



Bombay Government Gazette.

Published by Authority.

THURSDAY, 27TH JUNE 1878.

Separate paying 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 second 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 20th June 1878:—

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 considered the Bill and the papers noted in the margin, and have the honour to present this second report.
2. Section I. declares that "nothing in this Act applies to hundis." But when the analogy between bills and hundis is complete and there is no proof of any special usage, it has been ruled by Colville, C. J., in *Amritram v. Damoodhur Doss* (cited 2 Hyde 261), that the English law applies.
- From Secretary to Chief Commissioner, Mysore, No. 7915-7 J., dated 5th December, 1877, and enclosure.
- „ Secretary to Chief Commissioner, Mysore, No. 7998-8 J., dated 10th December, 1877, and enclosure.
- „ Chairman, Madras Chamber of Commerce, to Honourable Whitley Stokes, dated 20th December, 1877.
- „ Secretary to Government, North-Western Provinces and Oudh, No. 803A, dated 24th December, 1877.
- „ Secretary to Government of Bengal, No. 24, dated 3rd January, 1878, and enclosure.
- „ Secretary to Chief Commissioner, Assam, No. 37, dated 8th January, 1878, and enclosure.
- „ Officiating Secretary to Chief Commissioner, Central Provinces, No. 172-5, dated 17th January, 1878, and enclosure.
- Memorial of the British Indian Association, dated 17th January, 1878.
- From Chief Secretary to Government, Fort St. George, No. 89, dated 15th January, 1878, and enclosure.
- „ Secretary to Chief Commissioner, British Burma, No. 159-51, dated 26th January, 1878, and enclosure.
- Observations by C. J. Wilkinson, Esq., Recorder of Rangoon, dated 6th February, 1878.
- From Under-Secretary to Government, Bombay, No. 991, dated 14th February, 1878, and enclosure.
- „ Officiating Secretary to Government, Panjáb, No. 808, dated 16th February, 1878, and enclosure.
- „ Secretary to Government of Bengal, No. 492, dated 21st February, 1878, and enclosure.
- Note by Honourable Whitley Stokes, dated 26th February, 1878.
- From Chief Secretary to Government, Fort St. George, No. 366, dated 21st February, 1878, and enclosure.
- Despatch from Secretary of State, No. 3, dated 21st February, 1878, forwarding Memorandum by W. Macpherson, Esq., dated 29th January, 1878.
- From Under Secretary to Government, Bombay, No. 1742, dated 16th March, 1878, and enclosure.
- Note to the Honourable Sir E. C. Bayley, K.C.S.I., dated 19th March, 1878.
- From Lakshmi Naráyana Pandit, Pleader, High Court, North-Western Provinces, dated 22nd March 1878, and enclosure.
- „ Officiating Junior Secretary to Chief Commissioner, British Burma, No. 518-51, dated 13th April, 1878, and enclosure.
- „ Judge of Small Cause Court, Agra, dated 27th May, 1878.

We think that we should give effect to this ruling, and have therefore changed the words above quoted to "nothing herein contained shall affect any usage relating to any instrument in an oriental language." This change will not only save the customs of Native merchants as to hundis, but also their customs (if any such exist) as to promissory notes and cheques.

3. We have in section 4 added several illustrations of what a promissory note is not. They are founded on decided cases.

4. Section 13 provides, in accordance with the Indian Law Commissioners' draft, that a note, bill or cheque payable to a specified person or order, or "to _____ or order" is negotiable. It appears to us that, in the absence of a payee, *i.e.*, till the blank is filled up, there can be no right of action on the instrument: such right cannot therefore be assignable: the instrument, in other words, is not 'negotiable.' We have therefore omitted the phrase "to _____ or order."

5. To section 20 (as to filling up blanks in a stamped instrument) we have added a proviso that, as between the person delivering and the person receiving the instrument, nothing in excess of the amount intended by them to be paid shall be recovered.

6. We have provided (section 22), in accordance with 34 & 35 Vic., c. 74, s. 2, that the expression 'on presentment' as well as 'at sight' shall mean on demand.

7. We have stated distinctly (section 23) the law as to days of grace as follows: "Every promissory note or bill of exchange 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."

8. In section 24, we have provided for the case of a bill "after sight" accepted for honour.

9. We have altered section 26 so as to express the present practice, according to which, when a bill or note matures on a public holiday, it is deemed to be due on the next preceding business day.

10. In section 27 we have added the presumption that every negotiable instrument bearing a date was made or drawn on such date. The Evidence Act, section 114, does not quite suffice. We have struck out the clause providing that a receipt on the back of notes and bills is *prima facie* evidence of payment by the maker or acceptor. This presumption, though important in England, is so weak in India as not to be worth inserting. We have also provided that when the instrument has been stolen or originally infected by fraud, invalidity or illegality, the burthen of proving that the holder is a holder in due course lies upon him.

11. We have redrawn section 29 (now 126) thus: "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."

12. We have declared that section 38 (now 28) shall be deemed to empower a corporation to make, accept or indorse notes, bills or cheques, except in cases in which under the law for the time being in force they are so empowered.

13. We have declared (section 31) the law as to the liability of a legal representative signing his name to a note, bill or cheque.

14. We have made section 40 (now 30, as to the liability of an agent signing) agree with the Contract Act, by wording the exception thus: except to those who induced him to sign upon the belief that the principal only would be held liable."

15. The exception to section 42 (now 33) declares, in accordance with *Mason v. Rumsey* (1 Camp 384), that "a partner may bind his firm by accepting in his own name for partnership purposes a bill drawn upon the firm." It would in this country be likely to mislead. We have therefore struck it out.

16. We have omitted section 42, as the Indian Contract Act, 1872, will of its own force extend to all contracts evidenced by bills, notes and cheques.

17. We have confined section 45 (now 35) to cheques. As a rule, bankers decline to accept bills except in cases where they have specially agreed to do so. They cannot be expected to write off amounts from an ordinary account current to provide for acceptances.

18. Section 52 of Bill No. II applies sections 134 and 135 of the Contract Act to the relations of suretyship between parties to negotiable instruments. The result would be to extinguish the power which the holder of an accepted bill has at present to release the acceptor, reserving his right to charge the other parties. We have therefore substituted a section (42) which will save this power.

19. We have expressly confined the estoppels mentioned in sections 54 and 56 (now 44 and 45) to suits by holders in due course. We have struck out the clause (55) relating to the estoppel of the acceptor from denying the drawer's signature. The Evidence Act, section 117, should, we think, in this respect remain untouched.

20. In the case of a transfer without indorsement, section 66 of Bill No. II empowers the transferee to sue upon the instrument in his own name. We have struck out this power which is not in accordance with the present law. We have abstained from expressly empowering such a transferee to sue in the name of the transferor, as this would have involved further provisions as to indemnifying the latter, which could not fitly find their place in the present Bill.

21. Section 76 of Bill No II declares, in accordance with American decisions, that the effect of an indorsement for part of the sum remaining due to the indorser is to give the indorsee a lien on the bill, but not to transfer a right to sue, except in the indorser's name. There can, however, be no doubt that such indorsements are not warranted by the custom of merchants, and we have substituted the clause originally framed by the Law Commissioners, namely, "65. 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 of the instrument."

22. Section 82 (now 71) provides for presentment for acceptance of bills payable at sight as well as of bills payable after sight. As "at sight" will be equivalent to "on demand," we have confined this section to the latter class of bills.

23. As foreign bills are equally with inland bills entitled to the privilege of days of grace, we have, in sections 87 and 88 (now 76 and 77) struck out the word 'inland.'

24. We have omitted section 97, as to posting instruments to be presented. It seems to us a useless provision.

25. Where interest is expressly made payable at a specified rate, we have provided in section 101 (now 89) for payment of interest in case of a suit to recover the principal sum due.

26. We have omitted section 109 as conflicting with section 110 (now 97).

27. When the drawee is incompetent to contract, we have declared (section 101) that the bill may be treated as dishonoured.

28. Section 140 (now 137) provided, in exact accordance with the Law Commissioners' draft, that the liability of the acceptor of a foreign bill should be regulated by the law of the place where he accepted the instrument and the liability of the indorser by the law of the place where he indorsed the instrument. We think that this neither agrees with the rules of international law nor the decisions of the English Courts (see, for instance, *Rouquette v. Overmann*, L. R. 10 Q. B. 525). The acceptor's liability is regulated by the law of the place of payment, and as the indorser is a surety for the acceptor, his liability is measured by that of his principal, is, in other words, regulated by the *lex loci* of performance. We have altered section 140 in accordance with these views.

29. Section 140 is a fragment of the law of evidence, just as section 87 (as to a banker's liability for negligence) is a fragment of the law of torts. But we think that these sections may conveniently stand where they are until the Evidence Act is revised and the law of torts codified.

30. We think that the provisions as to bills in sets should be confined to foreign bills, and we have consequently transferred them to Chapter XIII. We have made the sections as to crossed cheques a separate chapter and placed it near the end of the Bill.

31. We have made some verbal amendments.

32. Lastly, we have added to the schedule of repeals the two old statutes, 9 William III, c. 17, as to inland bills, and 3 & 4 Ann., c. 8, as to promissory notes.

33. We desire to acknowledge the valuable criticisms received from the Chambers of Commerce at Calcutta, Madras, Bombay and Rangoon, from Mr. William Macpherson, Secretary to the late Indian Law Commission, from Pandit Lakshmi Náráyana of Lucknow, and from Mr. Rattigan, the Government Advocate, Panjáb; and Mr. Stokes is much indebted to Sir R. Garth for some notes unofficially communicated.

34. We are well aware that the Bill does not deal exhaustively with the subject; but we believe that the Bill, the Contract Act (to which it is a supplement) and the Evidence Act will, taken together, supply rules sufficient for the disposal of the questions that ordinarily arise as to the rights of parties to negotiable instruments:

35. We, therefore, recommend that the Bill be passed as amended; but we are of opinion that it has been so altered as to render republication desirable. We propose that it shall not be further proceeded with until the Council re-assembles at Calcutta.

27th May, 1878.

WHITLEY STOKES.
F. R. COCKERELL.
E. MORGAN.
G. H. P. EVANS.
G. C. PAUL.

No. III.
THE NEGOTIABLE INSTRUMENTS
BILL, 1878.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title.
Local extent.
Saving of usages relating to hundis, &c.
Commencement.
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, Acceptor, Acceptor for honour, Payee.
8. Holder.
9. Holder in due course.
10. Payment in due course.
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. Amount stated differently in figures and words.
19. Instruments payable on demand.
20. Blank stamped instruments.
21. Subscribing to alternative liability.
22. 'At sight'
'On presentment.'
'After sight'
23. Maturity.
Days of grace.
24. Date on which bill or note payable so many months after date or sight, or after a certain event, is at maturity.
25. Date on which bill or note payable so many days after date or sight, or after a certain event, is at maturity.
26. When day of maturity is a holiday.
27. 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 endorsements;
(f) as to stamp;
(g) that holder is a holder in due course.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

28. Capacity to make, &c., promissory notes, &c.
Minor.
29. Agency.
30. Liability of agent signing.
31. Liability of legal representative signing.
32. Acceptance by several drawees not partners.

SECTION.

33. When partnership bound by promissory notes, &c.
34. Liability of drawer.
35. Liability of drawee of cheque.
36. Liability of maker of note and acceptor of bill.
37. Only drawee can be acceptor except in need or for honour.
38. Liability of indorser.
39. Liability of prior parties to holder in due course.
40. Maker, drawer and acceptor principals.
41. Prior party a principal in respect of each subsequent party.
42. Suretyship.
43. Discharge of indorser's liability.
44. Estoppel against denying original validity of instrument.
45. Estoppel against denying capacity of payee to indorse.
46. Estoppel against denying signature or capacity of prior party.
47. Acceptor bound although indorsement forged.
48. Acceptance of bill drawn in fictitious name.
49. Party receiving consideration liable to subsequent parties.
50. Party not liable to one from whom no consideration moved.
51. Partial absence or failure of money-consideration.
52. Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

53. Negotiation by delivery.
54. Negotiation by indorsement.
55. Transfer without indorsement.
56. Liability of transferer without indorsement.
57. Conversion of indorsement in blank into indorsement in full.
58. Effect of indorsement.
59. Negotiability may be restricted or excluded.
60. Who may negotiate.
61. Indorser who excludes his own liability or makes it conditional.
62. Holder deriving title from holder in due course.
63. Instrument indorsed in blank.
64. Conversion of indorsement in blank into indorsement in full.
65. Indorsement for part of sum due.
66. Collateral agreements.
67. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
68. Instrument obtained by unlawful means or for unlawful consideration.
69. Instrument acquired after dishonour or when overdue.
Accommodation note or bill.
70. Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

71. Presentment for acceptance.
72. Presentment of promissory note for sight.
73. Drawee's time for deliberation.
74. Presentment for payment.
75. Hours for presentment.
76. Presentment for payment of instrument after date or sight.

SECTION.

77. Presentment for payment of promissory note payable by instalments.
78. Presentment for payment of instrument payable at specified place and not elsewhere.
79. Instrument payable at specified place.
80. Presentment where no exclusive place specified.
81. Presentment when maker, &c., has no known place of business or residence.
82. Presentment of cheque to charge drawer.
83. Presentment of cheque to charge any other person.
84. Presentment of instrument payable on demand.
85. Presentment by or to agent, representative of deceased, or assignee of insolvent.
86. When presentment unnecessary.
87. Liability of banker for negligently dealing with bill presented for acceptance.

CHAPTER VI.

OF PAYMENT AND INTEREST.

88. To whom payment should be made.
89. Interest when rate specified.
90. Interest when no rate specified.
91. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

92. Discharge from liability :
 - (a) by cancellation ;
 - (b) by release :
 - (c) by payment.
93. Discharge by allowing drawee more than twenty-four hours to accept.
94. When cheque not duly presented and drawer damaged thereby.
95. Cheque payable to order.
96. Parties not consenting discharged by conditional or limited acceptance.
97. Effect of material alteration.
98. Alteration by indorsee.
99. Acceptor or indorser bound notwithstanding previous alteration.
100. Payment of instrument on which alteration is not apparent.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

101. Dishonour by non-acceptance.
102. Dishonour by non-payment.
103. By and to whom notice should be given.
104. Mode in which notice may be given.
105. Party receiving must transmit notice of dishonour.
106. Agent for presentment.
107. When party to whom notice given is dead.
108. When notice of dishonour is unnecessary.

CHAPTER IX.

OF NOTING AND PROTEST.

109. Noting.
110. Protest.
- Protest for better security.

VI.—11

SECTION.

111. Contents of protest.
112. Notice of protest.
113. Protest for non-payment after dishonour by non-acceptance.

CHAPTER X.

OF REASONABLE TIME.

114. Reasonable time.
115. Reasonable time for presentment.
116. Reasonable time for giving notice of dishonour.
117. Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

118. Acceptance for honour.
119. Acceptance not specifying for whose honour it is made.
120. Liability of acceptor for honour.
121. When acceptor for honour may be charged.
122. Payment for honour.
123. Right of payer for honour.

CHAPTER XII.

OF COMPENSATION.

124. Rules as to compensation.

CHAPTER XIII.

OF FOREIGN BILLS.

125. Set of bills.
126. Holder of first acquired part entitled to all.
127. Drawee in case of need.
128. Protest of foreign bills.

CHAPTER XIV.

OF CROSSED CHEQUES.

129. Cheque crossed generally.
130. Cheque crossed specially.
131. Crossing after issue.
132. Payment of cheque crossed generally.
Payment of cheque crossed specially.
133. Payment of cheque crossed specially more than once.
134. Payment in due course of crossed cheque.
135. Payment of crossed cheque out of due course.
136. Cheque bearing "not negotiable."

CHAPTER XV.

OF INTERNATIONAL LAW.

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

SCHEDULE.

No. III.

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.

Short title.	1. This Act may be called "The Negotiable Instruments Act, 1878."
It extends to the whole of British India; but Local extent.	nothing herein contained affects any usage relating to any instrument in an oriental language.
Saving of usages relating to hundis, &c.	And it shall come into force on the first day of January, 1879.
Commencement.	2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.
Repeal of enactments.	3. In this Act.—
Interpretation clause.	"Banker" includes also persons or a corporation or company acting as bankers, and
"Banker."	"Notary Public" includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.
"Notary Public."	

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 person ascertainable when such undertaking is made, 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 promise to account with B or order for Rs. 500 value received by me."
- (c) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."
- (d) "Mr. B, I O U Rs. 1,000."
- (e) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- (f) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
- (g) "I promise to pay B Rs. 500 seven days after my marriage with C."
- (h) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

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

The instruments respectively marked (a), (b) and (c) are promissory notes. The instruments respectively marked (d), (e), (f), (g), (h), and (i) 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 person ascertainable when such order is given or to the bearer of the instrument.

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 the bill gives the name of any person in addition to the drawee "Drawee in case of need," 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 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, for consideration 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.
- Inland instrument.
12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.
- Foreign instrument.
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."
14. When 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.
15. When the maker or holder of 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.
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 whole or any part of 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."
- "Indorsee."
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.
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.
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.
20. Where a stamped paper, which is intended to be completed as a negotiable instrument, is signed and delivered by a competent person as maker, drawer, acceptor or indorser, the holder thereof may complete the same by filling up any blanks therein, and the

person so signing shall be liable upon such instrument, in the capacity in which he signed the same, for any amount which may be specified therein not exceeding the amount covered by the stamp thereon: provided that as between the person delivering and the person receiving the instrument nothing in excess of the amount intended by them to be paid shall be recovered.

Illustration.

A stamped paper intended to be completed as a negotiable instrument is made payable to "or order:" the holder of such instrument may fill up the blank with his own name, or that of any other person.

21. Where a promissory note is signed by two persons, and it appears on the face of it that one of them subscribes only to an alternative liability, such one is not liable on the note as maker, but is liable as guaranteeing its payment by the maker.

Subscribing to alternative liability

22. In a promissory note or bill of exchange the expressions "at 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 protest for non-acceptance.

"At sight"
"On presentment."
"After sight."

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

"Maturity."

Every promissory note or bill of exchange, other than a promissory note or bill of exchange 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.

24. 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 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.

Date on which bill or note payable so many months after date or sight, or after a certain event, is at maturity.

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 1877 is made payable at one month after date. The month terminates on the 28th February 1877.

(b) A negotiable instrument dated 30th August 1877 is made payable three months after date. The three months terminate on the 30th November 1877.

(c) A promissory note or bill of exchange, dated 31st August 1877, is made payable three months after date. The three months terminate on the 30th November 1877.

25. 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 on which the event happens, shall be excluded.

Date on which bill or note payable so many days after date or sight, or after a certain event, is at maturity.

When day of maturity is a holiday.

26. When the day on which 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.

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.

27. 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 as to date; a date was made or drawn on such date:

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

(d) that every transfer of a negotiable instrument was as to time of transfer; 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 as to stamp; duly stamped.

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

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

28. 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.

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.

29. Every person capable of binding himself or of being bound, as Agency. mentioned in section 28, may so bind himself or be bound by a duly authorized agent acting in his name.

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.

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

30. 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.

31. A legal representative 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.

32. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but one of them can accept it for another without his authority.

33. When it is within the scope of the business of a partnership to make, draw, accept, indorse or negotiate promissory notes, bills of exchange or cheques, any partner may bind his firm by making, drawing, accepting, indorsing or negotiating such instruments in the name of his firm, but not otherwise.

34. 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 for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

35. 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.

36. 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

Liability of maker of note and acceptor of bill.

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.

The provisions of this section are subject to those of sections 28, 30, 50, 51, 52, 68, 74, 78, 79 and 92.

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

38. 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.

The provisions of this section are subject to those of sections 28, 30, 50, 51, 52, 64, 65, 68, 71, 72, 74, 78, 82, 92, 93, 94, 96, 97 and 108, clause, (a).

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

40. 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 any 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.

41. 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.

42. When the holder of an accepted bill of exchange enters into any contract with the acceptor.

tor 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.

43. The indorser of a negotiable instrument is not discharged from his liability thereupon by the discharge of indorser's liability. holder having merely forborne to sue a prior party; but where the holder, 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 William."

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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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 claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

49. If at any time there has been consideration between any parties to a negotiable instrument for the making, drawing, acceptance, in-

dorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

The provisions of this section are subject to those of sections 28, 51, 52, 56, 64, 71, 72, 74, 78, 79, 82, 92, 93, 94, 95, 96, 97, and 98.

Illustrations.

(a.) A indorses a bill of exchange to B., at the request of C., for C.'s account with B. B is a holder of the bill for consideration, and if he indorses it as a present to D, D. is a holder for consideration.

(b.) A, the holder of a negotiable instrument, indorses it in full to B., in the belief that B. has done something which he has not done. B., for consideration proceeding from C., indorses the instrument in blank to C. and C. indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration.

50. When there was no consideration for the

Party not liable to one from whom no consideration moved.

making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration

has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through such party, unless consideration moved from the claimant or from some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the amount due thereon.

51. When the consideration for which a person

Partial absence or failure of money-consideration.

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.

52. Where a part of the consideration for which

Partial failure of consideration not consisting of money.

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.

53. Subject to the provisions of section 68, Negotiation by delivery. 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) 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.

54. Subject to the provisions of section 68, a

Negotiation by indorsement.

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.

55. If the holder of such an instrument as

Transfer without indorsement.

mentioned in section 54, delivers it to another person without indorsing

it, but with intent to transfer his title thereto, the transferee acquires by such delivery all the rights which the transferor had as holder except the right of negotiation.

56. If such transfer, as mentioned in section

Liability of transfer or without indorsement.

55, is made for consideration to a person having

no sufficient cause to believe in the existence of any matter affecting the validity of the instrument or of the transfer thereof, and the instrument is thereafter avoided as against any party on account of matters prior to the transfer, the transferor is bound to return to the transferee the consideration received, provided that such return is claimed within a reasonable time.

57. The holder of a negotiable instrument indorsed in blank may,

Conversion of indorsement in blank into indorsement in full.

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.

58. The indorsement of a negotiable instrument

Effect of indorsement. followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, be restrained to a transfer of the property without 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.

59. The indorser of a negotiable instrument

Negotiability may be restricted or excluded. may, by express words in the indorsement, restrict or exclude the right of the indorsee to negotiate the instrument, although the instrument was, at the time of such words being written, payable to the bearer thereof.

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.

60. Every sole maker, drawer, payee or indorsee, or all of several

Who may negotiate. 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 59, 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.

61. The indorser of a negotiable instrument

Indorser who excludes his own liability or makes it conditional. 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.

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.

62. A holder of a negotiable instrument who

Holder deriving title from holder in due course. derives title from a holder in due course has the rights thereon of that holder in due course.

63. Subject to the provisions of sections 132

Instrument indorsed in blank. and 133, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

64. If a negotiable instrument after having

Conversion of indorsement in blank into indorsement in full. 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.

65. No writing on a negotiable instrument is

Indorsement for part of sum due. valid for the purpose of negotiation if such writing purports to transfer only a part of the amount of the instrument.

66. No agreement between any parties to a

Collateral agreements. negotiable instrument which is not expressed thereon, or which is collateral thereto, is binding upon any other holder thereof for consideration, or upon any holder deriving title from a holder for consideration.

Illustration.

A person who is a creditor of A signs, as acceptor, a bill of exchange in A's favour for 3,000 rupees. A being the holder indorses it for value to B, who is aware that the acceptor was a creditor of A. A's debt to the acceptor cannot be set off against B's claim on the bill.

67. The legal representative of a deceased

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

68. When a negotiable instrument has been

Instrument obtained by unlawful means or for unlawful consideration. 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.

69. The holder of a negotiable instrument

Instrument acquired after dishonour or when overdue. 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.

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.

70. 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.

71. 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.

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 has absconded, the bill is dishonoured.

72. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight, 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.

73. The drawee of a bill of exchange presented to him for acceptance may retain the same until the end of twenty-four hours, or until the next post to the holder, whichever first happens, to consider whether he will accept it.

Explanation.—In calculating the twenty-four hours mentioned in this section, public holidays shall be excluded.

74. 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.

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.

75. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

76. 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.

77. 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.

78. 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.

79. 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.

80. A promissory note or bill of exchange, not made payable as mentioned in sections 78 and 79, must be presented for payment at one of the places specified (if any), or at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

81. 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.

82. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn within a reasonable time after it was first received from the drawer, or before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

83. Subject to the provisions of section 35, a cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

84. A negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

85. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, or, 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.

86. 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 marker, 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 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 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;

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

87. 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 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.

88. Subject to the provisions of section 92, 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.

89. 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 and from the date of the instrument, 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.

90. When no rate of interest is specified in the instrument, interest on the amount thereof 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.

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.

91. 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.

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

(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;

(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;

(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.

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

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

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

96. If the holder of a bill of exchange acquiesces in a conditional 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 is not signed by all the drawees (not being partners) all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

97. Save as provided in sections 20, 57, 96 and 131, any material alteration of a negotiable instrument renders the same void as against any party thereto at the time, and not consenting to such alteration, unless such alteration was made in order to carry out the common intention of the original parties.

Explanation.—The following are material alterations within the meaning of this section, namely: an alteration of date, amount, or of time or place of payment; the insertion in the body of the instrument of words authorising the transfer thereof, or stating the value thereof to have been received on a particular account; the addition of a name as that of a maker or drawer; obliteration of, addition to, or alteration of, the crossing of a cheque.

98. Save as provided in sections 20, 57, 96 and 131, any such alteration as is mentioned in section 97, if made by an indorsee, discharges his indorser from all liability to him in respect of the instrument or the consideration thereof.

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

100. 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 so paying from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

101. 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.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

102. 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.

103. 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.

104. Notice of dishonour may be given to a duly authorised 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 sent by post and miscarries, such miscarriage does not render the notice invalid.

105. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to

such party within a reasonable time, unless such party otherwise receives due notice as provided by section 103.

106. 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.

107. 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.

108. 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.

109. 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.

110. 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, and shall, in the absence of proof to the contrary, in a suit upon the instrument, be deemed evidence of the fact of dishonour.

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.

Contents of protest.

111. A protest under section 110 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.

112. 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.

113. 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.

CHAPTER X.

OF REASONABLE TIME.

114. 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.

115. Presentment is made within a reasonable time within the meaning of sections 71, 82, 83, and 84, if it is made on the business day next after that on which the holder received the bill, negotiable instrument or cheque

referred to, or when there is no more delay than is occasioned by the residence of the parties to the bill, negotiable instrument or cheque in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

116. 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 after its despatch in time to reach its destination on the day next after the day of dishonour.

117. 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.

118. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

119. 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.

120. 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.

121. 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.

122. 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.

123. 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.

CHAPTER XII.

OF COMPENSATION.

124. 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.

OF FOREIGN BILLS.

125. Foreign 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 is liable on each part as if it were a separate bill.

126. 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.

127. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

128. 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 XIV.

OF CROSSED CHEQUES.

129. 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.

130. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

131. 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.

132. 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.

133. 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.

134. 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.

135. 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.

136. 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.

But a banker who has in good faith and without negligence received payment from 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 INTERNATIONAL LAW.

137. 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.

Illustrations.

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.

138. 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.

139. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with its law. 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.

140. Until the contrary is proved, 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.

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,

Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 4th July 1878.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following second 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 20th June 1878:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the

- From Secretary to Chief Commissioner, Mysore, No. 7915-7 J., dated 5th December 1877, and enclosure.
 „ Secretary to Chief Commissioner, Mysore, No. 7998-8 J., dated 10th December 1877, and enclosures.
 „ Chairman, Madras Chamber of Commerce, to Honourable Whitley Stokes, dated 20th December 1877.
 „ Secretary to Government, North-Western Provinces and Oudh, No. 803A, dated 24th December 1877.
 „ Secretary to Government of Bengal, No. 24, dated 3rd January 1878, and enclosures.
 „ Secretary to Chief Commissioner, Assam, No. 37, dated 8th January 1878, and enclosures.
 „ Officiating Secretary to Chief Commissioner, Central Provinces, No. 172-5, dated 17th January 1878, and enclosures.
 Memorial of the British Indian Association, dated 17th January 1878.
 From Chief Secretary to Government, Fort St. George, No. 89, dated 15th January 1878, and enclosures.
 „ Secretary to Chief Commissioner, British Burma, No. 159-51, dated 26th January, 1878, and enclosures.
 Observations by C. J. Wilkinson, Esq., Recorder of Rangoon, dated 6th February 1878.
 From Under-Secretary to Government, Bombay, No. 991, dated 14th February 1878, and enclosures.
 „ Officiating Secretary to Government, Panjáb, No. 808, dated 16th February 1878, and enclosures.
 „ Secretary to Government of Bengal, No. 492, dated 21st February 1878, and enclosures.
 Note by Honourable Whitley Stokes, dated 26th February 1878.
 From Chief Secretary to Government, Fort St. George, No. 366, dated 21st February 1878, and enclosure.
 Despatch from Secretary of State, No. 3, dated 21st February 1878, forwarding Memorandum by W. Macpherson, Esq., dated 29th January 1878.
 From Under Secretary to Government, Bombay, No. 1742, dated 16th March 1878, and enclosures.
 Note to the Honourable Sir E. C. Bayley, K.C.S.I., dated 19th March 1878.
 From Lakshmi Naráyana Pandit, Pleader, High Court, North-Western Provinces, dated 22nd March 1878, and enclosure.
 „ Officiating Junior Secretary to Chief Commissioner, British Burma, No. 518-51, dated 13th April 1878, and enclosures.
 „ Judge of Small Cause Court, Agra, dated 27th May 1878.

law relating to Promissory Notes, Bills of Exchange and Cheques, was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this second report.

2. Section I. declares that "nothing in this Act applies to hundis." But when the analogy between bills and hundis is complete and there is no proof of any special usage, it has been ruled by Colvile, C. J., in *Amritram v. Damoodhur Doss* (cited 2 Hyde 261), that the English law applies.

We think that we should give effect to this ruling, and have therefore changed the words above quoted to "nothing herein contained shall affect any usage relating to any instrument in an oriental language." This change will not only save the customs of Native merchants as to hundis, but also their customs (if any such exist) as to promissory notes and cheques.

3. We have in section 4 added several illustrations of what a promissory note is not. They are founded on decided cases.

4. Section 13 provides, in accordance with the Indian Law Commissioners' draft, that a note, bill or cheque payable to a specified person or order, or "to _____ or order" is negotiable. It appears to us that, in the absence of a payee, *i.e.*, till the blank is filled up, there can be no right of action on the instrument: such right cannot therefore be assignable: the instrument, in other words, is not 'negotiable.' We have therefore omitted the phrase "to _____ or order."

5. To section 20 (as to filling up blanks in a stamped instrument) we have added a proviso that, as between the person delivering and the person receiving the instrument, nothing in excess of the amount intended by them to be paid shall be recovered.

6. We have provided (section 22), in accordance with 34 & 35 Vic., c. 74, s. 2, that the expression 'on presentment' as well as 'at sight' shall mean on demand.

7. We have stated distinctly (section 23) the law as to days of grace as follows: "Every promissory note or bill of exchange 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."

8. In section 24, we have provided for the case of a bill "after sight" accepted for honour.

9. We have altered section 26 so as to express the present practice, according to which, when a bill or note matures on a public holiday, it is deemed to be due on the next preceding business day.

10. In section 27 we have added the presumption that every negotiable instrument bearing a date was made or drawn on such date. The Evidence Act, section 114, does not quite suffice. We have struck out the clause providing that a receipt on the back of notes and bills is *prima facie* evidence of payment by the maker or acceptor. This presumption, though important in England, is so weak in India as not to be worth inserting. We have also provided that when the instrument has been stolen or originally infected by fraud, invalidity or illegality, the burthen of proving that the holder is a holder in due course lies upon him.

11. We have redrawn section 29 (now 126) thus: "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."

12. We have declared that section 38 (now 28) shall be deemed to empower a corporation to make, accept or indorse notes, bills or cheques, except in cases in which under the law for the time being in force they are so empowered.

13. We have declared (section 31) the law as to the liability of a legal representative signing his name to a note, bill or cheque.

14. We have made section 40 (now 30, as to the liability of an agent signing) agree with the Contract Act, by wording the exception thus: "except to those who induced him to sign upon the belief that the principal only would be held liable."

15. The exception to section 42 (now 33) declares, in accordance with *Mason v. Rumsey* (1 Camp 384), that "a partner may bind his firm by accepting in his own name for partnership purposes a bill drawn upon the firm." It would in this country be likely to mislead. We have therefore struck it out.

16. We have omitted section 42, as the Indian Contract Act, 1872, will of its own force extend to all contracts evidenced by bills, notes and cheques.

17. We have confined section 45 (now 35) to cheques. As a rule, bankers decline to accept bills except in cases where they have specially agreed to do so. They cannot be expected to write off amounts from an ordinary account current to provide for acceptances.

18. Section 52 of Bill No. II applies sections 134 and 135 of the Contract Act to the relations of surtyship between parties to negotiable instruments. The result would be to extinguish the power which the holder of an accepted bill has at present to release the acceptor, reserving his right to charge the other parties. We have therefore substituted a section (42) which will save this power.

19. We have expressly confined the estoppels mentioned in sections 54 and 56 (now 44 and 45) to suits by holders in due course. We have struck out the clause (55) relating to the estoppel of the acceptor from denying the drawer's signature. The Evidence Act, section 117, should, we think, in this respect remain untouched.

20. In the case of a transfer without indorsement, section 66 of Bill No. II empowers the transferee to sue upon the instrument in his own name. We have struck out this power which is not in accordance with the present law. We have abstained from expressly empowering such a transferee to sue in the name of the transferor, as this would have involved further provisions as to indemnifying the latter, which could not fitly find their place in the present Bill.

21. Section 76 of Bill No. II declares, in accordance with American decisions, that the effect of an indorsement for part of the sum remaining due to the indorser is to give the indorsee a lien on the bill, but not to transfer a right to sue, except in the indorser's name. There can, however, be no doubt that such indorsements are not warranted by the custom of merchants, and we have substituted the clause originally framed by the Law Commissioners, namely, "65. 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 of the instrument."

22. Section 82 (now 71) provides for presentment for acceptance of bills payable at sight as well as of bills payable after sight. As "at sight" will be equivalent to "on demand," we have confined this section to the latter class of bills.

23. As foreign bills are equally with inland bills entitled to the privilege of days of grace, we have, in sections 87 and 88 (now 76 and 77) struck out the word 'inland.'

24. We have omitted section 97, as to posting instruments to be presented. It seems to us a useless provision.

25. Where interest is expressly made payable at a specified rate, we have provided in section 101 (now 89) for payment of interest in case of a suit to recover the principal sum due.

26. We have omitted section 109 as conflicting with section 110 (now 97).

27. When the drawee is incompetent to contract, we have declared (section 101) that the bill may be treated as dishonoured.

28. Section 140 (now 137) provided, in exact accordance with the Law Commissioners' draft, that the liability of the acceptor of a foreign bill should be regulated by the law of the place where he accepted the instrument and the liability of the indorser by the law of the place where he indorsed the instrument. We think that this neither agrees with the rules of international law nor the decisions of the English Courts (see, for instance, *Rouquette v. Overmann*, L. R. 10 Q. B. 525). The acceptor's liability is regulated by the law of the place of payment, and as the indorser is a surety for the acceptor, his liability is measured by that of his principal, is, in other words, regulated by the *lex loci* of performance. We have altered section 140 in accordance with these views.

29. Section 140 is a fragment of the law of evidence, just as section 87 (as to a banker's liability for negligence) is a fragment of the law of torts. But we think that these sections may conveniently stand where they are until the Evidence Act is revised and the law of torts codified.

30. We think that the provisions as to bills in sets should be confined to foreign bills, and we have consequently transferred them to Chapter XIII. We have made the sections as to crossed cheques a separate chapter and placed it near the end of the Bill.

31. We have made some verbal amendments.

32. Lastly, we have added to the schedule of repeals the two old statutes, 9 William III, c. 17, as to inland bills, and 3 & 4 Ann., c. 8, as to promissory notes.

33. We desire to acknowledge the valuable criticisms received from the Chambers of Commerce at Calcutta, Madras, Bombay and Rangoon, from Mr. William Macpherson, Secretary to the late Indian Law Commission, from Pandit Lakshmi Náráyana of Lucknow, and from Mr. Rattigan, the Government Advocate, Panjáb; and Mr. Stokes is much indebted to Sir R. Garth for some notes unofficially communicated.

34. We are well aware that the Bill does not deal exhaustively with the subject; but we believe that the Bill, the Contract Act (to which it is a supplement) and the Evidence Act will, taken together, supply rules sufficient for the disposal of the questions that ordinarily arise as to the rights of parties to negotiable instruments.

35. We, therefore, recommend that the Bill be passed as amended; but we are of opinion that it has been so altered as to render re-publication desirable. We propose that it shall not be further proceeded with until the Council re-assembles at Calcutta.

27th May 1878.

WHITLEY STOKES.
F. R. COCKERELL.
E. MORGAN.
G. H. P. EVANS.
G. C. PAUL.

No. III.

THE NEGOTIABLE INSTRUMENTS BILL, 1878.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title.
Local extent.
Saving of usages relating to hundis, &c.
Commencement.
2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. Promissory Note.
5. Bill of Exchange.
6. Cheque.

SECTION.

7. Drawer, Drawee, Acceptor, Acceptor for honour, Payee.
8. Holder.
9. Holder in due course.
10. Payment in due course.
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. Amount stated differently in figures and words.
19. Instruments payable on demand.
20. Blank stamped instruments.
21. Subscribing to alternative liability.
22. 'At sight'
'On presentment.'
'After sight'
23. Maturity.
Days of grace.
24. Date on which bill or note payable so many months after date or sight, or after a certain event, is at maturity.
25. Date on which bill or note payable so many days after date or sight, or after a certain event, is at maturity.

SECTION.

26. When day of maturity is a holiday.
27. 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 endorsements;
 - (f) as to stamp;
 - (g) that holder is a holder in due course.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

28. Capacity to make, &c., promissory notes, &c. Minor.
29. Agency.
30. Liability of agent signing.
31. Liability of legal representative signing.
32. Acceptance by several drawees not partners.
33. When partnership bound by promissory notes, &c.
34. Liability of drawer.
35. Liability of drawee of cheque.
36. Liability of maker of note and acceptor of bill.
37. Only drawee can be acceptor except in need or for honour.
38. Liability of indorser.
39. Liability of prior parties to holder in due course.
40. Maker, drawer and acceptor principals.
41. Prior party a principal in respect of each subsequent party.
42. Suretyship.
43. Discharge of indorser's liability.
44. Estoppel against denying original validity of instrument.
45. Estoppel against denying capacity of payee to indorse.
46. Estoppel against denying signature or capacity of prior party.
47. Acceptor bound although indorsement forged.
48. Acceptance of bill drawn in fictitious name.
49. Party receiving consideration liable to subsequent parties.
50. Party not liable to one from whom no consideration moved.
51. Partial absence or failure of money-consideration.
52. Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

53. Negotiation by delivery.
54. Negotiation by indorsement.
55. Transfer without indorsement.
56. Liability of transferer without indorsement.
57. Conversion of indorsement in blank into indorsement in full.
58. Effect of indorsement.
59. Negotiability may be restricted or excluded.
60. Who may negotiate.
61. Indorser who excludes his own liability or makes it conditional.
62. Holder deriving title from holder in due course.
63. Instrument indorsed in blank.
64. Conversion of indorsement in blank into indorsement in full.

SECTION.

65. Indorsement for part of sum due.
66. Collateral agreements.
67. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
68. Instrument obtained by unlawful means or for unlawful consideration.
69. Instrument acquired after dishonour or when overdue.
Accommodation note or bill.
70. Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

71. Presentment for acceptance.
72. Presentment of promissory note for sight.
73. Drawee's time for deliberation.
74. Presentment for payment.
75. Hours for presentment.
76. Presentment for payment of instrument after date or sight.
77. Presentment for payment of promissory note payable by instalments.
78. Presentment for payment of instrument payable at specified place and not elsewhere.
79. Instrument payable at specified place.
80. Presentment where no exclusive place specified.
81. Presentment when maker, &c., has no known place of business or residence.
82. Presentment of cheque to charge drawer.
83. Presentment of cheque to charge any other person.
84. Presentment of instrument payable on demand.
85. Presentment by or to agent, representative of deceased, or assignee of insolvent.
86. When presentment unnecessary.
87. Liability of banker for negligently dealing with bill presented for acceptance.

CHAPTER VI.

OF PAYMENT AND INTEREST.

88. To whom payment should be made.
89. Interest when rate specified.
90. Interest when no rate specified.
91. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

92. Discharge from liability:
 - (a) by cancellation;
 - (b) by release;
 - (c) by payment.
93. Discharge by allowing drawee more than twenty-four hours to accept.
94. When cheque not duly presented and drawer damaged thereby.
95. Cheque payable to order.
96. Parties not consenting discharged by conditional or limited acceptance.
97. Effect of material alteration.
98. Alteration by indorsee.

SECTION.

99. Acceptor or indorser bound notwithstanding previous alteration.
100. Payment of instrument on which alteration is not apparent.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

101. Dishonour by non-acceptance.
102. Dishonour by non-payment.
103. By and to whom notice should be given.
104. Mode in which notice may be given.
105. Party receiving must transmit notice of dishonour.
106. Agent for presentment.
107. When party to whom notice given is dead.
108. When notice of dishonour is unnecessary.

CHAPTER IX.

OF NOTING AND PROTEST.

109. Noting.
110. Protest.
110. Protest for better security.
111. Contents of protest.
112. Notice of protest.
113. Protest for non-payment after dishonour by non-acceptance.

CHAPTER X.

OF REASONABLE TIME.

114. Reasonable time.
115. Reasonable time for presentment.
116. Reasonable time for giving notice of dishonour.
117. Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

118. Acceptance for honour.
119. Acceptance not specifying for whose honour it is made.
120. Liability of acceptor for honour.
121. When acceptor for honour may be charged.
122. Payment for honour.
123. Right of payer for honour.

CHAPTER XII.

OF COMPENSATION.

124. Rules as to compensation.

CHAPTER XIII.

OF FOREIGN BILLS.

125. Set of bills.
126. Holder of first acquired part entitled to all.
127. Drawee in case of need.
128. Protest of foreign bills.

SECTION.

CHAPTER XIV.

OF CROSSED CHEQUES.

129. Cheque crossed generally.
130. Cheque crossed specially.
131. Crossing after issue.
132. Payment of cheque crossed generally.
132. Payment of cheque crossed specially.
133. Payment of cheque crossed specially more than once.
134. Payment in due course of crossed cheque.
135. Payment of crossed cheque out of due course.
136. Cheque bearing "not negotiable."

CHAPTER XV.

OF INTERNATIONAL LAW.

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

SCHEDULE.

No. III.

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, 1878."
Short title.
It extends to the whole of British India; but nothing herein contained affects any usage relating to any instrument in an oriental language.
Local extent.
Saving of usages relating to hundis, &c.
Commencement.
And it shall come into force on the first day of January, 1879.
2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.
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.

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 person ascertainable when such undertaking is made, 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 promise to account with B or order for Rs. 500 value received by me."
 (c) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."
 (d) "Mr. B, I O U Rs. 1,000."
 (e) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
 (f) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
 (g) "I promise to pay B Rs. 500 seven days after my marriage with C."
 (h) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
 (i) I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a), (b) and (c) are promissory notes. The instruments respectively marked (d), (e), (f), (g), (h) and (i) 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 person ascertainable when such order is given or to the bearer of the instrument.

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 the bill gives the name of any person 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

"Acceptor."

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 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, for consideration 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.

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

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.

14. When 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.

15. When the maker or holder of negotiable instrument signs the same, otherwise than as Indorsement. 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."

16. If the indorser signs his name only, the Indorsement "in blank" and "in full." indorsement is said to be "in blank," and if he adds a direction to pay the whole or any part of 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.

17. Where an instrument may be construed Ambiguous instruments. 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.

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

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

20. Where a stamped paper, which is intended Blank stamped instrument. to be completed as a negotiable instrument, is signed and delivered by a competent person as maker, drawer, acceptor or indorser, the holder thereof may complete the same by filling up any blanks therein, and the person so signing shall be liable upon such instrument, in the capacity in which he signed the same, for any amount which may be specified therein not exceeding the amount covered by the stamp thereon: provided that as between the person delivering and the person receiving the instrument nothing in excess of the amount intended by them to be paid shall be recovered.

Illustration.

A stamped paper intended to be completed as a negotiable instrument is made payable to " or order:" the holder of such instrument may fill up the blank with his own name, or that of any other person.

21. Where a promissory note is signed by two Subscribing to alternative liability. persons, and it appears on the face of it that one of them subscribes only to an alternative liability, such one is not liable on the note as maker, but is liable as guaranteeing its payment by the maker.

22. In a promissory note or bill of exchange the expressions "at 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 protest for non-acceptance.

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

Every promissory note or bill of exchange, other than a promissory note or bill of exchange Days of grace. 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.

24. 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 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 1877 is made payable at one month after date. The month terminates on the 28th February 1877.

(b) A negotiable instrument dated 30th August 1877 is made payable three months after date. The three months terminate on the 30th November 1877.

(c) A promissory note or bill of exchange, dated 31st August 1877, is made payable three months after date. The three months terminate on the 30th November 1877.

25. 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 on which the event happens, shall be excluded.

26. When the day on which 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.

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.

27. Until the contrary is proved, the following presumptions as to negotiable instruments; ing 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 as to date; a date was made or drawn on such date:

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

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

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

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

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

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

28. Every person capable of contracting, according to the law to Capacity to make, &c., promissory notes, &c., 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.

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.

29. Every person capable of binding himself or of being bound, as Agency. mentioned in section 28, may so bind himself or be bound by a duly authorized agent acting in his name.

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.

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

30. 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.

31. A legal representative 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.

32. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but one of them can accept it for another without his authority.

33. When it is within the scope of the business of a partnership to make, draw, accept, indorse or negotiate promissory notes, bills of exchange or cheques, any partner may bind his firm by making, drawing, accepting, indorsing or negotiating such instruments in the name of his firm, but not otherwise.

34. 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 for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

35. 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.

36. 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.

The provisions of this section are subject to those of sections 28, 30, 50, 51, 52, 68, 74, 78, 79 and 92.

37. No person except the drawee of a bill of exchange, or all or some of several joint 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.

38. 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.

The provisions of this section are subject to those of sections 28, 30, 50, 51, 52, 64, 65, 68, 71, 72, 74, 78, 82, 92, 93, 94, 96, 97 and 108, clause, (a).

39. 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.

40. 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 any 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.

41. 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.

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.

42. 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

Suretyship.

VI.—14 c

parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

43. The indorser of a negotiable instrument is not discharged from his liability thereupon by the holder having merely forborne to sue a prior party; but where the holder, 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.

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.

44. 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.

Estoppel against denying original validity of instrument.

45. 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.

Estoppel against denying capacity of payee to indorse.

46. 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.

Estoppel against denying signature or capacity of prior party.

47. 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.

Acceptor bound, although indorsement forged.

48. 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 claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

49. If at any time there has been consideration between any parties to a negotiable instrument for the making, drawing, acceptance, in-

Party receiving consideration liable to subsequent parties.

dorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

The provisions of this section are subject to those of sections 28, 51, 52, 56, 64, 71, 72, 74, 78, 79, 82, 92, 93, 94, 95, 96, 97 and 98.

Illustrations.

(a.) A indorses a bill of exchange to B, at the request of C, for C's account with B. B is a holder of the bill for consideration, and if he indorses it as a present to D, D is a holder for consideration.

(b.) A, the holder of a negotiable instrument, indorses it in full to B, in the belief that B has done something which he has not done. B, for consideration proceeding from C, indorses the instrument in blank to C and C indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration.

50. When there was no consideration for the

Party not liable to one making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration from whom no consideration moved.

has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through such party, unless consideration moved from the claimant or from some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the amount due thereon.

51. 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.

Partial absence or failure of money-consideration.

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.

52. 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,

Partial failure of consideration not consisting of money.

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.

53. Subject to the provisions of section 68, 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 the hands of a holder for value without notice) 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.

54. Subject to the provisions of section 68, 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.

Negotiation by indorsement.

55. If the holder of such an instrument as mentioned in section 54, transfers it to another person without indorsing it, but with intent to transfer his title thereto, the transferee acquires by such delivery all the rights which the transferor had as holder except the right of negotiation.

56. If such transfer, as mentioned in section 55, is made for consideration to a person having no sufficient cause to believe in the existence of any matter affecting the validity of the instrument or of the transfer thereof, and the instrument is thereafter avoided as against any party on account of matters prior to the transfer, the transferor is bound to return to the transferee the consideration received, provided that such return is claimed within a reasonable time.

Liability of transfer or without indorsement.

57. 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.

Conversion of indorsement in blank into indorsement in full.

58. 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, be restrained to a transfer of the property without 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.

59. The indorser of a negotiable instrument may, by express words in the indorsement, restrict or exclude the right of the indorsee to negotiate the instrument, although the instrument was, at the time of such words being written, payable to the bearer thereof.

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.

60. 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 59, 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.

61. 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.

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 re-instated in his former rights but has the rights of an indorsee against B and C.

62. 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.

63. Subject to the provisions of sections 132 and 133, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

64. 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.

65. 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 of the instrument.

66. No agreement between any parties to a negotiable instrument which is not expressed thereon, or which is collateral thereto, is binding upon any other holder thereof for consideration, or upon any holder deriving title from a holder for consideration.

Illustration.

A person who is a creditor of A signs, as acceptor, a bill of exchange in A's favour for 3,000 rupees. A being the holder indorses it for value to B, who is aware that the acceptor was a creditor of A. A's debt to the acceptor cannot be set off against B's claim on the bill.

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

68. 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.

69. 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 be-
 Accommodation note or comes the holder, after
 bill. maturity of a promissory
 note or bill of exchange made, drawn or accept-
 ed without consideration for the purpose of en-
 abling 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 ac-
 cepted 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 matu-
 rity, the drawer sold the goods and retained the pro-
 ceeds, but indorsed the bill to A. A's title is subject
 to the same objection as the drawer's title.

70. A negotiable instrument may be negotiat-
 ed (except by the maker,
 Instrument negotiable till drawee or acceptor after
 payment or satisfaction. 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.

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

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 has absconded,
 the bill is dishonoured.

72. A promissory note, payable at a certain
 period after sight, must
 Presentment of promis- be presented to the maker
 sory note for sight. thereof for sight, 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 pre-
 sentment no party thereto is liable thereon to the
 person making such default.

73. The drawee of a bill of exchange present-
 ed to him for acceptance
 Drawee's time for deli- may retain the same until
 beration. the end of twenty-four
 hours, or until the next
 post to the holder, whichever first happens, to
 consider whether he will accept it.

Explanation.—In calculating the twenty-four
 hours mentioned in this section, public holidays
 shall be excluded.

74. Promissory notes, bills of exchange and
 cheques must be present-
 ment. ed 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.

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

75. Presentment for payment must be made
 during the usual hours of
 Hours for presentment. business, and, if at a
 banker's, within banking hours.

76. A promissory note or bill of exchange,
 made payable at a specifi-
 Presentment for pay- ed period after date or
 ment of instrument pay- sight thereof, must be
 able after date or sight. presented for payment
 at maturity.

77. A promissory note payable by instalments
 must be presented for
 Presentment for pay- payment on the third day
 ment of promissory note after the date fixed for
 payable by instalments. payment of each instal-
 ment; and non-payment on such presentment
 has the same effect as non-payment of a note at
 maturity.

78. A promissory note, bill of exchange or
 cheque made, drawn or
 Presentment for pay- accepted payable at a
 ment of instrument pay- specified place and not
 able at specified place and elsewhere must, in order
 not elsewhere. to charge any party
 thereto, be presented for payment at that place.

79. A promissory note or bill of exchange
 made, drawn or accepted
 Instrument payable at payable at a specified
 specified place. place must, in order to
 charge the maker, or
 drawer thereof, be presented for payment at that
 place.

80. A promissory note or bill of exchange, not
 made payable as mention-
 Presentment where no ed in sections 78 and 79,
 exclusive place specified. must be presented for
 payment at one of the places specified (if any),
 or at the place of business (if any), or at the
 usual residence, of the maker, drawee or acceptor
 thereof, as the case may be.

81. If the maker, drawee or acceptor of a
 negotiable instrument
 Presentment when maker, has no known place of
 &c., has no known place of business or fixed resi-
 business or residence. dence, 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.

CHAPTER VI.

OF PAYMENT AND INTEREST.

82. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn within a reasonable time after it was first received from the drawer, or before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

83. Subject to the provisions of section 35, a cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

84. A negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

85. 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.

Presentment by or to agent representative of deceased, or assignee of insolvent.

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

When presentment unnecessary.

(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 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 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;

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

87. 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 keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for acceptance.

88. Subject to the provisions of section 92, 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.

To whom payment should be made.

89. 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 and from the date of the instrument, 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.

Interest when rate specified.

90. When no rate of interest is specified in the instrument, interest on the amount thereof 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.

Interest when no rate specified.

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.

91. 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.

Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

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

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

(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;

(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.

by payment.

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

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

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

96. If the holder of a bill of exchange acquiesces in a conditional 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 is not signed by all the drawees (not being partners) all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

97. Save as provided in sections 20, 57, 96 and 131, any material alteration of a negotiable instrument renders the same void as against any party thereto at the time, and not consenting to such alteration, unless such alteration was made in order to carry out the common intention of the original parties.

Explanation.—The following are material alterations within the meaning of this section, namely: an alteration of date, amount, or of time or place of payment; the insertion in the body of the instrument of words authorising the transfer thereof, or stating the value thereof to have been received on a particular account; the addition of a name as that of a maker or drawer; obliteration of, addition to, or alteration of, the crossing of a cheque.

98. Save as provided in sections 20, 57, 96 and 131, any such alteration as is mentioned in section 97, if made by an indorsee, discharges his indorser from all liability to him in respect of the instrument or the consideration thereof.

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

100. 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 so paying from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

101. 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.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

102. 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.

103. 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.

104. Notice of dishonour may be given to a duly authorised 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 sent by post and miscarries, such miscarriage does not render the notice invalid.

105. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to

such party within a reasonable time, unless such party otherwise receives due notice as provided by section 103.

106. 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.

107. 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.

108. 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.

109. 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.

110. 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, and shall, in the absence of proof to the contrary, in a suit upon the instrument, be deemed evidence of the fact of dishonour.

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.

Contents of protest.

111. A protest under section 110 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.

112. 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.

113. 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.

CHAPTER X.

OF REASONABLE TIME.

114. 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.

115. Presentment is made within a reasonable time within the meaning of sections 71, 82, 83 and 84, if it is made on the business day next after that on which the holder received the bill, negotiable instrument or cheque

referred to, or when there is no more delay than is occasioned by the residence of the parties to the bill, negotiable instrument or cheque in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

116. 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.

117. 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.

118. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

119. 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.

120. 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.

121. 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.

122. 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.

123. 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.

CHAPTER XII.

OF COMPENSATION.

124. 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.

OF FOREIGN BILLS.

125. Foreign 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 is liable on each part as if it were a separate bill.

126. 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.

127. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

128. 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 XIV.

OF CROSSED CHEQUES.

129. 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.

130. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

131. 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.

132. 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.

133. 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.

134. 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.

135. 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.

A person taking a cheque crossed generally or specially, bearing "not negotiable" 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.

But a banker who has in good faith and without negligence received payment from 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 INTERNATIONAL LAW.

137. 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.

Illustrations.

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.

138. 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.

139. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with its law. 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.

140. Until the contrary is proved, 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.

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,

Secy. to the Govt. of India.

12-7-78
[Published with the "Bombay Government Gazette" on the 11th July 1878.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following second 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 20th June 1878:—

We, the undersigned Members of the Select Committee to which the Bill to define and amend the

- From Secretary to Chief Commissioner, Mysore, No. 7915-7 J., dated 5th December 1877, and enclosure.
- „ Secretary to Chief Commissioner, Mysore, No. 7998-8 J., dated 10th December 1877, and enclosures.
- „ Chairman, Madras Chamber of Commerce, to Honourable Whitley Stokes, dated 20th December 1877.
- „ Secretary to Government, North-Western Provinces and Oudh, No. 803A, dated 24th December 1877.
- „ Secretary to Government of Bengal, No. 24, dated 3rd January 1878, and enclosures.
- „ Secretary to Chief Commissioner, Assam, No. 37, dated 8th January 1878, and enclosures.
- „ Officiating Secretary to Chief Commissioner, Central Provinces, No. 172-5, dated 17th January 1878, and enclosures.
- Memorial of the British Indian Association, dated 17th January 1878.
- From Chief Secretary to Government, Fort St. George, No. 89, dated 15th January 1878, and enclosures.
- „ Secretary to Chief Commissioner, British Burma, No. 159-51, dated 26th January 1878, and enclosures.
- Observations by C. J. Wilkinson, Esq., Recorder of Rangoon, dated 6th February 1878.
- From Under-Secretary to Government, Bombay, No. 991, dated 14th February 1878, and enclosures.
- „ Officiating Secretary to Government, Panjáb, No. 808, dated 16th February 1878, and enclosures.
- „ Secretary to Government of Bengal, No. 492, dated 21st February 1878, and enclosures.
- Note by Honourable Whitley Stokes, dated 26th February 1878.
- From Chief Secretary to Government, Fort St. George, No. 366, dated 21st February 1878, and enclosure.
- Despatch from Secretary of State, No. 3, dated 21st February 1878, forwarding Memorandum by W. Macpherson, Esq., dated 29th January 1878.
- From Under Secretary to Government, Bombay, No. 1742, dated 16th March 1878, and enclosures.
- Note to the Honourable Sir E. C. Bayley, K.C.S.I., dated 19th March 1878.
- From Lakshmi Naráyana Pandit, Pleader, High Court, North-Western Provinces, dated 22nd March 1878, and enclosure.
- „ Officiating Junior Secretary to Chief Commissioner, British Burma, No. 518-51, dated 13th April 1878, and enclosures.
- „ Judge of Small Cause Court, Agra, dated 27th May 1878.

law relating to Promissory Notes, Bills of Exchange and Cheques, was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this second report.

2. Section I. declares that "nothing in this Act applies to hundis." But when the analogy between bills and hundis is complete and there is no proof of any special usage, it has been ruled by Colville, C. J., in *Amritram v. Damoodhur Doss* (cited 2 Hyde 261), that the English law applies.

We think that we should give effect to this ruling, and have therefore changed the words above quoted to "nothing herein contained shall affect any usage relating to any instrument in an oriental language." This change will not only save the customs of Native merchants as to hundis, but also their customs (if any such exist) as to promissory notes and cheques.

3. We have in section 4 added several illustrations of what a promissory note is not. They are founded on decided cases.

4. Section 13 provides, in accordance with the Indian Law Commissioners' draft, that a note, bill or cheque payable to a specified person or order, or "to _____ or order" is negotiable. It appears to us that, in the absence of a payee, *i.e.*, till the blank is filled up, there can be no right of action on the instrument: such right cannot therefore be assignable: the instrument, in other words, is not 'negotiable.' We have therefore omitted the phrase "to _____ or order."

5. To section 20 (as to filling up blanks in a stamped instrument) we have added a proviso that, as between the person delivering and the person receiving the instrument, nothing in excess of the amount intended by them to be paid shall be recovered.

6. We have provided (section 22), in accordance with 34 & 35 Vic., c. 74, s. 2, that the expression 'on presentment' as well as 'at sight' shall mean on demand.

7. We have stated distinctly (section 23) the law as to days of grace as follows: "Every promissory note or bill of exchange 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."

8. In section 24, we have provided for the case of a bill "after sight" accepted for honour.

9. We have altered section 26 so as to express the present practice, according to which, when a bill or note matures on a public holiday, it is deemed to be due on the next preceding business day.

10. In section 27 we have added the presumption that every negotiable instrument bearing a date was made or drawn on such date. The Evidence Act, section 114, does not quite suffice. We have struck out the clause providing that a receipt on the back of notes and bills is *prima facie* evidence of payment by the maker or acceptor. This presumption, though important in England, is so weak in India as not to be worth inserting. We have also provided that when the instrument has been stolen or originally infected by fraud, invalidity or illegality, the burthen of proving that the holder is a holder in due course lies upon him.

11. We have redrawn section 29 (now 126) thus: "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."

12. We have declared that section 38 (now 28) shall be deemed to empower a corporation to make, accept or indorse notes, bills or cheques, except in cases in which under the law for the time being in force they are so empowered.

13. We have declared (section 31) the law as to the liability of a legal representative signing his name to a note, bill or cheque.

14. We have made section 40 (now 30, as to the liability of an agent signing) agree with the Contract Act, by wording the exception thus: "except to those who induced him to sign upon the belief that the principal only would be held liable."

15. The exception to section 42 (now 33) declares, in accordance with *Mason v. Rumsey* (1 Camp. 384), that "a partner may bind his firm by accepting in his own name for partnership purposes a bill drawn upon the firm." It would in this country be likely to mislead. We have therefore struck it out.

16. We have omitted section 42, as the Indian Contract Act, 1872, will of its own force extend to all contracts evidenced by bills, notes and cheques.

17. We have confined section 45 (now 35) to cheques. As a rule, bankers decline to accept bills except in cases where they have specially agreed to do so. They cannot be expected to write off amounts from an ordinary account current to provide for acceptances.

18. Section 52 of Bill No. II applies sections 134 and 135 of the Contract Act to the relations of suretyship between parties to negotiable instruments. The result would be to extinguish the power which the holder of an accepted bill has at present to release the acceptor, reserving his right to charge the other parties. We have therefore substituted a section (42) which will save this power.

19. We have expressly confined the estoppels mentioned in sections 54 and 56 (now 44 and 45) to suits by holders in due course. We have struck out the clause (55) relating to the estoppel of the acceptor from denying the drawer's signature. The Evidence Act, section 117, should, we think, in this respect remain untouched.

20. In the case of a transfer without indorsement, section 66 of Bill No. II empowers the transferee to sue upon the instrument in his own name. We have struck out this power which is not in accordance with the present law. We have abstained from expressly empowering such a transferee to sue in the name of the transferor, as this would have involved further provisions as to indemnifying the latter, which could not fitly find their place in the present Bill.

21. Section 76 of Bill No. II declares, in accordance with American decisions, that the effect of an indorsement for part of the sum remaining due to the indorser is to give the indorsee a lien on the bill, but not to transfer a right to sue, except in the indorser's name. There can, however, be no doubt that such indorsements are not warranted by the custom of merchants, and we have substituted the clause originally framed by the Law Commissioners, namely, "65. 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 of the instrument."

22. Section 82 (now 71) provides for presentment for acceptance of bills payable at sight as well as of bills payable after sight. As "at sight" will be equivalent to "on demand," we have confined this section to the latter class of bills.

23. As foreign bills are equally with inland bills entitled to the privilege of days of grace, we have, in sections 87 and 88 (now 76 and 77) struck out the word 'inland.'

24. We have omitted section 97, as to posting instruments to be presented. It seems to us a useless provision.

25. Where interest is expressly made payable at a specified rate, we have provided in section 101 (now 89) for payment of interest in case of a suit to recover the principal sum due.

26. We have omitted section 109 as conflicting with section 110 (now 97).

27. When the drawee is incompetent to contract, we have declared (section 101) that the bill may be treated as dishonoured.

28. Section 140 (now 137) provided, in exact accordance with the Law Commissioners' draft, that the liability of the acceptor of a foreign bill should be regulated by the law of the place where he accepted the instrument and the liability of the indorser by the law of the place where he indorsed the instrument. We think that this neither agrees with the rules of international law nor the decisions of the English Courts (see, for instance, *Rouquette v. Overmann*, L. R. 10 Q. B. 525). The acceptor's liability is regulated by the law of the place of payment, and as the indorser is a surety for the acceptor, his liability is measured by that of his principal, is, in other words, regulated by the *lex loci* of performance. We have altered section 140 in accordance with these views.

29. Section 140 is a fragment of the law of evidence, just as section 87 (as to a banker's liability for negligence) is a fragment of the law of torts. But we think that these sections may conveniently stand where they are until the Evidence Act is revised and the law of torts codified.

30. We think that the provisions as to bills in sets should be confined to foreign bills, and we have consequently transferred them to Chapter XIII. We have made the sections as to crossed cheques a separate chapter and placed it near the end of the Bill.

31. We have made some verbal amendments.

32. Lastly, we have added to the schedule of repeals the two old statutes, 9 William III, c. 17, as to inland bills, and 3 & 4 Ann., c. 8, as to promissory notes.

33. We desire to acknowledge the valuable criticisms received from the Chambers of Commerce at Calcutta, Madras, Bombay and Rangoon, from Mr. William Macpherson, Secretary to the late Indian Law Commission, from Pandit Lakshmi Náráyana of Lucknow, and from Mr. Rattigan, the Government Advocate, Panjáb; and Mr. Stokes is much indebted to Sir R. Garth for some notes unofficially communicated.

34. We are well aware that the Bill does not deal exhaustively with the subject; but we believe that the Bill, the Contract Act (to which it is a supplement) and the Evidence Act will, taken together, supply rules sufficient for the disposal of the questions that ordinarily arise as to the rights of parties to negotiable instruments.

35. We, therefore, recommend that the Bill be passed as amended; but we are of opinion that it has been so altered as to render republication desirable. We propose that it shall not be further proceeded with until the Council re-assembles at Calcutta.

27th May 1878.

WHITLEY STOKES.
F. R. COCKERELL.
E. MORGAN.
G. H. P. EVANS.
G. C. PAUL.

No. III.

THE NEGOTIABLE INSTRUMENTS BILL, 1878.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title.
2. Local extent.
3. Saving of usages relating to hundis, &c.
4. Commencement.
5. Repeal of enactments.
6. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. Promissory Note.
5. Bill of Exchange.
6. Cheque.

SECTION.

7. Drawer, Drawee, Acceptor, Acceptor for honour, Payee.
8. Holder.
9. Holder in due course.
10. Payment in due course.
11. Inland instrument.
12. Foreign instrument.
13. Negotiable instrument.
14. Negotiation.
15. Indorsement.
16. Indorsement in blank and in full.
17. Indorsee.
18. Ambiguous instruments.
19. Amount stated differently in figures and words.
20. Instruments payable on demand.
21. Blank stamped instruments.
22. Subscribing to alternative liability.
23. 'At sight'
24. 'On presentment.'
25. 'After sight'
26. Maturity.
27. Days of grace.
28. Date on which bill or note payable [so many months after date or sight, or after a certain event, is at maturity.
29. Date on which bill or note payable so many days after date or sight, or after a certain event, is at maturity.

SECTION.

26. When day of maturity is a holiday.
27. 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 endorsements;
 - (f) as to stamp;
 - (g) that holder is a holder in due course.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

28. Capacity to make, &c., promissory notes, &c. Minor.
29. Agency.
30. Liability of agent signing.
31. Liability of legal representative signing.
32. Acceptance by several drawees not partners.
33. When partnership bound by promissory notes, &c.
34. Liability of drawer.
35. Liability of drawee of cheque.
36. Liability of maker of note and acceptor of bill.
37. Only drawee can be acceptor except in need or for honour.
38. Liability of indorser.
39. Liability of prior parties to holder in due course.
40. Maker, drawer and acceptor principals.
41. Prior party a principal in respect of each subsequent party.
42. Suretyship.
43. Discharge of indorser's liability.
44. Estoppel against denying original validity of instrument.
45. Estoppel against denying capacity of payee to indorse.
46. Estoppel against denying signature or capacity of prior party.
47. Acceptor bound although indorsement forged.
48. Acceptance of bill drawn in fictitious name.
49. Party receiving consideration liable to subsequent parties.
50. Party not liable to one from whom no consideration moved.
51. Partial absence or failure of money-consideration.
52. Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

53. Negotiation by delivery.
54. Negotiation by indorsement.
55. Transfer without indorsement.
56. Liability of transferer without indorsement.
57. Conversion of indorsement in blank into indorsement in full.
58. Effect of indorsement.
59. Negotiability may be restricted or excluded.
60. Who may negotiate.
61. Indorser who excludes his own liability or makes it conditional.
62. Holder deriving title from holder in due course.
63. Instrument indorsed in blank.
64. Conversion of indorsement in blank into indorsement in full.

SECTION.

65. Indorsement for part of sum due.
66. Collateral agreements.
67. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
68. Instrument obtained by unlawful means or for unlawful consideration.
69. Instrument acquired after dishonour or when overdue.
Accommodation note or bill.
70. Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

71. Presentment for acceptance.
72. Presentment of promissory note for sight.
73. Drawee's time for deliberation.
74. Presentment for payment.
75. Hours for presentment.
76. Presentment for payment of instrument after date or sight.
77. Presentment for payment of promissory note payable by instalments.
78. Presentment for payment of instrument payable at specified place and not elsewhere.
79. Instrument payable at specified place.
80. Presentment where no exclusive place specified.
81. Presentment when maker, &c., has no known place of business or residence.
82. Presentment of cheque to charge drawer.
83. Presentment of cheque to charge any other person.
84. Presentment of instrument payable on demand.
85. Presentment by or to agent, representative of deceased, or assignee of insolvent.
86. When presentment unnecessary.
87. Liability of banker for negligently dealing with bill presented for acceptance.

CHAPTER VI.

OF PAYMENT AND INTEREST.

88. To whom payment should be made.
89. Interest when rate specified.
90. Interest when no rate specified.
91. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

92. Discharge from liability:
 - (a) by cancellation;
 - (b) by release;
 - (c) by payment.
93. Discharge by allowing drawee more than twenty-four hours to accept.
94. When cheque not duly presented and drawer damaged thereby.
95. Cheque payable to order.
96. Parties not consenting discharged by conditional or limited acceptance.
97. Effect of material alteration.
98. Alteration by indorsee.

SECTION.

99. Acceptor or indorser bound notwithstanding previous alteration.
100. Payment of instrument on which alteration is not apparent.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

101. Dishonour by non-acceptance.
102. Dishonour by non-payment.
103. By and to whom notice should be given.
104. Mode in which notice may be given.
105. Party receiving must transmit notice of dishonour.
106. Agent for presentment.
107. When party to whom notice given is dead.
108. When notice of dishonour is unnecessary.

CHAPTER IX.

OF NOTING AND PROTEST.

109. Noting.
110. Protest.
Protest for better security.
111. Contents of protest.
112. Notice of protest.
113. Protest for non-payment after dishonour by non-acceptance.

CHAPTER X.

OF REASONABLE TIME.

114. Reasonable time.
115. Reasonable time for presentment.
116. Reasonable time for giving notice of dishonour.
117. Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

118. Acceptance for honour.
119. Acceptance not specifying for whose honour it is made.
120. Liability of acceptor for honour.
121. When acceptor for honour may be charged.
122. Payment for honour.
123. Right of payer for honour.

CHAPTER XII.

OF COMPENSATION.

124. Rules as to compensation.

CHAPTER XIII.

OF FOREIGN BILLS.

125. Set of bills.
126. Holder of first acquired part entitled to all.
127. Drawee in case of need.
128. Protest of foreign bills.

VI.—14 g

SECTION.

CHAPTER XIV.

OF CROSSED CHEQUES.

129. Cheque crossed generally.
130. Cheque crossed specially.
131. Crossing after issue.
132. Payment of cheque crossed generally.
Payment of cheque crossed specially.
133. Payment of cheque crossed specially more than once.
134. Payment in due course of crossed cheque.
135. Payment of crossed cheque out of due course.
136. Cheque bearing "not negotiable."

CHAPTER XV.

OF INTERNATIONAL LAW.

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

SCHEDULE.

No. III.

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, 1878."
Short title.
It extends to the whole of British India; but nothing herein contained affects any usage relating to any instrument in an oriental language.
Local extent.
Saving of usages relating to hundis, &c.
Commencement.
And it shall come into force on the first day of January, 1879.
2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.
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.

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 person ascertainable when such undertaking is made, 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 promise to account with B or order for Rs. 500 value received by me."
 (c) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand for value received."
 (d) "Mr. B, I O U Rs. 1,000."
 (e) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
 (f) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
 (g) "I promise to pay B Rs. 500 seven days after my marriage with C."
 (h) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
 (i) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a), (b) and (c) are promissory notes. The instruments respectively marked (d), (e), (f), (g), (h) and (i) 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 person ascertainable when such order is given or to the bearer of the instrument.

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 the bill gives the name of any person 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 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, for consideration 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.

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

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.

14. When 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.

15. When the maker or holder of 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."

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 whole or any part of 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.

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.

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.

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

20. Where a stamped paper, which is intended to be completed as a negotiable instrument, is signed and delivered by a competent person as maker, drawer, acceptor or indorser, the holder thereof may complete the same by filling up any blanks therein, and the person so signing shall be liable upon such instrument, in the capacity in which he signed the same, for any amount which may be specified therein not exceeding the amount covered by the stamp thereon: provided that as between the person delivering and the person receiving the instrument nothing in excess of the amount intended by them to be paid shall be recovered.

Illustration.

A stamped paper intended to be completed as a negotiable instrument is made payable to "or order:" the holder of such instrument may fill up the blank with his own name, or that of any other person.

21. Where a promissory note is signed by two persons, and it appears on the face of it that one of them subscribes only to an alternative liability, such one is not liable on the note as maker, but is liable as guaranteeing its payment by the maker.

22. In a promissory note or bill of exchange the expressions "at 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 protest for non-acceptance.

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

Every promissory note or bill of exchange, other than a promissory note or bill of exchange 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.

24. 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 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 1877 is made payable at one month after date. The month terminates on the 28th February 1877.

(b) A negotiable instrument dated 30th August 1877 is made payable three months after date. The three months terminate on the 30th November 1877.

(c) A promissory note or bill of exchange, dated 31st August 1877, is made payable three months after date. The three months terminate on the 30th November 1877.

25. 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 on which the event happens, shall be excluded.

26. When the day on which 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.

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.

27. Until the contrary is proved, the following presumptions as to negotiable instruments; 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 as to date; a date was made or drawn on such date:
- (c) that every accepted bill of exchange was as to time of acceptance; accepted within a reasonable time after its date and before its maturity:
- (d) that every transfer of a negotiable instrument as to time of transfer; was made before its maturity:
- (e) that the endorsements appearing upon a negotiable instrument as to order of endorsements; were made in the order in which they appear thereon:
- (f) that a lost promissory note, bill of exchange or cheque was as to stamp; duly stamped.
- (g) that the holder of a negotiable instrument that holder is a holder in due course. 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.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

28. 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.

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.

29. Every person capable of binding himself or of being bound, as Agency. mentioned in section 28, may so bind himself or be bound by a duly authorized agent acting in his name.

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.

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

30. 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.

31. A legal representative 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.

32. 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.

33. When it is within the scope of the business of a partnership to make, draw, accept, indorse or negotiate promissory notes, bills of exchange or cheques, any partner may bind his firm by making, drawing, accepting, indorsing or negotiating such instruments in the name of his firm, but not otherwise.

34. 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 for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

35. 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.

36. 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.

The provisions of this section are subject to those of sections 28, 30, 50, 51, 52, 68, 74, 78, 79 and 92.

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

38. 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.

The provisions of this section are subject to those of sections 28, 30, 50, 51, 52, 64, 65, 68, 71, 72, 74, 78, 82, 92, 93, 94, 96, 97 and 108, clause, (a).

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

40. 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 any 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.

41. 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.

42. 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.

43. The indorser of a negotiable instrument is not discharged from his liability thereupon by the holder having merely forbore to sue a prior party; but where the holder, 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.

44. 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.

45. 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.

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

47. 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.

48. 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 claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

49. If at any time there has been consideration between any parties to a negotiable instrument for the making drawing, acceptance, in

dorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

The provisions of this section are subject to those of sections 28, 51, 52, 56, 64, 71, 72, 74, 78, 79, 82, 92, 93, 94, 95, 96, 97 and 98.

Illustrations.

(a.) A indorses a bill of exchange to B, at the request of C, for C's account with B. B is a holder of the bill for consideration, and if he indorses it as a present to D, D is a holder for consideration.

(b.) A, the holder of a negotiable instrument, indorses it in full to B, in the belief that B has done something which he has not done. B, for consideration proceeding from C, indorses the instrument in blank to C and C indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration.

50. When there was no consideration for the

Party not liable to one from whom no consideration moved.

making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration

has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through such party, unless consideration moved from the claimant or from some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the amount due thereon.

51. When the consideration for which a person

Partial absence or failure of money-consideration.

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.

52. Where a part of the consideration for which

Partial failure of consideration not consisting of money.

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.

53. Subject to the provisions of section 68, Negotiation by delivery. 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) 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.

54. Subject to the provisions of section 68, a

Negotiation by indorsement.

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.

55. If the holder of such an instrument as

Transfer without indorsement.

mentioned in section 54, delivers it to another person without indorsing

it, but with intent to transfer his title thereto, the transferee acquires by such delivery all the rights which the transferor had as holder except the right of negotiation.

56. If such transfer, as mentioned in section

Liability of transfer or without indorsement.

55, is made for consideration to a person having

no sufficient cause to believe in the existence of any matter affecting the validity of the instrument or of the transfer thereof, and the instrument is thereafter avoided as against any party on account of matters prior to the transfer, the transferor is bound to return to the transferee the consideration received, provided that such return is claimed within a reasonable time.

57. The holder of a negotiable instrument

Conversion of indorsement in blank into indorsement in full.

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.

58. 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, be restrained to a transfer of the property without 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.

59. The indorser of a negotiable instrument may, by express words in the indorsement, restrict or exclude the right of the indorsee to negotiate the instrument, although the instrument was, at the time of such words being written, payable to the bearer thereof.

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.

60. 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 59, 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.

61. 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.

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 re-instated in his former rights, but has the rights of an indorsee against B and C.

62. 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.

63. Subject to the provisions of sections 132 and 133, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

64. 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.

65. 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 of the instrument.

66. No agreement between any parties to a negotiable instrument which is not expressed thereon, or which is collateral thereto, is binding upon any other holder thereof for consideration, or upon any holder deriving title from a holder for consideration.

Illustration.

A person who is a creditor of A signs, as acceptor, a bill of exchange in A's favour for 3,000 rupees. A being the holder indorses it for value to B, who is aware that the acceptor was a creditor of A. A's debt to the acceptor cannot be set off against B's claim on the bill.

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

68. 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.

69. 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.

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.

70. 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.

71. 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.

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 has absconded, the bill is dishonoured.

72. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight, 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.

73. The drawee of a bill of exchange presented to him for acceptance may retain the same until the end of twenty-four hours, or until the next post to the holder, whichever first happens, to consider whether he will accept it.

Explanation.—In calculating the twenty-four hours mentioned in this section, public holidays shall be excluded.

74. 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.

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.

75. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

76. 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.

77. 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.

78. 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.

79. 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.

80. A promissory note or bill of exchange, not made payable as mentioned in sections 78 and 79, must be presented for payment at one of the places specified (if any), or at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

81. 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.

82. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn within a reasonable time after it was first received from the drawer, or before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.
 83. Subject to the provisions of section 35, a cheque must, in order to charge any other person, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.
 84. A negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased, or assignee of insolvent.
 85. 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.

When presentment unnecessary.
 86. 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 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 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;

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

Liability of banker for negligently dealing with bill presented for acceptance.
 87. 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 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.

88. Subject to the provisions of section 92, 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.

To whom payment should be made.
 89. 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 and from the date of the instrument, 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.

Interest when rate specified.
 90. When no rate of interest is specified in the instrument, interest on the amount thereof 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.

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.

Delivery of instrument on payment, or indemnity in case of loss.
 91. 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.

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

(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;

(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;

(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.

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

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

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

96. If the holder of a bill of exchange acquiesces in a conditional 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 is not signed by all the drawees (not being partners) all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

97. Save as provided in sections 20, 57, 96 and 131, any material alteration of a negotiable instrument renders the same void as against any party thereto at the time, and not consenting to such alteration, unless such alteration was made in order to carry out the common intention of the original parties.

Explanation.—The following are material alterations within the meaning of this section, namely: an alteration of date, amount, or of time or place of payment; the insertion in the body of the instrument of words authorising the transfer thereof, or stating the value thereof to have been received on a particular account; the addition of a name as that of a maker or drawer; obliteration of, addition to, or alteration of, the crossing of a cheque.

98. Save as provided in sections 20, 57, 96 and 131, any such alteration as is mentioned in section 97, if made by an indorsee, discharges his indorser from all liability to him in respect of the instrument or the consideration thereof.

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

100. 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 so paying from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

101. 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.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

102. 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.

103. 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.

104. Notice of dishonour may be given to a duly authorised 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 sent by post and miscarries, such miscarriage does not render the notice invalid.

105. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to

such party within a reasonable time, unless such party otherwise receives due notice as provided by section 103.

106. When the instrument is deposited with an agent for presentment, the agent is entitled at 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.

107. 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.

108. 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.

109. 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.

110. 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, and shall, in the absence of proof to the contrary, in a suit upon the instrument, be deemed evidence of the fact of dishonour.

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.

111. A protest under section 110 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.

112. 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.

113. 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.

CHAPTER X.

OF REASONABLE TIME.

114. 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.

115. Presentment is made within a reasonable time within the meaning of sections 71, 82, 83 and 84, if it is made on the business day next after that on which the holder received the bill, negotiable instrument or cheque

referred to, or when there is no more delay than is occasioned by the residence of the parties to the bill, negotiable instrument or cheque in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

116. 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.

117. 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.

118. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

119. 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.

120. 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.

121. 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.

122. 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.

123. 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.

CHAPTER XII.

OF COMPENSATION.

124. 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.

OF FOREIGN BILLS.

125. Foreign 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 is liable on each part as if it were a separate bill.

126. 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.

127. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

128. 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 XIV.

OF CROSSED CHEQUES.

129. 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.

130. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

131. 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.

132. 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.

133. 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.

134. 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.

135. 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.

136. 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.

But a banker who has in good faith and without negligence received payment from 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 INTERNATIONAL LAW.

137. 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.

Illustrations.

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.

138. 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.

139. 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.

140. Until the contrary is proved, 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.

Presumption as to foreign law.

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 Anno, 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,

Secy. to the Govt. of India.