. American Express Co., 98 Mich. 154.

[88] Andrews v. Bond, 16 Barb. 633.

authority to collect,[89] confers a right to indorse.

An unauthorized indorsement may be ratified,[90] either by a failure to repudiate the indorsement after full knowledge of the facts,[91] or by receiving the proceeds of the instruments;[92] but a mere acquiescence in an unauthorized sale of a note given to an agent for collection, without knowledge of the wrongful indorsement, does not amount to a ratification.[93]

Where an instrument is so payable or indorsed that the payee or indorsee is under obligation to indorse in a representative capacity, he may indorse in such terms as will negative personal liability.[94]

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[89] Willison v. Smith, 52 Mo. App. 133.

[90] Lysle v. Beals, 27 La. Ann. 274.

[91] Mayer v. Old, 57 Mo. App. 639.

[92] Third Nat. Bank v. Butler Colliery Co., 59 Hun, 627. But see Claflin v. Wilson, 51 Iowa, 15.

[93] Sherrill v. Weisiger Clothing Co., 114 N. C. 436.

[94] Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 44); R. I. (§ 52); Md. (§ 63); N. Y. (§ 74); Wis. (§ 1676-14).

Davis v. Peck, 54 Barb. 425.

Descripto personae in indorsement, see Speelman v. Culbertson, 15 Ind. 441; Powell v. Morrison, 35 Mo. 244.

§ 162. Same—Indorsement by or to Cashier or Other Fiscal Officer.

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 such bank or corporation, and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of such officer.[95] This rule enlarges the previously existing rule that paper payable or indorsed to a cashier is payable to the bank,[96] by making paper payable or indorsed to "other fiscal officers" payable to the bank. An indorsement of the name of a corporation, made by a duly-au-

A bank is bound by an indorsement, "Pay to order of A. J. A. Marine Bank by J. S. H., Pres't." Aiken v. Marine Bank, 16 Wis. 713. And a bank of which A. B. is cashier is bound by an indorsement, "A. B., Cas." Houghton v. First Nat. Bank, 26 Wis. 663.

[95]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 42); R. I. (§ 50); Md. (§ 61); N. Y. (§ 72); Wis. (§ 1676-12).

[96]Watervliet Bank v. White, 1 Denio, 608; First Nat. Bank v. Hall, 44 N. Y. 395; Farmers' & Mechanics' Bank v. Day, 13 Vt. 36. See, also, Dupont v. Mt. Pleasant Ferry Co., 9 Rich. Law, 255 (indorsement to president of corporation); Sayers v. First Nat. Bank, 89 Ind. 230 (indorsement to trustee of University).

thorized officer, is the indorsement of the corporation, though the agency does not appear.[97]

§ 163. Time and Place of Indorsement—Presumptions.

Every indorsement is deemed prima facie to have been affected before the instrument was overdue,[98] except, of course, where the indorsement bears date later than the time of maturity of the instrument. So, also, unless the contrary appears, every indorsement is presumed to have been made at the place where the instrument is dated.[99]

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[97]Second Nat. Bank v. Martin, 82 Iowa, 442.

[98]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 45); R. I. (§ 53); Md. (§ 64); N. Y. (§ 75); Wis. (§ 1676-15).

An undated indorsement by a third person will be presumed to have been made at the inception of the instrument. Grier v. Cable, 45 Ill. App. 405; Way v. Butterworth, 108 Mass. 509; Bradford v. Prescott, 85 Me. 482; Mason v. Noonan, 7 Wis. 510.

Variance between pleading and proof as to time of indorsement, see Canfield v. McIlwaine, 32 Md. 94; Little v. Blunt, 16 Pick. 359; Davis v. Miller, 14 Grat. 1.

[99]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 46); R. I. (§ 54); Md. (§ 65); N. Y. (§ 76); Wis. (§ 1676-16).

§ 164. Negotiability Continues until Restrictive Indorsement or Discharge.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or has been discharged by payment or otherwise.[100]

§ 165. Negotiation of Bills Drawn in Sets.

Ordinarily the indorsement or transfer of one part of a bill drawn in a set is a transfer of the whole set,[101] but, as between holders in due course of two or more parts of a set, the one whose title first accrues is the owner of the bill,[102] But this rule does not affect the rights of a person who in due course accepts or pays the part first presented to him.[103]

A holder who indorses two or more parts of a set to different persons is liable on each part, and, generally, every indorser subsequent to him is liable on the part he has

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[100]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 47); R. I. (§ 55); Md. (§ 66); N. Y. (§ 77); Wis. (§1676-17).

[101]Walsh v. Blatchley, 6 Wis. 413, 422.

[102]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 179); R. I. (§ 187); Md. (§ 198); N. Y. (§311); Wis. (§1681-36).

[103]Same sections of Negotiable Instruments Laws as last above cited.

himself indorsed, as if such part were a separate bill.[104]

§ 166. Striking out Indorsements.

It is a general rule that an indorser may strike out his own indorsement if the instrument is returned to him,[105] or indorsements subsequent to his own if he again becomes the holder.[106]

The holder may also, at any time, strike out any indorsement which is not necessary to his title.[107] An indorser whose indorsement

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[104]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 180); R. I. (§ 188); Md. (§ 199); N. Y. (§ 312); Wis. (§ 1681-37).

[105]Sweet v. Garwood, 88 Ill. 407; Chautauqua County Bank v. Davis, 21 Wend. 584. See, also, French v. Jarvis, 29 Conn. 347.

[106]Giddings v. McCumber, 51 Ill. App. 373; Alcock v. McKain, 12 La. Ann. 614; Ritchie v. Moore, 5 Munf. 388. See, also, Bank of U. S. v. United States, 2 How. 711.

[107]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 48); R. I. (§ 56); Md. (§ 67); N. Y. (§ 78); Wis. (§1676-18).

A blank indorsement may be struck out at the trial. Parks v. Brown, 16 Ill. 454; Hunter v. Hempstead, 1 Mo. 67. Especially if such indorsement is not declared on in the petition. Merg v. Kaiser, 20 La. Ann. 377; Hill v. Buddington, 8 Rob. 119.

is struck out, and all indorsers subsequent to him, are thereby discharged.[108]

§ 167. Transfer, without Indorsement, of Instrument Payable to Order.

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 transferror had therein, and the transferee acquires in addition the right to have the indorsement of the transferror.[109] But in order to determine whether

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But in a suit by a holder against an indorser, plaintiff will not be allowed to strike out the name of any indorser prior to defendant. Curry v. Bank of Mobile, 8 Port. 360.

[108]Same sections of Negotiable Instruments Laws as last above cited.

[109]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 49); R. I. (§ 57); Md. (§ 68); N. Y. (§ 79); Wis. (§ 1676-19).

An assignment without indorsement does not cut off equities. Terry v. Allis, 16 Wis. 504; Goshen Nat. Bank v. Bingham, 118 N. Y. 349.

A transferee by delivery without indorsement takes only an equitable interest. Freeman v. Perry, 22 Conn. 617; Pavey v. Stauffer, 45 La. Ann. 353, 19 L. R. A. 716; Jenkins v. Wilkinson, 113 N. C. 532.

There is an implied warranty that an instrument has not been paid on a sale thereof for its face value. French v. Turner, 15 Ind. 59; Daskam

the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.[110]

Where the indorsement was omitted by mistake, or there was an agreement to indorse, made at the time of the transfer, the indorsement, when made, relates back to the time of the transfer.[111]

§ 168. When Prior Party may Reissue and Negotiate Instrument.

If an instrument is negotiated back to a prior party, such party may, subject to the other provisions of the negotiable instruments laws, reissue and further negotiate the same, but cannot enforce payment thereof against any intervening party to whom he was personally liable.[112]

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v. Ullman, 74 Wis. 474. See, also, Meriden Nat. Bank v. Gallaudet, 120 N. Y. 298.

See, also, Whistler v. Forster, 14 C. B. (N. S.) 248, Bigelow Lead. Cas. 73.

[110]Same sections of Negotiable Instruments Laws as last above cited.

[111]Neg. Inst. Laws Wis. (§ 1676-19).

This provision is not found in the Negotiable Instruments Laws as adopted in the other states, but the rule stated would probably be enforced.

[112]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 50); R. I. (§ 58); Md. (§ 69); N. Y. (§ 80); Wis. (§ 1676-20).

B. Liability of Indorser or Assignor.

§ 169. General Indorser.
§ 170. Irregular Indorser—Indorsement in Blank before Delivery.
§ 171. Warranties Where Negotiation is by Delivery or Qualified Indorsement.
§ 172. Same—Negotiation by Agent or Broker.
§ 173. Indorser of Paper Negotiable by Delivery.
§ 174. Consecutive Indorsers.
§ 175. Same—Joint Payees or Indorsers.

§ 169. General Indorser.

An indorser who indorses without qualification warrants to all subsequent holders in due course that the instrument is genuine and in all respects what it purports to be;[113] that

See Scott v. First Nat. Bank,71 Ind. 445; Montgomery & E. R. Co. v. Trebles, 44 Ala. 255.

[113]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 66); R. I. (§ 74); Md. (§ 85); N. Y. (§ 116); Wis. (§ 1677-6).

Crosby v. Wright, 70 Minn. 251. The indorser warrants the genuineness of the signature of the maker. Brown v. Ames, 59 Minn. 476; Condon v. Pearce, 43 Md. 83; First Nat. Bank v. Northwestern Nat. Bank, 40 Ill. App. 640; Turnbull v. Bowyer, 40 N. Y. 456.

An indorser of a forged paper is liable to a bona fide holder. Birmingham Nat. Bank v. Bradley, 103 Ala. 109; Lennon v. Grauer, 2 App. Div. 513. See, also, National Bank of North America v. Bangs, 106 Mass. 441; Turnbull v. Bowyer, supra. The federal courts hold that the indorsement of a collecting bank does not imply a warranty that

he has a good title to it;[114] that all prior parties had capacity to contract;[115] that the instrument is, at the time of his indorsement valid and subsisting;[116] and engages that on

a prior indorsement is genuine. United States v. American Exch. Nat. Bank, 70 Fed. 232.

Liability of accommodation indorser, see post, § 179.

Liability of indorser without recourse, see ante, § 157.

[114]Same sections of Negotiable Instruments Laws as last above cited.

Furgerson v. Staples, 82 Me. 159.

[115]Same sections of Negotiable Instruments Laws as last above cited.

Warranty as to capacity of maker: Dalrymple v. Hillenbrand, 62 N. Y. 5; Archer v. Shea, 14 Hun, 493; Kilgore v. Bulkley, 14 Conn. 362.

Warranty as to capacity of prior indorser: Prescott Bank v. Caverly, 7 Gray, 217; Ogden v. Blydenburgh, 1 Hilt. 182.

Under the negotiable instrument laws the indorsement or assignment of a negotiable instrument by a corporation or an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon as indorsee or otherwise. Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 22); R. I. (§ 30); Md., N. Y. (§ 41); Wis. (§ 1675-22). To same effect see, as to indorsement or transfer by infant, Roach v. Woodall, 91 Tenn. 206; Semple v. Morrison, 7 T. B. Mon. 298; and as to indorsement or transfer by corporation, Brown v. Donnell, 49 Me. 421; Clark v. Farrington, 11 Wis. 321.

due presentment it shall be accepted and 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] It will thus be seen that one who indorses a negotiable instrument without qualification is liable as a general indorser, though it had been indorsed to him restrictively, i. e., for collection or deposit. The rule is very important, especially with reference to checks indorsed for collection, and subsequently indorsed without qualification by the bank or other collecting agent. It is very important, also, because it changes the law.[118]

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[116] Same sections of Negotiable Instruments Laws as last above cited.

[117] Same sections of Negotiable Instruments Laws as last above cited.

Ankeny v. Henry, 1 Idaho, 229, where the court used this language: "The undertaking of an indorser is conditional; that is, his promise is that he will pay, provided the payment shall first have been properly demanded of the maker, and due notice of his neglect or refusal shall have been given."

[118] The rule heretofore was that a collecting bank indorsing generally was not liable to the paying bank in case the check had been raised.

§ 170. Irregular Indorser—Indorsement in Blank before Delivery.

The courts differ widely as to the status and liability of a person not otherwise a party, who places his signature in blank on a negotiable instrument before delivery. The weight of authority has classed such a person as a joint maker,[119] but he has been held by some courts to be an indorser,[120] and by others

National Park Bank v. Seaboard Bank, 114 N. Y. 28.

See, also, LaFarge v. Kneeland, 7 Cow. 456; Mowatt v. McLelan, 1 Wend. 173; Herrick v. Gallagher, 60 Barb. 566, holding that, when a collecting bank acted merely as agent, it could not be required to repay, where it had paid the amount collected to its principal without notice.

[119]Byers v. Tritch (Colo. App.) 55 Pac. 622; Allen v. Brown, 124 Mass. 77; Gumz v. Giegling, 108 Mich. 295; Stein v. Passmore, 25 Minn. 256; McCallum v. Driggs, 35 Fla. 277; Salisbury v. First National Bank, 37 Neb. 872; Jackson Bank v. Irons, 18 R. I. 718. But see Moorman v. Wood, 117 Ind. 144.

[120]Fisk v. Miller, 63 Cal. 367; Davis v. Barron, 13 Wis. 254. The status of such a signer has also been held to be that of a second indorser. Bogue v. Melick, 25 Ill. 91; Collins v. Everett, 4 Ga. 266; Baker v. Martin, 3 Barb. 634; Lester v. Paine, 39 Barb. 616; Deering v. Creighton, 19 Or. 118. But evidence was admissible to show that the indorsement was made for accommodation, in which case the status would be that of a first indorser. Coulter v. Richmond, 59 N. Y. 478.

to be a guarantor,[121] and by still others to be a mere surety.[122] The negotiable instrument laws settle the difficulty by providing that such a signer shall be liable as indorser according to 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."[123] This changes the rule in those states where such a signer was treated as a second indorser not

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On the rights and liabilities of anomalous or irregular indorsers, see, also, Seabury v. Hungerford, 2 Hill, 80; Hall v. Newcomb, 7 Hill, 416; Union Bank v. Willis, 8 Metc. 504; Fessenden v. Summers, 62 Cal. 484; Bank of Jamaica v. Jefferson, 92 Tenn. 537.

[121]Portsmouth Sav. Bank v. Wilson, 5 App. Cas. D. C. 8; Varley v. Title Guarantee & Trust Co., 60 Ill. App. 565; Arnold v. Bryant, 8 Bush. 668.

[122]Killian v. Ashley, 24 Ark. 511; Rogers v. Gibbs, 24 La. Ann. 468.

[123]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 64, subd. 1); R. I. (§ 72, subd. 1); Md. (§ 83, subd. 1); N. Y. (§114, subd. 1); Wis. (§ 1677-4, subd. 1).

In a recent New York case it was held that where an action on a note was begun before the passage of the Negotiable Instruments Law, the complaint alleging execution of the note by defendant, and its delivery, should have alleged that the note was indorsed to give credit to the maker, or as surety for him, as required by statute prior to the passage of the Negotiable Instru-

liable to the payee,[124] and has already been held in New York to apply only to indorsement before delivery.[125]

"(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."[126]

"(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee."[127]

§ 171. Warranties Where Negotiation is by Delivery or Qualified Indorsement.

Every person negotiating an instrument by delivery or by a qualified indorsement warrants that it is genuine and in all respects what it purports to be;[128] that he has a good

ments Laws; and that the defect was not cured by section 114 of said law. McMoran v. Lange, 48 N. Y. Supp. 1000.

[124]See note 120, supra.

[125]Kohn v. Consolidated Butter & Egg Co. (1900) 63 N. Y. Supp. 265.

[126]Subdivision 2 of same sections of Negotiable Instruments Laws as last above cited.

[127]Subdivision 3 of same sections of Negotiable Instruments Laws as last above cited.

[128]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 65, subd. 1); R. I. (§ 73, subd. 1); Md. (§ 84, subd. 1); N. Y. (§ 115, subd. 1); Wis. (§ 1677-5, subd. 1).

Barton v. Trent, 3 Head, 167; Meyer v. Richards, 163 U. S. 385; Littauer v. Goldman, 72 N. Y.

title to it;[129] that all prior parties had capacity to contract [130] (this does not apply to persons negotiating public or corporate securities other than bills and notes);[131] that he has no knowledge of any fact that would impair the validity of the instrument or render it valueless.[132]

506; Thompson v. McCullough, 31 Mo. 224; Merriam v. Wolcott, 3 Allen, 258.

Damages for breach of warranty, see Coolidge v. Brigham, 1 Metc. 547, 5 Metc. 68; Giffert v. West, 33 Wis. 617.

What instruments negotiable by delivery, see ante, §§ 146, 152, 159.

What is a qualified indorsement, see ante, § 157.

Liability of indorser "without recourse," see ante, § 157.

[129]Subdivision 2 of same sections of Negotiable Instruments Laws as last above cited.

Meriden Nat. Bank v. Gallaudet, 120 N. Y. 298, reversing 55 N. Y. Super Ct. 233; Murray v. Judah, 6 Cow. 484; Merriam v. Wolcott, supra.

[130]Subdivision 3 of same sections of negotiable instruments laws as last above cited.

Glidden v. Chamberlin, 167 Mass. 486; Lobdell v. Baker, 3 Metc. 469. See, also, cases cited in note 62, supra.

[131]Subdivision 4 of same sections of negotiable instruments laws as last above cited.

Otis v. Cullum, 92 U. S. 447 (municipal bonds).

[132]Same subdivision and sections of negotiable instruments laws as last above cited.

That one negotiating without delivery does not warrant the solvency of the maker, see Milliken v.

Where the negotiation is by delivery, the warranty extends only to the immediate transferee.[133]

§ 172. Same—Negotiation by Agent or Broker.

Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed in the preceding section, unless he discloses the name of his principal, and the fact that he is acting as agent.[134]

§ 173. Indorser of Paper Negotiable by Delivery.

A person who places his indorsement on an instrument negotiable by delivery incurs all the liabilities of an indorser.[135] This is true,

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Chapman, 75 Me. 306; Burgess v. Chapin, 5 R. I. 225. But see Stewart v. Orvis, 47 How. Prac. 518.

Where the seller of a check knows the drawer to be insolvent, he cannot recover the price to be paid for the check. Brown v. Montgomery, 20 N. Y. 287.

[133]Same subdivision and sections of negotiable instruments laws as last above cited.

[134]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 69); R. I. (§ 77); Md. (§ 88); N. Y. (§ 119); Wis. (§ 1677-9).

[135]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 67); R. I. (§ 75); Md. (§ 86); N. Y. (§ 117); Wis. (§ 1677-7).

Doom v. Sherwin, 20 Colo. 234; Tillman v. Ailles, 5 Smedes & M. 373; Brush v. Reeves' Adm'rs, 3 Johns. 439.

of course, whether the indorsement is for accommodation or is placed on the instrument in ignorance of the fact that it is negotiable by delivery and that the indorsement is unnecessary. The rule holds also where the indorsement is coupled with a guaranty of payment.[136]

§ 174. Consecutive Indorsers.

As between themselves, indorsers are liable prima facie in the order in which they indorse,[137] but evidence is admissible to show that as between or among themselves they have agreed otherwise.[138] Under this rule it may be shown that the indorsers had agreed on a joint liability, [139] either as co-sureties[140]

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[136]Leggett v. Raymond, 6 Hill, 639.

[137]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 68); R. I. (§ 76); Md. (§ 87); N. Y. (§ 118); Wis. (§ 1677-8).

Coolidge v. Wiggin, 62 Me. 568. See, also, Williams v. Merchants' Bank, 67 Tex. 606.

[138]Same sections of negotiable instruments laws as last above cited.

Coolidge v. Wiggin, supra. See, also, Cauthen v. Central Georgia Bank, 69 Ga. 733.

[139]Phillips v. Preston, 5 How. 278; Williams v. Smith, 48 Me. 135.

[140]Clapp v. Rice, 13 Gray, 403; Farwell v. Ensign, 66 Mich. 600; Easterly v. Barber, 66 N. Y. 433; Love v. Wall, 1 Hawks, 313.

or otherwise, or that each should contribute equally.[141]

§ 175. Same—Joint Payees or Indorsers.

Joint payees or indorsees who indorse are deemed to indorse jointly and severally.[142] Heretofore they have been held to a joint liability only.[143]

C. Bona Fide Holders.

§ 176. What Constitutes Holder in Due Course—Paper must be Complete and Regular on Face.
§ 177. Same—Must Take before maturity without Notice of Any Previous Dishonor.
§ 178. Same—Must Take in Good Faith.
§ 179. Same—Must Take for Value.
§ 180. Same—Must take without Notice of Infirmities or Defects.
§ 181. Same—Must take in Due Course of Business.
§ 182. When Title of Person Negotiating is Defective.
§ 183. What Constitutes Notice of Defects.
§ 184. Defenses Available against holder in Due Course.
§ 185. Same—Matters Affecting the Execution and Delivery of the Instrument.
§ 186. Holder in Due Course may Recover Full Amount.
§ 187. Rights of Holder not a Holder in Due Course.
§ 188. Holder Deriving Title from Holder in Due Course.
§ 189. Presumptions and Burden of Proof.

§ 176. What Constitutes Holder in Due Course—Paper must be Complete and Regular on Face.

In considering the essential differences between negotiable and nonnegotiable paper, we saw that it is one of the chief characteristics of a negotiable instrument that it is transferable to a holder who takes free from all prior equities affecting the paper.[144] In order that a holder may escape such equities, and become what is termed a "bona fide" holder, or a "holder in due course," it is essential, first, that the paper he takes be complete and

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[141]Ross v. Espy, 66 Pa. St. 481; Kiel v. Choate, 92 Wis. 517.

[142]Same sections of negotiable instruments laws as last above cited.

[143]Lane v. Stacy, 8 Allen, 41, holding that joint payees are joint and not successive indorsers, and that it makes no difference whose name appears first. See, also, Woodward v. Severance, 7 Allen, 340.

For successive indorsers held to several liability, see Scott v. Doneghy, 17 B. Mon. 321; Hacket v. Linares, 16 La. Ann. 204; Chalmers v. McMurdo, 5 Munf. 252; Slack v. Kirk, 67 Pa. St. 380.

[144]This is also expressly provided by the negotiable instruments laws: Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 57); R. I. (§ 65); Md. (§ 76); N. Y. (§ 96); Wis. (§ 1676-27).

See, also, ante, § 143, and post, § 184.

regular on its face.[145] Thus, where corporate notes were signed by all the necessary corporate officers but the president, one taking them as collateral had actual notice of the infirmity, and was not a bona fide holder.[146] The same rule applies to the purchaser of a check, payable to order, who obtains title without the indorsement of the payee. Such a purchaser takes "subject to all equities and defenses existing between the original parties, even though he has paid full consideration, without notice of the existence of such equities and defenses."[147] If an instrument discloses usury,[148] or any other substantive irregular-

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[145]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 52, subd. 1); R. I. (§ 60, subd. 1); Md. (§ 71, subd. 1); N. Y. (§ 91, subd. 1); Wis. (§ 1676-22).

Authority to fill blanks, see ante, § 20.

[146]Davis Sewing Mach. Co. v. Best, 105 N. Y. 59.

[147]Goshen Nat. Bank v. Bingham, 118 N. Y. 349.

One who takes title to a promissory note, payable to the order of a person therein named, merely by the transfer of the indebtedness contained in the assignment of the mortgage securing such note, is not entitled to the benefits of the law merchant as to such note, but holds it subject to the equities that would affect it in the hands of his assignor. Galusha v. Sherman (Wis.) 81 N. W. 495.

See, also, cases cited in note 109, supra.

ity,[149] the holder has actual notice of the infirmity, and is not a bona fide holder.

§ 177. Same—Must Take before Maturity without Notice of any Previous Dishonor.

The holder, to be a holder in due course, must also become holder before the paper was overdue, and without notice that it had been previously dishonored, if such was the case.[150] Commercial paper is not overdue, within the meaning of this rule, if transferred on the

[148]Metcalf v. Watkins, 1 Port. 57; Hamill v. Mason, 51 Ill. 488. But see Parker v. Plymell, 23 Kan. 402.

[149]Cronly v. Hall, 67 N. C. 9; Stein v. Rheinstrom, 47 Minn. 476. But see Bank of Pittsburgh v. Neal, 22 How. 96.

Note made payable before recited date of note, see Miller v. Crayton, 3 Thomp. & C. 360.

Instruments on their face nonnegotiable, see Muse v. Dautzler, 85 Ala. 359; Robertson v. Cooper, 1 Ind. App. 78; First Nat. Bank v. Bynum, 84 N. C. 24. See, also, Loomis v. Ruck, 56 N. Y. 462.

[150]Subdivision 2 of same sections of negotiable instruments laws as last above cited.

See First Nat. Bank v. Commissioners of Scott County, 14 Minn. 77; Kernohan v. Durham, 48 Ohio St. 1, 12 L. R. A. 41. See, also, Hocking Valley Bank v. Barton, 72 Pa. St. 110.

Overdue interest does not destroy bona fide character of purchase made before maturity of the principal. Kelly v. Whitney, 45 Wis. 110.

Indorsement after maturity of paper transferred before maturity, see Haskell v. Mitchell, 53 Me. 468; Lancaster Nat. Bank v. Taylor, 100 Mass. 18.

day of maturity,[151] or, where grace is allowed, on the last day of grace.[152]

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the paper is overdue, and the holder is not a holder in due course.[153] What is a reasonable time depends on the circumstances of the case.[154] A negotiation of demand paper within seven days,[155] or twenty-three days,[156] or a month,[157] or even two

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An indorsee of several notes, some past due, and others not, is a holder in due course of those not due. Boss v. Hewitt, 15 Wis. 285. But see Knott v. Tidyman, 86 Wis. 164.

[151]Wallach v. Bader, 7 N. Y. St. Rep. 375.

[152]Johnson v. Glover, 121 Ill. 283; Continental Nat. Bank v. Townsend, 87 N. Y. 8; Crosby v. Grant, 36 N. H. 273. But see Pine v. Smith, 11 Gray, 38.

[153]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 53); R. I. (§ 61); Md. (§ 72); N. Y. (§ 92); Wis. (§ 1676-23).

Poorman v. Mills, 39 Cal. 345; Stockbridge v. Damon, 5 Pick. 223.

[154]Neg. Inst. Laws N. Y., R. I. (§ 4); Md. (§ 16); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 193); Wis. (§ 1675); Conn., Fla., D. C., Tenn. (art. 1, sections not numbered).

[155]Thurston v. McKown, 6 Mass. 428.

[156]Mitchell v. Catchings, 23 Fed. 710.

[157]Ranger v. Cory, 1 Metc. 369.

years[158] from its issuance, has been held to be within a reasonable time. But on the other hand a negotiation three or four months,[159] or eight months,[160] or a year[161] after date has been held not to be within a reasonable time.

§ 178. Same—Must Take in Good Faith.

To be a holder in due course, one must also take in good faith.[162] The words "good faith," in this connection, refer only to the good faith of the indorsee or transferee.[163]

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[158]Tomlinson Carriage Co. v. Kinsella, 31 Conn. 268.

[159]Paine v. Central Vt. R. Co., 14 Fed. 269. See, also, Herrick v. Woolverton, 41 N. Y. 581; Stevens v. Brice, 21 Pick. 193.

[160]Ayer v. Hutchins, 4 Mass. 370; American Bank v. Jenness, 2 Metc. 288.

[161]Hemmenway v. Stone, 7 Mass. 58.

[162]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 52, subd. 3); R. I. (§ 60, subd. 3); Md. (§ 71, subd. 3); N. Y. (§ 91, subd. 3); Wis. (§ 1676-22, subd. 3).

Canajoharie Nat. Bank v. Diefendorf, 123 N. Y. 191, 10 L. R. A. 676; Noble v. Carey, 64 Hun, 635; Winkelman v. Choteau, 78 Ill. 107; Merchants' Nat. Bank v. Hanson, 33 Minn. 40.

A transfer in consideration of other negotiable paper is for value. Mickles v. Colvin, 4 Barb. 304. But, contra, see Harrington v. Johnson, 7 Colo. App. 483; Bird v. Harville, 33 Ga. 459 (due bill).

[163]Haugan v. Sunwal, 60 Minn. 367; Helmer v. Krolick, 36 Mich. 371.

Bad faith on the part of a purchaser may be shown by evidence of gross negligence,[164] and, when once shown, subjects him to all defenses available between prior parties.[165]

§ 179. Same—Must Take for Value.

To be a holder in due course one must be a holder for value.[166] We have seen that the original consideration for a negotiable instrument is presumed,[167] and that a consideration for an indorsement is also presumed;[168] and it follows, as of course, that a holder is presumed to have given value for the instrument.[169]

The rule of the negotiable instrument laws, that an antecedent or pre-existing debt constitutes value, applies as well to the transfer as to the original execution of a negotiable instrument.[170] This provision has already

[164]Drew v. Wheelihan (Minn.) 77 N. W. 558. In this case, the question of bona fides was held to be a question for the jury.

[165]Johnson v. Way, 27 Ohio St. 374.

[166]Same sections of negotiable instruments laws as last above cited.

[167]See ante, § 87.

[168]See ante, § 150.

[169]Owens v. Snell, 29 Or. 483; Page's Adm'rs v. Bank of Alexandria, 7 Wheat. 35. See, also, cases cited in notes 232-235, infra.

[170]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 25);

been passed upon by the New York courts in a case holding that the indorsee of a note taken as collateral for a pre-existing debt takes free from equities between the original parties,[171] and in a case holding that a person taking a note before maturity without notice, who credits the amount thereof on an antecedent debt due to him, is a bona fide holder.[172] Under the Wisconsin negotiable instruments laws, however, "the indorsement or delivery or negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery by the maker, does not constitute value."[173]

R. I. (§ 33); Md. (§ 44); N. Y. (§ 51); Wis. (§ 1675-51).

Rosemond v. Graham, 54 Minn. 324; Oates v. Nat. Bank, 100 U. S. 239; Swift v. Tyson, 16 Pet. 1. See, also, cases cited in notes 171, 172, infra.

[171]Brewster v. Shrader, 26 Misc. Rep. 480. The court in this case, decided in February, 1899, takes occasion to review at some length the history of the steps leading up to the adoption of the negotiable instruments laws.

See, also, Whiteside v. First Nat. Bank (Tenn. Ch.) 47 S. W. 1108; Murphy v. Gumaer (Colo. App.) 55 Pac. 951.

[172]Rosenwald v. Goldstein, 57 N. Y. Supp. 224.

[173]Neg. Inst Law, § 1675-51.

One taking negotiable paper in absolute payment of a pre-existing debt is a purchaser for value, though he did not pay the full face value of the instrument.[174]

If value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time.[175] Thus, an indorsee for value before maturity is not affected by a failure of consideration for the indorsement to his immediate indorser by the original payee,[176] and, if a party becomes a bona fide holder for value of a bill before its acceptance, it is not essential to his right to enforce it against a subsequent acceptor that an additional consideration should proceed from him to the drawee.[177]

In amplification of the rule that an antecedent or pre-existing debt constitutes value[178] is the rule that a holder having a lien on the instrument, arising either from contract or

[174]Heath v. Silverthorn Lead Mining & Smelting Co., 39 Wis. 146.

[175]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 26); R. I. (§ 34); Md. (§ 45); N. Y. (§ 52); Wis. (§ 1675-52).

[176]Bookheim v. Alexander, 64 Hun, 458.

[177]Heurtematte v. Morris, 101 N. Y. 63.

[178]See ante, § 88.

by implication of law, is a holder for value to the extent of his lien.[179] While this rule limits the recovery by the lienholder himself to the amount of the debt secured,[180] it does not limit the amount recoverable by a subsequent bona fide holder; but the latter as will be seen later, may recover the face value of the instrument, though he paid less.[181]

An accommodation party is liable on the instrument to a holder for value, though such holder, at the time of taking the instrument, knew him to be only an accommodation party.[182] This rule of the negotiable instru-

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[179]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 27); R. I. (§ 35); Md. (§ 46); N. Y. (§ 53); Wis. (§ 1675-53).

[180]Hatcher v. Independence Nat. Bank, 79 Ga. 547; Handy v. Sibley, 46 Ohio St. 9; Winship v. Merchants' Nat. Bank, 42 Ark. 22.

The rule applies to accommodation paper. Continental Nat. Bank v. Bell, 125 N. Y. 38; Handy v. Sibley, supra.

[181]See post, § 186, and cases cited.

[182]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 29); R. I. (§ 37); Md. (§ 48); N. Y. (§ 55); Wis. (§ 1675-55).

This provision has already been literally applied in New York. See Citizens' Nat. Bank v. Lillenthal, 57 N. Y. Supp. 567.

ments laws is declaratory of the law merchant.[183]

On the question whether a bank discounting paper and allowing checks to be drawn against the credit given therefor is a purchaser for value, the court in a recent Kansas case says: "It is probably true that simply discounting a note, and crediting the amount thereof on the indorser's account, without parting with any value for it, is not enough to constitute such bank a bona fide purchaser of the note. In this instance, however, this transaction was not simply placing the note to the credit of Nichols, Shepherd & Co. alone, for they subsequently checked against it, and exhausted the amount of their credit at the time this note was placed to their account, including the amount of this note. We think that the fact of thus paying out the full amount makes them purchasers. It is conceded that the bank did not buy the note outright, and pay for it at that time; but they were certainly debtors to Nichols, Shepherd & Co. for its amount; and the general rule as to the application of payments, when

[183] Hodges v. Nash, 43 Ill. App. 638; Tourtelot v. Reed, 62 Minn. 384; Maitland v. Citizens' Nat. Bank, 40 Md. 540; Holland Trust Co. v. Waddell, 75 Hun, 104.

there are no special facts to interfere, is that the first payments go to the oldest debts. Under this rule the bank paid for it by allowing Nichols, Shepherd & Co. to check against and exhaust the amount of their credit at that time. This note was a part of that credit. It paid for it by cashing checks drawn upon it, and thus became a purchaser of the same for value."[184]

§ 180. Same—Must Take without Notice of Infirmities or Defects.

A holder in due course must have taken without notice, at the time of the negotiation, of any infirmity in the instrument or defect in the title of the person negotiating it.[185] If,

[184] Dreilling v. First Nat. Bank, 43 Kan. 197, citing Fox v. Bank of Kansas City, 30 Kan. 441, and Mann v. Second Nat. Bank, 30 Kan. 412.

[185] Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 52, subd. 4); R. I. (§ 60, subd. 4); Md. (§ 71, subd. 4); N. Y. (§ 91, subd. 4); Wis. (§ 1676-22, subd. 4).

Notice acquired after transfer does not affect bona fides. Hoge v. Lansing, 35 N. Y. 136; Richardson v. Monroe, 85 Iowa, 359.

As to notice acquired after transfer, but before consideration is paid, see Thompson v. Sioux Falls Nat. Bank, 150 U. S. 231.

On rights of bona fide purchaser of stolen paper, see Whiteside v. First Nat. Bank (Tenn. Ch.) 47 S. W. 1108; Kuhns v. Gettysburg Nat. Bank, 68 Pa. St. 445; Dinsmore v. Duncan, 57 N. Y. 573;

however, the transferee receives notice of any such infirmity or defect 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.[186]

§ 181. Same—Must Take in Due Course of Business.

In addition to the above essentials of a taking in due course it is usually stated that to be a bona fide holder one must take in the usual or due course of business.[187] The ne-

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Hall v. Wilson, 16 Barb. 548; Franklin Sav. Inst. v. Heinsman, 1 Mo. App. 336; Wheeler v. Guild, 20 Pick. 545, 32 Am. Dec. 231.

[186]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 54); R. I. (§ 62); Md. (§ 73); N. Y. (§ 93); Wis. (§ 1676-24).

Hubbard v. Chapin, 2 Allen, 328; Dresser v. Missouri & I. R. Const. Co., 93 U. S. 92, 23 Lany. Ed. 815.

[187]The Wisconsin negotiable instruments law expressly adds this requisite (§ 1676-22, subd. 5).

As to what constitutes a taking in due course of business, see Roberts v. Hall, 37 Conn. 205; Stephens v. Olson, 62 Minn. 295, following Fredin v. Richards, 61 Minn. 490; Railway Equip. & Pub. Co. v. Lincoln Nat. Bank, 82 Hun, 8; Canajoharie Nat. Bank v. Diefendorf, 123 N. Y. 191, 10 L. R. A. 676; Burnam v. Merchants' Exch. Bank, 92 Wis. 277.

gotiable instruments laws, however, consider one a bona fide purchaser when his purchase has the elements set out in the preceding four sections, as such elements, taken together, constitute a taking in due course of business.

§ 182. When Title of Person Negotiating is Defective.

The title of the person negotiating is defective, within the meaning of section 180 if he obtained the instrument or any signature thereto by fraud, duress, or force and fear, or other unlawful means, for an illegal consideration, or when he negotiates it in breach of faith, or under circumstances amounting to fraud.[188] The Wisconsin negotiable instruments law adds that the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the character of the instrument, and could not have obtained such knowledge by the use of ordinary care.[189]

[188]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 55); R. I. (§ 63); Md. (§ 74); N. Y. (§ 94); Wis. (§ 1676-25).

Fraud, see Brook v. Teague, 52 Kan. 119; Heist v. Hart, 73 Pa. St. 286.

[189]Neg. Inst. Law, § 1676-25.

Signature obtained by misrepresentation as to nature of the instrument, without negligence on

§ 183. What Constitutes Notice of Defects.

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 was 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.[190] A mere suspicion of infirmity will not constitute notice.[191] Notice to an agent is ordinarily con-

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the part of the signer, does not create a valid obligation, even in the hands of a bona fide holder. Auten v. Gruner, 90 Ill. 300; Green v. Wilkie, 98 Iowa, 74; Kalamazoo Nat. Bank v. Clark, 52 Mo. App. 593; Griffiths v. Kellogg, 39 Wis. 290; Willard v. Nelson, 35 Neb. 651. Aliter, if signer was negligent. Boynton v. McDaniel, 97 Ga. 400; Ward v. Johnson, 51 Minn. 480; Chapman v. Rose, 56 N. Y. 137.

[190]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 56); R. I. (§ 64); Md. (§ 75); N. Y. (§ 95); Wis. (§ 1676-26).

See Canajoharie Nat. Bank v. Diefendorf, 123 N. Y. 191, 10 L. R. A. 676; American Exch. Nat. Bank v. New York Belting & Packing Co., 148 N. Y. 698.

[191]Kelly v. Whitney, 45 Wis. 110; Jennings v. Todd, 118 Mo. 296; Second Nat. Bank v. Morgan, 165 Pa. St. 199.

But the fact that the maker of a note procures its discount for his own benefit is notice that the indorsement was merely for his accommodation. National Park Bank v. German Am. Mut. W. &

sidered notice to his principal,[192] and notice to a partner is notice to the firm.[193]

§ 184. Defenses Available against Holder in Due Course.

The rule that a holder in due course takes free from all equities existing between prior parties has already been considered, generally, in treating of the essential differences between negotiable and nonnegotiable paper, and is of such uniform application that it hardly requires the citation of any authorities to sustain it.[194] But it is advisable at this

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S. Co., 116 N. Y. 281, 5 L. R. A. 673; Mechanics' Bank v. Barnes, 86 Mich. 632; National Park Bank v. Remsen, 43 Fed. 226.

[192]Merrill v. Packer, 80 Iowa, 542; Knott v. Tidyman, 86 Wis. 164. Contra, see First Nat. Bank v. Babbidge, 160 Mass, 563 (notice to president of bank). See, also, Union Square Bank v. Hellerson, 90 Hun, 262 (notice to attorney).

Knowledge of the president of a bank is not notice to the bank unless he receives it in his official capacity. Merchants' Nat. Bank v. Clark, 139 N. Y. 314.

[193]Calvert v. Dimon, 19 Colo. 17; Cunningham v. Woodbridge, 76 Ga. 302; King v. Nichols, 138 Mass. 18.

[194]McFarland v. State Bank of Chase (Kan. App.) 52 Pac. 110; Knight v. Kenney (Neb.) 80 N. W. 912; Pettee v. Prout, 3 Gray, 502; Bostwick v. Dodge, 1 Doug. 413, 41 Am. Dec. 584; Chase Nat. Bank v. Faurot, 149 N. Y. 532; Genesee County

point to examine more particularly into the scope of the term "equities," and to discover what legal defenses may be interposed against a holder in due course.

It is clear that defects appearing on the face of the paper at the time of its transfer to the holder are not "equities" which he can escape;[195] nor are matters which, though not apparent on the face of the paper, render the contract void ab initio, such as illegality of consideration in cases were, by statute, the illegality renders the contract void,[196] incapacity of prior parties,[197] and want of authority in the officers of a public corporation to

Sav. Bank v. Kindt (Wyo.) 51 Pac. 878; Little v. Dunlap, Busb. 40.

[195]See ante, § 176.

[196]Aurora v. West, 22 Ind. 88, 85 Am. Dec. 413; Bayley v. Taber, 5 Mass. 286, 4 Am. Dec. 57; Glen v. Farmers' Bank, 70 N. C. 191; Union Nat. Bank v. Brown (Ky.) 41 S. W. 273; International Bank v. Vankirk, 39 Ill. App. 23; Snoddy v. American Nat. Bank, 88 Tenn. 573, 7 L. R. A. 705; Swinney v. Edwards (Wyo.) 55 Pac. 306.

[197]Anglo-California Bank v. Ames, 27 Fed. 727; Voreis v. Nussbaum, 131 Ind. 267, 16 L. R. A. 45; Johnson v. Sutherland, 39 Mich. 579; Baker v. Gregory, 28 Ala. 544; Miller v. Finley, 26 Mich. 249.

Title passes under indorsement or assignment by corporation or infant notwithstanding want of capacity. See supra, note 115.

execute negotiable instruments.[198] Ordinarily, however, matters not apparent on the face of the paper, such as unindorsed payments,[199] set-offs and counterclaims,[200] mistake,[201] fraud,[202] duress,[203] and want or failure of consideration,[204] are "equities" which cannot

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[198]Eastman v. District Tp. of Lyon, 40 Iowa, 438; Halstead v. City of New York, 5 Barb. 218; School Directors v. Fogleman, 76 Ill. 190.

[199]Bank of University v. Tuck, 96 Ga. 456; Biggerstaff v. Marston, 161 Mass. 101; Harpending v. Gray, 76 Hun, 351. See, also, Swope v. Ross, 40 Pa. St. 186.

[200]Way v. Lamb, 15 Iowa, 79; United States Nat. Bank v. McNair, 116 N. C. 550; Carothers v. Richards (Ky.) 30 S. W. 211; McGrath v. Pitkin, 56 N. Y. Supp. 398; Robinson v. Lyman, 10 Conn. 30.

[201]Steadwell v. Morris, 61 Ga. 97; Huston v. Young, 33 Me. 85.

[202]Alabama Nat. Bank v. Halsey, 109 Ala. 196; Holeman v. Hobson, 8 Hump. 127; Cristy v. Campau, 107 Mich. 172 (false representations); Grant v. Walsh, 145 N. Y. 102; Ormsbee v. Howe, 54 Vt. 182; Holcomb v. Wyckoff, 35 N. J. Law, 35.

[203]Morrill v. Nightingale, 93 Cal. 452; Clark v. Pease, 41 N. H. 414; Farmers' Bank of Grand Rapids v. Butler, 48 Mich. 192, distinguishing Gibbs v. Linabury, 22 Mich. 479. But see First Nat. Bank v. Bryan, 62 Iowa, 42, where it was held that an innocent indorsee of a note secured by mortgage on a homestead could not enforce the mortgage as against the wife whose signature had been obtained by duress.

avail against a holder in due course.

Forgery and alteration as a defense against a holder in due course will be considered in a later chapter.[205]

§ 185. Same—Matters Affecting the Execution and Delivery of the Instrument.

The fact that there were defects or omissions in the execution of a negotiable instrument, which are not apparent on its face, is not available against a holder in due course. Thus, a collateral agreement intended to be incorporated, but not incorporated, in the instrument, is not a defense;[206] nor can a mis-

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[204]Middletown Bank v. Jerome, 18 Conn. 443; First Nat. Bank v. Ruhl, 122 Ind. 279; Arthurs v. Hart, 17 How. 6; Rand v. Pantagraph Co., 1 Colo. App. 270; Culver v. Hide & Leather Bank, 78 Ill. 625; Williams v. Cheney, 3 Gray, 215; First Nat. Bank v. Skeen, 101 Mo. 387; Bookheim v. Alexander, 64 Hun, 458; Hardie v. Wright, 83 Tex. 345; Rea v. McDonald, 68 Minn. 187; Keith v. Fork (Ga.) 31 S. E. 169; Merchants' & Planters' Bank v. Penland (Tenn.) 47 S. W. 693; Davis v. Howell Cotton Co., 101 Ga. 128.

Liability of accommodation party to holder for value, see ante, § 179.

[205]Chapter XIV.

[206]Hodges v. Nash, 141 Ill. 391; Yellow Medicine County Bank v. Tagley, 57 Minn. 391; Donovan v. Fox, 121 Mo. 236; Lewis v. Long, 102 N. C. 206; Davy v. Kelley, 66 Wis. 452; Miller v. Ottaway, 81 Mich. 196.

take in date be shown against a holder in due course,[207] though such a mistake may be shown in his favor.[208]

If an instrument is signed and delivered in blank, with intent that it shall be converted into a negotiable instrument, and, after the blanks are filled and the instrument completed, it is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it according to its terms, though it was not filled up within a reasonable time, or in accordance with the authority given.[209] Thus, where the place for the sum payable was left blank, but "$200" was written on the margin, a bona fide holder could fill the blank with any sum within that amount. [210] Also, one who, with another, and for accommodation, signs a note having "$45" expressed in one corner, but having a blank for the amount in the body of the instrument and authorizes the other maker to write

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[207]Huston v. Young, 33 Me. 85.

[208]Germania Bank v. Distler, 4 Hun, 633, affirmed in 64 N. Y. 642; Almich v. Downey, 45 Minn. 460; Jessup v. Dennison, 2 Disn. 150.

[209]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 14); R. I. (§ 22); Md., N. Y. (§ 33); Wis. (§ 1675-14).

[210]Norwich Bank v. Hyde, 13 Conn. 279.

"forty-five dollars" in the blank space, is liable to a bona fide holder for $450, in case the other maker fills out the blank with the words "four hundred and fifty," and adds a cipher to the "$45."[211] The maker of a note blank as to the date, time of maturity, amount, and name of the payee, who entrusts it to another with verbal instructions to buy personal property and fill in the name of the seller as payee and the amount of the purchase as the amount of the note, is liable to a bona fide holder where the person to whom the note was entrusted violated his instructions, and used the note to procure a personal loan.[212] An acceptor who delivers a blank acceptance to another with authority to fill the blank is liable to a bona fide holder for the amount filled in, though it is greater than the amount authorized.[213]

Decisions of this kind are based on the theory that the person to whom the instrument is delivered becomes the agent of the person signing, and a purchaser is not bound

[211] Johnson Harvester Co. v. McLean, 57 Wis. 258; Weidman v. Symes (Mich.) 79 N. W. 894. See, also, Snyder v. Van Doren, 46 Wis. 602, and cases cited.

[212] Geddes v. Blackmore, 132 Ind. 551.

[213] Van Duser v. Howe, 21 N. Y. 531.

by limitations on the authority of the agent, not brought home to him;[214] and sometimes on the theory of estoppel.[215] But if there was no delivery with intent that the instrument be thereafter negotiated, and no authority, expressed or implied, to fill up the blanks, a bona fide holder cannot enforce the instrument against the signer.[216] This rule of the law merchant is also the rule of the negotiable instruments laws.[217]

Where an instrument is in the hands of a holder in due course of business, a valid delivery by all prior parties is conclusively presumed.[218] It will be observed that this presumption in favor of a bona fide holder is conclusive, and that want of delivery is no de-

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[214]Snyder v. Van Doren, supra; Androscoggin Bank v. Kimball, 10 Cush. 373; Bank v. Neal, 22 How. 107; Goodwin v. Simonds, 20 How. 361; Mitchell v. Culver, 7 How. 336. See, also, Orrick v. Carlston, 7 Grat. 189.

[215]Redlich v. Doll, 54 N. Y. 234.

[216]Ledwich v. McKim, 53 N. Y. 307. But see Nance v. Lary, 5 Ala. 370.

[217]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 15); R. I. (§ 23); Md., N. Y. (§ 37); Wis. (§ 1675-15).

[218]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 16); R. I. (§ 22); Md., N. Y. (§ 35); Wis. (§ 1675-16).

fense as against such a holder;[219] but we have just seen, in the preceding paragraph of this section, that even a bona fide holder cannot enforce, as against one signing before delivery, an instrument which, having been incomplete and undelivered, was wrongfully and without authority completed, delivered and negotiated.

§ 186. Holder in Due Course may Recover Full Amount.

A holder in due course not only holds the instrument free from all prior equities and defenses, as shown in the preceding sections, but he may also enforce payment of the instrument for the full amount thereof against all parties liable thereon.[220] This rule allow-

[219] Clarke v. Johnson, 54 Ill. 296; McCormick v. Holmes, 41 Kan. 265; Kinyon v. Wohlford, 17 Minn. 239. Contra, see Palmer v. Poor, 121 Ind. 135, 6 L. R. A. 469; Cline v. Guthrie, 42 Ind. 227.

[220] Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah., Va., Wash. (§ 57); R. I. (§ 65); Md. (§ 76); N. Y. (§ 96); Wis. (§ 1676-27).

The Wisconsin negotiable instruments law adds (§ 1676-27): "Except as provided in sections 1944 and 1945 of these statutes (Rev. St. 1878), relating to insurance premiums, and also in cases where the title of the person negotiating such instrument is void under the provisions of section 1676-25 of this act." Section 1945 provides that

ing a recovery of the face value is, in effect, an amplification of the rule that mere inadequacy of consideration does not show mala fides.[221] The rules does not, however, cure void usurious[222] or gaming[223] transactions, or affect the doctrine that one who makes a loan on commercial paper, or takes it as security for a precedent debt, can recover only the amount loaned or secured.[224] It is doubtful, too, whether it will cure transactions in which the consideration is so grossly inadequate as to indicate fraud.[225]

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notes or obligations given for premiums on fire insurance shall become void if the company becomes insolvent or bankrupt during the life of the policy, as far as the premium was unearned at the time of insolvency or bankruptcy. Section 1944 is considered in section 32, ante.

[221]Scott v. Seelye, 27 La. Ann. 95; Forepaugh v. Baker (Pa.) 13 Atl. 465; Daniels v. Wilson, 21 Minn. 530.

[222]Hart v. Adler, 109 Ala. 467; Claflin v. Boorum, 122 N. Y. 385; Ward v. Sugg, 113 N. C. 489, 24 L. R. A. 280. But see Lynchburg Nat. Bank v. Scott, 91 Va. 652, 29 L. R. A. 827.

[223]Conklin v. Roberts, 36 Conn. 461; Harper v. Young, 112 Pa. 419; Traders' Bank v. Alsop, 64 Iowa, 98; Swinney v. Edwards (Wyo.) 55 Pac. 306.

[224]Cromwell v. County of Sac, 96 U. S. 51, 60; Kelly v. Ferguson, 46 How. Prac. 411.

[225]Gould v. Stevens, 43 Vt. 125; Hunt v. Sanford, 6 Yerg. 387; De Witt v. Perkins, 22 Wis. 451; Smith v. Jansen, 12 Neb. 125.

The rule affirms the doctrine of the federal courts,[226] and that of most of the state courts,[227] but changes the rule in others.[228]

§ 187. Rights of Holder not a Holder in Due Course.

Where a negotiable instrument comes into the hands of a holder who is not a holder in due course, it is subject, as against him, to the same defenses as if it were nonnegotiable.[229]

§ 188. Holder Deriving Title from Holder in Due Course.

An exception to the rule laid down in the last section is found in the further rule that 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 to all parties prior to the

[226] Cromwell v. County of Sac. supra.

[227] Sully v. Goldsmith, 32 Iowa. 397; United States Nat. Bank v. McNair, 116 N. C. 550; Kitchen v. Loudenback, 48 Ohio St. 177; Hobart v. Penny, 70 Me. 248.

[228] See Huff v. Wagner, 63 Barb. 215, 230; Todd v. Shelbourne, 8 Hun, 512; Campbell v. Brown (Tenn.) 48 S. W. 970.

And see cases under note 35, supra.

[229] Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 58); R. I. (§ 66); Md. (§ 77); N. Y. (§ 97); Wis. (§ 1676-28).

latter.[230] But a payee who transfers a note to a bona fide holder, and afterwards repurchases it for a new consideration, is not a bona fide holder. In a case deciding this point the court said: "It cannot be very important to him [the innocent transferee from the payee] that there is one person incapable of succeeding to his equities, and who consequently would not be likely to become a purchaser. If he may sell to all the rest of the community, the market value of his security is not likely to be affected by the circumstances that a single individual cannot compete for its purchase, especially when we consider that the nature of negotiable securities is such that their market value is very little influenced by competition."[231]

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[230] Same sections of negotiable instruments laws as last above cited.

Miller v. Talcott, 54 N. Y. 114; Cheever v. Pittsburg, S. & L. E. R. Co., 150 N. Y. 59; Glenn v. Farmers' Bank, 70 N. C. 191; O'Conor v. Clarke (Cal.) 44 Pac. 482; Wood v. Starling, 48 Mich. 592; Matson v. Alley, 141 Ill. 284; Koehler v. Dodge, 31 Neb. 328; Jones v. Wiesen (Neb.) 69 N. W. 762; Knight v. Kenney (Neb.) 80 N. W. 912; McFarland v. State Bank of Chase (Kan. App.) 52 Pac. 110; Bank of Sonoma County v. Gove, 63 Cal. 355.

[231] Kost v. Bender, 25 Mich. 515.

§ 189. Presumptions and Burden of Proof.

Every holder is presumed to be a holder in due course.[232] When it is shown, however, 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 one under whom he claims, acquired the title as a holder in due course;[233] but this rule does not

[232]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 59); R. I. (§ 67); Md. (§ 78); N. Y. (§ 98); Wis. (§ 1676-29).

Champion Empire Min. Co. v. Bird, 7 Colo. App. 523; Farmers' Bank v. Brooke, 40 Md. 249; Hall v. First Nat. Bank, 133 Ill. 234; Estabrook v. Boyle, 1 Allen, 412; Langley v. Wadsworth, 99 N. Y. 61; Tredwell v. Blount, 86 N. C. 33; Wayland University v. Boorman, 56 Wis. 657; Joy v. Diefendorf, 130 N. Y. 6, holding that where the maker establishes fraud, plaintiff must prove that he is a bona fide holder.

Presumption in favor of bona fide holder, that instrument was delivered, see ante, § 185.

[233]Same sections of negotiable instruments laws as last above cited.

Chambers v. Falkner, 65 Ala. 448; Shirk v. Mitchell, 137 Ind. 185. The last case cited holds that where the defense pleaded is a failure of consideration, or any other matter arising after the execution of the note, the transaction out of which the note arose being fair and lawful, the defendant has the onus of the issue to establish that the holder of the note took it with notice of the defense.

apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.[234]

The corresponding provision of the English Bills of Exchange Act of 1882 (45 & 46 Vict. c. 61, § 30, subd. 2) is: "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 is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill." This provision has been construed to mean that, when fraud is proved, the burden is on the holder to prove both a valuable consideration and a taking in good faith without notice of the fraud.[235]

[234] Same sections of negotiable instruments laws as last above cited.

[235] Tatam v. Haslar, 23 Q. B. Div. 345.

CHAPTER XI.

Presentment for Payment.

§ 190. Presentment not Necessary to Charge Person Primarily Liable.
§ 191. Presentment Necessary to Charge Drawer and Indorsers—Exceptions.
§ 192. By Whom Presentment Made—Holder or Agent.
§ 193. To Whom Presentment Made—Person Primarily Liable.
§ 194. Time of Presentment.
§ 195. Same—Instruments Payable on Demand.
§ 196. Same—Checks.
§ 197. Same—Instruments not Payable on Demand.
§ 198. Same—Instruments Payable at Bank.
§ 199. Same—When Delay Excused.
§ 200. Place of Presentment.
§ 201. Instrument must be Exhibited.
§ 202. When Presentment may be Dispensed with.
§ 203. Waiver of Presentment.
§ 204. When Instrument Dishonored by Non-payment.
§ 205. Liability, after Dishonor, of Person Secondarily Liable.
§ 206. Time of Maturity—Days of Grace Abolished.
§ 207. Same—When Day of Maturity is Sunday or a Holiday.
§ 208. Same—When Day of Maturity is Saturday.
§ 209. Computation of Time.

§ 190. Presentment not Necessary to Charge Person Primarily Liable.

Presentment for payment is not necessary to charge the person primarily liable on the instrument,[1]—that is, the person who by the terms of the instrument is absolutely required

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 70); R. I. (§ 78); Md. (§ 89); N. Y. (§ 130); Wis. (§ 1678).

McIntyre v. Michigan State Ins. Co., 52 Mich. 188; Mosser v. Criswell, 150 Pa. St. 409; Wilkins v. McGuire, 2 App. D. C. 448; Wamsley v. Darragh, 14 Misc. Rep. 566; Cox v. National Bank, 100 U. S. 704, 713.

In determining who are primarily liable on an instrument, it must be remembered that no person is liable unless his name appears on the instrument (Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. [§ 18]; R. I. [§ 26]; Md., N. Y. [§ 37]; Wis. [§ 1675-18]); that the drawee is not liable until he accepts (Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. [§ 127]; R. I. [§ 135]; Md. [§ 146]; N. Y. [§ 211]; Wis. [§ 1680a]); and that a bank is not liable on a check until it accepts or certifies it (Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. [§ 189]; R. I. [§ 197]; Md. [§ 208]; N. Y. [§ 325]; Wis. [§ 1684-5]).

The acceptor is primarily liable, and hence is not entitled to presentment for payment. Hunt v. Johnson, 96 Ala. 130; James v. Ocoee Bank, 2 Cold. 57; Steiner v. Jeffries (Ala.) 24 South. 37.

to pay the same;[2] 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, such ability and willingness are equivalent to a tender on his part.[3]

§ 191. Presentment Necessary to Charge Drawer and Indorsers—Exceptions.

Presentment is necessary, however, to charge the drawer and indorsers,[4] except that

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[2]Neg. Inst. Laws N. Y., R. I. (§ 3); Md. (§ 15); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 192); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

[3]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 70); R. I. (§ 78); Md. (§ 89); N. Y. (§ 130).

This provision is not in the negotiable instruments law of Wisconsin. The negotiable instruments law of New York has been amended by inserting after the word "maturity" the clause, "and has funds there available for that purpose." Laws 1898, c. 336, § 11.

A maker who deposits in bank funds to meet a note payable at the bank is discharged if no presentment is made, and the bank fails after the maturity of the note. Lazier v. Horan, 55 Iowa, 75.

This case has, however, been overruled in the recent case of Bank of Montreal v. Ingerson (Iowa) 75 N. W. 351.

[4]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 70); R. I. (§ 78); Md. (§ 89); N. Y. (§ 130); Wis. (§ 1678).

Presbrey v. Thomas, 1 App. D. C. 171; Howard Bank v. Carson, 50 Md. 18; Seacord v. Miller, 13 N. Y. 55.

it is not required, in order to charge a drawer, if he has no right to expect or require that the drawee or acceptor will pay the instrument;[5] nor is it necessary 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.[6]

Presentment is necessary to charge the drawer of a bill. Hoyt v. Seeley, 18 Conn. 353; Jaudon v. Read, 32 How. Prac. 190; Grange v. Reigh, 93 Wis. 552. It is also necessary to charge the drawer of a check. Daniels v. Kyle, 5 Ga. 245; Green v. Darling, 15 Me. 139; Gough v. Staats, 13 Wend. 549; Kelley v. Brown, 5 Gray, 108; Scott v. Meeker, 20 Hun, 161.

Presentment of a nonnegotiable instrument is not necessary. White v. Low, 7 Barb. 204; Smith v. Cromer, 66 Miss, 157.

[5]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 79); R. I. (§ 87); Md. (§ 98); N. Y. (§ 139); Wis. (§ 1678-9).

Dickins v. Beal, 10 Pet. 572; Rhett v. Poe, 2 How. 457.

Lack of funds in hands of drawee, see Howes v. Austin, 35 Ill. 396; Beauregard v. Knowlton, 156 Mass. 395; Franklin v. Vanderpool, 1 N. Y. Sup. Ct. 78.

Where the drawer obtains an acceptance and indorsement for his accommodation and receives the proceeds of the bill, he is not entitled to presentment for payment. Barbaroux v. Waters, 3 Metc. (Ky.) 304.

§ 192. By Whom Presentment Made—Holder or Agent.

Presentment for payment must be made by the holder or by some person authorized to receive payment on his behalf.[7] It is not necessary that presentment be made by a notary;[8] but any person who has possession of the instrument at the time and place of payment is deemed prima facie to have authority, and may present the instrument for payment.[9]

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[6]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 80); R. I. (§ 88); Md. (§ 99); N. Y. (§ 140); Wis. (§ 1678-10).

Reid v. Morrison, 2 Watts & S. 401.

[7]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 72, subd. 1); R. I. (§ 80, subd. 1); Md. (§ 91, subd. 1); N. Y. (§ 132, subd. 1); Wis. (§ 1678-2, subd. 1).

[8]Cole v. Jessup, 10 N. Y. 96; Shed v. Brett, 1 Pick. 401; Sussex Bank v. Baldwin, 17 N. J. Law, 487, where the court said: "There is an impression current, in some degree, that a presentment of a note must be made by a notary, or at least on his behalf, and that he must protest it upon nonpayment before the indorser is liable. But this is not so. Any person may present at its maturity a promissory note of which he is put in possession."

[9]Cole v. Jessup, supra; Baer v. Leppert, 12 Hun, 516; Sussex Bank v. Baldwin, 17 N. J. Law, 487. But see Doubleday v. Kress, 50 N. Y. 410.

§ 193. To Whom Presentment Made—Person Primarily Liable.

Presentment for payment must be made to the person primarily liable, or, if he is absent or inaccessible, to any person found at the place of presentment.[10]

Where the person primarily liable is dead, and no place of payment is specified, presentment for payment may be made to his personal representative, if there be one, and he can be found after the exercise of reasonable diligence.[11]

If the persons primarily liable were partners, and no place of payment was specified,

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One holding an instrument for collection is deemed a holder within the rule. Freeman's Bank v. Perkins, 18 Me. 292; Blakeslee v. Hewitt, 76 Wis. 341.

[10]Subdivision 4 of same sections of negotiable instruments laws as last above cited.

The temporary absence of an indorser from his place of business does not excuse nonpresentment. Wilson v. Senier, 14 Wis. 411. See, also, Granite Bank v. Ayers, 16 Pick. 392.

Who is person primarily liable, see note 1, supra.

[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 76); R. I. (§ 84); Md. (§ 95); N. Y. (§ 136); Wis. (§ 1678-6).

Huff v. Ashcraft, 1 Disn. 277.

Presentment on death of one of two partners who are makers, see note 13, infra.

presentment for payment may be made to any one of them,[12] even after a dissolution of the firm.[13]

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.[14] This is the rule in force in most of the states,[15] and has been applied where one or more of the makers were sureties.[16]

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[12]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 77); R. I. (§ 85); Md. (§ 96); N. Y. (§ 137); Wis. (§ 1678-7).

Mount Pleasant Branch of State Bank v. McLeran, 26 Iowa, 306; Hunter v. Hempstead, 1 Mo. 67.

[13]Same sections of negotiable instruments laws as last above cited.

Barry v. Crowley, 4 Gill. 194; First Nat. Bank v. Heuschen, 52 Mo. 207.

After dissolution by bankruptcy, see Gates v. Beecher, 60 N. Y. 518.

After dissolution by death of one partner, see Cayuga County Bank v. Hunt, 2 Hill, 635; Barlow v. Coggan, 1 Wash. T. 257.

[14]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 78); R. I. (§ 86); Md. (§ 97); N. Y. (§ 138); Wis. (§ 1678-8).

[15]Bank of Red Oak v. Orvis, 40 Iowa, 332; Arnold v. Dresser, 8 Allen, 435; Benedict v. Schmieg, 13 Wash. 476.

§ 194. Time of Presentment.

Presentment for payment must be made at a reasonable hour on a business day.[17] What is a reasonable hour within this rule depends on circumstances.[18] On the question whether a presentment, at 5:20 o'clock P. M., of a note payable at an office in an insurance building in Chicago, was made within business hours, evidence as to what were the ordinary business hours in that city was admissible.[19]

§ 195. Same—Instruments Payable on Demand.

The negotiable instruments laws have changed the rule, in several states,[20] as to the

[16]Britt v. Lawson, 15 Hun, 123.

[17]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 72, subd. 2); R. I. (§ 80, subd. 2); Md. (§ 91, subd. 2); N. Y. (§ 132, subd. 2); Wis. (§ 1678-2, subd. 2). Cayuga County Bank v. Hunt, supra.

[18]A presentment at a bank after business hours on the day of maturity, but before the officers had left the bank, was sufficient. Allen v. Avery, 47 Me. 287. A presentment at 9 o'clock P. M., on the last day of grace, at the residence of the maker after he had retired, was sufficient. Farnsworth v. Allen, 4 Gray, 453.

[19]Clough v. Holden, 115 Mo. 336.

[20]Massachusetts, where demand notes have hitherto been overdue at the end of 60 days from date (St. 1839, c. 121, § 2. See Rice v. Wesson 11 Metc. 400); Connecticut, where they could be presented

time for presentment of an instrument payable on demand, by providing that presentment of such instrument for payment must be made within a reasonable time after their issuance, except that, in case of a bill of exchange, presentment for payment within a reasonable time after the last negotiation is sufficient.[21]

§ 196. Same—Checks.

A check, being a bill payable on demand,[22] is governed by the above rule, and must be presented for payment within a reasonable

within four months (Gen. St. p. 405; Rhodes v. Seymour, 36 Conn. 1); and New York, where they were treated as good security for an indefinite time (Merritt v. Todd, 23 N. Y. 28; Parker v. Stoud, 98 N. Y. 379, reversing 31 Hun, 578). In Vermont demand notes must be presented within 60 days (Rev. Laws, § 2013; Verder v. Verder, 63 Vt. 38).

[21]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 71); R. I. (§ 79); Md. (§ 90); N. Y. (§ 131); Wis. (§ 1678-1).

A failure to demand payment of a demand note for two and one-half years, or to notify the indorsers, releases them. Home Sav. Bank v. Hosie (Mich.) 77 N. W. 625.

Effect of negotiation as extending time, see Rice v. Wesson, 11 Metc. 400; Union Bank v. Ezell, 10 Hump. 385; Corwith v. Morrison, 1 Pin. 489.

[22]See ante, § 13.

time after its issuance, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.[23]

It has long been a general rule that presentment of a check must be made within a reasonable time after its issuance;[24] and this rule is usually construed to mean that a presentment, or a forwarding for presentment, must be made within twenty-four hours after the issuance of the check.[25] Most of the cases,

[23]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§186); R. I. (§ 194); Md. (§ 205); N. Y. (§ 322); Wis. (§ 1684-2).

Drawer of check must show special injury by delay in presentment. Emery v. Hobson, 63 N. E. 32; Cowing v. Altman, 79 N. Y. 167; Little v. Phenix Bank, 2 Hill, 425. Also in case of failure to present for payment. Allen v. Kramer, 2 Ill. App. 205. But see Ford v. McClung, 5 W. Va. 156; First Nat. Bank v. Miller, 37 Neb. 500, holding that the indorser need not show special injury.

A payee who neglects to present a check within a reasonable time must stand any loss occasioned by his default. Greely v. Cascade County (Mont.) 57 Pac. 274.

[24]Bull v. First Nat. Bank, 14 Fed. 612; Woodruff v. Plant, 41 Conn. 344; Mohawk Bank v. Broderick, 10 Wend. 304.

[25]Mohawk Bank v. Broderick, supra; Smith v. Miller, 43 N. Y. 171; Schoolfield v. Moon, 9 Heisk. 171; First Nat. Bank v. Alexander, 84 N. C. 30; Grange v. Reigh, 93 Wis. 552.

however, have been decided on their own peculiar facts.[26]

§ 197. Same—Instruments not Payable on Demand.

Instruments not payable on demand must be presented for payment on the day they fall due.[27] Under this provision of the negotiable instruments laws it has been held that if notes in a series are payable at different times, and default in payment of the first is to mature the others immediately, the holders of others than the first have a reasonable time within which to present them after the dishonor of the first note.[28]

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[26]For presentments held to have been made with reasonable diligence, see Woodruff v. Plant, supra; First Nat. Bank v. Buckhannon Bank, 80 Md. 475, 27 L. R. A. 332; Nebraska Nat. Bank v. Logan, 35 Neb. 182; Rosenthal v. Ehrlicher, 154 Pa. St. 396; Lloyd v. Osborne, 92 Wis. 93.

For unreasonable delay in presentment, see Anderson v. Rodgers, 53 Kan. 542, 27 L. R. A. 248; Anderson v. Gill, 79 Md. 312; Holmes v. Roe, 62 Mich. 199; Carroll v. Sweet, 9 Misc. Rep. 382.

[27]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 71); R. I. (§ 79); Md. (§ 90); N. Y. (§ 131); Wis. (§ 1678-1).

Days of grace abolished, see post, § 206, q. v. for time of maturity in general.

[28]Creteau v. Foote, 57 N. Y. Supp. 1103.

§ 198. Same—Instruments Payable at Bank.

Where the instrument is payable at a bank, presentment 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.[29] Presentment a few minutes after the regular time for closing is sufficient if such is the custom of the bank;[30] but a presentment to an officer of the bank out of business hours would not ordinarily be sufficient.[31]

Where the office hours of a bank ended at 4 o'clock P. M., and the indorser of a note payable there was ready to pay the same on the day of its maturity, and on that day sent the maker to the bank several times to see if

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[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 75); R. I. (§ 83); Md. (§ 94); N. Y. (§ 135); Wis. (§ 1678-5).

See Allen v. Avery, 47 Me. 287.

Since the maker of a note payable at a bank has up to the close of business hours to deposit money to meet it, presentment should be made at the time of closing. Church v. Clark, 21 Pick. 310; Harrison v. Crowder, 6 Smedes & M. 464.

[30]Bank of Utica v. Smith, 18 Johns. 230. See, also, Salt Springs Nat. Bank v. Burton, 58 N. Y. 430.

[31]Swan v. Hodges, 3 Head, 251.

the note was there and ascertain its amount, and the maker was informed that the note was not there, but the note was finally presented at the bank on that day by the holder, who obtained admittance at about 5 o'clock P. M. and demanded payment, which was refused because no funds had been furnished to meet the note, the indorser was held liable; the court stating that the circumstances did not take the case out of the general rule, and that "had the maker gone to the bank prepared to pay the note, and waited there for that purpose until the close of business hours, and then left, or had he placed funds in the bank and allowed them to remain there until the close of business hours, and then withdrawn them in consequence of the nonpresentment of the note, we are of the opinion that a subsequent presentation would not have been sufficient to charge the indorser."[32]

§ 199. Same—When Delay Excused.

Delay in making presentment is excused when caused by circumstances beyond the control of the holder and not imputable to

[32]Salt Springs Nat. Bank v. Burton, 58 N. Y. 430, citing Bank of Syracuse v. Hollister, 17 N. Y. 46; Shepherd v. Chamberlain, 8 Gray, 225; Flint v. Rogers, 15 Me. 67; Allen v. Avery, 47 Me. 287.

his default, misconduct, or negligence.[33] When the cause of delay ceases to operate, presentment must be made with reasonable diligence.[34]

§ 200. Place of Presentment.

Where a place of presentment is specified in the instrument, it must be presented for payment there.[35] If no place of payment is designated, but the address of the person to

[33]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 81); R. I. (§ 89); Md. (§ 100); N. Y. (§ 141); Wis. (§ 1678-11).

Mistake of postal clerk, see Windham Bank v. Norton, 22 Conn. 21.

Bad weather, see McDonald v. Mosher, 23 Ill. App. 206; Barker v. Parker, 6 Pick. 80.

Death of holder, see Wilson v. Senier, 14 Wis. 380.

War, see Hardin v. Boyce, 59 Barb. 425; Lane v. Bank of West Tennessee, 9 Heisk. 419.

[34]Same sections of negotiable instruments laws as last above cited.

[35]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 73, subd. 1); R. I. (§ 81, subd. 1); Md. (§ 93, subd. 1); N. Y. (§ 133, subd. 1); Wis. (§ 1678-3, subd. 1).

Bank of the State v. Bank of Cape Fear, 13 Ired. 75; Warren v. Briscoe, 12 La. 472; Townsend v. Chas. H. Heer Dry Goods Co., 85 Mo. 503; Ferner v. Williams, 37 Barb. 9; Arnold v. Dresser, 8 Allen, 435; Apperson v. Bynum, 5 Cold. 341; Bynum v. Apperson, 9 Heisk. 632.

make payment is given in the instrument, it should be presented there.[36]

If no place of payment is specified, and no address is given, the instrument should be presented at the place of business or residence of the person to make payment.[37]

In the absence of custom authorizing it, a presentment at the office of a loan and trust company in a particular city is not a sufficient presentment of a note payable at any "bank" in such city. Nash v. Brown, 165 Mass. 384. But see statutory definition of "bank" in note 21, chapter XV.

Where the specified place of payment is the agency of a banking company in a particular city, a presentment there has been sustained, though the agency had been removed shortly before the presentment. Spann v. Batlzell, 1 Fla. 301, 46 Am. Dec. 346. So if the bank where a note is made payable fails before the maturity of the note, presentment at the old place of business is good. Central Bank v. Allen, 16 Me. 41. See, also, Rienke v. Wright, 93 Wis. 368; Adams v. Leland, 30 N. Y. 309.

On question of diligence in presentment at place designated, see Farnsworth v. Mullen, 164 Mass. 112.

[36]Subdivision 2, same sections of negotiable instruments laws as last above cited.

A holder who, within the knowledge of the maker, places the latter's address below his name on the note, is bound by a demand made at such place by a subsequent holder. Farnsworth v. Mullen, supra.

[37]Subdivision 3, same sections of negotiable instruments laws as last above cited.

In any other case presentment is sufficient if made to the person to make payment wherever he can be found, or if made at his last known place of business or residence.[38]

§ 201. Instrument must be Exhibited.

To render a presentment for payment sufficient, the instrument must be exhibited to the person from whom payment is demanded.[39] This rule is stated in Arnold v.

Estes v. Tower, 102 Mass. 65; Peoples' Nat. Bank v. Lutterloh, 95 N. C. 495 (no address given).

Presentment at maker's place of business without inquiring for his residence is not sufficient. Talbot v. National Bank of the Commonwealth, 129 Mass. 67.

Diligence where no place is specified, see Holtz v. Boppe, 37 N. Y. 634; Mason v. Prichard, 9 Heisk. 793.

[38]Subdivision 4, same sections of negotiable instruments laws as last above cited.

Demand made on the maker while on the street is good, if he has no place of business, and does not object to the place of demand. King v. Crowell, 61 Me. 244; Parker v. Kellogg, 158 Mass. 90.

Place of execution of instrument as proper place for presentment, see Wittkowski v. Smith, 84 N. C. 671; Hart v. Wills, 52 Iowa, 56. The maker is presumed to reside in the state where the note is executed. Herrick v. Baldwin, 17 Minn. 209.

[39]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 74); R. I. (§ 82); Md. (§ 93); N. Y. (§ 134); Wis. (§ 1678-4).

Dresser as follows: "No valid presentment and demand can be made by any person without having the note in his possession at the time, so that the maker may receive it in case he pays the amount due, unless special circumstances, such as the loss of the note or its destruction, are shown to excuse its absence."[40] The right of such person to an actual exhibition or production of the instrument may be waived by failing to ask for it, and refusing payment on other grounds.[41]

§ 202. When Presentment may be Dispensed with.

Presentment for payment is dispensed with if, after the exercise of reasonable diligence, presentment cannot be made.[42] This is the case where the person primarily liable cannot be found after diligent search.[43] So,

Musson v. Lake, 4 How. 262; Arnold v. Dresser, 8 Allen, 435; Shaw v. Reed, 12 Pick. 132. But see Whitwell v. Johnson, 17 Mass. 449.

[40]Arnold v. Dresser, 8 Allen, 435.

[41]Legg v. Vinal, 165 Mass. 555; Waring v. Betts, 90 Va. 46; King v. Crowell, supra; Lockwood v. Crawford, 18 Conn. 361.

[42]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 82, subd. 1); R. I. (§ 90, subd. 1); Md. (§ 101, subd. 1); N. Y. (§ 142, subd. 1); Wis. (§ 1678-12, subd. 1).

Waring v. Betts, 90 Va. 96.

also, if payment is stopped by the drawer, or his funds are withdrawn, presentment is not necessary to charge him.[44] But the mere insolvency of the person primarily liable will not excuse presentment.[45]

Presentment is also dispensed with where the drawee is a fictitious person.[46]

§ 203. Waiver of Presentment.

Presentment may also be waived,[47] and the

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[43]Galpin v. Hard, 3 McCord, 394; Adams v. Leland, 30 N. Y. 309; Ratcliff v. Planters' Bank, 2 Sneed, 425. But mere failure to find the maker of a note in the city where it was executed is not a good excuse. Haber v. Brown, 101 Cal. 445.

Nonresidence as excusing presentment, see Williams v. Bank of United States, 2 Pet. 96; Moore v. Coffield, 1 Dev. 247.

[44]Rhett v. Poe, 2 How. 457; Purchase v. Mattison, 6 Duer, 587.

[45]Lee Bank v. Spencer, 6 Metc. 308; Manning v. Lyon, 70 Hun, 345; Bassenhorst v. Vilby, 45 Ohio St. 333; Cedar Falls Co. v. Wallace Brothers, 83 N. C. 225.

[46]Subdivision 2, same sections of negotiable instruments laws as last above cited.

[47]Subdivision 3, same sections of negotiable instruments laws as last above cited.

Robinson v. Barnett, 19 Fla. 670. See, also, Stanley v. McElrath, 86 Cal. 449, 10 L. R. A. 545, where it was held that an indorser who waived notice of nonpayment after dishonor, and paid the note, could recover from the maker.

waiver may be express, by parol[48] or writing,[49] or it may be implied.[50]

§ 204. When Instrument Dishonored by Nonpayment.

The instrument is dishonored by nonpayment if it is duly presented for payment, and payment is refused or cannot be obtained, or presentment is excused, and the instrument is overdue and unpaid.[51]

§ 205. Liability after Dishonor, of Person Secondarily Liable.

Subject to the other provisions of the negotiable instruments laws as to the liability of persons secondarily liable when an instrument is dishonored by nonpayment, an immediate right of recourse against all parties secondarily thereon accrues to the holder.[52]

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[48]Porter v. Kemble, 53 Barb. 467; Maples v. Traders' Deposit Bank. 15 Ky. Law Rep. 879.

[49]Portsmouth Sav. Bank v. Wilson, 5 App. D. C. 8; City Sav. Bank v. Hopson, 53 Conn. 453.

[50]Markland v. McDaniel, 51 Kan. 350, L. R. A. 96; Cady v. Bradshaw, 116 N. Y. 188; Sieger v. Second Nat. Bank, 132 Pa. St. 307.

[51]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 83); R. I. (§ 91); Md. (§ 102); N. Y. (§ 143); Wis. (§ 1678-13).

[52]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 84);

§ 206. Time of Maturity—Days of Grace Abolished.

Most of the negotiable instruments laws contain the provision that "every negotiable instrument is payable at the time fixed therein without grace."[53] But three days of grace are allowed on sight drafts by the negotiable instruments law of Rhode Island,[54] and on notes, acceptances, and sight drafts by the law as adopted in North Carolina,[55] while the negotiable instruments act as first adopted in Massachusetts has already been amended so as to allow three days of grace on sight drafts.[56]

R. I. (§ 92); Md. (§ 103); N. Y. (§ 144); Wis. (§ 1678-14).

Parties to negotiable instruments held to be guarantors, and not indorsers. See Glickauf v. Kaufmann, 73 Ill. 378; Nelson v. Harrington, 16 Gray, 139; Harding v. Waters, 6 Lea, 324. But see Pollard v. Huff, 44 Neb. 892.

Cosureties not guarantors, see Southerland v. Fremont, 107 N. C. 565.

In case of a mere guaranty of collection, the holder must first pursue remedies against the principal debtor. Summers v. Barrett, 65 Iowa, 292; Pach v. Frink, 10 Iowa, 193.

[53]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. D., Or., Tenn., Utah, Va., Wash. (§ 85); Md. (§ 104); N. Y. (§ 145); Wis. (§ 1678-15).

[54]Neg. Inst. Law, § 93.

[55]Neg. Inst. Law § 85.

Under the English Bills of Exchange Acts 1882 (45 & 46 Vict. c. 61, § 14, subd. 1) providing that a bill is due and payable "on the last day of grace," the holder cannot begin, on the last day of grace, an action against the acceptor, who had refused payment on that day, as no cause of action arises until after the expiration of that day.[57]

§ 207. Same—When Day of Maturity is Sunday or a Holiday.

When the day of maturity falls on Sunday or a holiday, the instrument is payable on the next succeeding business day.[58] This rule is an application of the general rule that where the day, or the last day, for doing any act required or permitted by the negotiable instruments laws falls on Sunday or a holiday the act may be done on the next succeeding secular or business day.[59]

§ 208. Same—When Day of Maturity is Saturday.

Instruments falling due on Saturday are

[56]Act March 6, 1899.

[57]Kennedy v. Thomas [1894] 2 Q. B. Div. 759.

[58]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 85); R. I. (§ 93); Md. (§ 104); N. Y. (§ 145); Wis. (§ 1678-15).

[59]Neg. Inst. Laws N. Y., R. I. (§ 5); Md. (§ 17); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va.,

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.[60] This provision is not in the negotiable instruments law of Wisconsin,[61] and in that state instruments falling due on Saturday are payable on that day.

In the negotiable instruments law of Colorado is a provision that "instruments fall-

Wash. (§ 194); Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

[60]Neg. Inst. Laws Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 85); R. I. (§ 93); Md. (§ 104); N. Y. (§ 145).

This provision of the negotiable instruments law has been amended in New York by inserting after the words "instruments falling due," the words "or becoming payable." Laws 1898, c. 336, § 13.

Saturday afternoon was made a half holiday in New York by Laws 1887, c. 289, § 1. See Sylvester v. Crohan, 138 N. Y. 494, where it was held that "a party whose duty it is to collect or present for payment a bill, note or draft which falls due on Saturday, is not chargeable with neglect or omission of duty because of failure to present it on that day, providing he does present it on Monday, or the next secular day, and then, on that day, gives notice of dishonor in case of nonpayment."

[61]See Neg. Inst. Law, § 1678-15.

ing due on any day, in any place where any part of such day is a holiday, 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 during reasonable hours of the part of such day which is not a holiday."[62]

§ 209. Computation of Time.

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 including the day of payment.[63]

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[62]Neg. Inst. Law, § 85.

[63]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 86); R. I. (§ 94); Md. (§ 105); N. Y. (§ 146); Wis. (§ 1678-16).

See New York Statutory Construction Law, §§ 26, 27.

CHAPER XII.

Protest of Bills of Exchange.

§ 210. Foreign Bills must be Protested for Nonacceptance or Nonpayment.
§ 211. Protest both for Nonacceptance and Nonpayment.
§ 212. Excuses for Delay or Failure to Protest.
§ 213. Nature and Sufficiency of Protest.
§ 214. Conclusiveness of Certificate.
§ 215. Protest may be Made by Notary or Resident of Place of Dishonor.
§ 216. Time of Making Protest—Extending Notes.
§ 217. Same—Protest before Maturity Where Acceptor is Insolvent.
§ 218. Place of Making Protest.
§ 219. Protest of Lost or Detained Bill may be Made on Copy.
§ 220. Waiver of Protest.
§ 221. Damages Recoverable in Case of Protest—Foreign Bills.

§ 210. Foreign Bills must be Protested for Nonacceptance or Nonpayment.

Where a foreign bill which shows on its face that it is such is dishonored by nonacceptance, it must be duly protested for nonacceptance; and it must be duly protested for nonpayment if it has been dishonored by nonpayment, and has not been previously dishonored for nonacceptance.[1] Negotiable instruments other than foreign bills may be, but need not be, protested for nonacceptance

or nonpayment.[2] But as the notarial certificate of protest is generally made prima facie evidence of the facts of dishonor and notice which it recites, it is often convenient to protest instruments which are not foreign bills. If a foreign bill is not protested as required by the above rules, the drawer and indorsers are discharged.[3]

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[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 152); R. I. (§ 160); Md. (§ 171); N. Y. (§ 260); Wis. (§ 1681-9).

As to necessity of protesting dishonored foreign bill, see Commercial Bank v. Varnum, 3 Lans. 86, 49 N. Y. 269; Gardner v. Bank of Tennessee, 1 Swan, 420; Joseph v. Salomon, 19 Fla. 623; Union Bank v. Hyde, 6 Wheat. 572.

A dishonored inland bill need not be protested. McCord v. Curlee, 59 Ill. 221; Townsend v. Auld, 8 Misc. Rep. 516; Hubbard v. Troy, 2 Ired. 134; Shaw v. McNeill, 95 N. C. 535.

A dishonored check need not be protested. Wittich v. First Nat. Bank, 20 Fla. 843; Henshaw v. Root, 60 Ind. 220; Wood River Bank v. First Nat. Bank, 36 Neb. 744.

[2]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 118); R. I. (§ 126); Md. (§ 137); N. Y. (§ 189); Wis. (§ 1678-48).

[3]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 152); R. I. (§ 160); Md. (§ 171); N. Y. (§ 260); Wis. (§ 1681-9).

§ 211. Protest both for Nonacceptance and Nonpayment.

The fact that a bill has been protested for nonacceptance will not prevent a subsequent additional protest for nonpayment.[4]

§ 212. Excuses for Delay or Failure to Protest.

It is a general rule that protest is dispensed with by any circumstances which would dispense with notice of dishonor.[5] This rule applies to any delay caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence; but the bill must in every case be protested within a reasonable time after the cause of delay ceases to operate.[6] A state of war rendering protest impossible would excuse a failure to protest,[7] but pro-

[4]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 157); R. I. (§ 165); Md. (§ 176); N. Y. (§ 265); Wis. (§ 1681-14).

[5]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 159); R. I. (§ 167); Md. (§ 178); N. Y. (§ 267); Wis. (§ 1681-16).

[6]Same sections of negotiable instruments laws as last above cited.

For provisions of charter of Greater New York as to presentment and protest of commercial paper during an epidemic in city, see ante, chapter VII., note 36.

test must be made within a reasonable time after the close of the war, and the resumption of commercial relations.[8] Protest is also excused if the drawer has instructed the drawee not to pay,[9] or, after issuing the bill or order, has withdrawn or intercepted the funds out of which it was to have been paid.[10]

§ 213. Nature and Sufficiency of Protest.

In its broadest sense, the word "protest" includes all the steps necessary to charge the indorsers.[11] Technically, however, the protest is a formal document annexed to the bill, or containing a copy of the bill,[12] under the

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[7]House v. Adams, 48 Pa. St. 261. And see Peters v. Hobbs, 25 Ark. 67; Bynum v. Apperson, 9 Heisk. 632. But see United States v. Barker, Fed. Cas. No. 14,519.

[8]James v. Wade, 21 La. Ann. 548; Lane v. Bank of West Tennessee, 9 Heisk. 419.

[9]Neederer v. Barber, Fed. Cas. No. 10,079; Manning v. Maroney, 87 Ala. 563. See, also, Child v. Moore, 6 N. H. 93.

[10]See Rhett v. Poe, 2 How. 457; Lilley v. Miller, 2 Nott. & McC. 257.

[11]White v. Keith, 97 Ala. 668; Ayrault v. Pac. Bank, 47 N. Y. 570; Wolford v. Andrews, 29 Minn. 250; Townsend v. Lorain Bank, 2 Ohio St. 345.

[12]See Colms v. Bank of Tennessee, 4 Baxt. 422, where it was held that a failure to copy the instrument in the formal protest was cured by prefixing a copy, and referring to such copy in the

hand and seal[13] of the notary making it, and specifying the time and place of presentment,[14] the fact that presentment was made, and the manner thereof,[15] the cause or reason for protesting the bill,[16] the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.[17]

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protest. See, also, Townsend v. Lorain Bank, supra.

[13]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 153); R. I. (§ 161); Md. (§ 172); N. Y. (§ 261); Wis. (§ 1681-10).

See Jordan v. Long, 109 Ala. 414; Richards v. Boller, 51 How. Prac. 371, 6 Daly, 460. And see Bank of Cooperstown v. Woods, 28 N. Y. 561.

[14]Subdivision 1, same sections of negotiable instruments laws as last above cited.

Gardner v. Bank of Tennessee, 1 Swan, 420; People's Bank v. Brooke, 31 Md. 7. See, also, Brooks v. Higby, 11 Hun, 235, in which it was held that the notarial certificate failed to show that the draft was presented at the place where it was made payable.

[15]Subdivision 2, same sections of negotiable instruments laws as last above cited.

A protest which does not show presentation to the drawee is not admissible in evidence in an action against an indorser. Musson v. Lake, 4 How. 262.

[16]Subdivision 3, same sections of negotiable instruments laws as last above cited.

§ 214. Conclusiveness of Certificate.

A properly executed certificate of protest is, in most states, prima facie evidence of the facts therein recited,[18] but may be contradicted by other evidence.[19]

§ 215. Protest may be Made by Notary or Resident of Place of Dishonor.

Protest of a bill may of course be made by a notary,[20] and it is customary to have a notary make the protest, but it may also be made by any respectable resident of the place where the bill is dishonored, in the presence

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[17]Subdivision 4, same sections of negotiable instruments laws as last above cited.

[18]See Martin v. Brown, 75 Ala. 442; Ricketts v. Pendleton, 14 Md. 320; Legg v. Vinal, 165 Mass. 555; Bettis v. Schrieber, 31 Minn. 329; McAndrew v. Radway, 34 N. Y. 511; Rosson v. Carroll, 6 Pickle, 90; Central Bank v. St. John, 17 Wis. 157. See, also, Sims v. Handley, 6 How. 1.

[19]Meise v. Newman, 76 Hun, 341; Adams v. Wright, 14 Wis. 408.

[20]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 154); R. I. (§ 162); Md. (§ 173); N. Y. (§ 262); Wis. (§ 1681-11).

Protest may be made by the notary's clerk, if that is the custom at the place of protest. Commercial Bank of Kentucky v. Varnum, 49 N. Y. 269; Munroe v. Woodruff, 17 Md. 159; Sussex Bank v. Baldwin, 17 N. J. Law, 487.

In the absence of well-defined custom, the notary's clerk or deputy cannot make the protest

of two or more credible witnesses.[21] By the law merchant, a notarial protest need not be made in the presence of witnesses.[22]

§ 216. Time of Making Protest—Extending Notes.

Protest must be made on the day the bill is dishonored, unless protest is excused.[23] The notary need not, however, make out the formal protest at that time. He may make a note of the facts, and draw up or extend his formal protest afterwards.[24] The rule is stated in Commercial Bank of Kentucky v. Barksdale as follows: "It seems to be clearly established by the general current

for him. Cribbs v. Adams, 13 Gray, 597; Onondaga Bank v. Bates, 3 Hill, 53.

[21]Same sections of negotiable instruments laws as last above cited.

This provision is taken from the English Bills of Exchange Act 1882 (§ 45).

[22]Bradford v. Cooper, 1 La. Ann. 325.

[23]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 155); R. I. (§ 163); Md. (§ 174); N. Y. (§ 263); Wis. (§ 1681-12).

Commercial Bank of Kentucky v. Barksdale, 36 Mo. 563.

A certificate of protest made four and one-half years after protest is not proof of notice of dishonor. Boggs v. Branch Bank at Mobile, 10 Ala. 970.

[24]Bailey v. Dozier, 6 How. 23; First Nat. Bank v. Crittenden, 2 Thomp. & Co. 118.

of authority that the protest must be made on the same day with the presentment and demand, though a noting of the protest on the bill itself may be regarded as an incipient step toward a protest which may be completed afterwards, at any time, by drawing up the protest in form."[25]

This formal protest or extension of the original noting takes date as of the date of the noting.[26]

§ 217. Same—Protest before Maturity Where Acceptor is Insolvent.

The holder of a bill may cause it to be protested before maturity for better security against the drawer and indorsers, if, before the maturity of the bill, the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors.[27]

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[25]Commercial Bank of Kentucky v. Barksdale, 36 Mo. 563.

[26]Same sections of negotiable instruments laws as last above cited.

See Chatham Bank v. Allison, 15 Iowa, 357; Union Bank v. Holcomb, 5 Hump. 583.

[27]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 158); R. I. (§ 166); Md. (§ 177); N. Y. (§ 266); Wis. (§ 1681-15).

§ 218. Place of Making Protest.

Ordinarily, a bill must be protested at the place where it is dishonored;[28] but where a bill is drawn payable at the place of business or residence of a person other than the drawee, and has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.[29]

§ 219. Protest of Lost or Detained Bill may be Made on Copy.

Where a bill is lost or destroyed, or wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.[30]

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[28]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 156); R. I. (§ 164); Md. (§ 175); N. Y. (§ 264); Wis. (§ 1681-13).

[29]Same sections of negotiable instruments laws as last above cited.

[30]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 160); R. I. (§ 168); Md. (§ 179); N. Y. (§ 268); Wis. (§ 1681-17).

This is section 51, subd. 8, of the English Bills of Exchange Act 1882.

See Hinsdale v. Miles, 5 Conn. 331, where it was held that presentment of copy of lost note and no-

§ 220. Waiver of Protest.

Protest may be waived by the indorsers or other parties secondarily liable,[31] and a waiver of protest is deemed to be a waiver of presentment and notice of dishonor.[32] A

tice of dishonor was sufficient, and Scott v. Meeker, 20 Hun, 161, where it was held that the accidental destruction of a check by fire excused presentment for payment.

As to the necessity of indemnity against subsequent presentation of lost paper by a bona fide holder, see McGregory v. McGregory, 107 Mass. 543, and Armstrong v. Lewis, 14 Minn. 406, where it was held that a receiver suing on a note must produce it, or prove it to have been lost or destroyed, and give bond accordingly.

[31]Mauney v. Coit, 80 N. C. 300.

It may be waived by one partner. Seldner v. Mt. Jackson Nat. Bank, 66 Md. 488.

One becoming a party to paper containing a waiver written in by the maker is bound thereby. Iowa Val. State Bank v. Sigstad, 96 Iowa, 491; Hoover v. McCormick, 84 Wis. 215. The last-cited case also holds that, by waiving demand and notice, an indorser promises to pay absolutely if the maker does not.

Indorsers waise protest of destroyed note by stating that payment will be made, after being informed of the destruction. Roch v. London, 24 Misc. Rep. 384.

[32]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 111); R. I. (§ 119); Md. (§ 130); N. Y. (§ 182); Wis. (§ 1678-41).

The rule is also recognized in the following

new consideration is not necessary for a waiver of protest,[33] but the weight of authority requires that the waiver should be in writing.[34]

§ 221. Damages Recoverable in Case of Protest—Foreign Bills.

The majority of the negotiable instruments laws do not provide for the damages recoverable in case of protest, but the Wisconsin law provides that where any bill of exchange drawn or endorsed within the state, and payable without the limits of the United States, shall be duly protested for nonac-

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cases: Union Bank v. Hyde, 6 Wheat. 572; Shaw v. McNeill, 95 N. C. 535; Wilkie v. Chandon, 1 Wash. 355; Johnson v. Parsons, 144 Mass. 173, where the words used were, "hereby waive protest," and it did not appear that the protest was necessary to hold the indorser making the waiver.

In Cooke v. Pomeroy, 65 Conn. 466, it was held that an indorser expressly waiving notice of protest was liable, though demand was not made on the maker, nor notice given, for 14 years after delivery of the note.

[33]Robinson v. Barnett, 19 Fla. 670.

[34]Farwell v. St. Paul Trust Co., 45 Minn. 495, and cases cited. But see Boyd v. Cleveland, 4 Pick. 525.

As to what expressions amount to express written waiver, see Savings Bank v. Fisher (Cal.) 41 Pac. 490; Portsmouth Sav. Bank v. Wilson, 5 App. D. C. 8.

ceptance or nonpayment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of demand, and damages at the rate of five per cent upon the contents thereof, together with the interest on said contents, to be computed from the date of the protest, and that said amounts shall be in full of all damages, charges, and expenses.[35]

The Wisconsin law further provides that if any bill of exchange drawn upon any person or corporation out of the state, but within some state or territory of the United States, shall be duly protested for nonacceptance or nonpayment, the drawer or indorser thereof, after due notice, "shall pay said bill, with legal interest, according to its tenor, and five per cent. damages, together with costs and charges of protest."[36]

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[35]Neg. Inst. Law, § 1682.

[36]Neg. Ins. Law, § 1683.

In the states, other than Wisconsin, that have adopted the negotiable instruments law the matter of damages on protest is regulated by other statutes. Colorado, Mills Ann. St. §§ 241, 242; Connecticut, Gen. St. 1864; District of Columbia, Comp. St. c. 8, §§ 11, 13; Maryland, Pub. Gen. Laws, art. 13, §§ 1, 4; Massachusetts, Pub. St. c.

77, §§ 18, 20, 21; New York, 1 Rev. St. p. 770, §§ 18, 23; North Carolina, Code, § 48; North Dakota, Rev. Code, §§ 4956, 4957; Oregon, Hills Ann. Laws, §§ 3195, 3196; Rhode Island, Pub. St. c. 166, §§ 1, 3; Tennessee, Code, § 3512, 3513; Virginia, Code, § 2851.

CHAPTER XIII.

Notice of Dishonor.

§ 222. Necessity of Notice.
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§ 248. Effect of Omission to Give Notice of Nonacceptance.
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§ 222. Necessity of Notice.

As a general rule, where a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser,[1] and any drawer or indorser to whom such notice is not given is discharged.[2]

§ 223. Same—When Notice Dispensed with.

Notice of dishonor may be dispensed with

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 89); R. I. (§ 97); Md. (§ 108); N. Y. (§ 160); Wis. (§ 1678-19).

Bank of Vergennes v. Cameron, 7 Barb. 143; Long v. Stephenson, 72 N. C. 569.

[2]Same sections of negotiable instruments laws as last above cited.

Allen v. Eldred, 50 Wis. 132; Smith v. Miller, 43 N. Y. 171.

when, after the exercise of reasonable diligence, it cannot be given to, or does not reach, the parties sought to be charged.[3] What constitutes "reasonable diligence" is a question to be decided on the facts of each case.[4]

Notice of dishonor by nonpayment is also dispensed with where due notice of a prior dishonor by nonacceptance has been given, unless in the meantime the instrument has been accepted.[5]

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[3]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 112); R. I. (§ 120); Md. (§ 131); N. Y. (§ 183); Wis. (§ 1678-42).

[4]On the question of reasonable diligence, see Gawtry v. Doane, 51 N. Y. 84; Bank of Utica v. Bender, 21 Wend. 643; Shepard v. Citizens' Ins. Co., 8 Mo. 272.

Looking for name in city directory, without other inquiry is not reasonable diligence. Cumming v. Roderick, 51 N. Y. Supp. 1053; Bacon v. Hanna, 137 N. Y. 379, affirming 17 N. Y. Supp. 430; Lawrence v. Miller, 16 N. Y. 235; Baer v. Leppert, 12 Hun, 516.

A state of war excuses notice if sufficient to prevent the conduct of business through the mails. Morgan v. Bank of Louisville, 4 Bush, 82; House v. Adams, 48 Pa. St. 261.

[5]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 116); R. I. (§ 124); Md. (§ 135); N. Y. (§ 187); Wis. (§ 1678-46).

§ 224. Same—When Notice Need not be Given to Drawer.

Notice of dishonor need not be given to the drawer in the following cases: Where the drawer and the drawee is the same person;[6] where the drawee is a fictitious person, or a person not having capacity to contract;[7] where the drawer is the person to whom the instrument is presented for payment;[8] where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;[9] and where the drawer has countermanded payment.[10]

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[6]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 114, subd. 1); R. I. (§ 122, subd. 1); Md. (§ 133, subd. 1); N. Y. (§ 185, subd. 1); Wis. (§ 1678-44, subd. 1).

Fairchild v. Ogdensburgh, C. & R. R. Co., 15 N. Y. 337; Chicago, C. & L. R. Co. v. West, 37 Ind. 211.

[7]Subdivision 2 of same sections of negotiable instruments laws as last above cited.

[8]Subdivision 3, same sections of negotiable instruments laws as last above cited.

[9]Subdivision 4, same sections of negotiable instruments laws as last above cited.

As where drawer has no funds in hands of drawee. Culver v. Marks, 122 Ind. 554; Emery v. Hobson, 63 Me. 32; Rhett v. Poe, 2 How. 457. But see Life Ins. Co. v. Pendleton, 112 U. S. 708, holding that presentment is necessary, even though the drawer has no funds in the hands of the

§ 225. Same—When Notice Need not be Given to Indorser.

Similar rules apply to indorsers, and notice is not required to be given to an indorser if 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;[11] nor is it required if the indorser is the person to whom the instrument is presented for payment,[12] nor where

drawee, if he has reason to believe that the bill will be accepted.

As to the right of the drawer to notice of dishonor where the bill was accepted for his accommodation, see McLaren v. Marine Bank of Georgia, 52 Ga. 131; Barbaroux v. Waters, 3 Metc. 304; Ross v. Bedell, 5 Duer. 462.

An accommodation drawer is entitled to notice. Sherrod v. Rhodes, 5 Ala. 683; Merchants' Bank v. Easley, 44 Mo. 286.

[10]Subdivision 5, same sections of negotiable instruments laws as last above cited.

. Jacks v. Darrin, 3 E. D. Smith, 557; Purchase v. Mattison, 6 Duer, 587; Lilley v. Miller, 2 Nott & McC. 257.

[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 115, subd. 1); R. I. (§ 123, subd. 1); Md. (§ 134, subd. 1); N. Y. (§ 186, subd. 1); Wis. (§ 1678-45, subd. 1).

[12]Subdivision 2, same sections of negotiable instruments laws as last above cited.

See Hull v. Meyers, 90 Ga. 674, holding that if the indorser has full control of the payer's busi-

the instrument was made or accepted for his accommodation.[13] But an indorser who signs for the accommodation of another party to the paper is entitled to notice.[14]

§ 226. Same—Notice to Guarantor.

As to the right of a guarantor to notice, the court in Sabin v. Harris, after a careful review of the authorities, says: "We conclude the rule to be that a guarantor (whose indorsement is not in blank), who is not a party to the note, is liable at the suit of the payee, without any proof of demand and notice of nonpayment, or use of diligence against the maker. If, however, in an action by the payee against the guarantor, the guarantor can show affirmatively that he has sustained damages from the want of such notice or

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ness, and his relation to him is such that it is his duty to see that the note is provided for, he is not entitled to notice.

[13]Subdivision 3, same sections of negotiable instruments laws as last above cited.

Reid v. Morrison, 2 Watts & S. 401.

[14]French v. Bank of Columbia, 4 Cranch, 141; Perry v. Friend, 57 Ark. 437; Apple v. Lesser, 93 Ga. 749; Sawyer v. Brownell, 13 R. I. 141, where the note was payable on demand, with interest.

An accommodation indorser of a draft is entitled to notice of dishonor where, prior to his indorsement, the draft had been altered by changing the name of the payee, and raising the amount.

diligence, he has a right to make such showing as a defense pro tanto to the plaintiff's action."[15] The court in that case also deduces the following conclusion from the opinion of the court in Gibbs v. Cannon:[16] "That, where the maker of a note is solvent at its maturity, notice of nonpayment should be given to the guarantor, and that the latter, under such circumstances, may avail himself of the want of notice of nonpayment; but it places the burden of proving solvency and of injury from want of notice upon the guarantor."

§ 227. By Whom Notice Given.

Notice of dishonor 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, on taking it up, would have a right to reimbursement from the party to whom notice is given.[17] The object of requiring the notice

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Susquehanna Val. Bank v. Loomis, 85 N. Y. 207, 39 Am. Rep. 652.

[15]Sabin v. Harris, 12 Iowa, 87. See, also, Heaton v. Hulbert, 3 Scam. 489.

[16]Gibbs v. Cannon, 9 Serg. & R. 198.

[17]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 90);

to come from the holder is to enable him, as the person chiefly interested, to fix or waive the liabilities of the indorsers.[18]

As a general rule, notice cannot be given by a total stranger,[19] though it may be given by a notary[20] or his clerk.[21]

§ 228. Same—May be Given by Agent.

Notice of dishonor may be given by an agent, either in his own, or in the name of any party entitled to give notice, whether that party be his principal or not.[22] One who

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R. I. (§ 98); Md. (§ 109); N. Y. (§ 161); Wis. (§ 1678-20).

Cromer v. Platt, 37 Mich. 132; Stanton v. Blossom, 14 Mass. 116 Stafford v. Yates, 18 Johns, 327.

[18]Harris v. Robinson, 4 How. 336.

[19]Lawrance v. Miller, 16 N. Y., 235; Chanoine v. Fowler, 3 Wend. 173; Brower v. Wooten, 4 N. C. 507.

[20]Burbank v. Beach, 15 Barb. 326; Renick v. Robbins, 28 Mo. 339. But in giving such notice, a notary does not act in his official capacity, but merely as an agent. Bank of Linsborg v. Ober. 31 Kan. 559; Swayze v. Britton, 17 Kan. 625.

[21]Munroe v. Woodruff, 17 Md. 159; Cowperthwaite v. Sheffield, 3 N. Y. Super. Ct. 416.

[22]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 91); R. I. (§ 99); Md. (§ 110); N. Y. (§ 162); Wis. (§ 1678-21).

Notice by notary as agent, see supra, note 20.

Notice may be given in agent's name. Drexler v. McGlynn, 99 Cal. 143.

takes a note for collection is an agent for the purpose of giving notice.[23]

If the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties thereon, or he may give notice to his principal.[24] If he gives notice to his principal, he must do so within the time required if he were the holder, and the principal, on receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.[25]

These last two provisions are identical

Cashier of bank which is the holder may give notice. Bank of State of Missouri v. Vaughan, 36 Mo. 90.

[23]Mead v. Engs, 5 Cow. 303; Burnham v. Webster, 19 Me. 232; Blakeslee v. Hewett, 76 Wis. 341.

Bank holding for collection may give notice of dishonor. Manchester Bank v. Fellows, 28 N. H. 302; Mead v. Engs, supra; Sheldon v. Benham, 4 Hill, 129.

[24]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 94); R. I. (§ 102); Md. (§ 113); N. Y. (§ 165); Wis. (§ 1678-24).

Bank of United States v. Goddard, 5 Mason, 366; Foster v. McDonald, 3 Ala. 34; First Nat. Bank v. Smith, 132 Mass. 227; Bank of United States v. Davis, 2 Hill, 451; Hill v. Planters' Bank, 2 Hump. 670.

[25]Same sections of negotiable instruments laws as last above cited.

with the provisions of the English Bills of Exchange Act 1882 (45 & 46 Vict. c. 61, § 49, subd. 13), under which it has been held that where one branch of a country bank sent a customer's bill to a London bank for presentment, and, on the day after dishonor, the London bank sent notice by post to a branch of the country bank other than the branch from which it received the bill, but on the next day, on discovering the mistake, telegraphed notice to such branch, the notice was sufficient to bind an indorser.[26]

§ 229. When Notice Inures to Subsequent Holders and Other Parties.

Where notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.[27]

Where notice is given by or on behalf of a party entitled to give notice, it inures to the benefit of the holder and all parties subse-

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[26]Fielding & Co. v. Corry [1898] 1 Q. B. Div. 268.

[27]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 92); R. I. (§ 100); Md. (§ 111); N. Y. (§ 163); Wis. (§ 1678-22).

Marr v. Johnson, 9 Yerg. 1.

quent to the party to whom notice is given.[28]

§ 230. To Whom Notice Given—Party or Agent.

Notice of dishonor may be given either to the party himself, or to his agent in that behalf.[29]

§ 231. Same—Personal Representative of Deceased Party.

When any party to be notified is dead, and his death is known to the party giving notice, the notice must be given to a personal representative of the deceased, if there be one, and if, with reasonable diligence, he can be found.[30] If there is no personal representa-

[28]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 93); R. I. (§ 101); Md. (§ 112); N Y. (§ 164); Wis. (§ 1678-23).

Union Bank v. Grimshaw, 8 La. 205; Brailsford v. Williams, 15 Md. 150, 74 Am. Dec. 559; Linn v. Horton, 17 Wis. 151.

[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 97); R. I. (§ 105); Md. (§ 116); N Y. (§ 168); Wis. (§ 1678-27).

Fassin v. Hubbard, 55 N. Y. 465, where it was held that service on the liquidating agent of a firm was good.

Death of the principal revoking agency, see note 30, infra.

[30]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C.. N. D., Or., Tenn., Utah, Va., Wash. (§ 98); R. I. (§106); Md. (§ 117); N. Y. (§ 169); Wis. (§ 1678-28).

tive, notice may be sent to the last residence or last place of business of the deceased.[31]

§ 232. Same—Notice to Partner is Notice to Firm.

Where the parties to be notified are part-

Dodson v. Taylor, 56 N. J. Law, 11; Merchants' Bank v. Birch, 17 Johns. 25, 8 Am. Dec. 367; Cayuga County Bank v. Bennett, 5 Hill, 236, where the holder, knowing the indorser to be dead, sent the notice by mail directed to the deceased.

An executor named in the will, but yet not approved by the court, is a "personal representative," within the rule. Drexler v. McGlynn, 99 Cal. 143.

The agency to receive notice is revoked by the death of the principal, and notice should thereafter be given to the personal representative. Brent v. Washington Bank, 2 Cranch C. C. 517; Bank of Washington v. Pierson, 2 Cranch C. C. 685.

Notice to an executor after the appointment of a special administrator is not sufficient. Goodnow v. Warren, 122 Mass. 79.

A notice sent to the "estate of" a deceased indorser at his last residence was held sufficient in Bank of Port Jervis v. Darling, 91 Hun, 236, and one addressed to the "legal representative" of a deceased indorser was also held sufficient in Pillow v. Hardeman, 3 Hump. 538, 39 Am. Dec. 195.

Where an indorser died before its maturity, a notice given two days after maturity to the executor is not sufficient to bind the estate. Deininger v. Miller, 7 App. Div. 409.

Notice to one of several personal representatives is good. Beals v. Peck, 12 Barb. 245.

[31]Same sections of negotiable instruments laws as last above cited.

Dodson v. Taylor, supra.

ners, notice to any one partner is notice to the firm, though the firm has been dissolved.[32]

§ 233. Same—Joint Parties not Partners must Each be Notified.

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.[33]

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[32]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 99); R. I. (§ 107); Md. (§ 118); N. Y. (§ 170); Wis. (§ 1676-29).

Coster v. Thomason, 19 Ala. 717; Magee v. Dunbar, 5 La. 711; Fourth Nat. Bank v. Altheimer, 91 Mo. 190; Hibbard v. Matthews, 54 N. Y. 43.

Notice to a cashier of a bank who was a member of a firm, acquired in the course of the business of the bank is notice to the firm. Citizens' Sav. Bank v. Hays, 96 Ky. 365.

Notice to surviving partner is sufficient. Dabney v. Stidger, 4 Smedes & M. 749; Cocke v. Bank of Tennessee, 6 Hump. 51.

[33]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 100); R. I. (§ 108); Md. (§ 119); N. Y. (§ 171); Wis. (§ 1678-30).

Shepard v. Hawley, 1 Conn. 367; State Bank v. Slaughter, 7 Blackf. 132; Peoples' Bank v. Keech, 26 Md. 521, 90 Am. Dec. 118; Willis v. Green, 5 Hill, 232, 40 Am. Dec. 351.

In Kentucky, notice to one joint indorser is notice to all. Dodge v. Bank of Kentucky, 2 A. K. Marsh, 610; Higgins v. Morrison, 4 Dana, 100.

§ 234. Same—Notice to Bankrupt or Insolvent.

Where a party to be notified has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to such party himself, or to his trustee or assignee.[34]

§ 235. Form and Requisites of Notice—May be Written or Oral.

Notice of dishonor may be in writing, or merely oral.[35] A written notice need not be

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Notice to one of several successive indorsers is sufficient to bind him. City Nat. Bank v. Clinton County Nat. Bank, 49 Ohio St. 351.

[34]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 101); R. I. (§ 109); Md. (§ 120); N. Y. (§ 172); Wis. (§ 1678-31).

Notice to assignee, see Callahan v. Bank of Kentucky, 82 Ky. 231; American Nat. Bank v. Junk Bros. Lumber & Manuf'g Co., 94 Tenn. 624, 28 L. R. A. 492.

Notice to an indorser is sufficient, though he has assigned for the benefit of creditors. Donnell v. Louis County Sav. Bank, 80 Mo. 165.

In Ohio, notice to an indorser's assignee for creditors is not sufficient. House v. Venton Nat. Bank, 43 Ohio St. 346.

[35]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 96); R. I. (§ 104); Md. (§ 115); N. Y. (§ 167); Wis. (§ 1678-25).

Pierce v. Schraden, 55 Cal. 406; First Nat. Bank v. Hatch, 78 Mo. 13; Cuyler v. Stevens, 4 Wend. 566.

signed, and an insufficient written notice may be supplemented and validated by verbal communication.[36]

Mere knowledge of the facts is not equivalent to notice,[37] though such knowledge was acquired by the indorsers in their capacity as administrators of the estate of the drawer.[38]

§ 236. Same—Sufficiency of Terms, and Effect of Misdescription.

Notice of dishonor may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment.[39] A

[36]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 95); R. I. (§ 103); Md. (§ 114); N. Y. (§ 166); Wis. (§ 1678-24).

Formerly in New York an unsigned notice was invalid. Walmsley v. Acton, 44 Barb. 312. Also in Tennessee. Peoples' Nat. Bank v. Dibrell, 91 Tenn. 301.

A printed signature is good. Sussex Bank v. Baldwin, 17 N. J. Law, 487.

[37]Tindal v. Brown, 1 Term R. 167.

[38]Juniata Bank v. Hale, 16 Serg. & R. 157.

[39]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 96); R. I. (§ 104); Md. (§ 115); N. Y. (§ 167); Wis. (§ 1678-25).

Kilgore v. Buckley, 14 Conn. 362; Spann v. Baltzell, 1 Fla. 301, 46 Am. Dec. 346; Sasscer v. Farmers' Bank, 4 Md. 409; Ross v. Planters' Bank, 5 Hump. 335.

misdescription of the instrument in the notice does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.[40]

As to the sufficiency of the recital of the date, see Brown v. Jones, 125 Ind. 375; Artisans' Bank v. Backus, 36 N. Y. 100.

The name of the maker or drawer must be properly given in the notice. Home Ins. Co. v. Green, 19 N. Y. 518. But see Gill v. Palmer, 29 Conn. 54. For illegible name, see McGeorge v. Chapman, 45 N. J. Law, 395.

A mistake in the recital of the time of payment of the instrument is not fatal. Gates v. Beecher, 60 N. Y. 518; Bank of Cooperstown v. Woods, 28 N. Y. 561. Nor is a mistake in the recital of the amount payable. Bank of Alexandria v. Swann, 9 Pet. 33; Cayuga County Bank v. Warden, 1 N. Y. 413, where a note for $600 was described as one for $300.

A notice to an indorser of one of a series of corporate notes, numbered differently, is not defective for a failure to state the number of the note. Hodges v. Shuler, 22 N. Y. 114.

The notice must show that the instrument was presented for payment or acceptance, and was dishonored. Armstrong v. Thurston, 11 Md. 148; Dole v. Gold, 5 Barb. 490. For notices held sufficient in the respect, see Cook v. Litchfield, 9 N. Y. 279; Reynolds v. Appleman, 41 Md. 615; Clark v. Eldridge, 15 Metc. 96. For notices held insufficient in this respect, see Arnold v. Kinloch, 50 Barb. 44; Winn v. Alden, 4 Denio, 163; Page v. Gilbert, 60 Me. 485.

[40]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass.,

§ 237. Notice may be Given Personally or by Mail.

Notice of dishonor may in all cases be given by delivering it personally, or through the mails.[41] Formerly, in most of the states that have adopted the negotiable instruments laws, notice could not be sent by mail where the parties resided in the same town or city.[42]

§ 238. Time Within Which Notice must be Given.

Notice of dishonor may be given as soon as the instrument is dishonored,[43] and must

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N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 95); R. I. (§ 103); Md. (§ 114); N. Y. (§ 166); Wis. (§ 1678-24). See Kilgore v. Bulkley, supra, and other cases cited in note 34, supra.

[41]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 96); R. I. (§ 104); Md. (§ 115); N. Y. (§ 167); Wis. (§ 1678-25).

[42]Shepard v. Hall, 1 Conn. 329; Morton v. McCammack, 4 McArthur, 22; Bell v. Hagerstown Bank, 7 Gill, 216; Peirce v. Pendar, 5 Metc. 352; Sheldon v. Benham, 4 Hill, 129; Costin v. Rankin, 3 Jones Law, 387; Davis v. Bank of Tennessee, 4 Sneed, 390; Smith v. Hill, 6 Wis. 154.

In Wisconsin, service could be made by mail if the distance was more than two miles. Rev. St. 1858, c. 12, § 5; Westfall v. Farwell, 13 Wis. 504. But see Rev. St. § 176.

In New York (Laws 1857, c. 416) and Virginia (Code, § 2858), service could be made by mail between parties residing in the same city.

[43]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 102);

be given within the times fixed by the negotiable instruments laws,[44] as shown in the next succeeding sections, unless the delay is excused for the causes set out in §§ 223-225 of this chapter.

§ 239. Same—Where Parties Reside in Same Place.

Where the person and the person to receive notice reside in the same place, notice of dishonor, if given at the place of business of the person to receive notice, must be given before the close of business hours on the day following dishonor.[45]

If given at his residence, it must be given before the usual hours of rest on the day following dishonor.[46] The negotiable instru-

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R. I. (§ 110); Md. (§ 121); N. Y. (§ 173); Wis. (§ 1678-32).

As to premature notice where days of grace are allowed, see Guignon v. Union Trust Co., 156 Ill. 135; Thornburg v. Emmons, 23 W. Va. 325; Pierce v. Cate, 12 Cush. 190, 59 Am. Dec. 176.

[44]Same sections of negotiable instruments laws as last above cited.

[45]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 103); Md. (§ 122); N. Y. (§ 174); Wis. (§ 1678-33).

Adams v. Wright, 14 Wis. 408.

[46]Subdivision 2, same sections of negotiable instruments laws as last above cited.

See Hallowell v. Curry, 41 Pa. St. 322.

ments law as adopted in Rhode Island provides that, in such case, notice must be given before ten o'clock in the evening of the day following the dishonor.[47]

If sent by mail, the notice must be deposited in the post office in time to reach the person to be notified, in the usual course, on the day following dishonor.[48]

§240. Same—Where Parties Reside in Different Places.

Where the person giving, and the person to receive, notice of dishonor, reside in different places, the notice, if sent by mail, 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.[49]

Formerly, in Wisconsin, at a "reasonable hour." Adams v. Wright, supra.

[47]Neg. Inst. Law, § 111.

[48]Subdivision 3 same sections of negotiable instruments laws as cited in note 45, supra.

Walters v. Brown, 15 Md. 285; Shoemaker v. Mechanics Bank, 59 Pa. St. 79.

What constitutes deposit in postoffice, see post, § 244.

[49]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 104, subd. 1); R. I. (§ 112, subd. 1); Md. (§ 132, subd.

When given otherwise than through the post office, notice must be given 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 preceding paragraph.[50]

§ 241. Same—Time for Giving Notice to Antecedent Parties.

Where a party receives notice of dishonor, he has, after receipt thereof, the same time for giving notice to antecedent parties that the holder has after dishonor.[51]

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1); N. Y. (§ 175, subd. 1); Wis. (§ 1678-34, subd. 1).

Smith v. Poillon, 87 N. Y. 590, affirming 23 Hun, 528; Sussex Bank v. Baldwin, 17 N. J. Law, 487; Lenox v. Roberts, 2 Wheat. 373; Lawson v. Farmers' Bank of Salem, 1 Ohio St. 206.

[50]Subdivision 2, same sections of negotiable instruments laws as last above cited.

[51]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 107); R. I. (§ 115); Md. (§ 126); N. Y. (§ 178); Wis. (§ 1678-37).

Farmer v. Rand, 16 Me. 453; National Bank v. Bradley, 117 N. C. 526; Shelburne Falls Nat. Bank v. Townsley, 102 Mass. 177. See, also, First Nat. Bank v. Farneman, 93 Iowa, 161.

For effect of intermediate agency for collection, on time required for notice to successive obligors, see Slack v. Longshaw, 8 Ky. Law Rep. 166; Warren v. Gillman, 17 Me. 360; McNeil v. Wyatt, 3 Hump. 125.

§ 242. Same—Excuses for Delay in Giving Notice.

Delay in giving notice of dishonor is excused when caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence.[52] When the cause of delay ceases to operate, notice must be given with reasonable diligence.[53]

§ 243. Sender of Notice Not Chargeable with Miscarriage of Mails.

Where notice of dishonor is properly addressed and deposited in the post office, the sender is deemed to have given due notice,

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[52]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 113); R. I. (§ 121); Md. (§ 132); N. Y. (§ 184); Wis. (§ 1676-43).

An ambiguous signature by an indorser, causing notice to be improperly addressed, is an excuse for a delay of several days. Manufacturers' & Traders' Bank v. Hazard, 30 N. Y. 226.

Existence of malignant disease is an excuse for delay. Hanauer v. Anderson, 16 Lea, 340; Tunno v. Lague, 2 Johns. Cas. 1, 1 Am. Dec. 14.

War is also an excuse. See cases cited in note 53, infra.

[53]Same sections of negotiable instruments laws as last above cited.

Harden v. Boyce, 59 Barb. 425; Farmers' Bank of Virginia v. Gummell, 26 Grat. 131; Bank of Old Dominion v. McVeigh, 29 Grat. 546.

notwithstanding any miscarriage in the mails.[54]

§ 244. What Constitutes Deposit of Notice in Post Office.

Notice of dishonor 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.[55] A liberal construction of this rule renders a delivery of a duly addressed and stamped letter containing a notice to a regular letter carrier a sufficient posting of the notice.[56] But a deposit of the letter con-

[54]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 105); R. I. (§ 113); Md. (§ 124); N. Y. (§ 176); Wis. (§ 1678-35).

Knott v. Venable, 42 Ala. 186; Dickens v. Beal, 10 Pet. 572; Mt. Vernon Bank v. Holden, 2 R. I. 467.

Sending to directory address not sufficient diligence, see note 4, supra.

[55]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 106); R. I. (§ 114); Md. (§ 125); N. Y. (§ 177); Wis. (§ 1678-36).

This is the rule in Casco Nat. Bank v. Shaw, 79 Me. 376; Greenwich Bank v. DeGroot, 7 Hun, 210; Wood v. Callaghan, 61 Mich. 402; Johnson v. Brown, 154 Mass. 105.

[56]Wynen v. Schavert, 6 Dal., 558, 55 How. Prac. 156; Pearce v. Langfit, 101 Pa. St. 507.

[57]Townsend v. Auld, 10 Misc. Rep. 343.

taining the notice in a private letter box is not sufficient.[57]

§ 245. Place Where Notice Must be Sent.

Where a party has added an address to his signature, notice of dishonor must be sent to that address;[58] but if he has not given such address, then notice must be sent either to the post office nearest to his place of residence, or to the one where he is accustomed to receive his letters.[59]

§ 246. Same—Residence or Business Address.

If the person to be notified live in one place, and have his place of business in another, notice may be sent to either.[60] If

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[58]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 108, subd. 1); R. I. (§ 116, subd. 1); Md. (§ 127, subd. 1); N. Y. (§ 179, subd. 1); Wis. (§ 1678-38, subd. 1).

Farmers' & Merchants' Bank v. Battle, 4 Hump. 86. But see Davenport v. Gilbert, 4 Bosw. 532, 6 Bosw. 179, and Bartlett v. Robinson, 39 N. Y. 187, where addressing a letter generally to the indorser in the "City of New York" was not sufficient, the address under the signature of the indorser having been more definite.

[59]Same subdivision and sections of negotiable instruments laws as last above cited.

Jones v. Lewis, 8 Watts & S. 14.

[60]Subdivision 2, same sections of negotiable instruments laws as last above cited.

such person is staying, or, as the negotiable instruments laws express it, is "sojourning," in a place other than his customary place of residence or business, the notice may be sent to such place.[61]

§ 247. Same—Place Immaterial if Notice Received in Time.

If, however, the notice is actually received by the party to whom it is sent within the proper time, it will be sufficient, though not sent as required in the two preceeding sections.[62]

§ 248. Effect of Omission to Give Notice of Nonacceptance.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the

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Bank of Columbia v. Lawrence, 1 Pet. 578; Simms v. Larkin, 19 Wis. 390; Phillips v. Alderson, 5 Hump. 403.

[61]Subdivision 3, same sections of negotiable instruments laws as last above cited.

Williams v. Bank of United States, 2 Pet. 96. But see Wachusett Nat. Bank v. Fairbrother, 148 Mass. 181.

[62]Same subdivision and sections of negotiable instruments laws as last above cited.

Bank of United States v. Corcoran 2 Pet. 121; M. V. Monarch Co. v. Farmers' & Drovers' Bank (Ky.) 49 S. W. 317.

omission.[63] The Wisconsin negotiable instruments law adds to this rule a proviso that it shall not be construed to revive any liability discharged by such omission.[64]

§ 249. Waiver of Notice of Dishonor—Effect of Waiver of Protest.

Notice of dishonor may be waived[65] either before the time for giving notice has arrived, or after the omission to give due notice,[66] and the waiver may be express or implied.[67]

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[63]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 117); R. I. (§ 125); Md. (§ 136); N. Y. (§ 188); Wis. (§ 1678-47).

[64]Neg. Inst. Law, § 1678-47.

[65]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 109); R. I. (§ 117); Md. (§ 128); N. Y. (§ 180); Wis. (§ 1678-39).

Stanley v. McElrath, 86 Cal. 449, 10 L. R. A. 545. See, also, Robinson v. Barnett, 19 Fla. 670.

[66]Same sections of negotiable instruments laws as last above cited.

Barclay v. Weaver, 19 Pa. St. 396.

[67]Same sections of negotiable instruments laws as last above cited.

An express waiver may be by parol. Porter v. Kemball, 53 Barb. 467; Worden v. Mitchell, 7 Wis. 161.

For cases on implied waiver, see Markland v. McDaniel, 51 Kan. 350, 20 L. R. A. 96; Seiger v. Second Nat. Bank, 132 Pa. St. 307.

Taking security or indemnity sufficient to cover

A promise to pay made by an indorser after dishonor, and with knowledge that he had been released by a failure to give him notice of dishonor, is a waiver of such notice.[68]

A waiver of protest is deemed to be a waiver of notice of dishonor.[69]

§ 250. Same—Parties Affected.

Where the waiver is embodied in the instrument, it is binding on all parties;[70] but where it is written above the signature of an indorser, it binds him only.[71]

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liability as implied waiver, see Brandt v. Mickle, 28 Md. 436; Durham v. Price, 5 Yerg. 300, 26 Am. Dec. 267; Secord v. Miller, 13 N. Y. 55; Whittier v. Collins, 15 R. I. 44; Denny v. Palmer, 5 Ired. 610; Wilson v. Senier, 14 Wis. 380; Armstrong v. Chadwick, 127 Mass. 156.

[68]Hobbs v. Straine, 149 Mass. 212.

[69]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 111); R. I. (§ 119); Md. (§ 130); N. Y. (§ 182); Wis. (§ 1678-41).

[70]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 110); R. I. (§ 118); Md. (§ 129); N. Y. (§ 181); Wis. (§ 1678-40).

Iowa Val. Bank v. Sigstad, 96 Iowa, 491; Bryant v. Merchants' Bank, 8 Bush. 43.

[71]Same sections of negotiable instruments laws as last above cited.

Central Bank v. Davis, 19 Pick. 373. But, contra, see Parshley v. Heath, 69 Me. 90.

A waiver printed on the back of the instrument binds the payee indorsing on another part of the instrument. Farmers' Bank v. Ewing, 78 Ky. 264.

CHAPTER XIV.

Forgery and Alteration.

§ 251. Forged or Unauthorized Signature—Inoperative Except by Ratification or Estoppel.
§ 252. Alterations—Materiality and Effect.
§ 253. Same—Rights of Bona Fide Holders.
§ 254. Presumptions and Burden of Proof.

§ 251. Forged or Unauthorized Signature—Inoperative Except by Ratification or Estoppel.

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 enforcement is sought is precluded from setting up the forgery or want of authority.[1] That no rights can be acquired by a bona fide or other holder, under a forged signature as against the person whose name was forged, in the person whose name was forged, in the ab-

[1]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 23); R. I. (§ 31); Md., N. Y. (§ 42); Wis. (§ 1675-23).

sence of an estoppel or of an adoption of the signature, is a settled rule of law.[2]

Logically, a forged signature is not capable of ratification, but may be adopted by the person whose name was used. The word "ratification" is used, however, in the decisions, and it has been held that a ratification may take place, though there was no agency or facts creating an estoppel in pais,[3] and no new consideration.[4] Ratification or adoption of the signature may take place where the proceeds of the instrument are used with knowledge of the forgery,[5] or where the per-

[2]Mersman v. Werges, 3 Fed. 378; Miers v. Coates, 57 Ill. App. 216; Butler v. Carns, 37 Wis. 61. See, also, Booth v. Powers, 56 N. Y. 22; Camp v. Carpenter, 52 Mich. 375.

A person whose name was forged as an indorser is not liable as such to a bona fide holder. Citizens' State Bank v. Adams, 91 Ind. 280; Rowe v. Putnam, 131 Mass. 281; Roach v. Woodall, 91 Tenn. 206; Terry v. Allis, 16 Wis. 478, 504, 20 Wis. 32, 35.

[3]Greenfield Bank v. Crafts, 4 Allen, 447; Wellington v. Jackson, 121 Mass. 157.

[4]Howard v. Duncan, 3 Lans. 174. But see criticism of holding in Hood v. Nichols, 3 Alb. Law J. 331, 1 Wkly. Law Bul. 227, and Workman v. Wright, 33 Ohio St. 405, in which it was held that a forged note is void ab initio, and incapable of ratification.

[5]Ballston Spa Bank v. Marine Bank, 16 Wis. 120.

son whose name was forged accepts a conveyance or deed of trust as security or indemnity;[6] but mere silence is not sufficient.[7]

One who signs a surety below the signatures of other ostensible sureties cannot show as against a bona fide holder, that the prior signatures were forged;[8] nor can one who negotiates an instrument by delivery or by qualified indorsement set up forgery against his immediate transferee, for, by thus negotiating it, he warrants that it is genuine;[9] nor can an acceptor set up forgery, because, by his acceptance, he admits the existence of

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[6]Fitzpatrick v. School Com'rs, 7 Hump. 224; Jones v. Hamlet, 2 Sneed, 256; Bell v. Waudby, 4 Wash. 743.

[7]California Bank v. Sayre, 85 Cal. 102; DeLand v. Dixon Nat. Bank, 111 Ill. 323.

Especially where the party sought to be charged did not know of the unauthorized use of his name until after maturity of the instrument. Walters v. Munroe, 17 Md. 150. And see Traders' Nat. Bank v. Rogers, 167 Mass. 315.

[8]Selser v. Brock, 3 Ohio St. 303.

[9]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 65, subd. 1); R. I. (§ 73, subd. 1); Md. (§ 84, subd. 1); N. Y. (§ 115, subd. 1); Wis. (§ 1677-5, subd. 1).

Littauer v. Goldman, 72 N. Y. 506. And see Coolidge v. Brigham, 5 Metc. 68.

the drawer, and the genuineness of his signature.[10]

An estoppel may be created by negligence,[11] or by admitting that the signature is genuine,[12] or by such admission, coupled with a promise to pay, whereby the holder is induced to abandon his remedy against other parties,[13] or by a representation to a prospective purchaser that he may safely buy the instrument.[14]

§ 252. Alterations—Materiality and Effect.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided except as against

[10]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 62, subd. 1); R. I. (§ 70, subd. 1); Md. (§ 81, subd. 1); N. Y. (§ 112, subd. 1); Wis. (§ 1677-2, subd. 1).

United States Bank v. Bank of Georgia, 10 Wheat. 333; Marine Nat. Bank v. National City Bank, 59 N. Y. 67.

[11]Leather Manuf'rs' Bank v. Morgan, 117 U. S. 96. See, also, Woodruff v. Munroe, 33 Md. 146; Wilson v. Law, 112 N. Y. 537.

But an innocent transferee is not chargeable with the negligence of his transferror in failing to make proper inquiry. First Nat. Bank of Marshalltown v. Marshalltown State Bank, 107 Iowa, 327.

[12]Hefner v. Vandolah, 62 Ill. 483.

[13]Hefner v. Dawson, 63 Ill. 403.

[14]Crout v. De Wolf, 1 R. I. 393.

a party who has himself made, authorized, or consented to the alteration, and subsequent indorsers.[15]

Any alteration is material which changes the date,[16] the sum payable either for principal or interest,[17] the time or place of pay-

[15]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 124); R. I. (§ 132); Md. (§ 143); N. Y. (§ 205); Wis. (§ 1679-5).

See Taddiken v. Cantrell, 69 N. Y. 597; Stewart v. First Nat. Bank, 40 Mich. 348.

[16]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 125); R. I. (§ 133); Md. (§ 144); N. Y. (§ 206); Wis. (§ 1679-6).

McCormick Harvesting Mach. Co. v. Lauber (Kan. App.) 52 Pac. 577; McMillan v. Hefferlin, 18 Mont. 385; Low v. Merrill, 1 Pin. 340; Wyman v. Yeomans, 84 Ill. 403; Inglish v. Breneman, 5 Ark. 377; Britton v. Dierker, 46 Mo. 591.

An innocent change of date made by the payee, from August 11th to August 12th, though material, did not destroy "the legal efficacy of the note, and recovery may be had upon it when restored." Wallace v. Tice (Or.) 51 Pac. 733.

[17]Same section of negotiable instruments laws as last above cited.

National Park Bank v. Ninth Nat. Bank, 55 Barb. 87; Batchelder v. White, 80 Va. 103; Wade v. Withington, 1 Allen, 561; Aetna Nat. Bank v. Winchester, 43 Conn. 391; Walsh v. Hunt (Cal.) 52 Pac. 115.

Alterations as to interest, see Little Rock Trust

ment,[18] the number or relation of the parties,[19] and the medium or currency in which payment is to be made,[20] or which adds a place of payment, where no place of payment

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Co. v. Martin, 57 Ark. 277; Hurlbut v. Hall, 39 Neb. 889; Lewis v. Shepherd, 1 Mackey, 46; Lamar v. Brown, 56 Ala. 157; Heath v. Blake, 28 S. C. 406; Harsh v. Klepper, 28 Ohio St. 200, and cases cited.

[18]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 125); R. I. (§ 133); Md. (§ 144); N. Y. (§ 206); Wis. (§ 1679-6).

Time of payment, see Seebold v. Tatlie (Minn.) 78 N. W. 967.

Place of payment, see Adair v. Egland, 58 Iowa, 314; Troy City Bank v. Louman, 19 N. Y. 477.

[19]Same sections of negotiable instruments laws as last above cited.

Mersman v. Werges, 112 U. S. 139; Chappell v. Spencer, 23 Barb. 584.

The erasure of the name of the payee and the substitution of another name is a material alteration. Erickson v. First Nat. Bank, 44 Neb. 622.

Changing the word "order" to "bearer" is a material alteration. Belknap v. National Bank of North America, 100 Mass. 376, 97 Am. Dec. 105; Union Nat. Bank v. Roberts, 45 Wis. 373. See, also McDaniel v. Whitsett, 96 Tenn. 10.

[20]Same sections of negotiable instruments laws as last above cited.

Church v. Howard, 17 Hun, 5; Darwin v. Rippey, 63 N. C. 318; Wills v. Wilson, 3 Or. 308.

is specified,[21] or makes any other change or addition which alters the effect of the instrument.[22]

How strict the courts are with regard to the question of materiality is shown by an extract from the opinion in Little Rock Trust Co. v. Martin, where the court said: "If paid at maturity, the note, as executed, bore no interest, but, as altered, 8 per cent. per annum from the 1st of November, 1889, until the 4th of the same month. The difference is slight, but the maxim 'De minimis non curat lex' does not apply to cases like this."[23]

As to an alteration by changing the names or relation of the parties, the case of Ripley

[21]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 125); R. I. (§ 133); Md. (§ 144); N. Y. (§ 206); Wis. (§ 1679-6).

Sturges v. Williams, 9 Ohio St. 443, 75 Am. Dec. 473; Southwark Bank v. Gross, 35 Pa. St. 80.

[22]Same sections of negotiable instruments laws as last above cited.

The erasure of an agreement to pay costs of collection and attorney's fees is a material alteration. First Nat. Bank v. Laughlin, 4 N. D. 391.

Tracing over in ink what was previously written in pencil is not an alteration. Reed v. Roark, 14 Tex. 329.

[23]Little Rock Trust Co. v. Martin, 57 Ark. 277.

v. First Nat. Bank of Springfield is instructive. Under the general rule that an alteration, to be material, "must in some way affect the legal rights of the parties as they were expressed before the change was made," the court holds to be immaterial two alterations by which a note, originally payable to a bank, and signed by two persons as makers, and two as sureties, was first changed by adding, under the signature of the makers, the signature of a third person, who had intended to sign as an indorser, and was again changed by making it payable to such third person, and simultaneously adding his indorsement to the bank, and a guaranty by him of payment of the note, on the ground that the rights and duties of the bank and the makers were precisely the same after as before the changes.[24]

§ 253. Same—Rights of Bona Fide Holders.

Where 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.[25] This provision of the

[24]Ryan v. First Nat. Bank of Springfield, 148 Ill. 349.

[25]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass.,

negotiable instruments laws changes the law.[26] In a well-considered Massachusetts case, decided before the negotiable instruments law was passed in that state, it was held that where the maker of a note, after it had been indorsed for his accommodation, raised the amount from $500 to $2,000, and discounted the note for the latter sum with the plaintiff bank, the indorser was discharged, and was not liable to the bank even for the original amount of the note.[27]

The question of negligence on the part of the maker is often important, and it has been held that the maker cannot defend against a bona fide holder, where he had left sufficient space to permit of an alteration without defacing the instrument.[28] On this point, an

N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 124); R. I. (§ 132); Md. (§ 143); N. Y. (§ 205); Wis. (§ 1675-5).

[26]See Gettysburg Nat. Bank v. Chisholm, 169 Pa. St. 564; Seebold v. Tatlie (Minn.) 78 N. W. 967; Walsh v. Hunt (Cal.) 52 Pac. 115.

[27]Citizens' Nat. Bank v. Richmond, 121 Mass. 110.

[28]Holmes v. Bank of Ft. Gaines (Ala.) 24 South. 959; Weidman v. Symes (Mich.) 79 N. W. 894; Garrard v. Haddan, 67 Pa. St. 83; Visher v. Webster, 13 Cal. 58; Scotland County Bank v. O'Connel, 23 Mo. App. 165; Burch v. Daniel, 101 Ga. 228.

instructive case has been decided under the corresponding provisions of the English Bills of Exchange Act (45 & 46 Vict. c. 61, § 64) which are identical with the provisions of the negotiable instruments law just considered in this section, and in the first paragraph of the preceding section. The action was brought by a bona fide holder against the acceptor of a bill which, when accepted, was for £500, but which, after acceptance and before indorsement, had been raised by the drawer to £3,500. It appeared that at the time of acceptance the figures 500, preceded by the sign "£," were in the left-hand corner of the bill, but that there was space enough between the sign and the figures for the insertion of another figure, and that in the body of the bill there was sufficient blank space before the written words "five hundred pounds" for the insertion of the words "three thousand," and that there was a stamp on the bill larger than was necessary for a 500-pound bill. The court held that the acceptor was not negligent, as he was not bound to anticipate that the bill would fall into the hands of a felonious person, who might fill the spaces, and that, pre-

supposing negligence on the part of the acceptor, no estoppel arose as against him because the felonious act of the forger intervened between such negligence and the indorsement to the holder.[29]

It is gross negligence to sign an instrument having an important clause affecting the signer's liability written in pencil, and, in case the clause is erased, it has been held that a bona fide holder may recover on the instrument as it was when he received it.[30] Under the negotiable instruments laws, the holder in this case would be permitted to recover only according to the original tenor of the instrument.

An alteration by detaching a part of the instrument which had been so executed that it could be detached without injury to the remainder of the instrument is no defense against a bona fide holder.[31]

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[29]Scholfield v. Earl of Londesborough [1895] 1 Q. B. Div. 536. See, also, Blakey v. Johnson, 13 Bush, 197.

[30]Harvey v. Smith, 55 Ill. 224.

[31]Elliott v. Levings, 54 Ill. 213; Woollen v. Ulrich, 64 Ind. 120; Zimmerman v. Rote, 75 Pa. St. 188; Brown v. Reed, 79 Pa. St. 370. But see Scofield v. Ford, 56 Iowa, 370, citing Benedict v. Cowden, 49 N. Y. 396, where the authorities are collected and discussed.

§ 254. **Presumptions and Burden of Proof.**

The decisions are not in harmony on the questions of the presumptions and burden of proof in case of the alteration of a negotiable instrument; but the weight of authority favors the rule that an apparent alteration will be presumed to have been made at or before delivery, and, consequently, to be a part of the agreement of the parties.[32] Hence the burden of proving a fraudulent alteration after delivery is on the party alleging it.[33]

Mere interlineations do not raise a presumption of fraudulent alteration;[34] nor does the fact that defendant's signature had been apparently erased or canceled, or rewritten over a cancelation, relieve plaintiff of the burden of proving, after a general traverse, that defendant's signature was on the instrument at the time of its delivery.[35]

[32]Paramore v. Lindsey, 63 Mo. 63; Stillwell v. Patton, 108 Mo. 352; Corcoran v. Doll, 32 Cal. 82; Franklin v. Baker, 48 Ohio St. 296. See, also, Odell v. Gallup, 62 Iowa, 253; Simpson v. Davis, 119 Mass. 269; Page v. Danaher, 43 Wis. 221; Byers v. Tritch (Colo. App.) 55 Pac. 622; Ward v. Cheney, 117 Ala. 238.

[33]Farmers' Loan & Trust Co. v. Olson, 92 Iowa, 770; Putnam v. Clark, 33 N. J. Eq. 338.

[34]Maldaner v. Smith (Wis.) 78 N. W. 140; Cox v. Palmer, 3 Fed. 16.

[35]Baxter v. Camp, 71 Conn. 245, 42 L. R. A. 514.

Material alterations being shown, however, the burden is on plaintiff suing on a note to show that they were made innocently, by a stranger, or for a proper purpose,[36] or that they were made with the authority or consent of the defendant,[37] or that they were ratified.[38]

[36]Maguire v. Eichmeier (Iowa) 80 N. W. 395, and cases cited. See, also, Davis v. Crawford (Tex. App.) 53 S. W. 384.

[37]Emerson v. Opp, 9 Ind. App. 581; Glover v. Gentry, 104 Ala. 222; Shroeder v. Webster, 88 Iowa, 627.

[38]Sneed v. Sabinal Min. & Mill. Co., 78 Fed. 925, 20 C. C. A. 230.

CHAPTER XV.

Payment and Discharge.

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§ 255. What Constitutes Payment.

Since the contract in a negotiable instrument is to pay money, it is not performed—that it, the instrument is not paid—by turning over to the creditor anything but money, unless there was an agreement to accept other property in payment.[1]

Accounts and credits in favor of the debtor do not constitute payment unless there was an agreement to that effect;[2] but where, by agreement of three persons, any balance found due on a settlement between two of them is to be credited on a note executed by them to the third, such balance, when found, operates as a payment.[3]

The mere acceptance of collateral security does not operate as a payment;[4] but a payment and satisfaction of the security operates as a payment of the instrument secured.[5] So,

[1]Graydon v. Patterson, 13 Iowa, 256, 81 Am. Dec. 432; Heath v. Silverthorn Lead M. & S. Co., 39 Wis. 146.

[2]Rugland v. Thomson, 48 Minn. 539; Bettison v. Jennings, 6 Eng. 116.

[3]Vawter v. Griffin, 40 Ind. 593.

[4]Hook v. White, 36 Cal. 299; Mohawk Bank v. Van Horne, 7 Wend. 117; Averill v. Loucks, 6 Barb. 470; Sterling v. Marietta & S. Trading Co., 11 Serg. & R. 179.

[5]Gilliam v. Davis, 7 Wash. 332; Sampson v.

also, an agreement to rely on the security may amount to a payment, as where a bank at which a note secured by chattel mortgage was payable agreed that it would look to the mortgaged property alone, it released the maker, if at the date of the agreement such property was sufficient to pay the note, though it had depreciated in value at the time the mortgage was foreclosed.[6]

Other notes, whether renewals or not, do not operate as payment unless it is so agreed,[7] and the same rule applies to checks or drafts taken by the payee or holder.[8] The inten-

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Fox, 109 Ala. 662; Bodley v. Anderson, 2 Ill. App. 450; Kent v. May, 13 Mich. 38.

[6]First Nat. Bank v. Watkins, 154 Mass. 385.

[7]Chisholm v. Williams, 128 Ill. 115; Moses v. Trice, 21 Grat. 556; Boston Nat. Bank v. Jose, 10 Wash. 185; Holland Trust Co. v. Waddell, 75 Hun. 104; Hadden v. Dooley, 92 Fed. 274; Savings Bank of San Diego Co. v. Central Market Co. (Cal.) 54 Pac. 273.

[8]Burkhalter v. Second Nat. Bank, 42 N. Y. 538, 40 How. Prac. 324; Western Brass Manuf'g Co. v. Maverick (Tex. Civ. App.) 23 S. W. 728; Hamill v. German Nat. Bank, 13 Colo. 203.

A bank receiving a draft for collection must collect it in money, and, if it takes the check of the debtor instead, it does so at its peril. National Bank of Commerce v. American Exchange Bank (Mo.) 52 S. W. 265.

tion of the parties governs in this class of cases, and, if the new instrument was intended as payment, it will so operate, though the old instrument was not surrendered,[9] but will not so operate if it is worthless or invalid.[10]

Payment is made in due course when it is made at or after maturity to the holder, in good faith, and without notice that his title is defective.[11]

§ 256. Payment by Principal Debtor or Party Accommodated.

A negotiable instrument is discharged by payment in due course by or on behalf of the principal debtor,[12] or by the party accom-

[9]Woodbridge v. Skinner, 15 Conn. 306; French v. French, 84 Iowa, 655, 15 L. R. A. 300; First Nat. Bank v. Getz, 96 Iowa, 139.

The rule seems to be different in New York. See East River Bank v. Butterworth, 45 Barb. 476; Schmidt v. Livingston, 16 Misc. Rep. 554.

[10]Lovinger v. First Nat. Bank, 81 Ind. 354; Ramsdell v. Soule, 12 Pick. 126; Hughes v. Wheeler, 8 Cow. 77.

[11]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 88); R. I. (§ 96); Md. (§ 107); N. Y. (§ 148); Wis. (§ 1678-18).

[12]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 119, subd. 1); R. I. (§ 127, subd. 1); Md. (§ 138, subd.

modated, where the instrument is made or accepted for accommodation.[13]

An acceptor is a principal debtor within the above rule, and a payment to him extinguishes the debt.[14] But where bills are drawn on letters of credit, instead of actual funds in the hands of the acceptor, the drawer is the principal debtor, and is liable to the acceptor for his advances.[15]

If the acceptor, after the bill has been paid, again puts it in circulation, and is sued thereon, he cannot set up the payment.[16] Though payment by an accommodation acceptor discharges the instrument, it is still evidence in his hands to charge the real debtor.[17]

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1); N. Y. (§ 200, subd. 1); Wis. (§ 1679, subd. 1).

American Bank v. Jenness, 2 Metc. 288. See, also, Chrisman v. Harman, 29 Grat. 494.

[13]Subdivision 2, same sections of negotiable instruments laws as last above cited.

Borland v. Phillips, 3 Ala. 719, where a payment by an accommodation indorser was held not to be a purchase, but to be an extinguishment of the note. See, also, Roland v. Smith, 49 Conn. 404.

[14]Brunswick Bank v. Sewall, 34 Me. 202; Saluan v. Relf, 4 La. Ann. 575; Whitwell v. Brigham, 19 Pick. 117.

[15]Turner v. Browder, 5 Bush. 216.

[16]Hinton v. Bank of Columbus, 9 Port. 463.

[17]First Nat. Bank v. Maxfield, 83 Me. 576.

Payment by or on behalf of the maker will also discharge the instrument,[18] and a payment by one of two joint makers satisfies the debt,[19] though the instrument was formally assigned to the payor.[20]

§ 257. Payment by or to Bank when Instrument Payable There.

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.[21]

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[18]American Bank v. Jenness, 2 Metc. 288; Chrisman's Adm'x v. Harman, 29 Grat. 494.

[19]Gillett v. Sweat, 6 Ill. 475; Hopkins v. Farwell, 32 N. H. 425; Stevens v. Hannan, 88 Mich. 13, affirming 86 Mich. 305.

[20]Swem v. Newell, 19 Colo. 397; Gordon v. Wansey, 21 Cal. 77; Kneeland v. Miles (Tex. Civ. App.) 24 S. W. 1113; Stevens v. Hannan, supra.

[21]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 87); R. I. (§ 95); Md. (§ 106); N. Y. (§ 147); Wis. (§ 1678-17).

Bedford Bank v. Acoam, 125 Ind. 584, where the court held that the law would imply authority from the depositor by reason of his making the instrument negotiable and payable at the bank.

A "bank" within the meaning of the negotiable instruments laws, includes "any person or association of persons carrying on the business of banking, whether incorporated or not." Neg. Inst. Laws N. Y., R. I. (§ 2); Md. (§ 14); Or. (§ 190); Colo., Mass., N. C., N. D., Utah, Va., Wash. (§ 191);

Where the instrument is made payable at a bank, and is left there for collection, the bank is entitled to receive payment as agent of the payee or holder;[22] but if the instrument, though payable at a bank, is not left there for collection, payment to the bank does not satisfy it, because the bank, in receiving the money in such case, acts only as agent of the maker or payor.[23]

§ 258. Payment to Holder.

Payment in due course to the holder of a negotiable instrument operates as a discharge of the instrument.[24]

Possession of the instrument is ordinarily prima facie evidence of the right to receive payment,[25] but possession by one person does

Wis. (§ 1675); Conn., D. C., Fla., Tenn. (art. 1, sections not numbered).

[22]Smith v. Essex County Bank, 22 Barb. 627; Ward v. Smith, 7 Wall. 447; Lazier v. Horan, 55 Iowa, 75, 39 Am. Rep. 167. But see Sutherland v. First Nat. Bank, 31 Mich. 230.

[23]St. Paul Nat. Bank v. Cannon, 46 Minn. 95; First Nat. Bank v. Chilson, 45 Neb. 257; Hill v. Place, 36 How. Prac. 26, 5 Abb. Prac. 18.

[24]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 51); R. I. (§ 59); Md. (§ 70); N. Y. (§ 90); Wis. (§ 1676-21).

Ellsworth v. Fogg, 35 Vt. 355; Greve v. Schweitzer, 36 Wis. 554.

not authorize payment to him if there is a formal assignment to another on the back of the note.[26]

A payment to the original payee after the instrument has been properly indorsed or transferred will not extinguish it[27] unless the payment is shown to have been made by the authority or with the consent of the holder, or to have been subsequently accepted or ratified by him.[28]

§ 259. Payment of Bill Drawn in Sets.

It is a general rule that payment of any one part of a set operates as a payment and discharge of the whole set.[29]

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[25]Paulman v. Claycomb, 75 Ind. 64; Cothran v. Collins, 29 How. Prac. 113.

[26]Pier v. Bullis, 48 Wis. 429.

A stranger who pays a note at maturity to the holder is presumed to have paid it, and not to have purchased it. Lee v. Field (N. M.) 54 Pac. 873.

[27]Wilkinson v. Sargent, 9 Iowa, 521; Harpending v. Gray, 76 Hun, 351; Perry v. Bray, 68 Ga. 293.

[28]City Bank v. Taylor, 60 Iowa, 66; Enright v. Beaumond, 68 Vt. 249.

[29]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 183); R. I. (§ 191); Md. (§ 202); N. Y. (§ 315); Wis. (§ 1681-40).

Durkin v. Cranston, 7 Johns. 442; Ingraham v. Gibbs, 2 Dall. (Pa.) 134; Downes v. Church, 13 Pet. 205.

The acceptor of a bill drawn in a set should, on payment of the part bearing his acceptance, require such part to be surrendered to him. If he pays without requiring such surrender, he is liable, notwithstanding the payment, to a holder in due course.[30]

§ 260. Payment of Bills of Exchange for Honor—Who May Make.

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.[31]

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[30]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 182); R. I. (§ 190); Md. (§ 201); N. Y. (§ 314); Wis. (§ 1681-39).

See Holden v. Davis, 57 Miss. 769. In this case, two bills, while for the same amount, were not intended as duplicates of each other, but together represented the whole amount intended to be paid. One was accepted, the other was not, but the acceptor paid the unaccepted bill by mistake, and was sued on the accepted bill. Held, that the payment of the unaccepted bill was neither a defense nor a good set-off.

When the instrument is paid it must be delivered up to the person paying it. Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 74); R. I. (§ 82); Md. (§ 93); N. Y. (§ 134); Wis. (§ 1678-4).

[31]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass.,

§ 261. Same—Attestation.

A 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.[32]

§ 262. Same—Declaration Before Payment for Honor.

The notarial act of honor must be founded on a declaration made by 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.[33]

§ 263. Same—Preference of Parties Offering to Pay for Honor.

Where two or more persons offer to pay a bill for the honor of different persons, the

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N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 171); R. I. (§ 179); Md. (§ 190); N. Y. (§ 300); Wis. (§ 1681-28).

Konig v. Bayard, 1 Pet. 250.

Payment for honor cannot be made before protest. Baring v. Clark, 19 Pick. 220; Gazzam v. Armstrong, 3 Dana, 554.

[32]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 172); R. I. (§ 180); Md. (§ 191); N. Y. (§ 301); Wis. (§ 1681-29).

See Gazzam v. Armstrong, supra.

[33]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 173);

person whose payment will discharge most parties to the bill is to be given the preference.[34]

§ 264. Same—Effect of Payment on Subsequent Parties.

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 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.[35]

§ 265. Same—Refusal of Holder to Receive Payment for Honor.

Where the holder refuses payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.[36]

R. I. (§ 181); Md. (§ 192); N. Y. (§ 302); Wis. (§ 1681-30).

See Gazzam v. Armstrong, supra.

[34]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 174); R. I. (§ 182); Md. (§ 193); N. Y. (§ 303); Wis. (§ 1681-31).

[35]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 175); R. I. (§ 183); Md. (§ 194); N. Y. (§ 304); Wis. (§ 1681-32).

See McDowell v. Cook, 6 Smedes & M. 420.

[36]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass.,

§ 266. Same—Rights of Payer for Honor.

The payer for honor, on payment to the holder of the amount of the bill, and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.[37]

§ 267. By Cancelation of Instrument—Intent.

A negotiable instrument is discharged by the intentional cancelation thereof by the holder;[38] but a cancelation made unintentionally, or by mistake, or without authority of the holder, is inoperative.[39]

N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 176); R. I. (§ 184); Md. (§ 195); N. Y. (§ 305); Wis. (§ 1681-33).

[37]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 177); R. I. (§ 185); Md. (§ 196); N. Y. (§ 306); Wis. (§ 1681-34).

As to the right of the payer for honor to reimbursement, see Grosvenor v. Stone, 8 Pick. 79; Leake v. Burgess, 13 La. Ann. 156. A voluntary payment without request does not give a right to reimbursement. Willis v. Hobson, 37 Me. 403.

[38]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 119, subd. 3); R. I. (§ 127, subd. 3); Md. (§ 138, subd. 3); N. Y. (§ 200, subd. 3); Wis. (§ 1679, subd. 3). Larkin v. Hardinbrook, 90 N. Y. 333, and cases cited.

[39]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 123);

Where an instrument or any signature thereon appears to have been canceled, the burden of proof rests on the party who alleges that the cancelation was made unintentionally, or by mistake, or without authority.[40]

§ 268. Renunciation by Holder.

The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity.[41]

An absolute and unconditional renunciation of his right against the principal debtor, made at or after the maturity of the instrument, discharges it; but a renunciation does not affect the rights of a holder in due course without notice.[42]

A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.[43]

R. I. (§ 131); Md. (§ 142); N. Y. (§ 204); Wis. (§ 1679-4).

[40]Same sections of negotiable instruments laws as last above cited.

[41]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 122); R. I. (§ 130); Md. (§ 141); N. Y. (§ 203); Wis. (§ 1679-3).

[42]Same sections of negotiable instruments laws as last above cited.

The corresponding provision of the English Bills of Exchange Act 1882 (45 & 46 Vict. c. 61, § 62, subd. 1) is to the same effect. It has been held under this subdivision that a parol renunciation by the holder of all rights under a promissory note is inoperative unless the note is delivered up to the "maker" or "acceptor," and that a devisee of the maker is not within the term "maker," though an executor or administrator of the maker might be included in the term.[44]

§ 269. Where Principal Debtor becomes Holder.

A negotiable instrument is discharged when the principal debtor becomes the holder thereof, at or after maturity in his own right.[45] Under this rule an assignment of the instrument to one joint maker extinguishes it,[46] and so does an indorsement to the acceptor or maker;[47] but a purchase by the

[43]Same sections of negotiable instruments laws as last above cited.

[44]Edwards v. Walters [1896] 2 Ch. Div. 157.

[45]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 119, subd. 5); R. I. (§ 127, subd. 5); Md. (§ 138, subd. 5); N. Y. (§ 200, subd. 5); Wis. (§ 1679, subd. 5).

[46]See Stevens v. Hannan, 88 Mich. 13; Kneeland v. Miles (Tex. Civ. App.) 24 S. W. 1113.

[47]Beede v. Real Estate Bank, Pike, 546; Long v. Bank of Cynthiana, 1 Litt. 290.

maker as agent for a third person does not ordinarily extinguish the instrument.[48]

§ 270. Application of Rules Governing Contracts.

In addition to the above modes of discharging negotiable instruments, it is a general rule that they are discharged by any act which will discharge any simple contract for the payment of money.[49]

§ 271. Discharge of Persons Secondarily Liable.

A person secondarily liable on the instrument is discharged by any act which discharges the instrument itself.[50] He is also discharged by the intentional cancelation of his signature by the holder,[51] by the discharge of a prior party,[52] or by a valid tender

[48]Bowman v. St. Louis Times, 87 Mo. 191; Dubois v. Stoner, 11 Ill. App. 403. But contra, see Cason v. Heath, 86 Ga. 438; White v. Fisher, 62 Ill. 258; Eastman v. Plumer, 32 N. H. 238.

[49]Subdivision 4, same sections of negotiable instruments laws as last above cited.

[50]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Tenn., Utah, Va., Wash. (§ 120, subd. 1); R. I. (§ 128, subd. 1); Md. (§ 139, subd. 1) · N. Y. (§ 201, subd. 1); Wis. (§ 1679-1, subd. 1).

[51]Subdivision 2, same sections of negotiable instruments laws as last above cited.

[52]Subdivision 3, same sections of negotiable instruments laws as last above cited.

Discharge of maker discharges indorser. Shutts v. Fingar, 100 N. Y. 539· Union Nat. Bank v. Grant, 48 La. Ann. 18.

of payment made by a prior party.[53]

A release of the principal debtor discharges a party secondarily liable, unless the holder's right of recourse against the party secondarily liable is expressly reserved.[54]

§ 272. Same—By Agreement Extending Time of Payment, or Postponing Right to Enforce Instrument.

A party secondarily liable is also discharged by any agrement, binding on the holder, to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless the right of recourse against such party is expressly reserved.[55]

Discharge of indorser releases subsequent indorser. State of New York Nat. Bank v. Coykendall, 58 Hun, 205; Plankington v. Gorman, 93 Wis. 560.

[53]Subdivision 4, same sections of negotiable instruments laws as last above cited.

[52]Subdivision 2, same sections of negotiable instruments laws as last above cited.

See Ludwig v. Iglehart, 43 Md. 39; Gloucester Bank v. Worcester, 10 Pick. 527; Eldrege v. Chacon, Crabbe, 296. See, also, cases cited in note 51, supra.

[55]Subdivision 6, same sections of negotiable instruments laws as last above cited.

First Nat. Bank v. Lineberger, 83 N. C. 454; Place v. McIlvan, 1 Daly, 266, 38 N. Y. 96; Stein v. Steindler, 1 Misc. Rep. 414; Commercial Bank of Lexington v. Wood, 56 Mo. App. 214.

Mere delay will not discharge a person secondarily liable. There must be a valid agreement to extend the time or vary the contract,[56] and this agreement must be supported by a new consideration.[57] If, however, the liability of a party secondarily liable has become fixed, he will not be discharged by a subsequent extension of time given to the maker.[58]

The negotiable instruments law as adopted in Wisconsin has additional provisions, negativing a discharge by such agreements if they were made with the assent of the person secondarily liable, or if he has been fully indemnified.[59]

§ 273. Same—By Misapplication of Securities or Funds Applicable to Debt.

Another addition has been made by the Wisconsin negotiable instruments law by the provision that a person secondarily liable is discharged "by giving up or applying to

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[56]Way v. Dunham, 166 Mass. 263; Smith v. Erwin, 77 N. Y. 466.

[57]Friedenberg v. Robinson, 14 Fla. 130.

Part payment is not a sufficient consideration. Manchester v. Van Brunt, 2 Misc. Rep. 228.

[58]State Bank v. Wilson, 1 Dev. 484; Pequet v. Dimitry, 3 La. 385.

[59]Neg. Inst. Law, § 1679-1.

other purposes collateral security applicable to the debt, or, there being in the holder's hands, or within his control, the means of complete or partial satisfaction, the same are applied to other purposes."[60]

In this class of cases, "the original contract is not changed in terms between any of the parties, but a collateral indemnity, held in trust by the creditor, and upon which the surety has a right to rely, has been destroyed, and he is presumed to have suffered loss by the surrender of the security. The creditor, having misapplied the trust fund, and acted in bad faith toward the surety, must be held to have released the surety in equity, or, rather, to be estopped from looking to him for payment, by reason of his bad faith in discharging his duty to the trust fund held for their common security."[61]

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[60]Neg. Inst. Law, § 1679-1, subd. 4a.

Haslett v. Ehrick, 1 Nott. & McC. 116; Union Nat. Bank v. Cooley, 27 La. Ann. 202. In order to discharge the indorser, collateral security released by the holder must be valid security. Id.

Equity will not relieve an indorser who has not used diligence to protect himself against the loss of security by prior parties. Mahone v. Central Bank, 17 Ga. 111. See, also, Brown v. Nichols, 123 Ind. 492; Kirkpatrick v. Hawk, 80 Ill. 122.

[61]Rogers v. School Trustees, 46 Ill. 428.

§ 274. Payment by Person Secondarily Liable Does not Discharge 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.[62] A payment by an indorser does not extinguish the holder's rights against the maker; for, as between the maker and the indorser, the transaction is a purchase, and not a payment.[63]

§ 275. Same—Striking out Indorsements, and Reissuing Instrument.

On payment by a party secondarily liable, he may strike out his own and all subsequent indorsements, and again negotiate, except, where it is payable to the order of a third person, and has been paid by the drawer, and where it was made or accepted for ac-

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[62]Neg. Inst. Laws Colo., Conn., D. C., Fla., Mass., N. C., N. D., Or., Penn., Utah, Va., Wash. (§ 121); R. I. (§ 129); Md. (§ 140); N. Y. (§ 202); Wis. (§ 1679-2).

French v. Jarvis, 29 Conn. 347; Eaton v. Carey, 10 Pick. 211; Stevens v. Hannan, 88 Mich. 13, affirming 86 Mich. 305; Havens v. Huntington, 1 Cow. 387; Davis v. Miller, 14 Grat. 1.

[63]Madison Square Bank v. Pierce, 137 N. Y. 444, 20 L. R. A. 335, affirming 62 Hun, 493.

commodation, and has been paid by the party accommodated.[64]

[64]Same sections of negotiable instruments laws as last above cited.

Payment by an indorser leaves the instrument still negotiable as to prior parties. French v. Jarvis, supra; Eaton v. Carey, supra; Davis v. Miller, supra.

Reissuance by accommodation indorser after payment by him, see Kirksey v. Bates, 1 Ala. 303.

Right of contribution between accommodation indorsers on payment by one or more of their number, see Kelly v. Burrough, 102 N. Y. 93; Hull v. Meyers, 90 Ga. 674; Hagerthy v. Phillips, 83 Me. 336; Newcomb v. Gibson, 127 Mass. 393.

APPENDIX "A."

APPENDIX "A."

ORIGINAL DRAFT OF NEGOTIABLE INSTRUMENTS LAW AS SUBMITTED TO THE VARIOUS STATE LEGISLATURES AND TO CONGRESS, AND ADOPTED, WITH SOME CHANGES, IN COLORADO (Laws 1897 c. 64), CONNECTICUT (Laws 1897 c. LXXIV), DISTRICT OF COLUMBIA (U. S. Stat. at Large 1897-99 c. 47), FLORIDA (Laws 1897 c. 4524, No. 10), MARYLAND (Laws 1898 c. 119), MASSACHUSETTS (Acts and Resolves 1898 c. 533), NEW YORK (Laws 1897 c. 612, Amendments Laws 1898 c. 336), NORTH CAROLINA (Pub. Laws 1899 c. 733), NORTH DAKOTA (Laws 1899 c. 113), OREGON (Laws 1899 p. 18), RHODE ISLAND (Laws 1899 c. 623, p. 24), TENNESSEE (Laws 1899 c. 94), UTAH (Laws 1899 c. 83), VIRGINIA (Acts Assem. 1897-98 c. 866), WASHINGTON (Laws 1899 c. CXLIX), and WISCONSIN (Laws 1899 c. 356).

The section numbers given are those of the original draft, and are the numbers used in the law as adopted in Colorado, District of Columbia, Florida, Massachusetts, North Carolina, North Dakota, Oregon, Tennessee, Utah, Virginia and Washington. The section numbers of the law as adopted in Maryland, New York, Rhode Island and Wisconsin are given in parentheses immediately

following the original section numbers. The numbers in brackets refer to the sections of this work where the subject matter of the act is considered and all changes and amendments are shown.

A General Act Relating to Negotiable Instruments (Being An Act to Establish a Law Uniform With the Laws of Other States on That Subject.)

TITLE I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.

FORM AND INTERPRETATION.

§ 1. (Md., N. Y. § 20; R. I. § 9; Wis. § 1675-1.) Be it enacted, etc., An instrument to be negotiable must conform to the following requirements:—

1. It must be in writing and signed by the maker or drawer [14, 21];
2. Must contain an unconditional promise or order to pay a sum certain in money [35, 40, 45, 60, 81-86];
3. Must be payable on demand, or at a fixed or determinable future time [70-78];
4. Must be payable to order or to bearer [48, 50-55]; and,
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty [63].

§ 2. (Md., N. Y. § 21; R. I. § 10; Wis. § 1675-2.) The sum payable is a sum certain within the meaning of this act, although it is to be paid:—

1. With interest [64]; or
2. By stated instalments [65]; or
3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due [66]; or
4. With exchange, whether at a fixed rate or at the current rate [67]; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity [68].

§ 3. (Md., N. Y. § 22; R. I. § 11; Wis. § 1675-3.) 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 [41]; or
2. A statement of the transaction which gives rise to the instrument [31].

But an order or promise to pay out of a particular fund is not unconditional [42, 43].

§ 4. (Md., N. Y. § 23; R. I. § 12; Wis. § 1675-4.) 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 [74]; or
2. On or before a fixed or determinable future time specified therein [75]; 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 [76].

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect [77, 78].

§ 5. (Md., N. Y. § 24; R. I. § 13; Wis. § 1675-5.) An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable [85]. 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 [44]; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity [46]; or
3. Waives the benefit of any law intended for the advantage or protection of the obligator [47]; or
4. Gives the holder an election to require something to be done in lieu of payment of money [86].

But nothing in this section shall validate any provision or stipulation otherwise illegal [44, 46, 47, 68].

§ 6. (Md., N. Y. § 25; R. I. § 14; Wis. § 1675-6.) The validity and negotiable character of an instrument are not affected by the fact that:—

1. It is not dated [15]; or
2. Does not specify the value given, or that any value has been given therefor [30]; or
3. Does not specify the place where it is drawn or the place where it is payable [79]; or
4. Bears a seal [33]; or
5. Designates a particular kind of current money in which payment is to be made [82].

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 [32].

§ 7. (Md., N. Y. § 26; R. I. § 15; Wis. § 1675-7.) An instrument is payable on demand:—

1. Where it is expressed to be payable on demand, or at sight, or on presentation [71]; or
2. In which no time for payment is expressed [72].

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 [73].

§ 8. (Md., N. Y. § 27; R. I. § 16; Wis. § 1675-8.) The instrument is payable to order when it is drawn payable to the order of a specified person or to him or his order [50]. It may be drawn payable to the order of:—

1. A payee who is not maker, drawer, or drawee [50]; or
2. The drawer or maker [51]; or
3. The drawee [52]; or
4. Two or more payees jointly [53]; or

5. One or some of several payees [9, 54]; or
6. The holder of an office for the time being [55].

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty [60, 61].

§ 9. (Md., N. Y. § 28; R. I. § 17; Wis. § 1675-9.) The instrument is payable to bearer:—

1. When it is expressed to be so payable [56]; or
2. When it is payable to a person named therein or bearer [56]; 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 [57]; or
4. When the name of the payee does not purport to be the name of any person [58]; or
5. When the only or last indorsement is an indorsement in blank [59].

§ 10. (Md., N. Y. § 29; R. I. § 18; Wis. § 1675-10.) The instrument need not follow the language of this act but any terms are sufficient which clearly indicate an in-

tention to conform to the requirements hereof [34].

§ 11. (Md., N. Y. § 30; R. I. § 19; Wis. § 1675-11.) Where the instrument or an acceptance or any endorsement 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 [15, note 7, c. VIII, 163].

§ 12. (Md., N. Y. § 31; R. I. § 20; Wis. § 1675-12.) 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 [17].

§ 13. (Md., N. Y. § 32; R. I. § 21; Wis. § 1675-13.) Where 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 [19, note 39, c. VIII].

§ 14. (Md., N. Y. § 33; R. I. § 22; Wis. § 1675-14.) 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 negoiated 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 [18, 20, 185].

§ 15. (Md., N. Y. § 34; R. I. § 23; Wis. § 1675-15.) 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 [185].

§ 16. (Md., N. Y. § 35; R. I. § 24; Wis. § 1675-16.) 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 made 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 shown 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 possesion of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved [26, 28, 185].

§ 17. (Md., N. Y. § 36; R. I. § 25; Wis. § 1675-17.) 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 [91];
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 [15, 95];
3. Where the instrument is not dated, it will be considered to be dated, as of the time it was issued [15];
4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail [92];
5. Where the instrument is so ambiguous that there is doubt whether it is a bill

or note, the holder may treat it as either at his election [97];

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 [21];

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon [96].

§ 18. (Md., N. Y. § 37; R. I. § 26; Wis. § 1675-18.) 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 [21, note 1, ch. XI].

§ 19. (Md., N. Y. § 38; R. I. § 27; Wis. § 1675-19.) 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 [23].

§ 20. (Md., N. Y. § 39; R. I. § 28; Wis. § 1675-20.) 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 authoriezd; 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 [24].

§ 21. (Md., N. Y. § 40; R. I. § 29; Wis. § 1675-21.) 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 [25].

§ 22. (Md., N. Y. § 41; R. I. § 30; Wis. § 1675-22.) 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 [note 115, c. X.].

§ 23. (Md., N. Y. § 42; R. I. § 31; Wis. § 1675-23.) Where a signature is forged or made without the 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 [251].

ARTICLE II.

CONSIDERATION.

§ 24. (Md. § 43; N. Y. § 50; R. I. § 32; Wis. § 1675-50.) 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 [87, 117, 145, 150, 179].

§ 25. (Md. § 44; N. Y. § 51; R. I. § 33; Wis. § 1675-51.) Value is any consideration sufficient to support a simple contract [88]. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time [88, 117, 150, 179].

§ 26. (Md. § 45; N. Y. § 52; R. I. § 34; Wis. § 1675-52.) 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 [179].

§ 27. (Md. § 46; N. Y. § 53; R. I. § 35; Wis. 1675-53.) 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 [179].

§ 28. (Md. § 47; N. Y. § 54; R. I. § 36; Wis. § 1675-54.) 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 [89].

§ 29. (Md. § 48; N. Y. § 55; R. I. § 37; Wis. 1675-55.) 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 [90]. 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 [179].

ARTICLE III.

NEGOTIATION.

§ 30. (Md. § 49; N. Y. § 60; R. I. § 38; Wis. § 1676.) An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof [146]. 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 [146].

§ 31. (Md. § 50; N. Y. § 61; R. I. § 39; Wis. § 1676-1.) The indorsement must be written on the instrument itself or upon a paper attached thereto [147]. The signature of the indorser, without additional words, is a sufficient indorsement. [147].

§ 32. (Md. § 51; N. Y. § 62; R. I. § 40; Wis. § 1676-2.) The indorsement must be an indorsement of the entire instrument [148]. 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 no operate as a nego-

tiation of the instrument [148]. But where the instrument has been paid in part, it may be indorsed as to the residue [148].

§ 33. (Md. § 52; N. Y. § 63; R. I. § 41; Wis. § 1676-3.) An indorsement may be either special [151] or in blank [152, 153]; and it may also be either restrictive [154] or qualified [157], or conditional [158].

§ 34. (Md. § 53; N. Y. § 64; R. I. § 42; Wis. 1676-4.) A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable [151]; and the indorsement of such indorsee is necessary to the further negotiation of the instrument [151]. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery [152].

§ 35. (Md. § 54; N. Y. § 65; R. I. § 43; Wis. § 1676-5.) 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 [153].

§ 36. (Md. § 55; N. Y. § 66; R. I. § 44; Wis. § 1676-6.) An indorsement is restrictive, which either:—

1. Prohibits the further negotiation of the instrument [154]; or
2. Constitutes the indorsee the agent of the indorser [155]; or
3. Vests the title in the indorsee in trust for or to the use of some other person [155].

But the mere absence of words implying power to negotiate does not make an indorsement restrictive [154].

§ 37. (Md. § 56; N. Y. § 67; R. I. § 45; Wis. § 1676-7.) A restrictive indorsement confers upon the indorsee the right:—

1. To receive payment of the instrument [156];
2. To bring any action thereon that the indorser could bring [156];
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so [156].

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement [156].

§ 38. (Md. § 57; N. Y. § 68; R. I. § 46; Wis. § 1676-8.) A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument [157]. It may be made by adding to the indorser's signature

the words "without recourse" or any words of similar import [157]. Such an indorsement does not impair the negotiable character of the instrument [157].

§ 39. (Md. § 58; N. Y. § 69; R. I. § 47; Wis. § 1676-9.) 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 [158]. 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 [158].

§ 40. (Md. § 59; N. Y. § 70; R. I. § 48; Wis. § 1676-10.) 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 [159].

§ 41. (Md. § 60; N. Y. § 71; R. I. § 49; Wis. § 1676-11.) 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 others [160].

§ 42. (Md. § 61; N. Y. § 72; R. I. § 50; Wis. § 1676-12.) 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 [162].

§ 43. (Md. § 62; N. Y. § 73; R. I. § 51; Wis. § 1676-13.) 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 [147].

§ 44. (Md. § 63; N. Y. § 74; R. I. § 52; Wis. § 1676-14.) Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability [161].

§ 45. (Md. § 64; N. Y. § 75; R. I. § 53; Wis. § 1676-15.) 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 [163].

§ 46. (Md. § 65; N. Y. § 76; R. I.

§ 54; Wis. § 1676-16.) Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated [163].

§ 47. (Md. § 66; N. Y. § 77; R. I. § 55; Wis. § 1676-17.) An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise [164].

§ 48. (Md. § 67; N. Y. § 78; R. I. § 56; Wis. § 1676-18.) The holder may at any time strike out any indorsement which is not necessary to his title [166]. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument [166].

§ 49. (Md. § 68; N. Y. § 79; R. I. § 57; Wis. § 1676-19.) 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 transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer [167]. But for the purpose of determining whether the transferee is a holder in due course, the ne-

gotiation takes effect as of the time when the indorsement is actually made [167].

§ 50. (Md. § 69; N. Y. § 80; R. I. § 58; Wis. § 1676-20.) Where an instrument is negotiated back to a prior party, such 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 [168].

ARTICLE IV.

RIGHTS OF HOLDER.

§ 51. (Md. § 70; N. Y. § 90; R. I. § 59; Wis. 1676-21.) The holder of a negotiable instrument may sue thereon in his own name [144]; and payment to him in due course discharges the instrument [258].

§ 52. (Md. § 71; N. Y. § 91; R. I. § 60; Wis. § 1676-22.) 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 [176];
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact [177];

3. That he took it in good faith [178] and for value [179].
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 [180].

§ 53. (Md. § 72; N. Y. § 92; R. I. § 61; Wis. § 1676-23.) 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 [89, 177].

§ 54. (Md. § 73; N. Y. § 93; R. I. § 62; Wis. § 1676-24.) 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 [180].

§ 55. (Md. § 74; N. Y. § 94; R. I. § 63; Wis. § 1676-25.) 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 an illegal con-

sideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud [182].

§ 56. (Md. § 25; N. Y. § 95; R. I. § 64; Wis. § 1676-26.) 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 [183].

§ 57. (Md. § 76; N. Y. § 96; R. I. § 65; Wis. § 1676-27.) 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 [176, 185, 186].

§ 58. (Md. § 77; N. Y. § 97; R. I. § 66; Wis. 1676-28.) In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defences as if it were non-negotiable [187]. But a holder who derives his tilte 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 [188].

§ 59. (Md. § 78; N. Y. § 98; R. I. § 67; Wis. § 1676-29.) 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 holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title [189].

ARTICLE V.

LIABILITIES OF PARTIES.

§ 60. (Md. § 79; N. Y. § 110; R. I. § 68; Wis. § 1677.) 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 endorse [22].

§ 61. (Md. § 80; N. Y. § 111; R. I. § 69; Wis. 1677-1.) 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 [22].

§ 62. (Md. § 81; N. Y. § 112; R. I. § 70; Wis. 1677-2.) The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance [130]; and admits:—

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument [130, 251]; and
2. The existence of the payee and his then capacity to indorse [130).

§ 63. (Md. § 82; N. Y. § 113; R. I. § 71; Wis. § 1677-3.) 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 [149, 21].

§ 64. (Md. § 83; N. Y. § 114; R. I. § 72; Wis. § 1677-4.) 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 [170];
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 [170];
3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee [170].

§ 65. (Md. § 84; N. Y. § 115; R. I. § 73; Wis. § 1677-5.) 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 [171];
2. That he has a good title to it [171, 251];

3. That all prior parties had capacity to contract [171];
4. That he has no knowledge of any fact which would impair the validity of the instrument to render it valueless [171].

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee [171].

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes [171].

§ 66. (Md. § 85; N. Y. § 116; R. I. § 74; Wis. § 1677-6.) Every indorser who indorses without qualification, warrants to all subsequent holders in due course:—

1. The matters and things mentioned in subdivisions one, two and three of the next preceding section [169]; and
2. That the instrument is at the time of his indorsement valid and subsisting [169].

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 proceed-

ings 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 [169].

§ 67. (Md. § 86; N. Y. § 117; R. I. § 75; Wis. § 1677-7.) Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser [173].

§ 68. (Md. § 87; N. Y. § 118; R. I. § 76; Wis. § 1677-8.) 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 [174]. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally [175].

§ 69. (Md. § 88; N. Y. § 119; R. I. § 77; Wis. § 1677-9.) Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent [172].

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

§ 70. (Md. § 81; N. Y. § 130; R. I. § 78; Wis. § 1678.) 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, such ability and willingness are equivalent to a tender of payment upon his part [190]. But except as herein provided, presentment for payment is necessary in order to charge the drawer and indorsers [191].

§ 71. (Md. § 90; N. Y. § 131; R. I. § 79; Wis. 1678-1.) Where the instrument is not payable on demand, presentment must be made on the day it falls due [197]. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof [195, 196].

§ 72. (Md. § 91; N. Y. § 132; R. I. § 80; Wis. § 1678-2.) Presentment for payment, to be sufficient, must be made:—

1. By the holder, or by some person authorized to receive payment on his behalf [192];
2. At a reasonable hour on a business day [194];
3. At a proper place as herein defined [200];
4. To the 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 [193].

§ 73. (Md. § 92; N. Y. § 133; R. I. § 81; Wis. § 1678-3.) 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 [80, 200].
2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented [80, 200];
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 [80, 200];

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence [80, 200].

§ 74. (Md. § 93; N. Y. § 134; R. I. § 82; Wis. § 1678-4.) 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 [201, 259].

§ 75. (Md. § 94; N. Y. § 135; R. I. § 83; Wis. § 1678-5.) 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 [198].

§ 76. (Md. § 95; N. Y. § 136; R. I. § 84; Wis. § 1678-6.) 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 [193].

§ 77. (Md. § 96; N. Y. § 137; R. I. § 85; Wis. § 1678-7.) 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 [193].

§ 78. (Md. § 97; N. Y. § 138; R. I. § 86; Wis. § 1678-8.) 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 [193].

§ 79. (Md. § 98; N. Y. § 139; R. I. § 87; Wis. § 1678-9.) 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 [191].

§ 80. (Md. § 99; N. Y. § 140; R. I. § 88; Wis. § 1678-10.) 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 [191].

§ 81. (Md. § 100; N. Y. § 141; R. I. § 89; Wis. § 1678-11.) 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 [189]. When the cause of delay ceases to operate, presentment must be made with reasonable diligence [199].

§ 82. (Md. § 101; N. Y. § 142; R. I. § 90; Wis. § 1678-12.) Presentment for payment is dispensed with:—

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made [202];
2. Where the drawee is a fictitious person [202];
3. By waiver of presentment, express or implied [203].

§ 83. (Md. § 102; N. Y. § 143; R. I. § 91; Wis. § 1678-13.) The instrument is dishonored by non-payment when:—

1. It is duly presented for payment and payment is refused or cannot be obtained [204]; or
2. Presentment is excused and the instrument is overdue and unpaid [204].

§ 84. (Md. § 103; N. Y. § 144; R. I. § 92; Wis. § 1678-14.) 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 [205].

§ 85. (Md. § 104; N. Y. § 145; R. I. § 93; Wis. § 1678-15.) 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 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 [206, 208].

§ 86. (Md. § 105; N. Y. § 146; R. I. § 94; Wis. § 1678-16.) 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 [209].

§ 87. (Md. § 106; N. Y. § 147; R. I. § 95; Wis. § 1678-17.) Where the instrument is made payable at a bank it is equiva-

lent to an order to the bank to pay the same for the account of the principal debtor thereon [257].

§ 88. (Md. § 107; N. Y. § 148; R. I. § 96; Wis. § 1678-18.) 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 [255].

ARTICLE VII.

NOTICE OF DISHONOR.

§ 89. (Md. § 108; N. Y. § 160; R. I. § 97; Wis. § 1678-19.) 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 [222].

§ 90. (Md. § 109; N. Y. § 161; R. I. § 98; Wis. § 1678-20.) 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 [227].

§ 91. (Md. § 110; N. Y. § 162; R. I. § 99; Wis. § 1678-21.) Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not [228].

§ 92. (Md. § 111; N. Y. § 163; R. I. § 100; Wis. § 1678-22.) 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 [229].

§ 93. (Md. § 112; N. Y. § 164; R. I. § 101; Wis. § 1678-23.) 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 [229].

§ 94. (Md. § 113; N. Y. § 165; R. I. § 102; Wis. § 1678-24.) 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 [228]. 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 [228].

§ 95. (Md. § 114; N. Y. § 166; R. I. § 103; Wis. § 1678-25.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication [235]. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby [236].

§ 96. (Md. § 115; N. Y. § 167; R. I. § 104; Wis. § 1678-26.) 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 [235, 236]. It may in all cases be given by delivering it personally or through the mails [237].

§ 97. (Md. § 116; N. Y. § 168; R. I. § 105; Wis. § 1678-27.) Notice of dishonor may be given either to the party himself or to his agent in that behalf [230].

§ 98. (Md. § 117; N. Y. § 169; R. I. § 106; Wis. § 1678-28.) 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 [231]. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased [231].

§ 99. (Md. § 118; N. Y. § 170; R. I. § 107; Wis. § 1678-29.) 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 [232].

§ 100. (Md. § 119; N. Y. § 171; R. I. § 108; Wis. § 1678-30.) 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 [233].

§ 101. (Md. § 120; N. Y. § 172; R. I. § 109; Wis. § 1678-31.) 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 trustees or assignee [234].

§ 102. (Md. § 121; N. Y. § 173; R. I. § 110; Wis. § 1678-32.) 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 [238].

§ 103. (Md. § 122; N. Y. § 174; R. I. § 111; Wis. § 1678-33.) 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 [239].
2. If given at his residence, it must be given before the usual hours of rest on the day following [239].
3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following [239].

§ 104. (Md. § 123; N. Y. § 175; R. I. § 112; Wis. § 1678-34.) 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 postoffice 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 [240].

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision [240].

§ 105. (Md. § 124; N. Y. § 176; R. I. § 113; Wis. § 1678-35.) Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails [243].

§ 106. (Md. § 125; N. Y. § 177; R. I. § 114; Wis. § 1678-36.) Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department [244].

§ 107. (Md. § 126; N. Y. § 178; R. I. § 115; Wis. § 1678-37.) 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 [241].

§ 108. (Md. § 127; N. Y. § 179; R. I. § 116; Wis. § 1678-38.) Where a party has

added an address to his signature, notice of dishonor must be sent to that address [245]; but if he has not given such address, then the notice must be sent as follows:—

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters [245]; or
2. If he live in one place, and have his place of business in another, notice may be sent to either place [246]; or
3. If he is sojourning in another place, notice may be sent to the place where he is sojourning [246].

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 [247].

§ 109. (Md. § 128; N. Y. § 180; R. I. § 117; Wis. § 1678-39.) 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 [249].

§ 110. (Md. § 129; N. Y. § 181; R. I. § 118; Wis. § 1678-40.) 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 [250].

§ 111. (Md. § 130; N. Y. § 182; R. I. § 119; Wis. § 1678-41.) 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 of a formal protest, but also of presentment and notice of dishonor [220, 249].

§ 112. (Md. § 131; N. Y. § 183; R. I. § 120; Wis. § 1678-42.) 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 [223].

§ 113. (Md. § 132; N. Y. § 184; R. I. § 121; Wis. § 1678-43.) 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 [242]. When the cause of delay ceases to operate, notice must be given with reasonable diligence [242].

§ 114. (Md. § 133; N. Y. § 185; R. I. § 122; Wis. § 1678-44.) Notice of dishonor

is not required to be given to the drawer in either of the following cases:—

1. When the drawer and drawee are the same person [224];
2. When the drawee is a fictitious person or a person not having capacity to contract [224];
3. When the drawer is the person to whom the instrument is presented for payment [224];
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument [224];
5. Where the drawer has countermanded payment [224].

§ 115. (Md. § 134; N. Y. § 186; R. I. § 123; Wis. § 1678-45.) 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 [225];
2. Where the indorser is the person to whom the instrument is presented for payment [225].

§ 116. (Md. § 136; N. Y. § 187; R. I. § 124; Wis. 1678-46.) 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 [223].

§ 117. (Md. § 136; N. Y. § 188; R. I. § 125; Wis. § 1678-47.) 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.

§ 118. (Md. § 137; N. Y. § 189; R. I. § 126; Wis. § 1678-48.) 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 [210].

ARTICLE VIII.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 119. (Md. § 138; N. Y. § 200; R. I. § 127; Wis. § 1679.) A negotiable instrument is discharged:—

1. By payment in due course by or on behalf of the principal debtor [256];
2. By payment in due course by the party accommodated, where the instrument is

made or accepted for accommodation [256];

3. By the intentional cancellation thereof by the holder [267];
4. By any other act which will discharge a simple contract for the payment of money [270];
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right [269].

§ 120. (Md. § 139; N. Y. § 201; R. I. § 128; Wis. § 1679-1.) A person secondarily liable on the instrument is discharged:—

1. By an act which discharges the instrument [271];
2. By the intentional cancellation of his signature by the holder [271);
3. By the discharge of a prior party [271];
4. By a valid tender of payment made by a prior party [271];
5. By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved [271];
6. By an 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 [272].

§ 121. (Md. § 140; N. Y. § 202; R. I. § 129; Wis. 1679-2.) 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 [274], and he may strike out his own and all subsequent indorsements, and again negotiate the instrument [275], except:—

1. Where it is payable to the order of a third person, and has been paid by the drawer [275]; and
2. Where it was made or accepted for accommodation, and has been paid by the party accommodated [275].

§ 122. (Md. § 141; N. Y. § 203; R. I. § 130; Wis. § 1679-3.) The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect 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 [268].

§ 123. (Md. § 142; N. Y. § 204; R. I. § 131; Wis. § 1679-4.) 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 [267].

§ 124. (Md. § 143; N. Y. § 205; R. I. § 132; Wis. § 1679-5.) Where a negotiable instrument is materially altered without the assent of all parties liable thereto, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers [252].

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 [253].

§ 125. (Md. § 144; N. Y. § 206; R. I.

§ 133; Wis. § 1679-6.) Any alteration which changes:—

1. The date [252];
2. The sum payable, either for principal or interest [252];
3. The time or place of payment [252];
4. The number or the relations of the parties [252];
5. The medium of currency in which payment is to be made [252];

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 alteration [252].

TITLE II.

BILLS OF EXCHANGE.

ARTICLE I.

FORM AND INTERPRETATION.

§ 126. (Md. § 145; N. Y. § 210; R. I. § 134; Wis. § 1680.) 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 cer-

tain in money to order or to bearer [7, 35].

§ 127. (Md. § 146; N. Y. § 211; R. I. § 135; Wis. § 1680a.) 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 [98, 117, note 1, ch. XI.].

§ 128. (Md. § 147; N. Y. § 212; R. I. § 136; Wis. § 1680b.) 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 [9].

§ 129. (Md. § 148; N. Y. § 213; R. I. § 137; Wis. § 1680c.) An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this 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 [10].

§ 130. (Md. § 149; N. Y. § 214; R. I. § 138; Wis. § 1680d.) 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 op-

tion, either as a bill of exchange or a promissory note [97].

§ 131. (Md. § 150; N. Y. § 215; R. I. § 139; Wis. § 1680e.) 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 [11].

ARTICLE II.

ACCEPTANCE.

§ 132. (Md. § 151; N. Y. § 220; R. I. § 140; Wis. § 1680f.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer [114]. The acceptance may be in writing and signed by the drawee [115, 128]. It must not express that the drawee will perform his promise by any other means than the payment of money [114].

§ 133. (Md. § 152; N. Y. § 221; R. I. § 141; Wis. § 1680g.) 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 [116].

§134. (Md. § 153; N. Y. § 222; R. I. § 142; Wis. § 1680h.) 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 is shown and who, on the faith thereof, receives the bill for value [116]

§ 135. (Md. § 154; N. Y. § 223; R. I. § 143; Wis. § 1680i.) 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 [118].

§ 136. (Md. § 155; N. Y. § 224; R. I. § 144; Wis. § 1680j.) 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 [119].

§ 137. (Md. § 156; N. Y. § 225; R. I. § 145; Wis. § 1680k.) 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 [120].

§ 138. (Md. § 157; N. Y. § 226; R. I. § 146; Wis. § 1680l.) 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 [121]. 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 [121].

§ 139. (Md. § 158; N. Y. § 227; R. I. § 147; Wis. § 1680m.) An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer [122]. A qualified acceptance in express terms varies the effect of the bill as drawn [124].

§ 140. (Md. § 159; N. Y. § 228; R. I. § 148; Wis. § 1680n.) 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 [123].

§ 141. (Md. § 160; N. Y. § 229; R. I. § 149; Wis. § 1680o.) An acceptance is qualified, which is:—

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated [125];
2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn [124];
3. Local, that is to say, an acceptance to pay only at a particular place [124];
4. Qualified as to time [124];
5. The acceptance of some one or more of the drawees, but not of all [124].

§ 142. (Md. § 161; N. Y. § 230; R. I. § 150; Wis. § 1680p.) 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 [126]. 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 [126]. When the drawer or an 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 [126].

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

§ 143. (Md. § 162; N. Y. § 240; R. I. § 151; Wis. § 1681.) 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 [100]; or
2. Where the bill expressly stipulates that it shall be presented for acceptance [105]; or
3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee [100].

In no other case is presentment for acceptance necessary in order to render any party to the bill liable [100, 110].

§ 144. (Md. § 163; N. Y. § 241; R. I. § 152; Wis. § 1681-1.) 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 fail to do so, the drawer and all indorsers are discharged [103].

§ 145. (Md. § 164; N. Y. § 242; R. I. § 153; Wis. § 1681-2.) 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 drawer or some person authorized to accept or refuse acceptance on his behalf [104, 105, 108]; 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 [106];
2. Where the drawee is dead, presentment may be made to his personal representative [105];
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 [107].

§ 146. (Md. § 165; N. Y. § 243; R. I. § 154; Wis. § 1681-3.) A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon, on that day [108].

§ 147. (Md. § 166; N. Y. § 244; R. I. § 155; Wis. § 1681-4.) 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 [109].

§ 148. (Md. § 167; N. Y. § 245; R. I. § 156; Wis. § 1681-5.) 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

194.

person not having capacity to contract by bill [101];

2. Where, after the exercise of reasonable diligence, presentment cannot be made [101];
3. Where, although presentment has been irregular, acceptance has been refused on some other ground [101].

§ 149. (Md. § 168; N. Y. § 246; R. I. § 157; Wis. § 1681-6.) 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 [111]; or
2. When presentment for acceptance is excused and the bill is not accepted [111].

§ 150. (Md. § 169; N. Y. § 247; R. I. § 158; Wis. § 1681-7.) 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 [112].

§ 151. (Md. § 170; N. Y. § 248; R. I. § 159; Wis. § 1681-8.) When a bill is dis-

honored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary [112].

ARTICLE IV.

PROTEST.

§ 151. (Md. § 171; N. Y. § 260; R. I. § 160; Wis. § 1681-9.) 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 has not previously been dishonored by non-acceptance is dishonored 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 [210].

§ 153. (Md. § 172; N. Y. § 261; R. I. § 161; Wis. § 1681-10.) 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 [213], and must specify:—

1. The time and place of presentment [213];

2. The fact that presentment was made and the manner thereof [213];
3. The cause or reason for protesting the bill [213];
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found [213].

§ 154. (Md. § 173; N. Y. § 262; R. I. § 162; Wis. § 1681-11.) Protest may be made by:—

1. A notary public [215]; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses [215].

§ 155. (Md. § 174; N. Y. § 263; R. I. § 163; Wis. § 1681-12.) When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided [216]. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting [216].

§ 156. (Md. § 175; N. Y. § 264; R. I. § 164; Wis. § 1681-13.) A bill must be protested at the place where it is dishonored, except that when a bill 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 [218].

§ 157. (Md. § 176; N. Y. § 265; R. I. § 165; Wis. § 1681-14.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment [211].

§ 158. (Md. § 177; N. Y. § 266; R. I. § 166; Wis. § 1681-15.) 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 [217].

§ 159. (Md. § 178; N. Y. § 267; R. I. § 167; Wis. § 1681-16.) 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 beoynd 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 [212].

§ 160. (Md. § 179; N. Y. § 268; R. I. § 168; Wis. § 1681-17.) 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 [219].

ARTICLE V.

ACCEPTANCE FOR HONOR.

§ 161. (Md. § 180; N. Y. § 280; R. I. § 169; Wis. § 1681-18.) Where a bill of exchange has been protested for dishonor by non-aceptance 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 [131].

§ 162. (Md. § 181; N. Y. § 281; R. I.

§ 170; Wis. § 1681-19.) 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 [132].

§ 163. (Md. § 182; N. Y. § 282; R. I. § 171; Wis. § 1681-20.) 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 [133].

§ 164. (Md. § 183; N. Y. § 283; R. I. § 172; Wis. § 1681-21.) 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 [134].

§ 165. (Md. § 184; N. Y. § 284; R. I. § 173; Wis. § 1681-22.) 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 not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him [135].

§ 166. (Md. § 185; N. Y. § 285; R. I. § 174; Wis. § 1681-23.) 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 [136].

§ 167. (Md. § 186; N. Y. § 286; R. I. § 175; Wis. § 1681-24.) 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 [137].

§ 168. (Md. § 187; N. Y. § 287; R. I. § 176; Wis. § 1681-25.) 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 [138];
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 four [138].

§ 169. (Md. § 188; N. Y. § 288; R. I. § 177; Wis. § 1681-26.) The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for

honor or referee in case of need [139].

§ 170. (Md. § 189; N. Y. § 289; R. I. § 178; Wis. § 1681-27.) When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him [139].

ARTICLE VI.

PAYMENT FOR HONOR.

§ 171. (Md. § 190; N. Y. § 300; R. I. § 179; Wis. § 1681-28.) 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 [260].

§ 172. (Md. § 191; N. Y. § 301; R. I. § 180; Wis. § 1681-29.) 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 [261].

§ 173. (Md. § 192; N. Y. § 302; R. I. § 181; Wis. § 1681-30.) The notarial act of honor must be founded on a declaration made by 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 [262].

§ 174. (Md. § 193; N. Y. § 303; R. I. § 182; Wis. § 1681-31.) 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 [263].

§ 175. (Md. § 194; N. Y. § 304; R. I. § 183; Wis. § 1681-32.) 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 [264].

§ 176. (Md. § 195; N. Y. § 305; R. I. § 184; Wis. § 1681-33.) 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 [265].

§ 177. (Md. § 196; N. Y. § 306; R. I. § 185; Wis. § 1681-34.) 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 [266].

ARTICLE VII.

BILLS IN A SET.

§ 178. (Md. § 197; N. Y. § 310; R. I. § 186; Wis. § 1681-35.) 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 constitutes one bill [8].

§ 179. (Md. § 198; N. Y. § 311; R. I. § 187; Wis. § 1681-36.) 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 [165]. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him [165].

§ 180. (Md. § 199; N. Y. § 312; R. I. § 188; Wis. § 1681-37.) Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills [165].

§ 181. (Md. § 200; N. Y. § 313; R. I. § 189; Wis. § 1681-38.) The acceptance may be written on any part and it must be written on one part only [127]. 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 [127].

§ 182. (Md. § 201; N. Y. § 314; R. I. § 190; Wis. § 1681-39.) 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 [259].

§ 183. (Md. § 202; N. Y. § 310; R. I. § 191; Wis. § 1681-40.) 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 [259].

TITLE III.

PROMISSORY NOTES AND CHECKS.

ARTICLE I.

§ 184. (Md. § 203; N. Y. § 320; R. I. § 192; Wis. § 1684.) 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 [12, 35, 48].

§ 185. (Md. § 204; N. Y. § 321; R. I. § 193; Wis. § 1684-1.) 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 [13].

§ 186. (Md. § 205; N. Y. § 322; R. I. § 194; Wis. § 1684-2.) 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 [196].

§ 187. (Md. § 206; N. Y. § 323; R. I. § 195; Wis. § 1684-3.) Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance [128].

§ 188. (Md. § 207; N. Y. § 324; R. I. § 196; Wis. § 1684-4.) Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon [129].

§ 189. (Md. § 208; N. Y. § 325; R. I. § 197; Wis. § 1684-5.) 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 [99, note 1, ch. XI].

TITLE IV.

GENERAL PROVISIONS.

ARTICLE I.

§ 190. (Md. § 13; N. Y. § 1; R. I. § 190; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) This act shall be known as the Negotiable Instruments Law [2].

§ 191. (Md. § 14; N. Y. § 2; Or. § 190; R. I. § 2; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) In this act unless the context otherwise requires:—

"Acceptance" means an acceptance completed by delivery or notification [114].

"Action" includes counter-claim and set-off [note 14, ch. XI.].

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not [note 21, ch. XV.].

"Bearer" means the person in possession of a bill or note which is payable to bearer [48, 49, 56-59].

"Bill" means bill of exchange, and "note" means negotiable promissory note [2].

"Delivery" means transfer of possession, actual or constructive, from one person to another [3, 26-28].

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof [144].

"Indorsement" means an indorsement completed by delivery [146 and notes].

"Instrument" means negotiable instrument [2].

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder [26-28].

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration [87-90].

"Written" includes printed, and "writing" includes print [14].

§ 192. (Md. § 15; N. Y. § 3; Or. § 190; R. I. § 3; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) The person "primarily" liable on an instrument is the person who by the

terms of the instrument is absolutely required to pay same. All other parties are "secondarily" liable [130, note 1, ch. XI].

§ 193. (Md. § 16; N. Y. § 4; Or. § 190; R. I. § 4; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) 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 [103, 177].

§ 194. (Md. § 17; N. Y. § 5; Or. § 190; R. I. § 5; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) 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 [207].

§ 195. (Md. § 18; N. Y. § 6; Or. § 191; R. I. § 6; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof [3].

§ 196. (Md. § 19; N. Y. § 7; Or. § 192; R. I. § 7; Wis. § 1675; Conn., D. C., Fla., Tenn., Art. I.) In any case not provided for in this act the rules of the law merchant shall govern [5].

§ 197. (D. C., Fla. § 190; N. Y. § 340; Or. § 193; R. I. § 8; Wis. § 1684-6, subd. 2.) Of the laws enumerated in the schedules hereto annexed that portion specified in the last column is repealed [6].

§ 198. (See notes 11 and 12, ch. I.) This chapter shall take effect on ———— [4].

TABLE TO FURTHER FACILITATE THE FINDING OF PARALLEL SECTIONS OF THE NEGOTIABLE INSTRUMENTS LAWS.

[The section numbers given in the above copy of the original draft of the Negotiable Instruments Law will enable one to find readily the parallel section with reference to the section numbers of the Law in the first group of states mentioned in the note preceding the draft. The following table will enable one to find parallel sections with reference to the section numbers of the Law as adopted in New York.]

N. Y.	Md.	R. I.	Wis.	The other states 190-196; Or., 190-192; Conn., D. C., Fla., Tenn., Art. 1.
1-7	13-19	1-7	1675	
20-42	20-42	9-31	1675-1 to 1675-23	1-23
50-55	43-48	32-37	1675-50 to 1675-55	24-29
60-80	49-69	38-58	1676 to 1676-20	30-50
90-98	70-78	59-67	1676-21 to 1676-29	51-59
110-119	79-88	68-77	1677 to 1677-9	60-69
130-148	89-107	78-96	1678 to 1678-18	70-88
160-189	108-137	97-126	1678-19 to 1070-48	89-118
200-206	138-144	127-133	1679 to 1679-6	119-125
210-215	145-150	134-139	1690 to 1680e	126-131
220-230	151-161	140-150	1680f to 1680p	132-142
240-248	162-170	151-159	1681 to 1681-8	143-151
260-268	171-179	160-168	1681-9 to 1681-17	152-160
280-289	180-189	169-178	1681-18 to 1681-27	161-170
300-306	190-196	179-185	1681-28 to 1681-34	171-177
310-315	197-202	186-191	1681-35 to 1681-40	178-183
320-325	203-208	192-197	1684 to 1684-5	184-189

APPENDIX "B."

Schedule of Statutes Repealed by the Various Negotiable Instruments Laws.[1]

COLORADO, Laws 1897 c. 64, repeals (§ 197) sections 101 to 115 inclusive, and sections 1630, 2463, 2464 and 2465 of the General Statutes of 1883, and all other inconsistent acts or parts of acts.

CONNECTICUT, Laws 1897 c. LXXIV, repeals (§ 197) sections 1858, 1859, 1860 and 1863 of the General Statutes.

DISTRICT OF COLUMBIA, U. S. Statutes at Large 1897-99 c. 47, repeals (§ 190) all inconsistent laws.

FLORIDA, Laws 1897 c. 4524, No. 10, repeals (§ 190) all conflicting laws or parts of laws.

MARYLAND, Laws 1898 c. 119. No express repeals.

MASSACHUSETTS, Acts and Resolves 1898 c. 533, repeals (§ 197) all inconsistent acts and parts of acts.

NEW YORK, Laws 1897 c. 612 (Amendments, Laws 1898 c. 361), repeals (Schedule following section 341):

[1]The question of implied repeals is considered in Section 6 of the text.

R. S., pt. II., Ch., 4, tit. II.....	All	Bills and notes.
Laws 1835...141	All	Notice of protest; how given.
1857...416	All	Commercial paper.
1865...309	All	Protest of foreign bills, etc.
1870...438	All	Negotiability of corporate bonds; how limited.
1871... 84	All	Negotiable bonds; how made non-negotiable.
1873...595	All	Negotiable bonds; how made negotiable.
1877... 65	1,3.	Negotiable instruments given for patent rights.
1887...461	All	Effect of holidays upon payment of commercial paper.
1888...229	All	One hundredth anniversary of the inauguration of George Washington.
1891...262	1.	Negotiable instruments given on a speculative consideration.
1894...607	All	Days of grace abolished.

NORTH CAROLINA, Pub. Laws 1899 c. 733, repeals (§ 197) all laws and parts of laws in conflict with the provisions of this act. The same section also provides: "That nothing in this act shall authorize the enforcement of an authorization to con-

fess judgment or a waiver of homestead and personal property exemptions or a provision to pay counsel fees for collection incorporated in any of the instruments mentioned in this act; but the mention of such provisions in such instrument shall not affect the other terms of such instruments or the negotiability thereof, the laws now in force with regard to days of grace shall remain in force and shall not be repealed by this act."

NORTH DAKOTA, Laws 1899 c. 113. No express repeals.

OREGON, Laws 1899 p. 18, repeals (§ 193) all inconsistent acts or parts of acts.

RHODE ISLAND, Laws 1899 c. 623, p 24, repeals (§ 8) sections 4, 5, 7 and 9 of Chapter 166 of the General Laws.

TENNESSEE, Laws 1899 c. 94. No express repeals.

UTAH, Laws 1899 c 83, repeals (§ 197) title 46 Revised Statutes 1898, being sections 1553 to 1665 inclusive, and all other conflicting acts.

VIRGINIA, Acts Assem. 1897-98 c. 866, repeals (§ 197) all conflicting acts and parts of acts. This section also provides that "Of the laws enumerated in the sched-

ules hereto annexed, that portion specified in the last column is repealed," but no schedule is annexed and the act is defective in this respect.

WASHINGTON, Laws 1899 c. CXLIX, repeals (§ 197) all inconsistent acts and parts of acts.

WISCONSIN, Laws 1899 c. 356, repeals (2 immediately following section 1684-6) all inconsistent acts.

This section also repeals sections 176, 1675, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, of the Revised Statutes of 1878. Sections 1676, 1944, 1945, 4143, 4194, 4425, and 4458, are not affected by the act, being expressly saved from repeal. Sections 1944 and 1945 just referred to are considered in section 32 and note 220, ch. X of this work, and sections 1676, 4194 and 4425 are considered in section 36 of this work.

Section "4143" as it is printed in the act, is probably a mistake, the section meant being 4193 which provides: "In all actions brought on promissory notes, or bills of exchange, by the indorsee, the possession of the note shall be presumptive evidence that the same was indorsed

by the persons by whom it purports to be indorsed."

Section 4458 provides that "Any person who shall fraudulently affix to any instrument or writing purporting to be a note, draft, or other evidence of debt issued by any corporation, a fictitious or pretended signature, purporting to be the signature of an officer or agent of such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation ever have existed."

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