



# Bombay Government Gazette.

Published by Authority.

THURSDAY, 3RD FEBRUARY 1881.

*Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st January 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have had the report of the Indian Law Commissioners, 1879, duly communicated to us. We have carefully considered so much of it as relates to the present Bill, as well as the papers noted in the margin, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, we

From Secretary, Chamber of Commerce, Madras, dated 1st August 1878, and enclosure [Papers No. 56].

„ Acting Chief Secretary to Government, Madras, No. 299, dated 14th February 1879, and enclosures [Papers No. 58].

„ Ditto, Ditto, Ditto, No. 1343, dated 7th June 1879, and enclosures [Papers No. 59].

„ J. Crawford, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June 1879 [Paper No. 60].

Note by Sir Charles Turner, Chief Justice, Madras, dated 22nd January 1880 [Paper No. 61].

From Seth Lachman Dás, Muttra, dated 1st January 1881 [Paper No. 62].

have the honour to submit this our fourth report.

2. We agree with the Commissioners that uniformity of practice is particularly desirable in matters relating to negotiable paper, and, to facilitate the assimilation of the practice of shroffs to that of European merchants, we have declared (section 1) that local usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by the proposed Act.

3. We have inserted explanations calculated to prevent doubts as to when a promise or order to pay is “conditional,” when the sum payable is “certain,” and when the person to whom the direction is given or payment is to be made is “a certain person,” within the meaning of sections 4 and 5.

4. We have re-drawn section 20 as to inchoate stamped instruments, so as to make it express more accurately what we conceive to be the law on this subject.

5. We have also re-drawn sections 47 and 48 (as follows):—

“43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

“Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.



"*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed."

6. We have prefixed to the sections relating to negotiation clauses (section 46) relating to delivery generally, and to the effect recommended by the Commissioners.

7. We think the section (67, now 63) relating to the drawee's time for deliberation should provide that the holder of a bill "must, if so required by the drawee," allow him twenty-four hours (exclusive of public holidays) to consider whether he will accept, and we have amended this section accordingly.

8. We have made (section 76) presentment for payment unnecessary as against any party sought to be charged, if he has engaged to pay notwithstanding non-presentment.

9. We have in section 90 (now 86) substituted "qualified" for "conditional" and added a paragraph shewing when an acceptance is qualified.

10. We have provided (section 90) for the extinguishment of rights of action on a negotiated bill held, at or after maturity, by the acceptor in his own right.

11. We agree with Sir C. Turner that section 108 of the Bill in its fourth form—as to reasonable time for presentment—should be omitted. It seems inconsistent with section 107 (now 105), and declares a rule which is not only stricter than the existing law, but would, in our opinion, be highly inconvenient.

12. We have inserted a statement of the procedure in the case of an acceptance *supra protest*, and to section 112 (now 109) we have prefixed a clause shewing how acceptance for honour must be made.

13. We have declared (section 116) that a drawee in case of need may accept and pay the bill without previous protest.

14. We have made it appear that inland (as well as foreign) bills may be drawn in sets, and altered Chapter XIV (now XV) accordingly. We have made the exception to section 126 (now 132) run thus:—

"*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorser of each part are liable on such part as if it were a separate bill."

15. We have amended the second clause of section 125 (now 130, 131) (as to the non-liability of a banker who has received payment for a customer of a crossed cheque) in accordance with *Matthiessen v. London and County Banking Company*, 48 L. J. C. P. 529.

16. We have made most of the changes in arrangement and wording advised by the Commissioners, and recommended that the Bill as now revised be passed. It has now been more than thirteen years before the Council of the Governor General; it has been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it is not likely to be further improved. But it should be published in the *Gazettes*, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

WHITLEY STOKES.  
B. W. COLVIN.  
J. PITT KENNEDY.  
G. C. PAUL.

The 20th January 1881.

No. V.

THE NEGOTIABLE INSTRUMENTS  
BILL, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title.
- Local extent.
- Saving of usages relating to hundis, &c.
- Commencement.

SECTION.

2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. Promissory Note.
5. Bill of Exchange.
6. Cheque.
7. "Drawer," "Drawee," "Drawee in case of need," "Acceptor," "Acceptor for honour," "Payee."
8. "Holder."
9. "Holder in due course."
10. "Payment in due course."



## SECTION.

11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument."
14. Negotiation.
15. Indorsement.
16. Indorsement "in blank" and "in full."  
"Indorsee."
17. Ambiguous instruments.
18. Where amount is stated differently in figures  
and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. "At sight."  
"On presentment,"  
"After sight."
22. "Maturity."  
Days of grace.
23. Calculating maturity of bill or note payable  
so many months after date or sight.
24. Calculating maturity of bill or note payable  
so many days after date or sight.
25. When day of maturity is a holiday.

## CHAPTER III.

## PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity to make, &c., promissory notes, &c.  
Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.
33. Only drawee can be acceptor except in need or  
for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due  
course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each sub-  
sequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, &c., without con-  
sideration.
44. Partial absence or failure of money-consider-  
ation.
45. Partial failure of consideration not consisting  
of money.

## CHAPTER IV.

## OF NEGOTIATION.

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into in-  
dorsement in full.
50. Effect of indorsement.
51. Who may negotiate.
52. Indorser who excludes his own liability or  
makes it conditional.
53. Holder deriving title from holder in due  
course.
54. Instrument indorsed in blank.
55. Conversion of indorsement in blank into  
indorsement in full.
56. Indorsement for part of sum due.
57. Legal representative cannot by delivery only  
negotiate instrument indorsed by deceased.

## SECTION.

58. Instrument obtained by unlawful means or  
for unlawful consideration.
59. Instrument acquired after dishonour or when  
overdue.  
Accommodation note or bill.
60. Instrument negotiable till payment or satis-  
faction.

## CHAPTER V.

## OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
64. Presentment for payment.
65. Hours for presentment.
66. Presentment for payment of instrument pay-  
able after date or sight.
67. Presentment for payment of promissory note  
payable by instalments.
68. Presentment for payment of instrument pay-  
able at specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place speci-  
fied.
71. Presentment when maker, &c., has no known  
place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other  
person.
74. Presentment of instrument payable on de-  
mand.
75. Presentment by or to agent, representative of  
deceased, or assignee of insolvent.
76. When presentment unnecessary.
77. Liability of banker for negligently dealing with  
bill presented for payment.

## CHAPTER VI.

## OF PAYMENT AND INTEREST.

78. To whom payment should be made.
79. Interest when rate specified.
80. Interest when no rate specified.
81. Delivery of instrument on payment, or in-  
demnity in case of loss.

## CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS  
AND CHEQUES.

82. Discharge from liability—  
(a) by cancellation :  
(b) by release :  
(c) by payment .
83. Discharge by allowing drawee more than  
twenty-four hours to accept.
84. When cheque not duly presented and drawer  
damaged thereby.
85. Cheque payable to order.
86. Parties not consenting discharged by qualified  
or limited acceptance.
87. Effect of material alteration.  
Alteration by indorsee.
88. Acceptor or indorser bound notwithstanding  
previous alteration.
89. Payment of instrument on which alteration is  
not apparent.
90. Extinguishment of rights of action on bill in  
acceptor's hands,



## SECTION.

## CHAPTER VIII.

## OF NOTICE OF DISHONOUR.

91. Dishonour by non-acceptance.
92. Dishonour by non-payment.
93. By and to whom notice should be given.
94. Mode in which notice may be given.
95. Party receiving must transmit notice of dishonour.
96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

## CHAPTER IX.

## OF NOTING AND PROTEST.

99. Noting.
100. Protest.  
Protest for better security.
101. Contents of protest.
102. Notice of protest.
103. Protest for non-payment after dishonour by non-acceptance.
104. Protest of foreign bills.

## CHAPTER X.

## OF REASONABLE TIME.

105. Reasonable time
106. Reasonable time of giving notice of dishonour.
107. Reasonable time for transmitting such notice.

## CHAPTER XI.

## OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. Acceptance for honour.
109. How acceptance for honour must be made.
110. Acceptance not specifying for whose honour it is made.
111. Liability of acceptor for honour.
112. When acceptor for honour may be charged.
113. Payment for honour.
114. Right of payer for honour.
115. Drawee in case of need.
116. Acceptance and payment without protest.

## CHAPTER XII.

## OF COMPENSATION.

117. Rules as to compensation.

## CHAPTER XIII.

## SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments.
  - (a) of consideration;
  - (b) as to date;
  - (c) as to time of acceptance;
  - (d) as to time of transfer;
  - (e) as to order of indorsements;
  - (f) as to stamp;
  - (g) that holder is a holder in due course.
119. Presumption on proof of protest.
120. Estoppel against denying original validity of instrument.
121. Estoppel against denying capacity of payee to indorse.
122. Estoppel against denying signature or capacity of prior party.

## SECTION.

## CHAPTER XIV.

## OF CROSSED CHEQUES.

123. Cheque crossed generally.
124. Cheque crossed specially.
125. Crossing after issue.
126. Payment of cheque crossed generally.  
Payment of cheque crossed specially.
127. Payment of cheque crossed specially more than once.
128. Payment in due course of crossed cheque.
129. Payment of crossed cheque out of due course.
130. Cheque bearing "not negotiable."
131. Non-liability of banker receiving payment of cheque.

## CHAPTER XV.

## OF BILLS IN SETS.

132. Set of bills.
133. Holder of first acquired part entitled to all.

## CHAPTER XVI.

## OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.
135. Law of place of payment governs dishonour.
136. Instrument made, &c., out of British India, but in accordance with its law.
137. Presumption as to foreign law.

## SCHEDULE.

## No. V.

*A Bill to Define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.*

WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881."
 

|              |                                   |
|--------------|-----------------------------------|
| Short title. | Bill II, s. 1;<br>Bill III, s. 2. |
|--------------|-----------------------------------|

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act;

Commencement. and it shall come into force on the first day of January, 1882.

2. On and from that day the enactments specified in the schedule here- Bill II, s. 2;  
Repeal of enactments. to annexed shall be re- Bill III, s. 2.  
pealed to the extent mentioned in the third column thereof,



Bill II, s. 3:  
Bill III, s. 2:  
39 & 40 Vic.,  
c. 81, s. 3.

Interpretation-clause.

3. In this Act—

“Banker.” includes also persons or a corporation or company acting as bankers; and  
“Notary Public” includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

## CHAPTER II.

### OF NOTES, BILLS AND CHEQUES.

4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### Illustrations.

A signs instruments in the following terms:—

(a) “I promise to pay B or order Rs. 500.”

(b) “I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received.”

(c) “Mr. B, I O U Rs. 1,000.”

(d) “I promise to pay B Rs. 500 and all other sums which shall be due to him.”

(e) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”

(f) “I promise to pay B Rs. 500 seven days after my marriage with C.”

(g) “I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.”

(h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional,” within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may

be a “certain person,” within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the “drawer,” the person thereby directed to pay is called the “drawee.”

When in the bill or in any indorsement thereon “Drawee in case of need” is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need.”

After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor.”

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour.”

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee.”

8. The “holder” of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. “Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. “Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Bill II, s. 6:  
Bill III, s. 5:  
Byles 13.

Draft, s. 6:  
Bill II, s. 7:  
Bill III, s. 7.

Draft, ss. 6,  
57:  
Byles 196:  
Act VI of  
1840, s. 2:  
Act V of 1866,  
s. 11:  
Sec 41 Vic.,  
c. 13.

Draft, s. 6:  
Bill II, s. 8:  
Bill III, s. 8:  
Byles 2.

Draft, s. 12:  
Bill II, s. 9:  
Bill III, s. 9:  
1 Parsons 255:  
Byles 164.

Draft, ss. 86,  
115:  
Bill II, s. 10:  
Bill III,  
s. 10:  
Byles on Bills  
(12th Edition)  
221:  
39 & 40 Vic.,  
c. 81, s. 11.

Bill II, s. 11:  
Bill III,  
s. 11:  
Act V of 1866,  
s. 12.

Bill II, s. 4:  
Bill III, s. 4:  
Byles on Bills  
(12th edition),  
pp. 5, 94,  
3 & 4 Anne,  
c. 9 (Byles  
481).  
Byles 5, 102:  
Byles 10:  
Byles 93:  
Byles 6.

Bill II, s. 5:  
Bill III, s. 5:  
Byles 1, 75:  
81, 94, 97:  
Byles 93, 94,  
96:  
Byles 75, 81.



- Bill II, s. 12 :  
Bill III, s. 12.
12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.
- Foreign instrument.
- Draft, s. 5 :  
Bill II, s. 13 :  
Bill III, s. 13.
13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.
- "Negotiable instrument."
- Draft, s. 7 :  
Bill II, s. 14 :  
Bill III, s. 14.
14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.
- Negotiation.
- Draft, s. 20 :  
Bill II, s. 15 :  
Bill III, s. 15 :  
Denton v. Peters, L. R. 5 Q. B. 475 :  
Ex parte Cote L. R. 9 Ch. App. 27 :  
Byles 165 :  
Byles 160.
15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."
- Indorsement.
- Bill II, s. 16 :  
Bill III, s. 16.
16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee" of the instrument.
- Indorsement "in blank" and "in full."
- Bill II, s. 17 :  
Bill III, s. 17 :  
Byles 91 :  
Bayley (6th edition) 8.
17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.
- Ambiguous instruments.
- Draft, s. 2 :  
Bill II, s. 18 :  
Bill III, s. 18 :  
Byles 84 :  
Bayley 12 (Saunderson v. Piper).
18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.
- Where amount is stated differently in figures and words.
- Bill II, s. 19 :  
Bill III, s. 19 :  
1 Parsons v. Aldous v. Cornwell, L. R. 3 Q. B. 573.
19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.
- Instruments payable on demand.
- Bill II, s. 20 :  
Bill III, s. 20 :  
Byles 88, 165, 188 :  
Poster v. Mackinnon, L. R. 4 C. P. 704 :  
Byles 84.
20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in
- which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.
- Bill II, s. 23 :  
Bill III, s. 22 :  
Byles 80, 180, 206, 209, 528 :  
34 & 35 Vic., c. 74, s. 2.
21. In a promissory note or bill of exchange the expressions "at sight," "on presentment," "after sight," "at sight" and "on presentment" mean on demand.
- "At sight." "On presentment." "After sight."
- The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.
- Bill II, s. 75 :  
Bill III, s. 22 :  
Bill III, s. 23.
22. The maturity of a promissory note or bill of exchange is the date at which it falls due.
- Maturity.
- New.
- Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.
- Days of grace.
- Draft, s. 79 :  
Bill II, s. 24 :  
Bill III, s. 24 :  
Byles 206.
23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.
- Calculating maturity of bill or note payable so many months after date or sight.
- Illustrations.
- (a). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.
- (b). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.
- (c). A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.
- Draft, s. 80 :  
Bill II, s. 25 :  
Bill III, s. 25 :  
Byles 206.
24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.
- Calculating maturity of bill or note payable so many days after date or sight.
25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.
- When day of maturity is a holiday.
- Draft, s. 80 :  
Bill II, s. 26 :  
Bill III, s. 26 :  
Byles 208.



*Explanation.*—The expression “public holiday” includes Sundays: New-Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

### CHAPTER III.

#### PARTIES TO NOTES, BILLS AND CHEQUES.

Bill II, s. 38 :  
Bill III, s. 23:  
See 37 & 38  
Vic., c. 62, s.  
1 (Byles 529):  
Byles 59.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Byles 61.

Capacity to make, &c.,  
promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Bill II, s. 39 :  
Bill III, s. 29:  
Byles 31.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Byles 32.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

Byles 33.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Draft, s. 15 :  
Bill II, s. 40:  
Bill III, s. 30.

28. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Act IX of  
1872, s. 234.

Byles 57 :  
Bill III, s. 31.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Draft, ss. 17.  
73 :  
Bill II, s. 44 :  
Bill III, s. 34 :  
Byles 3, 245 :  
Byles 43 :  
Byles 250.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Bill II, s. 45 :  
Bill III, s. 35 :  
Byles 18, 19,  
185 :  
Chitty 56 :  
Grant on  
Bankers, 51 :  
Gray v.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment,

must compensate the drawer for any loss or damage caused by such default.

Johnston, L.  
R. 3 E. and  
I. App. 1.

Draft, ss. 60,  
65 :  
Bill II, s. 46 :  
Bill III, s. 36 :  
Byles 190,  
193 :  
Draft, s. 60 :  
Bayley 44 :  
Byles 910.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

Draft, s. 61 :  
Bill II, s. 47 :  
Bill III, s. 37 :  
Byles 187,  
188.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Draft, s. 59 :  
Bill II, s. 41 :  
Bill III, s. 32.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Draft, ss. 28,  
32, 37 (para.  
2), 46, 64, 65,  
90 and 98 :  
Bill II, s. 48 :  
Bill III, s. 38 :  
Byles 153,  
245, 295 :  
Robertson v.  
Kensington, 4  
Taunt. 30 :  
Byles 152,  
155 :  
Suse v.  
Pompe, 30 L.  
J., C. P. 75 :  
Horne v.  
Rouquette, 3  
Q. B. Div.  
519.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Draft, s. 44.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Draft, ss. 63,  
71 :  
Bill II, s. 49 :  
Bill III, s. 39 :  
Byles 166 :  
O’Keefe v.  
Dunn, 6  
Taunt. 305 : 5  
M. & S. 282.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Bill II, s. 50 :  
Bill III, s. 40 :  
Byles 245.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Bill II, s. 51 :  
Bill III, s. 41 :  
Byles 245.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.



*Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Bill II, s. 52 :  
Bill III, s. 42 :  
*Duen v. Homan*, 4 H. L. Cas. 97 :  
*Muir v. Crawford*, L. R. 2 Sc. App. 156.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

*Suretyship.*

Draft, s. 100 :  
Bill II, s. 53 :  
Bill III, s. 43 :  
s. Act IX of 1872, s. 137.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the same extent as if the instrument had been paid at maturity.

*Discharge of indorser's liability.*

*Illustration.*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

- First indorsement "B."
- Second indorsement, "Peter Williams."
- Third indorsement, "Wright and Co."
- Fourth indorsement, John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

Draft, s. 36 :  
Bill II, s. 58 :  
Bill III, s. 47 :  
s. Act IX of 1872, s. 137.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Bill II, s. 59 :  
Bill III, s. 48 :  
s. Act IX of 1872, s. 137.

43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid

the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Draft, s. 54 :  
Bill II, s. 62 :  
Bill III, s. 51 :  
s. Act IX of 1872, s. 137.

*Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

*Illustration.*

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Draft, s. 55 :  
Bill II, s. 63 :  
Bill III, s. 52.

CHAPTER IV.  
OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

New.



Draft, s. 18 :  
Bill II, s. 64 :  
Bill III, s. 53 :  
Byles 148.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

*Exception.*—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

*Illustrations.*

(a). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b). A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Byles 148,  
note (i).

Draft, s. 19 :  
Bill II, s. 65 :  
Bill III, s. 54 :  
*Denton v. Peters, L. R. 5 Q. B. 475 ; Ex parte Cote, L. R. 9 Ch. App. 27.*

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Draft, s. 31 :  
Bill II, s. 68 :  
Bill III, s. 57 :  
Byles 150,  
151.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Draft, ss. 29,  
30 :  
Bill II, ss. 69,  
70 :  
Bill III, ss.  
58, 59 :  
Byles 153.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

*Illustrations.*

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a) "Pay the contents to C only."
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Draft, ss. 20,  
24, 27 :  
Bill II, s. 71 :  
Bill III, s. 60.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers,

payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section fifty indorse and negotiate the same.

*Explanation.*—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in his own liability or makes it conditional. his indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Draft, ss. 34 :  
Bill II, s. 72 :  
Bill III, s. 61 :  
Byles 153,  
157.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Draft, s. 45

*Illustrations.*

(a) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Draft, s. 44 :  
Bill II, s. 73 :  
Bill III, s. 62.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Draft, s. 24 :  
Bill II, s. 74 :  
Bill III, s. 63.

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Draft, s. 25 :  
Bill II, s. 75 :  
Bill III, s. 64.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Draft, s. 26 :  
Bill II, s. 76 :  
Bill III, s. 65 :  
Byles 172.



Draft, s. 22 :  
Bill II, s. 78 :  
Bill III, s. 67 :  
Byes 174.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Draft, ss. 52, 53 :  
Bill II, s. 79 :  
Bill III, s. 68 :  
Byes 122, 164.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Draft, s. 43, and part of s. 52 :  
Bill II, s. 80 :  
Bill III, s. 69 :  
Byes 166, 168.

59. The holder of a negotiable instrument, who has acquired it after dishonour or when overdue, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Draft, ss. 41, 48 :  
Bill II, s. 81 :  
Bill III, s. 70 :  
Byes 170.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.  
OF PRESENTMENT.

Draft, s. 56 :  
Bill II, s. 82 :  
Bill III, s. 71.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Walker v. MaDonald,  
2 Ex. 532 :  
Leonard v. Wilson,  
2 Cr. & M. 592 :  
Byes 180 to 182.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured. Byes 184.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured. Byes 183, 184.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Bill II, s. 83 :  
Bill III, s. 7.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it. Draft, s. 56 :  
Bill II, s. 84 :  
Bill III, s. 73 :  
Byes 183.

64. Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Draft, s. 133 :  
Bill II, s. 85 :  
Bill III, s. 74.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof. Byes 216.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours. Bill II, s. 86 :  
Bill III, s. 75 :  
Draft, s. 137 :  
Byes 213.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity. Draft, s. 133 :  
Bill II, s. 87 :  
Bill III, s. 76 :  
Byes 208, 213.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity. Bill II, s. 88 :  
Bill III, s. 77 :  
Byes 7.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place. Draft, s. 138 :  
Bill II, s. 89 :  
Bill III, s. 78 :  
Act VI of 1840, s. 1 :  
1 & 2 Geo. IV, c. 78 (Byes 490).

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place. Draft, ss. 139, 140 :  
Bill II, s. 90 :  
Bill III, s. 79 :  
Byes 214.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must Draft, ss. 139, 140, 142 :  
Bill II, s. 91 :  
Bill III, s. 80.



Byles 214, 215.

be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Draft, s. 141 :  
Bill II, s. 92 :  
Bill III, s. 81.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Bill II, s. 93 :  
Bill III, s. 82 :  
Byles 21, 210.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Byles 20.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Draft, s. 134 :  
Bill II, s. 95 :  
Bill III, s. 84 :  
Byles 21.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Bill II, s. 96 :  
Bill III, s. 85 :  
Parsons 500.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Draft, ss. 89, 91 :  
Bill II, s. 96 :  
Bill III, s. 86 :  
Byles 218.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(a) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument,

or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or

if the instrument not being payable at any specified place, he cannot, after due search, be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

## CHAPTER VI.

### OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

## CHAPTER VII.

### OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Terry v. Parker, G. A. & E. 502 :  
Wirth v. Austin, L. R. 10 C, P. 689.

Draft, s. 83 :  
Bill II, s. 99 :  
Bill III, s. 87 :  
Byles 197.

Bill II, s. 100 :  
Bill III, s. 88 :  
Byles 220.

Bill III, s. 101 :  
Bill III, s. 89 :  
Byles 306, 307.

Draft, s. 65 :  
Bill III, s. 102 :  
Bill III, s. 90 :  
Byles 306, 307, 308.

'ten,' Bank of Bengal.

Byles 308.

Draft, s. 82 :  
Bill II, s. 103 :  
Bill III, s. 91 :  
Byles 373 :  
See Pro. Code, s. 61.

Draft, s. 85 :  
Bill II, s. 104 :  
Bill III, s. 92.



Byles 154,  
199 :  
Draft, s. 38.

(a) to a holder thereof who cancels such acceptance by cancellation; acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

Byles 198,  
240.

(b) to a holder thereof who otherwise discharges by release; such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

Draft, ss. 87,  
88 :  
Byles 221.

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Draft, s. 70 :  
Bill II, s. 105 :  
Bill III, s. 93.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Draft, s. 101 :  
Bill II, s. 106 :  
Bill III, s. 94 :  
Byles 20.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Bill II, s. 107 :  
Bill III, s. 95 :  
16 & 17 Vic., c. 59, s. 19 :  
Byles 27, 505 :  
Charles v. Blackwell,  
1 C. P. Div. 548.

85. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Draft, s. 69 :  
Bill II, s. 108 :  
Bill III, s. 96 :  
Byles 193,  
194.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder, they assent to such acceptance.

*Explanation.*—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

89. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

Draft, ss. 109,  
110 :  
Bill II, s. 110 :  
Bill III, s. 97 :  
Byles 324.

Bill II, s. 111 :  
Bill III, s. 98 :  
Byles 326.

Draft, ss. 112  
to 114 :  
Act I of 1872,  
s. 112 :  
Bill II, s. 112 :  
Bill III, s. 99.

Draft, s. 115 :  
Bill II, s. 113 :  
Bill III, s. 100 :  
39 & 40 Vic., c. 81, s. 11.

Draft, s. 33 :  
Bill II, s. 114 :  
Bill III, s. 101 :  
Byles 187.

Bill II, s. 115 :  
Bill III, s. 102.



Draft, ss. 125, 127, 131 :  
 Bill II, s. 116 :  
 Bill III, s. 103 :  
 Byles 273.  
 Byles 288.  
 Byles 293.  
 Byles 290.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Draft, ss. 126, 127, 128, 130 :  
 Bill II, s. 117 :  
 Bill III, s. 104 :  
 Byles 274, 275, 280.  
 Held in America notice must be signed.  
 Parsons 506.  
 Re Bellman, L. R. 4  
 Ch. Div. 795.  
 Draft, s. 126.  
 Byles 283.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Draft, s. 131 :  
 Bill II, s. 118 :  
 Bill III, s. 105.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Draft, s. 132 :  
 Bill II, s. 119 :  
 Bill III, s. 106 :  
 Byles 286.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

Draft, s. 130 :  
 Druse 2 :  
 Bill II, s. 120 :  
 Bill III, s. 107.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

Draft, s. 92 :  
 Bill II, s. 121 :  
 Bill III, s. 108 :  
 Byles 296.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;

Draft, ss. 67, 68, 93 :  
 Byles 301.

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Draft, s. 119 :  
 Bill II, s. 122 :  
 Bill III, s. 109.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Draft, s. 119  
 Byles 261.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Draft, s. 119  
 Bill II, s. 123  
 Bill III, s. 110  
 Byles 260.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Draft, s. 122  
 Bill II, s. 124  
 Bill III, s. 111 :  
 Byles 261.

101. A protest under section one hundred must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.



102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

## CHAPTER X.

### OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI.

### OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

New.

Draft, s. 75 :  
Bill II, s. 132 :  
Bill III, s. 119 :  
Byes 265, 266.Draft, s. 77 :  
Bill II, s. 133 :  
Bill III, s. 120 :  
Byes 267.

Byes 268.

Draft, s. 845 :  
Byes 266 :  
Act VI of 1840, s. 3.Draft, s. 95 :  
Bill II, s. 134 :  
Bill III, s. 121.Draft, s. 96 :  
Bill II, s. 135 :  
Bill III, s. 122 :  
Byes 270.Draft, s. 97 :  
Bill II, s. 136 :  
Bill III, s. 123 :  
Byes 271.  
*In re Overend, Gurney & Co., L. R. 6, Eq. 434.*



Draft, s. 73 :  
Bill II, s. 138 :  
Bill III, s.  
127 :  
Byles 266.

115. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

## CHAPTER XII.

### OF COMPENSATION.

Bill II, s.  
137 :  
Bill III, s.  
124.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

Draft, s. 65 :  
Byles 415.

(a) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

## CHAPTER XIII.

### SPECIAL RULES OF EVIDENCE.

Draft, s. 12 :  
Bill II, s. 27 :  
Bill III, s. 26 :  
Byles 3, 119.

118. Until the contrary is proved, the following presumptions shall be made :—

(a) that every negotiable instrument was made or drawn for consideration, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration :

(b) that every negotiable instrument bearing a date was made or drawn on such date :

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity :

(d) that every transfer of a negotiable instrument was made before its maturity ;

(e) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear hereon :

(f) that a lost promissory note bill of exchange or cheque was duly stamped :

(g) that the holder of a negotiable instrument is a holder in due course :

that holder is a holder in due course. provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addi-

tion shall be deemed a crossing, and the cheque shall be deemed to be crossed specially.

## CHAPTER XIV.

### OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addi-

tion shall be deemed a crossing, and the cheque shall be deemed to be crossed specially.

Byles 190

Byles 170

Draft, s. 1

Byles 117,  
382.Draft, s. 1  
Byles 122.Draft, ss. 1  
123 ;  
Act V of 18  
s. 13.Bill II, s. 5  
Bill III, s. 4  
Phillips v.  
Thorn 18,  
B., N. S. 63Bill II, s. 5  
Bill III, s. 4  
Byles 200.Draft, s. 33  
Bill II, s. 27  
Bill III, s. 26  
Byles 153.  
See Byles 5  
n. (i).Bill II, s. 39  
Bill III, s. 29 :  
39 & 40 V  
c. 81, s. 4Bill II, s. 39  
Bill III, s. 29 :  
39 & 40 V  
c. 81, s. 4



tion shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

- II, s. 32 : 125. Where a cheque is uncrossed, the holder  
III, s. may cross it generally or  
& 40 Vic., Crossing after issue. specially.  
1, s. 5.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

- II, s. 102, 126. Where a cheque is crossed generally, the  
II, s. 33 : Payment of cheque banker on whom it is  
III, s. crossed generally. drawn shall not pay it  
2 : otherwise than to a  
& 40 Vic., banker.  
51, s. 7.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

- II, s. 34 : 127. Where a cheque is crossed specially to  
III, s. more than one banker,  
3 : Payment of cheque except when crossed to  
8 : crossed specially more than an agent for the purpose  
8. of collection, the banker  
on whom it is drawn shall refuse payment thereof.

- II, s. 35 : 128. Where the banker on whom a crossed  
III, s. cheque is drawn has paid  
4 : Payment in due course the same in due course,  
9. of crossed cheque. the banker paying the  
cheque and (in case such cheque has come to the  
hands of the payee) the drawer thereof, shall  
respectively be entitled to the same rights, and  
be placed in the same position in all respects, as  
they would respectively be entitled to and placed  
in if the amount of the cheque had been paid to  
and received by the true owner thereof.

- II, s. 36. 129. Any banker paying a cheque crossed  
III, s. generally otherwise than  
5 : Payment of crossed to a banker, or a cheque  
10. cheque out of due course. crossed specially other-  
wise than to the banker to whom the same is  
crossed, or his agent for collection, being a bank-  
er, shall be liable to the true owner of the  
cheque for any loss he may sustain owing to the  
cheque having been so paid.

- II, s. 37 : 130. A person taking a cheque crossed generally  
III, s. rally or specially, bear-  
3 : ing in either case the  
12. Cheque bearing "not words "not negotiable"  
shall not have, and shall not be capable of giving,  
a better title to the cheque than that which the  
person from whom he took it had.

- L. J. C. P. 131. A banker who has in good faith and  
without negligence received payment for a  
customer of a cheque  
Non-liability of banker receiving payment of cheque.  
crossed generally or specially to himself shall  
not, in case the title to the cheque proves defective,  
incur any liability to the true owner of the  
cheque by reason only of having received such  
payment.

## CHAPTER XV.

### OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

Draft, ss. 11,  
116 :  
Bill II, s. 28 :  
Bill III, s.  
125 :  
Byles 390,  
391.

Byles 92 :  
*Holdsworth v.*  
*Hunter*, 10 B.  
& C. 449.

Bill II, s. 29 :  
Bill III, s.  
126 :  
Byles 391 :  
Bayley 30,  
171.

## CHAPTER XVI.

### OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

#### *Illustration.*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Draft, s. 104 :  
Bill II, s. 140 :  
Bill III, s.  
137 :  
Byles 399 :  
*Rouquette v.*  
*Overmann*, L.  
R. 10 Q. B.  
525 :  
*Horne v.*  
*Rouquette*, 3  
Q. B. Div.  
514.

Byles 402.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

#### *Illustration.*

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

Draft, s. 105 ;  
Bill II, s. 141 :  
Bill III, s.  
138.

Draft, s. 106 :  
Bill II, s. 142 :  
Bill III, s.  
139.



Draft, s. 107 :  
 Bill III, s. 143 :  
 Bill III, s. 140 :  
 Act I of 1872,  
 s. 4.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

SCHEDULE.

(a)—STATUTES.

| Year and chapter. | Title.   | Extent of repeal. |
|-------------------|--|-------------------|
| 9 Wm. III, c. 17  | An Act for the better payment of Inland Bills of Exchange.   | The whole.        |
| 3 & 4 Anne, c. 8. | An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange. | The whole.        |

(b)—ACTS OF THE GOVERNOR GENERAL  
 IN COUNCIL.

| No. and year.  | Title.   | Extent of repeal.  |
|----------------|--|--|
| VI of 1840 ... | An Act for the amendment of the law concerning the negotiation of Bills of Exchange. | The whole.   |
| V of 1866 ...  | An Act to amend in certain respects the Commercial Law of British India,             | Sections 11, 12 and 13.  |
| XV of 1874 ... | The Laws Local Extent Act, 1874.   | The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, Sections 11, 12 and 13. |

D. FITZPATRICK,  
 Secretary to the Government of India.



The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 28th January, 1881, and was referred to a Select Committee:—

**Bill No. 3 of 1881.**

*A Bill for the amendmet of the law relating to Insolvent Debtors in India.*

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows:—

Preamble.

1. This Act may be called "The Insolvent Law Short title. Amendment Act, 1881."

Local extent. it extends to the whole of British India; and

it shall come into force on the first day of Commencement. April 1881.

2. In this Act, unless there be something Interpretation-clause. repugnant in the subject or context,—

the word "Insolvent" means a person of whose property a receiver has been appointed under the

Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act:

the word "adjudication" means the order under the said section 351

"Adjudication." of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and

the word "assignee" means the person in whom the property of

"Assignee." Insolvent has been vested by the adjudication of such Insolvent.

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or under any order for attachment before judgment, the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent:

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not merely on account of such adjudication be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that proper and necessary costs of the attachment and of the preservation of the property attached shall be charged, upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns, in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;



and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver with any of such property before he has notice of such adjudication.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend

Distribution of un-claimed dividends.

remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

### STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, whenever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent is friendly to the execution creditor the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing however to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte Dorman* L. R. 8 Ch. App. 51, that such was not the effect of the language of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it



has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mufassal, and in many cases if such traders became insolvent they might be able by taking advantage of the insolvency proceedings in the Procedure Code,\* to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mufassal Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841, an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act however was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

---

\* It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

*The 23rd January 1831.*

J. PITT KENNEDY.

D. FITZPATRICK,  
Secretary to the Government of India.



[Published with the "Bombay Government Gazette" on the 10th February 1881.]

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st January 1881:—

We, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have had the report of the Indian Law Commissioners, 1879, duly communicated to us. We have carefully considered so much of it as relates to the present Bill, as well as the papers noted in the margin, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, we have the honour to submit this our fourth report.

2. We agree with the Commissioners that uniformity of practice is particularly desirable in matters relating to negotiable paper, and, to facilitate the assimilation of the practice of shroffs to that of European merchants, we have declared (section 1) that local usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by the proposed Act.

3. We have inserted explanations calculated to prevent doubts as to when a promise or order to pay is "conditional," when the sum payable is "certain," and when the person to whom the direction is given or payment is to be made is "a certain person," within the meaning of sections 4 and 5.

4. We have re-drawn section 20 as to inchoate stamped instruments, so as to make it express more accurately what we conceive to be the law on this subject.

5. We have also re-drawn sections 47 and 48 (as follows):—

"43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

"*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

"*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed."



6. We have prefixed to the sections relating to negotiation clauses (section 46) relating to delivery generally, and to the effect recommended by the Commissioners.

7. We think the section (67, now 63) relating to the drawee's time for deliberation should provide that the holder of a bill "must, if so required by the drawee," allow him twenty-four hours (exclusive of public holidays) to consider whether he will accept, and we have amended this section accordingly.

8. We have made (section 76) presentment for payment unnecessary as against any party sought to be charged, if he has engaged to pay notwithstanding non-presentment.

9. We have in section 90 (now 86) substituted "qualified" for "conditional" and added a paragraph shewing when an acceptance is qualified.

10. We have provided (section 90) for the extinguishment of rights of action on a negotiated bill held, at or after maturity, by the acceptor in his own right.

11. We agree with Sir C. Turner that section 108 of the Bill in its fourth form—as to reasonable time for presentment—should be omitted. It seems inconsistent with section 107 (now 105), and declares a rule which is not only stricter than the existing law, but would, in our opinion, be highly inconvenient.

12. We have inserted a statement of the procedure in the case of an acceptance *supra protest*, and to section 112 (now 109) we have prefixed a clause shewing how acceptance for honour must be made.

13. We have declared (section 116) that a drawee in case of need may accept and pay the bill without previous protest.

14. We have made it appear that inland (as well as foreign) bills may be drawn in sets, and altered Chapter XIV (now XV) accordingly. We have made the exception to section 126 (now 132) run thus:—

"*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorser of each part are liable on such part as if it were a separate bill."

15. We have amended the second clause of section 125 (now 130, 131) (as to the non-liability of a banker who has received payment for a customer of a crossed cheque) in accordance with *Matthiessen v. London and County Banking Company*, 48 L. J. C. P. 529.

16. We have made most of the changes in arrangement and wording advised by the Commissioners, and recommend that the Bill as now revised be passed. It has now been more than thirteen years before the Council of the Governor General; it has been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it is not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

WHITLEY STOKES.

B. W. COLVIN.

J. PITT KENNEDY.

G. C. PAUL.

The 20th January 1881.

No. V.

THE NEGOTIABLE INSTRUMENTS  
BILL, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title.
- Local extent.
- Saving of usages relating to hundis, &c.
- Commencement.

SECTION.

2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. Promissory Note.
5. Bill of Exchange.
6. Cheque.
7. "Drawer," "Drawee," "Drawee in case of need," "Acceptor," "Acceptor for honour," "Payee."
8. "Holder."
9. "Holder in due course."
10. "Payment in due course."



## SECTION.

11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument."
14. Negotiation.
15. Indorsement.
16. Indorsement "in blank" and "in full."  
"Indorsee."
17. Ambiguous instruments.
18. Where amount is stated differently in figures and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. "At sight."  
"On presentment,"  
"After sight."
22. "Maturity."  
Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
24. Calculating maturity of bill or note payable so many days after date or sight.
25. When day of maturity is a holiday.

## CHAPTER III.

## PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity to make, &c., promissory notes, &c.  
Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.
33. Only drawee can be acceptor except in need or for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each subsequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, &c., without consideration.
44. Partial absence or failure of money-consideration.
45. Partial failure of consideration not consisting of money.

## CHAPTER IV.

## OF NEGOTIATION.

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into indorsement in full.
50. Effect of indorsement.
51. Who may negotiate.
52. Indorser who excludes his own liability or makes it conditional.
53. Holder deriving title from holder in due course.
54. Instrument indorsed in blank.
55. Conversion of indorsement in blank into indorsement in full.
56. Indorsement for part of sum due.
57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

## SECTION.

58. Instrument obtained by unlawful means or for unlawful consideration.
59. Instrument acquired after dishonour or when overdue.  
Accommodation note or bill.
60. Instrument negotiable till payment or satisfaction.

## CHAPTER V.

## OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for liberation.
64. Presentment for payment.
65. Hours for presentment.
66. Presentment for payment of instrument payable after date or sight.
67. Presentment for payment of promissory note payable by instalments.
68. Presentment for payment of instrument payable at specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place specified.
71. Presentment when maker, &c., has no known place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other person.
74. Presentment of instrument payable on demand.
75. Presentment by or to agent, representative of deceased, or assignee of insolvent.
76. When presentment unnecessary.
77. Liability of banker for negligently dealing with bill presented for payment.

## CHAPTER VI.

## OF PAYMENT AND INTEREST.

78. To whom payment should be made.
79. Interest when rate specified.
80. Interest when no rate specified.
81. Delivery of instrument on payment, or indemnity in case of loss.

## CHAPTER VII.

## OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. Discharge from liability—
  - (a) by cancellation :
  - (b) by release :
  - (c) by payment.
83. Discharge by allowing drawee more than twenty-four hours to accept.
84. When cheque not duly presented and drawer damaged thereby.
85. Cheque payable to order.
86. Parties not consenting discharged by qualified or limited acceptance.
87. Effect of material alteration.  
Alteration by indorsee.
88. Acceptor or indorser bound notwithstanding previous alteration.
89. Payment of instrument on which alteration is not apparent.
90. Extinguishment of rights of action on bill in acceptor's hands,



## SECTION.

## CHAPTER VIII.

## OF NOTICE OF DISHONOUR.

91. Dishonour by non-acceptance.
92. Dishonour by non-payment.
93. By and to whom notice should be given.
94. Mode in which notice may be given.
95. Party receiving must transmit notice of dishonour.
96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

## CHAPTER IX.

## OF NOTING AND PROTEST.

99. Noting.
100. Protest.  
Protest for better security.
101. Contents of protest.
102. Notice of protest.
103. Protest for non-payment after dishonour by non-acceptance.
104. Protest of foreign bills.

## CHAPTER X.

## OF REASONABLE TIME.

105. Reasonable time
106. Reasonable time of giving notice of dishonour.
107. Reasonable time for transmitting such notice.

## CHAPTER XI.

## OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. Acceptance for honour.
109. How acceptance for honour must be made.
110. Acceptance not specifying for whose honour it is made.
111. Liability of acceptor for honour.
112. When acceptor for honour may be charged.
113. Payment for honour.
114. Right of payer for honour.
115. Drawee in case of need.
116. Acceptance and payment without protest.

## CHAPTER XII.

## OF COMPENSATION.

117. Rules as to compensation.

## CHAPTER XIII.

## SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments.
  - (a) of consideration;
  - (b) as to date;
  - (c) as to time of acceptance;
  - (d) as to time of transfer;
  - (e) as to order of indorsements;
  - (f) as to stamp;
  - (g) that holder is a holder in due course.
119. Presumption on proof of protest.
120. Estoppel against denying original validity of instrument.
121. Estoppel against denying capacity of payee to indorse.
122. Estoppel against denying signature or capacity of prior party.

## SECTION.

## CHAPTER XIV.

## OF CROSSED CHEQUES.

123. Cheque crossed generally.
124. Cheque crossed specially.
125. Crossing after issue.
126. Payment of cheque crossed generally.  
Payment of cheque crossed specially
127. Payment of cheque crossed specially more than once.
128. Payment in due course of crossed cheque.
129. Payment of crossed cheque out of due course.
130. Cheque bearing "not negotiable."
131. Non-liability of banker receiving payment of cheque.

## CHAPTER XV.

## OF BILLS IN SETS.

132. Set of bills.
133. Holder of first acquired part entitled to all.

## CHAPTER XVI.

## OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.
135. Law of place of payment governs dishonour.
136. Instrument made, &c., out of British India, but in accordance with its law.
137. Presumption as to foreign law.

## SCHEDULE.

## No. V.

*A Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.*

WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Negotiable Bill II, s. 1; Short title. Instruments Act, 1881." Bill III, s. 2

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language; Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act;

and it shall come into force on the first day of January, 1882.

2. On and from that day the enactments specified in the schedule here- Bill II, s. 2; Bill III, s. 2.  
Repeal of enactments. to annexed shall be repealed to the extent mentioned in the third column thereof,



Bill II, s. 3:  
Bill III, s. 2:  
39 & 40 Vic.,  
c. 81, s. 3.

Interpretation-clause.

3. In this Act—

“Banker.” “Banker” includes also persons or a corporation or company acting as bankers; and

“Notary Public” includes also any officer appointed by the Governor

“Notary Public.” General in Council to perform the functions of a Notary Public under this Act.

## CHAPTER II.

### OF NOTES, BILLS AND CHEQUES.

4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### Illustrations.

A signs instruments in the following terms:—

(a) “I promise to pay B or order Rs. 500.”

(b) “I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received.”

(c) “Mr. B, I O U Rs. 1,000.”

(d) I promise to pay B Rs. 500 and all other sums which shall be due to him.”

(e) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”

(f) “I promise to pay B Rs. 500 seven days after my marriage with C.”

(g) “I promise to pay B Rs. 500 on D's death, provided D leavesme enough to pay that sum.”

(h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional,” within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may

be a “certain person,” within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the “drawer;” the person thereby directed to pay is called the “drawee.”

When in the bill or in any indorsement thereon “Drawee in case of need.” is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need.”

After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor.”

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour.”

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee.”

8. The “holder” of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. “Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. “Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Bill II, s. 6:  
Bill III, s. 5:  
Byles 13.

Draft, s. 6:  
Bill II, s. 7:  
Bill III, s. 7.

Draft, ss. 6,  
57:  
Byles 196:  
Act VI of  
1840, s. 2:  
Act V of 1866,  
s. 11:  
See 41 Vic.,  
c. 13.

Draft, s. 6:  
Bill II, s. 8:  
Bill III, s. 8:  
Byles 2.

Draft, s. 12:  
Bill II, s. 9:  
Bill III, s. 9:  
1 Parsons 255:  
Byles 164.

Draft, ss. 86,  
115:  
Bill II, s. 10:  
Bill III,  
s. 10:  
Byles on Bill  
(12th Edition)  
221:  
39 & 40 Vic.,  
c. 81, s. 11.

Bill II, s. 11:  
Bill III,  
s. 11:  
Act V of 1866  
s. 12.

Bill II, s. 5:  
Bill III, s. 5:  
Byles 1, 75:  
81, 94, 97:  
Byles 93, 94,  
96:  
Byles 75, 81.



Bill II, s. 12 :  
Bill III, s. 12.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Draft, s. 5 :  
Bill II, s. 13 :  
Bill III, s. 13.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

Draft, s. 7 :  
Bill II, s. 14 :  
Bill III, s. 14.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Draft, s. 20 :  
Bill II, s. 15 :  
Bill III, s. 15 :  
Denton v. Peters, L. R. 5 Q. B. 475 :  
Ec parte Cole L. R. 9 Ch. App. 27 :  
Byles 165 :  
Byles 150.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Bill II, s. 16 :  
Bill III, s. 16.

16. If the indorser signs his name only, the indorsement is said to be "in blank" and "in full." If he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Bill II, s. 17 :  
Bill III, s. 17 :  
Byles 91 :  
Bayley (6th edition) 8.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Draft, s. 2 :  
Bill II, s. 18 :  
Bill III, s. 18 :  
Byles 84 :  
Bayley 12 (Saunderson v. Piper).

18. If the amount undertaken or ordered to be paid is stated differently in figures and words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Bill II, s. 19 :  
Bill III, s. 19 :  
Parsons 271 :  
Byles 113, 212 :  
Aldous v. Cornwall, L. R. 3 Q. B. 173.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

Bill II, s. 20 :  
Bill III, s. 20 :  
Byles 88, 165, 188 :  
Coster v. Mackinnon, L. R. 4 O. P. 704 :  
Byles 84.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in

which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight," "on presentment," "after sight," "sight" and "on presentment" mean on demand.

Bill II, s. 23 :  
Bill III, s. 22 :  
Byles 80, 180, 206, 209, 528 :  
34 & 35 Vic. c. 74, s. 2.

The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Draft, s. 78 :  
Bill II, s. 22 :  
Bill III, s. 23.

Every promissory note or bill of exchange which is not expressed to be payable on demand,

New.

at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months

Draft, s. 79 :  
Bill II, s. 24 :  
Bill III, s. 24 :  
Byles 206.

after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(c). A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Draft, s. 80 :  
Bill II, s. 25 :  
Bill III, s. 25 :  
Byles 206.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Draft, s. 80 :  
Bill II, s. 26 :  
Bill III, s. 26 :  
Byles 208.



*Explanation.*—The expression “public holiday” includes Sundays: New-Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

## CHAPTER III.

## PARTIES TO NOTES, BILLS AND CHEQUES.

- Bill II, s. 38 :  
” III, s. 23:  
See 37 & 38  
Vic., c. 62, s.  
1 (Byles 529):  
Byles 59.
26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.
- Capacity to make, &c.,  
promissory notes, &c.
- Byles 61.
- A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.
- Minor.
- Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.
- Bill II, s. 39 :  
Bill III, s. 29:  
Byles 31.
27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by adultly authorized agent acting in his name.
- Agency.
- Byles 32.
- A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.
- Byles 33.
- An authority to draw bills of exchange does not of itself import an authority to indorse.
- Draft, s. 15 :  
Bill II, s. 40:  
Bill III, s. 30.
28. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.
- Liability of agent signing.
- Act IX of  
1872, s. 234.
- Byles 57 :  
Bill III, s. 31.
29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.
- Liability of legal representative signing.
- Draft, ss. 17,  
73 :  
Bill II, s. 44 :  
Bill III, s. 34 :  
Byles 3, 245 :  
Bayley 43 :  
Byles 290.
30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.
- Liability of drawer.
- Bill II, s. 45 :  
Bill III, s. 35 :  
Byles 18, 19,  
185 :  
Chitty 56 :  
Grant on  
Bankers, 51 :  
Gray v.
31. The drawee of a cheque, having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment,

must compensate the drawer for any loss or damage caused by such default.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.
- Liability of maker of note and acceptor of bill.
- Draft, ss. 60,  
65 :  
Bill II, s. 46 :  
Bill III, s. 36 :  
Byles 190,  
193 :  
Draft, s. 60 :  
Bayley 44 :  
Byles 910.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.
- Only drawee can be acceptor except in need or for honour.
- Draft, s. 61 :  
Bill II, s. 47 :  
Bill III, s. 37 :  
Byles 187,  
188.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

Draft, s. 59 :  
Bill II, s. 41 :  
Bill III, s. 32.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.
- Liability of indorser.
- Draft, ss. 28,  
32, 37 (para.  
2), 46, 64, 65,  
90 and 98 :  
Bill II, s. 48 :  
Bill III, s. 38 :  
Byles 153,  
245, 295 :  
Robertson v.  
Kennington, 4  
Taunt. 302 :  
Byles 152,  
155 :  
Suse v.  
Pompe, 30 L.  
J., C. P. 75 :  
Horne v.  
Rouquette, 3  
Q. B. Div.  
519.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.
- Liability of prior parties to holder in due course.
- Draft, ss. 63,  
71 :  
Bill II, s. 49 :  
Bill III, s. 39 :  
Byles 166 :  
O’Keefe v.  
Dunn, 6  
Taunt. 305 :  
M. & S. 282.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

Bill II, s. 50  
Bill III, s. 40 :  
Byles 245.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Bill II, s. 51 :  
Bill III, s. 41 :  
Byles 245.

Johnston, L.  
R. 3 E, and  
I. App. 1.



*Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Bill II, s. 52 :  
Bill III, s. 42 :  
*Owen v.*  
*Homan*, 4 H.  
L. Cas. 97 :  
*Muir v.*  
*Crawford*, L.  
R. 2 Sc. App.  
456.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Draft, s. 100 :  
Bill II, s. 53 :  
Bill III, s. 43 :  
cf. Act IX of  
1872, s. 137.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Illustration.*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

- First indorsement "B."  
Second indorsement, "Peter Williams."  
Third indorsement, "Wright and Co."  
Fourth indorsement, John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

Draft, s. 36 :  
Bill II, s. 53 :  
Bill III, s. 47 :  
Byles 200,  
201.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Bill II, s. 59 :  
Bill III, s. 48 :  
Byles 201 :  
*Cooper v.*  
*Mayer*, 10  
B. & C. 468 :  
Act I of 1872,  
s. 117.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

New.

43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn accepted or indorsed, can, if he have paid

the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

*Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

*Illustration.*

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

## CHAPTER IV.

## OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Draft, s. 54 :  
Bill II, s. 62 :  
Bill III, s. 51 :  
Byles 130.

Draft, s. 55 :  
Bill II, s. 63 :  
Bill III, s. 52.



Draft, s. 18 :  
Bill II, s. 64 :  
Bill III, s. 53 :  
Byles 148.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

*Exception.*—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

*Illustrations.*

(a). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b). A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Byles 148,  
note (i).

Draft, s. 19 :  
Bill II, s. 65 :  
Bill III, s. 54 :  
Denton v.  
Peters, L. R.  
5 Q. B. 475 :  
Ex parte Cole,  
L. R. 9 Ch.  
App. 27.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Draft, s. 31 :  
Bill II, s. 68 :  
Bill III, s. 57 :  
Byles 150,  
151.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Draft, ss. 29,  
30 :  
Bill II, ss. 69,  
70 :  
Bill III, ss.  
58, 59 :  
Byles 153.

*Illustrations.*

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a) "Pay the contents to C only."
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers,

Draft, ss. 20,  
24, 27 :  
Bill II, s. 71 :  
Bill III, s. 60.

payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section fifty indorse and negotiate the same.

*Explanation.*—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsoment not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Draft, ss. 32,  
34 :  
Bill II, s. 72 :  
Bill III, s. 61 :  
Byles 153,  
157.

Draft, s. 45.

*Illustrations.*

(a) The indorser of a negotiable instrument signs his name, adding the words—  
"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from holder in due course has the rights thereon of that holder in due course.

Draft, s. 49 :  
Bill II, s. 73  
Bill III, s. 64

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Draft, s. 25 :  
Bill II, s. 74  
Bill III, s. 63

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Draft 's. 39  
Bill II, s. 75  
Bill III, s. 64

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Draft, s. 22  
Bill II, s. 7  
Bill III, s. 6  
Byles 172.



- Draft, s. 22 :  
Bill II, s. 78 :  
Bill III, s. 67 :  
Byles 174.
57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.
- Draft, ss. 52, 53 :  
Bill II, s. 79 :  
Bill III, s. 68 :  
Byles 122, 164.
58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.
- Draft, s. 43, and part of s. 52 :  
Bill II, s. 80 :  
Bill III, s. 69 :  
Byles 166, 168.
59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :
- Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.
- Accommodation note or bill.
- Illustration.*
- The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.
- Draft, ss. 41, 84 :  
Bill II, s. 81 :  
Bill III, s. 70 :  
Byles 170.
60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.
- CHAPTER V.  
OF PRESENTMENT.
- Draft, s. 56 :  
Bill II, s. 82 :  
Bill III, s. 71.
61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.
- Walker v. McDonald,  
2 Ex. 532 :  
Leonard v. Wilson,  
2 Cr. & M. 592 :  
Byles 180 to 182.
- If the drawee cannot, after reasonable search, be found, the bill is dishonoured.
- If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.
- Bill II, s. 83 :  
Bill III, s. 72.
62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.
- Presentment of promissory note for sight.
63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.
64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.
- Drawee's time for deliberation.
- Presentment for payment.
- Exception.*—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.
- Hours for presentment.
65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.
66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.
- Presentment for payment of instrument payable after date or sight.
67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.
68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.
- Presentment for payment of instrument payable at specified place and not elsewhere.
69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.
- Instrument payable at specified place.
70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must
- Draft, s. 133 :  
Bill II, s. 85 :  
Bill III, s. 74.
- Draft, s. 56 :  
Bill II, s. 84 :  
Bill III, s. 73 :  
Byles 183.
- Draft, s. 133 :  
Bill II, s. 85 :  
Bill III, s. 74.
- Byles 216.
- Bill II, s. 86 :  
Bill III, s. 75 :  
Draft, s. 137 :  
Byles 213.
- Draft, s. 133 :  
Bill II, s. 87 :  
Bill III, s. 76.
- Byles 203, 213.
- Bill II, s. 88 :  
Bill III, s. 77 :  
Byles 7.
- Draft, s. 138 :  
Bill II, s. 89 :  
Bill III, s. 78 :  
Act VI of 1840, s. 1 :  
1 & 2 Geo. IV, c. 78 :  
(Byles 490).
- Draft, ss. 139, 140 :  
Bill II, s. 90 :  
Bill III, s. 79 :  
Byles 214.
- Draft, ss. 139, 140, 142 :  
Bill II, s. 91 :  
Bill III, s. 80



Byles 214,  
215.

be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Draft, s. 141 :  
Bill II, s. 92 :  
Bill III, s. 81.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentation for acceptance or payment, such presentation may be made to him in person wherever he can be found.

Bill II, s. 93 :  
Bill III, s. 82 :  
Byles 21, 210.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Bill II, s. 94 :  
Bill III, s. 83 :  
Byles 21.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Draft, s. 134 :  
Bill II, s. 95 :  
Bill III, s. 84 :  
Byles 211.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Bill II, s. 96 :  
Bill III, s. 85 :  
Parsons 500.

75. Presentation for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Draft, ss. 89,  
91 :  
Bill II, 98 :  
Bill III, s. 86 :  
Byles 218.

76. No presentation for payment is necessary, and the instrument is dishonoured at the due date for presentation, in any of the following cases :—

(a) If the maker, drawee or acceptor intentionally prevents the presentation of the instrument,

or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or

if the instrument not being payable at any specified place, he cannot, after due search, be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentation ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentation for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentation.

Terry v.  
Parker, 6  
Ad. & E.  
502  
Wirth v.  
Austin, L. R.  
10 C. P. 689.

77. When a bill of exchange, accepted payable at a specified bank, negligently dealing with has been duly presented for payment, there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Draft, s. 83  
Bill II, s. 99  
Bill III, s. 8  
Byles 197.

## CHAPTER VI.

### OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Bill II, s. 100  
Bill III, s. 88  
Byles 220.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Bill II, s. 101  
Bill III, s. 89  
Byles 306,  
307.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

Draft, s. 65  
Bill II, s. 102  
Bill III, s. 90  
Byles 306,  
307, 308.

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

'ten,' Bank  
of Bengal.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

Byles 308.  
Draft, s. 81  
Bill II, s. 103  
Bill III, s. 91  
Byles 373 :  
See Pro. Co.  
s. 61.

## CHAPTER VII.

### OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Draft, s. 82  
Bill II, s. 104  
Bill III, s. 92



yles 154,  
19 :  
raft, s. 38.

(a) to a holder thereof who cancels such acceptance by cancellation; or indorser's name with intent to discharge him, and to all parties claiming under such holder;

yles 198,  
40.

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

raft, ss. 87,  
8 :  
yles 221.

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

raft, s. 70 :  
Bill II, s. 105 :  
Bill III, s. 93.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

raft, s. 101 :  
Bill II, s. 106 :  
Bill III, s. 94 :  
Bytes 20.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Bill II, s.  
107 :  
Bill III, s.  
95 :  
16 & 17 Vic.,  
s. 59, s. 19 :  
Bytes 27, 505 :  
Charles v.  
Blackwell,  
1 C. P. Div.  
548.

85. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

raft, s. 69 :  
Bill II, s. 108 :  
Bill III, s. 96 :  
Bytes 193,  
194.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder, they assent to such acceptance.

*Explanation.*—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due,

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Effect of material alteration.  
And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.  
The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.  
89. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.  
or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

## CHAPTER VIII.

### OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

Draft, ss. 109,  
110 :  
Bill II, s.  
110 :  
Bill III, s.  
97 :  
Bytes 324.

Bill II,  
111 :  
Bill III, s.  
98 :  
Bytes 326.

Draft, ss. 112  
to 114 :  
Act I of 1872,  
s. 112 :  
Bill II, s.  
112 :  
Bill III, s. 99.

Draft, s. 115 :  
Bill II, s.  
113 :  
Bill III, s.  
100 :  
39 & 40 Vic.,  
c. 81, s. 11.

Draft, s. 33 :  
Bill II, s.  
114 :  
Bill III, s.  
101 :  
Bytes 187.

Bill II, s.  
115 :  
Bill III, s.  
102.



Draft, ss. 125. 93. When a promissory note, bill of exchange  
127, 131 : or cheque is dishonoured  
Bill II, s. By and to whom notice should be given. by non-acceptance or  
-116 : non-payment, the holder  
Bill III, s. thereof or some party thereto who remains liable  
103 : thereon, must give notice that the instrument has  
Byles 273. been so dishonoured to all other parties whom  
the holder seeks to make severally liable thereon,  
and to some one of several parties whom he seeks  
to make jointly liable thereon.

Byles 288.  
Byles 293.  
Byles 290.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. A protest under section one hundred must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Draft, ss. 126, 127, 128, 130 :  
Bill II, s. 117 :  
Bill III, s. 104 :  
Byles 274, 275, 280.  
Held in America notice must be signed.  
Parsons 506.  
Re Bellman, L. R. 4  
Ch. Div. 795.

Draft, s. 126.  
Byles 283.

Draft, s. 131 :  
Bill II, s. 118 :  
Bill III, s. 105.

Draft, s. 132 :  
Bill II, s. 119 :  
Bill III, s. 106 :  
Byles 286.

Draft, s. 130 :  
Druse 2 :  
Bill II, s. 120 :  
Bill III, s. 107.

Draft, s. 92 :  
Bill II, s. 121 :  
Bill III, s. 108 :  
Byles 296.

Draft, ss. 67, 68, 93 :  
Byles 301.

Byles 302.

Draft s. 119 :  
Bill II, 122 :  
Bill III, s. 109.

Draft, s. 119 :  
Byles 261.

Draft, s. 120 :  
Bill II, s. 123 :  
Bill III, s. 110 :  
Byles 260.

Byles 261.

Draft, 122 :  
Bill II, s. 124 :  
Bill III, s. 111 :  
Byles 261.



Draft, s. 124 : 102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Bill II, s. 126 : 103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Draft, s. 108 : 104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

## CHAPTER X.

### OF REASONABLE TIME.

Draft, s. 56, Explan. 1 : 105. In determining what is a reasonable time for presentment for acceptance or payment for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time public holidays shall be excluded.

Draft, s. 129 : 106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

Byles 285. If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Draft, s. 131 : 107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI.

### OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Draft, ss. 74, 76 : 108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Draft, s. 75 : Bill II, s. 132 : Bill III, s. 119 : Byles 265, 266.

Draft, s. 77 : Bill II, s. 133 : Bill III, s. 120 : Byles 267.

Byles 268.

Draft, s. 845 : Byles 266 : Act VI of 1840, s. 3.

Draft, s. 95 : Bill II, s. 134 : Bill III, s. 121.

Draft, s. 96 : Bill II, s. 135 : Bill III, s. 122 : Byles 270.

Draft, s. 97 : Bill II, s. 136 : Bill III, s. 123 : Byles 271. In re Overend Gurney & Co. L. R. 6, Eq 344.



Draft, s. 73 :  
Bill II, s. 138:  
Bill III, s.  
127 :  
Byles 266.

115. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

Acceptance and payment without protest.

CHAPTER XII.

OF COMPENSATION.

Bill II, s.  
137 :  
Bill III, s.  
124.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

(a) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Draft, s. 12 :  
Bill II, s. 27 :  
Bill III, s. 26 :  
Byles 3, 119.

118. Until the contrary is proved, the following presumptions shall be made :—

(a) that every negotiable instrument was made or drawn, for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

(b) that every negotiable instrument bearing a date was made or drawn on such date :

as to date ;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

(d) that every transfer of a negotiable instrument was made before its maturity ;

(e) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon :

(f) that a lost promissory note, bill of exchange or cheque was duly stamped ;

(g) that the holder of a negotiable instrument is a holder in due course : provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addi-

CHAPTER XIV.  
OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addi-

Byles 190.

Byles 170.

Draft, s. 37.

Byles 117,  
382.

Draft, s. 12 :  
Byles 122.

Draft, ss. 121,  
123 :  
Act V of 1906,  
s. 13.

Bill II, s. 54 :  
Bill III, s. 44 :  
*Phillips v. In*  
*Thura* 18, C.  
B., N. S. 694.

Bill II, s. 56 :  
Bill III, s. 45 :  
Byles 200.

Draft, s. 35 :  
Bill II, s. 37 :  
Bill III, s. 46 :  
Byles 153.  
See Byles 222.  
n. (i).

Bill II, s. 30 :  
Bill III, s.  
129 :  
39 & 40 Vic.,  
c. 81, s. 4.

Bill II, s. 31  
Bill III, s.  
130 :  
39 & 40 Vic.  
c. 81, s. 4.



tion shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. A person taking a cheque crossed generally or specially, bearing "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

## CHAPTER XV. OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. A between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

## CHAPTER XVI.

### OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

#### *Illustration.*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

#### *Illustration.*

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Draft, ss. 11, 116 :  
Bill II, s. 25 :  
Bill III, s. 125 :  
Byles 390, 391.

Byles 92 :  
*Holdsworth v. Hunter*, 10 B. & C. 449.

Bill II, s. 29 :  
Bill III, s. 126 :  
Byles 391 :  
Bayley 30, 171.

Draft, s. 104 :  
Bill II, s. 140 :  
Bill III, s. 137 :  
Byles 399 :  
*Rouquette v. Overmann*, L. R. 10 Q. B. 525 :  
*Horne v. Rouquette*, 3 Q. B. Div. 514.

Byles 402.

Draft, s. 105 ;  
Bill II, s. 141 :  
Bill III, s. 138.

Draft, s. 106 :  
Bill II, s. 142 :  
Bill III, s. 139.

Bill II, s. 32 :  
Bill III, s. 131 :  
39 & 40 Vic., c. 81, s. 5.

Draft, ss. 102, 103 :  
Bill II, s. 33 :  
Bill III, s. 132 :  
39 & 40 Vic., c. 81, s. 7.

Bill II, s. 34 :  
Bill III, s. 133 :  
S. 8.

Bill II, s. 35 :  
Bill III, s.

Bill II, s. 36 :  
Bill III, s. 135 :  
S. 10.

Bill II, s. 37 :  
Bill III, s. 136 :  
S. 12.

48 L. J. C. P. 529.



Draft, s. 107 : 137. The law of any foreign country regard-  
 Bill II, s. 143 : ing promissory notes,  
 Bill III, s. Presumption as to foreign bills of exchange and  
 140 : law. cheques shall be presum-  
 Act I of 1872, ed to be the same as that of British India, unless  
 4 and until the contrary is proved.

SCHEDULE.

(a)—STATUTES.

| Year and chapter.    | Title.  | Extent of repeal. |
|----------------------|---|-------------------|
| 9 Wm. III, c. 17     | An Act for the better pay-<br>ment of Inland Bills of<br>Exchange.  | The whole.        |
| 3 & 4 Anne, c.<br>8. | An Act for giving like re-<br>medy upon promissory<br>notes as is now used upon<br>Bills of Exchange, and<br>for the better payment of<br>Inland Bills of Exchange. | The whole.        |

(b)—ACTS OF THE GOVERNOR GENERAL  
IN COUNCIL.

| No. and year.  | Title.  | Extent of repeal.  |
|----------------|---|--|
| VI of 1840 ... | An Act for the amendment<br>of the law concerning the<br>negotiation of Bills of<br>Exchange. | The whole.   |
| V of 1866 ...  | An Act to amend in certain<br>respects the Commercial<br>Law of British India,                | Sections 11,<br>12 and 13.   |
| XV of 1874 ... | The Laws Local Extent<br>Act, 1874.   | The first<br>schedule, so<br>far as relates<br>to Act VI of<br>1840 and<br>Act V of<br>1866, Sec-<br>tions 11, 12<br>and 13. |

D. FITZPATRICK,  
Secretary to the Government of India.



The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 28th January, 1881, and was referred to a Select Committee:—

**Bill No. 3 of 1881.**

*A Bill for the amendment of the law relating to Insolvent Debtors in India.*

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows:—

1. This Act may be called "The Insolvent Law Amendment Act, 1881."

Local extent. it extends to the whole of British India; and

it shall come into force on the first day of Commencement. April 1881.

2. In this Act, unless there be something repugnant in the subject or context,—

the word "Insolvent" means a person of whose property a receiver has been appointed under the

Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act:

the word "adjudication" means the order

"Adjudication." under the said section 351 of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and

the word "assignee" means the person in whom the property of any

"Assignee." Insolvent has been vested by the adjudication of such Insolvent.

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or

Attached property of insolvent. under any order for attachment before judgment, the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent:

VI.—8f

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication, be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns, in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;



and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver with any of such property before he has notice of such adjudication.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend

remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

#### STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent is friendly to the execution creditor, the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit, could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing, however, to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt, so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte Dorman* L. R. 8 Ch., App. 51, that such was not the effect of the language of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent, the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it



has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mufassal, and in many cases, if such traders became insolvent, they might be able, by taking advantage of the insolvency proceedings in the Procedure Code,\* to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mufassal Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act, however, was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

---

\* It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

*The 23rd January 1881.*

J. PITT KENNEDY.

D. FITZPATRICK,  
Secretary to the Government of India.



[Published with the "Bombay Government Gazette" on the 17th February 1881.]

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st January 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have had the report of the Indian Law Commissioners, 1879, duly communicated to us. We have carefully considered so much of it as relates to the present Bill, as well as the papers noted in the margin, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, we

From Secretary, Chamber of Commerce, Madras, dated 1st August 1878, and enclosure [Papers No. 56].  
 ,, Acting Chief Secretary to Government, Madras, No. 299, dated 14th February 1879, and enclosures [Papers No. 58].  
 ,, Ditto, Ditto, Ditto, No. 1343, dated 7th June 1879, and enclosures [Papers No. 59].  
 ,, J. Crawford, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June 1879 [Paper No. 60].  
 Note by Sir Charles Turner, Chief Justice, Madras, dated 22nd January 1880 [Paper No. 61].  
 From Seth Lachman Dás, Muttra, dated 1st January 1881 [Paper No. 62].

have the honour to submit this our fourth report.

2. We agree with the Commissioners that uniformity of practice is particularly desirable in matters relating to negotiable paper, and, to facilitate the assimilation of the practice of shroffs to that of European merchants, we have declared (section 1) that local usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by the proposed Act.

3. We have inserted explanations calculated to prevent doubts as to when a promise or order to pay is "conditional," when the sum payable is "certain," and when the person to whom the direction is given or payment is to be made is "a certain person," within the meaning of sections 4 and 5.

4. We have re-drawn section 20 as to inchoate stamped instruments, so as to make it express more accurately what we conceive to be the law on this subject.

5. We have also re-drawn sections 47 and 48 (as follows):—

"43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable instrument made, &c., without consideration.

"Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

"Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed."



6. We have prefixed to the sections relating to negotiation clauses (section 46) relating to delivery generally, and to the effect recommended by the Commissioners.

7. We think the section (67, now 63) relating to the drawee's time for deliberation should provide that the holder of a bill "must, if so required by the drawee," allow him twenty-four hours (exclusive of public holidays) to consider whether he will accept, and we have amended this section accordingly.

8. We have made (section 76) presentment for payment unnecessary as against any party sought to be charged, if he has engaged to pay notwithstanding non-presentment.

9. We have in section 90 (now 86) substituted "qualified" for "conditional" and added a paragraph shewing when an acceptance is qualified.

10. We have provided (section 90) for the extinguishment of rights of action on a negotiated bill held, at or after maturity, by the acceptor in his own right.

11. We agree with Sir C. Turner that section 108 of the Bill in its fourth form—as to reasonable time for presentment—should be omitted. It seems inconsistent with section 107 (now 105), and declares a rule which is not only stricter than the existing law, but would, in our opinion, be highly inconvenient.

12. We have inserted a statement of the procedure in the case of an acceptance *supra protest*, and to section 112 (now 109) we have prefixed a clause showing how acceptance for honour must be made.

13. We have declared (section 116) that a drawee in case of need may accept and pay the bill without previous protest.

14. We have made it appear that inland (as well as foreign) bills may be drawn in sets, and altered Chapter XIV (now XV) accordingly. We have made the exception to section 126 (now 132) run thus:—

*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorser of each part are liable on such part as if it were a separate bill."

15. We have amended the second clause of section 125 (now 130, 131) (as to the non-liability of a banker who has received payment for a customer of a crossed cheque) in accordance with *Matthiessen v. London and County Banking Company*, 48 L. J. C. P. 529.

16. We have made most of the changes in arrangement and wording advised by the Commissioners, and recommend that the Bill as now revised be passed. It has now been more than thirteen years before the Council of the Governor General; it has been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it is not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

WHITLEY STOKES.  
B. W. COLVIN.  
J. PITT KENNEDY.  
G. C. PAUL.

The 20th January 1881.

No. V.  
THE NEGOTIABLE INSTRUMENTS  
BILL, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.  
PRELIMINARY.

SECTION.

1. Short title.  
Local extent.  
Saving of usages relating to hundis, &c.  
Commencement.

SECTION.

2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. Promissory Note.
5. Bill of Exchange.
6. Cheque.
7. "Drawer," "Drawee," "Drawee in case of need," "Acceptor," "Acceptor for honour," "Payee."
8. "Holder."
9. "Holder in due course."
10. "Payment in due course."



## SECTION.

11. Inland instrument.
12. Foreign instrument.
13. "Negotiable instrument."
14. Negotiation.
15. Indorsement.
16. Indorsement "in blank" and "in full."  
"Indorsee."
17. Ambiguous instruments.
18. Where amount is stated differently in figures  
and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. "At sight."  
"On presentment."  
"After sight."
22. "Maturity."  
Days of grace.
23. Calculating maturity of bill or note payable  
so many months after date or sight.
24. Calculating maturity of bill or note payable  
so many days after date or sight.
25. When day of maturity is a holiday.

## CHAPTER III.

## PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity to make, &c., promissory notes, &c.  
Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.
33. Only drawee can be acceptor except in need or  
for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due  
course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each sub-  
sequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, &c., without con-  
sideration.
44. Partial absence or failure of money-consider-  
ation.
45. Partial failure of consideration not consisting  
of money.

## CHAPTER IV.

## OF NEGOTIATION.

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into in-  
dorsement in full.
50. Effect of indorsement.
51. Who may negotiate.
52. Indorser who excludes his own liability or  
makes it conditional.
53. Holder deriving title from holder in due  
course.
54. Instrument indorsed in blank.
55. Conversion of indorsement in blank into  
indorsement in full.
56. Indorsement for part of sum due.
57. Legal representative cannot by delivery only  
negotiate instrument indorsed by deceased.

## SECTION.

58. Instrument obtained by unlawful means or  
for unlawful consideration.
59. Instrument acquired after dishonour or when  
overdue.  
Accommodation note or bill.
60. Instrument negotiable till payment or satis-  
faction.

## CHAPTER V.

## OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
64. Presentment for payment.
65. Hours for presentment.
66. Presentment for payment of instrument pay-  
able after date or sight.
67. Presentment for payment of promissory note  
payable by instalments.
68. Presentment for payment of instrument pay-  
able at specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place speci-  
fied.
71. Presentment when maker, &c., has no known  
place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other  
person.
74. Presentment of instrument payable on de-  
mand.
75. Presentment by or to agent, representative of  
deceased, or assignee of insolvent.
76. When presentment unnecessary.
77. Liability of banker for negligently dealing with  
bill presented for payment.

## CHAPTER VI.

## OF PAYMENT AND INTEREST.

78. To whom payment should be made.
79. Interest when rate specified.
80. Interest when no rate specified.
81. Delivery of instrument on payment, or in-  
demnity in case of loss.

## CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS  
AND CHEQUES.

82. Discharge from liability—  
(a) by cancellation :  
(b) by release :  
(c) by payment.
83. Discharge by allowing drawee more than  
twenty-four hours to accept.
84. When cheque not duly presented and drawer  
damaged thereby.
85. Cheque payable to order.
86. Parties not consenting discharged by qualified  
or limited acceptance.
87. Effect of material alteration.  
Alteration by indorsee.
88. Acceptor or indorser bound notwithstanding  
previous alteration.
89. Payment of instrument on which alteration is  
not apparent.
90. Extinguishment of rights of action on bill in  
acceptor's hands,



## SECTION.

## CHAPTER VIII.

## OF NOTICE OF DISHONOUR.

91. Dishonour by non-acceptance.
92. Dishonour by non-payment.
93. By and to whom notice should be given.
94. Mode in which notice may be given.
95. Party receiving must transmit notice of dishonour.
96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

## CHAPTER IX.

## OF NOTING AND PROTEST.

99. Noting.
100. Protest.  
Protest for better security.
101. Contents of protest.
102. Notice of protest.
103. Protest for non-payment after dishonour by non-acceptance.
104. Protest of foreign bills.

## CHAPTER X.

## OF REASONABLE TIME.

105. Reasonable time
106. Reasonable time of giving notice of dishonour.
107. Reasonable time for transmitting such notice.

## CHAPTER XI.

## OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. Acceptance for honour.
109. How acceptance for honour must be made.
110. Acceptance not specifying for whose honour it is made.
111. Liability of acceptor for honour.
112. When acceptor for honour may be charged.
113. Payment for honour.
114. Right of payer for honour.
115. Drawee in case of need.
116. Acceptance and payment without protest.

## CHAPTER XII.

## OF COMPENSATION.

117. Rules as to compensation.

## CHAPTER XIII.

## SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments.
  - (a) of consideration;
  - (b) as to date;
  - (c) as to time of acceptance;
  - (d) as to time of transfer;
  - (e) as to order of indorsements;
  - (f) as to stamp;
  - (g) that holder is a holder in due course.
119. Presumption on proof of protest.
120. Estoppel against denying original validity of instrument.
121. Estoppel against denying capacity of payee to indorse.
122. Estoppel against denying signature or capacity of prior party.

## SECTION.

## CHAPTER XIV.

## OF CROSSED CHEQUES.

123. Cheque crossed generally.
124. Cheque crossed specially.
125. Crossing after issue.
126. Payment of cheque crossed generally.  
Payment of cheque crossed specially.
127. Payment of cheque crossed specially more than once.
128. Payment in due course of crossed cheque.
129. Payment of crossed cheque out of due course.
130. Cheque bearing "not negotiable."
131. Non-liability of banker receiving payment of cheque.

## CHAPTER XV.

## OF BILLS IN SETS.

132. Set of bills.
133. Holder of first acquired part entitled to all.

## CHAPTER XVI.

## OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.
135. Law of place of payment governs dishonour.
136. Instrument made, &c., out of British India, but in accordance with its law.
137. Presumption as to foreign law.

## SCHEDULE.

## No. V.

*A Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.*

WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:—

## CHAPTER I.

## PRELIMINARY.

1. This Act may be called "The Negotiable Bill II, s. 1: Short title. Instruments Act, 1881;" Bill III, s. 2.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act;

and it shall come into force on the first day of January, 1882.

2. On and from that day the enactments specified in the schedule here- Bill II, s. 2. Bill III, s. 2.  
Repeal of enactments. to annexed shall be repealed to the extent mentioned in the third column thereof.



Bill II, s. 3 :  
Bill III, s. 2 :  
39 & 40 Vic.,  
c. 81, s. 3.

Interpretation-clause.

3. In this Act—

“Banker.” “Banker” includes also persons or a corporation or company acting as bankers ; and  
“Notary Public” includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

## CHAPTER II.

### OF NOTES, BILLS AND CHEQUES.

Bill II, s. 4 :  
Bill III, s. 4 :  
Byles on Bills  
(12th edition),  
pp. 5, 94.  
3 & 4 Anne,  
c. 9 (Byles  
481).  
Byles 5, 102 :  
Byles 10 :  
Byles 93 :  
Byles 6.

4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### Illustrations.

A signs instruments in the following terms :—

- (a) “I promise to pay B or order Rs. 500.”  
(b) “I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received.”  
(c) “Mr. B, I O U Rs. 1,000.”  
(d) I promise to pay B Rs. 500 and all other sums which shall be due to him.”  
(e) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”  
(f) “I promise to pay B Rs. 500 seven days after my marriage with C.”  
(g) “I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.”  
(h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

Bill II, s. 5 :  
Bill III, s. 5 :  
Byles 1, 75 :  
81, 94, 97 :  
Byles 93, 94,  
96 :  
Byles 75, 81.

5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional,” within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may

be a “certain person,” within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the “drawer ;” the person thereby directed to pay is called the “drawee.”

When in the bill or in any indorsement thereon “drawee in case of the name of any person is need.” given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need.”

After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor.”

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour.”

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee.”

8. The “holder” of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. “Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. “Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Bill II, s. 6 :  
Bill III, s. 5 :  
Byles 13.

Draft, s. 6 :  
Bill II, s. 7 :  
Bill III, s. 7 :

Draft, ss. 6,  
57 :  
Byles 196 :  
Act VI of  
1840, s. 2 :  
Act V of 1866,  
s. 11 :  
See 41 Vic.,  
c. 13.

Draft, s. 6 :  
Bill II, s. 8 :  
Bill III, s. 8 :  
Byles 2.

Draft, s. 12 :  
Bill II, s. 9 :  
Bill III, s. 9 :  
1 Parsons 255 :  
Byles 164.

Draft, ss. 86,  
115 :  
Bill II, s. 10 :  
Bill III,  
s. 10 :  
Byles on Bills  
(12th Edition)  
221 :  
39 & 40 Vic.,  
c. 81, s. 11.

Bill II, s. 11 :  
Bill III,  
s. 11 :  
Act V of 1866,  
s. 12.



- Bill II, s. 12 :  
Bill III, s. 12.
12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.
- Foreign instrument.
- Draft, s. 5 :  
Bill II, s. 13 :  
Bill III, s. 13.
13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.
- "Negotiable instrument."
- Draft, s. 7 :  
Bill II, s. 14 :  
Bill III, s. 14.
14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.
- Negotiation.
- Draft, s. 20 :  
Bill II, s. 15 :  
Bill III, s. 15 :  
*Denton v. Peters*, L. R. 5 Q. B. 475 :  
*Ex parte Cole*, L. R. 9 Ch. App. 27 :  
Byles 165 :  
Byles 150.
15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."
- Indorsement.
- Bill II, s. 16 :  
Bill III, s. 16.
16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee."
- Indorsement "in blank" and "in full."
- Bill II, s. 17 :  
Bill III, s. 17 :  
Byles 91 :  
Bayley (6th edition) 8.
17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.
- Ambiguous instruments.
- Draft, s. 2 :  
Bill II, s. 18 :  
Bill III, s. 18 :  
Byles 84 :  
Bayley 12  
(*Stauderson v. Piper*).
18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.
- Where amount is stated differently in figures and in words.
- Bill II, s. 19 :  
Bill III, s. 19 :  
1 Parsons 271 :  
Byles 13, 212 :  
*Aldous v. Cornwall*, L. R. 3 Q. B. 573.
19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.
- Instruments payable on demand.
- Bill II, s. 20 :  
Bill III, s. 20 :  
Byles 83, 165, 188 :  
*Foster v. Mackinnon*, L. R. 4 C. P. 704 :  
Byles 84.
20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.
- Inchoate stamped instruments.
- Bill II, s. 23 :  
Bill III, s. 22 :  
Byles 80, 180, 206, 209, 528 :  
34 & 35 Vic., c. 74, s. 2.
21. In a promissory note or bill of exchange the expressions "at sight," "on presentment," "after sight," "sight" and "on presentment" mean on demand.
- The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.
- Bill II, s. 78 :  
Bill II, s. 22 :  
Bill III, s. 23.
22. The maturity of a promissory note or bill of exchange is the date at which it falls due.
- Maturity.
- New.
- Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.
- Days of grace.
- Draft, s. 79 :  
Bill II, s. 24 :  
Bill III, s. 24 :  
Byles 206.
23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.
- Calculating maturity of bill or note payable so many months after date or sight.
- Illustrations.
- (a). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.
- (b). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.
- (c). A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.
- Draft, s. 80 :  
Bill II, s. 25 :  
Bill III, s. 25 :  
Byles 206.
24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.
- Calculating maturity of bill or note payable so many days after date or sight.
- Draft, s. 80 :  
Bill II, s. 26 :  
Bill III, s. 26 :  
Byles 208.
25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.
- When day of maturity is a holiday.



*Explanation.*—The expression “public holiday” includes Sundays: New-Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Bill II, s. 38 : 26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Byles 61, A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Bill II, s. 39 : 27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Byles 32, A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

Byles 33, An authority to draw bills of exchange does not of itself import an authority to indorse.

Draft, s. 15 : 28. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Byles 57 : 29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Draft, ss. 17, 73 : 30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Bill II, s. 45 : 31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment,

must compensate the drawer for any loss or damage caused by such default.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Johnston, L. R. 3 E, and I. App. 1.

Draft, ss. 60, 65 : Bill II, s. 46 : Bill III, s. 36 : Byles 190, 193 : Draft, s. 60 : Bayley 44 : Byles 910.

Draft, s. 61 : Bill II, s. 47 : Bill III, s. 37 : Byles 187, 188.

Draft, s. 59 : Bill II, s. 41 : Bill III, s. 32

Draft, ss. 28, 32, 37 (para. 2), 46, 64, 65, 90 and 98 : Bill II, s. 48 : Byles 153, 245, 295 : Robertson v. Kensington, 4 Taunt. 39 : Byles 152, 155 : Suse v. Pompe, 30 I. J., C. P. 75 : Horne v. Rouquette, 3 Q. B. Div. 519.

Draft, s. 44.

Draft, ss. 63, 71 : Bill II, s. 46 : Bill III, s. 36 : Byles 166 : O’Keefe v. Dunn, 6 Taunt. 305 : M. & S. 282

Bill II, s. 50 : Bill III, s. 40 : Byles 245.

Bill II, s. 51 : Bill III, s. 41 : Byles 245.



*Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Bill II, s. 52 :  
Bill III, s. 42 :  
*Owen v.*  
*Toman*, 4 H.  
L. Cas. 97 :  
*Huir v.*  
*Craveford*, L.  
R. 2 Sc. App.  
56.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Draft, s. 100 :  
Bill II, s. 53 :  
Bill III, s. 43 :  
f. Act IX of  
1872, r. 137.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Illustration.*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

- First indorsement "B."
- Second indorsement, "Peter Williams."
- Third indorsement, "Wright and Co."
- Fourth indorsement, John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

Draft, s. 36 :  
Bill II, s. 58 :  
Bill III, s. 47 :  
s. 200,  
11.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Bill II, s. 59 :  
Bill III, s. 48 :  
s. 201 :  
*Waper v.*  
*Wayer*, 10  
& C. 468 :  
Act I of 1872,  
117.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn accepted or indorsed, can, if he have paid

the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Draft, s 54  
Bill II, s. 62 :  
Bill III, s 51 :  
Byles 130.

*Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

*Illustration.*

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Draft, s. 55 :  
Bill II, s. 63 :  
Bill III, s. 52.

CHAPTER IV.  
OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.



Draft, s. 18 :  
Bill II, s. 64 :  
Bill III, s. 53 :  
Byles 148.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

*Exception.*—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

*Illustrations.*

(a). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b). A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Byles 148,  
note (i).

Draft, s. 19 :  
Bill II, s. 65 :  
Bill III, s. 54 :  
*Denton v. Peters, L. R. 5 Q. B. 475 ; Esparte Cole, L. R. 9 Ch. App. 27.*

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Draft, s. 31 :  
Bill II, s. 68 :  
Bill III, s. 57 :  
Byles 150,  
151.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full ; and the holder does not thereby incur the responsibility of an indorser.

Draft, ss. 29,  
30 :  
Bill II, ss. 69,  
70 :  
Bill III, ss.  
58, 59 :  
Byles 153.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation ; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

*Illustrations.*

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a) " Pay the contents to C only."
- (b) " Pay C for my use."
- (c) " Pay C or order for the account of B."
- (d) " The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) " Pay C."
- (f) " Pay C value in account with the Oriental Bank."

(g) " Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Draft, ss. 20,  
24, 27 :  
Bill II, s. 71 :  
Bill III, s. 60.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers,

payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section fifty, indorse and negotiate the same.

*Explanation.*—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof ; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words " or order " or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in his own liability or makes it conditional, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Draft, ss. 32,  
34 :  
Bill II, s. 72 :  
Bill III, s. 61 :  
Byles 153,  
157.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Draft, s. 45.

*Illustrations.*

(a) The indorser of a negotiable instrument signs his name, adding the words—

" Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement " without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Draft, s. 49 :  
Bill II, s. 73 :  
Bill III, s. 64.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Draft, s. 25 :  
Bill II, s. 74 :  
Bill III, s. 63.

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Draft, s. 39 :  
Bill II, s. 75 :  
Bill III, s. 64.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument ; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Draft, s. 23 :  
Bill II, s. 76 :  
Bill III, s. 65 :  
Byles 172.



Draft, s. 22 :  
Bill II, s. 78 :  
Bill III, s. 67 :  
Byles 174.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured. Byles 184.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured. Byles 183, 184.

Draft, ss. 52, 53 :  
Bill II, s. 79 :  
Bill III, s. 68 :  
Byles 122, 164.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

Bill II, s. 83 :  
Bill III, s. 72.

Draft, s. 43, and part of s. 52 :  
Bill II, s. 80 :  
Bill III, s. 69 :  
Byles 166, 168.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Instrument acquired after dishonour or when overdue.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

Draft, s. 56 :  
Bill II, s. 84 :  
Bill III, s. 73 :  
Byles 183.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment for payment.

Draft, s. 133 :  
Bill II, s. 85 :  
Bill III, s. 74.

*Exception.*—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Byles 216.

*Illustration.*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

Bill II, s. 86 :  
Bill III, s. 75 :  
Draft, s. 137 :  
Byles 213.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of instrument payable after date or sight.

Draft, s. 133 :  
Bill II, s. 87 :  
Bill III, s. 76.

Byles 208, 213.

Draft, ss. 41, 84 :  
Bill II, s. 81 :  
Bill III, s. 70 :  
Byles 170.

61. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

Bill II, s. 88 :  
Bill III, s. 77 :  
Byles 7.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment for payment of instrument payable at specified place and not elsewhere.

Draft, s. 138 :  
Bill II, s. 89 :  
Bill III, s. 78 :  
Act VI of 1840, s. 1 :  
& 2 Geo. IV, c. 78 (Byles 490).

Draft, s. 56 :  
Bill II, s. 82 :  
Bill III, s. 71.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place.

Draft, ss. 139, 140 :  
Bill II, s. 90 :  
Bill III, s. 79 :  
Byles 214.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must

Presentment where no exclusive place specified.

Draft, ss. 139, 140 :  
Bill II, s. 91 :  
Bill III, s. 80

CHAPTER V.  
OF PRESENTMENT.

Walker v. McDonald, 2 Ex. 532 :  
Leonard v. Wilson, 2 Cr. & M. 592 :  
Byles 180 to 182.



Byles 214, 215. be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Draft, s. 141 :  
Bill II, s. 92 :  
Bill III, s. 81. 71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Bill II, s. 93 :  
Bill III, s. 82 :  
Byles 21, 210. 72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Bill II, s. 94 :  
Bill III, s. 83 :  
Byles 21. 73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Draft, s. 134 :  
Bill II, s. 95 :  
Bill III, s. 84 :  
Byles 211. 74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Bill II, s. 96 :  
Bill III, s. 85 :  
Parsons 500. 75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Draft, ss. 89, 91 :  
Bill II, s. 98 :  
Bill III, s. 86 :  
Byles 218. 76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(a) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument,

or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or

if the instrument not being payable at any specified place, he cannot, after due search, be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, negligently dealing with has been duly presented for payment there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment To whom payment should be made. of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall Interest when rate specified. be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Terry v. Parker. 6 Ad. & E. 502  
Wirth v. Austin, L. 10 C. P. 68

Draft, s. 83  
Bill II, s. 91  
Bill III, s. 81  
Byles 197.

Bill II, s. 100  
Bill III, s. 88  
Byles 220.

Bill II, s. 101  
Bill III, s. 89  
Byles 306, 307.

Draft, s. 65  
Bill II, s. 102  
Bill III, s. 90  
Byles 306, 307, 308.

'ten,' Bank of Bengal.

Byles 308.

Draft, s. 82  
Bill II, s. 103  
Bill III, s. 91  
Byles 373 :  
See Pro. Code s. 61.

Draft, s. 85  
Bill II, s. 104  
Bill III, s. 92



Bytes 154,  
99 :  
Draft, s. 38.

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

Bytes 198,  
240.

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

Draft, ss. 87,  
88 :  
Bytes 221.

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Draft, s. 70 :  
Bill II, s. 105 :  
Bill III, s. 93.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Draft, s. 101 :  
Bill II, s. 106 :  
Bill III, s. 94 :  
Bytes 20.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Bill II, s.  
107 :  
Bill III, s.  
95 :  
16 & 17 Vic.,  
c. 59, s. 19 :  
Bytes 27, 505 :  
Charles v.  
Blackwell,  
1 C. P. Div.  
548.

85. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Draft, s. 69 :  
Bill II, s. 108 :  
Bill III, s. 96 :  
Bytes 193,  
194.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder, they assent to such acceptance.

*Explanation.*—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
- (b) where it undertakes the payment of part only of the sum ordered to be paid;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Draft, ss. 109,  
110 :  
Bill II, s.  
110 :  
Bill III, s.  
97 :  
Bytes 324.

And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Bill II, s.  
111 :  
Bill III, s.  
98 :  
Bytes 326.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Draft, ss. 112  
to 114 :  
Act I of 1872.  
s. 112 :  
Bill II, s.  
112 :  
Bill III, s. 99.

89. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

Draft, s. 115 :  
Bill II, s.  
113 :  
Bill III, s.  
100 :  
39 & 40 Vic.,  
c. 81, s. 11.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Draft, s. 33 :  
Bill II, s.  
114 :  
Bill III, s.  
101 :  
Bytes 187.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

Bill II, s.  
115 :  
Bill III, s.  
102.



Draft, ss. 125. 93. When a promissory note, bill of exchange  
127, 131 : or cheque is dishonoured  
Bill II, s. By and to whom notice should be given. by non-acceptance or  
116 : non-payment, the holder  
Bill III, s. thereof or some party thereto who remains liable  
103 : thereon, must give notice that the instrument has  
Byes 273. been so dishonoured to all other parties whom  
the holder seeks to make severally liable thereon,  
Byes 288. and to some one of several parties whom he seeks  
Byes 293. to make jointly liable thereon.

Byes 290. Nothing in this section renders it necessary to  
give notice to the maker of the dishonoured prom-  
issory note, or the drawee or acceptor of the  
dishonoured bill of exchange or cheque.

Draft, ss. 94. Notice of dishonour may be given to a  
126, 127, duly authorized agent of  
128, 130 : the person to whom it is  
Bill II, s. may be given. required to be given, or,  
117 : where he has died, to his legal representative, or,  
Bill III, s. where he has been declared an insolvent, to his  
104 : assignee; may be oral or written; may, if written  
Byes 274, 275. be sent by post; and may be in any form; but it  
Byes 280. must inform the party to whom it is given,  
Hold in either in express terms or by reasonable intend-  
America notice must be signed. ment, that the instrument has been dishonoured,  
1 Parsons 506. and in what way, and that he will be held liable  
Re Bellman, thereon; and it must be given within a reason-  
L. R. 4. able time after dishonour, at the place of business,  
Ch. Div. 795. or (in case such party has no place of business)  
at the residence of the party for whom it is in-  
Draft, s. 126. tended.

Byes 283. If the notice is duly directed and sent by post  
and miscarries, such miscarriage does not render  
the notice invalid.

Draft, s. 131 : 95. Any party receiving notice of dishonour  
Bill II, s. 118 : must, in order to render  
Bill III, s. Party receiving must himself, give notice of  
105. transmit notice of dis- dishonour to such party  
honour. within a reasonable time, unless such party other-  
wise receives due notice as provided by section  
ninety-three.

Draft, s. 132 : 96. When the instrument is deposited with an  
Bill II, s. agent for presentment, agent for presentment,  
119 : the agent is entitled to  
Bill III, s. the agent is entitled to  
106 : the same time to give notice to his principal as if  
Byes 286. he were the holder giving notice of dishonour,  
and the principal is entitled to a further like  
period to give notice of dishonour.

Draft, s. 130 : 97. When the party to whom notice of dis-  
Druse 2 : honour is despatched is  
Bill II, s. When party to whom dead, but the party de-  
120 : notice given is dead. spatching the notice is  
Bill III, s. ignorant of his death, the notice is sufficient.  
107.

Draft, s. 92 98. No notice of dis-  
Bill II, s. is unnecessary. honour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;

- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Draft, ss. 67  
68, 93 :  
Byes 301.  
Byes 302.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of ex-  
change has been dis-  
Noting. honoured by non-accept-  
ance or non-payment, the holder may cause such  
dishonour to be noted by a notary public upon  
the instrument, or upon a paper attached thereto,  
or partly upon each.

Draft s. 119 :  
Bill II, 122 :  
Bill III, s. 109.

Such note must be made within a reasonable  
time after dishonour, and must specify the date of  
dishonour, the reason, if any, assigned for such  
dishonour, or, if the instrument has not been  
expressly dishonoured, the reason why the holder  
treats it as dishonoured, and the notary's charges.

Draft, s. 119 :  
Byes 261.

100. When a promissory note or bill of ex-  
change has been dis-  
Protest. honoured by non-accept-  
ance or non-payment, the holder may, within a  
reasonable time, cause such dishonour to be noted  
and certified by a notary public. Such certificate  
is called a protest.

Draft, s. 120 :  
Bill II, s. 123 :  
Bill III, s. 110 :  
Byes 260.

When the acceptor of a bill of exchange has  
become insolvent, or his  
Protest for better secu- credit has been publicly  
urity. impeached, before the  
maturity of the bill, the holder may, within a  
reasonable time cause a notary public to demand  
better security of the acceptor, and on its being  
refused may, within a reasonable time, cause

Byes 261.

101. A protest under  
section one hundred must  
Contents of protest. contain—

Draft, s. 122 :  
Bill II, s. 124 :  
Bill III, s. 111 :  
Byes 261.

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.



Draft, s. 124 : 102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by the notary public who makes the protest.

Bill II, s. 126 : 103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Draft, s. 108 : 104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

## CHAPTER X.

## OF REASONABLE TIME.

Draft, s. 56, Explan. 1 : 105. In determining what is a reasonable time for presentment for acceptance or payment for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments ; and in calculating such time public holidays shall be excluded.

Draft, s. 129 : 106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

Byles 285. If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Draft, s. 131 : 107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI.

## OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Draft, ss. 74, 76 : 108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time ; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour ; and such declaration must be recorded by the notary in his register.

110. Where the acceptance does not expressly state for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not ; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

New.

Draft, s. 75 :  
Bill II, s. 132 :  
Bill III, s. 119 :  
Byles 265, 266.

Draft, s. 77 :  
Bill II, s. 133 :  
Bill III, s. 120 :  
Byles 267.

Byles 268.

Draft, s. 845 :  
Byles 266 :  
Act VI of 1840, s. 3.

Draft, s. 95 :  
Bill II, s. 134 :  
Bill III, s. 121.

Draft, s. 96 :  
Bill II, s. 135 :  
Bill III, s. 122 :  
Byles 270.

Draft, s. 97 :  
Bill II, s. 136 :  
Bill III, s. 123 :  
Byles 271.  
*In re Overend Gurney & Co.*  
L. R. 6, Eq. 344.



Draft, s. 73 :  
Bill II, s. 133:  
Bill III, s.  
127 :  
Byles 266.

115. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.  
OF COMPENSATION.

Bill II, s.  
137 :  
Bill III, s.  
124.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

(a) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Draft, s. 12 :  
Bill II, s. 27 :  
Bill III, s. 26 :  
Byles 3, 119.

118. Until the contrary is proved, the following presumptions shall be made :—

(a) that every negotiable instrument was made of consideration ; or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

(b) that every negotiable instrument bearing a date was made or drawn on such date ;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

(d) that every transfer of a negotiable instrument was made before its maturity ;

(e) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

(f) that a lost promissory note, bill of exchange or cheque was duly stamped ;

(g) that the holder of a negotiable instrument is a holder in due course : provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addi-

Byles 190.

Byles 170.

Draft, s. 37.

Byles 117,  
382.

Draft, s. 12 :  
Byles 122.

Draft, ss. 121,  
123 :  
Act V of 1866,  
s. 13.

Bill II, s. 54 :  
Bill III, s. 44 :  
*Phillips v. Im*  
*Thura* 18, C  
B., N. S. 694.

Bill II, s. 56 :  
Bill III, s. 45 :  
Byles 200.

Draft, s. 35 :  
Bill II, s. 57 :  
Bill III, s. 46 :  
Byles 153.  
See Byles 222,  
n. (i).

Bill II, s. 30  
Bill III, s.  
129 :  
39 & 40 Vic.  
c. 81, s. 4.

Bill II, s. 31  
Bill III, s.  
130 :  
39 & 40 Vic  
c. 81, s. 4.



tion shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable" shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

## CHAPTER XV.

## OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a

provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

## CHAPTER XVI.

## OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

*Illustration.*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

*Illustration.*

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with its law, the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Draft, ss. 11, 116 :  
Bill II, s. 28 :  
Bill III, s. 125 :  
125 :  
Byles 390, 391.

Byles 92 :  
*Holdsorth v. Hunter*, 10 B. & C. 449.

Bill II, s. 29 :  
Bill III, s. 126 :  
Byles 391 :  
Bayley 30, 171.

Draft, s. 104 :  
Bill II, s. 140 :  
Bill III, s. 137 :  
Byles 399 :  
*Rouquette v. Overmann*, L. R. 10 Q. B. 525 :  
*Horne v. Rouquette*, 3 Q. B. Div. 514.

Byles 402.

Draft, s. 105 :  
Bill II, s. 141 :  
Bill III, s. 138.

Draft, s. 106 :  
Bill II, s. 142 :  
Bill III, s. 139.

Bill II, s. 32 :  
Bill III, s. 131 :  
39 & 40 Vic., c. 81, s. 5.

Draft, ss. 102, 103 :  
Bill II, s. 33 :  
Bill III, s. 132 :  
39 & 40 Vic., c. 81, s. 7.

Bill II, s. 34 :  
Bill III, s. 133 :  
S. 8.

Bill II, s. 35 :  
Bill III, s. 134 :  
S. 9.

Bill II, s. 36 :  
Bill III, s. 135 :  
S. 10.

Bill II, s. 37 :  
Bill III, s. 136 :  
S. 12.

S. L. J. C. P. 29.



Draft, s. 107 : 137. The law of any foreign country regard-  
 Bill II, s. 143 : ing promissory notes,  
 Bill III, s. 140 : Presumption as to foreign bills of exchange and  
 Act I of 1872, s. 4 : law. cheques shall be presumed  
 to be the same as that of British India, unless  
 and until the contrary is proved.

SCHEDULE.

(a)—STATUTES.

| Year and chapter. | Title.   | Extent of repeal. |
|-------------------|--|-------------------|
| 9 Wm. III, c. 17  | An Act for the better payment of Inland Bills of Exchange.   | The whole.        |
| 3 & 4 Anne, c. 8. | An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange. | The whole.        |

(b)—ACTS OF THE GOVERNOR GENERAL  
 IN COUNCIL.

| No. and year.  | Title.   | Extent of repeal.  |
|----------------|--|--|
| VI of 1840 ... | An Act for the amendment of the law concerning the negotiation of Bills of Exchange. | The whole.   |
| V of 1866 ...  | An Act to amend in certain respects the Commercial Law of British India.             | Sections 11, 12 and 13.  |
| XV of 1874 ... | The Laws Local Extent Act, 1874.   | The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, Sections 11, 12 and 13. |

D. FITZPATRICK,  
 Secretary to the Government of India.



The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 28th January, 1881, and was referred to a Select Committee:—

### Bill No. 3 of 1881.

#### *A Bill for the amendment of the law relating to Insolvent Debtors in India.*

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows:—

Preamble.

1. This Act may be called "The Insolvent Law Amendment Act, 1881."

Local extent. it extends to the whole of British India; and

it shall come into force on the first day of April 1881.

2. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

the word "Insolvent" means a person of whose property a receiver has been appointed under the

Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act:

the word "adjudication" means the order under the said section 351

"Adjudication." of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and

the word "assignee" means the person in whom the property of any

"Assignee." Insolvent has been vested by the adjudication of such Insolvent.

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or

under any order for attachment before judgment, the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent:

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication, be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns, in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;



and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver with any of such property before he has notice of such adjudication.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend

Distribution of un-claimed dividends.

remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

### STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent is friendly to the execution creditor, the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit, could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing, however, to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt, so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte Dorman* L. R. 8 Ch., App. 51, that such was not the effect of the language of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent, the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it



has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mofussil, and in many cases, if such traders became insolvent, they might be able, by taking advantage of the insolvency proceedings in the Procedure Code,\* to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mofussil Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act, however, was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

---

\*It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

*The 23rd January 1881.*

J. PITT KENNEDY.

D. FITZPATRICK,  
Secretary to the Government of India.