No. 153, A.] [Published May 15, 1899.

CHAPTER 356.

AN ACT relating to negotiable instruments and to establish a law uniform with such other states as have adopted or shall adopt like provisions, and amendatory of chapter 78 of the Wisconsin statutes of 1898.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter seventy-eight of the Wisconsin statutes of 1898 is hereby amended so as to read as follows:

GENERAL PROVISIONS.

Terms defined.

Section 1675. In this chapter 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.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay same. All other parties are "secondarily" liable.

"Reasonable" or "unreasonable times."

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

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

NEGOTIABLE INSTRUMENTS IN GENERAL.

FORM AND INTERPRETATION.

When instrument is negotiable.

SECTION 1675–1. 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.

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. But no order drawn upon or accepted by the treasurer of any county, town, city, village or school district, whether drawn by any officer thereof or any other person, and no obligation nor instrument made by any such corporation or any officer thereof, unless expressly authorized by law to be made negotiable, shall be, or shall be deemed to be, negotiable according to the custom of merchants, in whatever form they may be drawn or made. Orders of municipalities.

Warehouse receipts, bills of lading and railroad receipts upon the face of which the words "not negotiable" shall not be plainly written, printed or stamped, shall be negotiable as provided in section 1676 of the Wisconsin statutes of 1878, and in section 4194 and 4425 of these statutes, as the same have been construed by the supreme court. Warehouse receipts.

NOTE—The indorsement of an instrument not negotiable for lack of the word order or bearer, supplying such word, makes it negotiable from that time. Carruth v. Walker, 8 Wis. 103.

ORDER OR BEARER.—No change from the Wisconsin rule as to notes. Carruth v. Walker, 8 Wis. 103. But a bill of exchange need not be so expressed. Mehlberg v. Fisher, 24 Wis. 607. Equivalent words may be used, as, holder, assigns, or "this note shall be negotiable." 4 Am. & Eng. Ency. 134.

OR AT A FIXED OR DETERMINABLE TIME.—A bill of exchange need not be made payable on a day certain. Mehlberg v. Fisher, 24 Wis. 607. Nor a note. Sec. 8. Stamp. A draft, note or other instrument required by the act of Congress to be stamped, is not void for want of a stamp, but is valid, unless the omission is shown to be fraudulent. Rheinstrom v. Cone, 26 Wis. 163; Grant v. Conn. Mut. Life Ins. Co., 29 Wis. 125 and Timp v. Dockham, 29 Wis., 440, followed. State v. Hill, 30 Wis. 416. This is in accordance with the great weight of authority. 4 Am. & Eng. Ency. 160. The burden is upon the party impeaching the instrument to show the fraudulent intent. Ibid.

IN MONEY.—The word "currency" in a certificate of deposit means money, including bank notes which, though not an absolute legal tender, are issued for circulation by authority of law, and are in actual and general circulation (at the *locus in quo*) at par with coin. Klauber et al. v. Biggerstaff, 47 Wis. 551.

A certificate of deposit promising payment to order of a certain number of dollars "in currency" is negotiable. (Ford v. Mitchell, 15 Wis. 305; Platt v. Bank, 17 Wis. 223; and Lindsey v. McClelland, 18 Wis. 481, explained and criticised.) Ibid.

INDICATED WITH REASONABLE CERTAINTY.—A bill payable at a particular house is meant to be addressed to the person there residing. Peto v. Reynolds, 9 Exch. 410.

Sum payable, defined.

SECTION 1675-2. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:—

1. With interest; or

2. By stated instalments; or

3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

NOTE—The provisions of sections 4 and 5 change the Wisconsin rule. Morgan v. Edwards, 53 Wis. 509. First Nat. Bk. v. Larson, 60 Wis. 206. Peterson v. Bank, 78 Wis. 113. Leggett v. Jones, 10 Wis. 30. Such fees may be recovered in an action on the note. Vipond v. Townsend, 88 Wis. 285.

BY STATED INSTALMENTS.—See note to next section.

THE WHOLE SHALL BE DUE.—This does not change the Wisconsin rule; but other conditions, allowing the payee to sell the chattel for the price of which the note was given, and collect the amount due, with ten per cent. for collection expenses, renders both the sum and time of payment uncertain. Kimball Co. v. Mellon, 80 Wis. 133.

Unqualified order or promise.

SECTION 1675-3. An unqualified order or promise to pay is unconditional within the meaning of this chapter, 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.

NOTE—PARTICULAR FUND.—A. and B. cultivating on shares the farm of M. and N., partners, gave X, (to whom A. and B. were indebted) an instrument in writing addressed to M. and N. requesting them to pay a certain sum of money to X., "and take the same out of our share of the grain" meaning the grain then harvested or growing on said farm; and M. and N. wrote the words "Order accepted" on the back of the instrument, with their firm name signed thereto. In an action by X. against M. and N.: Held,

(1) That the instrument, though without words of negotiability, is a valid bill of exchange.

(2) That the order and acceptance are absolute; the words above quoted from the order not limiting its payment to a par-

ticular fund, or making it conditional, but merely indicating the means by which the drawees might reimburse themselves.

(3) That the drawees cannot defend against the legal effect of the bill and acceptance, on the ground that, before such acceptance, they had already made advances to the drawers, solely on the faith of the share of grain belonging to the latter, more than sufficient to cover its full value, and that the facts were known to X. at the time of such acceptance. Corbett v. Clarke et al., 45 Wis. 403. An order by a debtor upon a third person to pay a certain sum to his creditor or order, out of a particular fund, when such fund shall be created (as by the future payment of a draft then in the hands of such third person), is not negotiable as a bill of exchange; and no inference can be drawn from the paper itself that it was taken in payment of the drawer's original debt to the payee or that the payee's right to recover such original debt was suspended until his credit on the instrument should expire. Brill v. Holle, 53 Wis. 537. A note payable "out of any property I may have" or "out of my separate property and estate" (in case of a married woman) is negotiable. 4 Am. & Eng. Ency. 88.

"The question in every case is, does the instrument carry the general personal credit of the drawer or maker, or only the credit of a particular fund." 4 Am. & Eng. Ency. 89.

ORDER OR PROMISE.—See cases in 4 Am. & Eng. Ency. of Law, 2d ed., pp. 81, 82.

ORDER OR PROMISE IN THE ALTERNATIVE, for the payment of money or the performance of another act, at the drawer's or maker's option, is not negotiable. 4 Am. & Eng. Ency. 84.

CONDITIONAL INSTRUMENTS.—A written instrument for the payment of a specified sum of money at a time specified, is rendered non-negotiable by an alternative contract therein that the payee may sell the collateral securities mentioned therein, and, if these decline in value, may sell them before the money for which the instrument was given would otherwise become due, in which case the proceeds of the sale, less the expenses thereof, shall be applied in payment or part payment of the debt, and if a deficiency remains the amount thereof shall become due forthwith. Continental Nat. Bk. v. McGeoch, 73 Wis. 332.

A note payable in instalments is rendered non-negotiable by a subjoined agreement that in case of default in any payment, or an attempt to dispose of or remove the chattel for the price of which the note is given, the holder may declare the whole amount due, and may collect the same with ten per cent. damages for expenses of collection, or may take possession of and sell the property to pay the unpaid balance, interest, damages and costs of sale, and that, if there is a deficiency on such sale, the signer will pay it on demand. Such agreement renders both the amount and time of payment uncertain. Kimball Co. v. Mellon, 80 Wis. 133.

A STATEMENT OF THE TRANSACTION.—An instrument in the form of a promissory note for the payment of "25.00 as per deed, 10 per cent. till paid", is a note for twenty-five dollars. State v. Schwartz, 64 Wis. 432. An agreement subjoined to a note, stating that it is given for a piano, the title to which is to remain in the payee until payment, does not render the note non-negotiable. Kimball Co. v. Mellon, 80 Wis. 133. A note promising to pay $40 for premium an insurance contract is negotiable. Kirk v. Insurance Co., 39 Wis. 138. A bill for $55, for work done on logs, accepted to pay when due, is negotiable. 44 Me. 496, approved in Corbett v. Clark, 45 Wis. 403.

An addition to a note of the words "For two mills, remit as soon as sold" does not render the time of payment uncertain. The note is negotiable. Ward v. Perrigo, 33 Wis. 143.

A MODE OF REIMBURSEMENT OR PAYMENT, as, a reference to "profits", or an expected salary, or to "take the same out of our share of the grain", does not affect the negotiability. Corbett v. Clark, supra. 4 Am. & Eng. Ency. 88.

Determinable future time.

SECTION 1675–4. An instrument is payable at a determinable future time, within the meaning of this chapter, 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.

4. At a fixed period after 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.

NOTE—AT NO SPECIFIED TIME.—Such an instrument is payable at once. Husbrook v. Wilder, 1 Pin. 643.

UPON A CONTINGENCY.—An instrument sued upon as a promissory note, when produced in evidence, had endorsed thereon a condition that the payee or bearer was "not to expect payment" until certain property of the maker was "sold for a fair price." Held, that if so endorsed at the time of its delivery (which may be proved by parol), it was a mere conditional agreement. Blake v. Coleman, 22 Wis. 396. When a note is given to an insurance company for the premium upon a policy of insurance, its negotiable character is not affected by a further agreement therein, that if it shall not be paid at maturity, the whole amount of premium on such policy shall be considered as earned, and the policy shall be void while the note remains overdue and unpaid. Kirk v. Insurance Co., 39 Wis. 138. But see sections 1944, 1945, Wisconsin statutes of 1898. A note payable "when convenient" or "as soon as I can," or "when payor and payee mutually agree," is due on demand, and negotiable. 4 Am. & Eng. Ency. 92.

CONTRACT TO EXTEND TIME.—The words "this note to be extended if desired by makers," indorsed on a note, are too indefinite to have any legal significance. Krouskop v. Shontz, 51 Wis. 204.

A note containing a provision that it is to be renewed at maturity renders the time of payment uncertain. Citizen's Nat. Bk. v. Piollet, 126 Pa. St. 860.

SUBD. 4.—This subdivision is added to the act as originally proposed, in order to harmonize with subd. 2 of this section, and to remove the doubt whether a note, payable, for example, "one year from date, or before, if realized from the sale of" a machine (64 Ind. 120) would be within subd. 2. See also Clsne v. Childchester, 85 Ill. 523. Cota v. Buck, 7 Met. 588; Palmer v. Hummer, 10 Kas. 464; Stults v. Silva, 119 Mass. 137.

CERTAIN TO HAPPEN.—This is within the authorities. 4 Am. & Eng. Ency. 92, 93.

SECTION 1675–5. 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:— Negotiable character not affected.

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 or authorize the waiver of exemptions from execution.

NOTE—Where the interest on a note given to a railroad company, and secured by mortgage, was payable annually, and both principal and interest payable at Racine in this state, the note (which was payable to bearer), and the mortgage were transferred with a bond of the company attached, by which it was guaranteed to the holder payment of the interest semi-annually at New York city, and the payment of the principal at the same place. The bond also provided that the note and mortgage might be "transferred in connection therewith, but not otherwise to any party or purchaser whomsoever." Held, that this guaranty did not affect the negotiable character of the note and mortgage. Andrews et al v. Hart et al, 17 Wis. 306. The statement that the note is "secured by mortgage" does not affect its negotiability. Kelly v. Whitney, 45 Wis. 110.

GIVES THE HOLDER AN ELECTION.—This follows the authorities. 4 Am. & Eng. Ency. 84.,

NOTES FOR CHATTLES WHEN VENDOR RETAINS TITLE UNTIL NOTE PAID.—Such instruments are negotiable. Chi. R. Equip. Co. v. Merchant's Bk., 136 U. S. 268.

SECTION 1675–6. The validity and negotiable character of an instrument are not affected by the fact that:— Validity and negotiability not affected, when.

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.

NOTE.—SEAL.—This changes the rule in this state. Parkinson v. McKirm, 1 Pin. 214.

CURRENT MONEY.—See note to Sec. 1675-1.

Payable on demand, when.

SECTION 1675-7. 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.

NOTE—NO TIME FOR PAYMENT.—Such a note is payable at once. Husbrook v. Wilder, 1 Pin. 643.

ON DEMAND.—The instrument is due at once, and suit may be immediately brought without demand. 4 Am. & Eng. Ency. 343.

Payable to order, when.

SECTION 1675-8. 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.

NOTE—ONE OR SOME OF SEVERAL.—This agrees with the decisions, 4 Am. & Eng. Ency. 113. But a note payable to A or B is not negotiable, unless there is a community of interest in the payees. Ibid. A note by A to A and B, or a joint note by A and B to B is invalid. Ibid. 121. But a note by a partner to his firm, or vice versa, is valid after negotiation. Ibid.

THE DRAWEE OR MAKER.—A bill is valid, although drawer, drawee and payee are the same, and it may be put in circulation in the usual way. Wildes v. Savage, 1 Story 22. A bill drawn to the order of the drawer may be treated as a note. 4 Am. & Eng. Ency. 120.

SECTION 1675–9. The instrument is payable to bearer:— Payable to bearer, when.

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

NOTE—FICTITIOUS OR NON-EXISTING PERSON.—When the name is inserted by way of pretense merely, without any intention that the payment shall be made in conformity therewith, the payee is fictitious, whether the name be that of an existing or non-existing person, and the bill is payable to bearer. Vaglino v. Bank of England, 23 Q. B. Div. 243, and on appeal 153. The same rule applies to a person supposed to exist, but not actually a real person. Shipman v. State Bank, 126 N. Y. 318. If a bill is made payable to a real person it must be indorsed by him, even though he was not intended to have any interest in the paper, and the drawer knew that fact. 4 Am. & Eng. Ency. 117. The maker is estopped to plead ignorance of the fictitious character of the payee, as against a bona fide holder. Ibid.

SECTION 1675–10. The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. 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 admissable to show the circumstances under which they were made. Effect of memoranda on instrument.

NOTE—MEMORANDA.—There was indorsed upon a note a memorandum, unsigned, that the payee or bearer was not to expect payment until certain property was sold at a fair price. Held, that if so endorsed when delivered, of which parol evidence might be given, it was part of the note, and made it a mere conditional agreement. Blake v. Coleman, 22 Wis. 415. 4 Am. & Eng. Ency. 141. If intended merely for identification, or mere memoranda, or to correct mere mistakes, they are immaterial. Ibid, 142.

SECTION 1675–11. Where the instrument or an acceptance or any endorsement thereon is dated, such date is deemed prima facie to be the Date prima facie evidence.

true date of the making, drawing, acceptance, or indorsement as the case may be.

Ante or post dating.

SECTION 1675–12. The instrument is not invalid for the reason that it is ante-dated or post-dated, provided that 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.

Undated instruments.

SECTION 1675–13. 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.

Uncompleted instruments.

SECTION 1675–14. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it prior to negotiation 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 an authority to fill it up as such for any amount. In order, however, that any such instrument when complete may be enforced against any person who became a party thereto prior to 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.

NOTE—Where a note and mortgage, otherwise fully executed, but with a blank in each for the name of the payee and mortgagee, were delivered to an agent who was to procure (from whomsoever he could) a loan of money thereon, for the maker, this shows an intention that the agent should fill the blanks, and when so filled the instruments were valid without a new execution and delivery.

Van Etta v. Evenson, 28 Wis. 33. If a note signed in blank by one person as maker for the accommodation of another to whom it is delivered, is afterwards signed by a third person as joint maker, it will probably be void in the hands of one who takes with knowledge that at the time of executing it, the first signer expressly stipulated against such further signature. Snyder v. Van Doren, imp., 46 Wis. 602. But where the note, when signed by the first maker, contained, among other blanks, one for words making it a joint or several obligation, its delivery to the person for whose accommodation it was made, without any express stipulation against further signature, is held to have authorized such person to procure it to be signed by other parties as joint makers with the first. Ibid.

The dollar sign, or the word dollars, may be supplied. State v. Schwartz, 64 Wis. 432.

VALID AND EFFECTUAL.—This accords with the authorities. 4 Am. & Eng. Ency. 338. Johnston Harvester Co. v. McLean, 57 Wis. 258. Where a husband being entrusted with a note and mortgage with the description of the property left blank, filled up the mortgage, pursuant to the understanding with his wife, with a description of their homestead, the note and mortgage are valid in the hands of a holder in due course, although the husband procured the wife's signature upon the representation that other property only was to be put in. Nelson v. McDonald, 80 Wis. 605.

Incomplete instruments completed without authority.

SECTION 1675–15. 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 negotiation.

NOTE—One who signs an instrument for the payment of money only, (whether negotiable or not), leaving the amount blank, and intrusts it to another with authority to fill the blank with an agreed sum, will, as to third persons having no knowledge of the limitations of such authority, be bound by the act of the person to whom the instrument was intrusted, although he fills the blank with a larger sum than that agreed. Johnston Harvester Co. v. McLean, 57 Wis. 258. So held, where A as accommodation maker with B, signed a note upon the upper left-hand corner of which were the figures $45, but the amount of which was left blank with the understanding that B should fill the blank so as to make it a note for forty-five dollars, and, before delivering the note to the payee and without the knowledge of the latter, B filled the blank with the words "four hundred and fifty dollars" and annexed a cipher to the figures $45. Ibid. The figures in the corner of the note were no part thereof, and an unauthorized change in them did not vitiate the note. Id.

Contracts on negotiable paper, when incomplete.

SECTION 1675–16. 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 or-

der 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.

NOTE—T and J, with others, were liable for the amount of a certain judgment, and W, who was not so liable, signed a note with them, and left it with T to be negotiated by him to raise money to pay it; but T paid the judgment with his own means, and did not attempt to negotiate the note. In an action by T against W to recover against him, a proportionate share of the note, on account of such payment, Held, that the note had not been delivered, and had no legal existence as such, and there could be no recovery. Thomas v. Watkins, 16 Wis. 571. Defendants made a note to C or bearer. The evidence tended to show its deposit by defendants with the supervisors of a town, to be by them delivered to C, on condition that by a certain day C should complete a road. C did not perform his contract; but, after the expiration of the time therefor, and after the note matured, the road was built by another person, and accepted by the supervisors, and the note delivered to him without the consent of defendants. The defendants were held not liable. McLean v. Nugent, 33 Wis. 353. Where a real estate agent took possession of a note which was to be delivered when certain land was sold, saying as he did so "I will take charge of this," and then sold the note to a bona fide purchaser, no sale being made, it was held that a verdict finding that there had been no delivery would be sustained, and that the maker was not guilty of such negligence in permitting the note to be taken as would render him liable to an innocent holder. Dodd v. Dunne, 71 Wis. 578. The rule of this case is changed by this act, Sec. 1676–28 post.

DELIVERY IN ESCROW. To constitute a good delivery of drafts in escrow the person making such delivery must part with the possession and divest himself of all power and dominion over them. Thus, if accepted drafts are delivered by the vendee of goods to a depositary who is to hold them until notified of the acceptance of the goods and directed by said vendee to turn the drafts over to the vendor, there is no escrow. Lehigh Co. v. W. Sup. Co., 91 Wis. 221.

Construction of ambiguities.

SECTION 1675–17. 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, references 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;

8. Where several writings are executed at or about the same time, as parts of the same transaction, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof.

NOTE—A note drawn by filling out a printed blank provided for the payment of interest after maturity; also that the failure to pay interest as agreed should make the note wholly due and payable. The condition of the mortgage given to secure the note was the payment of the amount "with ten per cent. per annum annually" etc. Construing the instruments together in the light of the parol testimony, it is held that to effectuate the intention of the parties, the printed words "after maturity" should be erased from the note. Stanton v. Caffee, 58 Wis. 261.

SUBD. 7. So held in Wisconsin, Dill v. White, 52 Wis. 456. And

It makes no difference in the rule that one of the makers adds the word surety after his signature. Dart v. Sherwood, 7 Wis. 523.

SUBD 8. This accords with the authorities. 4 Am. & Eng. Ency. 144.

Trade or assumed names.

SECTION 1675-18. 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 his own name.

NOTE—SIGNATURE.—See Sec. 10. Matter written partly on the same line as the last word of a printed form and before the signature, and partly on a lower line, is part of the note. Kilkelly v. Martin, 525. Subscription is not necessary. 4 Am. & Eng. Ency. 109.

Signature by agent.

SECTION 1675-19. 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.

NOTE.—Where, in an action against C upon a promissory note signed F. B. & Co., it appeared in evidence that F. B. & Co. were doing no business of their own, but were carrying on a manufacturing business as agents for C, who furnished the necessary money, and held himself out as their principal and liable upon all notes given by them in the business, and had authorized them to sign notes therein either "F. B. & Co. Agents" or simply "F. B. & Co.", held, that the note in suit, though made to run for five years, with interest payable annually, was presumably the note of the defendant C, and he was liable thereon to the purchaser thereof, unless there was sufficient on its face to put such purchaser upon inquiry as to the agent's authority to give it in that form, and that question was one for the jury. Conroe v. Case, 74 Wis. 85.

Agent not liable.

SECTION 1675-20. 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.

NOTE—A note sued on was as follows: "April 1st, 1858. One year after date, for value received, we, as trustees of the Summerfield M. E. Church, for and in behalf of the said church, promise to pay Diana Taylor the sum of fifteen hundred dollars, with interest, etc. Geo. F. Austin, Edward Emery, M. Steever, W. A.

Chapman, R. P. Elmore, Trustees Summerfield M. E. Church." Held, that whatever might be the conclusion as to the personal liability of the trustees in case they had bound the church, if they did not bind the church they bound themselves. Dennison v. Austin et al., 15 Wis. 366. The evidence did not show any vote by the board of trustees, at an authorized meeting, to execute said note or to borrow the money for which it was given, but the negotiation appeared to have been continued principally by one of the trustees, and the loan effected without any such previous action, and two of the trustees signed the note, and the lender's agent then took it to the other trustees, and procured their signatures. Held, that the note was not binding upon the church. Ibid. A note reading "we promise to pay" etc., signed "San Pedro Mining and Milling Company, F. Kraus, President' is the note of the company alone; and parol evidence is not admissible to show that the president did not sign the name of the company, but signed his own name as a joint maker. Liebscher v. Kraus, 74 Wis. 387.

Signature by "procuration."

SECTION 1675–21. 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.

Indorsement by corporation or infant.

SECTION 1675–22. 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.

Forgery.

SECTION 1675–23. 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.

CONSIDERATION.

Presumptions.

SECTION 1675–50. 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.

Value, defined.

SECTION 1675-51. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt, discharged, extinguished or extended, constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. But the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery, by the maker, does not constitute value.

NOTE—ANTECEDENT DEBT.—Taking an indorsement in discharge of such a debt without notice of equities makes the indorsee a bona fide holder. Atchison v. Davidson, 2 Pin. 48. Stevens v. Campbell, 13 Wis. 419. Curtis v. Mohr, 18 Wis. 615. Kellogg v. Fancher, 23 Wis. 21. Knox v. Clifford, 38 Wis. 651. Heath v. Company, 39 Wis. 146. Where the payee indorses a note as collateral security for an antecedent debt which still remains unsatisfied, no new consideration intervening, the holder is not one in due course. Cook v. Helms, 5 Wis. 107, Jenkins v. Schaub, 14 Wis. 1. See note to Sec. 1675-53, and a full discussion of the subject in 4 Am. & Eng. Ency., 290-296.

ACCOMMODATION PAPER.—See Black v. Tarbell, 89 Wis. 390.

CONSIDERATION.—Where an agent gives his note in discharge of or forbearance of his principals' debt, this is a consideration. Dolph v. Rice, 21 Wis. 597. A contract void by the statute of frauds is not a consideration. Hooker v. Knab, 26 Wis. 511. Where a note was given for an amount due the payee from the maker on a certain contract, this was a sufficient consideration, although the payee may have owed the maker at the time more than the face of the note, on other contracts. Knox v. Clifford, 38 Wis. 651. One who takes the note of his debtor for the amount of a debt then past due, especially if such note is signed or indorsed by a third person and payable at a future day, will be presumed to extend the time for the payment of the debt until the day fixed in the note; and such extension is a valuable consideration for the note and places the creditor in the position of an innocent holder thereof for value. Johnson Harvester Co. v. McLean, 57 Wis. 258.

Value presumed.

SECTION 1675-52. 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.

NOTE—VALUE.—The purchase of a $300 note of a person known by the indorsee to be in fair credit, for $5, is not a purchase for value. De Witt v. Perkins, 22 Wis. 451. Taking a note, bond and mortgage at 73 per cent. of their par value held a purchase bona fide. Bange v. Flint, 25 Wis. 544. See Griffiths v. Kellogg, 39 Wis. 290.

Where a claim to a future contingent interest in land was made in good faith, based upon the terms of a will, a release thereof was a sufficient consideration for a promissory note given therefor by one who, while denying such claim, chose to compromise it; and

in the absence of fraud or undue advantage it is immaterial whether such claim was in fact well founded or not. Brooks v. Wage, 85 Wis. 12.

When holder has lien.

SECTION 1675-53. 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.

NOTE—A holder as collateral for value is one in due course. Lyon v. Ewings, 17 Wis. 63. Bond v. Wiltse, 12 Wis. 611. Curtis v. Mohr, 18 Wis. 615. Bowman v. Van Kueren, 29 Wis. 209.

Where a debt is created without any stipulation for further security, and the debtor afterward, without any obligation to do so, voluntarily transfers a negotiable instrument to secure the pre-existing debt, and both parties are in *statu quo* in respect to such debt, no new consideration, stipulation for delay or credit being given, or right parted with by the creditor, he is not a holder of the collateral for value in the usual course of trade, so as to be protected against any equities existing against it at the time of the transfer. Bowman v. Van Kueren, 29 Wis. 209.

The mere transfer of such collateral to the creditor raises no presumption of a stipulation for further time on the pre-existing debt, which will operate to defeat the equities of the maker or indorser existing at the time of such transfer. Body v. Jewson, 33 Wis. 402.

Thus where a mortgagee, whose mortgages were past due, threatened to foreclose them, and the debtor transferred to him a negotiable note as further security, upon his general promise "to be more lenient" in respect to such mortgage debt, but without any agreement to forbear the enforcement thereof for any specified time. Held, that the equities of the maker were not cut off by such transfer. Ibid.

Where an accommodation indorser of a note indorses successive notes in renewal thereof, each as the previous note becomes due, his liability will be regarded as a continuous one without hiatus. Black v. Tarbell, 89 Wis. 390.

One to whom an accommodation note is transferred in good faith before due as collateral security against his pre-existing liability as indorser of another note, and who in consideration of such transfer definitely extends the duration of his liability by indorsing a renewal of such other note, is a bona fide holder of the accommodation note for value before due. Ibid.

Absence of consideration matter of defense.

SECTION 1675-54. 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.

Accommodation party defined.

SECTION 1675-55. An accomodation 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.

NOTE—Defendant's accommodation note, payable in bank, was by the payee indorsed to his creditor as collateral security, and on presentment at maturity, was paid by the bank at the payee's request, without any notice to defendant. Held, that these facts show a payment of the note to the indorsee with moneys obtained from the bank by the payee, and that the latter alone (and not the defendant) is liable to the bank or its assignees. Cravath et al. Assignees v. Esterly, 26 Wis. 675.

H, as broker, negotiated a sale of G's land to L for $27,500. L having only $22,500 in cash to pay for the land, by mutual agreement between the three, G deeded the land to H and received $22,500 less H's commission on the sale, and also received H's note for $5,000, secured by H's mortgage of the land; and H conveyed the land to the party designated by L, subject to the payment of said $5,000 note and mortgage. All these writings were contemporaneous. Held, that construing all the instruments together, as a single transaction, H is absolutely liable to G on said note, and he cannot set up a contemporaneous oral agreement between himself and G, by which the latter was to collect the $5,000 by foreclosure of a mortgage, without holding H personally liable on the note. Gillman v. Henry, 53 Wis. 465.

One is to be regarded as an accommodation maker of a note only where he receives nothing for his signature, and the payee parts with nothing therefor; and the facts above state show that H was not such a maker.

Query whether the holder of accommodation paper must be one in due course. Black v. Tarbell, 89 Wis. 390. The general weight of authority is that he must be. I Am. & Eng. Ency. 364.

NEGOTIATION.

Instrument, when negotiated.

SECTION 1676. 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.

NOTE—DELIVERY. A valid delivery is absolutely necessary even against a holder otherwise in due course. See notes to Sec. 1676 28. But this is opposed to the weight of authority. See notes to same.

INDORSEMENT. A guaranty of payment is not an indorsement, and no demand or notice is necessary to charge the guarantor. Ten Eyck v. Brown, 3 Pin. 452. Query whether it is a good defense, by the indorser, that it was made on Sunday. Walsh v. Blatchley, 6 Wis. 413. Is presumed to have been made at or about the date of the note. Mason v. Noonan, 7 Wis. 510. When made by the payee and another, the presumption is that the payee indorsed first. Cady v. Shepard, 12 Wis. 713.

Evidence of an agreement that a note should not be negotiated is not admissible. Knox v. Clifford, 38 Wis. 651.

No consideration necessary other than that supporting the original paper. Frederick v. Winans, 51 Wis. 472.

Indorsement, what is.

SECTION 1676–1. 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.

NOTE—Where a promissory note and a mortgage securing its payment were executed to a railroad company, and it executed to C its negotiable bond for a sum equal to the note, attaching thereto the note and mortgage, and reciting in the bond that the company transferred the note and mortgage to C as security, and that both should be transferable in connection with the bond, and not otherwise: Held,

(1) That this was a sufficient indorsement within the law merchant to pass to C the legal title to the note.

(2) That C being a purchaser of value, took the note free from all equities or defenses existing against it in the hands of the railroad company, of which he had no actual notice. Crosby v. Roub, 16 Wis. 645.

The payee or owner of a promissory note may by the law merchant transfer the legal title thereto without assuming any liability on account thereof as indorser or guarantor, and when a note is transferred by a guaranty, whether the guaranty be good or not against the party making it, under the same statute of frauds, the legal title to the note passes. 16 Wis. 645, Ibid.

An indorsement or transfer of a promissory note may be on another paper attached to and made a part of the note, called an allonge; and it is not essential to a transfer of a note by this method that there should have been a physical impossibility of writing the indorsement or transfer on the note itself, but it may be on another paper attached to the note, whenever necessity or the convenience of the parties required it. Ibid. Crosby v. Roub, affirmed, Bange v. Flint, 25 Wis. 544. Murphy v. Dunning, 30 Wis. 296.

The signature may be either the name of the payee or any mark or designation which is used as a substitute for his name with the intention of being bound or of transferring the paper. 4 Am. & Eng. Ency. 260.

INDORSEMENT WITH GUARANTY.—This amounts to a special indorsement without the right to require presentment, notice or protest. The liability of indorser and guarantor is the same. This is called a facultative indorsement. 4 Am. & Eng. Ency. 277. A guaranty on the note or bill, or on a paper attached is, like an indorsement without recourse, a negotiation of the instrument; and this is so even though the guaranty is void under the statute of frauds. Crosby v. Roub, supra. A guaranty of a note by the owner, thus putting it in circulation, is not within the statute of frauds. Wyman v. Goodrich, 26 Wis. 21.

Guaranty by one not a party, is not negotiable, because it is not a contract that the guarantor will pay, but that the maker will, and if he does not, the guarantor will do so. Ten Eyck v. Brown, 3 Pin. 452.

Indorsement is entire.

SECTION 1676-2. 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.

NOTE—If notes when taken were voidable for the fraud of the maker, and the assignee in taking them relied upon the credit of the indorsement, that could not operate as a reservation of any legal interest in the assignor, and he could not lawfully do anything to impair their value in the hands of the assignee, as by electing to declare them void. Landauer v. Espenhain, 95 Wis. 169.

Special or blank indorsement.

SECTION 1676-3. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

What special or blank indorsement.

SECTION 1676-4. 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.

NOTE—One who has indorsed a note in blank, without qualification expressed in the writing, cannot show by parol, as against the person to whom he delivered it, a contemporaneous agreement between them that he should not be liable as indorser, where no mistake or fraud in procuring the instrument is alleged. Charles v. Denis, 42 Wis. 56.

Though a special indorsement is made after an indorsement in blank, the instrument continues to be negotiable by delivery. 4 Am. & Eng. Ency. 251.

Conversion of blank into special indorsement.

SECTION 1676-5. 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.

NOTE—This applies to an indorsement in blank without recourse. Lyon v. Ewings, 17 Wis. 63.

He cannot so write a valid agreement to pay the note jointly with another. Catlin v. Jones, 1 Pin. 130. This may be done after the indorser's death. Cope v. Daniel, 9 Dana, 415.

Restrictive indorsement.

SECTION 1676–6. 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.

SECTION 1676–7. 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.

Qualified indorsement.

SECTION 1676–8. 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.

Conditional indorsement.

SECTION 1676–9. 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 endorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Indorsements of instruments payable to bearer.

SECTION 1676–10. Where an instrument, payable to bearer, is endorsed 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.

Instruments payable to two or more persons.

SECTION 1676–11. Where an instrument is payable to the order of two or more payees or joint indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

NOTE—All the partners may indorse to one of them, so as to make him the holder. Merril v. Guthrie, 1 Pin. 435. Manegold v. Dulaw, 30 Wis. 541.

When drawn to fiscal officer.

SECTION 1676–12. Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

NOTE—An indorsement of a promissory note payable to a bank, made by its president as follows: "Pay to the order of A. J. A.; Marine Bank by J. S. H., Pres't," is binding on the bank. Aiken v. Marine Bank, 16 Wis. 713.

The words "A. B. Cas." indorsed upon a note, held sufficient in form to bind the bank of which A. B. was cashier. Houghton et al v. First Nat. Bk. of Elkhorn, 26 Wis. 663.

Such indorsement, although made upon a note not belonging to the bank, and merely for the accommodation of the payee or prior endorser, will bind the bank as against a purchaser in good faith, for value, before maturity. Ibid.

Representations by a bank cashier need not be made at the counter or office of the bank in order to bind it. Ibid.

The fact that a note purporting to have been made in Michigan and endorsed by a bank in Elkhorn, in this state, was offered to the plaintiff at Milwaukee a day or two after its date, was not notice that it could not have passed through said bank in the regular course of business, so as to prevent plaintiffs from being innocent purchasers, especially when they enquired of the cashier before purchasing and were told that it was "all right." Ibid.

Misspelled names.

SECTION 1676–13. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

Negative personal liability.

SECTION 1676–14. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Prima facie evidence of negotiation.

SECTION 1676–15. Except where an indorsement bears date after the maturity of the instru-

ment, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

NOTE—Same in Wisconsin. 5 Wis. 107; 6 Wis. 109. Mason v. Noonan, 7 Wis. 510.

Presumption.

SECTION 1676–16. Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Length of negotiability.

SECTION 1676–17. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Erasing indorsements.

SECTION 1676–18. 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.

Transfer without indorsement.

SECTION 1676–19. 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 transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. 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. When the endorsement was omitted by mistake, or there was an agreement to endorse made at the time of the transfer, the endorsement, when made, relates back to the time of transfer.

Subsequent endorsement.

NOTE—ASSIGNMENT WITHOUT INDORSEMENT. Does not cut off equities. Terry v. Allis, 16 Wis. 504.

In case of a note payable to order, indorsement, as well as delivery before maturity, is necessary to cut off equities existing between the maker and payee before the delivery. Beard v. Dedolph et al. 29 Wis. 136.

But the bona fide holder of such note by delivery only is protected against everything subsequent to such delivery, especially if the note be afterward endorsed to him; such endorsment being held to relate back to the time of delivery, as to any equity outside of the note itself. Ibid.

On payment of money loaned to him by his wife, a husband delivered to her, without formal indorsement, immediately after it

was made, defendant's note, payable to his order. After its maturity the wife sold it to the plaintiff; and afterward, before suit, it was endorsed by both husband and wife. Held,

(1) That the wife was competent to take the legal title to the note from the husband.

(2) That it was valid in her hands, and in the hands of the plaintiff, against any offset arising out of indebtedness of the husband to the makers, contracted after the note was transferred to the wife. Ibid.

A debtor, who held notes of a third person payable to his order, delivered them to his creditor, who agreed that if, upon inquiry, he found the notes to be good he would apply the amount thereof on on the indetedness, but otherwise would return them. Afterwards, on demand of the debtor, the creditor refused to return the notes. Held, that such refusal was an exercise of the creditor's option to retain the notes, and vested the title in him, even though they had not been indorsed by the debtor. Esau v. Greene & Button, Co., 94 Wis. 8.

WARRANTY ON ASSIGNMENT. Upon the sale of a promissory note for its face value there is an implied warranty that it has not been paid. Daskam v. Ullman, 74 Wis. 474.

Re-issue by prior party.

SECTION 1676–20. 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.

RIGHTS OF THE HOLDER.

Holder may sue.

SECTION 1676–21. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

NOTE—MAY SUE. The holder of an instrument as collateral (pledgee) may sue and collect the whole debt, being liable only for a surplus over the claim. Hilton v. Waring, 7 Wis. 492, Curtis v. Mohr, 18 Wis. 615. Demand paper may be sued at once. 4 Am. & Eng. Ency. 343.

PAYMENT TO HIM. Where payments are made in good faith to the holder of a promissory note, payable to bearer, the maker's liability is discharged to the extent of such payments; and he cannot recover back the moneys so paid from the person to whom they were paid, on the ground that the latter was not the real owner of the note. Greve v. Schweitzer, 36 Wis. 554.

HOLDER The fact that securities were taken by one person in the name of another who had no interest in them, does not invalidate the securities or prevent the person beneficially interested from enforcing payment of them by action. Lane v. Duchac, 73 Wis. 646.

HOLDER'S RIGHTS The agent of a company dealing in pianos sold in instrument under a written contract by which the title was

to remain in himself until payment of the price. This contract, which was not negotiable, he assigned to his principal, the owner of the piano. He also took from the purchaser negotiable notes containing the same condition as to the title of the piano, and these he transferred to one who knew nothing of his having taken the contract also. Held, that the bona fide holder of the notes was entitled to enforce their payment out of the piano, in preference to the piano company, the assignee of the non-negotiable contract. W. W. Kimball Co. v. Mellon, 80 Wis. 133.

Holder in due course.

SECTION 1676–22. 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.

5. That he took it in the usual course of business.

NOTE—PARTNERS. Individual partners, indorsees of the firm, who are payees, cannot be holders in due course as to any equities or infirmities of which the firm had notice. Mannay v. Glendinning 15 Wis. 55. Notice to one is notice to all. Hubbard v. Galusha, 23 Wis. 308.

One who takes in payment of the individual note of A for his pribate debt, notes of third parties running to A, but which are in fact the property of a co-partnership of which A is a member, is protected as a bona fide holder for value, if he was ignorant of the existence of such co-partnership. Kellogg v. Fancher, 23 Wis. 21.

BEFORE OVERDUE. Where an indorsee takes several notes, secured by one mortgage, some due and others not, he is a holder in due course as to such as are not due, but not as to those overdue. Boss v. Hewitt, 15 Wis. 285. No change: Gregory v. Hart, 7 Wis. 532. Dunbar v. Harnesberger, 12 Wis. 373; Knott v. Tidyman, 86 Wis. 164.

HOLDER AS COLLATERAL. Is a holder in due course. Lyon v. Ewing, 17 Wis. 63. One who received the notes of a third person, a part of which are past due, as collateral security for a pre-existing debt due him from the holder thereof, who had notice of equities in favor of the maker, is not a bona fide purchaser. Knott v. Tidyman, 86 Wis. 164.

WITHOUT NOTICE OF INFIRMITY. As to instrument indorsed by a bank, see note to 1676–12. A bank discounted a note for a company, and credited it with the amount, the credit subsequently increasing, so that, at the time of the suit on the note, the bank had parted with nothing of value for it. Held, that the bank was not a bona fide purchaser, for value. Mnf. Nat. Bk. v. Newell, 71 Wis. 309.

Where a note is given to a company, constructive notice of infirmity therein to the officers of the company does not in itself import notice to a bank discounting the note, of which, also, they are directors and officers. Ibid.

The mere fact that the officers of the bank knew in a general way, that the company was in the habit of selling machinery and taking notes therefor, and then discounting the same at the bank, was not equivalent to actual notice of the infirmity attaching to this particular note. Ibid.

INFIRMITY. Where an accommodation indorsement was made for a specific purpose, and the note was negotiated by the maker in violation of the agreement with the indorser, the holder cannot recover unless he took the note in good faith for a valuable consideration, without notice of the agreement. Bowman v. Van Kuren, 29 Wis. 209.

When the general manager of a bank taking an instrument as collateral shortly after its execution, took the acknowledgement of a mortgage securing the paper, and had full knowledge of the incapacity of the maker, this is notice to the bank. The transaction being a recent one (the transfer being eleven days after execution) the bank was bound, though the notice was gained in another transaction. Brothers v. Bank, 84 Wis. 381, 395.

It seems that where A makes his note payable to X or bearer, and procures B to sign it for his accommodation, and for the purpose of enabling him to negotiate said note to X, and afterwards A negotiates it in fact to Y for the payment of a different debt, this as a fraud upon B, which if known to Y when he took the note, will prevent a recovery thereon against B. Ibid.

INTEREST DUE. A promissory note matures only when, by its terms, the principal becomes due; and one who purchases it in good faith for value, before maturity, is within the protection of the law merchant, although interest is overdue at the time of such purchase. Ross v. Hewitt, 15 Wis. 260 followed; and a dictum in Hart v. Stickney, 41 Wis. 630 overruled. Kelly v. Whitney et al. 45 Wis. 110. Patterson v. Wright, 64 Wis. 289.

WHAT NOT A PURCHASE. A promissory note for $648.26 had been obtained by the payee through fraud. The plaintiff claimed to be a bona fide purchaser before its maturity. The evidence—showing among other things, that the sale, if any, to the plaintiff was made only ten days before the note became due, at a discount of over $50, and that the payee indorsed the note; that the plaintiff, who knew nothing, and did not enquire as to the pecuniary responsibility of the makers, directed that there should be no protest to charge the payee as indorser; that a draft for a partial payment was indorsed by the plaintiff to the payee; and that after the transfer the business with respect to the note was done by agents of the payee,—is held to sustain a finding by the trial court that the note was never in fact transferred to the plaintiff, and that the payee is still the owner thereof. Smith v. Lockwood, 80 Wis. 491.

LISPENDENS. Does not affect a purchaser and is no constructive notice. Kellogg v. Fancher, 23 Wis. 21.

USUAL COURSE OF BUSINESS. This means according to the customs and uses of the law merchant, without anything unusual on the face of the paper or mode of transfer. A transfer from a receiver, assignee in insolvency, etc., is not in due course. 4 Am. and Eng. Ency. 310.

When not a holder in due course.

SECTION 1676–23. When 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.

NOTE—Each case necessarily depends upon its own facts and circumstances. The question of reasonable time is purely one of fact. 4 Am. and Eng. Ency. 248, 249. See sec. 1675 above.

Notice of infirmity in the instrument.

SECTION 1676–24. 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 therefor the full amount agreed to be paid he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

NOTE—Where a bank discounts a note and carries the proceeds to the credit of the indorser, who does not draw out the money, the bank is not a holder in due course. Mnf's Bank v. Newell, 71 Wis., 309. But if it pays out the full amount before notice of infirmity it becomes such a holder. Fox v. Bank, 30 Kansas, 441.

Defective title.

SECTION 1676–25. The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature thereto, by fraud, duress, or force or 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 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.

NOTE—Prommissory notes under duress are void, even though there may have been some consideration to support them. Magoon v. Reber, 76 Wis., 392.

FRAUD, DURESS, ETC. This section and section 1676 28, making the title defective only, and not absolutely void, change the rule in Wisconsin. See cases cited to section 1676–28.

A wife may avoid notes made under duress of threats, to prosecute her husband. City Nat. Bk. v. Kusworm, 88 Wis., 188.

A note procured by duress is not void but only voidable, and in an action thereon the duress is not a defense if the maker retains a valuable consideration received by him therefor. City Nat. Bk. v. Kusworm, 91 Wis., 166.

So where, in consideration of a note alleged to have been given under duress, the payee surrendered to the maker prior valid notes executed by the latter for the same amount, the duress is not a de-

fense to an action on the new note if the maker retains the notes so surrendered. But if those notes have been lost or destroyed without his agency by mere accident, it may be that the duress will be a defense, provided the maker does all he can to put the payee in as good condition as he was before the note in the suit was given. Ibid.

Actual knowledge of infirmity necessary to notice.

SECTION 1676-26. 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.

NOTE—Mere suspicion of infirmity immaterial. Kelly v. Whitney, 45 Wis., 110.

A holder not in due course takes the paper subject to equities even though he paid full value. Johnson v. Williard, 93 Wis., 420.

Rights of holder in due course.

SECTION 1676-27. 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 except as provided in sections 1944 and 1945 of these statutes, relating to insurance premiums, and also in cases where the title of the person negotiating such instrument is void under the provision of section 1676-25 of this act.

Insurance premiums; fraud.

NOTE—Holder in due course not having actual notice is not affected by pending suit. Kellogg v. Fancher, 23 Wis., 21.

A set-off against the payee of a note cannot be claimed against a bona fide purchaser thereof before due, although he had knowledge of such set- off. Patterson v. Wright, 64 Wis. 289.

Where shares of stock in a corporation are pledged as collateral security to a note, the payee of which is a director and officer of such corporation, the negligence of the payee in the performance of his duties as such director and officer, whereby the stock depreciated or became worthless, is no defense to an action by him on the note. So held where the defense was sought to be interposed by one who indorsed the note at the time of its execution and who owned a part of the stock pledged. Palmer v. Hawes, 73 Wis., 46.

In such action it was alleged that some months after the stock was so pledged that the plaintiff had falsely represented to the indorser that the affairs of the business of the corporation were in good condition, when in fact they were being so carelessly and wastefully managed by the plaintiff and other officers that the stock was rapidly depreciating; that the indorser relied on such representations and was thereby lulled into inactivity and rest concerning her liability on the note when, but for such representations, she might have secured herself from loss. Held, that such facts did not constitute a defense. Ibid.

SECTION 1676-28. 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, duress or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to such holder. Holder, other than in due course.

NOTE—This section changes the rule in Wisconsin; but it is in accord with the weight of authority. The Wisconsin cases have been adversely criticised in other courts. 4 Am. and Eng. Ency. 335.

A note dated on a secular day, but actually made and delivered on Sunday is valid in the hands of an innocent holder. Knox v. Clifford, 38 Wis., 651. The maker is estopped. Ibid.

An indorser who entrusts the instruments to another for delivery only on condition is bound by an authorized delivery, as agains a bona fide holder. Ibid. 336.

FRAUD DURESS, ETC. It is settled in Wisconsin that if the maker's signature is procured by false representations as to the character of the paper itself, he being ignorant of its true character, and having no intention to sign such paper, and being guilty of no negligence in doing so, the paper is void even in the hands of an innocent holder. Walker v. Ebert, 20 Wis., 194. Kellog v. Steiner, 29 Wis., 626; Baker v. Karns, 37 Wis., 61. The same rule applies to paper deposited in escrow, and purloined or furtively taken and put in circulation without the knowledge or consent of the depositary. Andrews v. Thayer, 30 Wis., 228. So held where the custodian delivers the paper without authority. This is not a valid delivery. Chapman v. Tucker, 38 Wis., 43. Also where notes were fraudulently obtained for the ostensible purpose of making copies. Roberts v. McGrath, 38 Wis., 52. Roberts v. Wood, 38 Wis., 60.

Where the maker could not read without her glasses, which had been left at a neighbor's, and did not read the paper she signed, a verdict that she was not negligent was sustained, although she had two children present who could read, but were not asked to read the paper. Griffiths v. Kellogg, 39 Wis., 480. Bowers v. Thomas, 62 Wis., 480.

INHERENT EQUITIES. Section 1676-28, above, seems to allow all defenses, whether collateral or inherent. The Wisconsin statute of set-offs allows a set-off to a note negotiated after due. But the mere knowledge by the indorsee before due of a set-off will not make the note subject thereto. Patterson v. Wright, 64 Wis., 289. Equities arising after negotiations cannot affect the holders' rights. 4 Am. & Eng. Ency., 317.

ILLEGALITY. Will not defeat an action upon a note by a holder in due course, without notice of the defect. Johnson v. Meeker, 1 Wis., 378. One who puts in circulation a note dated on a week day is estopped to claim that it was made Sunday. Knox v. Clifford, 38 Wis., 651.

PURCHASER WITH NOTICE from one in due course is protected. Kinney v. Kruse, 28 Wis., 183. Verbeck v. Scott, 71 Wis., 59. But where the payee transfers paper void in his hands to a holder in due course, and re-purchases it from him or a subsequent holder, he is not protected. Tod v. Wick, 36 Ohio St., 370.

RENEWAL. A renewal note is subject to same defenses, and affords the same protection, as the original. 4 Am. & Eng. Ency., 339. First Nat. Bk. of [v.] Plankinton, 27 Wis., 177. Unless the defect is thereby waived or excused; as, by renewing an usurious note by a new note at the lawful rate. Gerlach v. Bassett, 20 Wis., 679. Eastman v. Porter, 14 Wis., 39.

Burden of proof as to title.

SECTION 1676–29. 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 a 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.

NOTE—PRESUMPTION. The holder is presumed to have taken the instrument in due course, and before maturity. Cook v. Helms, 5 Wis., 107. Mason v. Noonan, 7 Wis., 609. Greve v. Schweitzer, 36 Wis., 554. Wayland University v. Bowman, 56 Wis., 657.

BURDEN OF PROOF. This is the Wisconsin rule. Fuller v. Green, 54 Wis., 159. Where an agent for the payee put a note in circulation in fraud of his rights, this is no defense in favor of the maker, nor does it change the burden of proof. Kinney v. Krause, 28 Wis., 183.

After the negotiation of notes, the payees agreed with the creditors of the maker to take forty per cent. in discharge of their claims on the note, in case all other creditors should sign the agreement. The compromise was negotiated prior to the negotiation of the note, but not executed until after such negotiation. Held, that these facts did not change the burden of proof, and that a holder in due course should recover. Gutwillig v. Stumes, 47 Wis., 428.

Wher a note had been pledged as collateral, with a written assignment indorsed, and the note was afterward re-delivered temporarily to the payee for a specific purpose, who sold it to a third person, the assignment remaining uncancelled, it was held that the purchaser had notice and could not recover. Pier v. Bullis, 48 Wis., 429.

The burden is again shifted when the holder shows that he or some holder under whom he claims, paid full value, since the other requisites, in good faith, of purchase, cannot generally be shown by direct evidence. 4 Am. & Eng. Ency. 323.

TITLE DEFECTIVE, FRAUD, DURESS, ILLEGALITY. When these are shown, or where the paper was fraudulently put in circulation, the burden is on the holder to show that he, or some one through whom he claims, is a holder in due course. Fuller v. Green, 64 Wis., 159. 4 Am. & Eng. Ency., 322. These defects affect the title.

LIABILITIES OF PARTIES.

SECTION 1677. 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. Maker.

SECTION 1677–1. The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder. Drawer.

SECTION 1677–2. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits: Acceptor.

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.

NOTE—The president of a corporation who had control of its business and the disposition of its funds, accepted in the name of the corporation a draft drawn on himself, personally; making it payable at the bank wherein the corporation funds were deposited. The bank paid the draft, as was customary charged the amount to the corporation, and on balancing the deposit book of the corporation, returned the draft to it with other vouchers. The transaction was entered upon the books of the corporation, and no objection was made until six months later, after a receiver of the corporation had been appointed. Held, that the acceptance was a direction to the bank to pay the draft out of the corporate funds, and although the draft was in fact drawn on account of the president's individual transaction, the corporation was estopped to recover the amount from the bank. McLaren v. First Nat. Bank, 76 Wis., 259.

The receiver, having ratified the transaction by bringing suit and recovering judgment against the drawer of the draft, and not being shown to represent the creditors of the corporation existing at the time of the misappropriation of the corporate fund, has no more right to recover, as aginst the bank, than the corporation would have had. Ibid.

Indorser.

SECTION 1677-3. 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.

NOTE—This expresses the law of this state, except in the United States Courts, and will, if adopted, control those courts also in regard to Wisconsin contracts. Cady v. Shepard, 12 Wis., 639. Davis v. Barron, 13 Wis., 227. Snyder v. Wright, id. 689. King v. Ritchie, 18 Wis., 554. Good v. Martin, 95 U. S., 90. 1st Nat. Bk. v. Fence Co., 24 Fed. R., 221. Phipps v. Harding, 70 Fed. R., 468. In the federal courts he is a maker or guarantor, according to circumstances. 95 U. S., 90.

Liability of indorser in blank.

SECTION 1677-4. 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 sign for the accommodation of the payee, he is liable to all parties subsequent to the payee.

NOTE—Where a note intended to be used in payment for goods to be purchased of the payee, is indorsed in blank by a third party before delivery, for the purpose of giving credit to the maker, and the payee parts with his goods upon the credit of such indorsement, upon demand at maturity and protest for non payment with due notice thereof, the indorser is liable. King v. Ritchie, 18 Wis., 582.

See note to preceding section.

Warranty.

SECTION 1677-5. 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 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.

NOTE—The sale and transfer, for a full and fair price, of a note past due, indorsed in blank by the person to whose order it is payable, implies a warranty by the vendor, that such indorsement is valid. Giffert v. West, 37 Wis., 115.

Warranty of indorser without qualification.

SECTION 1677–6. 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 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 is 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.

NOTE—One who has indorsed a note in blank, without qualification expressed in the writing, cannot show by parol, as against the person to whom he delivered it, a contemporaneous agreement between them that he should not be liable as indorser, where no mistake or fraud in procuring the indorsement is alleged. Charles v. Denis, 42 Wis., 56.

Indorsement of instrument negotiable by delivery.

SECTION 1677–7. When a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

NOTE—See note to section 167–3. [1677–3.]

Indorsers liable in order of indorsement.

SECTION 1677–8. 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.

NOTE—A made and delivered to B a promissory note to the order of B, indorsed in blank by C for goods sold by B to A on the credit of C's indorsement, pursuant to a prior agreement by C. Held, that C was liable, as a prior indorser, to B; this being the intention of the parties and B being the real creditor, and A and C the real debtors. Cady v. Shepard, 12 Wis., 713. Kiel v. Choate, 92 Wis., 517.

Indorsements by two or more persons may be joint, as where partnership or otherwise joint payees are the indorsers; and perhaps two or more persons not joint payees might qualify their indorsement so as to make their liabilities joint; but in other cases, where there are two indorsements in succession, they are several, and the rights and liabilities of the two indorsees are as defined in Linn v. Horton, 17 Wis., 151. Hale v. Danforth, 46 Wis., 554.

Negotiation without indorsement by broker.

SECTION 1677–9. When a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 1677–5, unless he discloses the name of his principal, and the fact that he is acting only as an agent.

PRESENTMENT FOR PAYMENT.

Presentment when necessary.

SECTION 1678. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Instruments payable on demand.;

SECTION 1678–1. 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.

NOTE—Where a sight draft on New York, indorsed to plaintiff in this state, was not mailed to New York to be presented for payment, until after fourteen days, when it was miscarried, and the second of exchange subsequently sent forward was protested, the

delay in mailing the first was prima facie evidence of laches, 23 Wis., 334.

ON THE DAY IT FALLS DUE. The cases are generally opposed to this rule. 4 Am. & Eng. Ency., 348.

ON DEMAND. A note payable on demand must be presented within a reasonable time after transfer in order to charge the indorser. Turner v. Iron Chief Mining Co., 74 Wis., 355.

Where the facts are undisputed the question whether such note was presented within a reasonable time is one of law for the court. Ibid. A delay of ten months after indorsement before presentation for payment, held unreasonable and to discharge the indorser. Id.

Paper indorsed after due must be presented within a reasonable time. Corwith v. Morrison, 1 Pin., 489.

Sufficient presentment.

SECTION 1678–2. 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 in accessible, to any person found at the place where the presentment is made.

Presentment at proper place.

SECTION 1678–3. 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.

NOTE—Temporary absence or removal of the indorser from his place of residence or business is no excuse for non-presentment. Wilson v. Senier, 14 Wis., 411.

Where the indorser, during his absence in England, left a general agent near his residence in this state, and his post office address in England was known to the maker of the note: Held, 1. That notice served upon such agent, or forwarded by mail to the address of the indorser in England, would have been sufficient. 2. That the holder, if ignorant of the indorser's address in England, would be bound to exercise diligence in making inquiry on the sub-

ject, and the maker was a proper person to whom to make such inquiry. 3. That if, after such inquiry, he could not ascertain the facts, then service by leaving the notice at the indorser's last place of abode or business, or by depositing it in the post office addressed to him at his last place of residence in this state, would probably have been sufficient. Ibid.

Service at the place of business must be during business hours, but service at the residence will be sufficient if made during any of the hours when members of a household are attending to their ordinary affairs. Adams v. Wright, 14 Wis., 442.

If service of notice be promptly made at the dwelling house or place of business of the indorser, it is sufficient, although he did not in fact receive it. 14 Wis., 442.

The notary in this case testified that he had protested several notes on which the defendant was indorser, and that on one occasion, but whether on that of giving the notice herein question he could not say, he gave the notice to a boy whom he met in the defendant's yard (and who said that he was the defendant's boy), and asked him to hand it to his father; that the boy turned and went towards the house, but that he did not see him go in, as the door was not in sight from where he stood. Held, that the mode of leaving the notice thus described did not constitute a valid service of the same. 14 Wis., 442.

Held, further, that it was for the jury to determine whether the notice so left was that of the protest of the note then in suit. 14 Wis., 442.

Presentment and demand of payment of a promissory note at the abandoned place of business of the maker is insufficient to charge an indorser, if the maker has another place of business or his place of residence is known or may be ascertained by reasonable diligence. Reinke v. Wright, 93 Wis., 368.

PLACE OF PAYMENT. A presentment to the maker on the day when due at any other place is valid. Howard v. Boorman, 17 Wis., 459. This rule is changed by the above provision, according to the rule settled generally in the United States. 4 Am. & Eng. Ency., 371.

Exhibition of instrument.

SECTION 1678–4. 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.

NOTE—If lost, a copy may be exhibited, with offer of indemnity. 4 Am. & Eng. Ency., 360.

During banking hours.

SECTION 1678–5. 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.

In case of death.

SECTION 1678–6. 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.

Partners.

SECTION 1678–7. 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.

Joint debtors.

SECTION 1678–8. 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.

In order to charge drawer.

SECTION 1678–9. 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.

In order to charge indorser.

SECTION 1678–10. 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.

Delay, when excused.

SECTION 1678–11. 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.

NOTE—As, by delay in mail. 6 Wis., 422. Sickness of the holder is no excuse, unless it was not only sudden, but so severe as not only to prevent him from making presentment, and giving notice himself, but from employing another to do so; and it must be shown that proper steps were taken as soon as the disability was removed. Wilson v. Senier, 14 Wis., 411. Where such sickness was fatal, yet a delay of the executrix to present the note for several month discharged the indorser. Ib.

Insolvency of maker is no excuse, although known to the indorser when the indorsement was made. Ibid. Taking security by the indorser is no excuse. Nothing but a general assignment and transfer to the indorser of all the maker's effects, or the receipt by by him of money or property to satisfy the note, will excuse such presentment and notice. Ibid.

When dispensed with.

SECTION 1678–12. Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this chapter cannot be made.

2. Where the drawee is a fictitious person;

3. By waiver of presentment express or implied.

NOTE—INSOLVENCY. Mere insolvency does not excuse presentment. Reinke v. Wright, 93 Wis., 368.

WAIVER. A note was secured by a chattel mortgage running to the payee but given to protect indorsers. After maturity of the note a part of the mortgaged property was sold, with the consent and approval of an indorser, and the amount realized was indorsed on the note. Held, not a payment by said indorser such as would constitute a waiver of presentment of the note to the maker and a demand of payment. Reinke v. Wright, 93 Wis., 368.

DISHONOR.

By non-payment.

SECTION 1678–13. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or,

2. Presentment is excused and the instrument is overdue and unpaid.

Right of recourse of holder.

SECTION 1678–14. Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

Without grace. Maturity.

SECTION 1678–15. 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.

Time of payment.

SECTION 1678–16. 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.

At a bank.

SECTION 1678–17. Where the instrument is made payable at a bank it is equivelant to an order to the bank to pay the same for the account of the principal debtor thereon.

SECTION 1678–18. 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. Payment in due course.

NOTICE OF DISHONOR.

SECTION 1678–19. Except as herein otherwise provided, when a negotiabe instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. Notice, how given.

NOTE—Where an instrument is indorsed (or accepted) after maturity, the holder must in order to charge persons secondarily liable make a demand and give notice of non-payment within a reasonable time thereafter. Corwith v. Morrison, 1 Pin., 489.

What is due diligence when the facts are not disputed is for the court. Parkinson v. McKim, 1 P., 214.

In an action by the indorsee against the indorser of a promissory note, which was not presented to the maker at maturity, the burden is upon the plaintiff to show that the maker had then removed from the state, or that due diligence was used to find him or ascertain his place of residence. Eaton v. McMahon, 42 Wis., 484.

SECTION 1678–20. 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. Who may give.

NOTE—Linn v. Horton, 17 Wis., 151.

SECTION 1678–21. 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. By agent.

SECTION 1678–22. 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. Subsequent holders.

SECTION 1678–23. Where notice is given by or on behalf of a party entitled to give notice, it Notice on behalf of entitled party.

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

NOTE—The holder of a bill or note may rely, if he choose, on the responsibility of his immediate indorser, and need not give notice of protest for non-acceptance or non-payment to any previous party Linn v. Horton, 17 Wis., 157.

In such case, if notice be properly given in due time by the lat ter indorser to previous parties, it will enure to the benefit of the holder, and he may recover from any of them. Ibid.

It is no objection to such notice that it was not received so soon by an earlier indorser as it would have been if transmitted directly by the holder or notary, provided it was sent with reasonable diligence by each indorser as he received it. Ibid.

The same degree of diligence must be exercised by the indorser in forwarding notice, as is required of the holder. Ordinary diligence must be used in both cases. Ibid.

The indorser is not bound to forward notice to a previous party on the same day on which he receives it, but may wait until the next day. Ibid.

For the purpose of receiving and transmitting notice, those who hold negotiable paper at the time of protest, and those who indorse as mere agents to collect are regarded as real parties to the paper; the former as holders in fact, and the latter as actual indorsers for value. Ibid.

On the day a note fell due at Janesville, in this state, notice of protest addressed severally to H (who had indorsed for the makers and resided near Janesville) to the payees and to their bankers in New York (who had respectively indorsed the note for collection) were sent by mail, postpaid, to the latter, who received them and on the same day delivered to the payees the notice for them and H; and on the same day the payees forwarded the notice for H, by mail, postpaid, directed to him at his proper post office at Janesville; but it was never received by him. Held, in an action by the payees, that H was chargeable with the notice. Ibid.

In hands of an agent.

SECTION 1678–24. 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.

Character of notice.

SECTION 1678–25. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Written notice.

SECTION 1678–26. 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.

NOTE—BY MAIL. Is valid. Brewster v. Arnold, 1 Wis., 229. But not where the indorser lives only two miles from the residence of the notary protesting it. Smith v. Hill, 6 Wis., 153. See Glicksman v. Earley, 78 Wis., 223.

Where a note was payable at a bank in the city of Madison and an indorser resided in the town of Westport, six miles from Madison and from the residence of the notary who protested the note, but usually received his mail matter at the post office at Madison; Held, that a proper notice deposited in the post office at Madison, addressed to such indorser at Madison, was sufficient to charge him, although there was a post office in the town of Westport, nearer to his residence. Westfall v. Farwell, 13 Wis., 563. Actual transmission by mail from the place to another is not essential, in all cases, to a good service through the post office. Ibid. A statute requiring personal service was so construed as to authorize a service by leaving a notice at the place of residence or business. Ibid.

To whom given.

SECTION 1678–27. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Deceased party.

SECTION 1678–28. 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.

Partners.

SECTION 1678–29. 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.

Joint parties.

SECTION 1678–30. 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.

Bankrupt.

SECTION 1678–31. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors,

notice may given either to the party himself or to his trustees or assignee.

When given.

SECTION 1678–32. 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.

Where parties reside in same place.

SECTION 1678–33. 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.

Where parties reside in different places.

SECTION 1678–34. 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 sub-division.

By mail.

SECTION 1678–35. 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.

When mailed.

SECTION 1678–36. 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.

Notice to antecedent parties.

SECTION 1678–37. 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.

Where to be sent.

SECTION 1678–38. 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.

NOTE—Notice may be served either at place of business or residence. Simms v. Larkin, 19 Wis., 412.

Waiver of notice.

SECTION 1678–39. 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.

NOTE Same rule in Wisconsin. Worden v. Mitchell, 7 Wis., 139. Is not within the statute of frauds, and may be by parol. Ibid. Part payment by the endorser, with knowledge of want of presentment, etc., is a waiver. Knapp v. Runals, 37 Wis., 135. It may be waived for a specific time, and must then be given. Worden v. Mitchell, supra. Where a note, on or a short time before the day of its maturity, is presented to an indorser, and the latter then promises that if the note is suffered to run he will pay it whenever payment is called for, an omission of protest and notice caused by such promise will not discharge the indorser. Hale v. Danforth, 46 Wis., 554. A promise to pay by drawer or indorser who is ignorant of the failure to give notice of dishonor, is not a waiver. Schierl v. Baumel, 75 Wis., 75.

Waiver in instrument.

SECTION 1678–40. 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.

Waiver of protest.

SECTION 1678–41. 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.

Notice, when dispensed with.

SECTION 1678–42. 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.

NOTE—As where the place of residence or business of the maker or indorser cannot be found after reasonable diligence. The burden of proof is upon the holder. Eaton v. McMahon, 42 Wis., 484.

Delay, when excused.

SECTION 1678–43. 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.

NOTE—O and L were joint indorsers of a promissory note, and L died a few days before its maturity; it was protested for non-payment, and O had due notice thereof, and the notary who protested the note made inquiries, for three days before the note became due, in the ward where L had resided and learned of the fact of his death, and that he had no family except a wife, and that she had gone to Canada with her father; and he made inquiries of persons whom he thought would be most likely to know, whether any executor or administrator had been appointed on L's estate, and could not learn that any had been appointed; he then deposited two notices in the post office at Milwaukee, where L had resided and died, one directed to L and the other to "L's executors and administrators." Held, that the notary was authorized to presume, from the information he had received, that L's family had no longer any residence in Milwaukee, and that he was not bound to go to the house where he had lived, to see if he could not find a servant there who had once lived with the deceased; and that the notary had exercised due diligence to notify the representatives of L of the dishonor of the note. Boyd v. Orton, 16 Wis., 521.

A bank had notes for collection. The bank building was burned, and the bank had only resumed business in a tentative way in a temporary structure when the note became due. Held, that this would not excuse a failure to notify indorsers. Merchts' Bk. v. State Bk., 94 Wis., 444.

Notice to drawer, when not required.

SECTION 1678–44. 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.

NOTE—Notice of non-acceptance or non-payment is not required in order to charge the drawer, if he has no funds or effects in the drawee's hands; but the burden of proving that fact is upon the holder. Mehlberg v. Fisher, 24 Wis. 607.

Evidence that the drawees told the holder on presentation for acceptance, that they had no money to pay it, is inadmissible, being hearsay. Ibid.

The burden of proof is upon the holder to show that he has used due diligence to find the residence or place of business of the maker or acceptor. Eaton v. McMahon, 42 Wis., 484.

Notice to indorser, when not required.

SECTION 1678-45. 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.

Of subsequent dishonor.

SECTION 1678-46. Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Omission to give notice.

SECTION 1678-47. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission, but this shall not be construed to revive any liability discharged by such omission.

Protest.

SECTION 1678-48. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as

the case may be; but protest is not required except in the case of foreign bills of exchange.

NOTE—Same rule in Wisconsin: Sumner v. Bowen, 2 Wis. 383. (changed by statute).

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

When discharged.

SECTION 1679. 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—PAYMENT.—The presumption that a note is unpaid, arising from the payee's possession thereof, uncancelled, and unextinguished by endorsed payments, is not sufficiently met by showing payments of money by the maker to the payee, without further showing that there were no other dealings between the parties, upon which such payments might have been made. Somervall v. Gillies, 31 Wis., 152.

Where such absence or other dealings is shown, proof of moneys paid by the maker to the payee would create a strong and almost conclusive presumption that they were paid upon the note. Ibid.

The cancellation and surrender of a promissory note upon the giving of a new note in renewal thereof, does not raise any presumption that the renewal note is taken in payment of the debt, but an agreement to that effect must be shown. First Nat. Bk. of Racine v. Case, 63 Wis., 504.

A draft was sent by the payee, a La Crosse bank, to a bank at Sparta for collection. The Sparta Bank, at the request of the drawee and on the faith of his solvency, gave him credit for the amount, made its own draft on a Chicago bank payable to the La Crosse bank, and mailed it to the latter "in payment of" the draft first mentioned. Held, that this was a delivery of the Chicago draft by the drawee in the first draft, through the Sparta bank, to the La Crosse bank, the payee, and that the Sparta bank could not, on learning of said drawee's insolvency, stop payment of the Chicago draft or withdraw it from the mail. Canterbury v. Bank of Sparta, 91 Wis., 53.

Accepting new notes of the same maker, for a smaller amount, in full payment and satisfaction, and the new notes being paid, operates as payment so that a surety is discharged. Jaffray v. Trane, 50 Wis., 349.

SECTION 1679–1. A person secondarily liable on the instrument is discharged: Discharge from secondary liability.

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—Any valid extension of time to the acceptor discharges the drawer. Racine Co. Bk. v. Lathrop, 12 Wis. 519.

One who has signed a note as surety, will not be discharged by an invalid agreement to extend the time of payment to his principal; nor by a valid agreement made by a holder without notice that he is a surety. St. Maries v. Polleys et al., 47 Wis., 67.

An usurious agreement for extension of time of payment may be shown by parol, in a proper case. 47 Wis. Ibid.

Where one issue was whether the time of payments had been extended on the note in suit, the jury was instructed that an agreement to pay a bonus or interest in excess of ten per cent. being illegal, would not constitute a sufficient consideration. Held, that this must be understood of a mere executory agreement, and was correct. Meiswinkle v. Jung, 30 Wis., 361. Ibid.

One who appears upon the face of a note as having signed it as a joint maker, may show by parol that the creditor knew, when the note was executed, that he was merely a surety, and has since, without his consent, extended time of payment to the principal. Irvine v. Adams, 48 Wis., 468.

Successive agreements by the payee of a note to extend time of payment to the principal for usurious consideration, with successive payments, after the expiration of each time of extension, of the usury stipulated therefor, do not release the surety; there being no suspension of the payee's right to enforce payment of the note. 48 Wis., Ibid.

Where, upon the principal maker of a note comprising [compromising] with a part of his creditors, including the surety, the latter treats the amount of the note as an existing obligation of the principal to him, he is estopped to deny his liability to the payee thereon, though the latter was not a party to the compromise. 48 Wis., Ibid.

Payment before due of the interest on a note is a sufficient consideration for an agreement to extend the time for payment of the principal. Grace v. Lynch, 80 Wis., 166.

Where such an agreement is fully executed on the one part by the payment of the interest, it is not within the statute of frauds, though not in writing and not to be performed within a year. Ibid.

An extension of the time for payment of a renewal note without the knowledge or consent of one of the makers does not discharge him, although he was merely an accommodation maker of the original note, where the renewal was accepted at his sole request and for his accommodation and benefit alone. First Nat. Bk. v. Jones, 92 Wis., 56.

If, after learning of an extension of the time for payment of a note, a surety recognizes his liability thereon by giving a collateral note for the debt or in any other way amounting to a promise to pay the same, he remains liable notwithstanding such extension. Ibid.

An agreement to take new notes for those in suit, payable at a later date, neither executed nor on any new consideration, is invalid, and does not release a surety. Jaffray v. Crane, 50 Wis., 349.

An agreement to extend the time of payment of a note past due, "for twenty or thirty days," is a good agreement to extend for a definite period of at least twenty days. Hamilton v. Prouty, 50 Wis., 592.

An agreement of the holder of a note past due, with the maker, to extend the time of payment for a definite period, in consideration of an usurious premium paid in advance, without the knowledge or acquiescence of the indorsers, discharges the latter, 50 Wis., 592.

The words "This note to be extended if desired by makers" indorsed upon a note, are too indefinite to have any legal significance, and the unauthorized addition thereto, by the holders, of the words, "on payment of the interest, as expressed, until January 1, 1879" would not affect the note. Krouskop v. Shontz, 51 Wis., 204.

An agreement upon sufficient consideration, to extend the time of payment of a note "until after threshing" held to be for a time sufficiently definite to give it validity, and work a discharge of the non-assenting surety. Moulton v. Posten, 52 Wis., 169.

The consideration for the alleged extension was a second note then given by the principal promisor in the first note; such second note was usurious; and it does not appear that it has ever been paid. Held, that there was a valid extension. Ibid.

Where a new firm, on buying out an old one, undertakes, with the knowledge of a creditor of the old firm, to pay its debts, the members of the old firm not included in the new are thereafter sureties upon the liability so assumed, and will be discharged from liability as such sureties by any extension of time granted without their consent, by the creditor, to the new firm. Brill v. Holle, 53 Wis., 537.

An usurious note given by the principal maker of another note to the holder thereof is a sufficient consideration for an extension of the time for payment of the latter. Fay v. Tower, 58 Wis., 286.

Admissions by a surety of his liability upon a note, made in ignorance of the fact that the holder had granted an extension of

the time for its payment, cannot estop him from asserting his release by reason of such extension. Ibid.

The liability of a surety who has been fully indemnified against loss by the principal debtor continues notwithstanding an extension of the time for payment; but the giving of a mortgage to the surety to indemnify him does not, if the mortgage proves worthless, continue his liability. Ibid.

In action by a bank against accommodation indorsers of notes it appeared, among other things, that after maturity thereof, the maker paid interest thereon for ninety-three days in advance. He testified that the plaintiff's cashier had agreed to extend the time of payment if the interest was paid in advance. Upon such payment being made the dates upon the backs of the notes, showing the times when they became due, were changed to the dates to which interest was so paid, and the notes were placed with others becoming due at those times, and no demand of payment was made until about those dates. The cashier testified that he had told the maker that if he wanted an extension he must get new notes indorsed by the same parties, and that he did not intentionally extend the time. The indorsers had no knowledge of and did not consent to any extension. Held, that the evidence did not warrant a verdict against the indorsers, it appearing that there had been an extension which released them. Batavian Bank v. McDonald, 77 Wis., 486.

At the maturity of a note, the maker asked for an extension of time, offering to have his wife sign the note. The payee agreed to grant an extension if a surety on the note would consent. The maker represented that he had seen the surety and knew he would consent, and thereupon his wife signed the note; but the surety when applied to refused his consent to the extension. Afterwards the payee caused judgment to be entered on the note against the maker and his wife and the surety. Held, that by so doing, he was estopped to assert that there was no extension or that there was no consideration for such extension because the note was not valid as against the maker's wife; and that the surety was discharged from liability. Donkle v. Milem, 88 Wis., 33.

RELEASING SECURITY.—Where the holder of promissory note, by filing his claim for the amount due thereon in the assignment proceedings of an insolvent indorser, had obtained an interest in or lien on the assets in the hands of the assignee for its payment, which, if enforced, would have satisfied the claim, his subsequent voluntary release of such lien or claim without the consent of a later indorser discharged the latter from his liability on the note. Plankinton v. Gorman, 93 Wis., 560.

Giving a renewal indorsement without notice of a misapplication of securities is not a waiver. Price Co. Bk. v. McKenzie, 91 Wis., 658.

When paid by secondary party.

SECTION 1679–2. 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.

NOTE—In an action by the indorser of a bill of exchange (who has been compelled to pay the same) the drawer and acceptor cannot defend on the ground that the bill was given and accepted on an unfulfilled parol condition, as that the payee would surrender a note held by him against a third person. Foster v. Clifford, 44 Wis., 569.

Under the rule of our statute that every action must be prosecuted in the names of the real party in interest, the payee of a promissory note who has transferred the same cannot maintain an action or an attachment for the debt so long as the notes remain in the hands of his assignee, even though, in transferring them, he indorsed them; but in that case, if he afterwards pays and takes them up he is remitted to his original rights. Landauer v. Espenhain, 95 Wis., 169.

Renunciation of rights.

SECTION 1679–3. 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.

Cancellation by mistake.

SECTION 1679–4. 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.

Altering of instrument.

SECTION 1679–5. 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—Conditional proposal by offering to give another note at different time of payment, is not. Kilkelly v. Martin, 34 Wis., 525.

Changing a word "order to "bearer," if it appears to have been done at the time of execution, will not affect the paper. Williams v. Starr, 5 Wis., 534. Otherwise, if made after delivery. Such an alteration is a material one. Union Nat. Bk. v. Roberts, 45 Wis., 373.

The unauthorized but not fraudulent alteration of a note, made under mistake of right to conform the note to the actual agreement rendering it void, does not prevent recovery on the original consideration; and a complaint on the note may be amended to claim such recovery. Matteson v. Ellsworth, 33 Wis., 488.

The words "ten per cent. interest if not paid before due," found written on the face of a note when offered in evidence, partly on the same line as the last word in the printed form, and before the signature, and partly on a lower line, held to be a part of the note as it then existed. Kilkelly v. Martin, 34 Wis., 525.

If such words were written after the note was signed by the makers, with the knowledge and consent of the holder, but without the knowledge or consent of the party sought to be charged, the liability of the latter was thereby extinguished. Ibid.

Whatever may be the rule as to sealed instruments, it is well settled that the alteration of an instrument not under seal, made by one party with the other's assent, will not avoid it. An assent to one already made has the same effect as an original grant of authority to make the alteration. Ibid.

An addition of the words "payable annually" after the argeement to pay interest, not made with fraudulent intent, but to make the note conform to the understanding of the payee of the actual agreement, would bring the case within the Matteson case, supra. But where the note did not show such alteration (it being claimed that it had been erased) and the note appeared fair on its face, the burden of proof as to alteration is upon the maker, or other person who would otherwise be liable. Gorden v. Robertson, 48 Wis., 493.

Where, in a printed form used in drawing a promissory note, the words "after due" in the clause relating to interest, have been striken out, apparently with a different ink from that used in filling up the body of the note, so that the general appearance of the instrument raises a suspicion of its genuineness, the party offering it in evidence must explain this appearance by some evidence upon which a jury might find that the words were stricken out before or at the time when the note was made. Page v. Danaker, 43 Wis., 221.

An alteration by a trespasser, against the holder's will, does not affect the paper. Ibid.

Where the principal maker of a note past due, without the knowledge or consent of his sureties to the same, borrows money upon a new note with other sureties, for the purpose of taking up the first note, with the understanding that the first note, when taken up, shall be transferred to such new securities as collateral security, and the money so borrowed is used in fulfilling and satisfying the purpose for which the first note was given, this amounts to a payment of the same, and the sureties thereon are discharged. Greening v. Patten et al., 51 Wis., 146.

The principal maker, by so transferring the first note after its payment, to the new sureties, in consideration of their becoming

such, is estopped (as against them) from alleging that such note was in fact paid. Ibid.

Where upon a promissory note of a husband and wife for $140, there was indorsed a property statement by the wife, as a basis of the credit given, showing that she owned a farm worth $4,000.00 and personal property worth $600.00, a subsequent unauthorized change of the last figures to $1,000.00 made by the holders, held, not a material alteration of the note, because the $600.00 basis of credit is as good as that of $1,000.00. Krouskop v. Shontz, 51 Wis., 204.

An alteration of a written contract, which in no way changes the legal effect thereof as between the parties thereto, is immaterial and does not avoid the contract. Fuller v. Green, 64 Wis., 159.

Merely affixing the name of an attesting witness to a promissory note is not a material alteration thereof. Ibid.

If an alteration is immaterial, the intent with which it was made is immaterial. Ibid.

The materiality of an alteration is to be determined by its effect upon the rights of the parties under the laws of the state in which the question is raised. Ibid.

HOLDER IN DUE COURSE.—This changes the rule adopted by the authorities. 4 Am. & Eng. Ency., 332, 333. In case the instrument is so drawn that a contract or memorandum qualifying negotiability can be readily detached, which is done, and the paper negotiated a holder in due course may recover, because of the negligence of the maker. Ibid.

Material alteration.

SECTION 1679-6. 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—Query whether the addition of the signature of the maker's wife, is a material alteration. Donkle v. Milem, 88 Wis., 33, (cases in conflict).

THE DATE.—No change in Wisconsin law. Low v. Merrill, 1 Pin., 340.

ALTERATION OF MEMORANDUM.—The material change in a memorandum which is part of an instrument avoids it. 4 Am. & Eng. Ency. 142.

PLACE OF PAYMENT.—The authorities are in conflict upon this question. 4 Am. & Eng. Ency., 142.

BILLS OF EXCHANGE.

FORM AND INTERPRETATION.

What is bill of exchange.

SECTION 1680. 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 bearer.

NOTE—A bill of exchange need not be payable to order or bearer, nor on a fixed day, nor at a particular place. Mehlberg v. Fisher, 24 Wis., 607. The above statute changes the rule of this case.

DESIGNATING DRAWEE. See note to section 1675.

DESIGNATING THE PAYEE.—May be to a bank manager, treasurer, trustee, executor or a steamboat. 4 Am. & Eng. Ency. 113. See section 1675–3.

Not an assignment of funds.

SECTION 1680a. 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.

Address of bill.

SECTION 1680b. 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.

NOTE—PARTNERS.—An acceptance by one partner in his own name of a bill drawn on the firm, for goods sold to it, binds the firm. Tolman v. Harnahan, 44 Wis., 133.

Inland and foreign bill.

SECTION 1680c. 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.

Where drawer and drawee are same person.

SECTION 1680d. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious 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.

Referee in case of need.

SECTION 1680e. 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 non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

ACCEPTANCE.

Acceptance of bill.

SECTION 1680f. 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 drawer. It must not express that the drawee will perform his promise by any other means than the payment of money.

NOTE—Acceptance is not revocable after negotiation. Thomas v. Thomas, 7 Wis. 403. It need not be in any particular form. The words: honored, seen, presented, acted, are sufficient, but merely taking notice of the bill are not. 4 Am. & Eng. Ency. 216.

IN WRITING.—See section 1680*k*. A Vermont statute required acceptance to be written, but where the drawer discounted the bill without accepting it, his acceptance was implied. Rutland Bk. v. Woodruff, 34 Vt. 89. So held also where the drawee wrote on the bill an order upon a third person to pay it. Harper v. West, 1 Cranch C. C. 192. Part payment, or payment to an unauthorized person, is not acceptance. Am & Eng. Ency. 224.

Acceptance in writing.

SECTION 1680g. 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.

Written acceptance on paper other than bill.

SECTION 1680h. 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.

Promise in writing.

SECTION 1680i. 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.

NOTE—This is the settled rule in this country. Am. & Eng. Ency., 235. The bill must be drawn within a reasonable time after such promise. Ibid., 236. It is sufficient that the bill to be

drawn be so designated that there can be no doubt that the particular one drawn was intended. Ibid. The bill must not vary from the authority in any material particular. Ibid., 243.

Time allowed for acceptance.

SECTION 1680j. 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.

Refusal or failure to return.

SECTION 1680k. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same. Mere retention of the bill is not acceptance.

NOTES—See notes to sec. 1680f.

DESTRUCTION; REFUSAL TO RETURN.—Similar statutes have been construed to refer only to acts of a tortious nature, implying conversion, and not where the bill is left with the drawee by the holder, and no demand made for its return. Gates v. Eno, 4 Hun 96. Sands v. Matthews, 27 Ala., 309. Rousch v. Duff 35 Wis., 312.

Acceptance before signing.

SECTION 1680l. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by 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.

General or qualified acceptance.

SECTION 1680m. 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.

NOTE—An acceptance to pay when due is general. Sylvester v. Staples, 44 Me., 496. So of an acceptance to pay if another person would not. Wilkinson v. Lutwidge, 1 Stra., 648. A conditional acceptance must be distinct and clear, or it will be construed to be general. 4 Am. & Eng. Ency., 225. Corbett v. Clark, 45 Wis., 403.

General acceptance.

SECTION 1680n. 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.

Qualified acceptance.

SECTION 1680o. 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, 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.

NOTE—CONDITIONAL.—Y, who had a contract with D to deliver the latter certain logs at an agreed price, made a draft on D in favor of H, which was accepted as follows: "Accepted July 15, 1880, payable according to a contract between Y and D, dated June 26, 1880, for the purchase of a lot of logs on Eau Claire, marked on ends 'F. W. Y.,' one half payable when lumber is sawed and put in pile, and one half on first day of October, A. D. 1880." Held, that the acceptance was conditional, and that upon the failure of Y to perform his contract, D was not liable on the acceptance beyond the sum found due from him to Y on a settlement between them. Haseltine v. Dunbar, 62 Wis., 162.

An acceptance to pay when in funds is qualified. 4 Am & Eng. Ency., 229, 230. So of acceptance to pay when lumber is run to market. Lamon v. French, 25 Wis. 37.

Refusal of qualified acceptance.

SECTION 1680p. 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 indorser receive 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.

PRESENTMENT FOR ACCEPTANCE.

SECTION 1681. Presentment for acceptance must be made: Where 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.

SECTION 1681–1. 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. Failure to present or negotia e.

NOTE—Unreasonable delay of a payee of a draft to present it to the drawee, or to notify the drawee of its non-acceptance or non-payment, or to return it to the drawer as refused by the payee, makes the paper the payee's own, and discharges the drawer. Allan v. Eldred, 50 Wis., 132.

E, being indebted to A, proposed to give him an order on X, and A refused to receive it giving no reason except that he wanted the money. E then promised to send A a sixty-day draft, which A understood was to be on a bank. Six weeks thereafter A wrote to E asking the latter to send him a sixty-day draft for the amount due, and E sent him a sixty-day draft on X. Without presenting this draft to X, returning it to E, or making any objection to it, A kept it about a year, and then offered to return it, but E refused to receive it. It does not appear that X was unable to pay the draft at any time, or that E suffered any loss by the delay in presenting or returning it. Held, that these facts are not sufficient in law to relieve A from the operation of the rule above stated, in the absence of any finding by the jury that E acted in bad faith in sending the draft to A under the circumstances. Ibid.

The taking of an order drawn upon a third person for the amount of a previous indebtedness of the drawer to the payee is prima facie a payment of the debt, and is absolute payment if, the drawee having funds to pay the order, the payee or holder fails to present it for payment within a reasonable time to the drawer. Schierl v. Baumel, 75 Wis., 69.

At the time of giving such an order and for a long time thereafter the drawees were indebted to the drawer in an amount largely

in excess of the order, and at a subsequent settlement between them the amount of the order was credited to the drawees and charged to the drawer. Held, that this was equivalent to funds in their hands to pay the order. Ibid.

Failure to present such an order for payment or to give notice of its non-payment within a reasonable time, is not waived by a subsequent promise of the drawer to pay the order, unless such promise is made with knowledge of the facts. Ibid.

The burden of proving that the promise was made with such knowledge is upon the holder of the order, at least where it appears upon the trial that he was in fact guilty of laches before the promise was made. Ibid.

When and where to be made.

SECTION 1681-2. 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 drawer 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.

Presentment of bill.

SECTION 1681-3. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 1678-2 and 1678-15.

NOTE—A delay in the mail is a sufficient excuse for delay to at once present a bill, and it may be done at once on receipt. Walsh v. Blatchey, 6 Wis., 413.

Delay, when excusable.

SECTION 1681-4. 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.

SECTION 1681–5. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:— Presentment, when excused.

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.

SECTION 1681–6. A bill is dishonored by non-acceptance,— When dishonored.

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.

SECTION 1681–7. When a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. Recourse, when lost.

SECTION 1681–8. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. When recourse accrues.

PROTEST.

SECTION 1681–9. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. 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 As to foreign bill.

bill, protest thereof in case of dishonor is unnecessary.

NOTE—TIME OF PROTEST.—Cannot be made until the bill is due. Stacy v. Dane Co. Bk., 12 Wis. 702. Welsh v. Dart, 12 Wis. 635.

Specifications of protest.

SECTION 1681–10. 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.

NOTE—A protest stating that a note, describing it, had been "protested for non-payment," and that the holder looked to the indorser for payment, is sufficient. The word "protest" fairly implies the dishonor of the instrument. Such a notice substantially contains the following requisites: 1. Description of instrument. 2. Assertion of presentment and dishonor. 3. That the holder looks to the person to whom note is given for payment, etc. Brewster v. Arnold, 1 Wis., 264, 273.

A notarial certificate stating that a note or bill was protested, was presented for payment "at Montello," and payment demanded and refused, but not stating to whom or at what place in the town of Montello, does not show such a presentation to the maker as will charge indorsers. Duckert v. Llienthal, 11 Wis., 55.

The words "Notice for W. W. (left at his house) Oshkosh" in the notary's certificate of service of notice of the dishonor of a note indicate that the notice was served by leaving it at the dwelling house of the person named. Adams v. Wright, 14 Wis., 442.

The omission to say "dwelling house" did not vitiate the certificate. Notaries are only to be held to reasonable certainty in the use of language. Ibid.

Neither is the certificate defective in not stating the hour of the day when the notice was left, or with whom it was deposited whether a member of the family or other person, or the particular circumstances attending the service, or that the indorser was absent. Ibid.

A notice of protest of a note payable at the banking office of a bank and indorsed by it, addressed to J. S. H. Pres't, describing the note by its amount, date, time of payment and the name of the maker, and stating that the note has been dishonored and the holder looks to you for payment, left at the banking office of such bank in due time, is sufficient to charge it as such indorser. Id. Aiken v. Marine Bk., 16 Wis., 713.

A notice of protest is sufficient if it conveys the necessary information; and mistakes of description and inaccuracies do not vitiate it, if the person to be notified could not have been misled by it. Ibid.

When a note payable at the banking office of a bank is indorsed by it, and is presented there at maturity and payment demanded

of the proper agent of the bank, which is refused, query whether a formal notice of protest to the bank is necessary in order to charge it as such indorser. Ibid.

A notice of the protest of a note is sufficient if it contains a true description of the note and states that it has been presented at maturity and dishonored, and that the holder looks to the indorser for payment. Glicksman v. Early, 78 Wis., 223.

How made.

SECTION 1681–11. 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.

When made.

SECTION 1681–12. 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.

Where made.

SECTION 1681–13. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

For non-payment.

SECTION 1681–14. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

When acceptor a bankrupt.

SECTION 1681–15. When 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.

When dispensed with.

SECTION 1681–16. 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 ope-

rate, the bill must be noted or protested with reasonable diligence.

Lost bill.

SECTION 1681–17. 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.

ACCEPTANCE FOR HONOR.

Acceptance supra protest, for honor.

SECTION 1681–18. 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 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.

To be in writing.

SECTION 1681–19. 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.

For drawer, when.

SECTION 1681–20. 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.

Liability of acceptor.

SECTION 1681–21. 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.

Engagement of acceptor for honor.

SECTION 1681–22. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

Bill payable after sight.

SECTION 1681–23. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Acceptance of dishonored bill.

SECTION 1681–24. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Presentment to acceptor, how made.

SECTION 1681–25. Presentment for payment to the acceptor for honor must be made as follows:—

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

2. If it is to be presented in some other place, than the place where it was protested, then it must be forwarded within the time specified in section 1678–34.

SECTION 1681–26. The provisions of section 1678–11 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

SECTION 1681–27. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

PAYMENT FOR HONOR.

Payment supra protest.

SECTION 1681–28. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon for the honor of the person for whose account it was drawn.

Notarial act of honor, when necessary.

SECTION 1681–29. 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.

Foundation of notarial act.

SECTION 1681–30. 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.

Different parties.

SECTION 1681–31. 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.

Bill paid for honor.

SECTION 1681–32. 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.

Holder's refusal, supra protest.

SECTION 1681–33. 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.

Payer for honor.

SECTION 1681–34. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

BILLS IN A SET.

When one bill.

SECTION 1681–35. Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Where parts are negotiated.

SECTION 1681–36. 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.

Indorsement to different parties.

SECTION 1681–37. 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.

Acceptance on any part.

SECTION 1681–38. 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.

Liability of acceptor in paying part.

SECTION 1681–39. 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.

When whole bill is discharged.

SECTION 1681–40. 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.

DAMAGES ON BILLS.

Rate of damages within state.

SECTION 1682. 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 non-acceptance or non-payment 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.

Rate of damages without state.

SECTION 1683. 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 non-acceptance or non-payment the drawer or indorser thereof, due notice being

given of such non-acceptance or non-payment, shall pay said bill with legal interest according to its tenor and five per cent. damages, together with costs and charges of protest.

PROMISSORY NOTES AND CHECKS.

Negotiable notes defined.

SECTION 1684. 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.

Check.

SECTION 1684–1. 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.

Presentation of check.

SECTION 1684–2. 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.

NOTE—Notice necessary. 18 Wis., 397. But no protest, 36 Wis., 149. On distant bank, must be sent by the close of business the next day after its receipt, or by the last mail. Lloyd v. Osborne, Wis., 93. Where drawer and drawee live in the same place, presentment must be made by the close of the banking hours on the next business day. Grange v. Reigh, 93 Wis. 552.

Where the payee presented the check on the next business day after receiving it, and on the next succeeding day notified the drawer of its dishonor and of his liability thereon, this is held due diligence, in the absence of any proof that the drawer was injured by the delay; especially as it appears that when the check was given the drawee had already suspended payment. Jones v. Heilger, 36 Wis., 149.

It will not be inferred that such delay in presentation and notice injured the drawer by causing a delay of legal proceedings on his part, where he appears not to have proceeded for the residue of his account with the drawee. Ibid.

No protest for non-payment of a check being necessary to fix the liability of the drawer, the fact that the check in this case was protested several days after presentment, and notice of dishonor given, is immaterial. Ibid.

Delay to present a bank check until the failure of the bank, ten days after its receipt, held negligence which would have discharged the drawers if they had left funds in the bank until that time, to meet the check. Kinyon v. Stanton, 44 Wis., 479.

But where the drawers drew out their entire account in the bank before its failure, they are liable to protect the check; and this, though the bank would probably have paid it at any time before the day of the failure, and although its assignee (under the federal bankruptcy act) recovered from the drawers the money drawn out by them on that day. Ibid. Dousman v. New Richmond, in 88 Wis. [See Gifford v. Hardell, in 88 Wis., 538.]

B, a resident of the village of Waukesha, having, through the whole time here in question, funds subject to his check, in the hands of O. M. T., a private banker in said village, erased from a blank check upon the First National Bank, of Milwaukee, the words "First National" and wrote over them the name of O. M. T., neglecting to erase the words "Bank of Milwaukee;" and dated and signed the check, inserting the sum to be paid and the name of W as payee and delivered it to W, who was a resident of said village and known to O. M. T. W soon after sold the check to plaintiff, a resident of the same village, who had done business there for six years, had a store within a few rods of O. M. T.'s bank, and had sometimes transacted banking business at the same. Nine days after the date of the check, and about a week after plaintiff became the holder, O. M. T. suspended payment, and the check which had not previously been presented to him, though afterwards presented by the payee, was never paid. In an action by the holder against the drawer, where the former claimed that the check was false and fictitious because there was no such bank as that named therein, while defendant claimed that the non-payment was caused by plaintiff's negligence; Held, That the drawee of the check should probably be regarded as sufficiently certain from the face of the instrument itself, and the unerased words "Bank of Milwaukee" as coming within the principle, *false demonstratio non nocet*. (2) That if that be doubtful, the above facts show that both W. and the plaintiff had full knowledge of who the drawee was, and of his place of business, in time to have obtained a payment of the check on presentation to him, and both were guilty of laches sufficiently to defeat the action. Cork v. Bacon, 45 Wis., 192.

Questions put to W. on his direct examination by defendant, inquiring whether he knew O. M. T.'s bank and place of business, when he took the check; whether he had previously received from defendant any similar check, payable at the same bank; whether O. M. T. ever paid to him money on any such check; whether he informed plaintiff, when he passed to him the check in suit, whom and what bank it was drawn upon; and whether he (witness) knew, when he took said check, where it was payable—were improperly ruled out. Ibid.

Certified check.

SECTION 1684–3. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

NOTE—The rule as to due care is [in] the presentation of a check drawn on a bank at a distant point is satisfied if the check is forwarded by the last mail of the day after its receipt and is presented at any time before the close of business on the day succeeding its receipt at the place of business of the drawee bank. Lloyd v. Osborne, 92 Wis., 93.

In the absence of any evidence as to when the hours of business closed according to the custom of banks in a certain city, it cannot be assumed that they close as early as 3 P. M., the hour when a bank at that place suspended business. Ibid.

The payee of a check had been in the habit of receiving letters from the drawers and others through the post office at N. though he lived and had his place of business at S, a few miles distant, to which latter place, by his direction, such letters were forwarded by the postmaster at N in the regular course of the mails. The check was addressed to him at N and was received there and forwarded to him at S in due course. Held, that, with reference to the rule requiring diligence in the presentation of the checks, he was not chargeable until it arrived at S. Ibid.

Discharge of liability of drawer and indorsers.

SECTION 1684–4. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Check not assignment of funds.

SECTION 1684–5. 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.

NOTE.—As between the drawer of a check and the holder thereof for value, the former having a deposit in the bank sufficient to pay the same, there is an equitable assignment of such fund to the amount of the check, and the drawer cannot arbitrarily stop its payment. Pease v. Landauer, 63 Wis., 20.

OTHER PROVISIONS.

Notes no part of chapter.

SECTION 1684–6. The notes to the foregoing sections of this chapter shall be no part of this chapter, but may be resorted to for purposes of construction and interpretation. The secretary of state shall, in preparing the session laws of 1899, print such notes in connection with the sections to which they apply.

Sections repealed.

SECTION 2. Sections 176, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683 and 1684, of the statutes of 1898 are hereby repealed. Sections 1944, 1945, 4143, 4194, 4425 and 4458 of said statutes are not affected by this act, and nothing herein shall be deemed to repeal any part of such sections. All other provisions inconsistent with this chapter are repealed.

SECTION 3. This act shall take effect and be in force from and after its passage and publication.

Approved May 5, 1899.