

ANDERSON'S MANUAL

FOR

NOTARIES PUBLIC

A COMPLETE GUIDE FOR NOTARIES PUBLIC AND
COMMISSIONERS OF DEEDS WITH FORMS,
CHARTS AND INSTRUCTIONS

FOR USE IN ALL STATES

QUALIFICATIONS, APPOINTMENT, JURISDICTION,
TERM, POWERS, DUTIES, FEES, RECORDS, SEAL,
LIABILITIES, PENALTIES, REMOVAL

BY

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of the Cincinnati Bar



CINCINNATI

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PREFACE



THIS book is founded upon Giauque's Notaries Manual, which for many years has been an authoritative guide. It has been the aim of the present author thoroughly to revise and rewrite the text and to present in clear and concise form and understandable language those matters which every notary public should know.

The statutory provisions and forms in the chapter on Acknowledgments, and the forms of deeds in the chapter on Conveyances have been taken from Couse's Ohio Form Book, Fourth Edition. The Negotiable Instruments Law, with statutory variations, is taken from Brannan's Negotiable Instruments Law, Sixth Edition. Grateful acknowledgment is made to the publisher and the authors for the use of these materials. For quick reference, tables of statutory provisions, with the states alphabetically arranged, have been included in the chapter on the Office of the Notary Public.

The author has omitted legal verbiage as much as possible in order that the manual may be understandable and clear to notaries public who have had no legal training.

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January 10, 1940

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ESSENTIAL REQUISITES

§ 350. Definitions; negotiable instrument.—An instrument is said to be negotiable when the legal title to the instrument itself, and to the whole amount of money expressed upon its face, may be transferred from one person to another by indorsement and delivery by the holder, or by delivery only. The 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; (5) where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.¹

§ 351. —**Promissory note.**—A negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.² The person who signs such unconditional written promise is called the maker and the person to whom the order is payable, the payee. If the payee transfers it to a third person by indorsement, the payee is the indorser and the third person, the indorsee. The following is an ordinary form of a promissory note:

————(City) ———(State) ———(Date)
On ———(date) (*or*, ——— days, *or*, months, *or*, years, after date; *or*, on demand), I promise to pay to the order of C D (*or*, bearer) the sum of ——— Dollars, with interest at ———%, payable quarterly (*or*, semi-annually, *or*, annually) from date (*or*, maturity) at the ——— Bank. Value received. A B

§ 352. —**Holder.**—The holder is the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.³

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

¹ See Negotiable Instruments Law, § 1. The entire law is given in § 392 of this text.

² See Negotiable Instruments Law, § 184.

³ See Negotiable Instruments Law, § 191.

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.⁴

§ 353. —**Bill of exchange.**—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.⁵ The person who signs such order is called the drawer; the person who is directed to pay, the drawee; and after accepting the order, he is also the acceptor. 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.⁶ The following is an ordinary form of a bill of exchange:

 ———(City) ———(State) ———(Date)
 ——— days after date (*or*, on demand; *or*, at sight)
 pay to the order of E F, ——— Dollars; value received,
 and charge to account of
 C D, ———(City) ———(State) A B

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor; and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.⁷

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the

⁴ See Negotiable Instruments Law, § 52.

⁵ See Negotiable Instruments Law, § 126.

⁶ See Negotiable Instruments Law, § 127.

⁷ See Negotiable Instruments Law, § 61.

same 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.⁸

§ 354. —**Check.**—A check is a bill of exchange drawn on a bank, payable on demand.⁹ 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.¹⁰ Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.¹¹ A check must be presented for payment within a reasonable time after it is issued or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.¹²

§ 355. —**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

§ 356. —**Indorsement.**—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.¹⁴ An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the

⁸ See Negotiable Instruments Law, § 129.

⁹ See Negotiable Instruments Law, § 185.

¹⁰ See Negotiable Instruments Law, § 189.

¹¹ See Negotiable Instruments Law, § 187.

¹² See Negotiable Instruments Law, § 186.

¹³ See Negotiable Instruments Law, § 30.

¹⁴ See Negotiable Instruments Law, § 31.

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.¹⁵

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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

§ 357. —**Accommodation party.**—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving

¹⁵ See Negotiable Instruments Law, § 34.

¹⁶ See Negotiable Instruments Law, § 36.

¹⁷ See Negotiable Instruments Law, § 38.

¹⁸ See Negotiable Instruments Law, § 39.

¹⁹ See Negotiable Instruments Law, § 63.

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.²⁰

§ 358. —**Acceptance.**—Accepting a bill is usually done by the drawee writing across its face: "Accepted," and signing his name below. 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.²¹ 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.

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.²² 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.²³

§ 359. **Presentment of bills for acceptance.**—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

²⁰ See Negotiable Instruments Law, § 29.

²¹ See Negotiable Instruments Law, § 132.

²² See Negotiable Instruments Law, § 140.

²³ See Negotiable Instruments Law, § 141.

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.²⁴

§ 360. —**Manner.**—The holder of the bill or his agent, generally a notary public, must call upon the drawee, exhibit the bill to him and ask whether the drawee will pay it at its maturity.

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.²⁵

§ 361. —**Time.**—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of the Negotiable Instruments Act. When Saturday is not otherwise a holiday,²⁶ presentment for acceptance may be made before twelve o'clock noon on that day.²⁷

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the

²⁴ See Negotiable Instruments Law, § 143.

²⁵ See Negotiable Instruments Law, § 145.

²⁶ For chart of legal holidays, see § 393 of this text.

²⁷ See Negotiable Instruments Law, § 146.

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.²⁸

§ 362. —**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 can not be made; (3) where, although presentment has been irregular, acceptance has been refused on some other ground.²⁹

§ 363. **Dishonor by nonacceptance.**—A bill is dishonored by nonacceptance: (1) when it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or can not be obtained; or (2) when presentment for acceptance is excused and the bill is not accepted.³⁰

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 nonacceptance or he loses the right of recourse against the drawer and indorsers.³¹

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.³²

²⁸ See Negotiable Instruments Law, § 147.

²⁹ See Negotiable Instruments Law, § 148.

³⁰ See Negotiable Instruments Law, § 149.

³¹ See Negotiable Instruments Law, § 150.

³² See Negotiable Instruments Law, § 151.

§ 364. **Presentment for payment.**—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. Except as otherwise provided in the Negotiable Instruments Law, presentment for payment is necessary in order to charge the drawer and indorsers.³³

§ 365. —**Time.**—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.³⁴

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.³⁵

§ 366. —**Sufficiency.**—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.³⁶

³³ See Negotiable Instruments Law, § 70.

³⁴ See Negotiable Instruments Law, § 71.

³⁵ See Negotiable Instruments Law, § 85.

³⁶ See Negotiable Instruments Law, § 72.

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.³⁷

§ 367. —Place.—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.³⁸

§ 368. —To whom made.—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.³⁹

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.⁴⁰

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.⁴¹

³⁷ See Negotiable Instruments Law, § 75.

³⁸ See Negotiable Instruments Law, § 73.

³⁹ See Negotiable Instruments Law, § 74.

⁴⁰ See Negotiable Instruments Law, § 76.

⁴¹ See Negotiable Instruments Law, § 77.

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.⁴²

§ 369. —**Delay 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.⁴³

§ 370. —**Dispensed with.**—Presentment for payment is dispensed with: (1) where after the exercise of reasonable diligence presentment as required by the Negotiable Instruments Act can not be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment, express or implied.⁴⁴

§ 371. **Dishonor by nonpayment.**—The instrument is dishonored by nonpayment when: (1) it is duly presented for payment and payment is refused or can not be obtained; or (2) presentment is excused and the instrument is overdue and unpaid.⁴⁵

§ 372. **Protest.**—A notarial protest is a declaration in writing made by a notary public on behalf of the holder of a bill or note, that acceptance or payment has been refused. This written declaration itself is also properly called the certificate of protest, which is only the evidence of the fact of protest. Although in a technical sense, the term “protest” means only the formal declaration drawn up and signed by the notary, yet in commercial usage, it includes all the steps necessary to charge the indorser.

⁴² See Negotiable Instruments Law, § 78.

⁴³ See Negotiable Instruments Law, § 81.

⁴⁴ See Negotiable Instruments Law, § 82.

⁴⁵ See Negotiable Instruments Law, § 83.

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance and where such a bill which has not previously been dishonored by nonacceptance 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.⁴⁶

§ 373. —**Time for making.**—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.⁴⁷

§ 374. —**Place.**—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 nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.⁴⁸

§ 375. —**Contents of certificate.**—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.⁴⁹

⁴⁶ See Negotiable Instruments Law, § 152.

⁴⁷ See Negotiable Instruments Law, § 155.

⁴⁸ See Negotiable Instruments Law, § 156.

⁴⁹ See Negotiable Instruments Law, § 153.

A complete certificate of protest should ordinarily include the following items: (1) the notary's venue or locality within which he is authorized to act; (2) his name and title; (3) for whom he acted, or the holder's name; (4) a copy of the instrument presented; (5) the fact and manner of presentment and demand; (6) the time; (7) the place; (8) to whom presented, and of whom demand was made; (9) the fact of dishonor; (10) the fact of protest; (11) the reason assigned for refusal to honor; (12) who was notified; (13) manner of notification; and (14) the notary's official seal and signature.

§ 376. —Form.—This certificate follows a copy of the bill or note protested:

United States of America, State of _____, _____
County, ss.

Be it known by this Instrument of Protest, that at the close of banking hours on _____ the _____ day of _____, 19—, I, G H, a notary public within and for said county of _____, did, at the request of _____, holder of the original _____ hereto attached and copies above, present the same to _____ at _____ in the city of _____, _____, and demanded payment (*or*, acceptance) thereof, which was refused for the following assigned reason: _____.

Whereupon I protested the same for nonpayment (*or*, nonacceptance) and notified the following named drawer and indorsers thereof of said presentment and protest, by a separate notice to each, inclosed in (the same, or separate) envelope— and addressed as follows: _____; and deposited the same in the post office of _____ in said county, the same day, postage paid; and the following named drawer and indorsers thereof, by delivering to each of them such notices personally on the same or the next day _____.

Whereupon, I, the said notary, upon the authority aforesaid, have protested and do hereby solemnly protest as well against the drawer and indorsers of the said _____ as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interest, suffered or to be suffered, for the want of payment (*or*, acceptance) thereof, and I certify that I have no interest in the above-protested instrument.

Witness my hand and notarial seal this _____ day of _____, 19—.

Protest fees, \$_____.

G H, Notary Public.

(SEAL)

§ 377. —**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.⁵⁰

§ 378. —**Record.**—A well established custom permits the notary to make a minute on the dishonored instrument, or in his register, of the presentment, refusal to accept or pay, the month, day and year, and his charges of protest. This is called *noting*, and must be done, if not at the very time, at least not later than the day of the dishonor. The protest may be written out in full at any convenient time afterward.

Because the notary may be called upon to testify in relation to his acts as notary by deposition or orally, it is important that he should keep a register or record containing detailed information with regard to the protesting of commercial paper.

⁵⁰ See Negotiable Instruments Law, § 159.

§ 379. —**National bank notes.**—Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, or at its designated place of redemption, the holder may cause the same to be protested, in one package, by a notary public, unless the president or cashier of the association whose notes are presented for payment, or the president or cashier of the association at the place at which they are redeemable, offers to waive demand and notice of the protest and, in pursuance of such offer, makes, signs and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the non-payment thereof. The notary public, on making such protest or upon receiving such admission, shall forthwith forward such admission or notice of protest to the comptroller of the currency, retaining a copy thereof. If any satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.⁵¹

§ 380. —**Acceptance supra protest.**—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill

⁵¹ See U.S.C., Title 12, § 131.

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.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.⁵⁶

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.⁵⁷ Presentment for payment to the acceptor for honor must be made as follows: (1) if it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity; (2) if it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104 of the Negotiable Instruments Law.⁵⁸ When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.⁵⁹

⁵² See Negotiable Instruments Law, § 161.

⁵³ See Negotiable Instruments Law, § 162.

⁵⁴ See Negotiable Instruments Law, § 163.

⁵⁵ See Negotiable Instruments Law, § 164.

⁵⁶ See Negotiable Instruments Law, § 165.

⁵⁷ See Negotiable Instruments Law, § 167.

⁵⁸ See Negotiable Instruments Law, § 168.

⁵⁹ See Negotiable Instruments Law, § 170.

§ 381. **Payment for honor.**—Where a bill has been protested for nonpayment, 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.⁶⁰ 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.⁶¹ 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.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵

§ 382. **Notice of dishonor.**—Except as otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, 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.⁶⁶

⁶⁰ See Negotiable Instruments Law, § 171.

⁶¹ See Negotiable Instruments Law, § 172.

⁶² See Negotiable Instruments Law, § 173.

⁶³ See Negotiable Instruments Law, § 175.

⁶⁴ See Negotiable Instruments Law, § 176.

⁶⁵ See Negotiable Instruments Law, § 177.

⁶⁶ See Negotiable Instruments Law, § 89.

§ 383. —**Given by agent.**—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.⁶⁷ 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.⁶⁸ Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.⁶⁹

§ 384. —**Essentials.**—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 nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.⁷⁰ 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.⁷¹

§ 385. —**Form.**—

————(Place) ———(Date)

Take notice, that a bill of exchange (*or*, promissory note) for ——— Dollars dated ———, drawn by ———.

⁶⁷ See Negotiable Instruments Law, § 90.

⁶⁸ See Negotiable Instruments Law, § 91.

⁶⁹ See Negotiable Instruments Law, § 94.

⁷⁰ See Negotiable Instruments Law, § 96.

⁷¹ See Negotiable Instruments Law, § 95.

in favor of ———, on ——— Bank, accepted by ———, indorsed by ———, payable ———, was this day presented for acceptance (*or*, payment), which was refused, and therefore was this day protested, by the undersigned notary public, for nonacceptance (*or*, nonpayment).

The holder therefore looks to you for payment thereof, together with interest, damages, costs, you being indorser (*or*, drawer) thereof.

To: ———
—————

G H, Notary Public

§ 386. ———**To whom given.**—Notice of dishonor may be given either to the party himself or to his agent in that behalf.⁷² 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.⁷³ 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.⁷⁴ 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.⁷⁵ 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.⁷⁶

§ 387. ———**Time of giving.**—Notice may be given as soon as the instrument is dishonored.⁷⁷ Where the person giving and the person to receive notice reside in the same

⁷² See Negotiable Instruments Law, § 97.

⁷³ See Negotiable Instruments Law, § 98.

⁷⁴ See Negotiable Instruments Law, § 99.

⁷⁵ See Negotiable Instruments Law, § 100.

⁷⁶ See Negotiable Instruments Law, § 101.

⁷⁷ See Negotiable Instruments Law, § 102.

place, notice must be given within the following times: (1) if given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.⁷⁸ Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) if sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.⁷⁹

§ 388. —Place.—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 of the Negotiable Instruments Law.⁸⁰

⁷⁸ See Negotiable Instruments Law, § 103.

⁷⁹ See Negotiable Instruments Law, § 104.

⁸⁰ See Negotiable Instruments Law, § 108.

§ 389. —**Waiver.**—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.⁸¹ 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.⁸² 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.⁸³

§ 390. —**Dispensed with.**—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.⁸⁴

Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment.⁸⁵

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

⁸¹ See Negotiable Instruments Law, § 109.

⁸² See Negotiable Instruments Law, § 110.

⁸³ See Negotiable Instruments Law, § 111.

⁸⁴ See Negotiable Instruments Law, § 112.

⁸⁵ See Negotiable Instruments Law, § 114.

presented for payment; (3) where the instrument was made or accepted for his accommodation.⁸⁶

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.⁸⁷

§ 391. —**Delay excused.**—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.⁸⁸

⁸⁶ See Negotiable Instruments Law, § 115.

⁸⁷ See Negotiable Instruments Law, § 116.

⁸⁸ See Negotiable Instruments Law, § 113.

STATUTORY PROVISIONS

§ 392. The Negotiable Instruments Law¹ with Statutory Variations.—

TITLE I

NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I

FORM AND INTERPRETATION

Sec. 1. 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.

STATUTORY VARIATIONS

The *Arizona, Idaho, Illinois, Iowa, Kentucky, North Carolina, West Virginia, and Wyoming* Acts read, in subsec. 4: "Must be payable to the order of a specified person, or to bearer," but "specified person" is surplusage. See sec. 8. *West Virginia* in 1931 returned to the uniform act.

The *Georgia* Act adds to subsec. 2, "provided that a promissory note may be made payable in cotton or other articles of value." See the form of sec. 184.

The *Illinois* Act interpolates "payable in money" after "instrument" because in that state instruments payable in goods had previously been negotiable.

The *Michigan* Act uses "certain sum" instead of "sum certain."

The following *Minnesota* law (Laws 1927, ch. 416) although not expressly an amendment to the Act, is an amendment in fact: "Any bond, note, debenture or promise to pay, which shall be secured by a mortgage, deed of trust, indenture, or lien upon any property, real, personal or mixed, and which shall have been authenticated, certified or approved by the authorized signature of a duly authorized mortgagee, trustee, registrar, or fiscal agent, when otherwise so drawn as to fall under and within the provisions of the uniform Negotiable Instruments Act (chapter 272, General Laws of 1913), shall be deemed to be a 'negotiable instrument' as defined by law and shall be held and construed to be such 'negotiable instrument' notwithstanding the fact that it shall refer to or recite that it is issued

¹ For annotations of decisions, see Brannan's Negotiable Instruments Law

under, in connection with, or secured by such mortgage, deed of trust, indenture, or other lien of any kind or nature, and whether or not the terms of said mortgage, deed of trust, indenture, or lien purport to be incorporated therein or made a part thereof, or otherwise."

New York and *California* also make bonds negotiable.

Wisconsin (Laws, 1921, c. 286) has repealed its former additional subsection, relating to the non-negotiability of municipal orders not expressly made negotiable by law, and the negotiability of warehouse receipts, bills of lading, and railroad receipts, unless plainly stamped "non-negotiable."

Sec. 2. 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 the 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; or
- (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

STATUTORY VARIATIONS

The *Connecticut* Act was amended in 1927 (Pub. Acts, ch. 240) to read as follows: "The sum payable, in the case of a negotiable instrument, is a sum certain within the meaning of chapter 225 * * * although it is to be paid * * * (5) with costs of collection or an attorney's fee, in case payment shall not be made at maturity or upon default, or (6) with provision for payment by the maker of taxes levied or assessed upon the instrument or the indebtedness evidenced thereby."

The original *Idaho* Act omitted the words "or of interest" in subsec. 3. In the Compiled Statutes of 1919, however, these words are restored.

The *Iowa*, *Kentucky*, *North Carolina*, and *Wyoming* Acts omit, "Or of interest," in subsec. 3.

This omission in the *Iowa* statute was held to be immaterial in *Commercial Sav. Bank v. Schaffer*, 190 Ia. 1088, 181 N. W. 492.

Kansas has a special statute (Gen. Stat. 1915, sec. 6475) which provides that a stipulation for payment of attorney fees in negotiable instruments and mortgages shall be null and void.

Minnesota adds "on or at a given place" after "current rate" in subsec. 4.

The *Nebraska* Act adds: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment on an instrument made in this state any sum for attorney's fees or other costs not allowable in other cases."

The *North Carolina* Act adds to subsec. 5: "But a provision incorporated in the instrument to pay counsel fees for collection is not enforceable, but does not affect the other terms of the instrument or the negotiability thereof." (Rev., ss. 2152, 2346; 1899, c. 733, ss. 2, 197; 1905, c. 327.)

North Dakota has a special code provision similar to the *North Carolina* variation, as follows (Sec. 7791, C. L. 1913): "Any provision contained in any note, bond, mortgage or other evidence of debt for the payment of an attorney fee in case of default in payment or of proceedings had to collect such note, bond, or evidence of debt or to foreclose such mortgage is hereby declared to be against public policy and void."

In *South Dakota* the following is substituted for subsec. 5: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment or instrument made in this state any sum for attorney's fees, or other costs not now taxable by law."

In *Sharpe v. Schoenberger*, 44 S. D. 402, 184 N. W. 209, a provision for attorney's fees was held a nullity, which did not impair negotiability; a provision for a higher interest rate after maturity or default was held not to render the note uncertain in amount.

Sec. 3. 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.

STATUTORY VARIATIONS

Massachusetts inserts the words "except as otherwise expressly provided by law," between "But" and "an" in the last sentence in this section.

The *North Dakota* Act, by evident error, changes the last word in the section to "conditional." This error is corrected in the 1925 Supplement.

Sec. 4. 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.

STATUTORY VARIATIONS

North Carolina (Laws, 1923, c. 72) adds: "An instrument is payable at a determinable future time, within the meaning of this chapter, notwithstanding the fact that it contains a provision waiving notice of protest, notice of dishonor, and an agreement to be bound notwithstanding any extension of time which may be granted. Or if collaterals have been deposited as security for the payment thereof and the instrument contains a provision that if the value of the securities so deposited has so decreased or declined as to render the holder insecure, the holder may require the maker to deposit other and further collaterals to secure the same, and, upon failure to comply with such demand, to declare the instrument due at once. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, but an instrument payable

at a determinable future time is negotiable, even though it may mature or be declared due upon a contingency happening before such future time."

The *Rhode Island* Act changes subdivision (1) to read: "At a fixed period after date or sight; or at sight."

The *South Carolina* Act was amended in 1926 so as to further define the expression "determinable future time" (Laws 1926, No. 574):

"But an instrument payable at a determinable future time is negotiable, even though it may mature or be declared due upon a contingency happening before such future time. An instrument is payable at a determinable future time within the meaning of this chapter, notwithstanding the fact that it contains a provision waiving notice of protest, notice of dishonor, and an agreement to be bound even though an extension of time may be granted. An instrument is payable at a determinable future time when collateral has been deposited as security for the payment thereof and the instrument contains a provision that if the value of the security deposited has so decreased or declined as to render the holder insecure, the holder may require the maker to deposit other and further collaterals to secure the same, and, upon failure to comply with such demand, may declare the instrument due at once."

Virginia, in 1934, added the first sentence of the *South Carolina* amendment as stated above, but omitted the rest.

The *Wisconsin* Act substitutes, for the last paragraph, the following: "4. At a fixed period after the date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided."

Sec. 5. 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.

STATUTORY VARIATIONS

The *Georgia* Act omits subsec. 2.

Idaho (Laws, 1925, c. 67) has amended this section by adding subsec. 5: "An instrument otherwise negotiable in character is not affected by the fact that it was at the time of the execution or subsequently secured by mortgage on real or personal property."

The *Illinois* Act adds the words "under this Act," at the end of the first sentence, and omits the words "if the instrument be not paid at maturity," in subsec. 2.

The *Illinois* and *Wisconsin* Acts add to the last paragraph: "Or authorize the waiver of exemptions from execution."

Kansas Laws, 1917, c. 244, adds to subsec. 1 the following: "Or in case the security should depreciate in value, or in case the holder for reasonable cause deems himself insecure." A new subsec. 5 is also added, as follows: "Provisions or agreements in concurrent writings or mortgages given to secure payment of such instruments."

This *Kansas* subsection was interpreted in *Commerce Trust Co. v. Guarantee Title & T. Co.*, 113 Kans. 311, 214 Pac. 610.

The *Kentucky* Act omits subsec. 3.

The *Montana* laws of 1923, ch. 143, add the following amendment: "(5) An instrument otherwise negotiable in character is not affected by the fact that it was at the time of the execution or subsequently secured by mortgage on real or personal property."

North Carolina adds at the end of this section: "nor authorize the enforcement of an authorization to confess judgment of a waiver of home-
stead and personal property exemptions."

The *South Dakota* Act omits subdivisions (2) and (3).

Utah Laws, 1925, c. 2, make no reference to the N. I. L., but provide: "The negotiability of a promissory note otherwise negotiable in form, secured by mortgage or deed of trust upon real or personal property shall not be affected or abridged by reason of a statement therein that it is so secured nor by reason of the fact that said instrument is so secured, nor by reason of any conditions contained in the mortgage or deed of trust securing the same."

Sec. 6. 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.

STATUTORY VARIATIONS

The *Illinois* Act begins subsec. 5 with the words, "is payable in currency or current funds: or," and omits the last paragraph of this section.

In the *Massachusetts* Act the last sentence reads: "But subdivision two shall not apply in cases where by statute the nature of the consideration is required to be stated in the instrument."

The *South Dakota* Act changes the last paragraph to read: "But nothing in this section shall be so construed as to alter or impair any provision requiring in certain cases the nature of the consideration to be stated in the instrument or to make negotiable in character a note which shows on its face that it is given for a consideration to be received in the future."

Sec. 7. 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.

STATUTORY VARIATIONS

The *Nebraska* Act omits "accepted" in the last sentence of this section. The *Rhode Island* Act changes subsection (1) by inserting the words "with grace" after "at sight."

Sec. 8. 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.

STATUTORY VARIATIONS

The *Illinois* Act interpolates after subsec. 6 the following: "7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate." This state also has "more" for "some" in subsec. 5.

The *Minnesota* Act was amended in 1929 (Laws, ch. 353) to include the following addition: "An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate."

The *South Dakota* Act substitutes "a specified person" for "him" in the first sentence and "more" for "some," in subsec. 5.

Sec. 9. 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 nonexisting 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.

STATUTORY VARIATIONS

In *Idaho*, *Illinois* and *Montana* subsec. 3 was amended to add after "nonexisting," "or living person, not intended to have any interest in it," and the following clause at the end: "or known to his employee or other agent who supplies the name of such payee."

The *Illinois* Act substitutes for subsec. 5, the following: "5. When, although originally payable to order, it is indorsed in blank by the payee or a subsequent indorsee." See *Continental Nat. Bank of Chicago v. Olney Nat. Bank*, 33 F. (2d) 437 (Ill. C. C. A.); see also *Swift & Co. v. Chemical Bank & Trust Co.*, 299 N. Y. Supp. 165, 47 Yale L. J. 282.

Sec. 10. 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.

STATUTORY VARIATIONS

Alabama, *Illinois*, *Iowa*, *North Carolina*, *Utah*, *West Virginia* and *Wyoming* Acts insert the word "negotiable" between the words "The" and "instrument."

The original *Idaho* Act made the same insertion, but in the Compiled Statutes of 1919, the insertion does not appear.

The *Wisconsin* Act (No. 1675-10) adds "Memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument and parol evidence is admissible to show the circumstances under which they were made."

Sec. 11. 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.

STATUTORY VARIATIONS

The *Arizona* 1928 Act omits the words "deemed" and "to be," and substitutes the word "thereof" for the last phrase of the section beginning with "of the making, etc."

Sec. 12. Antedated and Postdated.

The instrument is not invalid for the reason only that it is antedated or postdated, 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.

STATUTORY VARIATIONS

The *Arizona* Act of 1928 substitutes the word "if" for the words "provided this is."

Sec. 13. 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.

STATUTORY VARIATIONS

The *Arizona* Act substitutes the word "invalidate" for "avoid" in the second sentence, and the 1928 *Arizona* Act omits the words "to be regarded as" in the last clause.

The *South Carolina* Act omits "of issue" after "true date"; this seems a clerical error.

Sec. 14. 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.

STATUTORY VARIATIONS

The *Arkansas* Act concludes the second sentence "to fill up for any amount," and in the third sentence "becomes" is substituted for "became."

The *Illinois* Act interpolates the words "issued or" before "negotiated" in the last sentence.

The *Kentucky* Act uses "negotiable" in the last paragraph instead of "negotiated," an evident clerical error.

The *South Dakota* Act substitutes for this section the following: "One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form." See *McCardell v. Davis*, 49 S. D. 554, 207 N. W. 662.

The *Wisconsin* Act inserts "prior to negotiation" before the words "by filling," and omits the words "*prima facie*" in the sixth line of the section.

Sec. 15. 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.

STATUTORY VARIATIONS

In *Wisconsin* "negotiation" is substituted for "delivery" at the end of the section.

Sec. 16. 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.

STATUTORY VARIATIONS

The *Kansas* Act omits the third sentence.

The *North Carolina* Act omits the word "accepting" in the second sentence.

In *South Dakota* the third paragraph beginning with the word "but" and ending with word "presumed" is omitted, and the following sentence substituted: "An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable and notwithstanding any defect in the title of the person from whom he acquired it." See *McCardle v. Davis*, 49 S. D. 554, 207 N. W. 662.

Sec. 17. 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.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits entirely subsec. 4, and omits the words "deemed to be" in subsec. 7.

The *Wisconsin* Act adds: "8. Where several writings are executed at or about the same time, as parts of the same transactions, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof."

Sec. 18. 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.

STATUTORY VARIATIONS

The *Wyoming* Act omits the word "expressly" in the first sentence.

Sec. 19. 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.

STATUTORY VARIATIONS

The *Kentucky* Act substitutes: "The signature of any party may be made by an agent duly authorized in writing." See *Finley v. Smith*, 165

Ky. 445, 177 S. W. 262, L. R. A. 1915F, 777; *Commercial Bank v. Arden*, 177 Ky. 520, 197 S. W. 951, L. R. A. 1918B, 320; *Selma Sav. Bank v. Webster Cty. Bank*, 182 Ky. 604, 206 S. W. 870, 2 A. L. R. 1136; *Pierson v. Union Bank & Trust Co.*, 181 Ky. 749, 205 S. W. 906, 2 A. L. R. 172, with note, "Effect of verbal order with respect to payment of checks or transfer of bank deposits"; *Clinton v. Hibbs*, 202 Ky. 304, 259 S. W. 356, 35 A. L. R. 462, with note on the application of general powers of attorney to accommodation paper; *Kentucky Title Sav. Bank & T. Co. v. Dunavan*, 205 Ky. 801, 266 S. W. 667; and see *Hartford Accident & Indemnity Co. v. Bear Butte Valley Bank*, 63 S. D. 262, 257 N. W. 642.

The *South Dakota* Act is like Kentucky in the first sentence, and also substitutes "written" before "appointment" in the second sentence. All the words after "purpose" are omitted. See *State Bank v. Weeks*, 45 S. D. 639, 189 N. W. 941, 190 N. W. 806; *First Nat. Bank v. Montgomery (S. D.)*, 196 N. W. 95. See also *Security Holding Co. of Beresford v. Christensen*, 53 S. D. 37, 219 N. W. 949, 60 A. L. R. 1173.

Sec. 20. 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.

STATUTORY VARIATIONS

The *South Dakota* Act reads "the principal" instead of "a principal."

The original *Virginia* Act inserted after "capacity" in line three, the words "without disclosing his principal," but this section was amended in 1928 (Acts, ch. 90) so as to conform exactly with the Uniform Act. See 14 Va. L. Rev. 405.

Sec. 21. Signature of 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.

STATUTORY VARIATIONS

In *Illinois* the word "only" in the second line is omitted.

Sec. 22. 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.

STATUTORY VARIATIONS

In *North Carolina*, after its original adoption in 1899 as sec. 22 and in the above form, the words "or married woman" were inserted after "infant" in both places, and this section was transferred to the article entitled "In-

dorsements" ("Negotiation" in the original statute), and became sec. 2180, Pell's Revisal of 1908. This is now sec. 3012 in Michie's 1935 Code in revised form.

The *South Dakota* Act omits from this section all reference to infants, and adds a new section, § 1726, A, on corporations.

Sec. 23. Forged Signature—Effect of.

Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts omit the words "of the person whose signature it purports to be."

ARTICLE II

CONSIDERATION

Sec. 24. Presumption of Consideration.

Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. 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.

STATUTORY VARIATIONS

In *Illinois* the second sentence reads, "An antecedent or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction therefor or as security therefor and is deemed such, whether the instrument is payable on demand or at a future time."

Sec. 26. 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.

Sec. 27. 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.

STATUTORY VARIATIONS

The *Alabama* Act inserts "whether" for "where."

The *South Dakota* Act inserts "whether" for "where" and "operation" for "implication."

Sec. 28. 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.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the last clause to read: "and partial failure of consideration is a defense to the extent of the failure, whether ascertained and liquidated or otherwise."

Sec. 29. 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.

STATUTORY VARIATIONS

The *Illinois* Act omits the words "without receiving value therefor" in line two and adds at the end of the section "and in case a transfer after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity."

This section of the *Massachusetts* Act was amended in 1918 by substituting "holder in due course" for "holder for value" in the second sentence (Gen. Laws 1918, ch. 257, § 282).

ARTICLE III**NEGOTIATION****Sec. 30. 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.

Sec. 31. 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.

STATUTORY VARIATIONS

The *Illinois* Act adds "and the addition of words of assignment or guaranty shall not negative the additional effect of the signature as an indorsement, unless otherwise expressly stated." *Chance v. Hudson*, 233 Ill. App. 542.

Sec. 32. 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.

Sec. 33. Kinds of Indorsement.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

STATUTORY VARIATIONS

The *Arkansas* Act has "instrument" instead of "indorsement" in the first line, an evident clerical error.

Sec. 34. 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.

STATUTORY VARIATIONS

In *Massachusetts*, the words "does not specify any indorsee" are substituted for the words "specifies no indorsee."

In *Wyoming* the word "made" is inserted between the words "be" and "payable."

Sec. 35. 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.

STATUTORY VARIATIONS

The original *Vermont* Statute contained this section in terms of the Uniform Act. However, the compilations of 1917 and 1933 omit this section entirely.

Sec. 36. 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.

STATUTORY VARIATIONS

The *Montana* Act substitutes "future" for "further" in subsec. 1. *North Carolina* omits "other" in subsec. 3.

Sec. 37. Effect of Restrictive Indorsement—Right 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.

STATUTORY VARIATIONS

The *Illinois* Act adds to subsec. 2, "or except in the case of a restrictive indorsement specified in sec. 36—subsec. 2—any action against the indorser or any prior party that a special indorsee would be entitled to bring," and substitutes for the words "his rights as such indorsee" in subsec. 3 the words "the instrument," and adds to the end of subsec. 3 the words, "specified in sec. 36—subsec. 1—and as against the principal or *cestui que trust* only the title of the first indorsee under the restrictive indorsement specified in sec. 36—subsecs. 2 and 3 respectively."

Sec. 38. 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.

STATUTORY VARIATIONS

The *Michigan* Act reads: "Such an instrument" instead of "such an indorsement," an evident error.

Sec. 39. 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.

Sec. 40. 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.

STATUTORY VARIATIONS

The *Alabama* Act substitutes "take" for "make."

The *Illinois* Act substitutes for "payable to bearer," in line 1, the words "originally payable to or indorsed specially to bearer."

The *West Virginia* Code of 1931 repeals this section.

Sec. 41. 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.

STATUTORY VARIATIONS

The *Wisconsin* Act inserts "joint" before "indorsees" in line two.

The *Wyoming* Act erroneously substitutes "indorsers" for "indorsees."

Sec. 42. 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 the indorsement of the officer.

STATUTORY VARIATIONS

In the 1928 *Arizona* Act, there is no reference to indorsement to a bank.

In *South Dakota* the words "the indorsement of" are omitted before the words "the bank" in the last part of the section.

Sec. 43. Indorsement Where Name is Misspelled, etc.

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.

STATUTORY VARIATIONS

Arkansas has "indorser" for "indorsee."

Sec. 44. 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.

Sec. 45. 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.

Sec. 46. 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.

Sec. 47. 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.

STATUTORY VARIATIONS

The *Illinois* Act, doubtless by error, substitutes "respectively" for "restrictively."

The *South Dakota* Act adds: "but a purchaser of the instrument after maturity is not a holder in due course."

Sec. 48. 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.

STATUTORY VARIATIONS

In *Indiana*, *Iowa*, *Kentucky* and *South Dakota* the word "owner" is substituted for "holder" in the first line, probably by an oversight.

Massachusetts omits the words "at any time" in the first sentence of this section.

Sec. 49. 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.

STATUTORY VARIATIONS

In *Alabama* the words "said holder" are substituted for "transferor" in the first paragraph, and the words "for the purpose of transferring title only" are added at the end of said paragraph. Laws 1909, p. 134.

The *Colorado* Act inserts after "transferor," at the end of the first sentence, "if omitted by mistake, accident or fraud."

The *Illinois* Act has "transferer vests" instead of "transfer vests," in the first sentence.

The *Illinois* and *Missouri* Acts, after the word "right" in the first sentence read as follows: "to enforce the instrument against one who signed for the accommodation of his transferor, and the right to have the indorsement of the transferor, if omitted by accident or mistake. But for the purpose," etc.

Sec. 50. 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.

STATUTORY VARIATIONS

The 1928 *Arizona* Act substitutes the word "may not" for "is not entitled to."

ARTICLE IV

RIGHTS OF THE HOLDER

Sec. 51. 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.

Sec. 52. 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.

STATUTORY VARIATIONS

The *Wisconsin* Act adds: "5. That he took it in the usual course of business."

The *West Virginia* Act inserts after the second "holder" in the first sentence "including a payee."

Sec. 53. 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.

STATUTORY VARIATIONS

See *infra*, sec. 193, for special provision in *South Dakota* fixing the maturity of demand instruments.

This section of the *Virginia* Act was changed in the Code of 1919 by adding the amendment as to bank notes and certificate of deposit as suggested by Professor J. D. Brannan.

Sec. 54. 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.

Sec. 55. 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.

STATUTORY VARIATIONS

The *Minnesota* Act has the following additional section:

"6015. Instrument obtained by fraud.—No person, nor the heirs of 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 person sought to be charged thereon shall be entitled to have the question of his negligence submitted to a jury."

See *Stevens v. Pearson*, 138 Minn. 72, 163 N. W. 769.

The *Wisconsin* Act (sec. 1676-25) adds the following: "And the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care." See the comment by Professor Clifton Williams, 9 Marq. L. Rev. 258; *Muscoda State Bank v. Kolar*, 187 Wis. 39, 203 N. W. 915.

Under this *Wisconsin* amendment an accommodation note signed by defendant, when so intoxicated as wholly to destroy the rational faculties of his mind, is absolutely void. And negligence in getting drunk does not

estop defendant. Signing a note is not a usual or probable result of drunkenness, though bodily harm or death may be. *Green v. Gunster*, 154 Wis. 69, 142 N. W. 261; reviewed in 27 *Harvard Law Rev.* 164, also in 20 *Case and Comment*, 477.

In a case covered by this clause the note is void not only as to the maker so defrauded, but also as to all the other makers. *Aukland v. Arnold*, 131 Wis. 64, 111 N. W. 212; *Klosterhuber v. Wisconsin State Bank*, 218 Wis. 191, 260 N. W. 644. Cf. *Arnd v. Sjoblom*, 131 Wis. 642, 111 N. W. 666, 10 L. R. A. (N.S.) 842; *Stevens v. Freund*, 169 Wis. 68, 171 N. W. 300.

Sec. 56. 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.

STATUTORY VARIATIONS

The *New York* Act was amended in 1927 (Laws 1927, ch. 473) so as to add a provision that the drawing or making of a negotiable instrument by an officer or agent of a corporation against the account of the corporation to himself as payee, or the indorsement of such instrument to himself or the deposit thereof to his own account shall not be sufficient to put the bank or trust company on inquiry as to the agent's authority, provided such bank or trust company has on file an authorization from the corporation showing the agent's authority.

In *Rhode Island* this section was amended by the addition of a provision based on sections 4, 5 and 6 of the Uniform Fiduciaries Act. See Laws 1930, ch. 1561, sec. 2.

Sec. 57. 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.

STATUTORY VARIATIONS

The *Georgia* Act, by evident clerical error, changes "title of prior parties" in the first clause of this section to "title to prior parties."

The *Illinois* Act after the word "themselves" interpolates a clause excepting the defenses of fraud and circumvention and gaming, which are, by statutes referred to in said clause, made real defenses.

See *Weir & Craig Co. v. Bonus*, 177 Ill. App. 626. But cf. *Delfosse v. Kendall*, 283 Ill. 301, 119 N. E. 346.

The unauthorized detachment of a contract from a note written on the same sheet of paper is fraud and circumvention within this section. *Stevens v. Lagerquist*, 210 Ill. App. 496, where other detachment cases are collected.

The *Illinois* amendment applies only to gaming, and not to other illegal considerations such as the settlement of a criminal charge. And a plea of illegal consideration does not raise the defense of fraud and circumvention. *Peru State Bank v. Waggett*, 230 Ill. App. 522.

The *Wisconsin* Act adds the words "except as provided in cases where the title of the person negotiating such instrument is void under the provisions of section 116.60 (N. I. L., section 55) of this Act." See *Aukland v. Arnold*, *supra*, sec. 55; *Arnd v. Sjoblom*, 131 Wis. 642, 111 N. W. 666, 10 L. R. A. (N.S.) 842.

Sec. 58. 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 non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

STATUTORY VARIATIONS

The *Illinois* and *Wisconsin* Acts insert "duress" after "fraud" and substitute "such holder" for "the latter."

The *South Dakota* Act omits the second sentence of this section.

The *West Virginia* Act substitutes for the words: "has all the rights of such former holder in respect of all parties prior to the latter," "or had not previously been a holder with notice and subject to the defense of such fraud or illegality, has all the rights of such holder in due course in respect to all parties liable to the latter."

Sec. 59. 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.

STATUTORY VARIATIONS

The *South Dakota* Act omits the words "or some other person under whom he claims" before the word "acquired" in the first sentence.

ARTICLE V

LIABILITIES OF PARTIES

Sec. 60. Liability of Maker.

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "by making it."

The *District of Columbia* Act inserts a provision providing that in case bills of exchange are lost the drawer is required to give new bills and the person to whom they are given shall give security therefor. *District of Columbia Code of 1929, Title 22, sec. 81.*

Sec. 61. Liability of Drawer.

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

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "by drawing the instrument." The *Colorado* and *Illinois* Acts omit the word "subsequent" before "indorser." The *District of Columbia*, *North Dakota*, *Ohio* and *New York* Acts read "accepted and paid."

Sec. 62. Liability of Acceptor.

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

- (1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (2) The existence of the payee and his then capacity to indorse.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "by accepting the instrument." The *Oregon* Banking Law provides that a certifying bank is not liable on an altered instrument except to a holder in due course, and then only for the original tenor. 2 Ore. Code Ann., § 22-1402 (1930). The *Missouri* Act omits "then" before "capacity" in subsec. 2.

Sec. 63. 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.

STATUTORY VARIATIONS

Section 38-509 of the Code of *Georgia* of 1933 permits the introduction of parol evidence to explain a blank indorsement as between immediate parties or a transferee with notice. See *Pickett v. Bank of Ellijay*, 182 Ga. 540, 186 S. E. 426, 53 Ga. App. 607, 186 S. E. 746.

Sec. 64. 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.

STATUTORY VARIATIONS

The *Georgia* Act substitutes "delivering" for "delivery" in the first clause of the section.

The *Illinois* and *Virginia* Acts substitute for subsections 1 and 2 the changes advised by Dean James Barr Ames.

The *Virginia* and *West Virginia* Acts adopt the amendments suggested by Dean Ames.

Sec. 65. Warranty Where Negotiation By Delivery, Etc.

Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

- (1) That the instrument is genuine and in all respects what it purports to be;
- (2) That he has a good title to it;
- (3) That all prior parties had capacity to contract;
- (4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

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

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

STATUTORY VARIATIONS

The *Alaska* Act, in subsec. 3, reads "have" for "had."

The 1928 *Arizona* Act changes the words "the provisions of subdivision three, etc. * * * do not apply" to "the warranty of capacity to contract does not apply" in the last paragraph of the section.

The *Illinois* Act omits the phrase "or render it valueless" at the end of subsec. 4.

Sec. 66. 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 subdivisions 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 endorser who may be compelled to pay it.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts interpolate after "indorser" in line one, the words "not an accommodating party" and after "three" in subsec. 1, the words "and four." The *Illinois* Act substitutes "every indorser" for "he" in the first line of the last sentence, and the *South Dakota* Act substitutes "every indorser who indorses without qualification" for said word "he."

In *West Virginia* the words "except an accommodation indorser" are inserted after "indorser" in the first line. Subsec. (1) is amended to include also subsec. (4) of sec. 65, and "he" is replaced by "every indorser" in the last sentence.

Sec. 67. 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.

Sec. 68. 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.

STATUTORY VARIATIONS

Illinois substitutes, "All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable," for the last sentence.

This provision did not change the previous law in *Illinois*, that the obligation of a firm could not be set off against an individual claim of one of the partners. *Hochschild v. Goddard Tool Co.*, 233 Ill. App. 56.

The last sentence reads, "joint indorsers" in *Delaware*, *Nebraska*, *Ohio*, *Oklahoma*, *South Carolina*, *West Virginia*. *Colorado* has the same form in the revisions of 1908 and later, although the original law followed the uniform draft. See *Owens v. Greenlee*, 68 Colo. 114, 188 Pac. 721, 9 A. L. R. 1184. *Kentucky* had this form in *Russell's Statutes* (1909), although the uniform draft was followed in the original law and in other revisions, including the most recent. See *Williams v. Paintsville Nat. Bank*, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912D, 350. This special form is discussed with a list of the statutes in *Case v. McKinnis*, 107 Ore. 223, 231 Pac. 422, 32 A. L. R. 167. This opinion cites *North Carolina* as having the special form, but the original law and 1 McIntosh, *Consolidated Statutes of North Carolina* (1919), sec. 3049, follow the uniform draft.

The *Kentucky* Act was amended by adding a section providing for rights and duties of collecting banks. See *Laws of 1930*, ch. 13. *New York* has a similar act; see *Laws of 1929*, ch. 589.

The *Nebraska*, *South Carolina*, and *West Virginia* Acts, by evident error, substitute "indorsers" for "indorsees" in the last sentence.

The *West Virginia* Act was amended in 1931 to read: "As respects one another, indorsers are liable *prima facie* in the order in which they indorse

except that accommodation or irregular indorsers, indorsing for the same party, are *prima facie* equally liable; but in any case evidence is admissible to show that as between or among themselves they have agreed otherwise. All parties jointly bound on negotiable instruments are deemed to be jointly and severally liable."

Sec. 69. 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 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the words "prescribed by section sixty-five of this Act" to "of a person negotiating an instrument by delivery or by a qualified indorsement." The *Florida* Act has a similar variation.

The *California* and *South Carolina* Acts, by evident error, refer to the wrong section instead of to section 65.

The *Illinois* Act adds the following:

"Sec. 69a. Whenever any bill of exchange, drawn or indorsed within this state and payable without this state, is duly protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable in the United States in case suit has to be brought thereon, and on bills payable without the United States with or without suit, five per cent. damages in addition."

ARTICLE VI

PRESENTMENT FOR PAYMENT

Sec. 70. 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.

STATUTORY VARIATIONS

The *Illinois* Act interpolates "except in the case of bank notes" after "instrument" in line two.

The *Kansas*, *New York* and *Ohio* Acts interpolate "and has funds there available for that purpose" after "maturity" in line four.

The *Virginia* Act as incorporated in the Code of 1930 contains the amendment suggested by Professor Ames.

The *West Virginia* Code of 1931 omits all the first sentence after "instrument" and adds, "The statute of limitations shall not begin to run

against the holder of a certificate of deposit or a bank note until after presentment and demand for payment."

The *Wisconsin* Act omits all of the first sentence after the words "on the instrument."

Sec. 71. 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.

STATUTORY VARIATIONS

Florida Compiled Laws 1927, sec. 6834, practically repeals all diligence between bank and bank depositor other than that mentioned in section 6834; see *Cunningham v. Bunker*, 45 F. (2d) 458 (C. C. A. 5th 1930).

The *Massachusetts* and *Nebraska* Acts omit all of the section after the words "reasonable time after its issue."

The *New Hampshire* Act adds the following: "Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof, without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect or other thing, which by the provisions of this act is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within the sixty days, shall be a dishonor thereof, and shall authorize the holder of the note to give notice of the dishonor to the indorser as upon a presentment to the promisor, and his neglect or refusal to pay the same. No presentment of the note to the promisor and demand for payment shall charge the indorser unless made on or before the last day of the sixty days."

In *South Dakota* the maturity of demand instruments is fixed by a new section, see *infra*, sec. 193.

In *Vermont* the words, "the last negotiation thereof," are omitted and the words, "its issue in order to charge the drawer," are substituted. And see *Foundry Mfg. Co. v. Farr*, 96 Vt. 382, 119 Atl. 885.

Sec. 72. 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.

STATUTORY VARIATIONS

The *West Virginia* Code of 1931 adds, "If the party primarily liable be a corporation, to the president, treasurer, cashier, secretary or manager or, if neither is present, to any person found at the place where presentment is made."

Sec. 73. 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.

STATUTORY VARIATIONS

Arkansas says "presentation" for "presentment."

Sec. 74. 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.

Sec. 75. 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.

STATUTORY VARIATIONS

The *Montana* Act was amended by Laws, 1909, ch. 82, to read as follows: "Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day of maturity only." It is obvious that the intention was to amend section 87 instead of section 75, the reference to section 75 being a mistake.

The *Nebraska* Act omits everything after the words "banking hours" in line two.

Sec. 76. Presentment Where Principal Debtor is Dead.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Sec. 77. 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.

Sec. 78. 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.

Sec. 79. 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.

Sec. 80. 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.

STATUTORY VARIATIONS

The *Illinois* Act and *West Virginia* Code of 1931 omit everything after the words "for his accommodation."

Sec. 81. 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.

Sec. 82. 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.

STATUTORY VARIATIONS

In the *Missouri* Act, subsec. 2 reads, "Where the drawee is a fictitious person, by waiver of presentment, express or implied," and subsec. 3 is omitted.

Sec. 83. When Instrument Dishonored by Nonpayment.

The instrument is dishonored by nonpayment 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.

Sec. 84. Liability of Person Secondarily Liable—When Instrument Dishonored.

Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 85. 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 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.

STATUTORY VARIATIONS

The *Arizona*, *Kentucky*, and *Wisconsin* Acts omit altogether the third sentence beginning "Instruments falling due." In *Vermont* all of the third sentence before the words "instruments payable on demand" was formerly omitted, but has been restored by the amendment of 1919.

The words "or becoming payable" have been interpolated after the words, "Instruments falling due," in the third sentence in some cases in the Act as originally adopted, in others by subsequent amendment in *Arkansas*, *Delaware*, *Idaho*, *Indiana*, *Kansas*, *Maine*, *Massachusetts*, *Minnesota*, *Missouri*, *New Hampshire*, *New Jersey*, *New York*, *Rhode Island*, *Texas* and *Vermont*. The Uniform Laws Commission now prints this as an alternate form.

The insertion of the words "becoming payable" or "or payable," seems unnecessary and to make no difference in the legal effect of the provision.

In the *Colorado* Act the following words are substituted: "Instruments falling due on any day, in any place where any part of such day is a holiday, are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment during reasonable hours of the part of such day which is not a holiday."

The *District of Columbia* Act inserts a list of legal holidays and the provision that bills mature on the next secular day. *District of Columbia Code of 1929*, Title 22, sec. 126.

The *Illinois* Act was amended in 1921 by adding a provision that the payment, certification or acceptance of a negotiable instrument or any other transaction by a bank is not rendered invalid because effected on Saturday between twelve o'clock noon and midnight if these acts would be valid

if performed before noon on such Saturday; but no bank which is permitted by law to close on Saturday afternoons is compelled to keep open for business except at its option.

Missouri has the same amendment; see Acts of 1921, p. 161.

The *Iowa* Act adopts sec. 85, but also by a subsequent section makes this additional provision:

"Section 198. Days of Grace—*demand made on.* A demand made on any one of the three days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this Act, and the provisions of this Act as to notice of nonpayment, nonacceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this Act; but the provisions of this section shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face."

The title of this section is a misnomer, for it simply permits the holder to make demand not only on the day of maturity, but on any of the three following days except a Sunday or a holiday. The "grace" is to the holder, not to the acceptor or maker. And the same ambiguities and uncertainties arise here as under sec. 85; namely, whether if an instrument payable at a special place where the acceptor or maker is able and willing to pay, is not presented on the day of maturity, the acceptor or maker will be liable for interest for the three following so-called days of grace. Also whether an agent for collection of such an instrument failing to make presentment on the day of maturity, whereby loss results, will not be chargeable with negligence, although presentment is made within three days following the day of maturity.

The *Kansas* Act omits the last sentence, and also adds: "No provisions of the act relating to negotiable instruments, being ch. 310 of the Laws of 1905, or of any law of this state, shall be construed as to prevent banks from paying checks, drafts or other bills of exchange upon Saturday afternoon, or upon any legal holiday: *Provided*, such payments would be legal if made at other times."

This section of the *Louisiana* Act was amended in 1926 (Act No. 89) so as to read:

"When the day of maturity falls upon Saturday, Sunday, or a holiday, the instrument is payable on the next succeeding business day which is not a Saturday. Instruments payable on demand may at the option of the holder be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday; provided, however, that no person receiving any check, draft, bill of exchange, or promissory note payable on demand shall be deemed guilty of any neglect or omission of duty or incur any liability for not presenting for payment or acceptance or collection such check, draft, bill of exchange or promissory note on a Saturday; provided, also that the same shall be duly presented for payment or acceptance or collection on the next succeeding business day."

In the *Massachusetts* Act this section reads: "Every negotiable instrument is payable at the time fixed therein without grace, except that three days of grace shall be allowed upon a draft or bill of exchange made payable within the commonwealth at sight, unless there is an express stipulation to the contrary. When the day of maturity falls upon Saturday, Sunday or a holiday, the instrument is payable on the next succeeding business day which is not a Saturday. Instruments payable on demand may at the option of the holder be presented for payment before 12 o'clock noon on Saturday, when that entire day is not a holiday; provided, that no person receiving any check, draft, bill of exchange, or promissory note payable on demand shall be charged with any neglect or omission of duty or incur any liability for not presenting it for payment or collection on a Saturday;

provided, also, that it shall be duly presented for payment or collection on the next succeeding business day."

The first sentence of the *New Hampshire* Act reads like the first sentence of the *Massachusetts* Act.

In *Minnesota*, by amendment in 1917, ch. 204, sec. 1, the following clause was added to the section, "and if presented after 12 o'clock noon on Saturday, when that entire day is not a holiday, may at the option of the payer be then paid."

Mississippi Laws, 1920, c. 190, amended this section by omitting the third sentence, and adding, "Provided that three days of grace shall be allowed upon a draft or bill of exchange made payable within this state at sight, unless there is an express stipulation to the contrary."

The section thus amended does not seem to correspond to the statutory head-note, "Negotiable instruments—when due on Sunday, may be presented on Saturday."

In *North Carolina*, the third sentence was stricken out by amendment, Laws, 1909, c. 800, and it was enacted that "there shall be no difference between Saturday and any other secular or business day, as far as negotiable instruments are concerned."

The *North Carolina* Act (Revisal of 1908, secs. 2234, 2235), provides that every negotiable instrument is payable at the time fixed therein without grace except that "all bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect, and not otherwise, shall be entitled to days of grace as the same are allowed by the customs of merchants in foreign bills of exchange, payable at the expiration of a certain period after date on sight; provided, that no days of grace shall be allowed on any bill of exchange, promissory note or draft payable on demand."

The *Oregon* and *Pennsylvania* Acts were in fact (though not expressly) amended by special laws (*Oregon* Acts 1925, ch. 124; *Pa.* Laws 1927, No. 81) by adding a provision that when a legal holiday falls on Sunday, the following Monday shall be a legal holiday and such Mondays shall be regarded as Sundays for all purposes as regards the presenting for payment or acceptance, or protesting or giving notice of dishonor of negotiable instruments.

Oregon also has an act validating payment and certification of acceptances on Saturday afternoon. *Oregon* Laws, 1931, ch. 137. Other states have similar statutes.

In *Rhode Island*, by amendment in 1917, the first sentence now reads (*Gen. Laws*, 1921, sec. 3096): "Every negotiable instrument is payable at the time fixed therein without grace, except that three days of grace shall be allowed upon a draft or bill of exchange made payable within this state at sight, unless there is an express stipulation to the contrary." This supersedes the amendment of 1909, which interpolated "except sight drafts" after "every negotiable instrument."

Vermont by amendment (*Laws*, 1919, No. 82) has "following" instead of "succeeding" in the second sentence.

Vermont Laws, 1923, No. 49, which is not stated to be part of the N. I. L., enacts that nothing in any law of this state shall affect the validity of the payment, certification, or acceptance of a negotiable instrument or any other transaction of a bank or trust company between Saturday noon and midnight, if it would be valid when performed before noon.

Virginia (*Gen. Laws*, 1923, sec. 5647) embodies an amendment of 1906, so that the language of sec. 85 is like the *Massachusetts* section as far as "when that entire day is not a holiday," but does not have the *Massachusetts* proviso.

In *Washington*, by amendment in 1915, everything is omitted after the second sentence.

Sec. 86. 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.

Sec. 87. Rule Where Instrument Payable at Bank.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

STATUTORY VARIATIONS

Arkansas, Laws, 1923, Act 627, sec. 13, amended sec. 87 to read: "Where the instrument, being one payable at a determinable future time and not on demand, is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon, but only in case he has funds there sufficient to meet it in full on the day it falls due."

The *Idaho* Act was amended in 1929 (Laws, ch. 220) by eliminating the word "for" in the second line and inserting in its place the words "at its option and to charge the same to."

The *Illinois*, *Kansas*, *Nebraska* and *South Dakota* Acts omit this section. *North Dakota* repealed it by Laws, 1921, c. 90.

In *Minnesota* and *Georgia* the words "shall not be" are substituted for "is."

In *Missouri*, by an amendment in 1909, and in *New Jersey*, by amendment in 1909, the following was added at the end of the section: "But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day of maturity only."

Montana, see *supra*, sec. 75.

The *West Virginia* Code of 1931 inserts "not" between "is equivalent."

In regard to this section of the *Montana* Act, see notes under section 75, *supra*.

The *New Jersey* Act adds: "But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day on which the instrument is payable."

The *Virginia* Act was amended in 1928 (Acts, ch. 162) so as to add this provision: "upon presentment at any time during banking hours on the day of maturity of such instrument."

Sec. 88. What Constitutes Payment in Due Course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

STATUTORY VARIATIONS

In *Rhode Island* this section was amended by Laws of 1930, ch. 1561, adding provisions based on secs. 78 and 89 of the Uniform Fiduciaries Act

ARTICLE VII

NOTICE OF DISHONOR

Sec. 89. To Whom Notice of Dishonor Must Be Given.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, 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.

Sec. 90. 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.

STATUTORY VARIATIONS

The *South Carolina* Act omits the words "by or" before "on behalf of any party."

Sec. 91. 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.

STATUTORY VARIATIONS

The *Arkansas* Act reads "any agent" instead of "an agent."

The *Delaware* Act omits the word "entitled" from this section.

Sec. 92. Effect of Notice Given on Behalf of Holder.

Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. 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 enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. When Agent May Give Notice.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice

to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

STATUTORY VARIATIONS

In *Arkansas* after the words "receipt of said notice" in the second paragraph, the rest of the section reads as follows: "himself must do so within the same time for giving notice as if the agent had been an independent holder."

Sec. 95. 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.

STATUTORY VARIATIONS

In *Alabama*, *Illinois*, *Kentucky*, *North Carolina*, *South Dakota* and *Wyoming* the words "the notice" are omitted after the word "vitate" in the last sentence.

The *Iowa* Act was amended in 1929 by inserting the words "the notice." (Acts, ch. 237.)

The *North Carolina* Act substitutes "it" for "the notice" in the last sentence.

The *Kentucky* Act omits the word "not" in the first line, and substitutes "written" for "verbal" in the third line.

Under the *Kentucky* Act the indorser is released unless the notice is in writing. *Grayson Co. Bank v. Elbert*, 143 Ky. 750, 137 S. W. 782.

Sec. 96. 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 nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "in all cases."

The words "or merely oral" are omitted in the *Kentucky* Act.

Sec. 97. To Whom Notice May Be Given.

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. 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.

STATUTORY VARIATIONS

In *Arkansas* the words "must be sent by mail" are substituted for "may be sent" in the last paragraph.

Sec. 99. 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.

Sec. 100. 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.

Sec. 101. 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.

Sec. 102. 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.

Sec. 103. Where Parties Reside in Same Place.

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

- (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;
- (2) If given at his residence, it must be given before the usual hours of rest on the day following;
- (3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

STATUTORY VARIATIONS

Subsection 2 in the *Rhode Island* Act reads as follows: "If given at his residence it must be given before ten o'clock in the evening of the day following."

Sec. 104. Where Parties Reside in Different Places.

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

- (1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.
- (2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

STATUTORY VARIATIONS

In *Kansas*, *Nebraska* and *Ohio* the words "next preceding paragraph of this section" are substituted for the words "last subdivision."

Sec. 105. 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.

Sec. 106. 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.

STATUTORY VARIATIONS

The *Alabama* Act, as re-enacted in 1909, adds the clause "with proper postage affixed."

In *Arkansas* the words "when deposited," in the second line, are omitted, probably by mistake.

Sec. 107. 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.

Sec. 108. Where Notice Must Be Sent.

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

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

- (2) If he live in one place, and have his place of business in another, notice may be sent to either place; or
- (3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. 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.

Sec. 110. Who 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.

Sec. 111. 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.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "deemed to be."
The *Montana* Act has "former" for "formal."

Sec. 112. 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.

Sec. 113. Delay in Giving Notice—How Excused.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

STATUTORY VARIATIONS

This section of the *Virginia* Act is changed in the Code of 1919 by inserting the words "or other person seeking to give notice under section 5652 (section 90 of Uniform Act)" after "holder" in the first sentence.

The *West Virginia* Code of 1931 inserts "or other person entitled to give notice."

Sec. 114. When Notice Need Not Be Given to Drawer.

Notice of dishonor is not required to be given to the drawer in either of the following cases:

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

STATUTORY VARIATIONS

In subsec. 4 the *South Carolina* Act has "expect to" for "expect or." The act as originally recommended by the commissioners used "when" in subsecs. 2 and 3, but most states have substituted "where." Variations of "when" and "where" in this section will be found in *Arizona, California, Delaware, Indiana, Maine, Minnesota, Mississippi, Montana, Nevada, New Mexico, Pennsylvania, Texas* and *Washington*.

Sec. 115. 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.

Sec. 116. Notice of Nonpayment Where Acceptance Refused.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. Effect of Omission to Give Notice of Nonacceptance.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

STATUTORY VARIATIONS

The *Florida* Act, by evident error, omits the words "of dishonor" after "notice."

The *Wisconsin* Act adds this inconsistent provision, "but this shall not be construed to revive any liability discharged by such omission." (See *Dunn v. O'Keefe*, 5 M. & S. 282.)

Sec. 118. When Protest Need Not Be Made—When Must Be Made.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange.

STATUTORY VARIATIONS

This section has been amended in the *District of Columbia*, in 1920, 41 Stat. at L. 569, by the addition of a provision making the original protest of a notary public *prima facie* evidence of the facts therein contained.

In *Vermont* the following words are added to the section: "But the provisions of this section shall not be held to dispense with demand and notice of dishonor as provided by secs. 71 and 90."

The *Virginia* Act is changed in the Code of 1919 by the addition of a clause giving *prima facie* effect to the notary's certificate of protest.

The *West Virginia* Act contains a similar addition to this section.

ARTICLE VIII

DISCHARGE OF NEGOTIABLE INSTRUMENTS

Sec. 119. 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.

STATUTORY VARIATIONS

Illinois omits subsec. 4. Nevertheless, in *Gorin v. Wiley*, 215 Ill. App. 541, it was stated that parties primarily liable on a negotiable instrument were discharged by any act which would discharge a simple contract for the payment of money such as payment, release or the like, and a maker was held to be discharged by a novation.

North Dakota Laws, 1921, c. 91, which is not stated to be part of the N. I. L., make a renewal note illegal and invalid, unless the renewed note is returned or the words "Renewed note," are written or printed across it.

The *South Carolina* Act substitutes "the other" for "any other" in subsec. 4.

The *Virginia* Act is changed in the Code of 1919 by omitting subsec. 4.

The *West Virginia* Code of 1931 omits subsec. 4.

Sec. 120. 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.

STATUTORY VARIATIONS

The *Arkansas* Act substitutes "money" for "payment" in subsec. 4.

The *Georgia* Act substitutes "an" for "any" in subsec. 1.

The *Illinois* Act omits subsec. 3.

The *Illinois* Act adds to subsec. 5 (Illinois subsec. 4) the words "or unless the principal debtor be an accommodating party."

The *Illinois* Act substitutes in line one of subsec. 6 (Illinois subsec. 5) the word "an" for "any" and interpolates "in favor of the principal debtor" after "agreement" in line one and interpolates "prior or subsequent" after "assent" in line three and adds "or unless the principal debtor be an accommodating party" at the end of the subsection.

The *Kentucky* Act adds the words "in the original instrument" at the end of subsec. 6.

The *Maryland*, *New York* and *Oklahoma* Acts omit the words "unless made with the assent of the party secondarily liable, or" in subsec. 6. But the *Maryland* Act was amended in 1927 (Laws, ch. 490) so as to make this section conform exactly with Uniform Act.

The *Missouri* Act adds to subsec. 3, "except when such discharge is had in bankruptcy proceedings." See the discussion of *Highleyman v. McDowell Motor Co.*, 202 Mo. App. 221, 216 S. W. 52.

The *Wisconsin* Act interpolates a new subsection as follows: "4a. By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes."

The *Wisconsin* Act interpolates the words "prior or subsequent" after "assent" in line three of subsec. 6 and adds the words "or unless he is fully indemnified" to the subsection; and also adds a new subsec. 4a, providing for discharge when collateral is applied by the holder to other purposes.

The *West Virginia* Code of 1931 omits subsecs. 3, 5, and 6, and adds, "This section does not include the rules governing the discharge of a surety or party secondarily liable because of such secondary liability," and substitutes "party to" for "person secondarily liable on." See *Marshall County Bank v. Fonner*, 113 W. Va. 451, 168 S. E. 375; *McDonald v. Stewart*, 110 W. Va. 280, 158 S. E. 177.

Sec. 121. 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.

STATUTORY VARIATIONS

In the *Arkansas* Act, the last word of the section reads "accommodater," an evident misprint.

Sec. 122. 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.

Sec. 123. 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.

Sec. 124. 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.

STATUTORY VARIATIONS

The *Illinois* Act interpolates "fraudulently or" (probably "and" was intended) before "materially" in line one and interpolates "by the holder" after "altered" in the same line.

In *South Dakota* the words "by the holder" are interpolated after "altered" in the first paragraph.

The *West Virginia* Code of 1931 inserts after "altered" in the first line, "by the holder or by some one acting with the authority or consent of the holder."

The *Wisconsin* Act interpolates "orally or in writing" after "assented," in the third line.

Sec. 125. 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.

STATUTORY VARIATIONS

The *South Dakota* Act changes subsec. 4 of this section to read: "The number and the relations of the parties."

The *Texas* Act has "of" instead of "or" in the fifth subsection.

TITLE II

BILLS OF EXCHANGE

ARTICLE I

FORM AND INTERPRETATION

Sec. 126. 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.

Sec. 127. 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.

Sec. 128. 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.

STATUTORY VARIATIONS

The *Wisconsin* Act omits the words "or in succession."

Sec. 129. 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.

Sec. 130. 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.

STATUTORY VARIATIONS

The *Wisconsin* Act omits the words "or a person" in line two.

Sec. 131. 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 nonpayment. 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.

STATUTORY VARIATIONS

The *Montana* Act has "drawee" for "drawer" in the first line of this section.

ARTICLE II**ACCEPTANCE****Sec. 132. Acceptance—How Made, Etc.**

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.

STATUTORY VARIATIONS

The *Indiana* Act omits "any" in the third sentence.

Sec. 133. 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.

Sec. 134. 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.

STATUTORY VARIATIONS

The *Illinois*, *South Dakota* and *Wisconsin* Acts omit the words "to whom it is shown and" in the third line.

The *West Virginia* Code of 1931 omits "to whom it is shown and."

Sec. 135. 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.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts insert "or after" after "before" in the first line.

Sec. 136. 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.

Sec. 137. 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 nonaccepted to the holder, he will be deemed to have accepted the same.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts omit the provisions of this section. See *Mitchell Livestock Auction Co. v. Bryant State Bank* (S. D.), 275 N. W. 262.

The *Pennsylvania* amendment to this section (Laws of 1909, Act 169, April 27, 1909) adds: "Provided, That the mere retention of such bill by the drawee, unless its return has been demanded, will not amount to an acceptance: And provided further, That the provisions of this section shall not apply to checks."

This amendment restores the former rule of construction put upon the old statutes from which sec. 137 is copied and makes a demand for the return of the bill and a refusal necessary in order to constitute an acceptance.

In *Union Nat. Bank v. Franklin Nat. Bank*, 249 Pa. 375, 94 Atl. 1080, it was held under the Pennsylvania Amendment of 1909 that a bank which has paid a check drawn upon it without accepting it is not an acceptor in the sense that it is precluded by sec. 62 from disputing the genuineness of the drawer's signature. See the later case of *U. S. Nat. Bank v. Union Nat. Bank*, 268 Pa. 147, 110 Atl. 792. See also *Wisner v. First Nat. Bank of Gallitzin*, 220 Pa. 21, 68 Atl. 955, 17 L. R. A. (N.S.) 1266.

The *West Virginia* Code of 1931 adopted the amendment suggested by Professor J. D. Brannan in the fourth edition of his book, p. 843.

The *Wisconsin* Act adds "Mere retention of the bill is not an acceptance." See *Westberg v. Chicago Lumber Co.*, 117 Wis. 589, 94 N. W. 572.

Sec. 138. 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 over-due, 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.

STATUTORY VARIATIONS

In *Illinois* the word "payable" is inserted between "bill" and "accepted" in the last clause, an evident error.

The *Texas* Act has "drawee" instead of "drawer" in the first line, an obvious misprint.

Sec. 139. 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.

STATUTORY VARIATIONS

The *Indiana* Act begins "an acceptor," an evident error.

Sec. 140. 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.

Sec. 141. Qualified Acceptance.

An acceptance is qualified, which is:

- (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

- (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (3) Local, that is to say, an acceptance to pay only at a particular place;
- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

STATUTORY VARIATIONS

Arkansas omits the word "not" in the last line, an obvious error in engrossing.

The *Louisiana* Act has "condition" for "conditional" in subsec. 1; an obvious misprint.

Sec. 142. 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.

ARTICLE III

PRESENTMENT FOR ACCEPTANCE

Sec. 143. 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.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the words "in any other case" in subsec. 1.

The *South Dakota* Act adds the words "other than the drawee" at the end of the section.

The *District of Columbia* Act inserts after this section a provision attempting to regulate negotiable instruments as payment of debts. District of Columbia Code of 1929, Title 22, sec. 223.

Sec. 144. 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 fail to do so, the drawer and all indorsers are discharged.

STATUTORY VARIATIONS

The *Alabama* Act has "drawee" for "drawer," an obvious clerical error.

Sec. 145. 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.

STATUTORY VARIATIONS

The *Alabama* Act has "drawer" for "drawee," an obvious clerical error.
The *New Mexico* has "drawer" for "drawee" in the third line of this section.

Sec. 146. 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 and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the portion of the first sentence beginning with the words "under the provisions" to the end of the section.

The *Arizona*, *Kentucky* and *Wisconsin* Acts omit the last sentence.

The *Colorado* Act substitutes for the last sentence the following: "When any day is in part a holiday, presentment for acceptance may be made during reasonable hours of the part of such day which is not a holiday."

This section of the *Massachusetts* Act, as incorporated in the *General Laws* of 1921, omits the second sentence of the section and substitutes the following: "And no person receiving any draft or bill of exchange payable on demand shall be charged with any neglect or omission of duty or incur any liability for not presenting it for acceptance on a Saturday, provided that it shall be duly presented for acceptance on the next succeeding business day."

In *Mississippi* the last sentence was stricken out by *Laws*, 1920, c. 191. The amendment does not seem to correspond to the statutory headnote, "Bills due on Sunday may be presented on Saturday." See *Mississippi* amendment to sec. 85, *supra*.

In *North Carolina* the last sentence was stricken out by amendment, *Laws*, 1909, c. 800, and it was enacted that "there shall be no difference between Saturday and any other secular or business day, as far as negotiable instruments are concerned."

In *Washington* the last sentence was stricken out by *Laws*, 1915, c. 173.

Sec. 147. 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.

STATUTORY VARIATIONS

Alabama reads, "presenting the bill of acceptance" for "presenting the bill for acceptance." It also has "discharge the drawees" for "discharge the drawers," an obvious misprint.

Sec. 148. Where Presentment is Excused.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, 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.

STATUTORY VARIATIONS

This section of the *Iowa* Act was amended in 1929 (*Acts*, ch. 237) by inserting the word "other" before the final word "ground."

The *Kentucky*, *North Carolina* and *South Dakota* Acts omit the word "other" in subsec. 3.

Louisiana in subsec. 1 has "drawer" for "drawee."

Sec. 149. When Dishonored By Nonacceptance.

A bill is dishonored by nonacceptance:

- (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.

STATUTORY VARIATIONS

The *North Carolina* Act, by evident error, substitutes "executed" for "excused" in subsec. 2.

Sec. 150. 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 nonacceptance or he loses the right of recourse against the drawer and indorsers.

STATUTORY VARIATIONS

The *South Dakota* Act, by evident error, changes the word "accepted" in the first clause to "presented."

Sec. 151. Rights of Holder Where Bill Not Accepted.

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

STATUTORY VARIATIONS

The *South Dakota* Act inserts a new section, § 1835-A, providing it is due diligence for a collecting bank to forward items directly to the drawee.

ARTICLE IV**PROTEST****Sec. 152. In What Cases Protest Necessary.**

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance 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.

STATUTORY VARIATIONS

North Dakota by amendment, Laws, 1923, c. 259, adds at the end of the last sentence, "and if the same is protested no charge therefor shall be made to any party to the instrument."

This section of the *Wisconsin* Act was amended in 1901 (ch. 41) by adding a provision that every notary protesting any bill or note shall give notice in writing to the drawer, maker and each indorser, and shall make a certificate of the presentment, demand, refusal and protest and the names and addresses of the parties notified, and shall keep a record of the certificate, the certificate or record to be presumptive evidence of facts stated therein; but want of certificate or record, or both, shall not invalidate the protest or notice which may be proved by other competent evidence.

Sec. 153. 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.

STATUTORY VARIATIONS

The *Alabama* Act in subsec. 3 reads "reason of protesting the bill."

Sec. 154. 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.

STATUTORY VARIATIONS

Alabama in subsec. 2 inserts "or" before "in."

In *Arkansas* and in *Washington*, "responsible" was substituted for "respectable" in subsec. 2, but later in *Washington*, Remington's Comp. Statutes of 1915 and 1922, "respectable" was used with "responsible" following it in parentheses.

In the *Iowa* Act the word "reputable" is substituted for "respectable."

This section of the *Vermont* Act has been amended by eliminating subsec. 2 (Gen. Laws 1917, par. 3023).

Some of the states have "creditable" for "credible."

Sec. 155. 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.

Sec. 156. 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 nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

STATUTORY VARIATIONS

Alabama substitutes "other" for "further."

Sec. 157. Protest Both for Nonacceptance and Nonpayment.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Sec. 158. 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.

Sec. 159. 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.

Sec. 160. Protest Where Bill is Lost, Etc.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ARTICLE V

ACCEPTANCE FOR HONOR

Sec. 161. When Bill May Be Accepted for Honor.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn;

and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. 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.

Sec. 163. 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.

Sec. 164. 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.

STATUTORY VARIATIONS

Alabama has "acceptance" for "acceptor."

Sec. 165. Agreement of Acceptor for Honor.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

STATUTORY VARIATIONS

Alabama has "acceptance" for "acceptor."

The 1928 *Arizona* Act changes "shall not have" and "shall have" to "has not" and "has" respectively.

Arkansas omits the word "to" in the last line.

Texas has "presentation" instead of "presentment."

Sec. 166. 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 nonacceptance and not from the date of the acceptance for honor.

Sec. 167. Protest of Bill Accepted for Honor, Etc.

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be pro-

tested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

STATUTORY VARIATIONS

Alabama reads "accepted in honor" for "accepted for honor."

In the *Kentucky* Act the word "or" is used instead of "for" after "accepted"; an evident misprint.

Sec. 168. Presentment for Payment to Acceptor for Honor —How Made.

Presentment for payment to the acceptor for honor must be made as follows:

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

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the words "in section 104" to "herein for the giving of notice of dishonor for a negotiable instrument."

The *Arkansas* Act refers to section 102 instead of section 104.

In *North Carolina* the words "in this chapter specified" are substituted for "section one hundred and four" in subsec. 2.

Sec. 169. When Delay in Making Presentment is Excused.

The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

STATUTORY VARIATIONS

The 1928 *Arizona* Act changes the words "of section 81" to "of this chapter excusing delay in presentment for payment."

The *Florida* Act contains this section changed to read as follows: "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."

In *Ohio* this section is worded exactly like section 81. There is no reference to the acceptor for honor, or referee in case of need.

Sec. 170. Dishonor of Bill by Acceptor for Honor.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

ARTICLE VI

PAYMENT FOR HONOR

Sec. 171. Who May Make Payment for Honor.

Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any per-

son liable thereon or for the honor of the person for whose account it was drawn.

STATUTORY VARIATIONS

The *Illinois* Act has "accepted" for "protested" in the first line.

Sec. 172. 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.

Sec. 173. 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.

STATUTORY VARIATIONS

The *North Dakota* Act erroneously substitutes "payee" for "payer."

Sec. 174. 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.

Sec. 175. 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.

Sec. 176. 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.

Sec. 177. Rights of Payer for Honor.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII

BILLS IN A SET

Sec. 178. 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 constitute one bill.

Sec. 179. 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.

Sec. 180. 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.

Sec. 181. 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.

Sec. 182. 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.

Sec. 183. 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.

STATUTORY VARIATIONS

The *Wisconsin* Act here inserts two sections, entitled "Damages on Bills," as follows:

"Sec. 118-59. Whenever any bill of exchange drawn or indorsed within this state and payable without the limits of the United States shall be duly

protested for nonacceptance or nonpayment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent. upon the contents thereof, together with interest on the said contents to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

"Sec. 118-60. If any bill of exchange drawn upon any person or corporation out of this state, but within some state or territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay said bill with legal interest, according to its tenor and five per cent. damages, together with costs and charges of protest."

TITLE III

PROMISSORY NOTES AND CHECKS

ARTICLE I

Sec. 184. 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.

STATUTORY VARIATIONS

California, Laws, 1923, c. 98, amends this section by inserting after the first sentence: "but the negotiability of a promissory note otherwise negotiable in form, secured by a mortgage or deed of trust upon real or personal property shall not be affected or abridged by reason of a statement therein that it is so secured, nor by reason of the fact that said instrument is so secured nor by any conditions contained in the mortgage or deed of trust securing the same."

The amended section is constitutional. *Bank of Balboa v. Benneson*, 122 Cal. App. 121, 9 P. (2d) 540.

The *Nevada* Act was amended in 1933 to read as the *California* does.

The *Georgia* Act inserts "made" after "note" in the first line, and inserts the words "or in cotton or other articles of value" after the words "a sum certain in money," and adds to this section: "If it is made payable in articles of value other than money, and payment is not punctually made, the holder may recover the value of such articles at the time the note was due, at the place where it was payable, if a specific place is mentioned, otherwise at the place where it was made, with lawful interest thereon." See the *Georgia* form of sec. 1(2).

Wisconsin omits this section.

Sec. 185. 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.

STATUTORY VARIATIONS

The *Arizona* Act substitutes "relating" for "of this act applicable."

The *Illinois* Act inserts "are" between "act" and "applicable" in the second sentence.

Sec. 186. 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.

STATUTORY VARIATIONS

The *Illinois* and *South Dakota* Acts interpolate "and notice of dishonor given to the drawer as provided for in the case of bills of exchange" after the word "issue" in line two.

In *Maine* and *Montana* independent statutes were adopted in 1923 providing that a bank may refuse payment of a check not presented for payment within a year from its date (Me. Laws 1923, ch. 150, § 2; Mont. Laws 1923, ch. 106).

This section of the *Virginia* Act is changed in the Code of 1919 by adding provisions taken from Laws 1908, ch. 275, to the effect that the death of the drawer shall not operate as a revocation of the authority of the bank upon which it is drawn to pay the check if it be presented within two weeks from the date of drawer's death; that the bank shall retain any deposits of the deceased for two weeks after knowledge of his death and after paying checks presented within said two weeks, shall pay the residue to persons entitled to it by law.

The *West Virginia* Code of 1931 adds, "Failure of the holder to give the drawer due notice of dishonor will discharge him from liability thereon only to the extent of the loss caused by the delay."

Sec. 187. 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.

STATUTORY VARIATIONS

This section of the *Virginia* Act is changed in the Code of 1919 by adding thereto the following clause taken from Laws 1910, ch. 346: "and the check shall be charged to the drawer's account."

Sec. 188. 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.

Sec. 189. 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.

TITLE IV

GENERAL PROVISIONS

ARTICLE I

Sec. 190. Short Title.

This act shall be known as the Uniform Negotiable Instruments Law.

STATUTORY VARIATIONS

In the original act the word Uniform was omitted but this form is now recommended by the Commission on Uniform Laws and has been adopted in the following states: *Arkansas, Delaware, Idaho, Indiana, Maine, Minnesota, Mississippi, Tennessee and Texas.*

In *Arizona, California, Connecticut, District of Columbia, Kentucky, Massachusetts, Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia and Wisconsin*, this section is omitted either in the original act or in revisions. In some states "may be cited" is used for "shall be known."

Sec. 191. Definitions and Meaning of Term.

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.

STATUTORY VARIATIONS

The 1928 *Arizona* Act omits the last definition, of "written."

Arkansas substitutes "all" for "an" in the definition of "Acceptance," an obvious clerical error.

The *Georgia* Act substitutes "of" for "or," in the definition of "Acceptance," an obvious clerical error.

The *Massachusetts* Act changes the definition of "bank" by omitting the words "or association of persons." It also changes the definition of "instrument" to read as follows: "'Instrument' and 'negotiable instrument' shall have the same meaning and shall not include a bill of lading, warehouse receipt or certificate of stock."

In *Rhode Island* this section was amended by Laws 1930, ch. 1561, adding definition of "person" as follows: "'person' includes a corporation, partnership or other association or two or more persons having a joint or common interest."

It also adds a definition of "Fiduciary" and "Principal."

The *South Dakota* Act omits from the definition of "bank" the words "whether incorporated or not." The definitions of "person" and "written" are omitted in the *South Dakota Revised Code* of 1919.

Sec. 192. 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.

STATUTORY VARIATIONS

The *Kansas* Act omits the last sentence.

Sec. 193. 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.

STATUTORY VARIATIONS

The *New Hampshire* Act adds the following exception: "except as otherwise specifically provided by section 71 of this chapter."

The *South Dakota* Act makes an additional provision as follows:

"Section 1895. A. The apparent maturity of a bill of exchange, payable at sight, or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Section 1896. B. The apparent maturity of a promissory note, payable at sight, or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, six months after its date."

Sec. 194. 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.

STATUTORY VARIATIONS

Massachusetts prefixes the words, "Unless otherwise provided."
In North Carolina the Revisal of 1908 omits this section from the Act, but it is to be found as sec. 2839 in the chapter entitled, "Sunday and Holidays."

South Dakota omits this section.

Sec. 195. Application of Act.

The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.

STATUTORY VARIATIONS

The *Alaska, Arizona, District of Columbia, Georgia, Idaho, Massachusetts, Nebraska* and *West Virginia* Acts omit this section.

As the Act was originally adopted in *Florida, Laws, 1897, chapter 4524*, this section was included, but in the General Statutes of 1906 and in the Compiled Laws of 1914 and in Rev. Gen. Stat., 1920, it was omitted.

Tennessee and *Michigan* omit this section in their latest compilations.

In *Minnesota* the following words were added to the end of the section: "Nor shall they be construed as modifying, repealing or superseding any of the terms and provisions of sec. 2747, Revised Laws, 1905 (sec. 6015, General Statutes, 1913)."

South Dakota adds at the end of the Act the following: "Nothing in this Act contained shall be construed in any manner repealing chapters 128, 140 and 141 of the Laws of 1905 and chapter 74 of the Laws of 1907." These chapters refer to notes given for insurance premiums or assessments, for lightning rods, patent rights and the like, for medical services or as to what shall be considered due diligence in the collection of a check or draft.

Sec. 196. Cases Not Provided for in Act.

In any case not provided for in this act the rules of the law merchant shall govern.

STATUTORY VARIATIONS

The *Kentucky* and *South Dakota* Acts omit this section.

In the following states this section reads: "The rules of law and equity including the law merchant": *Arkansas, Delaware, Idaho, Maine, Minnesota, Mississippi, Tennessee, Texas, Vermont* and *West Virginia*.

The *California Act*, as originally enacted, contained the words "law and equity including." But by amendment in 1921, these words were eliminated (Laws 1921, ch. 94).

Sec. 197. Repeals.

Of the laws enumerated in the schedules hereto annexed that portion specified in the last column is repealed.

STATUTORY VARIATIONS

The form of this section differs in the various states.

Sec. 198. Time When Act Takes Effect.

This chapter shall take effect on * * *.

STATUTORY VARIATIONS

A number of the states add sections defining public holidays; making provisions as to notes given for a patent right; authorizing a bank to send a collection item direct to the drawee, and to receive the drawee's draft in payment; fixing the damages on protested bills; and regulating the liability of a bank to a depositor for mistakenly dishonoring checks.

New York, by amendment, adds the following section, number 326 (Laws, 1904, c. 287): "No bank shall be liable to a depositor for the payment by it of a forged or raised check, unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid was forged or raised."

Similar provisions have been adopted in some other states, but not as amendments to the Negotiable Instruments Law.

§ 393. **Chart of legal holidays.**—In the chart on the following page are listed the legal holidays for the various states. This information is important to the notary public in connection with his duties under the Negotiable Instruments Law. Under Section 85 of the act, when the day of maturity falls on a holiday, the instrument becomes payable on the next succeeding business day. The fact that in some states Saturday afternoon is a half-holiday is recognized in both Sections 85 and 146 of the Negotiable Instruments Law; and Section 194 is a general provision that when the day, or the last day for doing any act falls on a holiday, the act may be done on the next succeeding business day.

