

GENERAL STATUTES

OF

MINNESOTA

1913

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160 cubic feet when thrown irregularly or loosely into a conveyance for delivery to the purchaser; and if the sale is of "sawed and split wood," a cord shall mean 120 cubic feet, when ranked, and 175 cubic feet when thrown irregularly and loosely into a conveyance for delivery. ('13 c. 560 § 5)

5796. **Standard weight of coal, charcoal and ice**—In all contracts for the sale of coal, charcoal, and ice, the term "ton" shall mean 2,000 pounds. A sale of coal, charcoal and ice, except by weight is hereby prohibited. ('13 c. 560 § 6)

5797. **Standard weight of flour**—In all contracts for the sale of flour, the term "barrel" shall mean 196 net pounds avoirdupois. ('13 c. 560 § 7)

5798. **Fractional parts**—All contracts for the sale of a fractional part of a bushel, barrel, ton or cord of any article or commodity on which the legal weight or measurement per bushel, barrel, ton or cord has been established, shall require and mean a like fractional part of the legal and established weight or measurement per bushel, barrel, ton or cord. ('13 c. 560 § 8)

5799. **Penalty for violation**—Whoever, in buying, shall take any greater number of pounds or cubic feet to the bushel, barrel, ton or cord, as the case may be, than is herein allowed and provided, or in selling, shall give any less number, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or by imprisonment for not less than ten (10) days nor more than ninety (90) days in the county jail, and the cost of such proceeding. ('13 c. 560 § 9)

5800. **Variations**—Duty of railroad and warehouse commission—The railroad and warehouse commission shall establish uniform tolerances or reasonable variation to take care of unavoidable shrinkage, and of scale variations in handling and weighing of any of the articles mentioned in this act. ('13 c. 560 § 10)

5801. **Sealing**—Every person engaged in any business requiring the use of weights or measures shall cause those used by him to be tested and sealed by the county sealer. Every person who shall buy, sell, or dispose of any goods or commodities by an unsealed weight, measure, or scale kept by him, or shall knowingly use any such weight, measure, or scale which has been sealed, but is incorrect, shall be guilty of a misdemeanor; but no contract of sale shall thereby be rendered void. (2729)¹

67-232, 69+910. Under former statute (39-143, 39+299).

5802. **Testing upon request**—Upon written request of any person aggrieved, and payment of one dollar, and mileage at the rate of twenty cents per mile going and returning, the county sealer or his deputy shall test any weights, measures, or scales used in his county, whether already sealed or not. If such sealer or deputy shall give to the person complained of prior notice of such testing, he shall be guilty of a misdemeanor. (2730)¹

5803. **Neglect to procure standards**—Whenever a county treasurer is requested in writing to procure any standard of weight or measure required by law to be kept by him, he shall procure the same within twenty days thereafter, or forfeit to the county one hundred dollars, at the suit of any interested person. (2731)¹

5804. **Fines**—All fines collected under the provisions of this chapter shall be paid to the county treasurer for the benefit of the school fund of the county where the action is brought. (2732)¹

CHAPTER 51

INTEREST AND NEGOTIABLE INSTRUMENTS

INTEREST

5805. **Rate**—The interest for any legal indebtedness shall be at the rate of six dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; and no person shall directly or indirectly take or

¹ It is suggested that this section was repealed by Laws 1911, c. 156, relating to the Department of Weights and Measures. See §§ 4611-4623, ante.

receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than ten dollars on one hundred dollars for one year; and in the computation of interest upon any bond, note, or other instrument or agreement interest shall not be compounded, but any contract to pay interest, not usurious, upon interest overdue, shall not be construed to be usury. Contracts shall bear the same rate of interest after they become due as before, and any provision in any contract, note, or instrument providing for an increase of the rate of interest after maturity, or any increase therein after making and delivery, shall work a forfeiture of the entire interest; but this provision shall not apply to notes or contracts which bear no interest before maturity. (2733)

An oral contract for interest in excess of six per cent. is void as to the excess (63-258, 65+452; 72-536, 75+744). A contract in an instrument to pay interest on interest overdue thereon is illegal (2-350, 302, 72 Am. Dec. 102; 3-339, 238; 4-51, 26; 19-67, 45; 24-267; 93-4, 100+379). But interest on overdue interest may be recovered if the contract therefor is in the form of interest coupons (25-314; 29-68, 77, 11+228; 39-122, 124, 39+74, 140; 93-4, 100+379). A contract for a greater rate of interest after maturity is illegal (3-339, 238; 3-347, 246; 22-19; 24-43; 33-144, 22+633, 53 Am. Rep. 20; 39-122, 39+74, 140; 51-485, 53+767). But such a stipulation does not render the entire contract void but simply works a forfeiture of all interest (51-485, 53+767; 62-498, 65+84). A note with no provision as to interest bears the legal rate of interest after maturity (18-429, 386). Interest is recoverable at the legal rate on a "legal indebtedness" (15-217, 169; 67-160, 69+715, 1069; 78-129, 133, 80+831). See cases under § 5807.

Cited ([C. C.] 184 Fed. 765).

5806. Usurious interest—Recovery—Every person who for any such loan or forbearance shall have paid or delivered any greater sum or value than in § 5805 allowed to be received may, by himself or his personal representatives, recover in an action against the person who shall have received the same, or his personal representatives, the full amount of interest or premium so paid, with costs, if action therefor be brought within two years after such payment or delivery: Provided, that one-half of the amount so recovered shall be paid by the officer collecting the same into the treasury of the county where collected, for the use of common schools. (2734)

53-191, 54+1062; 61-490, 492, 63+1031.

5807. Usurious contracts invalid—Exceptions—All bonds, bills, notes, mortgages, and all other contracts and securities whatsoever, and all deposits of goods, or any other thing, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action than hereinbefore prescribed, shall be void, except as to bona fide purchasers of negotiable paper, in good faith, for a valuable consideration and before maturity, as hereinafter provided. But no merely clerical error in the computation of interest, made without intent to avoid the provisions of this chapter, shall constitute usury. Interest at the rate of one-twelfth of ten per cent. for every thirty days shall not be construed to exceed ten per cent. per annum; nor shall the payment of interest in advance of one year, or any less time, at a rate not exceeding ten per cent. per annum, constitute usury; and nothing herein shall prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by an innocent purchaser, at any price before the maturity of the same, when there has been no intent to evade the provisions of this chapter, or where such purchase has not been a part of the original usurious transaction; but where the original holder of a usurious note sells the same to an innocent purchaser the maker thereof, or his representatives may recover back from the original holder the amount of principal and interest paid by him on said note. (2735)

1. In general—Usury is the taking of a greater rate of interest for the loan or forbearance of money, goods, or things in action, than is allowed by law (28-211, 9+734. See 35-312, 29+134; 35-456, 29+154; 46-360, 365, 49+55, 24 Am. St. Rep. 234). The three essentials of usury are (1) a loan; (2) an agreement for its return at all events; and (3) an agreement to pay more than the legal rate of interest for the use of it (59-468, 475, 61+560). There can be no usury without a loan of money (53-350, 353, 55+555; 69-199, 71+913); or without a contract (35-312, 29+134). The test is, will the contract, if performed, result in

producing to the lender a rate of interest greater than is allowed by law, and was that result intended by the lender (55-520, 526, 57+311). To be usurious a contract must be so when it is made (55-466, 57+205; 55-520, 526, 57+311). A contract to pay for the past use of money cannot be usurious (21-530; 68-210, 70+978, 64 Am. St. Rep. 471). Usury laws are enacted to protect the weak and necessitous from oppression (37-441, 443, 35+265).

2. Intent—Presumptions—It is of the essence of usury that there be a corrupt intent to take or reserve a greater compensation for the future use of money than is allowed by law (31-304, 17+630; 42-438, 44+316; 49-496, 498, 52+135; 66-343, 69+3; 70-380, 388, 73+165). But the law raises a presumption of usury from the fact that the lender reserves greater compensation than the law allows (46-400, 49+189), and the rule that a person is presumed to have intended the necessary consequences of his acts applies (92-128, 133, 99+415). The intent or knowledge of the borrower is immaterial (37-441, 35+265; 42-438, 44+316; 46-400, 49+189).

3. Usurious contracts void—Except as to bona fide purchasers usurious contracts are absolutely void as well as all security given therefor (31-495, 18+450; 36-306, 31+213; 63-258, 65+452). Executory usurious contracts are non-enforceable (21-415). Any amount however small above the lawful rate is fatal (49-496, 52+135).

4. Form not controlling—Forms and names are not controlling. Courts look to the substance and effect of transactions. There is no shift or device on the part of the lender to evade the statute under or behind which the law will not look in order to ascertain the real object of the transaction (34-409, 26+229; 37-441, 35+265; 40-329, 42+20; 42-438, 44+316; 52-356, 54+591; 59-468, 61+560; 60-303, 62+260; 69-199, 202, 71+913; 89-386, 390, 94+1088; 92-128, 99+415; 59-468, 61+560; 83-114, 117, 85+939; 97-265, 106+911, 7 Ann. Cas. 984). Unusual clauses always excite suspicion (52-356, 54+591; 59-468, 61+560).

5. Question of fact—Whether a transaction is usurious is a question of fact (46-360, 49+55, 24 Am. St. Rep. 234; 49-111, 51+816; 59-468, 474, 61+560; 56-155, 57+462; 64-3, 65+959; 64-162, 66+269; 66-343, 69+3; 70-89, 72+817; 97-265, 106+911, 7 Ann. Cas. 984), to be submitted to the jury (35-312, 29+134; 49-496, 52+135; 102-166, 112+1009, 1067; 104-510, 116+919), except where only one reasonable inference can be drawn from the evidence (40-329, 42+20; 60-422, 62+544).

6. Burden of proof—The burden of proving usury is on him who asserts it (40-200, 41+1030; 49-111, 118, 51+816; 64-162, 164, 66+269; 70-89, 93, 72+817). He must negative by his proof every supposable fact which if true would render the transaction lawful (60-422, 62+544). The burden rests on a principal to prove that the acts of his general agent in taking unlawful interest were without his knowledge or consent (43-307, 310, 45+439; 48-69, 50+1015; 85-242, 88+845, 89 Am. St. Rep. 541).

7. Degree of proof required—All that is required to prove usury is a fair preponderance of evidence (37-441, 35+265; 40-329, 42+20; 43-307, 45+439; 60-303, 62+260). But as usury works an absolute forfeiture of the entire debt the proofs on which it rests should be scrutinized and the rule as to the effect of a fair preponderance of evidence applied, with more strictness than in ordinary civil actions (61-452, 63+1093; 64-162, 167, 66+269). Especially is this true where the adverse party is dead (80-419, 83+379). The evidence must warrant something more than a mere suspicion (40-329, 42+20. See 59-468, 61+560). Evidence may be wholly circumstantial (59-468, 61+560).

8. Effect of commission or bonus to lender—34-409, 26+229; 35-312, 29+134; 40-200, 41+1030; 43-517, 45+1100; 55-520, 57+311; 58-473, 59+1103; 60-303, 62+260; 64-3, 65+959; 64-457, 67+355; 90-377, 97+113.

9. Sale of property as a cover for usury—43-307, 45+439; 49-111, 51+816; 51-523, 53+754; 61-83, 63+250; 64-162, 66+269; 70-89, 72+817; 83-114, 85+939; 97-265, 106+911; 98-420, 108+951; 98-489, 108+877.

10. Effect of collateral contract—49-111, 51+816; 55-466, 57+205; 90-377, 97+113.

11. Effect of including in note more than received—34-409, 26+229; 35-312, 29+134; 44-121, 46+327; 46-8, 48+412; 46-400, 49+189; 49-111, 51+816; 49-496, 52+135; 60-534, 63+108; 83-203, 85+1012; 84-286, 87+774; 90-377, 97+113.

12. Liability of principal for acts of agent—37-441, 35+265; 43-307, 45+439; 44-121, 46+327; 44-218, 46+360; 49-431, 52+39; 60-534, 63+108; 85-242, 88+845, 89 Am. St. Rep. 541. See cases under note 13.

13. Effect of commission or bonus to loan agent—28-211, 9+734; 31-495, 18+450; 33-194, 22+295; 35-456, 29+154; 35-513, 29+337; 40-329, 42+20; 43-307, 45+439; 44-121, 46+327; 44-218, 46+360; 45-448, 48+185; 46-360, 49+55; 48-69, 50+1015; 49-431, 52+39; 58-137, 59+985, 49 Am. St. Rep. 492; 58-487, 60+132; 62-295, 64+898; 66-343, 69+3; 70-542, 73+514; 85-242, 88+845, 89 Am. St. Rep. 541; 89-386, 94+1088; 92-149, 99+641.

14. Repayment contingent—59-468, 61+560; 69-318, 72+121.

15. Payment of interest in advance—55-520, 527, 57+311; 70-380, 73+165; 89-386, 391, 94+1088.

16. Miscellaneous—Delay in delivering loan (43-517, 45+1100). Retention of part of loan for past services (51-276, 53+648). Note for services in procuring loan (39-339, 40+358). Provision for attorney's fees (31-182, 17+274; 55-341, 56+1119). Renewal of note (44-419, 46+908; 49-496, 52+135). Removal of taint of usury (37-182, 33+567). Pretended agency (52-356, 54+591).

17. Effect of new security—Where a new contract is substituted for a usurious one the taint of usury will affect the new security (31-495, 18+450; 37-441, 35+265).

18. Clerical mistake—31-304, 17+630. See 69-178, 71+929.

19. Extensions—If a note is not originally usurious it cannot be made so by a subsequent extension granted in consideration of usurious interest (35-456, 29+154; 65-37, 67+655; 68-210, 70+978, 64 Am. St. Rep. 471). An agreement at the time of the original loan for an

extension at the option of the borrower at an illegal rate does not render the original loan usurious if not intended as an evasion of the usury law (44-218, 46+360).

20. Who may assail—44-218, 46+360; 70-380, 73+165; 71-351, 74+146, 70 Am. St. Rep. 326.

21. Estoppel—36-57, 29+674; 42-438, 44+316; 71-351, 74+146, 70 Am. St. Rep. 326.

22. Bona fide purchasers—The term "innocent purchaser" means a bona fide indorsee or bearer within the law merchant (27-87, 6+422; 61-490, 63+1031; 62-62, 64+90; 62-295, 64+898. See 40-329, 42+20; 53-267, 55+123). Exception in favor of bona fide purchasers limited to negotiable paper. Does not extend to mortgages securing negotiable paper (36-460, 32+89, 864; 55-520, 57+311). A bona fide purchaser at a foreclosure sale of a usurious mortgage is protected (31-495, 18+450; 53-350, 55+555).

23. Discounting commercial paper—53-350, 55+555; 63-459, 65+928.

24. Liability of national banks—66-257, 68+1092; 76-458, 79+509; 79-266, 82+1118.

25. Conflict of laws—36-333, 31+348; 55-520, 57+311; 74-335, 77+230.

26. Pleading—36-333, 31+348; 45-448, 48+185; 46-8, 48+412; 58-385, 59+1038; 60-422, 424, 62+544; 61-490, 63+1031; 64-3, 65+959; 66-257, 68+1092; 72-229, 75+106; 90-377, 97+1113. See § 5809.

27. Evidence—46-360, 49+55, 24 Am. St. Rep. 234; 67-510, 70+799.

28. Chattel mortgages held usurious—35-496, 29+196; 36-123, 30+439; 43-270, 45+443; 45-448, 48+185; 52-356, 54+591; 78-94, 80+862.

29. Real estate mortgages held usurious—37-182, 33+567; 55-520, 57+311; 70-542, 73+514; 83-114, 85+939; 85-242, 88+845, 89 Am. St. Rep. 541; 92-128, 99+415.

30. Real estate mortgages held not usurious—40-200, 41+1030; 43-517, 45+1100; 64-162, 66+269; 68-183, 70+1077; 68-210, 70+978, 64 Am. St. Rep. 471; 69-178, 71+929; 77-97, 79+609; 89-386, 94+1088.

5808. Offenders to answer on oath—Every person offending against the provisions of this chapter shall be compelled to answer on oath the complaint in any action brought against him in the district court of the proper county for the discovery of any sum of money, goods, or things in action so taken, accepted, or received in violation of any of the foregoing provisions. (2736)

5809. Usurious contracts—Cancellation—Whenever it satisfactorily appears to a court that any bond, bill, note, assurance, pledge, conveyance, contract, security, or evidence of debt has been taken or received in violation of the provisions of this chapter, it shall declare the same to be void, enjoin any proceeding thereon, and order it to be canceled and given up. (2737)

Plaintiff need not repay what he has received (36-460, 32+89, 864; 37-182, 33+567; 69-318, 72+121; 77 Fed. 32, 23 C. C. A. 1; 172 U. S. 351, 19 Sup. Ct. 179, 43 L. Ed. 474). Requisites of complaint (51-274, 53+647; 69-318, 72+121; 71-112, 73+513). Cited (68-183, 70+1077).

5810. Agreements to share profits—Building associations—Nothing in this chapter shall be construed as in any way affecting any contract whereby one party advances money to be used in business or other ventures mutually determined upon, and whereby the party receiving such money agrees to refund the same, with lawful stipulated interest, and in addition thereto agrees to share, equally or otherwise, with the party so advancing the money, the profits of such business or ventures; nor shall its provisions apply to mutual building associations. (2738)

60-422, 62+544; 77-97, 79+609.

5811. Salary loans and chattel mortgage loans—The words "salary loan" as used in this act shall mean a loan in a case where the lender shall take as security for the repayment thereof a promissory note or other written agreement secured by an endorsement, or by an assignment, transfer or pledge of the whole, or any part of any wages or salary whether earned or to be earned. The words "chattel mortgage loan" shall mean a loan in a case where the lender shall loan money upon a promissory note or other written agreement secured by mortgage or other lien upon any personal property.

It shall be lawful for any corporation organized under the laws of the state of Minnesota, and carrying on a "salary loan" or "chattel mortgage loan" business or both a "salary loan" and a "chattel mortgage loan" business in any city of the first class in this state, upon complying with all the provisions of this act, to charge and collect on loans in sums not exceeding two hundred dollars (\$200.00) to any one person, any rate of interest, not exceeding the rate of one per cent (1%) per month thereon, and in cases where a chattel mortgage is taken and possession or control over the possession of the

property mortgaged is not taken at the time of making the loan, a fee in addition to the interest allowed by this act of any sum not exceeding in the aggregate \$1.75 on loans of \$20 or less, \$2.75 on loans over \$20 and not over \$45, \$3.75 on loans over \$45 and not over \$75, \$4.75 on loans over \$75 and not over \$150, and \$5.75 on loans over \$150. No sum shall be directly or indirectly charged to or received from the borrower, either as a bonus, attorney's fee, or as a charge for examining or valuing the property offered as security, or for filing or recording of instruments or otherwise, in excess of said fees hereinafore specified. It shall not be lawful to divide or split up loans in any transaction whatsoever for the purpose of requiring or exacting any other or greater charges than those prescribed herein, nor to make any such charge for renewals or extensions, or for any transfer or change of the loan within one year from the date of the original loan, or oftener than once in each year thereafter, except in cases where a new and additional sum shall be loaned at the time of making such renewal or change, at the request of the borrower in each case the fee above prescribed may be charged for such additional amount loaned. ('13 c. 439 § 1)

5812. Same—License—Before any such corporation shall engage in the business of making such loans, and charge the rates and fees permitted by this act, it shall first obtain and have in force and effect a license for carrying on such business in the city in which such business shall be transacted. Such license shall be issued by the city clerk or corresponding officer of such city, and it shall be renewed annually, and shall not be transferable. Such license shall be granted on application to such city clerk or corresponding officer in writing pursuant to such form as such clerk or corresponding officer, or city council, or corresponding body, may prescribe, for which license the licensee shall pay annually to the treasurer of said city at the time of taking out said license or renewal a uniform fee of \$25 per year. Such licenses shall not be granted until the applicant therefor shall file a statement under oath by its treasurer or some other officer, stating the place in the city where the business is to be carried on, the names of the corporation's officers and manager, and also an affidavit by its treasurer that in the fiscal year of said corporation next preceding the date of said application, the corporation did not pay its stockholders upon their shares in money or money's worth dividends in excess of six per cent (6%). ('13 c. 439 § 2)

TITLE I. NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

5813. Form of negotiable instrument—An instrument to be negotiable must conform to the following requirements:

- (1) It must be in writing and signed by the maker or drawer;
- (2) Must contain an unconditional promise or order to pay a sum certain in money;
- (3) Must be payable on demand, or at a fixed or determinable future time;
- (4) Must be payable to order or to bearer; and
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. ('13 c. 272 § 1)

"An act to make uniform the law of negotiable instruments." By section 198 the act takes effect July 1, 1913.

The act enacts the so-called "Negotiable Instruments Law" recommended to the legislatures of the states by the National Conference of State Boards of Commissioners for Promoting Uniformity of Legislation in the United States and now in force in most of the states.

Section 195 [6007] departs from the draft in one particular.

5814. Certainty as to sum—What constitutes—The sum payable is a sum certain within the meaning of this act, although it is to be paid:

- (1) With interest or
- (2) By stated instalments; or
- (3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate on or at a given place; or

(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity. ('13 c. 272 § 2)

5815. When promise is unconditional—An unqualified order or promise to pay is unconditional within the meaning of this act though coupled with:

(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional. ('13 c. 272 § 3)

5816. Determinable future time—What constitutes—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

(1) At a fixed period after date or sight; or

(2) On or before a fixed or determinable future time specified therein; or

(3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect. ('13 c. 272 § 4)

5817. Additional provisions not affecting negotiability—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or

(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. ('13 c. 272 § 5)

5818. Omissions—Seal—Particular money—The validity and negotiable character of an instrument are not affected by the fact that:

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given therefor; or

(3) Does not specify the place where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. ('13 c. 272 § 6)

5819. When payable on demand—An instrument is payable on demand:

(1) Where it is expressed to be payable on demand; or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. ('13 c. 272 § 7)

5820. When payable to order—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or some of several payees; or

(6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. ('13 c. 272 § 8)

5821. When payable to bearer—The instrument is payable to bearer:

- (1) When it is expressed to be so payable; or
- (2) When it is payable to a person named therein or bearer; or
- (3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
- (4) When the name of the payee does not purport to be the name of any person; or
- (5) When the only or last indorsement is an indorsement in blank. ('13 c. 272 § 9)

This section supersedes R. L. § 2745.

5822. Terms when sufficient—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. ('13 c. 272 § 10)

5823. Date, presumption as to—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be. ('13 c. 272 § 11)

5824. Ante-dated and post-dated—The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. ('13 c. 272 § 12)

5825. When date may be inserted—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. ('13 c. 272 § 13)

5826. Blanks—When may be filled—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. ('13 c. 272 § 14)

5827. Incomplete instrument not delivered—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. ('13 c. 272 § 15)

5828. Delivery—When effectual—When presumed—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears

thereon, a valid and intentional delivery by him is presumed until the contrary is proved. ('13 c. 272 § 16)

5829. Construction where instrument is ambiguous—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. ('13 c. 272 § 17)

5830. Liability of person signing in trade or assumed name—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. ('13 c. 272 § 18)

5831. Signature by agent—Authority—How shown—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. ('13 c. 272 § 19)

5832. Liability of person signing as agent, etc.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. ('13 c. 272 § 20)

5833. Signature by procuration—Effect of—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. ('13 c. 272 § 21)

5834. Effect of indorsement by infant or corporation—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. ('13 c. 272 § 22)

5835. Forged signature—Effect of—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. ('13 c. 272 § 23)

ARTICLE II. CONSIDERATION

5836. Presumption of consideration—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party therefor value. ('13 c. 272 § 24)

5837. Consideration, what constitutes—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. ('13 c. 272 § 25)

5838. What constitutes holder for value—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. ('13 c. 272 § 26)

5839. When lien on instrument constitutes holder for value—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. ('13 c. 272 § 27)

5840. Effect of want of consideration—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. ('13 c. 272 § 28)

5841. Liability of accommodation party—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. ('13 c. 272 § 29)

ARTICLE III. NEGOTIATION

5842. What constitutes negotiation—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. ('13 c. 272 § 30)

5843. Indorsement—How made—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. ('13 c. 272 § 31)

5844. Indorsement must be of entire instrument—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. ('13 c. 272 § 32)

5845. Kinds of indorsement—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. ('13 c. 272 § 33)

5846. Special indorsement—Indorsement in blank—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. ('13 c. 272 § 34)

5847. Blank indorsement—How changed to special indorsement—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. ('13 c. 272 § 35)

5848. When indorsement restrictive—An indorsement is restrictive, which either:

- (1) Prohibits the further negotiation of the instrument; or
- (2) Constitutes the indorsee the agent of the indorser; or
- (3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. ('13 c. 272 § 36)

5849. Effect of restricting indorsement—Rights of indorsee—A restrictive indorsement confers upon the indorsee the right:

- (1) To receive payment of the instrument:
- (2) To bring any action thereon that the indorser could bring:
- (3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. ('13 c. 272 § 37)

5850. Qualified indorsement—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. ('13 c. 272 § 38)

5851. Conditional indorsement—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. ('13 c. 272 § 39)

5852. Indorsement of instrument payable to bearer—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. ('13 c. 272 § 40)

5853. Indorsement where payable to two or more persons—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. ('13 c. 272 § 41)

5854. Effect of instrument drawn or indorsed to a person as cashier—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. ('13 c. 272 § 42)

5855. Indorsement where name is misspelled et cetera—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. ('13 c. 272 § 43)

5856. Indorsement in representative capacity—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. ('13 c. 272 § 44)

5857. Time of indorsement—Presumption—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. ('13 c. 272 § 45)

5858. Place of indorsement—Presumption—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. ('13 c. 272 § 46)

5859. Continuation of negotiable character—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. ('13 c. 272 § 47)

5860. Striking out indorsement—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. ('13 c. 272 § 48)

5861. Transfer without indorsement—Effect of—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. ('13 c. 272 § 49)

5862. **When prior party may negotiate instrument**—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. ('13 c. 272 § 50)

ARTICLE IV. RIGHTS OF THE HOLDER

5863. **Right of holder to sue—Payment**—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument. ('13 c. 272 § 51)

5864. **What constitutes a holder in due course**—A holder in due course is a holder who has taken the instrument under the following conditions:

- (1) That it is complete and regular upon its face;
- (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (3) That he took it in good faith and for value;
- (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. ('13 c. 272 § 52)

5865. **When person not deemed holder in due course**—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. ('13 c. 272 § 53)

5866. **Notice before full amount paid**—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. ('13 c. 272 § 54)

5867. **When title defective**—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. ('13 c. 272 § 55)

5868. **What constitutes notice of defect**—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. ('13 c. 272 § 56)

5869. **Rights of holder in due course**—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. ('13 c. 272 § 57)

See § 6015.

5870. **When subject to original defenses**—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. ('13 c. 272 § 58)

5871. **Who deemed holder in due course**—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. ('13 c. 272 § 59)

ARTICLE V. LIABILITIES OF PARTIES

5872. **Liability of maker**—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse. ('13 c. 272 § 60)

5873. Liability of drawer—The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. ('13 c. 272 § 61)

5874. Liability of acceptor—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to endorse. ('13 c. 272 § 62)

5875. When person deemed indorser—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. ('13 c. 272 § 63)

5876. Liability of irregular indorser—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. ('13 c. 272 § 64)

5877. Warranty where negotiation by delivery, et cetera—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes. ('13 c. 272 § 65)

5878. Liability of general indorser—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivision one, two and three of the next preceding section; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. ('13 c. 272 § 66)

5879. Liability of indorser where paper negotiable by delivery—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. ('13 c. 272 § 67)

5880. Order in which indorsers are liable—As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have

agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. ('13 c. 272 § 68)

5881. Liability of an agent or broker—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five [5877] of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent. ('13 c. 272 § 69)

ARTICLE VI. PRESENTMENT FOR PAYMENT

5882. Effect of want of demand on principal debtor—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. ('13 c. 272 § 70)

5883. Presentment where instrument is not payable on demand and where payable on demand—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. ('13 c. 272 § 71)

This section supersedes R. L. § 2741.

5884. What constitutes a sufficient presentment—Presentment for payment, to be sufficient, must be made:

- (1) By the holder, or by some person authorized to receive payment on his behalf;
- (2) At a reasonable hour on a business day;
- (3) At a proper place as herein defined;
- (4) To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made. ('13 c. 272 § 72)

5885. Place of presentment—Presentment for payment is made at the proper place:

- (1) Where a place of payment is specified in the instrument and it is there presented;
- (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.
- (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
- (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. ('13 c. 272 § 73)

5886. Instrument must be exhibited—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. ('13 c. 272 § 74)

5887. Presentment where instrument payable at bank—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. ('13 c. 272 § 75)

5888. Presentment where principal debtor is dead—Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found. ('13 c. 272 § 76)

5889. Presentment to persons liable as partners—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. ('13 c. 272 § 77)

5890. Presentment to joint debtors—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. ('13 c. 272 § 78)

5891. When presentment not required to charge the drawer—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. ('13 c. 272 § 79)

5892. When presentment not required to charge the indorser—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. ('13 c. 272 § 80)

5893. When delay in making presentment is excused—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. ('13 c. 272 § 81)

5894. When presentment may be dispensed with—Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied. ('13 c. 272 § 82)

5895. When instrument dishonored by non-payment—The instrument is dishonored by non-payment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid. ('13 c. 272 § 83)

5896. Liability of person secondarily liable, when instrument dishonored—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. ('13 c. 272 § 84)

5897. Time of maturity—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due (or becoming payable) on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. ('13 c. 272 § 85)

See §§ 6010, 6011.

5898. Time—How computed—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. ('13 c. 272 § 86)

5899. Rule where instrument payable at bank—Where the instrument is made payable at a bank it shall not be equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. ('13 c. 272 § 87)

5900. What constituted payment in due course—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. ('13 c. 272 § 88)

ARTICLE VII. NOTICE OF DISHONOR

5901. To whom notice of dishonor must be given—Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. ('13 c. 272 § 89)

5902. **By whom given**—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given. ('13 c. 272 § 90)

5903. **Notice given by agent**—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. ('13 c. 272 § 91)

5904. **Effect of notice given on behalf of holder**—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. ('13 c. 272 § 92)

5905. **Effect where notice is given by party entitled thereto**—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. ('13 c. 272 § 93)

5906. **When agent may give notice**—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder. ('13 c. 272 § 94)

5907. **When notice sufficient**—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. ('13 c. 272 § 95)

5908. **Form of notice**—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. ('13 c. 272 § 96)

5909. **To whom notice may be given**—Notice of dishonor may be given either to the party himself or to his agent in that behalf. ('13 c. 272 § 97)

5910. **Notice where party is dead**—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. ('13 c. 272 § 98)

5911. **Notice to partners**—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. ('13 c. 272 § 99)

5912. **Notice to persons jointly liable**—Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others. ('13 c. 272 § 100)

5913. **Notice to bankrupt**—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. ('13 c. 272 § 101)

5914. **Time within which notice must be given**—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act. ('13 c. 272 § 102)

See §§ 5718, 5719.

5915. **Where parties reside in same place**—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following.

(3) If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following. ('13 c. 272 § 103)

See §§ 5718, 5719.

5916. Where parties reside in different places—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2) If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision: ('13 c. 272 § 104)

See §§ 5718, 5719.

5917. When sender deemed to have given due notice—Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. ('13 c. 272 § 105)

5918. Deposit in post-office—What constitutes—Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department. ('13 c. 272 § 106)

5919. Notice to subsequent party—Time of—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. ('13 c. 272 § 107)

5920. Where notice must be sent—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. ('13 c. 272 § 108)

5921. Waiver of notice—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. ('13 c. 272 § 109)

5922. Whom affected by waiver—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. ('13 c. 272 § 110)

5923. Waiver of protest—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. ('13 c. 272 § 111)

5924. When notice is dispensed with—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. ('13 c. 272 § 112)

5925. Delay in giving notice—How excused—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this [his] default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. ('13 c. 272 § 113)

5926. When notice need not be given to drawer—Notice of dishonor is not required to be given to the drawer in either of the following cases:

- (1) Where the drawer and drawee are the same person;
- (2) When the drawee is a fictitious person or a person not having capacity to contract;
- (3) When the drawer is the person to whom the instrument is presented for payment.
- (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
- (5) Where the drawer has countermanded payment. ('13 c. 272 § 114)

5927. When notice need not be given to indorser—Notice of dishonor is not required to be given to an indorser in either of the following cases:

- (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
- (2) Where the indorser is the person to whom the instrument is presented for payment;
- (3) Where the instrument was made or accepted for his accommodation. ('13 c. 272 § 115)

5928. Notice of non-payment where acceptance refused—Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted. ('13 c. 272 § 116)

5929. Effect of omission to give notice of non-acceptance—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission. ('13 c. 272 § 117)

5930. When protest need not be made—When must be made—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. ('13 c. 272 § 118)

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

5931. Instrument—How discharged—A negotiable instrument is discharged:

- (1) By payment in due course by or on behalf of the principal debtor;
- (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3) By the intentional cancellation thereof by the holder;
- (4) By any other act which will discharge a simple contract for the payment of money;
- (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right. ('13 c. 272 § 119)

5932. When persons secondarily liable on, discharged—A person secondarily liable on the instrument is discharged:

- (1) By any act which discharges the instrument;
- (2) By the intentional cancellation of his signature by the holder;
- (3) By the discharge of a prior party;
- (4) By a valid tender of payment made by a prior party;
- (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. ('13 c. 272 § 120)

5933. Right of party who discharges instrument—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated. ('13 c. 272 § 121)

5934. Renunciation by holder—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. ('13 c. 272 § 122)

5935. Cancellation—Unintentional—Burden of proof—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority. ('13 c. 272 § 123)

5936. Alteration of instrument—Effect of—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. ('13 c. 272 § 124)

5937. What constitutes a material alteration—Any alteration which changes:

- (1) The date;
- (2) The sum payable, either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relations of the parties;
- (5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. ('13 c. 272 § 125)

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

5938. Bill of exchange defined—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. ('13 c. 272 § 126)

5939. Bill not an assignment of funds in hands of drawee—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. ('13 c. 272 § 127)

5940. Bill addressed to more than one drawee—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. ('13 c. 272 § 128)

5941. Inland and foreign bills of exchange—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. ('13 c. 272 § 129)

5942. When bill may be treated as promissory note—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. ('13 c. 272 § 130)

5943. **Referee in case of need**—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. ('13 c. 272 § 131)

ARTICLE II. ACCEPTANCE

5944. **Acceptance—How made, et cetera**—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. ('13 c. 272 § 132)

This section supersedes R. L. § 2742.

5945. **Holder entitled to acceptance on face of bill**—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. ('13 c. 272 § 133)

5946. **Acceptance by separate instrument**—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. ('13 c. 272 § 134)

5947. **Promise to accept—When equivalent to acceptance**—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value. ('13 c. 272 § 135)

5948. **Time allowed drawee to accept**—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation. ('13 c. 272 § 136)

5949. **Liability of drawee retaining or destroying bill**—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder he will be deemed to have accepted the same. ('13 c. 272 § 137)

5950. **Acceptance of incomplete bill**—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. ('13 c. 272 § 138)

5951. **Kinds of acceptances**—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. ('13 c. 272 § 139)

5952. **What constitutes a general acceptance**—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. ('13 c. 272 § 140)

5953. **Qualified acceptance**—An acceptance is qualified, which is:

- (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
- (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (3) Local, that is to say, an acceptance to pay only at a particular place;
- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

5954. **Rights of parties as to qualified acceptance**—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a

qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. ('13 c. 272 § 142)

ARTICLE III. PRESENTMENT FOR ACCEPTANCE

5955. When presentment for acceptance must be made—Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. ('13 c. 272 § 143)

5956. When failure to present releases drawer and indorser—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. ('13 c. 272 § 144)

5957. Presentment—How made—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. ('13 c. 272 § 145)

5958. On what days presentment may be made—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two [5884] and eighty-five [5897] of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day. ('13 c. 272 § 146)

5959. Presentment where time is insufficient—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. ('13 c. 272 § 147)

5960. Where presentment is excused—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

(2) Where, after the exercise of reasonable diligence, presentment cannot be made.

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground. ('13 c. 272 § 148)

5961. When dishonored by non-acceptance—A bill is dishonored by non-acceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted. ('13 c. 272 § 149)

5962. Duty of holder where bill not accepted—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. ('13 c. 272 § 150)

5963. Rights of holder where bill not accepted—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. ('13 c. 272 § 151)

ARTICLE IV. PROTEST

5964. In what cases protest necessary—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. ('13 c. 272 § 152)

See §§ 5718, 5719.

5965. Protest—How made—The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

- (1) The time and place of presentment;
- (2) The fact that presentment was made and the manner thereof;
- (3) The cause or reason for protesting the bill;
- (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. ('13 c. 272 § 153)

5966. Protest—By whom made—Protest may be made by:

- (1) A notary public; or
- (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. ('13 c. 272 § 154)

5967. Protest—When to be made—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. ('13 c. 272 § 155)

See § 5718.

5968. Protest—Where made—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. ('13 c. 272 § 156)

5969. Protest both for non-acceptance and non-payment—A bill which has been protested for non-acceptance may be subsequently protested for non-payment. ('13 c. 272 § 157)

5970. Protest before maturity where acceptor insolvent—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. ('13 c. 272 § 158)

5971. When protest dispensed with—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. ('13 c. 272 § 159)

5972. **Protest where bill is lost, et cetera**—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. ('13 c. 272 § 160)

ARTICLE V. ACCEPTANCE FOR HONOR

5973. **When bill may be accepted for honor**—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. ('13 c. 272 § 161)

5974. **Acceptance for honor—How made**—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. ('13 c. 272 § 162)

5975. **When deemed to be an acceptance for honor of the drawer**—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. ('13 c. 272 § 163)

5976. **Liability of the acceptor for honor**—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. ('13 c. 272 § 164)

5977. **Agreement of acceptor for honor**—The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him. ('13 c. 272 § 165)

5978. **Maturity of bill payable after sight—Accepted for honor**—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor. ('13 c. 272 § 166)

5979. **Protest of bill accepted for honor, et cetera**—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. ('13 c. 272 § 167)

5980. **Presentment for payment to acceptor for honor—How made**—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four [5916]. ('13 c. 272 § 168)

5981. **When delay in making presentment is excused**—The provisions of section eighty-one [5893] apply where there is delay in making presentment to the acceptor for honor or referee in case of need. ('13 c. 272 § 169)

5982. **Dishonor of bill by acceptor for honor**—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him. ('13 c. 272 § 170)

ARTICLE VI. PAYMENT FOR HONOR

5983. **Who may make payment for honor**—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. ('13 c. 272 § 171)

5984. **Payment for honor—How made**—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must

be attested by a notarial act of honor which may be appended to the protest or form an extension to it. ('13 c. 272 § 172)

5985. Declaration before payment for honor—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. ('13 c. 272 § 173)

5986. Preference of parties offering to pay for honor—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. ('13 c. 272 § 174)

5987. Effect on subsequent parties where bill is paid for honor—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. ('13 c. 272 § 175)

5988. Where holder refuses to receive payment supra protest—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. ('13 c. 272 § 176)

5989. Rights of payer for honor—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. ('13 c. 272 § 177)

ARTICLE VII. BILLS IN A SET

5990. Bills in sets constitute one bill—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. ('13 c. 272 § 178)

5991. Right of holders where different parts are negotiated—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. ('13 c. 272 § 179)

5992. Liability of holder who indorses two or more parts of a set to different persons—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. ('13 c. 272 § 180)

5993. Acceptance of bills drawn in sets—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. ('13 c. 272 § 181)

5994. Payment by acceptor of bills drawn in sets—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. ('13 c. 272 § 182)

5995. Effect of discharging one of a set—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. ('13 c. 272 § 183)

TITLE III. PROMISSORY NOTES AND CHECKS

ARTICLE I

5996. Promissory note defined—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. ('13 c. 272 § 184)

5997. Check defined—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. ('13 c. 272 § 185)

5998. Within what time a check must be presented—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. ('13 c. 272 § 186)

5999. Certification of check—Effect of—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. ('13 c. 272 § 187)

6000. Effect where the holder of check procures it to be certified—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. ('13 c. 272 § 188)

6001. When check operates as an assignment—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. ('13 c. 272 § 189)

TITLE IV. GENERAL PROVISIONS

ARTICLE I

6002. Short title—This act may be cited as the Uniform Negotiable Instruments Act. ('13 c. 272 § 190)

6003. Definitions and meaning of terms—In this act, unless the context otherwise requires,—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print. ('13 c. 272 § 191)

6004. Person primarily liable on instrument—The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable. ('13 c. 272 § 192)

6005. Reasonable time, what constitutes—In determining what is a “reasonable time” or an “unreasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. ('13 c. 272 § 193)

6006. Time, how computed—When last day falls on holiday—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. ('13 c. 272 § 194)

See §§ 6010, 6011.

6007. Application of act—The provisions of this act do not apply to negotiable instruments made and delivered prior to the taking effect hereof,

nor shall they be construed as modifying, repealing or superseding any of the terms and provisions of section 2747, Revised Laws, 1905 [6015]. ('13 c. 272 § 195)

6008. Cases not provided for in act—In any case not provided for in this act the rules of (law and equity including) the law merchant shall govern. ('13 c. 272 § 196)

6009. Repeals—All acts and parts of acts inconsistent with this act are hereby repealed. ('13 c. 272 § 197)

MISCELLANEOUS PROVISIONS

6010. Contracts due on holidays, etc.—Bills of exchange, promissory notes, and other contracts payable or to be performed on Sunday, Good Friday, Thanksgiving Day, or on any legal holiday, shall be payable or performable on the next succeeding business day. (2739)

See § 6006 and following section.

6011. Same—Following day deemed holiday, when—All promissory notes, drafts, checks, acceptances, bills of exchange, or other evidences of indebtedness, falling due or maturing on Good Friday, Thanksgiving Day, Sunday, or on any legal holiday, shall be deemed due or maturing on the next succeeding business day; and when Sunday and one or more legal holidays, or two or more legal holidays, fall on the same day, the following day shall be deemed a legal holiday, and when Sunday and one or more legal holidays, or two or more legal holidays, immediately succeed each other, then such instrument, paper or indebtedness shall be deemed as due or maturing on the day following the last of such days. ('05 c. 345 § 1)

Section 2 of 1903 c. 261 was amended, as above set forth, by section 1 of 1905 c. 345.

1903 c. 261 was repealed by § 9450, its provisions being incorporated in part in the preceding section. So far as the above section differs from the Revised Laws, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

See § 6006.

6012. Corporate bonds—Seal—Bonds and other obligations under seal for payment of money to bearer, or to some designated person or bearer, or to order, issued by any corporation or joint stock company, shall be negotiable in the same manner and to the same extent as promissory notes. (2740)

28-291, 9-799, 41 Am. Rep. 285.

6013. Damages on international bills—Whenever any bill of exchange, drawn or indorsed in the state, and payable without the United States, is duly protested for non-acceptance or non-payment, the party liable for the contents thereof, on due notice and demand, shall pay the same at the current rate of exchange at the time of the demand, and damages at the rate of ten per cent. upon the contents, together with the interest on such contents, computed from the date of protest. The amount of such contents, damages, and interest shall be in full of all damages, charges, and expenses. (2743)

6014. Rate of damage on interstate bills—Whenever any bill of exchange drawn upon any person out of the state, but within the United States, is duly presented for acceptance or payment, and is protested for non-acceptance or non-payment, the drawer or indorser thereof, after due notice of such dishonor, shall pay said bill according to its tenor, with interest and five per cent. damages, together with charges of protest. (2744)

6015. Instrument obtained by fraud—No person, nor the heirs or personal representatives of any person, whose signature is obtained to any bill of exchange, promissory note, or other paper negotiable under the law merchant, shall be held liable thereon if it be made to appear that the signature was obtained by fraudulent representation, trick, or artifice as to the nature and terms of the contract so signed, that at the time of signing he did not believe it to be a bill of exchange, promissory note, or other paper negotiable under the law merchant, and that he was not guilty of negligence in signing such paper without knowledge of its terms. The question of negligence in any suit on such contract shall in all cases be one of fact for the jury, and the per-

son sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury. (2747)

See § 6007.

51-480, 53+766, 38 Am. St. Rep. 515; 57-391, 59+486; 63-525, 65+952; 88-401, 93+307; 89-473, 477, 95+308; 102-414, 113+1011; 104-438, 116+928; 112-239, 127+940; 113-397, 129+770; 115-414, 132+911.

CHAPTER 52

PARTITION FENCES

6016. Fence viewers—Supervisors in their respective towns, aldermen of cities in their respective wards, and village trustees in their respective villages shall be fence viewers. (2748)

6017. Legal fences—All fences not less than 54 inches high, consisting of boards firmly fastened to well set posts not more than 9 feet apart, the space between the ground and bottom board being not more than 20 inches, and each space between the boards not more than 9 inches; all fences consisting of not less than one smooth and two barbed wires, with at least 40 barbs to the rod, the wires to be firmly fastened to posts not more than 33 feet apart, with two stays between the posts, the top wire to be not more than 52 nor less than 48 inches high, and the bottom wire not less than 16 nor more than 20 inches from the ground; or four smooth wires, the top wire to be not more than 54 nor less than 48 inches high, and the bottom one not less than 16 nor more than 20 inches from the ground, with like posts and stays; and all fences consisting of rails, timbers, wires, boards, stone walls, or any combination thereof, or of streams, lakes, ditches, or hedges, which shall be considered by the fence viewers as equivalent to any of the fences herein described—shall be deemed legal and sufficient fences. (2749)

29-336, 340, 13+168, 43 Am. Rep. 212; 30-1, 13+906; 30-489, 16+271; 32-88, 19+392; 80-508, 83+454; 96-176, 104+827. See §§ 4263, 4264.

6018. Occupants to maintain—The respective owners or occupants of land inclosed by fences shall keep up and maintain partition fences between their own and the next adjoining inclosures in equal shares. (R. L. § 2750, amended '13 c. 525 § 1)

By 1913 c. 525 §§ 2, 3, R. L. §§ 2760, 2761 are repealed.
15-350, 283.

6019. Neglect—Complainant may repair—In case any person neglects to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the fence viewers, who, after notice to the parties, shall examine such fence, and, if they determine that it is insufficient, they shall notify the delinquent occupant in writing to that effect, and direct him to repair or rebuild the fence within such time as they deem reasonable; and if the delinquent fails to comply with such direction, the complainant may repair or rebuild such fence. (2751)

65-310, 315, 67+997, 33 L. R. A. 432, 60 Am. St. Rep. 475.

6020. Value of repairs, etc., recoverable—When any such deficient fence, repaired or rebuilt by the complainant under the provisions of § 6019, is adjudged sufficient by the fence viewers, they, after giving the occupants reasonable notice and an opportunity to be heard, shall ascertain the expense thereof, and give to the complainant repairing or rebuilding the same a certificate of their decision, under their hands, and of the amount of such expense, together with their fees; and thereupon such complainant may demand, either of the owner or occupant of the land where the fence was deficient, double such ascertained expense, together with such fees; and, in case of failure to pay the sum so due within one month after demand, the complainant may recover the same, with interest, in a civil action. (2752)

42-363, 44+255; 65-310, 67+997, 33 L. R. A. 432, 60 Am. St. Rep. 475.

6021. Controversy, how settled—If a controversy arise in regard to the rights in partition fences of the respective occupants, or their obligation to maintain the same, either party may apply to the fence viewers, who, after due