CHAPTER 117.

NEGOTIABLE INSTRUMENTS.

DISHONOR AND DISCHARGE.

117.01 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.

117.02 Right of recourse of holder. Subject to the provisions of chapters 116 to 118, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder. [*1945 c. 33*]

117.03 Without grace; maturity. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon a Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday may be presented for payment on said Saturday, if not a holiday, or on the next succeeding business day. [*1947 c. 36*]

117.04 Time of payment. 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 the payment.

117.05 At a 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.

117.06 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.

Note: Parties who had assumed a mortgage debt, and who through their agent had paid the original mortgagee, were not estopped from setting up the defense of payment in a foreclosure action by a holder of the mortgage note, who had purchased the same after maturity from the agent after the note had been paid, where the payers had made no representation to the holder and knew nothing of their agent's deal with the holder. Michalak v. Nowinski, 220 W 1, 264 NW 498.

117.07 Notice, how 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.

117.08 Who may give. 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.

117.09 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.

117.10 Subsequent holders. 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.

117.11 Notice on behalf of entitled party. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

117.12 In hands of an agent. 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.

117.13 Character 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.

117.14 Written notice. 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.

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

117.16 Deceased party. 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.

117.17 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.

117.18 Joint parties. 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.

117.19 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 trustees or assignee.

117.20 When 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 chapter.

117.21 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.

117.22 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.

117.23 By mail. 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.

117.24 When mailed. Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under control of the post-office department.

117.25 Notice to antecedent parties. 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.

117.26 Where to 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 chapters 116 to 118, it will be sufficient, though not sent in accordance with the requirements of this section. [*1945 c. 33*]

117.27 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.

117.28 Waiver in instrument. 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.

117.29 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.

117.30 Notice, when 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.

117.31 Delay, when 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.

117.32 Notice to drawer, when not required. 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.

117.33 Notice to indorser, when not required. 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.

117.34 Of subsequent dishonor. 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.

117.35 Omission to give notice. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission, but this shall not be construed to revive any liability discharged by such omission.

117.36 Protest. 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.

117.37 When discharged. A negotiable instrument is discharged:

(1) By the 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.

Note: The maker's purchase of a note and mortgage for the purpose of asserting his equities against a subsequent grantee who assumed the mortgage and remote grantees holding the premises subject to the mortgage did not discharge the instrument; the mortgage lien remained paramount to the lien of the remote grantee's judgment creditor. Mueller v. Jagerson F. Co., 203 W 453, 233 NW 633.

In circumstances showing a recorded satisfaction of a first mortgage securing notes due to three payees and the execution of a new mortgage for the entire amount to one of the old mortgagees, the evidence supported findings that the transaction constituted a new loan rather than an extension of the old debt, so that a purchaser of a second mortgage, after the recording of the satisfaction of the first mortgage, was entitled to priority on foreclosure. Rielly v. Arnsmeier, 220 W 564, 265 NW 713.

Subsection (5), providing that a negotiable instrument is discharged when the principal debtor becomes the holder of the instrument at or after maturity in his own right, does not defeat the right of one of the parties primarily liable for the payment of a note, and into whose possession the note has come, to subrogation to which he is otherwise entitled. Hare v. Reddy, 222 W 508, 269 NW 294.

The testator's writing of the word "canceled" across the face of a legatee's one note to him canceled and discharged that note, as did the testator's tearing of two other notes. Where the testator canceled certain notes from a legatee to him, wrote the word "canceled" on the last page of the legatee's ledger account kept by him, and made a statement to the effect that the debt was canceled, and other notes by the legatee were not found among the testator's assets, the conclusion was required that the testator intended to cancel the other notes also. Estate of Pardee, 240 W 19, 1 NW (2d) 893.

117.38 Discharge from secondary liability. 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;

(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;

(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 an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument unless made with the assent, prior or subsequent, of the party secondarily liable, unless the right of recourse against such party is expressly reserved, or unless he is fully indemnified.

Note: The liability of a guarantor on a note may be discharged independently of the statute by a settlement and release fully performed. Green v. Loberg, 205 W 221, 237 NW 274.

In order to prevent a release of the principal debtor on a negotiable instrument from discharging a party secondarily liable thereon, the express reservation of the holder's right of recourse against the person secondarily liable must be incorporated in or contemporary with the release so as to be a part of the entire agreement. National Bank of La Crosse v. Funke, 215 W 541, 255 NW 147.

117.39 When paid by secondary party. 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.

117.40 Renunciation of rights. 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.

117.41 Cancellation by mistake. 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 canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

117.42 Altering of instrument. 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, orally or in writing, 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.

Note: Where, through inadvertence, only the accommodation parties signed the note, the subsequent addition of the accommodated party's signature was held to have been assented to by the accommodation makers, their original assent not having been withdrawn. Five year delay in securing signature of accommodated party did not prevent recovery against the accommodation makers. Klundby v. Hodgen, 202 W 438, 232 NW 858.

117.43 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 relation 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.

Note: The unauthorized detachment of a note-form from a contract operates as a material alteration which renders the note nonnegotiable, precludes a cognovit judgment thereon, and discharges the obligation on the entire instrument; but if the contract was made with the understanding that the note-form could be detached therefrom, the note is severable and may be treated as an independent instrument. Shawano F. Corp. v. Julius, 214 W 637, 254 NW 355.

A seller's insertion of the figures "280" in a blank space in an instrument guaranteeing payment for all goods sold to a buyer and also guaranteeing payment of the buyer's existing indebtedness "within—days" constituted a material alteration avoiding the guaranty, where the evidence did not support the seller's contention that the alteration was immaterial because made after the application of payments had liquidated such existing indebtedness. Morley-Murphy Co. v. Van Vreede, 223 W 1, 269 NW 664.

Alterations in a promissory note, which changed the interest rate, were "material alterations." Balliet v. Wollersheim, 241 W 536, 6 NW (2d) 824.